



**International Migration and Multicultural Policies Section**

**UNESCO Series of Country Reports on the Ratification of the UN Convention on  
Migrants**

**Identification of the Obstacles to the Signing and Ratification of the UN  
Convention on the Protection of the Rights of All Migrant Workers  
-  
The Asia-Pacific Perspective**

By: Robyn Iredale and Nicola Piper

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- Singapore (Associate Professor Brenda Yeoh, National University of Singapore and Ms. Elaine Ho).

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Ms Kerry Lyon, Administrative Assistant for the APMRN and Wendy Weeks, School of Geosciences, University of Wollongong, both assisted with organisational details and editing. Ms Keren Adams acted as a research assistant for Nicola at the Australian National University, Canberra.

Ultimately the interpretation of the information supplied to us is ours. We have sought to protect the people who provided us with sensitive material while at the same time endeavouring to ensure that some of the sensitive and difficult obstacles are conveyed in a balanced manner.

Nicola Piper and Robyn Iredale  
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## List of Acronyms

AMC	Asian Migrant Centre, Hong Kong
APMRN	Asia Pacific Migration Research Network
ASEAN	Association of Southeast Asian Nations
BAIRA	Bangladesh Association of International Recruitment Agencies
BMET	Bureau of Manpower, Employment and Training
BOESL	Bangladesh Overseas Employment and Services Limited
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRCOPAC	Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict
ECOSOC	United Nations Economic and Social Council
EPF	Employees Provident Fund
ICCPR	International Covenant on Civil and Political Rights
ICEAFRD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMR	International Convention of the Rights of All Migrant Workers and their Family
IELTS	International English Language Testing System
ILO	International Labour Organization
IOM	International Organization for Migration
KFSB	Korean Federation of Small Businesses
<i>Komnas HAM</i>	National Commission for Human Rights, Indonesia
<i>Komnas Perempuan</i>	National Commission for Violence Against Women, Indonesia
LDP	Liberal Democratic Party, Japan
MEWOE	Ministry of Expatriates Welfare and Overseas Employment
MFA	Ministry of Foreign Affairs
MFA	Migrant Forum Asia, Manila
MOLE	Ministry of Labour and Employment
MoU	Memorandum of Understanding
PAC	Pacific Access Category
RMMRU	Refugee and Migratory Movements Research Unit
SAARC	South Asian Association for Regional Cooperation
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme

## EXECUTIVE SUMMARY

### I Background and Method

On 1 July 2003, the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter: ICMR) officially entered into force as an instrument of international law that will ensure protection and respect for the human rights of all migrants. The Convention is a commendable effort by the international community to respect and protect the human rights of this vulnerable group of people. However, despite the universal involvement of UN member states in the drafting process beginning in 1990, it took almost 13 years for this important instrument to become part of international law.

In the Asia Pacific region, only three sending countries have ratified (the Philippines, Sri Lanka and Tajikistan) despite this region constituting an important source of labour migrants and with intra-regional labour migration taking place on a large scale. This report is concerned with the identification of the obstacles to the ratification of the ICMR in this region. Both countries of origin and destination are considered with regard to contemporary labour migration patterns and the extent to which their policies are consistent with human rights standards. The project was conducted in seven countries: two countries of origin (Bangladesh and Indonesia) and five countries of destination (Japan, Korea, Malaysia, New Zealand and Singapore).

The overall aim of this report is to investigate ways to gain wider acceptance of the ICMR in the specific context of the Asia Pacific region. This report:

- investigates why a sample of major sending and receiving countries in the Asia Pacific region have not ratified the Convention, and
- develops recommendations to encourage more ratifications in this region and beyond.

The main research methods employed were semi-structured interviews with key informants in seven selected countries in the Asia Pacific region. Informants were sought from among the following groups: politicians and/or governmental officials (at national and local level), NGO representatives (migrant support groups and human rights groups), academics, embassy staff (labour attaches), lawyers (bar associations), trade unions and employers/industry organizations, and National Human Rights Commissions (see Appendix I for more details). Interviews were arranged with the assistance of local coordinators, most of whom are members of the APMRN. The actual interview schedule was designed to test the obstacles and opportunities created by ratifying the Convention from a legal, social and political perspective. This also included an examination of the role the media are playing in the acceptance of human rights for migrants. Other materials informing the report comes from websites, and from newspaper clippings and copies of legal and semi-legal documents provided by the country coordinators.

## **II Major Findings**

In both sending and receiving countries in this study the ICMR is known in government circles, largely due to the promotion by very active NGOs. This does not mean, however, that the Convention is fully understood in all its details. On the technical legal level, apart from Japan and New Zealand, none of the other countries have come so far as to investigate clause by clause the exact legal implications of ratifying this Convention. Visibility of this Convention has not extended into the wider public sphere.

Human rights in general are reasonably well known, particularly in the receiving countries where standards of education are on average higher, but the concept of human rights of migrants is neither given much attention nor sympathy. The media are partly to blame. Also, human rights divisions at ministerial level in countries tend to be understaffed and under-funded. The lack of experts in the area of international law and human rights is also a common problem. Once governments ratify a UN Convention they need to address their obligations. With regard to foreign migrant workers, they are typically not prepared to do so at both the labour sending and receiving end.

Combined interests (among recruitment agencies, employers, governmental officials) that go against the granting of rights to foreign workers are a huge force that is not easily counter-acted by NGOs and sympathetic individuals within the government structure. At the NGO level, a big problem is the lack of resources available to campaign for this Convention. The Convention is often seen as too far removed with little hope for success, especially in receiving countries. NGOs feel that the pressure to compel receiving countries to ratify has to come more from the outside. Unless it comes from the UN, it will not come about easily as no western receiving country has ratified the ICMR.

### ***Specific Constraints in the Sample of Sending Countries***

The situation in the two sending countries, Bangladesh and Indonesia, is very similar: the ratification and the implementation processes are expensive undertakings and both countries' governmental budgets and staff assigned to such matters are very limited. Another problem is the allegedly high level of collusion between government circles and those involved in the export business (recruitment agencies). The creation of an environment of 'good governance' is needed and this requires broad level reforms.

The biggest obligation on the part of Bangladesh and Indonesia, once they ratified the ICMR, would be the provision of pre-departure information campaigns and training sessions, the monitoring and imposition of sanctions on brokers and recruiters operating illegally, and the provision of embassy services to citizens working abroad. Both countries are afraid of losing jobs abroad and of other sending countries picking up their workers' share if they ratify the ICMR.

NGOs in both countries are campaigning on behalf of the ICMR and also for national legislation but problems are posed by the lack of resources. The lack of awareness, on the

part of many migrants, of their basic human rights and the negative impacts of strong interests involved in the ‘migration business’ all pose major problems that need to be addressed.

### *Specific Constraints in the Sample of Receiving Countries*

The receiving countries in this study can be clustered together in the following manner with regard to their immigration policies, on the one hand, and political systems and attitudes towards human rights on the other: 1) New Zealand, 2) Malaysia and Singapore, 3) Japan and Korea.

In New Zealand, the dominant policy orientation at present follows that of other western receiving countries — no further expansion of human rights but the protection of national interests of the (welfare) state. There is agreement with the core aims and principles of UN human rights provisions but a critical position is taken vis-à-vis the UN system at large — it is seen as duplicating many projects and not using resources efficiently. With specific reference to the ICMR, it is seen as not matching the national situation and as duplicating rights provisions that already exist. As New Zealand takes compliance seriously, the extent of reforms needed to avoid breach of this Convention is considered too substantial and monitoring too costly. There is little pressure coming from semi- or non-governmental sources and some even concur with the official government position.

In Malaysia and Singapore, the many ministries involved in the migration phenomenon seem to operate without clear coordination and cooperation, and with little transparency. Immigration departments, rather than labour ministries, generally handle migrant worker programs. Moreover, departments are often in conflict with each other over the issue of suitable policy and policies are changed frequently. Clear cases of discrimination, such as the Singapore government’s refusal to classify domestic maids as workers and their provision of a special ‘non-worker’ visa for domestics, would not be challenged by the Convention as it stands.

In Japan and Korea, the issue of non-coordination among ministries and unclear policy approaches is more related to the relatively new experience of receiving substantial numbers of foreign migrants. With prolonged experience of this kind, governments seem to implement clearer policies (as can be seen in the context of Japan). What distinguishes Japan from Korea is that local governments of prefectures with high proportions of foreign residents and workers have put social welfare and legal aid facilities in place. Such programs, however, are highly localised and do not result in general rights as stipulated by the ICMR. The National Commission of Human Rights in Korea does not recommend ratification of the ICMR at this stage, and suggest improvement of existing legislation and practices instead in order to enhance social security of migrants.

In the receiving countries, migrant workers are seen as well protected in their capacity as workers (although their visa status often poses an obstacle to claiming labour rights in practice) but addressing their social, economic and cultural rights as stipulated in the ICMR is a different matter. In countries with social welfare states, this has to do with the current restructuring and reducing of welfare provisions. In countries of multi-ethnic

composition, this has to some extent to do with ethnic politics and existing minority groups whose rights often have not been protected according to international standards.

No government covered is prepared to extend rights to irregular migrants. They perceive this as a form of encouragement and, of course, they provide a cheap, flexible pool of labour. There is very little critical assessment of how migrants become 'irregular' and 'blame' is usually attributed to the migrants themselves.

Problems with recruitment agencies exist in all countries. States typically protect employers more than foreign workers and this is generally approved of by the public at large. Although most receiving countries claim that they have sufficient legislation in place, by excluding 'trainees' and domestic workers from coverage of their employment acts or labour laws a substantial part of the foreign migrant worker population is without protection.

### **III Conclusions and Recommendations**

Overall, a better understanding of the Convention and the implications of its ratification are required in both sending and receiving countries. There is confusion as to what the gains and losses are in case of ratification and it is assumed in both sending and receiving countries that the potential losses are greater than the gains. In addition, fears of 'being first' to ratify need to be addressed.

#### ***National Level***

Ratification of the ICMR faces major hurdles in the Asia Pacific region for two major reasons. For sending countries, the fear of being undercut by non-ratifying neighbours is a major obstacle — countries fear they will lose markets if they ratify. The need to encourage cooperation and collaboration, rather than competition, is imperative. The trade-off between ensuring labour market penetration and protecting the labour and human rights of migrants is a complex issue and so countries need to work together to ensure that undercutting does not occur. The fears associated with the consequences of ratifying the Convention need to be acknowledged and resolved. One way of doing this would be to conduct a study of the impacts for the Philippines, Sri Lanka and Tajikistan of their ratification. This would identify negatives consequences, if any, and put to rest unfounded fears.

For receiving countries, the major obstacles are of a political nature and require changes in national perspectives. The perception that they must admit the family members of labour migrants is widespread and needs to be corrected. Of even greater concern are issues surrounding irregular migrant workers. The unwillingness to admit the failure of border control and visa policies is a sensitive issue and likely to attract negative publicity for the government. However, the mismatch between labour demand and supply (providing an opportunity for migrant labour) is evident in Malaysia, Japan and Korea. Moreover, the high costs of migration, the inflexibility and/or brevity of some contracts and the absence of opportunities to migrate often lead to a growth in the number of



irregular migrants. Until these governments acknowledge the needs of employers and develop adequate labour migration programs and enable mobility between employers, migrants will be found in unprotected and highly exploitative positions.

The focus in receiving countries could be on changing domestic policies and laws first before mounting a ratification campaign. Parallel to improving national legislation could be the drafting of a 'declaration' or 'recommendation' of a non-binding nature that the receiving countries could be encouraged to sign. This would establish a 'code of practice' vis-à-vis migrant workers. The next step could be a campaign aiming at full ratification of the UN Convention.

Newer labour sending countries, such as Cambodia, Mongolia and Nepal, need to be incorporated into the regional migrant labour system and regional advocacy initiatives. At the moment, they are excluded from the major academic and NGO networks — partly because they have not yet developed country counterpart bodies.

*Recommendation 1: That UNESCO commissions a study of the Philippines, Sri Lanka and Tajikistan to examine the economic, social and political impacts of ratification of the Convention.*

*Recommendation 2: That the existing initiative in South Korea to change domestic legislation first, involving the UNDP and IOM, be encouraged and supported by UNESCO.*

*Recommendation 3: In addition, national or regional codes of practice or 'sets of principles' could be discussed as a step in the direction of ratifying the ICMR.*

*Recommendation 4: That UNESCO funds a similar study to this one in Cambodia, Mongolia and Nepal as a way of investigating the obstacles that exist in these newer countries of labour migration and as a means of incorporating them into the Asia Pacific Migration Research Network.*

### ***Regional level***

Leadership by one or more countries should be encouraged. Governments most likely to be active are the Philippines and Sri Lanka as they have already ratified the ICMR. The Philippines, in particular, is seen by NGOs and governments throughout the region as a model. Bangladesh already has an active process in place for trying to get the ICMR ratified and Indonesia is beginning to move in this direction. Other anecdotal evidence suggests that Thailand also appears receptive to the possibility of signing.

The next IOM sponsored Labour Minister's meeting will take place in Manila in 2004 and the establishment of a consortium could be discussed on this occasion. Once the consortium is established it would require a coordinator to arrange an initial meeting to discuss possible action plans. After this meeting, country representatives from

Bangladesh, Indonesia and Thailand would be required to develop plans specific to their situations.

Receiving countries may be more willing to ratify the ICMR if they have greater confidence in the ability of governments and other agencies to curb irregular migration in the region. Various initiatives have already been put in place in this region but the efficacy of these approaches has so far not been evaluated and before further initiatives are put in place a stock-take needs to be done in the region.

**Recommendation 5:** That a consortium of ILO representatives and government officials, NGOs and researchers from Bangladesh, Indonesia, the Philippines, Sri Lanka and Thailand be established to meet and discuss the possibility of formulating country action plans in Manila in 2004. This should be followed up by the initiation of a process to develop action plans for Bangladesh, Indonesia and Thailand to encourage them to ratify the ICMR.

*Recommendation 6: That UNESCO, ILO and IOM work together on this initiative as part of their on-going commitment to the improvement of labour migration programs and policies.*

*Recommendation 7: That an evaluation be undertaken into the National, Regional and Global Initiatives for Combating the Exploitative Aspects of Irregular Migration.*

### ***International level***

UN agencies need to work to mainstream migration — every agency and program should look at its potential ramifications/implications for migration. The concept of ‘workers rights are human rights’ needs promoting. However, the UN Convention is a ‘pre-globalisation’ document and does not take into account the changing patterns of migration and labour markets within regional economies. Long-term, there is a need for an Optional Protocol that amends the original Convention’s provisions. An international campaign is urgently required to promote ratification of the Convention:

- *Global:* to encourage Western countries to ratify so that other countries are more likely to follow suite;
- *Regional:* aimed at both senders and receivers simultaneously to achieve ratification ideally at the same time so that an actual or perceived ‘race to the bottom’ is avoided.

*Recommendation 8: The current Steering Committee for the Global Campaign, of which UNESCO is a member, should be resourced to continue promoting migrant workers’ rights.*

*Recommendation 9: As a long-term strategy, the Steering Committee could consider lobbying for a UN Decade of the Migrant. In the short-term, celebrations on International Migrants Day on 18 December should be widespread.*

*Recommendation 10: Information and training campaigns in both sending and receiving countries should be launched involving NGOs and trade unions — targeting the media, schools, employers, police and doctors in particular.*

### **NGOs**

At the time of the development of the ICMR there were few migrant NGOs operating globally, and especially in the Asia Pacific region. Therefore, they were not involved in the Convention's discussions and preparatory meetings. NGOs need to be assisted with capacity-building and incorporated more into the process of achieving ratification in many countries. The UN could fund training programs and networking among NGOs. A stronger partnership between UNESCO and migrant NGOs should be built.

*Recommendation 11: That UNESCO encourages NGOs in social capital building by supporting an existing NGO to act as a coordinating body.*

*Recommendation 12: That the UN provides training opportunities for NGO representatives and assist with the development of networks.*

*Recommendation 13: That UNESCO and the Steering Committee for the Global Campaign assist NGOs with the formulation of a new strategy now that the ICMR has come into effect.*

# CHAPTER 1

## INTRODUCTION

### 1.1 Background and Method

With the ratification by El Salvador and Guatemala on 14 March and Mali on 5 June 2003, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (hereafter: ICMR), adopted by General Assembly resolution 45/158 of 18 December 1990, finally enters into force on 1 July 2003. To date, from among the 22 countries that have ratified, or acceded to, the ICMR, there are only three situated in the Asia Pacific region: the Philippines, Sri Lanka and Tajikistan.<sup>1</sup> The Asia Pacific region, however, has emerged as a particularly important source for the export and import of labour. By 2000 the stock of authorised migrants (mostly migrant workers) in the seven major labour importing countries in East and Southeast Asia alone was approximately 3.7 million. The stock of unauthorised migrant workers in the same countries was estimated at 2.4 million (Battistella 2002: 406). Based on these statistics, an estimated 2 million women account for a third of the 6.1 million migrant workers in the region.

The increasing presence of non-national workers has resulted in a growing need for concepts, institutions, and legal instruments to protect the rights of migrant workers. International concern for the rights of migrant workers began with the establishment of the International Labour Organisation (ILO) in 1919 (which became a UN specialised agency in 1946). There are a number of ILO Conventions specifically relevant to migrant labour commencing with the 1975 *UN Convention on Basic Human Rights of Migrant Workers* whose text provided a primary model (along with ILO Convention 97 of 1949) for the drafting of the ICMR. The latter breaks new ground by clarifying the full application of the human rights law to migrant workers, defining what constitutes a migrant worker and covering the entire migration process. So far, it has gained only limited support from states generally and no support at all from labour receiving countries.<sup>2</sup> This stands in stark contrast to other UN conventions (such as the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of the Child*) covering other vulnerable groups such as women and children.

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<sup>1</sup> Bangladesh has signed, but not yet ratified.

<sup>2</sup> As of July 2003, the following countries have ratified the Convention: Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay (please see: <http://www.migrantsrights.org/Ratificationchart.htm>).

The ICMR specifically addresses the fundamental human rights of migrant workers and members of their families based on their vulnerability as non-nationals in states of remunerative employment and states of transit. The types of migrants covered range from unskilled to skilled, including itinerant, project-tied, those in specified employment, self-employed migrant workers, and seasonal workers. Explicitly excluded are seafarers, business people (traders, investors), trainees and asylum seekers.<sup>3</sup> Given the impact of global migration for employment, the Preamble of the Convention emphasizes the need to ‘harmonize the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and their families’. Overall, this Convention underscores the age long conflict between the international norms of human rights and state sovereignty. Ultimately, the ‘rights of states’ clearly prevail over the ‘rights of migrants’ with states retaining the right to set the conditions under which foreigners may enter and reside in their territory. Many of the problems migrants face, however, are directly connected to their visa status or type of work permit. Migrants who are holders of valid work permits/visas tend to be in a better position than irregular migrant workers but they may be subject to state restrictions and their working conditions may be poor. The situation is usually much worse for irregular migrant workers who are afforded little or no legal protection and face the constant threat of deportation. Despite its flaws, the ICMR is nevertheless considered ‘the first universal codification of the rights of the migrant workers and their family members in a single instrument’ and although ‘some of the provisions can be found in other international instruments, the fact that they are brought together in one Convention gives them validity’ (Loennroth 1991: 735).

Until fairly recently, neither relevant institutions within the UN system nor governments which had played an influential role in the drafting process had made efforts to promote this Convention. The marginalisation of the Convention might also be related to the fact that it did not officially come into effect until July 2003. Unlike the six UN core conventions<sup>4</sup>, the ICMR is a smaller convention that has never been given much priority. Until 1996 even obtaining its text was difficult, and until the beginning of 2001 no single person anywhere in the world was engaged on a full-time basis in promoting the Convention. On the contrary, there is evidence that a number of governments strongly discouraged attempts to do so. The late 1990s, however, witnessed (1) intensified civil society activism, notably in Asia which has the most advanced migrant worker NGOs and regional networks, (2) the launching of a Global Campaign for its entry into force in 1998<sup>5</sup>, (3) the appointment of a UN Special Rapporteur on Human Rights of Migrants in 1999, and (4) the official launching of International Migrants Day on 18 December by the UN in the year 2000 (Taran 2000). In April 2000, the United Nations Commission on Human Rights in Geneva passed a resolution calling upon ‘all member states to consider

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<sup>3</sup> Asylum seekers who have not yet obtained that status but who have managed to engage in remunerated activity while their claim as refugee is being processed do benefit from the new Convention’s scope of application (Boehning, 1991).

<sup>4</sup> The ICESCR and ICCPR came into effect after ten years (1966-76); the CEAFRD after 4 years (1965-1969); CEDAW (1980-81) and CROC (1989-90) after one year only and CAT after three years (1984-87).

<sup>5</sup> The Campaign Steering Committee includes 16 leading international bodies on human rights, labour, migration and church organizations. See for more detail Global Campaign website at: [www.migrantsrights.org](http://www.migrantsrights.org)

the possibility of signing and ratifying or acceding to the Convention as a matter of priority'.<sup>6</sup>

All of these recent developments were aimed at achieving the 20 necessary ratifications to allow the Convention to come into effect. The next step is not only to boost the number of ratifications but also to get receiving countries to ratify.

### ***Purpose of this Report***

The overall aim of this report is to identify the obstacles to the ratification of the ICMR in order to promote the protection of human rights for migrants by means of gaining wider acceptance of the ICMR in the specific context of the Asia Pacific region. Taking an international human rights approach to the plight of migrant workers is particularly important in the context of the Asia Pacific region, as it not only lacks a regional human rights instrument and monitoring regime but also makes the extension of citizenship rights to migrants extremely difficult, if not impossible.

The overall aim of this report is to investigate ways to gain wider acceptance of the ICMR in the specific context of the Asia Pacific region. Thus the two main aims of this report are to:

- investigate why a sample of major sending and receiving countries in the Asia Pacific region have not ratified this Convention, and
- develop recommendations to encourage more ratifications in this region and beyond.

### ***Research Methods***

The main research methods employed were semi-structured interviews with key informants in seven selected countries in the Asia Pacific region. Informants were sought from among the following groups: politicians and/or governmental officials (at national and local level), NGO representatives (migrant support and human rights groups), academics, embassy staff (labour attachés), lawyers (bar associations), trade unions and employers/industry organizations, and National Human Rights Commissions (see Appendix I for more details).

The actual interview schedule was designed to test the obstacles and opportunities created by ratifying the Convention from a legal, social and political perspective. This also included an examination of the role that the media are playing in the acceptance of human rights for migrants. The design of questions was approached from an import-export perspective. By grounding the open-ended questionnaire in an 'export-import' dialectic, different questions were asked at the import end informed by the export end and vice versa. In this sense, the interviewing schedule was dynamic rather than static.

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<sup>6</sup> E/CN.4/2000/L.56, Agenda item 14(a) (14 April 2000). The Resolution was ultimately adopted with this part of the draft text in tact. See E/CN.4/RES/2000/49 (adopted without a vote).

The interview schedule was arranged with the assistance of ‘local coordinators’ most of whom are members of the Asia Pacific Migration Research Network (directed by Associate Professor Robyn Iredale, University of Wollongong, Australia).<sup>7</sup>

Other materials informing the report came from websites, and from newspaper clippings and copies of legal and semi-legal documents provided by the country coordinators, which contained information on migrants’ rights and reports of abusive practices against migrants.

## **1.2 Migration Patterns and Human Rights in the Asia Pacific Region**

Over the last few decades, the labour market conditions in the region under discussion have undergone considerable changes. Intensified migration pressures have resulted in the supply side of migrant labour out-balancing the demand, with the effect that benefits for migrants have been reduced, as wages have been pushed down and recruitment fees up. Furthermore, these market pressures allow for less protection, meaning migrants are subjected to higher levels of exploitation. On the labour exporting front, new source countries such as Nepal and Vietnam have emerged (see Appendix II for overview of policies in Asian sending countries). This has resulted in increased competition and lower standards of labour migration policies at the receiving end, where economic downturns and rising unemployment among the local workforce have lowered existing protective mechanisms and reduced the prospects of implementing rights-based regulations for non-citizens. Certain abuses have become more common, such as the non-payment of wages which reflects the current state of the economy in many receiving countries where unskilled migrants are usually employed in small- and medium-sized companies which typically take the brunt of increased competition. Hence, the costs of migration have come to be disproportionately born by the migrants themselves.<sup>8</sup>

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<sup>7</sup> The selected countries (representing South, Southeast, and East Asia as well as the Pacific) and the respective coordinators were:

Bangladesh (Professor Tasneem Siddiqui, University of Dhaka and RMMRU)

Indonesia (Dr. Riwanto Tirtosudarmo, LIPI, Jakarta)

Japan (Professor Ruri Ito, Ochanomizu Women’s University, Tokyo)

Korea (Professor Junghwan Lee, Pai Chai University)

Malaysia (Dr. Noorul Ainur Mohd Nur, National Institute of Public Administration, Kuala Lumpur),

New Zealand (Professor Richard Bedford, Waikato University, and Professor Paul Spoonley, Massey University)

Singapore (Associate Professor Brenda Yeoh, National University of Singapore)

The following individuals were also involved, as assistants helping out as ‘guides’, interpreters and additional resource persons: Professor Hyekyung Lee, Ms. Elaine Ho, Mr. K.N.M. Hossainul Haque, Ms. Chiho Ogaya, and Ms. Pande Ketut Trimayuni.

<sup>8</sup> A good example is Singapore where employers pay one Singapore \$ as a ‘fee’ to agents for an Indonesian maid but the maid herself has to pay for her expenses and the proper fees, resulting in several months without wages to pay off the debts.

Intra-Asian labour migration flows have become a structural part of the regional economies and societies. Despite the increasing cross-border movements, control over migration remains one of the last bastions of individual states, creating a growing discrepancy between the social reality of migration and its legal regulation. In much of Asia, this is also related to the political sensitivity of issues revolving around workers' and human rights which has prevented a regional dialogue on international labour migration from taking place within for such as ASEAN or SAARC. There are, however, signs of solidarity emerging - at least as far as major sending countries are concerned - and moves toward collective bargaining on governmental level.<sup>9</sup> With no Asian Human Rights monitoring system, however, this task is largely left to NGOs.

Despite some variations, labour migration policies in the receiving countries in Asia can be broadly summarized as follows:

- Limiting labour migration
- Limiting the duration of migration
- Limiting integration.

These policies all impact upon migrants' rights as they classify migrants as workers or labourers to be deposed off when convenient and thus reduce the economic benefits for individual migrants who are often forced into repeat or circular migration. There is a tacit approval of irregular migration in much of the region.

In terms of human rights protection in general, the Asia Pacific region is the only region without a specific human rights treaty and without some form of a region-wide mechanism.<sup>10</sup> This is despite the fact that this region has about one third of the world's area and two thirds of its population. The region's enormous diversity particularly in terms of political systems explains the absence of a regional human rights mechanism of the kind existent in South America, Europe and Africa. On the national level, in the countries under investigation here, human rights commissions exist only in New Zealand, Indonesia, Malaysia, and Korea.<sup>11</sup>

Apart from New Zealand, none of the countries under investigation have an immigration policy aimed at bringing in long-term and/or permanent settlers. None of the sending countries have a migrant worker bill including human rights along similar lines to *The Migrant Workers and Overseas Filipinos Act of 1995* promoted by the Philippine government as being the *Magna Carta* for overseas workers.

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<sup>9</sup> In April 2003, a ministerial level meeting among the labour sending countries in the Asian region was instigated by the governments of Sri Lanka and Indonesia and was held in Colombo. The next meeting is planned for Manila in early 2004.

<sup>10</sup> This is partially due to the level of diversity, in terms of political systems, historical processes, languages, and culture in the region, and the emphasis on economic gains in the last 50 years.

<sup>11</sup> The other countries in the Asia Pacific which have established National Commissions of Human Rights are: Australia, India, the Philippines, Fiji and Sri Lanka. Thailand has also set up a National Commission in 2000. Although Japan has not established a National Commission, the government set up a Promotion Council for human rights education in 1995 and the Council for Human Rights Protection in 1997.



## **CHAPTER 2**

### **PROFILE AND DESCRIPTION OF OBSTACLES IN EACH COUNTRY**

The main reason for not signing the ICMR is political. Receiving governments' strategy for overcoming financial crises or periods of recession is to maintain a mobile and flexible workforce through importing migrant labour. This functions as a convenient mechanism for regulating economic performance and provides a system which has no political repercussions. When convenient, any number of migrant workers can be deported without public outcry. Rising unemployment in both receiving and sending countries creates a climate that is not conducive to ratification; the senders fear losing their share of the regional labour market, and the receivers fear an unfavourable reaction by the populace/citizenry. There are differences though, as to whether a country is mainly an importer or exporter of labour.

Sending countries have to date been more ready to sign on to the ICMR as part of a political/social agenda to protect the rights and conditions of their workers abroad. The actual attitudes in, and situation that pertains to, each country need to be better understood to enable discussion about possible means of alleviating the concerns and fears of countries in the region. There are however nuances, if not substantial variations, among the countries within each category.

#### **2.1. SENDERS' PERSPECTIVE**

##### **Bangladesh**

With a large labour surplus and being one of the lower developed countries<sup>12</sup>, Bangladesh is a major supplier to the global labour market. Between 1991 and 2000, on average more than 225,000 Bangladeshis left the country each year, mainly to destinations in the Middle East, Southeast and East Asia to work largely in the construction and manufacturing sectors. Their remittances constitute a significant proportion of Bangladesh's foreign exchange earnings (Siddiqui 2002). The bulk of migrant workers

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<sup>12</sup> According to the Human Development Report 2002, Bangladesh is ranked no. 145 from among 173 countries (UNDP 2002).

are unskilled (58%) and semi-skilled (16%) and most move to Saudi Arabia, followed by Malaysia, United Arab Emirates, Kuwait, Oman, Qatar, Singapore, Bahrain, Libya, Korea and Brunei. There is an official ban on women which prohibits them from migrating as domestic workers.<sup>13</sup>

Labour migration began officially in 1976, and the Government of Bangladesh has been promoting the employment of its manpower abroad as part of an overall development plan ever since, but the laws and institutions for managing the outflow of labour seem to have fallen behind largely due to limited resources and expertise. There is no comprehensive policy regarding overseas labour recruitment. The Emigration Ordinance of 1982 constitutes the only piece of legislation and works as a broad skeleton to regulate the movement of migrant workers. Necessary supplements and rights based protection clauses have, however, not been formulated, let alone implemented.

The agencies of the Government of Bangladesh involved in the deployment of labour overseas are the Bureau of Manpower, Employment and Training (BMET) and the Bangladesh Overseas Employment and Services Limited (BOESL) under the administrative control of the Ministry of Expatriates Welfare and Overseas Employment (MEWOE), a newly created ministry out of the former Ministry of Labour and Employment (MOLE) in 2001. The Ministry of Foreign Affairs (MFA) also plays a role to the extent of deploying Labour Attaches and is in charge of international obligations. The BMET is responsible for the regulations of terms and conditions, requiring all migrants to get clearance before departure. The Bureau is also in charge of monitoring recruiting agencies - which are mostly private with approximately 700 registered agents - and running Technical Training Centres (IOM/Dhaka 2002). Since the creation of the MEWOE, new sets of rules were put into effect pertaining to 1) emigration rules (contracts, services), 2) recruitment agencies' licensing, and 3) welfare fund rules. This constitutes a first step towards addressing the welfare of migrant workers.

There are bilateral agreements with Qatar and Iraq which establish a quasi-legal framework. But Iraq has not been a destination for Bangladeshi workers since 1991, while the average yearly flow to Qatar is rather small (8,000). With Malaysia, Bangladesh has a Memorandum of Understanding (MoU) but since 1998, the number of migrants to Malaysia has been declining (AMC 2001).

In 2001, the Refugee and Migratory Movements Research Unit (RMMRU) was asked by the Caretaker government to prepare a strategy paper on how to streamline labour recruitment processes in Bangladesh. This set off efforts to bring all stakeholders together to discuss common objectives (Siddiqui 2002) and this has led to increased knowledge about the type of stakeholders and the breadth of the problem issues involved. It has also resulted in a certain level of coordination with regard to possible solutions. Ratification of the ICMR is among the recommendations in RMMRU's strategy paper.

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<sup>13</sup> There have been talks of the government lifting this ban which has not yet happened. However, a more relaxed attitude can be observed in the government's official practices in letting women migrate abroad.

In terms of its overall human rights records, Bangladesh has ratified CEDAW (1984) and the Optional Protocol to CEDAW (2000), ICEAFRD (1979), CRC (1990), CAT (1998), ICESCR (1998), and ICCPR (2000). In 1997 Bangladesh signed the ICMR but has not yet proceeded to full ratification. This comparatively good ratification record does not, however, translate into a good implementation record. There are in fact many technical and other problems with implementation. This partly has to do with the fact that Bangladesh has only become more democratic since the overthrow of the last dictatorship in 1990 and partly with seriously limited resources available due to being a lower developed country. Bangladesh has no National Commission for Human Rights, but apparently is *the* country where developments to establish a national human rights institution have come the furthest amongst those Asian countries which have not yet set one up. Since 1995, the government has been assessing the need for such a national institution and despite criticism by NGOs, the first draft legislation was approved by the Cabinet in 1999 and currently awaits implementation (Australian Human Rights Centre 2000).

### ***Areas of Human Rights Violations vis-à-vis Migrants***

#### *Financial ‘milking’ of migrants*

- Unscrupulous activities of recruitment agencies;
- The possible involvement of government officials in the labour recruitment business process needs to be investigated.
- The widespread involvement of so-called ‘middlemen’ may encourage even ‘good-natured’ recruitment agencies to become exploitative;
- Collection of extra money as levies;
- Non-Transparency of the Welfare Fund;
- The money paid into this Fund is deducted from recruitment fees paid by individual migrants and managed by the government supposedly for social welfare payments (medical expenses; pensions for widows etc.). The Executive Board consists of government officials and BAIRA representatives, but no NGOs. There is no public knowledge as to the overall amount and the way in which it is spent;
- Short term contracts;
- These types of contracts are in the interest of Bangladesh as a sending country as the migrant workers are required to return and pay fees all over again for getting a new work permit;
- Forged Documents cost high sums of money;
- Many middlemen sell fake passports and visas.

#### *Corruption*

There are strong vested interests in maintaining the present system and they greatly obstruct the bringing about of change from the top.

#### *Class discrimination*

There is a requirement for migrant workers to wear a kind of ‘uniform’ to mark them out as different from other travellers. This constitutes a violation of their dignity.

### *Gender discrimination*

The ban on domestic helpers (imposed in 1992) has forced many women to migrate in an irregular manner, often with the help of smugglers or traffickers. This ban needs lifting to open up legal channels which would reduce the vulnerability of these women.

### ***Obstacles to Ratification of the ICMR***

#### *Political/economic climate and commitment to human rights issues*

Among the general population, high rates of illiteracy hamper the spread of information about rights to increase awareness, although empowerment programs by various NGOs are trying to alleviate this situation. There is a general reluctance, including among the media, to highlight human rights abuses by the government or others.

Bangladesh's ratification record is comparatively good and in the 1990s most of the major conventions were incorporated into domestic legislation, though not necessarily implemented. The economic situation in Bangladesh is poor and this, together with the political situation, militates against its ability to implement human rights laws.

#### *Perceptions of impact of ratifying ICMR*

The Law Commission of Bangladesh in 1998 stated that Convention on Protection of Rights of all Migrant Workers and Members of their Families, 1990 could be ratified immediately but with a reservation on Article 18. Accordingly, the Government of Bangladesh signed the Convention. It asked to make a reservation in one section of Article 18 because it was in conflict with the Code of Criminal Procedure of Bangladesh. The relevant clause of the Convention provides for trial for criminal offences in the presence of the accused while Section 339B of the Code of Criminal Procedure permits the trial of an accused in absentia, when the accused is absconding. The Law Commission did not consider this a major hindrance in ratifying the Convention (Siddiqui 2001: 66). Nevertheless, the Convention was not ratified.

As they are dependent on sending out labour, government officials (especially the Ministry of Foreign Affairs) expressed fears of retaliation by receiving countries in the form of non-acceptance of workers from countries that have ratified this Convention. They also fear that sending countries would be made liable for the costs of any of their citizens who migrate 'illegally', if they ratify the Convention.

#### *Other obstacles*

Spontaneous migration between India, Pakistan and Bangladesh, partly because of ethno-religious conflicts, occurs on a continuous basis. It is an extremely sensitive and highly politicised issue and the three governments try to avoid addressing this in public. Ratification of the Convention would draw attention to migration generally and would require equal treatment of all ethnic groups, a fact that is politically unpalatable at present.

## Indonesia

Indonesia is the largest labour sending country in this study. Its overseas labour contract program was developed in the 1980s. The program maintained a modest flow (less than 100,000 workers) for many years, mostly consisting of domestic workers to the Middle East and Malaysia. Their numbers and destinations increased in the 1990s (now surpassing 500,000 workers). The largest outflow is to Malaysia where the Indonesian community amounts to approximately 1.4 million people (many of whom are irregular), followed by Saudi Arabia (the second largest importer of Indonesian workers), Singapore, Taiwan, South Korea, etc. (IOM 2000).<sup>14</sup> Since 1999, an average of 387,304 Indonesians per year leave the country in the search for work abroad (Chandrakirana *et al.* 2002).

It is not only the steep rise in numbers of overseas migrant workers that is dramatic but also the reversal of the gender balance. During the 1970s, women were outnumbered by men by a ratio of 3:1. By the early 1990s, almost twice as many women were placed overseas as men. Currently, 70% of Indonesian migrant workers are women. Domestic workers from Indonesia constitute the fastest growing group in Hong Kong (Chandrakirana *et al.* 2002).

Generally, government policies on labour migration have been made at the ministerial level in the form of decrees by the Ministry of Labour. Their main interest is to reduce local unemployment which currently stands at 40%. Hence its policies have more to do with facilitating the outflow of migrant labour than with setting up costly protection mechanisms. The emergence of unregulated 'labour export businesses' is facilitated by the current political transition period which has left the bureaucracy in turmoil. The bureaucracy's focus on political stability and national integration has taken priority.

Since the collapse of the Suharto regime in May 1998 and the rise of civil society activism, the state is no longer able to suppress strong public demand for a legal basis for the protection of migrant workers. However, the more fundamental problems currently facing the state of consolidating democracy and reinvigorating the economy seem to hamper the realisation of clear policies on overseas migrant workers. With the state largely incapable of delivering legal and institutional protection and the demand for overseas work rising, human rights violations continue unabated.

Several initiatives to reform the system of exporting workers have been attempted by the Indonesian government. These reforms, however, have been ad hoc in nature rather than constituting a coherent and comprehensive strategy for the promotion of migrants' rights. These initiatives include the recent establishment of new divisions in two ministries (Foreign Affairs and Social Welfare) which have not yet come up with well-defined strategies (Chandrakirana *et al.* 2002).

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<sup>14</sup> To get clear figures in Indonesia is very difficult as official statistics are unreliable or unavailable. This is especially so in the case of migrant workers as many of them are unauthorised.

Indonesia's overall ratification record of UN conventions must be seen in light of the political and institutional transformations the country is currently undergoing. Despite having a better record than Malaysia and Singapore on paper with the ratification of CEDAW (1984), CAT (1998), CRC (1990) and CEAFRD (1999), the real issue in Indonesia is implementation. The National Commission for Human Rights (*Komnas Ham*) was set up in 1993. Its ability to operate effectively and independently has been questioned since its inception and it has no powers of enforcement and can only make recommendations to the Indonesian government. Furthermore, there is only one regional branch office. Most complaints received have to do with land issues. In addition to *Komnas Ham*, the National Commission For Violence Against Women (*Komnas Perempuan*) was set up in 1998, after the occurrence of racially motivated riots and rapes following the overthrowing of Suharto. *Komnas Perempuan* is more actively involved in migrant worker related issues than *Komnas Ham* and functions as a bridge between the government and NGOs. Migrant worker NGOs have been on the increase since the mid-1990s. They have undertaken many laudable initiatives, including the formulation and promotion of a draft law on the protection of migrant workers modelled after the ICMR (submitted to the Parliament). More comprehensive and broad-based strategies, however, are hampered by a lack of funding and resources.

### ***Areas of Human Rights Violation vis-à-vis Migrants***

Indonesian migrants are subject to abusive practices at all three stages of the migration process: in the pre-departure phase, while working abroad and upon return. The focus here is on the Indonesian government's role in the three stages.

#### *Pre-departure*

Potential and prospective migrants become victims of deceitful and incomplete information about the whole migration process as well as forgery of their travel documents. Women are typically held against their will in 'holding' or 'training' centres while awaiting clearance of their visa applications. This is supposed to take no longer than three months, but many stay much longer. The facilities are inadequate and women are often subject to various types of harassment. The training provided does not include educating the migrants on their basic rights as workers. On the contrary, there is anecdotal evidence that they are instructed to be submissive and comply with employers' demands.

The performance of recruitment agencies is not regulated or monitored except from outside (e.g. Singapore). These agencies have played an important role in undercutting the minimum wage set in Hong Kong which is supposed to be the same for all domestic workers regardless of nationality. There is also a lack of transparency in the management and use of fees officially required by the government, which supports anecdotal evidence of collusion between the Ministry of Manpower and recruitment agencies.<sup>15</sup>

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<sup>15</sup> Frequent reports of abuse of power and the involvement of government officials in migration management were received in Indonesia. Other comments were also received on the inappropriate

### *Working abroad phase*

The Indonesian embassies abroad are extremely understaffed and under-resourced. The posts of Labour Attachés only exist in Kuala Lumpur and Riyadh, and in such offices only one person is employed to take care of large numbers of migrant workers. There is anecdotal evidence of direct involvement in the labour migration business by members of the diplomatic corps. Despite recent improvements in certain countries, there are still complaints by individual migrants and NGO representatives about the attitude of embassy staff towards lower class labourers ('feudalistic character', 'no sympathy').

There are no bilateral agreements with any receiving country governments. There is only one Memorandum of Understanding (MoU) in place with Malaysia covering procedural matters regarding recruitment but this makes no mention of rights. On the contrary, it condones human rights violations by (1) prohibiting Indonesian workers from organising, (2) requiring them to submit their passports to employers and (3) prohibiting marriage with local citizens. Agreements with Saudi Arabia, and other countries, do not include any clauses on migrants' rights and are too limited to become the foundations for developing a mechanism for redress. According to some NGOs, the situation has slightly improved in recent years but still constitutes blatant financial exploitation.

### *Return*

Institutional exploitation of returning migrants takes place at the site of the Terminal 3 at Soekarno Hatta Airport/Jakarta, originally created to allow a one-stop service. Since its inception it has been mismanaged, with migrants (mostly the women) having to pay separate fees at various points during customs and immigration clearance for 'services' they have no control or choice over. Foreign exchange rates are higher than outside of the airport. Transportation is pre-arranged at more than double the usual rate. Family members have to pay when picking up the returnees.

There is no legal base for demanding compensation for returnees who have been crippled, disfigured or maimed for life. The social insurance system for returnees in need of hospitalisation is highly dysfunctional.

Another issue returning migrants have to face are new tax regulations by regional governments, set up as part of the decentralisation process. Regional governments are currently empowered to tax citizens, without the central government having put in place protection of people's basic rights and the provision of good quality services.

## ***Obstacles to Ratification of the ICMR***

### *Political/economic climate and commitment to human rights issues*

As Indonesia is in a transition phase from dictatorship to democracy, the government and bureaucratic structures are weak. There is no long-term planning or vision, and internal politics focus upon upcoming elections – the next one is in 2004. There is a lack of

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treatment and attitude towards less skilled workers. Due to concerns about privacy it is not possible to name the sources.

coordination between sectors and ministries, which is compounded by ministers representing different parties. Recently a considerable amount of administrative responsibility was devolved to regional governments but they have no experience in providing public services.

Labour issues and migrant workers issues are marginal issues in politics. But there are signs of improvement and a National Coordinating Body, involving all concerned ministries, was put in place in 2002. Also, the two main ministries concerned, the Ministries of Foreign Affairs and Manpower, are currently undergoing restructuring and there are plans for new Directorates for the protection of Indonesian citizens and migrant workers.

Indonesia has not yet ratified all of the six core conventions and is currently focused on drafting a bill to ratify the ICCPR and ICESCR.<sup>16</sup> The ICMR is not on their list of priorities (it was not included in the last Plan of Action) though discussions are currently under way as to whether or not to put the ICMR onto the new Plan of Action being pushed by the Ministry of Foreign Affairs. The outcome of these discussions is as yet unknown but at least there are positive signs of change.

Ministries, such as the Ministry of Foreign Affairs, stated that there is no political pressure to ratify this Convention, as there is with the ICCPR or ICESCR. Moreover, the lack of international pressure is significant. Broad reforms are needed (social, educational, political, economic) to promote human rights and rights consciousness.

#### *Perceptions of impact of ratifying ICMR*

With emigration pressure being high in the light of little or no job creation nationally or locally, the government fears losing out in the international labour market, particularly in the Middle East, if it ratifies this Convention. Indonesia approaches its neighbours and largest receivers of its workers, its Islamic brother countries in the Middle East and Malaysia, somewhat timidly. Public confrontation with these countries is highly undesirable. Indonesian migrants are not protected abroad because none of these receiving countries have ratified this Convention (issue of reciprocity). Unless countries like Malaysia in particular ratify, Indonesia will not either because it sees no benefit in doing so as there would still be no guarantee of protection of its citizens abroad.

The government has the perception that if it ratified the ICMR, it would have to protect migrant workers in Indonesia, who are mostly professionals ('ex-pats'), by providing services such as education for their children and welfare services. This would be too costly for a country struggling to elevate standards for its own citizens and would create the impression that professional migrants were being given special treatment.

#### *Other obstacles*

The direct or indirect involvement of government officials (particularly Labour/Manpower) with recruitment agencies is an ongoing problem. If migrants were to

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<sup>16</sup> However, NGOs and social commentators believe that the ICCPR has no chance of being ratified because of nationalism, the army's influence, and fear of foreign intervention.



be protected by the ICMR after ratification, this whole money-making business would in theory be exposed and could not carry on as migrant worker services would be treated as a public matter.<sup>17</sup>

Indonesia experiences a huge budget deficit which means there is no budget to cover reporting obligations to the UN after ratification and to implement the provisions. There are few experts and no training budget to enhance the social capital and expertise among bureaucrats. There are concerns that ratification would bring huge administrative burdens. The low salaries for bureaucrats, who often engage in work outside of their ministerial jobs to beef up their salaries, means that they cannot fully devote all their time to solving national problems. A lack of professionalism and ignorance of migrant worker-related issues adds to this.

## 2.2 RECEIVERS' PERSPECTIVE

### Japan

Since the 1980s, Japan has increasingly become a labour receiving country, largely of less skilled workers from Asia. This has resulted in 1,6778,462 registered foreign residents at the end of 2001 - a figure which includes 'oldcomer' Koreans and Chinese (about 636,548<sup>18</sup>) and just over one million 'newcomers' from China (249,201), Brazil (224,299), the Philippines (175,033), Peru (42,802), Thailand (25,253), Indonesia (16,418), Vietnam (14,569) and other countries (AMC and MFA 2001). There are also a small number of highly skilled workers, most of whom form part of multinational company transfers or teachers/academics.

The cornerstone of the Japanese government's migration policy was and remains that of limiting the stay of migrants and assuring their return to their home countries after two or three years. Among the visa categories available, there are none for un- or semi-skilled workers. There are three exceptions: as a result of the revised 1990 Immigration Law, the only group of 'unskilled' foreigners who are granted 'long-term residency' (or rather 'longer term') are foreigners of Japanese ancestry, the so-called *Nikkeijin* (from South-America; by 1995 there were approximately 195,000). The second exception are people

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<sup>17</sup> Evidence of this is the recent policy to make domestic helpers return to Indonesia from Hong Kong in order to apply for a new contract rather than apply while in Hong Kong because in this way, they will have to pay recruitment agencies again. The more recent policy is a temporary ban put in place on all domestic workers to all destinations. For how long this will be in place and how the problem issues are solved, is unclear. Another piece of evidence is the Nunukan tragedy which happened in August 2002 when Malaysia expelled about 22,000 irregular migrant workers (most of them Indonesians, but also some Filipinos) from Sabah: the Philippine government sent a task force to investigate what happened, but the Indonesian government did not react. NGOs and social commentators partly explain this by the interests among certain ministries in charging fees to the migrants to sort out their papers and then send them back. This apparently created a huge windfall for the Ministry of Manpower and Immigration Office. There is currently a civil law suit going on, instigated by a consortium of NGOs (the Indonesian people against the government).

<sup>18</sup> Their presence in Japan is largely rooted in Japan's colonial rule of parts of East Asia between 1910 and 1945.

on an ‘entertainer’s visa’<sup>19</sup> and the third are the ‘trainees’. Much of the labour migration, particularly from Asia, occurs in a spontaneous manner and conservative estimates put figures for irregular workers at around 300,000.

Labour laws in Japan such as the Labour Standards Law, the Employment Insurance Law and the Workers’ Accident Compensation Insurance Law are in theory applicable to all workers regardless of their nationality and type or legality of visa status. Thus, labour laws apply to all who are *working* in Japan. However, at the level of administrative application, foreign workers are treated differently. The threat of being reported to the immigration authorities often frightens unauthorised migrant workers and prevents them from making any claims. Although local labour standards offices are known for offering assistance, there is no obligation to give relief to unauthorised workers seeking redress. Hence, in practice there is little if any protection afforded by domestic labour laws and regulations.

In areas such as social welfare, however, there have been slight improvements. The controversial compulsory finger printing law was first abolished for all permanent residents in 1993, then for all resident aliens in 2000. The re-entry permit system was abolished in 1999, and the requirements for obtaining long-term residence permits have been slightly eased. Since 1997 foreign wives can stay in Japan on permanent residence visa even after divorce from a Japanese citizen if they are raising children of Japanese nationality. Many other areas of discrimination and human rights violations, however, remain.

With regard to international instruments, Japan has ratified the ICESCR and ICCPR (both on 1979), the CRC (1994), the CAT (1999), the CEAFRD (1995) and the CEDAW (1985). The latter resulted in the amendment of the Citizenship Act from the principle of patrilineal *jus sanguinis* to the principle of patrilineal *and* matrilineal *jus sanguinis*. The CRC has been invoked in recent court cases by families with unauthorised residence and work status asking for special permit to remain in Japan, four families were successful (16 persons) in 2002.

The fundamental rights of foreign nationals remain ambiguous, however, largely because the Japanese government applies related laws in an arbitrary and discretionary manner. Local governments, on the other hand, have made considerable progress with regard to socio-cultural integration and the provision of social welfare rights. However, political rights are a different matter: voting rights (local and national) have not yet been given to people granted permanent residence and they are excluded from certain jobs (usually public service related).

With regard to the ICMR, during the drafting process the Japanese government was late and was unable to participate in the Working Group’s deliberations. Although each session of the Working Group was open to all countries, Japan sent its delegation only when the draft was being completed in June 1989. At the June 1989 meeting of the

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<sup>19</sup> In the Philippines, this type of visa has been renamed the ‘Overseas Performing Artist’ in an attempt to ‘professionalize’ this kind of work.

Working Group, Japan took a firm stance against the draft text of this Convention pointing to the many contradictions between the Convention and domestic law (Kitamura 1993). The government has continued to hold this position.

Although there is no National Commission for Human Rights in Japan, from 1995 a number of agencies have been set up in an effort to enhance the promotion of human rights: the Promotion Council for Human Rights Education (1995), and the Council for Human Rights Protection (1997). In addition, Human Rights Forum 21 was formed in 1997, comprising of NGOs and academics.

### ***Areas of human rights violations vis-à-vis migrants***

#### *Immigration policies and discrimination by visa status*

##### Front Door

##### 1. Preferential treatment of ‘ethnic’ Japanese

So-called *Nikkeijin* (ethnic Japanese from South America) are given work visas, are allowed to bring in their families and can become permanent residents after only one-year’s continuous residence, purely because of their Japanese ancestry (others need 10 years continuous residence; spouses or children of Japanese three years). They can work without restrictions and are eligible for unemployment benefit after having paid tax for six months.

Formal rights enjoyed by the *Nikkeijin*, however, do not necessarily translate into substantial rights and there are areas of discrimination (bullying of children at school and gang violence) despite their secure visa status. Also, voting is still deemed unconstitutional for them.

##### 2. Entertainers

Another group given legal working visas are the so-called ‘entertainers’ (mainly Asian women, but increasingly also Eastern Europeans). However, this is a strictly time-limited visa (six month to one year), given for this type of work only and ties the women to this particular job. If they leave to work in a different establishment or sector, they are deemed ‘illegal’. This impedes their freedom of mobility and exposes them to high- risk levels of abuse (physical, psychological, and in terms of working conditions). Also, entertainers are not covered by the Labour Standards Act because they are not formally recognized as ‘workers’.

##### 3. Academics/Teachers

Skilled migrants such as teachers and university professors also do not enjoy freedom of choice with regard to employment. They can move within academia or teaching jobs, but not outside of this sector. There have been a number cases of unfair dismissal of foreign teachers<sup>20</sup>. A serious problem area is the regulation of pensions (funds are not paid out to foreigners when leaving Japan).

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<sup>20</sup> See [www.issho.org](http://www.issho.org) and [www.debito.org/residentspage.html#naturalization](http://www.debito.org/residentspage.html#naturalization) and [www.debito.org/TheCommunity/communityissues.html](http://www.debito.org/TheCommunity/communityissues.html) and [www.debito.org/HELPSpring2001.html#fox/](http://www.debito.org/HELPSpring2001.html#fox/)

### Side Door: Trainee system

Through this system established in 1993, the Japanese government has been circumventing its prohibition of foreign unskilled labourers. There are many reports of problems inherent in this system such as the withholding or skimming of wages, Trainees are not covered by the Worker's Accident Compensation Insurance Law and the minimum wage does not apply as they are paid 'allowances' instead of 'wages'.

Embassies of source countries are pressured to make their nationals comply and avoid 'run-aways' as otherwise the Japanese government lowers the quota for their respective countries.

All categories of migrant workers (although less for highly skilled) are potentially subject to exploitative practices by private recruitment agencies and the broker system charging huge fees and creating false expectations.

### *Working conditions*

Many cases of low/unpaid wages, unfair dismissals, accidents (health and safety regulations), and various types of harassment have been reported by NGOs and trade unions.<sup>21</sup>

### *Racial discrimination*

In the area of public facilities (Japanese bath houses etc.) and the private rental market, there are incidents of open discrimination toward non-Japanese residents.

### *Alien Registration Card*

Carrying this card at all times is only compulsory for foreigners. Japanese citizens are not required to do so.

### *Criminalisation of Foreigners*

Police statistics give the false impression that crimes committed by foreigners are on a steep increase by including mafia-related transnational crimes and visa-related offences (which can only be committed by foreigners). This is typically not put in the context of overall rising crime rates in Japan (including Japanese citizens). Some nationality groups (e.g. the Chinese) are targeted.

### ***Obstacles to the Ratification of the ICMR***

#### *Political/economic climate and commitment to human rights issues*

Japan has been almost continuously governed by the LDP, the Conservative Party, and attitudes of the ruling elite are dominated by conservative views, particularly in areas that might impinge on national sovereignty. NGOs are outside the state system, considered anti-establishment, and have relatively little influence on party policies.

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<sup>21</sup> See Asahi [www.asahi-net.or.jp/!FS5C-KPRW/nut.html](http://www.asahi-net.or.jp/!FS5C-KPRW/nut.html) and [http://village.infoweb.ne.jp/~fvvj5740/katsudou/counter\\_report\\_1998/article\\_02\\_b.html](http://village.infoweb.ne.jp/~fvvj5740/katsudou/counter_report_1998/article_02_b.html) and [http://village.infoweb.ne.jp/~jclu/katsudou/counter\\_report\\_1998/index.htm](http://village.infoweb.ne.jp/~jclu/katsudou/counter_report_1998/index.htm)

Japan usually follows international pressure when ratifying UN documents and as none of the ‘western’ countries (particularly the G7) have ratified this Convention, Japan does not feel compelled to do so either. Moreover, Japan is not prepared to be first among the migrant receiving countries to take this step. Japan also hesitates to ratify multinational conventions because this potentially means exposure to criticism from UN agencies. This is compounded by Japan’s current attempts to reform its employment laws as part of an on-going restructuring process. These laws have already invited criticism from the ILO.

The Human Rights Division of the Ministry of Foreign Affairs is pushing for ratification of three documents at this moment in time. The ICMR, however, is not among them and is not on the government’s agenda at all. This is related to the fact that the ICMR is not considered one of the six core conventions, and there is little international pressure to accede. The Ministry of Labour typically discusses ratification of work-related instruments (mainly ILO) with trade unions before making recommendations to the government, and migrant worker related conventions are not a priority.

#### *Perceptions of impact of ratifying ICMR*

In 1990, after adoption by the General Assembly, the Japanese government released the following statement expressing several points of concern with regard to the ICMR:

- The Convention offers more favourable treatment for migrant workers than nationals or other foreigners (principle of equality);
- There are potential clashes with Japan’s Constitution, which is regarded as the highest law, in the areas of criminal law, social welfare provisions, education and elections;
- The Convention has implications for Japan’s basic immigration policies.

Japan’s current treatment of undocumented migrant workers contradicts the ICMR as applications are not determined on a case-by-case basis. This is regarded as a matter of national sovereignty. The fact that this Convention covers all migrants regardless of immigration status is thus seen as a big obstacle to ratification. The Government’s view is that ratification of the Convention would attract more migration by sending out a signal that Japan is a country of immigration. Politicians and bureaucrats prefer to portray Japan as being mono-ethnic and culturally homogeneous.

The Convention is also considered to be too detailed and duplicating parts of other conventions. This concern particularly relates to the burden of reporting, which many governments have complained about. Administrative reforms mean that many countries are currently undergoing cuts in personnel, and budgets for human rights related areas being particularly hard hit. The Human Rights Division of the Ministry of Foreign Affairs is often behind schedule in processing reports — a time-consuming task involving consultations with many stakeholders. Thus, spending time and funds on a Convention

which is seen as already well covered by other instruments is not perceived as worthwhile.

#### *Other obstacles*

The 'old-comer' Korean and Chinese communities have historically been treated as second class citizens, if as citizens at all. There are still many human rights violations with regard to the more established ethnic communities so that they would be unlikely to be supportive of the ratification of the ICMR, which gives preferential treatment to other types of foreigners. Ratification could potentially lead to social conflict.

### **The Republic of Korea**

Since the late 1980s, the Republic of Korea (hereafter South Korea) has experienced an ever-increasing influx of foreign workers and has thus shifted from being a labour exporter to becoming a major labour importing country. The total number of migrant workers in 1990 was less than 20,000 but rose to between 340,000 and 400,000 in 2002. In terms of legal status, Korea has 32 categories of sojourn, including various work-related visas for professionals and teachers. For unskilled or semi-skilled workers, however, there are only two legal visas available: the 'industrial trainee visa' and the 'Artist visa' which is essentially for foreign entertainers/sex workers. Only those in the visa group of diplomats and the highly skilled are allowed to bring their families.

The immigration flow began with 'visiting' ethnic Koreans from China who mainly worked on construction sites in the late 1980s, followed by Filipinos and Bangladeshis who filled labour shortages in the manufacturing sector in the early 1990s. A peculiar characteristic of migration to South Korea is that the majority (about 70-90%) are undocumented workers. This indicates a discrepancy between available visas and the demand for workers in the 'unskilled' category. In 1992, the Korean government created the industrial trainee program to circumvent its policy of prohibiting the import of unskilled labour and to meet serious labour shortages in certain sectors. With this policy, the nationality groups of the migrants have diversified. Migrant workers are now drawn from over 90 countries, including China, the Philippines, Vietnam, Indonesia, Bangladesh, Thailand and Mongolia. In 1993, the industrial trainee program was modified to include the possibility of employment 'after training' (one to two year permit). This new program is similar to the 'technical intern program' in Japan. Migrant workers are mainly employed in the machinery assembly, automotive and appliance, textile and chemical industries.

With regard to immigration policies and ministerial responsibilities, there used to be substantial overlap and conflict in the handling of migrant worker issues by the various ministries. Until January 2003, embassies were not informed of the Korean government's changing approaches and policies at all, leaving embassies at a loss as to which ministry to communicate with. Partly related to an initiative by the IOM and UNDP offices in Seoul which brought together the various stakeholders, the communication channels are

now improving. On an administrative level, there are also developments, with the Ministry of Labour having established a Foreign Workers' Affairs Division.

With the general democratisation of South Korea since 1987, the situation of Korean workers has improved, as has the general human rights situation. This period coincides with larger numbers of migrant workers entering South Korea. At the time of the ICMR drafting, South Korea was not a member of the UN (it only joined in 1991) and hence there was no input from Korea at the Working Group deliberations.

Historically, human rights have played an important role in South Korea during its 35 year long struggle to overcome military dictatorship. South Korea has a strong human rights activist civil society and some high-ranking politicians and bureaucrats have an NGO background themselves (including the current President Roh and Minister of Justice). Thus, the 'Asian values' debate is not used as a reason for not ratifying UN conventions. Since 1987 South Korea's official record on acceding to international human rights documents has improved tremendously resulting in the ratification of all six core conventions by 1995.<sup>22</sup> In 2001, the National Commission for Human Rights was set up. This body enjoys an independent status and has 200 members of staff, of whom 40% have an NGO background.

### ***Areas of Human Rights Violations vis-à-vis Migrants***

#### *Industrial trainee system*

According to the National Commission of Human Rights, migrant workers NGOs and some ministries, this system is the root cause of human rights abuses against migrant workers in South Korea and should be replaced or at least supplemented by the enactment of a special Employment Act. The current system uses unskilled workers to maximise economic benefits and to minimize social costs. They are not 'regular workers' by definition and are excluded from the Labour Standards Law. They are not allowed to join trade unions. They are tied to one employer only and earn less than formal workers (despite performing the same jobs). This system results in a high number of 'run aways' (ca. 60%) or overstayers who end up being classified as 'illegal' migrants. This scheme is not necessarily bad but because it is the sole option for unskilled migrants it has been easily exploitable.

Trainees come from 14 countries and fill certain quotas. If there are too many 'run-aways' from among one particular nationality group, the quota is adjusted so that it is in the respective Embassy's interest to collaborate with the Korean government and to keep their trainees under control.

On 31 July 2003, the National Assembly has passed a new law to implement an Employment Permit System alongside with the existing Industrial Trainee System. At the time of finalizing this report, no further information was available.

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<sup>22</sup> CEAFRD in 1978; ICESCR in 1990; ICCPR in 1990 (plus Optional Protocol on same date); CEDAW in 1984; CAT in 1995; CROC in 1991.

### *Labour/work conditions*

There are many instances of unpaid salaries, work accidents, unfair dismissals, and unresolved labour disputes reported by NGOs.<sup>23</sup>

### *Harassment*

Instances of physical, sexual and verbal harassment also occur especially vis-à-vis female migrant workers.<sup>24</sup>

### *Broker scandals/corruption*

This mainly revolves around the controversial operation of the trainee recruitment system which is not directly run by a government ministry but by the KFSB (Korean Federation of Small Businesses). Charging trainees exorbitant fees has been common practice.<sup>25</sup>

The KFSB is a semi-private organization and there is anecdotal evidence of senior level staff shifting between certain ministries. KFSB extorts fees from small and medium sized companies for the recruitment of unskilled trainee labour, forcing some companies to resort to 'illegal' employment to avoid the exorbitant fees.

### *Undocumented migrants*

The Labour Law applies in theory to undocumented migrants because it covers all workers. Because of their immigration status, however, they tend to not complain as they fear being exposed and deported. More recently, however, the Ministry of Labour has been trying to protect irregular workers who are facing a dispute until their cases are resolved.

### *Entertainers*

Women working in the entertainment sector enter on the so-called E6 visa. They are not allowed to work in any other job, but quite often they breach this by working in other establishments or sectors where they can make more money. In this way, the protection provided by the labour law exists only in theory as by breaching their contracts they become 'illegal'. Although in theory still workers, they tend to keep a low profile because of their irregular visa status.

## ***Obstacles to Ratification of the ICMR***

### *Political/economic climate and commitment to human rights issues*

The notion of giving rights to migrants is very new in Korea — a country which is not used to foreigners living in its midst. Korea has been a mono-ethnic/ethno-centric closed society, with only a small Chinese minority that has blended into the wider society very smoothly. Koreans do not perceive themselves as multi-cultural or multi-ethnic and there is resistance to do so. This is reflected in the recent debate (among NGOs, academics,

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<sup>23</sup> Undertakings given to NGOs about their comments being treated confidentially mean it is not possible to name the NGOs.

<sup>24</sup> The same comment applies here.

<sup>25</sup> This is confirmed by NGOs and academic researchers who do not wish to be named.



parliamentarians) about including Korean-Chinese in the ‘Law for Koreans Abroad’<sup>26</sup> and also the tacit acceptance of Mongolian families living in Korea (as opposed to other nationalities) because both groups are considered culturally and ethnically close to Koreans. International marriage is still frowned upon and ordinary Koreans do not have much contact with foreigners.

The protection of foreign workers is not high on the agenda in Korea. President Roh announced in his election campaign in 2002 that he would organise an inter-governmental meeting to discuss the implementation of a work permit system but this meeting has been postponed indefinitely. In June 2003, the sub-committee of the Korean National Assembly (parliament) rejected a bill in support of an employment permit system. Most assemblymen are of the older generation and continue to hold conservative attitudes. Korean foreign policy is said to be reactive, rather than pro-active. Korea would not take the initiative to ratify unless directly or indirectly pushed by other developed countries. Since 1987, South Korea’s overall ratification record was speeded up, with all six core conventions now ratified.

#### *Perceptions of impact of ratifying ICMR*

Korea is adamant about avoiding the settlement of migrant workers and would not permit migrants to bring their families with them. However, this is not required by the ICMR but the misconception, nevertheless, is one of the biggest obstacles to ratification.

Officially, there are no migrant workers in Korea, only ‘trainees’ who do not have the status of ‘formal workers’. This means that a work permit system must be put in place before any discussion about ratification could commence. The problems Korea has to address first have thus mainly to do with the existing immigration policies and changes to domestic laws to ensure social security for migrants. The Ministry of Labour, the National Commission for Human Rights and most NGOs are concentrating on this first step, before addressing ratification of the ICMR.

Business circles have a strong voice in Korea (as elsewhere) and may be against normalising foreign migrant workers because they worry about these workers being absorbed into the strong and radical labour movement, potentially forcing employers to pay them higher wages. In the current economic climate this is not seen as desirable. There is, however, anecdotal evidence that small- and medium-sized enterprises would prefer the hiring of unskilled workers instead of ‘trainees’ to circumvent the fees charged by the KFSB. Under the existing system, some employers hire foreign workers (as ‘trainees’) on an irregular basis to avoid the fees.

Korea is also concerned about the implementation and monitoring burdens created by signing another international document.

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<sup>26</sup> This law is comparable to Germany’s former treatment of ethnic Germans in Eastern Europe: Koreans living abroad are given the same citizenship status upon return to Korea, excluding Koreans in China and the former Soviet Union. There are voices within Korean society asking for an amendment to include Chinese and Russian Koreans.

### *Other obstacles*

There is also a minor, and rather remote, issue at this stage concerning the possible reunification of the two Koreas. If Germany's experience is used as an example, it is assumed that in the wake of unification, North Koreans would seek the kind of jobs that are currently carried out by foreign migrant workers. This has the potential to increase social tension — if foreign migrant workers were permitted to retain these jobs.

## **Malaysia**

By 1995, Malaysia had become the largest importer of labour in Asia in terms of overall numbers. The Malaysian government differentiates between two types of foreign workers: the skilled professional group (or expatriates) and the semi-skilled or unskilled group who are subject to different immigration laws and employment rules and regulations. The majority of Malaysia's migrant worker population belongs to the semi- and unskilled group (Jones 1996). Malaysia currently has 1,057,000 foreign workers, of whom 332,00 or 31.4% work in the manufacturing sector. In 2002, there were 159,873 domestic helpers, the majority of whom were Indonesians. Overall, Indonesians constitute the largest nationality group (ca. 83.50%), followed by Bangladeshis (on whom, however, a ban was imposed in 1998), Filipinos, Thais, Pakistanis, Nepalese, and others. There is an annual levy on employers for foreign labour employment in the manufacturing, construction and service sectors. All of the above figures refer to authorised workers; there is also an estimated one million unauthorised workers (WAO 2003). The relatively high level of unauthorised workers is sometimes addressed by amnesty periods (such as between 22 March 2002 and 31 July 2002). Malaysia's foreign labour policies governing the semi- and unskilled workers are constantly being modified in an ad hoc manner in response to changing economic and social circumstances.

Regarding general human rights, the situation is critical for both Malaysian citizens and migrant workers alike.<sup>27</sup> Defence of human rights in Malaysia is considered by the government as 'western influence' and hence dismissed as culturally unacceptable. At the same time, Malaysia established a (semi-independent) National Commission for Human Rights in 2000. Its time is consumed with the many areas of general human rights violations relating to the security forces and the Internal Security Act. With regard to migrant worker related problems, they have investigated the situation in detention centres and have looked into the ICMR but the latter did not result in any concrete recommendations. The National Commission has been described by NGOs as good at reporting but bad at lobbying the government for change.

National legislation providing a social security safety net for workers exists and this protects local as well as foreign labour. There is, first of all, the Employment Act of

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<sup>27</sup> According to human rights NGOs, thousands of Malaysians have been detained without trial under the Internal Security Act. Thousands more have been arrested for exercising their basic right to freedom of expression and peaceful assembly. Abuse of police powers, including police brutality, torture in custody and indiscriminate police killings still exists. The government sanctions violations of human rights with impunity.

1955. Female domestic workers are excluded from the benefits pertaining to rest days, working hours, holidays, and termination of contract however. The Workmen's Compensation Act 1952 also excludes domestic workers. There are only insurance schemes to protect domestic workers against accidents with long-lasting effects, medical and repatriation expenses and hospitalisation. Since 1998, every employee is liable to contribute to the Employees Provident Fund (EPF). However, expatriates and seamen are exempted. Migrant workers have to contribute 11% of their wages to the EPF and the employer is required to contribute RM 5.00 every month. In theory, workers have the right to withdraw all their savings when leaving Malaysia.

Domestic helper related issues are dealt by employment contracts between the employer and the foreign worker, outlining duration, address of employer, responsibilities of the employee, and provision of accommodation, food and medical treatment by the employer. Another type of contract between the recruitment agency and the domestic worker stipulates, amongst other things, that they will not marry a Malaysian citizen.

In general, the fate of migrant workers is in the hands of employers and the Malaysian security forces that operate with the approval of the government. The various ministries involved in migrant worker related issues include the Ministry of Home Affairs (Immigration Section), Ministry of Human Resources, and the Labour Department. However, there is little transparency and government officials are reluctant to openly discuss issues of concern, including the non-ratification of the ICMR.

### ***Areas of Human Rights Violations vis-à-vis Migrants***

#### *Discrimination on the basis of gender*

A Bilateral Agreement governing the recruitment of Indonesian domestic workers signed in 1996 stipulates that domestic work is categorised as an 'informal sector', resulting in minimum standards lower than stipulated in the Employment Act covering 'formal' workers.

Filipinos tend to earn more than the other nationality groups because they are considered better skilled and because their government pushes for contracts stipulating a minimum wage.

#### *Restrictions on movement*

The visa status for semi- and un-skilled foreign migrant workers deprives them of the right to choose or change an employer once they are in Malaysia. This is particularly detrimental in view of the wide-ranging problems that occur in the area of non-payment or under-payment of wages and other exploitative conditions.

#### *Detention centres*

The government has established 12 such centres with the capacity to hold 12,000 detainees. Reports claim that these places are at times heavily over-crowded, with insufficient sanitary facilities and extremely basic dormitories with inadequate ventilation; no medical care and lack of nutritious food; abusive practices like queuing

for hours in the burning hot sun; high levels of corruption. Children are also kept under these conditions.

Migrant workers end up in these centres for various reasons: not having their documents on them, overstaying or failing to obtain work permits. Apparently the first reason (not carrying documents) is the most common. This is highly unjust as the workers have to leave their passports with their employers – a practice which in itself constitutes an offence under the Passport Act of 1956. There is no due process of law to review or validate decisions made by immigration officers.

#### *Punishment for 'illegals'*

Undocumented migrants can be imprisoned for between six months and five years and are subject to whipping (up to six strokes and the payment of a fine (maximum of RM 10,000)). In theory similar penalties apply to employers of undocumented workers. However, there is evidence that employers are rarely, if ever, punished.

#### *Ad hoc expulsion*

The Malaysian government's decision in 2002 to expel 80,000 Bangladeshi workers and the now infamous Nunukan tragedy in July/August 2002<sup>28</sup>, during which the national government expelled a large number of migrants from Sabah, on the basis of passing a new policy to terminate free education for migrant children constitute examples of such ad hoc practices. The Nunukan tragedy affected a large number of 'migrant' families (Indonesian and Filipino) who had in fact resided in Sabah for up to 30 years, but never acquired Malaysian citizenship.

#### *Second contract/Violation of Passports Act 1996*

This relates to Filipino domestic workers, many if not most of whom are asked to sign a second contract in Malaysia despite the first contract signed before departure from the Philippines. The conditions laid down in the second contract are much worse and often stipulate that employers should have possession of the women's passports for fear of 'runaways' and do not give them specific rest days. This constitutes a violation of the 1996 Passports Act.

#### *Non-payment or withholding of wages*

There are cases of employers depositing the domestic workers' wages into a bank account which is under the employer's name. As a result, these women never receive any wages.

#### *Employment Provident Fund (EPF)*

Although foreign migrants have the right to be paid what they contributed to the EPF when leaving Malaysia, they have to go personally to the EPF office to submit an application with copies of several documents. In practice, this is almost impossible for workers to do, because employers withhold such documents. Often the workers become 'illegal' by default, end up in detention centres and then cannot claim their EPF savings back.

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<sup>28</sup> See section on Indonesia.

### *Arbitrary rules set by recruitment agencies*

Recruitment agencies give advice to employers that goes well beyond the actual contract asking them, for instance, to not give days off (linked to 'statements of undertaking' domestic workers are made to sign which state that they will not form or participate in any 'social club', not seek a change of employer and not marry a Malaysian citizen). Likewise, migrant workers are typically required to sign contracts stipulating that they are not allowed to unionise, although in theory trade unions are not against accepting migrant workers as members.

### *Obstacles to seek redress*

While the Employment Act states that every worker has the right to seek legal redress and that migrant workers are actually protected on a par with local workers, the government has stopped issuing passes to allow foreign workers to remain in the country while waiting for the court case. This constitutes a contradiction in that certain regulations or policies override the law by taking away the rights as stipulated in the Employment Act.

### ***Obstacles to Ratification of the ICMR***

#### *Political/economic climate and commitment to human rights issues*

Individual Malaysians do not know much about their rights and even within the local population, many rights violations take place. Thus, there is not always deliberate discrimination against foreigners. It is common that those who are unaware of their rights are discriminated against. For migrants, the additional problem is that with the current economic downturn, the government is even less inclined to implement, enforce and promote rights for foreign workers.

From among the countries under investigation, Malaysia has the poorest ratification record of UN instruments and because its political system seriously obstructs human rights activism, there is very little pressure on the government to consider acceding to conventions from within civil society. Ministries which have a stake in bringing in foreign labour were not prepared to be interviewed on the issue of the ICMR and hence the views of the government have been garnered from non-governmental and semi-governmental sources. Malaysia has ratified only two of the six core conventions and priority lies with the other four, particularly ICESCR, ICCPR and CAT. The ICMR is not on the agenda.

The Malaysian government is not transparent and accessible to ordinary Malaysian citizens, to Members of Parliament representing political opposition parties and to non-citizens. International agencies investigating human rights issues are even less acceptable.

There is little public debate about the rights of migrant workers. This is partly related to the fact that migrants generally keep a low profile, apart from the odd riot by Indonesian workers. Such riots are usually covered by the media from the viewpoint of employers,

without considering the possibilities of legitimate reasons for the rioting. Apart from one migrant worker NGO, there is little civil society activism supporting migrant workers.

The government's argument is that the *Employment Act* offers sufficient protection. There is no minimum wage in Malaysia for any worker, but every worker who earns less than 1700 Ringgit per month is covered by this Act. The Act is fairly comprehensive and comparatively speaking good, setting out compensation regulations, accidents and injuries at work etc. In theory, it even covers irregular workers. This Act was passed by the socialist-minded PM Tun Abdul Razak.<sup>29</sup> The problem is its lack of implementation. Ministerial officials either do not know about the law or are not active in using it. This leads to the general public, not just migrant workers, being ill-informed about their rights. There is also prejudice on the part of officials vis-à-vis foreign workers, and this is exaggerated by biased media coverage.

#### *Perceptions of impact of ratifying ICMR*

Government policy is not to allow the settlement of un- or semi-skilled migrants. Since 2002, all migrant workers, not just domestic workers, have been prohibited from marrying locals. The perception is that if this Convention were ratified, the country would be flooded with migrant workers and their families and that their repatriation would not be possible. Family migration is currently not allowed for un- and semi-skilled migrants and the government does not want this to change.

Extending protection to undocumented migrants is seen as unacceptable. They are highly criminalised by the media so that there is no sympathy within civil society, apart from a few NGOs.

#### *Other obstacles*

The 'business' of migration is too lucrative and political. The establishment of recruitment agencies in Malaysia is reportedly used by the government as a tool to buy political allegiance. Giving out licenses is a political device and licenses can be taken away if the government is no longer satisfied with a recruiter's allegiance.

The government's approach to political control is related to the power struggle between the 'indigenous' ethnic groups in Malaysia, with Malays feeling particularly vulnerable. Hence, newcomer migrants have it even harder. Depending who is in power, a newcomer Muslim might be more welcome than a newcomer Christian or vice versa. This is related to party politics and the mixing of politics with ethnicity and religion.

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<sup>29</sup> Tun Abdul Razak Bin Dato Hussein succeeded Tunku Abdul Rahman Putra as the second Prime Minister of Malaysia, leading the country from 1970 to 1976.

## **New Zealand**

From among the countries investigated in this study, New Zealand seems the ‘odd one out’ in that its policies have focused on permanent immigration and to a far lesser extent on (temporary) migration for employment – similar to other ‘traditional’ settlement countries like North America and Australia. However, this does not mean that temporary labour migration does not take place at all. For Pacific Islanders for instance, there were work permit systems, first implemented in the 1970s and 1980s. There is evidence that Samoans and Tongans hardly made any use of these schemes, instead migrating to New Zealand sponsored by their relatives and then finding work. Fijians used the scheme more widely but it was abolished after the first military coup in May 1987. Pacific work schemes no longer exist. New Zealand does, however, have quota schemes for permanent migration (residence) from the Pacific. The Samoan Quota Scheme allows up to 1,100 Samoans, including spouses and dependent children, to be granted residence in New Zealand each year, subject to an offer of employment, among other criteria. Under similar rules, the Pacific Access Scheme allows the grant of residence each year to citizens of Tonga (250), Tuvalu (75), Kiribati (75), and Fiji (250).

According to the 2001 Census data, 19.5% of all New Zealand residents were born overseas, the majority having lived in the country for a number of years. Just 7.5% had lived in New Zealand for less than one year. Almost one-third (32.3%) of those born overseas came from the United Kingdom and Ireland. A further 24.9% were born in Oceania (primarily Samoa and Australia), and 12.8% were born in North-East Asia (primarily China). In the five years between 1996 and 2001, the biggest numeric increase in people born overseas was from those born in North East Asia, with China making the biggest contribution, followed by Korea. Overall, in 2001 there were more migrants of Asian than Pacific ethnicity. Almost one in 15 persons were of Asian ethnicity, against one in 16 of Pacific ethnicity. The fastest growing of the top 50 ethnic groups were Koreans, and the greatest growth in overseas birthplaces between 1996 and 2001 was China, with India in third place, Fiji in fourth and Korea in fifth (EEO Trust 2002). This shows the significant Asia-Pacific link as far as migration and ethnic composition of New Zealand is concerned.

New Zealand has a long history of being a strong supporter of human rights, at the international, regional, bilateral and national levels. New Zealand has ratified all of the core international human rights treaties.<sup>30</sup> At the national level, there is a range of

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<sup>30</sup> International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture and Other Inhuman and Degrading Forms of Treatment or Punishment (CAT), Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD), Convention on the Elimination of All Forms Of Discrimination Against Women (CEDAW), and UN Convention on the Rights of the Child (CRC).

institutions to protect and promote human rights. The Parliamentary Commissioner (Ombudsman Act 1962) established the Office of the Ombudsman, which protects citizens from abuse of power by central government (extended in 1975 to cover local government). In 1971 the Race Relations Act was passed to promote racial equality, setting up the office of the Race Relations Conciliator. The passage of this Act was part of the implementation process of ICEAFRD (ratified in 1972). The Human Rights Commission was established in 1978, the same year that both the ICCPR and ICECSR were ratified. In 1991, the Equal Employment Opportunities Trust was founded to promote the business benefits of equal employment opportunities to all employers throughout New Zealand.

### ***Areas of Human Rights Violations vis-à-vis Migrants***

#### *Immigration Consultants*

There is some evidence of exploitative practices and communication of incorrect information creating high expectations for skilled migrants that are not realized after arrival.

#### *Discrimination*

There are barriers to employment based on prejudice, language (English competency according to IELTS standard), and non-recognition of qualifications/experience from overseas.

#### *Social welfare services*

Subsidised compulsory education (primary and secondary) is available to the children of work permit holders. Health care access is only possible for those with a work permit of two years or more.

#### *Family members*

The spouses and de facto partners of most classes of work permit holders working in New Zealand for more than six months may be granted work permits allowing work for any employer.

#### *Limitations on freedom of movement*

The holders of work permits with a condition restricting work to a particular employer must apply for and be granted a variation of that condition or a new work permit before changing employment.

#### *Work conditions*

In certain sectors (services and food; construction; clothing) there are reports of working conditions being below minimum accepted standards. These are also the sectors where pockets of unauthorised workers can be found. Although exact statistics are not available, irregular migration is not perceived as a big problem. In the food and garment industries, however, there have been cases involving workers entering New Zealand through the family sponsorship scheme and working in 'ethnic' businesses run by relatives as cheap labour.



Legislation was introduced in June 2002 to implement the two Protocols to the UN Transnational Organised Crime Convention dealing with the Smuggling of Migrants and Trafficking of Persons. Besides criminalising these activities and introducing stiff penalties for those engaging in them, the legislation now puts the onus on employers not to employ unauthorised workers including undocumented migrant workers. This is intended for the protection of undocumented migrant workers themselves as well as to discourage illegal migration.

### ***Obstacles to Ratification of the ICMR***

#### *Political/economic climate and commitment to human rights issues*

Within the context of New Zealand's wide migration program the ICMR is largely seen as irrelevant by the Government. Many types of protections are already in place: a Bill of Rights which offers protection for migrants, ILO conventions signed by New Zealand and citizenship provisions which enable migrants to become naturalised and full citizens reasonably easily. New Zealand's Bill of Rights is seen as offering rights in the context as to what is reasonable, whereas the ICMR is perceived as offering absolute rights. The little extra protection offered by this Convention is seen as not matching the costs and benefits involved in ratification and implementation.

The main argument against ratifying this Convention is that the rights laid down are already well covered by existing national laws. This is linked to the concern shared by other countries over duplication: this Convention is perceived as contributing little new to existing international instruments. Related to this is the argument of the high costs involved in supervising the implementation of any UN convention.

Much of what is in this Convention amounts to a consolidation and codification of existing rights. The current treaty body is seen in need of revisiting and changing with the aim to use resources more efficiently. As it stands, there is a great deal of duplication and wastage of resources. With compliance costs being high (as this Convention would engage every single governmental department) and considering that migrant workers' rights are already well protected (including undocumented migrants<sup>31</sup>) there is no justification in allocating resources to the ratification and post-ratification process.

There is no pressure coming from the non-governmental sector demanding ratification of the ICMR — NGOs in New Zealand are more concerned with refugee related issues. As a result, the ICMR has not been a major policy issue and never subject to any public debate.

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<sup>31</sup> Undocumented migrants workers are protected under New Zealand's domestic human rights and employment legislation, especially the Bill of Rights, and by virtue of New Zealand's existing international human rights obligations. The distinction is that they do not have access to all the social services and benefits as New Zealanders and documented migrants.

### *Perceptions of impact of ratifying ICMR*

New Zealand's government is concerned with extending additional access to certain social services and benefits to unauthorised migrants and their families because of the risk that this could become a pull factor for illegal migration (especially through migrant smuggling and trafficking in persons).

The Convention would present an additional burden for the UN human rights treaty monitoring system; the system is already stretched and there are many delays within the reporting process. Further, the UN monitoring system is regarded as cumbersome. Moreover, many businesses in New Zealand are small with few resources for equal employment opportunities compliance and reporting.

There is a major concern about the tension between non-discrimination principles in the Convention and immigration policies. New Zealand's immigration policy discriminates between applicants for residence on grounds perceived as prohibited by this Convention.

Some articles in this Convention extend beyond the rights currently enjoyed by New Zealand citizens (this refers mainly to criminal legal procedures and compensation claims). A few other provisions are currently not available for *all* migrants, but only certain categories. As a result, too many reservations would be necessary to allow ratification and this would render the Convention irrelevant.

### *Other obstacles*

There is the view that the Pakeha-Maori divide dominates societal issues, with other migration populations in New Zealand not being large enough to have a voice. A legal and political concern might be that Maori communities would oppose ratification as they would fear losing out if migrant workers were given precedence or special treatment. New Zealand's government might also oppose a further broadening of the human rights frame as it could mean more rights for the indigenous Maori peoples.

## **Singapore**

With 612,200 foreign workers constituting 29.2% of the total workforce in 2000, Singapore has the highest proportion of foreign workers in the labour force in Asia. About 500,000 of these fall under the category of unskilled or low skilled (of those, 180,000 are male construction workers and 140,000 are female domestic workers). Singapore's foreign labour force is highly ethnically segmented with different source countries being treated differently in terms of visa categories. Malaysians make up the largest nationality group with a total of approximately 200,000. Among the 140,000 foreign domestic workers, most come from the Philippines, followed by Indonesia and Sri Lanka. Among the male foreign workers, Thais constitute the largest group, followed by South Asians, Indonesians and Chinese.

Malaysia historically represents a 'traditional source country' for migrant labour in Singapore but since 1978 flows began to ebb due to Malaysia's own economic

development. As a result ‘non-traditional source countries’ had to be resorted to, such as Bangladesh, India, Indonesia, Sri Lanka, the Philippines and Thailand, to meet persisting labour shortages. In addition, the expansion of the middle classes and women’s rising entry into the labour market has resulted in an increased demand for domestic workers in the context of a lack of state-sponsored child-care facilities. As a result, one in seven households in Singapore employ a foreign domestic worker. Singapore is also known for its recruitment of ‘foreign talent’, i.e. professional and highly skilled workers from developed countries.

There are three main visa categories available to foreign workers: 1) semi-permanent residents with semi-permanent work permits who are allowed to take any job anywhere in Singapore (valid for five years); 2) foreign professionals with annual permits called employment passes which are issued only for specific jobs and for a specific duration (valid for one to five years); 3) seasonal workers with short-term permits usually valid for two years. Foreigners falling within the first category are eligible to apply for citizenship. Just like citizens, they are subject to no restrictions in the labour market. Employment pass holders, although tied to a specific company, enjoy limitless opportunity to get their permits extended. Work permits are usually given to unskilled workers whose salaries are low by local standards. They are the only group of foreign migrants covered by the Employment of Foreign Workers Act of 1990. The consequences of the implementation of a tight regulatory regime have been twofold: in the construction sector, rising numbers of undocumented workers (the exact number of whom is unknown) and in the domestic sector increased cases of abuse (Wong 1997).

Singapore has an Employment Act covering all un- and lower skilled workers, local and foreign, except for domestic workers who are explicitly excluded. Since the infamous Flor Contemplacion case in 1995<sup>32</sup>, the government has become aware of the diplomatic embarrassment domestic worker abuse can cause and frightened of losing global investors, has taken measures aimed at providing some minimum services to foreign domestic workers. The Ministry of Manpower provides conciliation services (Foreign Workers Unit set up on 1997; a help-line for domestic workers is run from there) in case of complaints by domestic workers. If an issue cannot be resolved in this manner, however, domestic workers do not have recourse to the courts as they are not covered by the Employment Act.

The Factories Act safeguards workers’ health and safety in the workplace and the Workmen’s Compensation Act provides for compensation to workers injured at work. Both Acts cover local and foreign workers equally. Health care standards are also the same for local and foreign workers alike. Trade union membership is open to foreign workers and unions do try to support them. But again, domestic workers cannot join. The Skills Development and Levy Act provides for training for all workers, local and foreign, but there is no training for domestic workers. On the whole, existing pieces of national

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<sup>32</sup> Flor Contemplacion was arrested for the murders of domestic worker and friend, Delia Maga, and Maga’s employer’s child, Nicolas, in 1991. She was subsequently executed in 1995. This affected diplomatic relations between Singapore and the Philippines very badly, partly based upon widespread NGO campaigning in the Philippines and elsewhere.

legislation covering foreign workers are fragmented and not consolidated in one specific Migrant Worker Act or bill which results in many people (officials, employers) not knowing or being aware of such legislation.

There is no National Commission for Human Rights or any other national human rights institution. With regard to Singapore's overall record on human rights, three UN conventions have been acceded to so far: CEDAW in 1995, CRC in 1995 and the CRCOPAC in 2000. Neither ICCPR nor ICESCR are ratified, and of particular importance to foreigners, nor is the ICEAFRD. The Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of others (1950) was acceded to in 1966. With regard to procedure, upon ratification of UN documents, Singapore makes sure that it fully complies. The procedure is hence to first ensure compliance and enforcement and then to ratify.

### ***Areas of Human Rights Violations vis-à-vis Migrants***

#### *Distinction between source countries resulting in discrimination based upon ethnicity*

Type of work permits, length of stay, the renewability of contracts, and the sectors open to employment vary according to the source country. Malaysian workers are the most 'free'. Non-traditional source country workers can be employed only in construction, marine and domestic service sectors. People's Republic of China nationals are not permitted to work in the domestic service sector.

This also leads to distinction in administrative procedures: employers need to pay a security bond of S\$5,000 for the worker to ensure repatriation. This security bond, however, does not apply to Malaysian workers. Furthermore, an employer levy scheme has been introduced with higher rates for unskilled workers compared to skilled workers. Termination of employment for unskilled workers results in the immediate termination of the work permit. They are prohibited from bringing their families or marrying a Singaporean citizen. Domestic workers' contracts are immediately cancelled upon pregnancy. Skilled workers can renew their contracts for up to ten years.

With visa being tied to employment, foreign workers are often reluctant to report abuses because of fear of losing their job and hence their visa. There is no standard contract for domestic helpers, but Filipinas are generally better off than Indonesians in terms of salary and working conditions.

#### *Recruitment agencies*

Those based in Singapore often give false information and discriminate between Indonesians and Filipinas (the former get paid less). They take fees from the domestic workers by subtracting them from their pay.

There are plans to accredit recruitment agencies through the Consumers Association of Singapore, but this scheme is not going to protect the domestic workers themselves from abuse. There is no evidence yet as to how this will work. So far, the agencies protect the employers' interests only ('right' of employers to 'good service'). Some even give advice

to employers to not treat their domestic workers too well.

### *Domestic helpers*

Women are subject to specific human rights violations as the main area of their employment is domestic services — a job category that is not included in any labour acts. The same goes for the provision of health care and housing: for construction workers, there are clear regulations, For example, from 2004, the Ministry of Manpower will not grant permits for foreign workers unless their employers house them in dormitories or other approved housing. For domestic workers, there are no detailed regulations of this kind. Recreational and social needs are catered to foreign workers in the productive sectors but not for domestic workers.

Issues pertaining to domestic helpers are dealt with on an informal basis, not by law. The Foreign Workers Unit at the Ministry of Manpower deals with individual disputes through conciliation. Employers are given an information kit about how to manage and relate to their domestic workers. The domestic workers are also given a booklet that explains their ‘rights’ and lists useful telephone numbers. The only legal procedure that has been put in place is the introduction of penalties for maid abuse (which were raised in 1998). The problem here however is the definition of ‘abuse’ (non-payment of wages is not enforced by law) and the lack of minimum standards. Domestic workers are also excluded from health care (Filipinas are encouraged by their own government to arrange for insurance). The Singapore Government has are no training centres for domestic helpers overseas as is the case for male workers (such as in Thailand, China, Vietnam, Bangladesh, India). For domestic workers, existing training centres are run by their own governments.

### *Working conditions*

There are elements of ‘forced/bonded’ labour in that domestic workers are often locked inside houses to avoid ‘running away’ and the loss of the S\$5,000 security bond on part of the employer. The issue of ‘no day off’ for Indonesians and Sri Lankans has become the subject of campaigns by the few NGOs that exist. Non-payment of wages (experienced by domestic helpers and construction workers) is a common problem. The law does not require labour agents and employers to provide a reason when cancelling work permits.

According to police figures, physical and verbal abuse seems to be increasing (especially for domestic helpers). As a result, the Penal Code (under the Family Violence Act) for maid abuse has been amended to increase penalties in 1998. However, there is still little evidence of regular monitoring, and the police are still regarded as unhelpful.

There are workplace safety issues for construction workers and domestic workers. Construction workers are subjected to occupational health and safety risks but are largely covered by employment laws. On the other hand, domestic workers have no such OH&S protection.

### *Levy*

There is anecdotal evidence that the government levy tax that is supposed to be paid by employers is indirectly paid by workers (deducted from their wages). How widespread this problem is, is unclear.

### *Caning*

Foreigners who overstay their visas by more than 90 days or enter Singapore illegally will receive a punishment of at least three strokes of the cane and three months jail. Caning does not apply to women or those below 17 years old.

### *'Grace period'*

Foreign workers whose work-permits have been cancelled or expired are not permitted to stay indefinitely in Singapore to pursue outstanding claims against the employers if they have no means of supporting themselves. The grace period is three months only, despite the fact that compensation cases can take up to one year or even one year and a half.

## ***Obstacles to Ratification of the ICMR***

### *Political/economic climate and commitment to human rights issues*

Because its political system does not allow for human rights activism, there is very little pressure on the government to consider acceding to conventions. This is even more so as far as the ICMR is concerned because of the lack of interest and compassion for foreign migrant workers. The Ministries that have a stake in bringing in foreign labour were not prepared to be interviewed and hence the views expressed here come from non-governmental sources.

As far as the government is concerned, the list of priorities for future accessions does not include the ICMR. Another issue is that ratifying a UN convention is seen as admitting that there is a problem. This would 'open up a can of worms' and the government does not like outsiders (UN agencies) to intervene in Singapore's internal affairs. Singapore has a relatively poor ratification record. Ratified conventions often come with so many reservations that other governments have filed objections.<sup>33</sup>

### *Perceptions of impact of ratifying ICMR*

With regard to migrant workers, Singapore has a very detailed, highly selective and tightly controlled system of obtaining foreign labour. Although there are some minimal welfare provisions, particularly for male workers, the objective is to avoid settlement. This is justified by Singapore being a very small country that is already densely populated. Even for the few highly skilled migrants who are allowed to bring their families, spouses are not usually allowed to seek paid employment. One of the biggest obstacles to ratification is the misconception that the ICMR mandates the right to bring one's family. The ICMR does not require that family members be admitted.

There is confusion about this Convention affecting immigration policies and giving foreigners full freedom of movement. The Convention would be in contradiction with

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<sup>33</sup> This is the case in the context of the CRC. The Norwegian government has objected to the many reservations made by the Singaporean government (Steiner and Alston 2000).

Singapore's existing migrant labour policies that discriminate on the basis of country of origin and skill level.

The ICMR is seen as 'far beyond' what is possible in Singapore on the basis of its existing laws and practices and, in the view of NGOs, an improvement of national legislation is seen as the first step towards launching a ratification campaign.

*Other obstacles*

Singapore has no migrant worker NGO involved in rights advocacy which is related to the lack of political opportunities (see above).

## CHAPTER 3

### DISCUSSION OF OVERALL FINDINGS

#### 3.1 GENERAL

The changing patterns and conditions of labour migration in the current global economy render the ratification and implementation of this Convention, as a state-driven intervention, so important. As it stands, however, obstacles to the ratification of the ICMR are of a multiple nature and need to be approached from a holistic framework, with protection of migrant labour being related to issues revolving around development and practices of ‘good governance’ at the national as well as the transnational level (economic and political relations between the countries at the receiving and sending ends).

Overseas employment, as an ‘industry’, can be seen to be governed by the same laws of supply and demand as any business. But as the international labour market becomes more demand-driven there is a bias in favour of labour receiving countries that are in a stronger position to dictate the terms and conditions of employment. In this respect, without the corresponding and reciprocal efforts from labour receiving countries, labour sending countries can only hope to mitigate the negative effects of overseas employment on its workers. This also makes NGO and civil society activism in the labour receiving countries so enormously important and transnational networking so crucial. Considering their limited resources and staff, plus the fact that they advocate on behalf of a marginalised group that is needed but not wanted, NGOs’ success rate is limited and there is a need for support on the international level.

The ICMR as a legal document is regarded by legal experts a key tool for the protection of migrant workers in receiving and sending countries as well as countries of transit. Due to its relatively poor ratification record, however, migrant workers’ legal protection is largely non-existent or highly fragmented. Hence, when crossing borders in search of employment abroad migrant workers are operating in a transnational sphere of jurisdiction. The many loopholes result in human rights’ violations being abundant. In the countries under investigation here, neither of the labour sending countries has put in place any rights-based legislation that covers the pre-departure, working abroad and return phases. Labour receiving countries in theory protect the migrants as workers but because of foreign workers’ immigration status, in practice they are often not covered by existing legislation. Extending rights to undocumented workers is seen as unacceptable in all of the receiving countries.

All receiving countries discriminate against migrants somehow – according to visa status and/or ethnicity. There are many legal loopholes between sending and receiving countries and this hampers the use of protective mechanisms that do exist. In addition, there are



more or less high levels of corruption/collusion, particularly in the context of recruitment of migrants at both ends of the migration process, and governments are generally not prepared to consider the rights of migrant workers and rights-based emigration/immigration policies. This is related to the prevailing view that migrants do not share the same entitlements to the full protection of human rights law as citizens do (de Varennes 2002). In this context, an international convention extending rights to migrants throughout the entire migration process (pre-departure, working abroad, return) gains enormous importance and could potentially close these loopholes if widely ratified and implemented.

In both the sending and receiving countries, the ICMR is known about in government circles, largely due to the promotion by very active NGOs. This does, however, not mean that the document is fully understood in all its details. On the technical legal level, apart from Bangladesh and Japan (which is the only country that joined the Working Group deliberations at least during the final phase of the drafting process) and New Zealand, none of the other countries have gone so far as to investigate clause by clause the exact legal implications of ratifying this Convention. This is also the reason why it was only Japan and New Zealand where the issue of ‘duplication’ was mentioned.

Visibility of this Convention has also not extended into the wider public sphere. Knowledge of human rights in general is reasonably good, particularly in the receiving countries where standards of education are on average higher, but the concept of the human rights of migrants is neither given much attention nor sympathy. The media are partially to be blamed.<sup>34</sup> In addition, human rights divisions at the ministerial level in most countries tend to be under-staffed and under-funded and this shows a general lack of priority given by governments. The lack in experts in the areas of international law and human rights is also a common problem.

Overall, a better understanding of the Convention and the implications of ratification are needed in both sending and receiving countries. The overwhelming perception of the ICMR among receiving countries is to see it as an instrument for liberal immigration policies. There is little understanding that this Convention actually (1) encourages the control of clandestine migratory movements and (2) does not touch upon the rights of States’ to establish criteria governing admission of migrant workers and their families (with some minimum standards, though). Sending countries, on the other hand, fear that they would have to grant migrant workers within their own midst (mainly highly skilled professionals from developed countries) rights which are superior to local workers’ rights. This would be beyond their means. Hence, there is much confusion as to what the gains and losses are in the case of ratification and it is assumed in both sending and receiving countries that the losses are bigger than the gains. A change of mind-set is needed as well as the need to address unnecessary fears about ‘being first’ to ratify this document.

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<sup>34</sup> Even coverage of abusive practices (in the case of domestic workers, for instance) does not translate into a call for rights.

Another issue is the novelty of the concept of the ‘rights of migrants’. Once governments ratify a UN Convention, they need to address their obligations. With regard to foreign migrant workers, they are typically not prepared to do so either at the labour sending or receiving end and this position is largely supported by public opinion. In the receiving countries, migrant workers are seen as well protected in their capacity as workers (although their visa status often poses an obstacle to claiming labour rights in practice), but addressing their social, economic and cultural rights as stipulated in the ICMR is a different matter. In countries with social welfare states, this has to do with the current restructuring and reducing of welfare provisions. In countries of multi-ethnic composition, this has to some extent to do with ethnic politics and existing minority groups whose rights often have not been protected according to international standards.

In receiving countries, the granting of rights to migrants is dependent upon the control of migratory flows and only a small minority of highly skilled migrants are given an array of rights. Regarding the majority of less skilled migrants, the objective is to treat them as temporary workers. The perception is that migrants coming from less developed countries are given the chance to earn much higher wages, hence there is no need to give them rights or treatment not available to them in their country of origin. Any demands for their rights are seen as not legitimate. Also, many receiving countries want to keep their immigration policies flexible so that changes can occur frequently, often on an ad hoc basis, in response to economic fluctuations and public opinion. There is no willingness to provide scope for protection or a rights-based approach to labour import.

In labour sending countries, extending rights to migrants is seen as a problem with regard to the numerically small group of professionals who – coming from developed countries — are used to services of high standard. Countries such as Indonesia and Bangladesh do not have the capacity to meet such standards.

Priority is another issue hampering closer examination of the ICMR by governments. Since 11 September 2001, it is reported that counter-terrorism conventions take precedence and there are certain deadlines to be met which keep relevant ministries very busy with little time left to consider other conventions. The current priority given to ‘national security’ issues is reinforced by the multi-ethnic composition of many countries in this region and the existence of extremist groups. This means that other conventions, including the ICMR, are further down the line of priorities. In this context, anti-trafficking issues are considered more important than conventions dealing with broader migrant worker rights.

Combined interests which go against the granting of rights to foreign workers – including recruitment agencies, employers, governmental officials – constitute a huge force that are not easily counter-acted by NGOs and sympathetic individuals within the government structure. At the NGO level, one big problem is the lack of resources available to campaign for the ICMR. As a result, NGOs often decide to concentrate on the improvement of national legislation first instead of promoting the ICMR. The Convention is seen as too far removed with little hope for success, especially in the receiving countries, so that spending efforts and resources is seen as a waste. NGOs feel that the

pressure to compel receiving countries to ratify has to come more from the outside, but unless coming from the UN, this external pressure will not come about easily because no western receiving country has ratified the ICMR.

Although NGOs in both sending and receiving countries are currently lobbying for national laws or bills being implemented or amended rather than concentrating on promoting the UN Convention alone, NGOs in the sending countries do engage in lobbying their governments to ratify the ICMR. On the contrary, NGOs in the receiving countries feel that if they focused on the promotion of the ICMR it would result in a backlash, with even smaller scale improvements slipping away. NGOs in receiving countries take the view that the political timing (because of the economic downturn and the need to protect undocumented workers) is not right to push for the ICMR's ratification. They prefer to fully concentrate on lobbying for changes within the national legislation. This does not mean that NGOs based in the receiving countries do not support the principles of this Convention. In fact, they engage in transnational networking and give support to NGOs in the sending countries. But their strategy is to get national legislation amended first and then follow up with campaigns for the ratification of the ICMR.

On the whole, NGOs' advocacy efforts are just one of the many activities they engage in and rarely is advocacy the specific focus of any NGO concerned with migrant workers. In addition, many NGOs engaged in migrant worker issues are often general human rights organisations, women's or labour watch groups. Hence, forceful campaigning on behalf of migrant workers is not happening. Alliance building is also scattered and relatively weak at the national as well as at the transnational level.

### **3.2 SENDERS**

The situation in the two sending countries in this study, Bangladesh and Indonesia, is very similar: the ratification and the implementation processes are expensive undertakings and both countries' governmental budgets and staff assigned to such matters are very limited. Another huge problem is the allegedly high level of collusion between government circles and those involved in the export business (recruitment agencies). The creation of an environment of 'good governance', which would involve broad level reforms to render ratification of this Convention meaningful, is needed.

The biggest obligation according to the ICMR for Bangladesh and Indonesia would be pre-departure information campaigns and training sessions, monitoring of workers abroad and the imposition of sanctions on brokers and recruiters operating illegally. Under the current infrastructure arrangements, this is a difficult task. Recruitment has been increasingly privatised as governments have sought to take this function out of the public sphere. Alternate types of recruitment agencies, for example trade unions and local councils, need to be found to minimise exploitation by private recruiting firms (see Iredale *et al.* 2003).

Partly due to an initiative instigated by the caretaker government in Bangladesh in 2001, activities organised by Refugee and Migratory Movements Research Unit (RMMRU) and the subsequent publication of a strategy paper resulted in institutional strengthening in Bangladesh. Bangladesh came quite close to ratification in 1997 when it signed this document and the communication, as well as the administrative channels, were put in place. Indonesia's current political situation and the changes in its bureaucratic system render ratification (and even more so implementation) within the near future difficult. Much more effort needs to go into building infrastructure. What both countries are most afraid of, in the event of ratification, is the loss of jobs abroad and other sending countries picking up their workers' share.

NGOs in both countries are campaigning on behalf of the ICMR and also for national legislation. The migrant worker NGO network is larger in Indonesia than Bangladesh, and a consortium of concerned NGOs in Indonesia has drafted a national Migrant Worker Bill modelled after this Convention. The Philippines' Migrant Workers Act of 1995 (RA 8042) was also used as a frame of reference and this resulted in the inclusion of a gender perspective into the Indonesian bill – an element missing from the ICMR. This Bill is still with the Parliament.

On the whole, major problems are posed by the lack of resources, at the governmental and NGO level, by lack of awareness or ignorance on the part of the migrants themselves, and by the strong interests involved in the 'migration business'. All of this needs addressing as part of a promotion campaign.

### **3.3 RECEIVERS**

The receiving countries in this study can be clustered together in the following manner with regard to their immigration policies on the one hand, and political systems and attitudes toward human rights on the other hand: 1) New Zealand, 2) Malaysia and Singapore, 3) Japan and Korea.

In New Zealand it seems as if the dominant policy orientation follows that of other western receiving countries and that is not the expansion of human rights, as was the case in the 1960s and 1970s, but the protection of national interests of the (welfare) state (Hune and Niessen 1994). New Zealand's official position against ratification of the ICMR takes a holistic approach without singling out one specific factor alone. There is agreement with the core aims and principles of UN human rights provisions but a critical position is taken vis-à-vis the UN system at large, as it is seen as duplicating many projects and not using resources efficiently. Along with many other voices from the developed world, a reform of the UN system is demanded before ratification of another convention can be considered. With specific reference to the ICMR, it is seen as not matching the national situation or of duplicating rights provisions that already exist. A country with a strong rights regime like New Zealand does not feel the need to sign this particular Convention to add more protection than what it already offers. As New Zealand takes compliance seriously after ratification, the extent of reforms needed to

avoid breach of this Convention is considered too substantial and monitoring too costly. On the whole, the ICMR is considered too comprehensive to allow ratification. There is no pressure coming from semi- or non-governmental sources. On the contrary, some are in consent with the official government position.

In countries where human rights are generally speaking a taboo, as in Malaysia and Singapore, the many ministries involved in the migration phenomenon seem to operate without clear coordination and cooperation. Even where they do, it is with little transparency. Outside of government circles, nobody knows which ministry is in charge of what migrant worker-related aspect. The trump card in matters related to foreign workers is in the hands of immigration bureaus rather than labour ministries. Moreover, the many departments involved are often in conflict with each other over the issue of suitable policy. In addition, policies are being changed frequently, often in an ad hoc manner without consulting important stakeholders (employers, NGOs) and thereby creating confusion and injustice.

In Japan and Korea, the issue of non-coordination among ministries and unclear policy approaches is more related to the fairly new experience of receiving substantial numbers of foreign migrants. With prolonged experience of this kind, governments usually implement clearer policies (as can be seen in the context of Japan). What distinguishes Japan from Korea is that local governments of prefectures with high proportions of foreign residents and workers, have put social welfare and legal aid facilities in place. These policies are highly localised and do not result in general rights as stipulated by the ICMR. The National Commissions of Human Rights in Korea and New Zealand do not recommend ratification of the ICMR at this stage, and suggest the improvement of existing legislation and practices instead in order to enhance the social security of migrants.

There are links between immigration policies and discriminatory practices, based on visa status or ethnicity, in all of the receiving countries under investigation. The preference for certain migrants is related to the importance given to maintain the (often false) mono-ethnic/mono-cultural nature of society or to maintain a balance with existing ethnic groups. Although the Convention allows individual countries to determine and design immigration policies suitable to their national situation and national interests, the problem is that the visa status and rights as provided by national legislations (labour laws) are tightly linked with migrants not being able to use existing rights in practice. This is also related to the complex issue of 'irregular' or undocumented migrants. No government is prepared to extend rights to irregular migrants and there is very little critical assessment of how migrants become 'illegal'.

Problems with recruitment agencies exist in all countries. States typically protect employers more than foreign workers and this is typically approved of by the public at large. Although most receiving countries claim that they have sufficient legislation in place, by excluding trainees and domestic workers from coverage under their employment or labour laws, a substantial part of the foreign migrant worker population is without protection.

### 3.4 CONCLUDING REMARKS

It appears from this study that the fact that the ICMR enjoys a relatively low number of ratifications is largely due to the lack of exact understanding of its content and benefits. It needs to be communicated that this Convention (1) applies rules to sending countries and receiving countries; (2) that it includes attempts to control ‘illegal’ migration to the benefit of receiving countries and (3) that it is not redundant in terms of the ILO Conventions. In receiving countries like Japan, Korea and New Zealand, the arguments against ratification which have to do with clashes with existing legislation seem to be lame excuses and many of these could be solved by reservations.

As shown above, abusive and exploitative practices within the migration process are related to development and ‘good governance’ and hence a holistic approach is needed in addressing human rights approaches of migrant workers and the obstacles to the ratification of the ICMR.

Ratification of the ICMR is obstructed by politics and to some extent also by a lack of political will. Ultimately, ratification hinges upon political will based on the formation of consent in favour of this Convention. This can be brought about through combined efforts by local, regional and global campaigns by NGOs and the Steering Committee for the Global Campaign.<sup>35</sup>

In 1991, Niessen and Taran wrote that a ratification campaign should focus its attention on countries where the rights of migrants are already fairly well defined and secured, but which have been reluctant to sign and ratify an international convention. This points to developed countries with established democracies and in the Asia Pacific, this would be Japan and New Zealand. But evidence from this study shows that the chances of achieving ratification are higher in the sending countries or could be higher with some external assistance.

In 2003, Taran (2003: 10) wrote that ‘While States appear focused on devising *national security*-based responses to migration that contradict their own future needs and defy labour and economic market laws, elaboration of alternative, rights-based approaches to governance of migration is desperately lacking’. This led him to conclude that unless ‘options and political support for alternative approaches can be generated from civil society and international organizations, it seems unlikely that addressing international migration in the context of international standards will advance’. This switch in focus is the result of the global changes in the last 10 years or so and Taran (2003: 10) now places little faith in governments providing ‘moral, political and practical leadership in assuring a rights-based approach to international migration’.

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<sup>35</sup> For more information, see [www.migrantsrights.org/about\\_campaign\\_engl.htm](http://www.migrantsrights.org/about_campaign_engl.htm)

## CHAPTER 4

### CONCLUSIONS AND RECOMMENDATIONS

Overall a better understanding of the Convention and the implications of its ratification is needed in both sending and receiving countries in this study. There is confusion as to what the gains and losses are in case of ratification and it is assumed in both sending and receiving countries that the potential losses are greater than the gains. A change of the mind set is needed. In addition, fears of ‘being first’ to ratify need to be addressed.

Forward planning is also required in that there should not purely be concern for gaining more ratifications, but also to ensure that implementation is happening. In terms of institutional set up, the sending countries in this study need a lot of assistance in this regard. This could be built into development assistance programmes. UN agencies have to monitor governments at both ends of the migration process closely so that they do not purely pay lip service to migrants’ rights and this Convention.

#### 4.1 NATIONAL LEVEL

Ratification of the ICMR faces major hurdles in the Asia Pacific region for two major reasons: fear of being undercut by other sending countries and fear of the political/economic/social consequences in receiving countries. For sending countries, the fear of being undercut by non-ratifying neighbours is a major obstacle — countries fear they will lose markets if they ratify as their workers may become ‘too demanding’ and ‘rights conscious’. The trade-off between ensuring labour market penetration and the labour and human rights of migrants is a complex issue and countries need to work together to ensure that undercutting does not occur. The need to encourage cooperation and collaboration, rather than competition, is imperative.

The fears and misunderstandings associated with the consequences of ratifying the Convention need to be acknowledged and resolved. One way of doing this would be to conduct a UN-sponsored study of the economic, social and political impacts for the Philippines, Sri Lanka and Tajikistan of their ratification. This would identify negatives consequences, if any, and hopefully put to rest unfounded fears.

For receiving countries, the major obstacles are of a political nature and require changes in national perspectives. Many do not fully understand the Convention. The perception that family members of labour migrants must be admitted is prevalent in receiving countries. But there is nothing in the Convention that requires that migrants be accompanied or joined by their family.

Of even greater concern are issues surrounding irregular migrant workers. The unwillingness to admit the failure of border control and visa policies is a sensitive issue

and likely to attract negative publicity for governments. The mismatch between labour demand and the supply of contract labour from overseas is particularly evident in Malaysia, Japan and Korea. The high costs of migration, the inflexibility and/or brevity of some contracts and the absence of opportunities to migrate often lead to a growth in the number of irregular migrants. Until these governments acknowledge the needs of employers and develop adequate labour migration programs and enable mobility between employers, migrants will be found in unprotected and highly exploitative positions. Employers need to be made aware of the benefits of having rights-based, clear laws and regulations/policies in place which do not change frequently on an ad hoc manner.

The focus in receiving countries should therefore be on changing domestic policies and laws first before mounting a ratification campaign. One such initiative has already begun in South Korea, involving UNDP and IOM. When domestic changes have been implemented, there will be a better chance of achieving ratification of the ICMR.

Parallel to improving national legislation could be the drafting of a 'declaration' or 'set of principles of a non-binding nature which the receiving countries could be encouraged to sign. This would establish a 'code of practice', vis-à-vis foreign migrant workers. The next step would be the launching of a campaign aimed at full ratification of the ICMR by receiving countries.

This initiative could be discussed at the next IOM-sponsored Asian Labour Ministers Consultation in Manila in 2004 or at some other forum. The ILO and other international agencies have already considered this option and they should be integrated into this process. Taran (2003: 8) cautions against this option as it could mean the 'establishment of a set of guidelines or principles that are far more general, vague and unenforceable' than the 'explicit standards and supervisory mechanisms of both the ILO and 1990 Conventions on migrant workers'.

Newer labour exporting countries, such as Cambodia, Mongolia and Nepal, need to be incorporated into the regional migrant labour system and regional advocacy initiatives. At the moment, they are excluded from the major academic and NGO networks — partly because they have not yet developed country counterparts. The conducting of a research project on the obstacles to ratification would be one way to start to open up the discussion.

*Recommendation 1: That UNESCO commissions a study of the Philippines, Sri Lanka and Tajikistan to examine the economic, social and political impacts of ratification of the Convention.*

*Recommendation 2: That the existing initiative in South Korea to change domestic legislation first, involving the UNDP and IOM, be encouraged and supported by UNESCO.*



*Recommendation 3: In addition, national or regional codes of practice or 'sets of principles' could be discussed as a step in the direction of ratifying the ICMR.*

*Recommendation 4: That UNESCO funds a similar study to this one in Cambodia, Mongolia and Nepal as a way of investigating the obstacles that exist in these newer countries of labour migration and as a means of incorporating them into the Asia Pacific Migration Research Network.*

## **4.2 REGIONAL LEVEL**

At the regional level, leadership by one or more countries should be encouraged. Governments of the Philippines, Sri Lanka and Tajikistan are most likely to be active as they have already ratified the ICMR. The Philippines, in particular, is seen by NGOs and governments throughout the region as a model. Three countries have been identified as possibly being interested in ratification: Bangladesh already has an active process in place; Indonesia is beginning to move in this direction, and Thailand also appears receptive.

In April 2003, IOM sponsored a meeting in Sri Lanka for labour officials and ministers from ten sending countries. The next IOM-sponsored Labour Minister's meeting in Manila in 2004 could be used for the initiation of the establishment of a small consortium of interested countries. Once a consortium is established, it would require a coordinator to arrange an initial meeting to discuss the development of possible action plans in each country. The ILO and other bodies should be brought into this process as they have the experience of informing governments and civil society of the details and implications of ratification of the ICMR. After such a meeting, country representatives from pivotal organisations in Bangladesh, Indonesia and Thailand would be required to develop action plans to promote ratification. In this way, a concerted effort to achieve ratification from at least some of the sending countries could be brought about. This would counteract the fear of 'being first' or 'losing out' on the regional labour market.

Receiving countries may be more willing to ratify the ICMR if they have greater confidence in the ability of governments and other agencies to curb irregular migration in the region. Various initiatives have already been put in place in this region. The Manila Process (IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia) held in 1996 was mainly an information-sharing process. A second regional conference followed in Bangkok in 1999. The outcome, the *Bangkok Declaration*, called for a regional mechanism and strong national action for dealing with traffickers. The root causes of both irregular and regular migration received much less attention in the *Bangkok Declaration*, in spite of the emphasis given to this aspect by sending countries. Other initiatives have been taken in relation to trafficking, including *The Asian Regional Initiative Against Trafficking in Women and Children* (ARIAT), the *Asia Pacific Consultations* (APC) and a 1997 *ASEAN Declaration on Transnational Crime*. The most recent is the Bali process (2002) initiated by Indonesia and Australia.

The efficacy of these approaches has so far not been evaluated and before further initiatives are put in place a stock-take needs to be done in the region.

*Recommendation 5: That a consortium of ILO representatives and government officials, NGOs and researchers from Bangladesh, Indonesia, the Philippines, Sri Lanka and Thailand be established to meet and discuss the possibility of formulating country action plans in Manila in 2004. This should be followed up by the initiation of a process to develop action plans for Bangladesh, Indonesia and Thailand to encourage them to ratify the ICMR.*

*Recommendation 6: That UNESCO, ILO and IOM work together on this initiative as part of their on-going commitment to the improvement of labour migration programs and policies.*

*Recommendation 7: That an evaluation be undertaken into the National, Regional and Global Initiatives for Combating the Exploitative Aspects of Irregular Migration.*

### **4.3 INTERNATIONAL LEVEL**

UN agencies need to work to mainstream migration — every agency and program should look at its potential ramifications/implications for migration. The concept of ‘workers rights are human rights’ needs promoting. Taran (2003) stresses the need for international organisations to provide moral and political leadership and to work with non-governmental organisations (or civil society organisations – CSOs). An international campaign is required on two fronts to promote ratification of the Convention:

- *Global*: to encourage western countries to ratify so that other countries are more likely to follow suite;
- *Regional*: aimed at both senders and receivers simultaneously to achieve ratification ideally at the same time so that an actual or perceived ‘race to the bottom’ is avoided.

The UN Convention, as it stands, is a pre-globalisation document and does not take into account the changing patterns of migration and labour markets within regional economies. In the long-term there is a need for an Optional Protocol amending/detailing the original Convention’s provisions. Examples of lacunae are:

- a) this Convention contains articles mostly relevant for workers in the formal sector; but much migration in Asia (as elsewhere) today is for work in the informal sectors; e.g. the original exclusion of ‘trainees’ must be reverted;
- b) gender sensitivity must be included (e.g. domestic workers’ recognition as ‘workers’);
- c) issues of ‘the family’ in the context of time-limited contracts: transnationally split families are very common today with family unification not being realistic under practiced immigration/visa policies; hence the issue of protecting the family has to

- be approached not only from an ‘immigration perspective’ at the receiving end, but also (and maybe even more importantly so) from the sending countries’ end;
- d) other issues pertaining to short-term contracts: such as allowing foreign workers who are waiting for a dispute resolving court case to continue remaining and working in the receiving country so that they do not lose all their savings etc.;
  - e) one big source of exploitation which is insufficiently dealt with by the ICMR is the area of recruitment; this should be considered a public service matter rather than a business;
  - f) intersection with abuses by multinational companies is not touched upon in the ICMR.

*Recommendation 8: The current Steering Committee for the Global Campaign, of which UNESCO is a member, should be resourced to continue promoting migrant workers’ rights.*

*Recommendation 9: As a long-term strategy, the Steering Committee could consider lobbying for a UN Decade of the Migrant. In the short-term, celebrations on International Migrants Day on 18 December should be widespread.<sup>36</sup>*

*Recommendation 10: Information and training campaigns in both sending and receiving countries should be launched involving NGOs and trade unions — targeting the media, schools, employers, police and doctors in particular.*

#### **4.4 NGOs**

At the time of the development of the ICMR there were few migrant NGOs operating globally, and especially in the Asia Pacific region. Therefore, they were not involved in the Convention’s discussions and preparatory meetings — which is very different from the drafting process surrounding CEDAW and the CRC. There is an urgent need for capacity-building of NGOs in this region and the encouragement of stronger networks within the Asia Pacific and internationally. At the moment, only one migrant NGO in the region has consultative status with ECOSOC.<sup>37</sup>

Building up a stronger NGO of CSO network nationally and internationally might be the first step toward such a global move. A stronger partnership between UNESCO and migrant NGOs should be built. Taran (2003: 12) stresses the importance of this so as to link the ‘wealth of experience and ability of CSOs to reach and mobilize constituencies with the resources and mechanisms of international institutions’.

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<sup>36</sup> In the context of CEDAW and the promotion of women’s rights as human rights, the declaring of such a decade proved very important in raising awareness and the proliferation of ratification and implementation of national legislation.

<sup>37</sup> This is the Asian Migrant Centre in Hong Kong — which obtained this status in 2002.

The UN as a whole could fund training programs and networking among NGOs. NGOs are often mainly dealing with short-term issues and crisis intervention. They need support by UN agencies to see the larger picture and to give them guidance on how to be part of long-term planning and advocacy projects. Job-sharing among the various NGOs in one national setting should be encouraged and worked out. Migrant workers' NGOs need to build up their confidence. They often work against majority public opinion by supporting an unwanted group of people (less skilled migrant workers) and need to gain international recognition to boost their status within their societies and vis-à-vis their governments.

Since the achievement of the necessary minimum number of ratifications in July 2003, many NGOs have not decided whether or how to change their strategy. Existing networks in the region (MFA, CARAM ASIA) should be utilised and should be encouraged to integrate into a more global campaign with Migrant Rights International (Geneva)<sup>38</sup> and December 18 (Brussels)<sup>39</sup>. This requires funding and support in organising.

*Recommendation 11: That UNESCO encourages NGOs in social capital building by supporting an existing NGO to act as a regional coordinating body.*

*Recommendation 12: That the UN provides training opportunities for NGO representatives and assists with the development of networks.*

*Recommendation 13: That UNESCO and the Steering Committee for the Global Campaign assist NGOs with the formulation of a new strategy now that the ICMR has come into effect.*

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<sup>38</sup> Migrant Rights International is at <http://www.migrantwatch.org>

<sup>39</sup> December 18 is at <http://www.december18.net>

## References

- Asian Migrant Centre and Migrant Forum in Asia (2001). *Asian Migrant Yearbook 2001 – Migration Facts, Analysis and Issues in 2000*. Hong Kong: AMC.
- Battistella, Graziano (2002) 'International Migration in Asia vis-à-vis Europe: An Introduction', *Asian and Pacific Migration Journal*, 11(4): 405-414.
- Boehning (1991) 'The ILO and the New UN Convention on Migrant Workers: The Past and Future', *International Migration Review*, 25(4): 698-709.
- Chandrakirana, Kamala, Trimayuni Pande, Safitri Salma, Soesilo Wahyu, Suryakusuma Julia and Tirtosudarmo, Riwanto (2002) 'Indonesian Migrant Workers: Systematic Abuse at Home and Abroad', Unpublished Report to the UN Special Rapporteur on the Human Rights of Migrants, Kuala Lumpur.
- De Varennes, Fernand (2002) 'Strangers in Foreign Lands' – Diversity, Vulnerability and the Rights of Migrants'. *UNESCO-MOST Strategy Paper*. 9 September 2002.
- Hune, Shirley and Niessen, Jan (1994) 'Ratifying the UN Migrant Workers Convention: Current Difficulties and Prospects', *Netherlands Quarterly of Human Rights*, 12(4): 393-404.
- IOM (2000) *World Migration Report 2000*, Geneva: IOM.
- Iredale, R., Doloswala, N., Siddiqui, T. and Tirtosudarmo, R. (2003) 'International Labour Migration in Asia: Trends, Characteristics, Policy and Interstate Cooperation', Paper delivered at Labour Ministers' Meeting organised by IOM, Colombo, Sri Lanka, 1-2 April.
- Jones, Sidney (1996) *Making Money Off Migrants – The Indonesian Exodus to Malaysia*. Hong Kong: Asia 2000 Ltd.
- Lin, Leam Lin and Oishi, Nana (1996) 'International Labor Migration of Asian Women: Distinctive Characteristics and Policy Concerns', *Asian and Pacific Migration Journal*, 5(1): 85-115.
- Loennroth, Juhani (1991) 'The International Convention on the Rights of all Migrants in the Context of International Migration Policies: An Analysis of Ten Years of Negotiation', *International Migration Review*, 25(4): 710-36.
- Niessen, Jan and Taran, Patrick (1991) 'Using the New Migrant Workers' Rights Convention', *International Migration Review*, 25(4): 859-65.
- Siddiqui, Tasneem (2001) *Transcending Boundaries: Labour Migration of Women from Bangladesh*, Dhaka, The University Press.
- Siddiqui, Tasneem (ed.) (2002) *Beyond the Maze – Streamlining Labour Recruitment Process in Bangladesh*, Dhaka: Refugee and Migratory Movements Research Unit.
- Steiner, Henry J. and Philip Alston (2000) *Human Rights in International Context: Law, Politics, Morals*. Oxford: Oxford University Press.
- Taran, Patrick (2000) 'Human Rights of Migrants: Challenges of the New Decade', *International Migration*, 38(6): 7-51.
- Taran, Patrick (2003) 'To Be or Not To Be Ruled by Law: Migration in the 21<sup>st</sup> Century and the 1990 International Convention', Paper delivered at *Workshop on the Protection of the Rights of All Migrant Workers 1990: Challenges?*, 8<sup>th</sup> International Metropolis Conference, Vienna, 15-18 September.
- Women's Aid Organisation (2003) 'Protection of Foreign Domestic Workers in Malaysia: Law and Policies, Implications and Intervention', Paper presented at the *Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking*, Hong Kong SAR, February 16-19.
- Wong, Diana (1997) 'Transience and Settlement: Singapore's Foreign Labor Policy', *Asian and Pacific Migration Journal*, 6(2): 135-67.

## APPENDIX I

### LIST OF INTERVIEWS

#### 1. Sending countries

##### a) **Bangladesh**

*NGOs:* Bangladesh National Women Lawyers' Association, Bangladesh Women Migrant Association, Welfare Association for Repatriated Bangladeshi Expatriates

*Employer Association:* Bangladesh Association of International Recruitment Agencies

*Ministries:* Foreign Affairs, Bureau of Manpower, Employment & Training (BMET), Expatriates' Welfare & Overseas Employment

*Semi-governmental:* Law Commission

*Law experts/academic:* One barrister, Refugee and Migratory Movements Research Unit

*Other:* IOM Dhaka

##### b) **Indonesia**

*NGOs:* Solidaritas Perempuan, Center for Indonesian Migrant Workers, KOPBUMI (Consortium for Indonesian Migrant Workers Advocacy), Indonesian Women's Coalition for Justice and Democracy, International NGO Forum on Indonesian Development

*Semi-governmental:* National Commission for Human Rights

*Ministries:* Ministry of Justice, Ministry of Manpower and Transmigration, Department of Justice and Human Rights, Department of Foreign Affairs (Directorate for Human Rights)

*Recruitment Agency:* Manpower and Recruitment Consultancy

*Academics/Law experts:* Two

*Other:* National Commission for Violence Against Women, One journalist, International Crisis Group

#### 2. Receiving countries

##### a) **Japan**

*NGOs:* National Network in Solidarity with Migrant Workers, Japan Civil Liberties Union, Kanagawa City Union, Issho Kikaku

*Academics/law experts:* five

*Ministries:* Ministry of Justice, Ministry of Health, Labour & Welfare, Ministry of Foreign Affairs

*Embassies:* Thailand, Philippines

*Other:* Kanagawa Prefecture Government, International Division, One journalist

##### b) **Korea**

*NGOs:* Migrant Workers House & Korean-Chinese House, Ansan Migrant Shelter, Seoul Migrant Mission Center

*Academics/law experts:* Korean Migration Research Network

*Ministries:* Ministry of Labour, Ministry of Justice, Ministry of Foreign Affairs

*Embassies:* Indonesia

*Other:* National Commission for Human Rights, IOM, UNDP

- c) **Malaysia**  
*NGOs:* Tenaganita, Women's Aid Organisation  
*Academics/law experts:* Three  
*Ministries:* Ministry of Home Affairs, Immigration Department of Malaysia  
*Embassies:* Nepal, Bangladesh  
*Other:* National Commission for Human Rights, UNDP, UNFPA, Opposition Party representatives
- d) **New Zealand**  
*NGOs:* Amnesty International  
*Ministries:* Department of Labour (Immigration Policy and Research Group), Ministry of Foreign Affairs and Trade (UN and Commonwealth Division)  
*Academics/law experts:* five  
*Other:* EEO Trust
- e) **Singapore**  
*NGOs:* AWARE, Commission for the Pastoral Care of Migrants and Itinerant People  
*Ministries:* Ministry of Manpower  
*Academics/law experts:* Three  
*Embassies:* Indonesia  
*Employer Association:* Singapore Contractors Association  
*Other:* Two journalists, National Trades Union Congress

## APPENDIX II

### A COMPARISON OF LABOUR MANAGEMENT POLICIES OF SAMPLE OF ASIAN SENDING COUNTRIES

Country	Foreign labour market development and marketing	Protection of migrant workers in recruitment and employment	Policy and legislative frameworks, structures and mechanisms governing labour migration	Pre-departure training and orientation	Remittance management	Labour migration information systems & data collection	Reintegration of returning labour migrants	Inter-state cooperation
Bangladesh	Gov't and private. Limited co-ordination.	Limited female migration suggests significant irregular migration. Limited protection. Local missions.	Ministry of Labour and Employment (Bureau of Manpower, Employment and Training), Home and Foreign Affairs <i>Emigration Ordinance 1982</i>	None	Both formal and informal. Migrants prefer informal though some advances made in formal recently.	No gender segregated information. Number obtaining clearance through BMET collected only.	Less developed program environment.	One bi-lateral agreement with Kuwait.
India	No national coordination.	Indian Missions responsible.	<i>1983 Emigration Act</i> - controls recruiting. 3 Ministries responsible.	Some NGO preparation and skills training by receiving companies.		Number obtaining clearance to work o/s (Emigration Check Required) collected by Ministry of Labour – under-enumeration as other categories not counted.		MoU with Nepal.
Nepal	No policy till recently – based on history.	Little policy development.	<i>Foreign Employment Act 2042 (1985)</i>	Little begun recently.	In hands of licence holders.	No official collection.		MoU with India.



Country	Foreign labour market development and marketing	Protection of migrant workers in recruitment and employment	Policy and legislative frameworks, structures and mechanisms governing labour migration	Pre-departure training and orientation	Remittance management	Labour migration information systems & data collection	Reintegration of returning labour migrants	Inter-state cooperation
Pakistan	Gov't organised private sector placements, O/S gov't work, and private.	Local missions responsible.	Comprehensive legislation under MOL - <i>Emigration Ordinance 1979</i> .	Limited to info about countries, cultural norms.	Many generous incentives to OPs to remit, generally formal channels.	Visa details. Limited gender segregated information.		Two bilateral agreements (Jordan and Qatar).
Sri Lanka	1985 SLBFE Act, 2001 Employment Policy.	Handled by licensed agents, missions, SLBFE, labour organisations and NGOs.	<i>Foreign Employment Agency Act No. 32</i> of 1980 to regulate recruitment agents.	Standard syllabus, govt. trainers but provided by licensees. Training stamp required on passport.	Non Resident Currency Accounts administered by Central Bank. Some training and awareness building.	SLBFE data based on registrations. Immigration/emigration card system at airport represents a second data collection system.	Low take-up of self-employment loans. Limited development of micro programs to support initiatives.	No MoUs.
Thailand	Gov't promotion	Little policy development. OFWs have right to vote at home.				Out-migration data improving. Poor data on irregular immigrants.		Agreement with Taiwan.

Country	Foreign labour market development and marketing	Protection of migrant workers in recruitment and employment	Policy and legislative frameworks, structures and mechanisms governing labour migration	Pre-departure training and orientation	Remittance management	Labour migration information systems & data collection	Reintegration of returning labour migrants	Inter-state cooperation
Philippines	Gov't actively promotes – increasingly looking for skilled employment Definition of 'skilled' is often pragmatic	Most developed protection Inc role of private recruiters. Model contracts Prominent role of NGOs at home and o/s.	<i>Migrant Workers and Overseas Filipinos Act 1995</i> Philippines Overseas Employment Agency (POEA), Overseas Workers Welfare Admin (OWWA). Both regular and irregular migrants.	Widespread. All OCWs must participate.	Relatively well managed.	POEA, Inter-Agency Committee on Tourism and Overseas Employment Statistics	Some policies but room for improved policy.	MoUs with many countries.
Vietnam	Government actively seeks out 'safe' labour markets	Protection by means of more government control, women prohibited from working as domestics, entertainers. Few private agents.	Gov't control high. Labour contracts handled by enterprises once government has negotiated agreement.	Increased training on a range of topics.	Gov't earns foreign currency. No managm't of personal remittances and small % sent through banks.	2 domestic agencies – MOLISA, Ministry of Public Security, Dep't of Statistics, Ministry of Planning and Investment.	Training and loans available for establish. of small and medium enterprises & assistance in finding a job.	Bilateral Agreements with Kuwait, Lebanon, Saudi Arabia, Libya, Japan S. Korea.
China	Gov-managed schemes and growing no. of employment agency contracts and irregular mig.	Attempts to improve protection in managed flows but little protection in others.	Regulation on Management of Overseas Employment Service, 2001-02.			Bureau of Public Security		

Source: Compiled from data collected from a wide range of sources, but especially from information available from government departments in the various countries.

## APPENDIX III

### SUMMARY OF MAIN OBSTACLES TO RATIFICATION

<b>Sending Countries</b>	<b>Main Obstacles</b>		
	<b>Political/economic climate</b>	<b>Perceptions of impact of ICMR</b>	<b>Other</b>
Bangladesh	Good ratification record but bad implementation largely based upon poor resources; high rates of illiteracy resulting in little awareness.	Clashes with domestic law; fear of being made liable for migrants in BD; fear of losing market for own workers abroad; fear of being made liable for irregular migration.	Migration between Pakistan, India and BD politically very sensitive because of ethno-religious conflicts.
Indonesia	Transition phase to democracy and decentralisation; weak bureaucratic structure; labour issues marginalized; priority put on ratifying other core conventions; lack of international pressure to ratify ICMR; reasonable ratification record, but poor implementation.	Fear of losing out on regional labour market; reluctance to criticize Muslim brother countries; fear of being liable for migrants in Indonesia.	Lack of transparency in bureaucratic processes; lack of experts (HR and international law).

	<b>Main Obstacles</b>		
<b>Receiving Countries</b>	<b>Political/economic climate</b>	<b>Perceptions of impact of ICMR</b>	<b>Other</b>
Japan	Grip on power by the Conservative Party (LDP); ICMR considered unimportant (not a core convention; not ratified by other G7 countries); lack of international pressure to ICMR; good ratification record but no interest in entry into more multilateral treaties (critique of UN system).	Clashes with domestic law; favourable treatment to migrant workers; implications for basic immigration policies; lack of willingness to give protection to irregular migrants; lack of willingness to accept family members.	'Oldcomer' immigrants are not protected according to international standards either.
Korea	Fear of losing 'mono-ethnic' character; Korean foreign policy reactive, not pre-active; economic recession does not allow for protection of migrant workers; conservative politicians in majority.	Lack of willingness to accept family members; fear of migrants joining strong labour unions; high burden of monitoring and implementation.	Possibility of reunification with North and influx of workers from the North.
Malaysia	Poor ratification record, little appreciation of universal HR by government; little pressure from within civil society; no public debate; existing legislation seen as sufficient to protect foreign workers	Lack of willingness to accept family members and settlement; fear of ethnic society becoming unbalanced; protection of irregular workers seen as unacceptable	Collusion with employers and recruiters; composition of ethno-religious politics
New Zealand	ICMR seen as irrelevant in view of existing settlement policies and protective legislation; high burden of implementation and monitoring; best ratification record but no interest in entry into more multilateral treaties (critique of UN system); no pressure from NGO's.	Lack of willingness to protect irregular migrants; clash with domestic laws	Maori communities might object to giving newcomers special treatment
Singapore	Poor ratification record and little civil society advocacy for HR in general; reluctance to be inspected by UN system.	Clash with immigration policies; avoidance of settlement and family unification for unskilled workers.	Lack of transparency regarding migration policies and official statistics unavailable.