



**Asia Pacific Migration Research Network**

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**Impact of Ratifying the 1990 UN Convention on the  
Rights of All Migrant Workers and Members of  
Their Family:  
Case Studies of the Philippines and Sri Lanka**

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No project is possible without the participation of willing informants. The involvement in this research of many dedicated NGOs, government officials, academic researchers and others needs to be acknowledged. We trust that the time that they devoted will ultimately be productive.

We also wish to acknowledge the input of Dr Marla Asis of the Scalabrini Migration Centre in Manila and Patrick Taran of the ILO office in Geneva in thinking about the evaluation framework.

# Executive Summary

## Background and rationale

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.

In the Asia Pacific region only three sending countries (the Philippines, Sri Lanka and Tajikistan) have so far ratified the ICMR, despite the region constituting an important source of labour migrants and intra-regional labour migration taking place on a large scale. Our report, *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers 1990: The Asia Pacific Perspective* (Piper and Iredale, 2003), covered both countries of origin and destination: two countries of origin, Bangladesh and Indonesia, and five countries of destination, Japan, Korea, Malaysia, New Zealand and Singapore.

When a country ratifies an international treaty, it assumes a legal obligation to implement the rights in that treaty. But this is only the first step because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. The situation in the two sending countries covered in the first report, Bangladesh and Indonesia, was very similar: ratification and the implementation processes were seen as expensive undertakings and both countries' governmental budgets and staff assigned to such matters were very limited. Another problem was the allegedly high level of collusion between government officials and those involved in the export business (recruitment agencies). The creation of an environment of 'good governance' was needed and this required broad reforms.

Thus, one of the major obstacles to ratification of the ICMR was the view that such ratification would involve heavy costs of implementation and monitoring. The biggest obligation 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 Bangladesh and Indonesia were also afraid of losing jobs abroad and of other sending countries picking up their workers' share if they ratified the ICMR. Some countries have had experiences of being 'advised' not to ratify or 'their workers would be rejected by [a host country]'. Competition between sending countries is a reality all over the world. 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 fears associated with the consequences of ratifying the ICMR need to be acknowledged and resolved.

Our first report recommended to UNESCO that 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 negative consequences, if any, and put to rest unfounded fears. This is the basis of the present study, though Tajikistan has not been included due to its current level of political and economic instability.

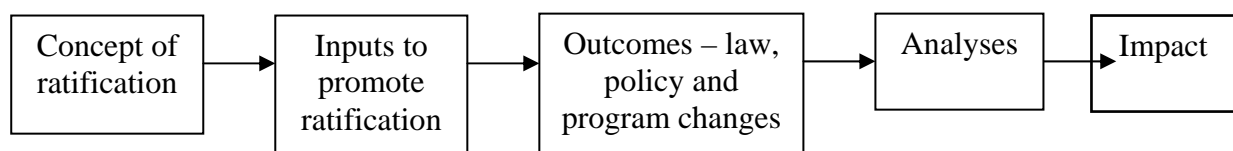
This report attempts to investigate the legislative side (implementation of Convention's content<sup>1</sup>) and the promotional aspects (i.e. 'external use') vis-à-vis the destination countries and beyond in the context of two State Parties that are located in Asia — Sri Lanka and the Philippines.<sup>2</sup> We focus on the obligations of both countries in their role as migrant sending countries but will also give consideration to the situation of in-coming foreign workers.

## Method

Neither country had submitted a report to the UN at the time of the research and it was necessary, therefore, to collect primary data. Governments are service delivery agencies and by ratifying a convention they undertake certain obligations: provision of advice and the promotion of understanding, acceptance and public discussion of human rights and actual delivery of a wide range of programs/policies. The *impact* of ratification is the subject of this project but the *process* of ratifying should itself bring about increased knowledge, awareness and commitment among government, civil society and international bodies of the intentions of the Convention.

This evaluation is concerned with an assessment of the whole process leading up to ratification and afterwards. The fact that the ICMR did not enter into force until July 2003 meant that less than two years had elapsed since then but it is approximately 10 years since both of our study countries ratified the ICMR. So there is a considerable period of preparing, thinking and acting in terms of the clauses contained within it. This evaluation includes analysis of a range of inputs at both the pre-ratification and post-ratification stages: such as qualitative data, committee reports and public advocacy.

Figure 1: Approach to the evaluation

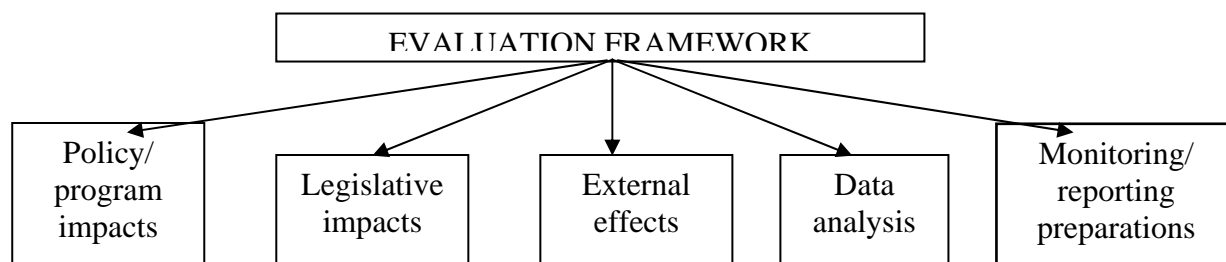


First we designed an evaluation framework. This was a new and innovative step to undertake. The evaluation framework is shown in Figure 2.

<sup>1</sup> For full text, see <http://www.ohchr.org/english/law/cmw.htm>.

<sup>2</sup> There are more State Parties in Asia to this Convention: East Timor and Tajikistan. Bangladesh and Indonesia have signed this Convention, but not yet ratified. For a full table of ratifications, see [www.december18.net](http://www.december18.net).

Figure 2: Evaluation framework



Second, once the framework was agreed upon a set of questions were developed to cover each aspect. The interview schedule was developed to test the obstacles and opportunities created by ratifying the Convention from a legal, social and political perspective. The main research method was semi-structured interviews with key informants in the two countries. 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.

Third, statistical data were sought from various agencies to try to assess whether there had been changes in the volume of out- or in-migration, whether destinations/sources had changed, whether there was an increase in the number of complaints being lodged and so on. This would provide quantitative indicators of the impacts of ratification. A range of documents — annual reports and /or studies of government agencies, institutes and institutions, records of Congress, pertinent provisions of law, policy statements and/or speeches of key officials and experts on migration and labour — were all drawn upon in the analysis.

## The Philippines

Until recently, the Philippines was the world's second largest exporter of labour but recently it surpassed Mexico to become No. 1. More than 7.7m Filipinos are working overseas in over 190 countries.

### Legislative changes

The Philippines participated in the deliberations of the draft of the ICMR in the early 1980s. The Philippine delegation contributed ideas and avidly supported the approval by the UN General Assembly. The Philippines ratified the Convention on 5<sup>th</sup> July, 1995 and was, thus, the first Asian country to do so.

The most significant piece of legislation in the Philippines is the Migrant Workers' Act of 1995 or Republic Act 8042. It was introduced around the time of ratification of ICMR. A wide range of institutional mechanisms has been established to ensure the protection of the rights of migrant and overseas workers. Voting rights for overseas Filipinos became a reality recently.

A major function of RA 8042 is the regulation of recruiting agencies to ensure that migrant workers are not abused or exploited and job placement is appropriately matched with training and skills. This is the function that is expected to be phased out gradually under Sections 29 and 30 of RA 8042. NGOs in general believe that it is premature to deregulate recruitment agencies, while the association of recruitment agencies insists that the best way to enhance job opportunities abroad is to deregulate the industry.

One of the good features of RA 8042 is the provision that penalises excessive charging of fees by recruitment agencies as an 'act of illegal recruitment'. In this connection, it may be noted that ICMR may not be in the consciousness of labour implementing agencies; however, the principles pertaining to the protection of migrant workers in ICMR are found in RA 8042.

While it is seen as being a very valuable piece of legislation there has been a range of bills proposed to amend RA 8042 in recent years.

### **Policy/program changes**

The Welfare and Employment Office (WEO) of the Philippine Overseas Employment Administration (POEA) develops and implements policies and programs to promote the interest and welfare of overseas Filipino workers and their families. Specifically, the WEO is responsible for the maintenance of the registry of workers for placement purposes; develops and signs recruitment agreements and foreign government employers and their instrumentalities; provides comprehensive facilities for handling all phases of recruitment of Filipino workers hired on government-to-government arrangements; and develops and implements pre-employment orientation programs to inform applicant-workers on migration realities and employment conditions in host countries.

RA 8042 has also contributed to the mediation/conciliation measures between employers and workers, the establishment of re-placement and monitoring centres and various other resources centres.

### **External effects**

At the national level, there are differing opinions about whether the country itself can and does influence others — especially receiving countries. Some feel that the Philippines has successfully used the weight of the ICMR to pressure for better conditions for workers in some countries while others disagree.

### **Statistical background and evidence of changes**

Except for 2003, the growth trend of the country's overseas employment has been on an upward trend for the last five-year period, ending 2004. There has been a marked increase in the skill level of Filipinos going offshore to work, a strategy that is government sponsored and implies greater success in locating these types of markets. Different destination patterns are more about locating and servicing more high skilled demands and not in response to ratification of the ICMR. The Philippines has become more acutely aware of its responsibility towards labour migrants and is seeking out better market and training according to these markets.

However, there is a need to take care with these data as the question of 'skill' visas for performing artists is a matter of contention and the Philippines' classification of 'entertainers' as 'skilled' remains an anachronism in the minds of some people.

## **Preparations in place for monitoring/assessing the impacts of ICMR and reporting to the UN**

The Implementing Rules/Guidelines for the report of member countries to monitor compliance with the ICMR were approved in May 2005. They contain the structure, parts, data requirements and frequency of submission of the reports. Members are expected to present their reports orally to the Committee so that they can respond to requests for clarifications and questions of the Committee on the Protection of All Rights of Migrant Workers and Their Families, established under the ICMR.

In the Philippines there are various mechanisms for monitoring the effects of RA 8042 and the ICMR but no clearly designated process as yet. NGOs that are active in advocacy on safeguarding and enhancing the rights of overseas workers are invited to hearings on labour bills but many regard the level of their input as unsatisfactory. Their participation in monitoring the ICMR is likely to be considerable as some NGOs manifest a high degree of commitment and expertise to be drawn upon. This is, however, still a matter for negotiation as many civil society elements are active.

### **Concluding remarks**

Overall, RA 8042 rather than ICMR was seen as having had more of an impact on policy and programs. There are still problems with migrant labour but the POEA states that it is committed to alleviating them and to helping workers navigate their way in new countries, including protecting their rights as envisioned by RA 8042 and the ICMR. As regards the impact of ICMR on government structure, POEA is going through the process of restructuring in line with the national government policy of reorganization to improve governance. This will hopefully improve transparency and openness.

NGOs are very active in the Philippines even though they have very limited funds and often rely on international donor agencies. They participate in policy making, attend hearings in the formulation of rules and regulations affecting their rights and express their views in position papers. The approval of R A8042 as well as ratification of ICMR enhanced their advocacy role in policy development and reforms.

From the NGO perspective, there is a need for government agencies and personnel to manifest stronger commitment to the welfare of workers, through effective service delivery.

## **Sri Lanka**

### **Legislative changes**

In 1985, it was assumed that migration was a short-term phenomenon but it has lasted and expanded. Prior to ratification, the following laws existed:

- Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985 (amended in 1994);
- Sri Lanka Bureau of Foreign Employment Regulations, 1985;
- Model Employment Contract – Sri Lanka Bureau of Foreign Employment, 1990. (ILO 'Migration Survey 2003')

The Foreign Employment Act was amended in 1994 (prior to ratification), at a time when the entire criminal law was amended and changing the Employment Act was part of this exercise. The amendment mainly concerns compulsory registration and training. The



operation of unauthorised recruitment agencies is an offence. Likewise, the charging of any extra fees, other than stated in this Act, is also an infringement of the law. There is no mention of the minimum standards for employment contracts, such as with regard to minimum working conditions or wages.

Since ratification, Sri Lanka has not created any laws aimed at further implementation. SLBFE keeps introducing more regulations but in its present form the Act does not include rights provisions for migrant workers. According to NGOs, the 1985 Act is useful for promoting migration but not for the protection of workers. There are no specific laws on social security and Sri Lanka has not negotiated any bilateral agreements with destination countries that would contain any social security provisions. Non-governmental stakeholders are therefore lobbying for further amendment of this Act.

### **Policy/program changes**

The Ministry of Labour and Sri Lanka Bureau of Foreign Employment (SLBFE) are in charge of migration policy and regulation. The Foreign Employment Office was established in 1985 under the Parliament Act No. 21. Since then it has functioned under the Ministry of Labour as the regulatory body for the industry of foreign employment in Sri Lanka. The main objectives of the SLBFE are promotion, development and regularisation of the industry and provision of protection and well being of migrant workers and their families. SLBFE is financially independent from government and operates on the basis of fees.

Some changes have been implemented but the pace of change is slow. The IOM and ILO have been working with government and civil society to assist with the implementation of the ICMR and with monitoring/report writing.

NGOs have been mainly engaged in service provision in Sri Lanka and to a much lesser extent in advocacy and lobbying. Migrant NGOs rally mainly around the issue of voting rights and social security (especially pension rights). It is seen as highly important that migrants know what their rights are in the destination countries and in general human rights terms.

Recruitment for employment overseas is handled by the Sri Lanka Foreign Employment Agency Ltd., a subsidiary of the SLBFE and private sector recruitment agencies. The job of protecting migrant workers in recruitment and employment is largely in the hands of licensed agents. In spite of the Act which stipulates fees, migrants often pay far in excess of the government stipulated fee (Yapa, 1995: 134).

Migrant workers are insufficiently provided for in terms of social security. Various government schemes are put in place from time to time but they are mainly political stunts to win votes. Migrants are often excluded from participating in the social security systems of their host countries, and according to an ILO brief from 2003, no Sri Lankan social security system is open to them. The situation for health care, however, is a little better as many recipient countries, such as Malaysia and Singapore, now require employers to take out medical insurance or permit legal migrant workers to access public health care facilities.

There is no mechanism of accountability regarding complaints lodged by migrants about abuse and contract violations built into the system at SLBFE. Also, the IOM has suggested a 'rating' system (with e.g. rape ranking no.1, followed by non-payment of wages or so) which would be important when re-licensing recruitment agencies. In this regard, SLBFE not only needs to take stock quantitatively but it needs to take a qualitative perspective

also. Corrupt practices also hamper the complaint monitoring system that has been in place.

Sri Lanka is obliged to extend voting rights to migrant workers but there is no policy or programme in place to do so. The lack of provision of adequate information also remains an ongoing problem.

### **External effects**

Sri Lanka's need to ensure that it keeps its foreign labour markets, especially in the Middle East, makes for compliance and acceptance of the prevailing conditions and rights. The Convention clause on cooperation between sending and receiving countries does not seem to have had any obvious effect as yet in Sri Lanka.

### **Statistical background and evidence of changes**

The number of migrants has risen steadily since the 1970s and there has been a gradual increase in the ratio of females to males so that there is now an excess of females. The Government has put greater emphasis on the proper registration of outgoing migrant workers. There is no evidence that overseas markets have been affected by ratification of the ICMR. Incoming migrants and their rights and conditions do not seem to attract much attention from policy makers.

### **Preparations in place for monitoring/assessing the impacts and reporting to the UN**

The Ministry of Labour is in charge of writing the report and the Ministry of Justice and SLFEB have also assisted. There does not appear to be much civil society involvement or input and the NGO network has planned to write a shadow report but there is little knowledge or expertise about how to do this.

### **Concluding remarks**

Lack of ratification by receiving countries is seen as a major stumbling block in ensuring better conditions and the rights of migrant workers. In addition, in Sri Lanka itself, the Government to date has not enacted sufficient legislation to cover the full breadth of the ICMR and many aspects, such as employment contracts, pre-departure training, better regulation of private recruiting agents, all need improvement. A whole range of socio-economic aspects also need attention.

There are no signs that migration has decreased since ratification and, there has been little use of the ICMR vis-à-vis receiving countries, by government representatives. The changes in statistics that exist seem to be mainly due to different measuring methods used or new policies/regulations.

On the whole, despite ratification of the UN Convention, the general perception is that Sri Lankan migrants are frequently subjected to indecent working conditions, non-payment of wages, physical and psychological harassment and discriminatory practices.

### **Comparative findings**

These two case studies show vastly different situations: the Philippines' ratification occurred simultaneously with the bringing into force of a new act, the RA 8042 while in Sri Lanka ratification was a routine action by the government resulting in little, if any, concrete

action. Government administration of the program is much more comprehensive in the former. The level of civil society activism in the Philippines is extraordinarily high, both inside the country and outside, while Sri Lanka has a few NGOs that are mostly concerned with social welfare issues. In both countries it is an ongoing process to introduce improvements that deliver better protection, conditions and services to migrant workers but this process is much more active in the Philippines.

## **Assessing impacts on the basis of the following obstacles to ratification of the ICMR that have been identified**

The attribution of an improvement in migrants' rights to the ratification of the ICMR is clearly difficult. It is an ongoing, two-way process involving government, migrant workers and their representatives. Nevertheless, it provides a framework for what is desirable and therefore sets the parameters of the goals that should be sought after.

There seems little evidence of negative impacts thereby dispelling the concerns of many of the non-ratifiers. The criteria used for assessing the impact are based on the major obstacles to ratification identified in earlier reports (Piper and Iredale 2003 and Pecoud & de Gutcheneire 2004: 21). They are:

### **1. Cost of providing greater awareness-raising and general education about the rights of migrant workers**

The costs of this have been spread across NGOs and others in the Philippines while Sri Lanka has not addressed this aspect adequately to date.

### **2. High costs of implementation**

The costs of implementation are not available at this stage for either country.

- **National legal outcomes** — these will be documented in the reports to the MWC. A significant number of bills are under discussion and debate as part of an ongoing process of reform in the Philippines but there is much less activity in this regard in Sri Lanka.
- **National policy outcomes** — these will also be documented in the report. Review of policies is underway in both countries but until affected workers have a loud enough 'voice' their concerns may go unattended.

### **3. Difficulty (partly due to lack of transparency) and high cost of monitoring**

The process of monitoring is just being developed in each country. A long report on each of the clauses in the ICMR is required. This does appear to be excessive but neither country voiced any concern at this point. The process set up by the MWC seems to allow some scope for the way that the process is handled and its emphasis on advocacy, seems to be a good starting point.

### **4. Loss of markets**

It is evident that neither country has suffered economically in terms of a loss of markets as a result of their ratification of ICMR.

## **Conclusions**

The ICMR represents a unique agreement by many countries on minimum migrants' rights but as it has not been ratified by a single receiving country, there is no global agreement.

This makes ratification and implementation at both origin and destination ends a slow process. Capacity-building is required in countries that have ratified while processes for encouraging ratification among other countries are urgently required. In another five years, if only developing countries ratify this Convention it will become meaningless. A developed country's ratification is urgently needed. For this, the UN agencies should form a coalition and so should the major NGOs.

# Chapter 1: Background, Framework and Method

## 1.1 Background

The United Nations, ILO and other international bodies have, over time, promulgated conventions, agreements and other arrangements aimed at achieving worldwide social, economic and political goals. 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 (the Philippines, Sri Lanka and Tajikistan) have so far ratified the ICMR despite this region constituting an important source of labour migrants and with intra-regional labour migration taking place on a large scale. A report completed by these authors in 2003 was concerned with the identification of the obstacles to the ratification of the ICMR in this region. Both countries of origin and destination were considered with regard to contemporary labour migration patterns and the extent to which their policies were 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, *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers 1990: The Asia Pacific Perspective* (Piper and Iredale, 2003) was to investigate ways to gain wider acceptance of the ICMR in the Asia Pacific region. The report:

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

It was found that in both sending and receiving countries the ICMR is known in government circles, largely due to its 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 had come so far as to investigate clause by clause the exact legal implications of ratifying this Convention. It appeared that visibility of the 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 it appears that the concept of the 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 under-staffed 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.

The combined interests of recruitment agencies, employers, governmental officials often go against the granting of rights to foreign workers. NGOs and sympathetic individuals within the government structure do not easily counter the force of this group. At the NGO level, a big problem is the lack of resources available to campaign for the ICMR. It is often seen as too far removed with little hope of 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 as yet.

## 1.2 Framework

When a country ratifies an international treaty, it assumes a legal obligation to implement the rights in that treaty. But this is only the first step because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. This report attempts to investigate the legislative side (implementation of Convention's content<sup>3</sup>) and the promotional aspects (i.e. 'external use') vis-à-vis the destination countries and beyond in the context of two State Parties that are located in Asia — Sri Lanka and the Philippines.<sup>4</sup> We focus on the obligations of both countries in their role as migrant sending countries but will also give consideration to the situation of in-coming foreign workers.

The 1990 Migrant Worker Convention has 93 articles and is thus one of the longest and most elaborate conventions on record. However, a number of general human rights provisions are taken from the other six core conventions and thus repeat widely accepted standards. With regard to its content and structure, the first part of this Convention deals with the definition of migrant labour; the second pertains to the non-discrimination with respect to rights; and the third deals with the human rights of all migrant workers. Part IV focuses on the rights of documented/regular migrants, and Part V contains provisions applicable to particular categories of migrants. Part VI deals with the cooperation between states, exchange of information, and the promotion of lawful conditions for the international migration of workers. The final part concerns the application of this Convention and the obligations by State Parties to the monitoring body at the UN (see below, section 4) and some final general provisions.

The main obligations for sending countries according to this Convention fall under:

PART III which deals with general human rights of all migrant workers and members of their families — which are largely covered by the national constitution in Sri Lanka and the Philippines. A sample of the clauses are:

1. Freedom to leave and to re-enter country of origin (art. 1 and 2)
2. Right to freedom from torture, cruel or inhuman treatment or punishment (art. 10)
3. Right to protection of the law (art. 14)
4. Right to recognition everywhere as a person before the law (art. 24)

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<sup>3</sup> For full text, see <http://www.ohchr.org/english/law/cmw.htm>.

<sup>4</sup> There are more State Parties in Asia to this Convention: East Timor and Tajikistan. Bangladesh and Indonesia have signed this Convention, but not yet ratified. For a full table of ratifications, see [www.december18.net](http://www.december18.net).

5. Right to take part in meetings and activities of trade unions and of any other associations established in accordance with the law (art. 26)
6. Right to full information (to be fully informed by the State of origin or the State of employment of all conditions applicable to their admission and those concerning their stay and the remunerated activities in which they may engage (art. 33 and 37 – right for all migrants and documented specifically).

All of the above rights seem to be more a problem in the destination countries than in countries of origin.

The Convention also provides the right to have recourse to the protection and assistance of the consular or diplomatic authorities of the State of origin (art. 23). Here, the responsibility clearly lies with the sending States to appoint capable individuals on a merit basis. Furthermore, the Convention provides procedures to enable States to make arrangements for social security coverage, for instance via bilateral or multilateral treaties. It also stipulates the right to receive medical care where urgently required for preservation of life. However, a broader right to health is not fully specified (as outlined in a presentation by CARAM Asia, Consultative Meeting with the UN Special Rapporteur for the Human Rights of Migrants, Kuala Lumpur, October 2003).

PART IV of the Convention covers other rights that documented migrants shall enjoy, such as:

7. Right to full information by state of origin or state of employment of all conditions applicable to their admission and those concerning their stay and remunerated activities (art. 37)
8. Migrant workers shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State; States shall (note: “shall”, not “must”) facilitate the exercise of these rights (art. 41) (Absentee Voting Rights)
9. States Parties shall take appropriate measures to ensure the protection of the unity of the families of migrant workers (*this could be interpreted as origin countries taking measure to assist left behind family members*) (art. 44)
10. Right to transfer earnings and savings (art. 47).

Part VI states that:

11. State parties shall consult and cooperate to promote sound equitable and humane conditions of employment (art. 64);
12. State parties shall maintain services regarding questions of international migration on: formulation and implementation of policies; exchange of information; provision of appropriate information on policies; provide consular and other services necessary (art. 65);
13. Recruitment is encourage to be undertaken by public services or public bodies of sending and receiving states; agencies may be permitted subject to authorization approval and supervision of state parties (art. 66);
14. States parties to collaborate with a view to preventing and elimination of illegal or clandestine movements or employments in an irregular situations (art. 68);
15. State parties shall facilitate repatriation of bodies of deceased migrant workers to state of origin (art. 71)

In terms of implementation, the Convention relies on an indirect enforcement mechanism where States parties are obliged to provide ‘an effective remedy’ through their juridical,

administrative, legislative and other measures necessary to implement the provisions of the convention (art. 84). There is a distinct role for civil society (trade unions, NGOs, employers' associations) to lobby authorities and campaign for interventions (Soysa, 2004). State parties are obliged to submit a report on implementation to the Treaty Body.

The monitoring/reporting body or Treaty Body is the OHCHR's Migrant Workers Committee. The Committee was appointed under clause 72 of the Convention and had its first meeting in March 2004. Ten commissioners were appointed (by their respective governments) from among the countries that have ratified: most of them are diplomats, ex-diplomats or foreign affairs officials and are thus not truly independent.

This Committee has no strong enforcement mechanism but the Commissioners can use moral persuasion and respect for the rights of migrants by the State parties. They may undertake strategies to inform and advise policy makers and political entities and policy review bodies to investigate State parties' obligations.

Both countries covered in this report, the Philippines and Sri Lanka, are represented by a Commissioner on the Migrant Worker Committee of the OHCHR. The Sri Lankan Commissioner, Mr. Prasad Kariyawasam, Minister of Foreign Affairs was the Chairperson until recently and the representative from the Philippines is Undersecretary Jose S. Brillantes, Department of Foreign Affairs. At the time of writing this report, both countries had not submitted their reports to the OHCHR.

### **1.3 Rationale for this project**

The situation in the two sending countries covered in our first report (Piper and Iredale, 2003), Bangladesh and Indonesia, was very similar: ratification and the implementation processes were seen as expensive undertakings and both countries' governmental budgets and staff assigned to such matters were very limited. Another problem was the allegedly high level of collusion between government officials and those involved in the export business (recruitment agencies). The creation of an environment of 'good governance' was needed and this required broad reforms.

Thus, one of the major obstacles to ratification of the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Family was the view that such ratification would involve heavy costs of implementation and monitoring. The biggest obligation 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 Bangladesh and Indonesia were also afraid of losing jobs abroad and of other sending countries picking up their workers' share if they ratified the ICMR. Some countries have had experiences of being 'advised' not to ratify or 'their workers would be rejected by [a host country]'. Competition between sending countries is a reality all over the world. 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 ICMR need to be acknowledged and resolved.



The first report recommended to UNESCO that 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. This is the basis of the present study, though Tajikistan has not been included due to its current level of political and economic instability.

At the regional level, the report recommended that:

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. NGOs and governments throughout the region see the Philippines, in particular, 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. (Piper and Iredale 2003: viii)

There have been moves by the International Organization for Migration (IOM) and others to bring sending countries together to create some sense of solidarity and concerted ratification within the Asia Pacific region. The first and second IOM-sponsored Labour Minister's meetings took place in Colombo in 2003 and Manila in 2004, respectively, and they are beginning to bring results in terms of collaboration on a variety of fronts. The third such meeting is going to take place in September 2005 in Bali - the first to which destination countries are also invited (personal communication with IOM Bangkok, 2005).

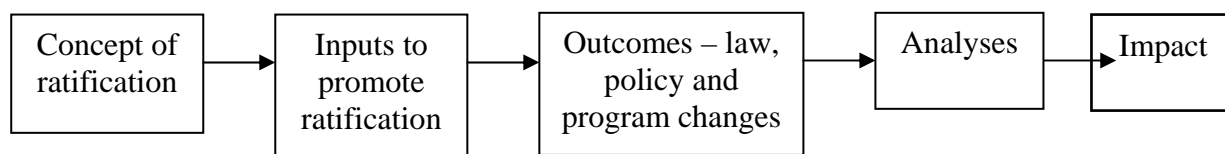
#### **1.4 Method for this project**

Given that neither country has yet submitted a report to the UN it was necessary to collect primary data. But first we needed to design an evaluation framework. The evaluation of the impact of ratifying a UN or any other convention does not seem to have been attempted before. We are aware that the ILO is considering such an exercise on one/some of its conventions but to date there are no other models on which to draw.

The task for this project was rather different from a typical program evaluation. Governments are service delivery agencies and by ratifying a convention they undertake certain obligations: provision of advice and the promotion of understanding, acceptance and public discussion of human rights and actual delivery of a wide range of programs/policies. The *impact* of ratification is the subject of this project. But the *process* of ratifying should in itself bring about increased knowledge, awareness and commitment among government, civil society and international bodies of the intentions of the convention.

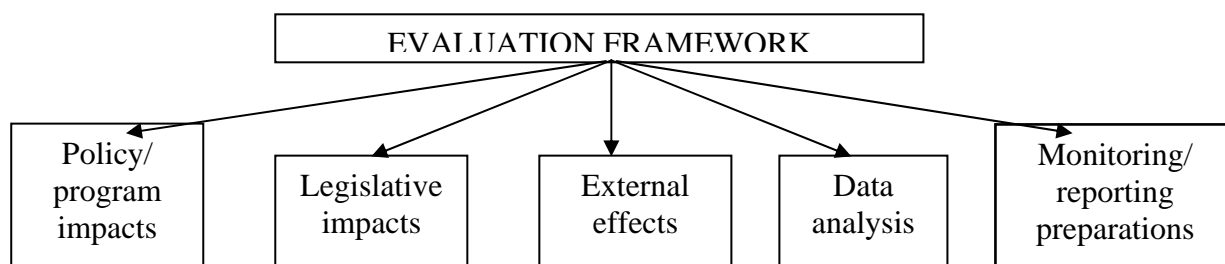
This evaluation, therefore, is concerned with an assessment of the whole process leading up to ratification and afterwards. The fact that the ICMR did not enter into force until July 2003 means that less than two years has elapsed since then but it is approximately 10 years since both of our study countries ratified the ICMR. So there is a considerable period of preparing, thinking and acting in terms of the clauses contained within it. This evaluation includes analysis of a range of inputs at both the pre-ratification and post-ratification stages: such as qualitative data, committee reports and public advocacy.

Figure 1: Approach to the evaluation



The actual interview schedule was then designed to test the obstacles and opportunities created by ratifying the Convention from a legal, social and political perspective. The evaluation framework that was designed is shown in Figure 2. This was a collaborative effort involving input from Patrick Taran from the ILO, Marla Asis from the Scalabrini Migration Centre in Manila and the researchers.

Figure 2: Evaluation framework



Once the framework was agreed upon we developed a set of questions to cover each aspect. Statistical data were also sought from various agencies to try to assess whether there had been changes in the volume of out- or in-migration, whether destinations/sources had changed, whether there was an increase in the number of complaints being lodged and so on. This would provide quantitative indicators of the impacts of ratification. A range of documents — annual reports and /or studies of government agencies, institutes and institutions, records of Congress, pertinent provisions of law, policy statements and/or speeches of key officials and experts on migration and labour — were all drawn upon in the analysis.

The main research method was semi-structured interviews with key informants in the two countries. 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). Dr Amelia Ancog, Private Consultant and former Undersecretary of the Ministry of Science and Technology and a research associate, Fermin M. Diaz, conducted interviews in the Philippines. In Sri Lanka the interviews were conducted by Dr Nicola Piper and S. Zulfika.

In the remainder of this report, Chapters 2 and 3 outline the situation in the Philippines and Sri Lanka and Chapter 4 draws together conclusions on the impacts of ratification.

## Chapter 2: The Philippines

### 2.1 Introduction

Until recently, the Philippines was the world's second largest exporter of labour but recently it surpassed Mexico to become No. 1. More than 7.7m Filipinos are working overseas in over 190 countries.

The diaspora, or the journeys to foreign lands by Filipinos, is a 21<sup>st</sup> century phenomenon, changing as it has the employment landscape, lifestyles of families, and the mindset of young and adult Filipinos to leave what one of the resource persons described as a "penetencia republic," for economic reasons. (Torrevillas, 2005)

The profile is gradually changing to include not only less skilled workers, such as domestics, construction and factory workers, etc but also highly skilled workers. In the past many of these highly skilled workers could only get low level but there is an increase in the number of skilled jobs being obtained overseas by Filipinos.

That the country is the major exporter of nurses to the world has long been acknowledged. Dr. Jaime Galvez-Tan said that 70% of all Filipino nursing graduates are working abroad. In the last five years, Filipino nurses constitute the major ethno-linguistic group of migrant nurses in the United Kingdom and Ireland.

... The country has been the second major exporter of physicians, with India being the first. During the mid-seventies, 68% of Filipino doctors were working outside the Philippines. But the most amazing paradox is that with the high demand for nurses, mainly in the United States, United Kingdom, and Ireland, Filipino doctors in droves have started to enroll in abbreviated nursing courses specially designed for physicians converting to nurses. This "out of the box" phenomenon in health human resource development, said Dr. Galvez-Tan, had never been seen in any country. (Torrevillas, 2005)

The following discussion has been collated from interviews conducted in the Philippines by Dr Amelia Ancog, Principal Consultant and Fermin Diaz, Research Associate, and from various reports, newspaper articles and other secondary sources. The views expressed are those of individuals and do not necessarily reflect those of the members of their committees or organisations.

### 2.2 Legislative changes

The Philippines participated in the deliberations of the draft of the ICMR in the early 1980s. The Philippine delegation contributed ideas and avidly supported the approval by the UN General Assembly. The Philippines ratified the Convention on 5<sup>th</sup> July, 1995 and was, thus, the first Asian country to do so.

## a) General

The most significant piece of legislation in the Philippines is the Migrant Workers' Act of 1995 or Republic Act 8042. RA 8042 is an innovative piece of legislation because it broadens the protective reach of the law to both documented and undocumented workers. It has institutional mechanisms for the protection of the rights of the workers while they employed in foreign countries. The embassies' officers and labour attaches are tasked to ensure that the needs of workers are attended to.

The Implementing Rules and Regulations of RA 8042 were approved by the Department of Foreign Affairs and Department of Labor and Employment on February 24, 1996. Congress passed RA 8042 on June 7, 1995 just before the ICMR was ratified. The execution by Singapore authorities of Flor Contemplacion who was convicted by the court for murder served as a trigger to the speedy approval of RA8042. Section 43 thereof states 'This Act shall take effect after fifteen (15) days from the publication in the Official Gazette or in at least two (2) national papers of general circulation whichever comes earlier'.

Republic Act No. 8042 entitled 'An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes', otherwise known as *Migrant Workers and Overseas Filipinos Act of 1995* is vital legislation which aims to protect and enhance the rights of Filipino migrant workers. It declares as the State's policies 'to uphold the dignity of its citizens whether in the country or overseas' and 'to provide adequate and timely social, economic and legal services to Filipino migrant workers'. Furthermore, the State recognises 'the right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision making process of the State and to be represented in institutions relevant to overseas employment'. Likewise 'non governmental organizations, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in the spirit of trust and mutual respect'. (Section 2)

Note that pursuant to Section 40 of the law, the agencies and departments 'charged with carrying out the provisions of this Act shall within ninety (90) days after the effectively of this Act, formulate the necessary rules and regulations for its effective implementation'. Consultations and hearings were undertaken by the government agencies (DFA, DOLE and others) with the various stakeholders; hence it took a number of months to finalise the Implementing Rules and Regulations (IRR).

Thus, ratification of the Convention and the introduction of RA 8042 went hand-in-hand. The Philippines, due to its large number of overseas workers, was committed to trying to protect these workers. Their contribution to GDP in annual remittances is very significant (\$8b or 8%), plus \$5b if non-banking channels are included, and their numbers mean that most families are affected in some way. Failure to protect these workers leads to a loud outcry from the very active NGOs and other components of civil society and to very damaging political tensions.

Efforts to continue to harmonise RA 8042 and the ICMR seem less evident.

While a number of its [RA 8042) provisions are consistent with and conform to those embodied in the ICMR, the piece of legislation is being amended to remove inconsistencies thereat and to attune it to existing realities of the times. In fact, at the House foreign affairs committee alone, there are 29 bills and three resolutions

passed calling for amendments to said law. At the special committee on overseas workers affairs, ten other bills had been passed.

It is worthwhile to note, however, that most amendments being proposed are in reaction to situations already encountered by migrant workers from the time they are recruited to their actual stay in the receiving country, and not as a conscious effort to harmonize existing laws with the provisions of ICMR. (Lomibao, Personal interview, 20-21 June 2005)

The following two boxes contain a summary of the House Bills and Resolutions passed after RA 8042, prepared by one of the research associates. It has been included in full to demonstrate the scope of discussion that is presently underway within the Philippines.

*Box 1: House Bills and Resolutions Passed after RA 8042*

**House Bills and Resolutions Passed After RA 8042 that Further Protect Migrants Rights**

1. **HBs 257, 346, and 2367.** These bills aim to strengthen the regulatory function of the Philippine Overseas Employment Administration over the overseas employment industry instead of phasing out its functions as what RA 8042 prescribes. The deregulation component of the Act relegates to the private recruitment agencies the fate of migrant workers. Should this arrangement persists, the vulnerabilities of Filipino migrant workers to greed, abuse and exploitation will go unabated. At the same time, the government reneges on its responsibility to look after their welfare. The measure, in effect, proves the firm commitment of the Philippine government to uphold the interest and welfare of its OFWs who are considered heroes of the Philippine economy. A particular sector that stands to benefit from the bill's passage is the overseas performing artists or entertainers in Japan, many of whom are victims of exploitation by foreign employers, recruitment agencies, talent managers, agents, and others.
2. **HB1281.** This bill liberalizes and accelerates the processing and deployment of OFWs and appropriates necessary funds thereof. In effect, it reaffirms the country policy of assisting job-seekers find work abroad and ensuring that they get their overseas jobs at acceptable terms and with all the government protection they deserve.
3. **HB737.** This measure aims to establish a legal attaché office in Middle Eastern countries. It aims to provide OFWs with legal assistance as they face criminal charges and suffer maltreatment, violation of legal and human rights and other abuses in their host countries.
4. **HB1618.** This piece of legislation imposes stiffer penalties on government personnel and officials stationed at various embassies and consulates abroad for gross negligence to act on complaints, give assistance or render service especially to distressed migrant Filipinos and OFWs.
5. **HB1754.** It redefines illegal recruitment and increases penalty for illegal recruiters especially those who put up shop without license or authority.

*Source:* Report prepared by Fermin M. Diaz, 22 June 2005: 5.

## *Box 2: Analysis of the Bases for Amendments*

A review of bills and resolutions passed aimed at amending RA 8042 shows that lawmakers and policy makers want to make revisions on at least six areas. They are:

### **1. On government's overseas employment policy**

In RA 8042, there are two policies which show the Philippine government's conflicting interests. Sec. 2 (c) clearly states that the government does not promote overseas employment. However, Sec. 2 (i) states that "deployment of Filipino overseas workers by local service contractors shall be encouraged, and appropriate incentives may be extended to them."

### **2. On deregulation**

Deregulation of the labor export industry, "where migration of workers become strictly a matter between the worker and his foreign employer," places migrant workers at greater risk of violations of their rights.

Further, RA 8042 assures that "the ultimate protection of migrant workers is the possession of skills." Philippine experience shows that skills have not been a guarantee of protection. Professionals and skilled overseas Filipino workers (OFWs), especially women, are not spared from the same abuses committed against unskilled workers.

In 1993, Filipino scientist Ma. Victoria Suller, who was sent by the Ramos administration in India to study microbiology, died mysteriously. The following year a nurse, Judy Ledesma, died in the Kingdom of Saudi Arabia.

Deregulation will reduce the government's responsibility to that of a provider of information regarding the situation of the receiving country where a migrant worker intends to work, and in case the OFW still decides to work overseas, the responsibility to protect his or her rights is left in the hands of the OFW himself or herself.

### **3. On the rights of sea-based workers**

Is generally blind to sea-based migrant workers and revisions of the law should be made to protect their interests. Sadly, the law has limited provisions for them. In fact, blacklisting is a major problem of seafarers. Manning agencies blacklist sea-based workers who demand the application of international standard of operation (ISO) and assert their rights.

### **4. On gender issue**

Gender sensitivity as a policy is yet to be fully understood and operationalized by government agencies servicing OFWs.

Women migrant workers continue to be at risk abroad because of their exclusion from labor laws, gender and class biases, and discrimination. Gender-based forms of violence committed against them are common. Yet, the government has neither the staff, the skill or the resources to respond appropriately and sensitively.

### **5. On OFWs' benefits and privileges**

Before RA 8042, migrant workers whose contracts were terminated used to receive the full reimbursement of their placement fee and their salaries for the unexpired portion of their employment. After RA 8042 was implemented, the migrant workers only receive an amount equivalent to their three months' salary.

Also, repatriation of OFWs will only be the responsibility of government, recruitment agency or the employer in cases where the worker was terminated due to reasons other than his or her misdeeds.

### **6. On social and economic reintegration**

Social reintegration is indeed an important issue for returning migrant workers to penetrate mainstream society once again. Women migrants, especially those who survived violence and exploitation, shall benefit in social reintegration.

(cont.) Unfortunately, RA 8042 does not provide provisions for social and economic reintegration for undocumented OFWs, women victims of violence as well as victims of trafficking.

Also, while RA 8042 calls for the establishment of a Replacement Center, the idea is not grounded on the concept of reintegration of migrant workers. The law only provides that the center will function as job-placement office where migrant workers who have completed their contracts can find local jobs.

Further, the replacement center does not provide sustainable alternative source of income for returning overseas workers.

Amid limited local jobs, the center is now re-deploying workers abroad.

*Source:* Report prepared by Fermin M. Diaz, 22 June 2005: 5-7.

Ancog (2005) points out that on top of all of these bills, there is a proposed bill that seeks to consolidate all proposals to amend RA 8042. This bill specifically includes a declaration of policies whereby the Philippines shall continuously monitor international conventions, adopt and be signatory to and ratify those that guarantee protection to Filipino migrant workers, and endeavour to enter into a bilateral agreements with countries hosting overseas Filipino workers.

#### **b) Social security/welfare and other services**

Under RA 8042, institutional mechanisms are established to ensure the protection of the rights of migrant and overseas workers. Services which will be provided to them include among others, travel advisory, information dissemination; repatriation of workers under certain conditions; establishment of re-placement and monitoring centres to be organized by the Technical Education and Skills Development Authority (TESDA) and the Technology Livelihood Center (TLRC) and other relevant government agencies; and the Migrant Workers' Guarantee Fund.

Significant is the establishment of Office of the Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs. It is primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino Migrant Workers as well as Filipinos in distress.

#### **c) Political rights**

##### *Voting rights:*

The Philippines enacted legislation to provide for absentee voting rights by the Absentee Voting Act (OAV) of 2003 (Republic Act 9189). The President of the Philippines signed this Act into law on February 13<sup>th</sup>, 2003. At the most recent presidential elections (May 2004), a considerable number of migrant workers were able to exercise their vote. Figures provided by Ellene Sana (2005) show that 364,187 registered (37% of the 975,000 maximum registrants, and of these 233,092 (65%) voted. Voting by geographic region shows that there was much the same rate in all regions — ranging from 69% in the Asia Pacific region to 61% in the Americas. In spite of this relatively good turnout for the first vote, Sana identifies the following problems that were encountered:

- registration centres were few and far between;
- forms were non-user friendly;
- names were missing and there were ID problems;
- tedious counting process;
- insufficient human resources and training;
- lack of information dissemination.

There is room for improvement in a number of areas, according to Sana, but the vote was assessed as:

- a good first-time exercise;
- it showed the need for amendment to the OAV law;
- it guarantees OFWs effective and meaningful participation in Philippine politics and society;
- it provides a challenge to OFWs to develop a Unity Platform for Migrants.

The Philippines is leading the world in the introduction of this law and the provision of voting rights will clearly have spin-off effects: especially the increased mobilisation of voters to become politically active and involved.

#### **d) Recruitment**

A major function of RA 8042 is the regulation of recruiting agencies to ensure that migrant workers are not abused or exploited and job placement is appropriately matched with training and skills. This is the function that is expected to be phased out gradually under Sections 29 and 30 of RA 8042. NGOs in general believe that it is premature to deregulate recruitment agencies, while the association of recruitment agencies insists that the best way to enhance job opportunities abroad is to deregulate the industry.

One of the good features of RA 8042 is the provision that penalises excessive charging of fees by recruitment agencies as an 'act of illegal recruitment'. In this connection, it may be noted that ICMR may not be in the consciousness of labour implementing agencies; however, the principles pertaining to the protection of migrant workers in ICMR are found in RA 8042.

It was pointed out that there is some inconsistency in the way by which the government implements RA 8042. The law declares as a policy that no migrants may be deployed to countries which do not have bilateral agreements with the Philippines or have no laws (or do not enforce their laws) to protect the rights of migrants. And yet, there are workers who had been allowed to work in such countries. An example of this is the ban on the deployment to Jordan declared in 1990 but workers were allowed to enter Jordan in 1995.

#### **e) Information/training**

The dissemination of information to workers of their rights under RA 8042 is very poor. More importantly, monitoring of the practices of some recruitment agencies which violate the rules on charges, fees etc. and covertly get a 'share' on padded charges is weak. Connie Braga-Regalado, Migrante Sectoral Party, said that the Government:

has to listen more to the plight of the workers and address the serious problems of undocumented workers. In a recent visit to Malaysia, I noted that about 5000 Filipinos who are scheduled for deportation are undocumented. The government assistance on this matter is ineffective, workers are confined in subhuman conditions: children are packed with adults in very limited spaces. (Personal interview, 20 June 2005)



## **2.3 Policy/program changes**

### **a) Social security/welfare and other services**

The Welfare and Employment Office (WEO) of the Philippine Overseas Employment Administration (POEA) develops and implements policies and programs to promote the interest and welfare of overseas Filipino workers and their families. Specifically, the WEO is responsible for the maintenance of the registry of workers for placement purposes; develops and signs recruitment agreements and foreign government employers and their instrumentalities; provides comprehensive facilities for handling all phases of recruitment of Filipino workers hired on government-to-government arrangements; and develops and implements pre-employment orientation programs to inform applicant-workers on migration realities and employment conditions in host countries.

RA 8042 has contributed to the mediation/conciliation measures between employers and workers. To avert resort to quasi-judicial measures or judicial approaches to resolve issues, the Welfare Service Branch (WSB) is active in settling problems before they become litigation cases. It is possible that ICMR is not in the realm of consciousness of both implementers and 'clients' of POEA in conflict resolution; nevertheless the underlying principles to safeguard the rights of workers are both explicit in the ICMR and RA 8042.

The IRR states that the Re-Placement and Monitoring Center (RPM Center) shall:

- 2.1 Provide a mechanism for the reintegration of Filipino migrant workers into the Philippine society;
- 2.2 Serve as a promotion house for their local employment; and,
- 2.3 Tap their skills and potentials for national development.

The RPM Center is under the supervision of the Secretary of Labor and Employment. (Section 66)

### **b) Information/training**

The Re-Placement and Monitoring Centre has the following functions:

- 1.1 Develop livelihood programs and projects for returning Filipino migrant workers on coordination with the private sector;
- 1.2 Coordinate with appropriate private and government agencies in the promotion, development, re-placement and the full utilization of their potentials;
- 1.3 Institute in cooperation with other government agencies concerned, a computer based information system on skilled Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private sectors;
- 1.4 Provide periodic study and assessment of job opportunities for returning Filipino migrant workers; and,
- 1.5 Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers. (Section 17)

RA 8042 also mandates the establishment of a Migrant Workers and Other Overseas Filipinos Resources Center. These shall be within the premises and under the administrative jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers.

The Centres have the following functions:

- 2.1 Counselling and legal services;

- 2.2 Welfare assistance including the procurement of medical and hospitalisation services;
- 2.3 Information advisory and programs to promote social integration such as post arrival orientation, settlement and community networking services and activities for social interaction;
- 2.4 Institute a scheme of registration of undocumented workers to bring them within the purview of RA 8042. For this purpose, the Center is enjoined to compel existing undocumented workers to register within six months from the effectivity of RA 8042, under pain of his/her passport cancellation;
- 2.5 Human resources development, such as training and skills upgrading;
- 2.6 Gender sensitive programs and activities to assist particular needs of women migrants;
- 2.7 Orientation program for returning workers and other migrants; and
- 2.8 Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos. (Section 19)

Overall, RA 8042 rather than ICMR was seen as having had more of an impact on policy and programs. According to the Committee Secretary of the House of Representatives Committee on Foreign Affairs:

In consideration of RA 8042, a number of bills and resolutions have been passed by legislators geared toward protecting migrants' welfare and interests. Also, congressional staff had gone beyond legislation to actively support efforts by the labor and foreign affairs department to protect migrants' rights. A case in point is Japan, which, of late had imposed stricter pre-employment conditions for Filipino entertainers by requiring them to first present proof of professional training as entertainers in their chosen field. To address this issue, staff of the House Foreign Affairs committee, along with those from labor and foreign affairs, had successfully made representation before Japanese authorities to let go of this ruling, or at least defer its implementation. (Apostol, Personal interview, 21 June 2005).

In the case of the POEA, current laws and policies should be revised to give this agency more powers to 'regulate manning agencies, service exporters and recruitment agencies. POEA should resume its previous functions of conducting pre-departure seminars and regulating the deployment process (Tanpiengco, Personal interview, 23 June 2005). The Government has devolved much of this training to private providers but this is not seen as satisfactory. Reintegration programs are also inadequate and there is a perception that there is no government agency responsible. In fact OWWA is responsible.

## **2.4 External effects**

Philippines interviewees repeatedly reiterated the value of the ICMR but stated that 'efforts should be exerted by appropriate international institutions to encourage the receiving countries to support ICMR' (Soriano 2005, personal interview). At the national level, there are differing opinions about whether the country itself can and does influence others.

There are no attempts by local policy makers and legislative staff to lobby and convince the non-signing individual country members to ratify the international convention. This is because they themselves have not yet internalised the provisions of the ICMR and don't have the resources (personnel and finances) to do the job. (Apostol, Personal interview, 21 June 2005)

But according to Ambassador Jose Brillantes, targeting ratification by countries in the Middle East is a top priority of the Philippines. He stated that this should be the policy of the Philippines because of the sheer magnitude of migrant workers holding various jobs in said countries. Five of the host/receiving countries of Filipino migrant workers in 2004 are Saudi Arabia, 2<sup>nd</sup> ranking (58,363); United Arab Emirates, 4<sup>th</sup> ranking (26,653); Kuwait, 5<sup>th</sup> ranking (22,640); Qatar, 7<sup>th</sup> ranking (10,919), Lebanon, 8<sup>th</sup> ranking (6,155); Bahrain, 9<sup>th</sup> ranking (3,683) (Data from 2004 POEA Annual Report).

There are continuing efforts to persuade receiving countries to ratify the ICMR; thus advocacy programs will be pursued more vigorously through diplomatic channels and information dissemination. (Personal interview, 22 June 2005)

Further, he believes that:

One approach that can contribute to faster ratification is to discourage bilateral agreements between receiving and sending countries on matters pertaining to the rights of migrant workers. While many receiving countries believe that the rights embodied in the ICMR are essentially the same as those contained in Conventions on Human Rights, nevertheless there is a significant benefit if countries adopt a common framework for obligations and rights. Enforcement of rights in a more systematic and standardized way is readily achievable within the ICMR provisions.

Tanpiegco states that:

ICMR had not made any impact on the bilateral agreements entered into by the Philippines with other countries. What has made an impact more effective in protecting migrants' rights is the extent by which the country's labor attaché uses his connections with authorities and even the rulers of receiving countries. If the attaché is close to the leaders of receiving countries, chances are he could be helpful in resolving disputes or conflicts pertaining to migrants' rights. (Personal interview, 23 June 2005).

This is an interesting argument because many countries have been proceeding with bilateral agreements and have been encouraged to do so by various international agencies.

Individual countries seem unable to make an impact on receiving countries' willingness to ratify but the Philippines has nevertheless used the weight of the ICMR to pressure for better conditions for workers in some countries. One case in point is Taiwan, which, until recently, had been hiring migrant Filipinos to work on the island on condition they work and stay only for a non-renewable period of three years.

To circumvent this rule, many migrant workers who finished their term had faked their names and altered their travel and work documents in cahoots with local recruiters, to gain re-entry and seek re-employment. But the practice often resulted to their permanent expulsion from Taiwan if authorities discover about it. To protect these workers, legislative staff and labor and foreign affairs officials had not only successfully made representation with Taiwan, a non-signatory to ICMR, to change the system. They were also able to convince Taiwan to increase Filipino migrant workers' health benefits to equal those enjoyed by their nationals, and to adopt a direct hiring policy that would get rid of middle men and labor recruiters who are only

out to collect astronomical placement fees from job applicants. (Apostol, Personal interview, 21 June 2005)

## 2.5 Statistical background and evidence of changes

Except for 2003, the growth trend of the country's overseas employment has been on an upward trend for the last five-year period, ending 2004.

*Table 2.1: Philippines overseas deployments, 1980-2004, number and %.*

Year	Total	Growth Rate
1980-84* (average annual)	274,000	
1985-89* (average annual)	353,900	29.16%
1990-94* (average annual)	471,000	33.08%
1995-99* (average annual)	562,000	19.32%
2000#	841,628	0.55%
2001#	866,590	3.08%
2002#	891,908	2.80%
2003#	867,969	2.68%
2004#	933,588	7.60%

Note: \* land clearances only.

# land and sea clearances.

Source: POEA, Annual Report, 2004 and Iredale, 2003.

There has been a dramatic increase in the number of skilled workers going offshore. As of December 2004, a total of 245,470 applicants were registered in the POEA 'manpower' pool, comprising of 220,259 (land-based) worker applicants and 25,161 sea-based worker-registrants. The 2004 figure was a hefty 939.2% expansion from a mere 4,491 recorded in 2002. This was also a remarkable 4,908.4% performance against the annual target of 5,000. Table 2.2 shows the numbers in the various occupational categories in 2003 and 2004.

The labour statistics show that there is a gradual shift from low-end occupation to high-end occupations. Hiring of professional workers/technical workers went up from 93,006 to 78,936. The majority of them were performing artists (76.9%), medical and health professionals (12.1%), engineers (7.2%), teachers (0.56%), accountants (0.43%), and architects (0.17%). The dramatic improvement is attributed to the centralisation of registration of land-based skills adopted in 2004, which includes the transfer of Government Placement Branch's in-house registration to Manpower Registry Division.

Table 2.2: Skills Category of Overseas Workers, 1992-2004

	1992	2000	2003	2004
Professional/Technical	57,972	78,684	78,956	93,006
Adm. & Managerial			387	490
Clerical			3,965	5,221
Sales			2,490	3,903
Service	66,922	68,257	84,021	112,856
Agricultural			413	665
Production			61,352	60,708
For classification			9,927	1,626
Total	204,218	245,195	241,511	280,475

Notes: Service workers refer to domestic helpers, household workers, caretakers, waiters and bar tenders and related work.

Professional and technical workers refer to medical workers such as nurses and health care assistants, teachers and performing artists and allied professions.

Production workers refer to stenographers, bookkeepers, receptionists and related jobs.

Source: POEA, Annual Report, 2004.

There is a need to take care with these data as the question of skilled visas for performing artists is a matter of contention and the Philippines' classification of 'entertainers' as 'skilled' remains an anachronism. The gender breakdown of new land-based deployments (as opposed to sea-based) shows an increasing proportion of females, from 50 per cent in 1992 to 70 per cent in 2000, and 73 per cent in the first half of 2002 (Philippines Overseas Employment Agency 2002). Data from the POEA shows that female professional and technical workers represented 42.3 per cent of total female migrants and 85 per cent of this category between January and October 2002 (Dimapilis-Baldoz, 2003, p. 21). The importation of female 'entertainers' to various countries, especially Japan and South Korea, is very noticeable and most of these come from the Philippines and Thailand.

Table 2.3: Deployed new hires from the Philippines by skill and sex, 1992-2000

Year	Prof., tech. & related	Choreographers & dancers	Composers, & musicians & singers	Profess. nurses	Service workers	Domestic helpers	Total (all occupations)
<b>1992</b>							
Male	13,666	1,552	416	536	9,993	1,334	96,633
Female	44,308	33,979	2,572	4,230	56,929	46,243	107,585
<b>1995</b>							
Male	11,469	657	221	1,133	6,947	6,947	82,240
Female	25,158	14,498	1,220	6,295	70,851	59,698	115,927
<b>1998</b>							
Male	13,916	720	485	663	7,616	1,035	85,981
Female	41,519	25,923	7,781	3,892	72,797	45,868	133,072
<b>2000*</b>							
Male	11,230	1,063	919	1,273	7,412	1,367	70,427
Female	67,454	34,475	23,048	6,410	83,780	66,890	174,768

Note: \* Not stated: 12,410.

Source: Scalabrini Migration Center (2000).

According to Tampiegco:

There has been a change in sending patterns in the deployment of Filipino workers overseas but it has nothing to do with ICMR. The change is more a reaction to changing realities in the overseas job market. While before, local authorities and service exporters had been sending a large number of workers to the US and Australia, notably health workers, deployment had slowed down now because health job opportunities in these countries had become very scarce. Nowadays, Local job seekers, regardless of profession, skills or training, are now targeting New Zealand. (Personal interview, 23 June 2005)

So the different destination patterns are more about locating and servicing more high skilled demands and not in response to ratification of the ICMR, as some countries fear. The Philippines has become more acutely aware of its responsibility towards labour migrants and is seeking out better market and training according to these markets.

The number of complaints lodged may indicate the level of abuse or mistreatment, the willingness or ability to complain or a combination of these. Therefore, too much should not be read into comparative figures but the following table indicates interesting trends. Sri Lanka has a much higher number of complaints than the Philippines overall, though figures should be looked at by skill level and by nature of the complaint. But both of these countries show much higher levels of complaints lodged against employers overseas than Pakistan. We can only assume that ratification of the ICMR and/or domestic regulations and policies encourage people to take action if the terms of their contract are not met.

*Table 2.4: Complaints lodged regarding overseas employers*

No of cases	1992	1995	1998	2000	2001	2002	2003
Philippines	3,727	8,476	2,383	3,349	3,729	3,873	
Sri Lanka				7,353	7,927	7,938	6,957
Pakistan					106	97	143

Source: International Organization for Migration (IOM) 2005, *Labour Migration in Asia Protection of Migrant Workers, Support Services and Enhancing Development Benefits*, Geneva: IOM: 50-54.

## **2.6 Preparations in place for monitoring/assessing the impacts of ICMR and reporting to the UN**

The Implementing Rules/Guidelines for the report of member countries to monitor compliance with the ICMR were only approved in May 2005. They contain the structure, parts, data requirements and frequency of submission of the reports. Members are expected to present their reports orally to the Committee so that they can respond to requests for clarifications and questions of the Committee on the Protection of All Rights of Migrant Workers and Their Families, established under the ICMR.

In the Philippines there are various mechanisms for monitoring the effects of RA 8042 and the ICMR. For instance, the House of Representatives has created the Special Committee on Overseas Workers Affairs (OWA). NGOs that are active in advocacy on safeguarding

and enhancing the rights of overseas workers are invited to hearings on labour bills. New bills which seek to amend some of the provisions of RA 8042, in particular Section 29 pertaining to deregulation of migration of workers (giving employers and the workers autonomy in employment relationships) and Section 30 which provides for the gradual phasing out of the regulatory functions of POEA are currently under consideration.

NGOs regularly attend hearings to articulate their positions on these and other labour issues. NGOs, such as the Center for Overseas Workers, Philippine Migrants' Rights Watch, Kaibigan, Migrante International and Center for Migrant Advocacy (CMA), are invited. But CMA is unhappy about:

the limited representation of NGOs on the Board of Trustees of OWA. The OWA Board has 7 from the government, 5 from the private sector and only 1 from the workers. The present representative of the workers is employed in Hong Kong and if she is unable to attend the meeting because of the distance, no one will articulate the views of the workers.

According to Ancog (2005: 16), the monitoring of ICMR has 'bright prospects as NGOs such as the CMA exhibit a high degree of commitment to participate and be involved in monitoring, including the preparation of reports'. Since CMA can tap its network, it can provide a regional perspective in assessing the level of implementation.

In terms of the preparation of the actual report on the ICMR, the Center for Migrant Advocacy (CMA) states that it:

sees a vital role in monitoring the implementation of ICMR in the Philippines. To do this, it has two options. The first is to join the government team in preparing the report. As participant with the government team, CMA however, needs to adhere to the parameters prescribed by government in the formulation of the report. The other option is for CMA to prepare its own monitoring report. By acting independently in monitoring, it can express its views, observations and insights on the implementation activities, very objectively unhampered by "parameters" which the government prescribes. More significantly, CMA will have a regional perspective and interact with its global network to obtain data and experiences of other countries in the implementation of the ICMR. (Personal interview, 20 June 2005)

As of now, there are no dedicated legislative staff to handle matters pertaining to the country's compliance with the ICMR although it is expected that this should be a joint function of the Departments of Labor and Employment (DOLE) and the Foreign Affairs (DFA). Since ratification of international treaties and conventions is a function of the Senate, this body, too, should also be part in the monitoring. But respondents had no knowledge of whether the Senate was doing this.

One respondent, Tanpiengco noted that 'the legislature can, and is actually in the process, of crafting enabling laws to help the Executive branch of government to monitor country compliance to the provisions of the ICMR and other international treaties and conventions related to the protection of migrant workers' and their families' (Personal interview, 23 June 2005). So it appears that steps are underway for reporting on progress on the ICMR. The fact the Ambassador Jose Brillantes sits on the UN Monitoring committee is no doubt significant in encouraging the Philippines in this.

## 2.7 Concluding remarks

While there are still problems on migrant labour, the POEA states that it is committed to alleviating them and to helping workers navigate their way in new countries, including protecting their rights as envisioned by RA 8042 and the ICMR. 'For instance, the reintegration program for returning workers have to be strengthened. Likewise, information dissemination of workers' rights must be broadened and accelerated' (Casco, Personal interview, 22 June 2005).

As regards the impact of ICMR on government structure, POEA is going through the process of restructuring in line with the national government policy of reorganization to improve governance. This will hopefully improve transparency and openness.

NGOs are very active in the Philippines even though they have very limited funds and often rely on international donor agencies. They participate in policy making, attend hearings in the formulation of rules and regulations affecting their rights and express their views in position papers. The approval of RA8042 as well as ratification of ICMR enhanced their advocacy role in policy development and reforms.

From the NGO perspective, there is a need for government agencies and personnel to manifest stronger commitment to the welfare of workers, through effective service delivery.

This commitment must be internalised at all levels of governance. Nevertheless, despite lapses and problems of implementation, RA 8042 embody vital provisions aligned with ICMR protects the rights of migrant and overseas workers in more ways than one. What is important is to assess the gaps, find solutions and adopt measures to address the issues. (CMA, Personal interview, 20 June 2005)

The 'wish list of OFWs presented by Sana in January 2005 includes: justice, freedom, democracy; confidence and discipline; tolerance, respect, dignity; valuation of work; gender-fairness, equal treatment; inclusion and non-discrimination.

Most importantly, there is a need to enhance the dissemination of the rights of workers and obligations of employers in receiving countries. According to Sto.Tomas (2002):

We must acknowledge that sending and receiving countries have significant mutual interests related to migration, but lack a developed capacity to jointly manage these issues for mutual benefit. Any joint management effort must support the democratic value of free movement and acknowledge the increasing desire of overseas migrants to participate in the activities, be it economic or social, of more than one country, while respecting the right and obligation of states to control their bodies.

The issue of how the ICMR fits with GATS Mode 4 (under the World Trade Organization) has also been raised as an issue for future consideration. Mode 4 or the movement of natural persons allows the temporary stay of foreign individuals who are employed by the service supplying entities. 'The scenario presented is consistent with the deregulation mode embodied in RA 8042 where the migration of workers will eventually be a matter between the worker and his foreign employer' (Santos 2002). Thus Santos, the Secretary of DOLE, sees the less regulated GATS Mode 4 structure as analogous to the anticipated deregulation embodied in RA 8042. The inconsistency in current approaches to the movement of migrant workers is obvious and needs resolution in the future.



On the whole, the ICMR is seen as a 'good instrument that can guide future legislation in Congress' (de Castro 2005, Personal interview). The interweaving of the effects of RA 8042 and ICMR is obvious to date but the degree to which the ICMR has been internalised by legislators and policy makers is questionable. DFA's Office of the Assistant Secretary for Migrant Affairs is 'the principal office that understands and appreciates the importance of the ICMR' (Ancog, 2005).

According to Lomibao, before 2004 there was no dedicated effort of legislators and policy makers in Congress to protect overseas workers and their families.

This is shown by the fact that issues and concerns affecting migrant laborers were lumped with those of local workers and only the committee on labor and employment had been tasked to handle both overseas and local workers' affairs.

The special committee on overseas workers affairs was created only last 2004 during the 13<sup>th</sup> Congress as a political move by House Speaker Jose de Venecia Jr. to address the growing problems encountered by Filipino workers abroad, notably maltreatment by their foreign employers, as exemplified by the Delia Maga and Flor Contemplacion cases. Since its creation in 2004, the special committee on overseas workers affairs has been operating only as an ad hoc body, with no budgetary allocation and whose staff does not hold any plantilla position. (Lomibao, Personal interview, 21 June 2005)

Mendoza (Personal interview, 23 June 2005) agrees and stresses that there are not enough short and long term measures being taken by the legislature.

At most, senators just ride on the issues of the day by passing resolutions inquiring into the problem. It's difficult to make a law on a particular issue when it can be threshed out or resolved by the executive level anyway. Legislators and policy-makers are also conscious that any bill meant to address a particular problem faced migrants would have diplomatic repercussions and might invite reprisal from affected countries and affect overall bilateral relations with the country concerned.

This analysis provides an overview of the current situation in the Philippines. Though there is scope for continued improvement, the Philippines provides a model of 'relatively good' migration management and this must be borne in mind in all subsequent analyses.

## Chapter 3: Sri Lanka

### 3.1 Introduction

In Sri Lanka, out-migration on a large scale began in the late 1970s. At first, there were restrictions imposed on out-flowing workers via an exit permit system but after 1977, when a new government came to power, cross-border migration became easier. The numbers of migrants have steadily increased since then. Today migrant workers account for ca. 10% of the overall national workforce, more than 17% of national savings, and more than 20% of national foreign exchange earnings.<sup>5</sup> The total stock of temporary contract workers is estimated to be 850,000 to 900,000. Eighty per cent are unskilled<sup>6</sup> (150,000 to 180,000 per year<sup>7</sup> as opposed to 15,000 to 25,000 skilled/professional workers) and most are from low-income families in rural areas. Of those, two-thirds are women, of whom 75-80% are housemaids (ILO Social Security Issues Brief 4, August 2003).

Sri Lanka ratified the UN Convention on March 16<sup>th</sup>, 1996. By contrast to the Philippines, the decision to do so was not driven, or prepared, by a vibrant civil society movement. Rather it seems to have been instigated by the UN in New York and subsequently done by the government then in power: it happened to be 'pro-labour' (NGO interview January 2005) or at least regarded ratification of the Convention as advantageous after careful scrutiny (former FEB employee, interview January 2005). It is suspected by some NGOs that this was more a routine ratification on the part of the Sri Lankan government rather than a political commitment to protect migrant workers (cf. Migrant Services Centre, interviewee January 2005). The electorate was definitely not aware of the Convention at that time. The fact that between 1996 and 2004, no action was taken to implement this Convention (cf. ILO Colombo, interview January 2005) supports the argument of a routine ratification. According to the chairperson of the OHCHR's Migrant Committee, the gravity of commitments was not fully understood by the Sri Lankan government at the point of ratification; and although the welfare components of the Convention were seen as compliable, the implementation of the clause on Overseas Voting Rights was not taken into consideration at that time (cf. Ministry of FA, interview January 2005).

NGOs advocating and supporting migrant workers are fairly new on the political scene in Sri Lanka and have only recently begun to demand implementation. Supported by IOM and ILO, some developments in this regard started to take place in 2004 when a Working Group<sup>8</sup> was formed to look into a detailed action plan aimed at pushing for implementation. The reason for the relatively late interest taken by those two organisations is the Convention's final coming into effect in 2003 and the requirement for State parties to prepare a comprehensive report to be submitted to the OHCHR. The Working Group's first meeting was held in August 2004, the second meeting took place in early December of 2004, but all follow-up activities were hindered by the tragic event of the tsunami that struck the country on December 26<sup>th</sup> 2004. Since then, understandably, this has been the focus of attention for politicians, bureaucrats and NGOs alike. Apparently, until December 2004 there was quite an optimistic mood among the stakeholder community in Sri Lanka but this was dampened by the tsunami. Migrant worker NGOs are trying to resurrect this

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<sup>5</sup> According to SLBFE, the amount in 2003 came to 27.5% (Statistical Handbook on Migration, 2003: i).

<sup>6</sup> SLBFE's report from 2003 quotes an equivalent figure of 70% (ibid., page ii).

<sup>7</sup> The equivalent figure quoted by SLBFE is over 200,000 per annum (ibid. page ii).

<sup>8</sup> This group consists of government officials (Ministry of Foreign Affairs, Labour, and Women), SLBFE, association of licensed employment agencies, trade unions and various NGOs.

issue of pushing the government to realize or operationalise the UN Convention in due course.

### **3.2 Legislative changes**

#### **a) General**

Since ratification, Sri Lanka has not created any laws aimed at further implementation. Prior to ratification, the following laws already existed:

- Sri Lanka Bureau of Foreign Employment Act, no. 21 of 1985 (amended in 1994);
- Sri Lanka Bureau of Foreign Employment Regulations, 1985;
- Model Employment Contract – Sri Lanka Bureau of Foreign Employment, 1990. (ILO 'Migration Survey 2003')

In 1985, it was assumed that migration was a short-term phenomenon but it lasted and expanded. The Foreign Employment Act was amended in 1994 (prior to ratification), at a time when the entire criminal law was amended, and changing the Employment Act was part of this exercise. The amendment mainly concerns compulsory registration and training. SLBFE keeps introducing more regulations but in its present form, this Act does not include rights provisions for migrant workers. According to NGOs, the Act is useful for promoting migration but not for the protection of workers. Non-governmental stakeholders are therefore lobbying for further amendment of this Act.

Upon ratification, no immediate legislative changes occurred. Thus, the clauses of this Convention pertaining to the obligations of Sri Lanka as a sending country have not yet been translated into national law. But with the assistance of IOM and ILO, there are plans for how to go about this and it remains to be seen how this will be achieved in the near future.

With regard to foreign workers who migrated to Sri Lanka, the law stipulates that everyone is supposed to be treated equal. There are said to be small numbers of migrants (most of whom are skilled) from India, Pakistan, Bangladesh and China in Sri Lanka, but no information on exact numbers, type of jobs, etc. could be found, other than anecdotal evidence that they are mostly professionals/skilled. It is said that they have no proper visa as such, but are nevertheless covered by Sri Lankan law (Employment Act) (Ministry of Labour, interview January 2005).

#### **b) Social security/welfare and other services**

There are no specific laws on this and Sri Lanka has not negotiated any bilateral agreements with destination countries that would contain any such social security provisions.

#### **c) Political rights**

Dual citizenship – which is not among the UN Convention's provisions - has been in practice since the early 1990s, but Absentee Voting rights do not yet exist although provided for in the Convention. The government has problems with the latter as it is perceived financially as a huge burden and the mechanisms that need establishing too complex (former SLBFE employee, interview January 2005). The refusal to pass the voting rights bill for organisational/financial reasons is also related to there being too many elections happening in Sri Lanka (Ministry of Foreign Affairs, interview January 2005).

The National Human Rights Commission has, instigated by NGOs' lobbying efforts, recommended by letter that "suitable arrangements be made to facilitate and ensure Voting Rights for Sri Lankan migrant workers in the respective countries where they are employed" (monthly e-letter of Migrant Workers of Sri Lanka, December 2004). To do so, the HR Commission further recommended the implementation of a separate and specific Special Provisions Act that is to provide a definition of an overseas voter and design a voting system.

A Select Committee of Parliament was appointed in 2003 to review the current system of Parliamentary Provincial Council and local Authority Elections, to review existing Election Laws and to formulate draft legislation for the submission to Parliament. But with the subsequent dissolution of Parliament, this Committee lapsed.

#### **d) Recruitment**

A law regulating recruitment existed before ratification in the form of the above-mentioned Foreign Employment Act No. 21 from 1985. Part IV of this Act pertaining to recruitment consists of 20 clauses (no. 24 to 44), most of which deal with licensing procedures as well as terms and conditions of that licence. The operation of unauthorised recruitment agencies is an offence. Likewise, the charging of any extra fees, other than stated in this Act, is also an infringement of the law. There is no mention of the minimum standards for employment contracts, such as with regard to minimum working conditions or wages.

Recruitment agencies are blacklisted if they operate illegally. Now, they are supposed to sign a contract with the embassies of the destination countries and pay a deposit. So, some control is being asserted.

#### **e) Information/training**

There is no specific law on this, but SLBFE runs training courses and disseminates information to prepare migrants, but there is much room for improvement (see below).

### **3.2 Policy/program changes**

#### **a) Background**

With regard to institutional provisions and programmes, it is the Ministry of Labour and Sri Lanka Bureau of Foreign Employment (SLBFE), which are in charge of migration policy and regulation. The Foreign Employment Office was established in 1985 under the Parliament Act No. 21. Since then it has functioned under the Ministry of Labour as the regulatory body for the industry of foreign employment in Sri Lanka. The main objectives of the Bureau are promotion, development and regularisation of the industry and provision of protection and well being of migrant workers and their families. SLBFE is financially independent from government and operates on the basis of fees.

The Ministry of Labour is responsible for writing the report on the Convention to be submitted to the Treaty Body at the OHCHR. At the time of the fieldwork visit in January 2005, this report was still being prepared. Guidelines had not been completed by OHCHR then and no deadline was set for the completion of the report (guidelines meanwhile exist – see Appendix 3).

The IOM office in Colombo (which was set up in 2002) took an active interest in this Convention in 2003. It organised two (tripartite) workshops, together with the ILO office,

which focused on two main objectives: 1) to assist with implementation of this document and 2) to assist the government with the report writing to the OHCHR. Despite the high number of female migrants, the Ministry of Women Affairs has shown little interest. A representative attended the first meeting but gave very little input and a delegate from this Ministry did not attend the second meeting.

It was decided at the first meeting that a study should be commissioned in preparation for the next meeting to break down the content of this Convention to identify the obligations for the Sri Lankan Government and the kind of concrete actions that need to be taken. Mr. David Soysa from the Migrant Services Centre (MSC) carried out this exercise and he presented his findings and a work plan prioritising key areas at the second meeting in December 2003. A proposal was also made to set up a Committee: a multilevel working group comprised of NGOs, trade unions, employer agencies, government and lawyers. The Legal Aid Foundation provided translations of the Convention into Tamil and Sinhalese for further promotion and dissemination.

NGOs have been mainly engaged in service provision in Sri Lanka and to a much lesser extent in advocacy and lobbying. Migrant NGOs rally mainly around the issue of voting rights and social security (especially pension rights). It is seen as highly important that migrants know what their rights are in the destination countries and in general human rights terms. Migrants typically do not know, for instance, that having their passport taken away from them is an infringement of the labour law in many destination countries. Feeding into policy making is not something they get into. This could be related to there not being a well-developed nationwide network that would allow for coordinated lobbying.

#### **b) Social security/welfare and services**

The job of protecting migrant workers in recruitment and employment is largely in the hands of licensed agents. Section 34 of the Act states 'A licensee shall not charge any fee, otherwise than as provided in Section 51 for providing or securing employment for any person in any country outside Sri Lanka' (SLBFE 1985: 13) and Section 51 outlines the charges. But research from a number of sources has identified that migrants often pay far in excess of the government stipulated fee (Yapa, 1995: 134). The causes for this are identified as being principally for quick placement.

The specific areas identified by the ILO as important are:

- income security for old age;
- insurance in event of death and disability occurring whilst employed abroad, or any other needs necessitating emergency repatriation, and
- health care.

Migrant workers are insufficiently provided for in terms of social security. They are often excluded from participating in the social security systems of their host countries, and according to an ILO brief from 2003, no Sri Lankan social security system is open to them. The situation for health care, however, is a little better as many recipient countries, such as Malaysia and Singapore, now require employers to take out medical insurance or permit legal migrant workers to access public health care facilities.

Insurance to cover death and disability and emergency repatriation is to some extent already provided by the SLBFE through its own scheme for registered workers. However, this scheme needs to be enhanced so as to provide more substantial benefits than it does at present (ILO 2003:4).

According to a report prepared by Soysa, director of the MSC, an Employee Trust Fund was set up in 1980 to which migrant workers could make voluntary contributions to claim benefits in case of death, disability, hospitalisation and even for low interest housing loans. There was also a voluntary benefit fund created in 1989 for resettlement for measures to preserve savings and investments for migrant workers. But both schemes were abandoned after the Gulf War (1990-91) and never resurrected.

According to a former employee, SLBFE runs special scholarship programmes as well as health schemes for migrants' children. The children programme targeting about 3000 children was started in 2000 in the province of Kandy in collaboration with the Department of Health and Education. Health workers monitored the children's progress by visiting their homes, observing their diet and vaccination histories. Expanding such programmes to other provinces/areas was planned but it was unclear to the interviewee whether this has happened. SLBFE also implemented a family health insurance scheme and began to shift the focus of its welfare programmes from migrants to families left behind because many left-behind men were found to be unable to cope with their new role. They were seen as in need of special assistance and support. A question many men would ask was "how can we go to work and also take care of the household?" – a situation that is not uncommon for women.

One problem with these welfare policies is that Ministers tend to support their home provinces and such policies are rarely countrywide. They tend to be politically driven to advance individual interests rather than as an 'of right' matter (IOM, interviewee January 2005). This has been suggested to be the case in Kandy where such a scheme was implemented by a high-ranking politician (Minister) who originated from this province (interview with NGO representative, January 2005). There are supposedly loan schemes for migrants' housing at low interest rates as well as pre-departure loan schemes offered by SLBFE whereby interest is apparently subsidized (half paid by SLBFE).

According to NGOs, these scholarship and welfare programmes are promotional gimmicks as they do not really address the most urgent needs of migrant workers, such as paid wages, better working conditions and enforcement of contracts. It is argued that these are issues that need urgent attention.

In the context of the enforcement of contracts, the IOM assisted SLBFE with the upgrading of equipment and capacity to trace complaints at the end of 2003. Before that, a complaint had to be lodged in Sri Lanka, not in the destination country and the migrant workers could not do so while abroad. From the existing database, it should have been possible to track complaints but the reporting of such cases stopped because the bureaucrat in charge did not want to have his inaction exposed. There is no mechanism of accountability built into this system at SLBFE. Also, the IOM has suggested a 'rating' system (with e.g. rape ranking no.1, followed by non-payment of wages or so) which would be important when re-licensing recruitment agencies. In this regard, SLBFE not only needs to take stock quantitatively but it needs to take a qualitative perspective also. Corrupt practices also hamper the complaint monitoring system that has been in place (IOM interview, January 2005).

NGOs mainly rally around the issue of income security for old age and have staged a 'Pension Rights Campaign' for migrant workers.

With regard to services provided by embassies, there are good and bad examples depending on the individuals attaches/officers. Two types of services exist: 1) labour

attaches sent by the Minister of Labour; and 2) welfare officers sent by SLBFE. Such posts have been created in most major receiving countries, although they are short of resources and qualified staff and often have offices only in the capital cities. Another problem is that labour attaches, being appointed by the Ministry of Labour and in this sense not 'real' diplomats, have the least power within the structure of embassies. Low diplomatic status means nobody takes them seriously. Besides, they often are political appointments and not experts. As a result they have no motivation, as well as no resources (the latter issue also affects the 'good' ones) (Action Network, interview January 2005).

The Colombo meeting of Labour Ministerial delegates that took place in 2003 (referred to above) resulted in training for labour attaches provided by the IOM. This was to address the widespread practice of appointing family members of Ministers as either attaches or welfare officers, despite their lack of training and/or experience in these matters (interview IOM, January 2005). As a result of this move, there is apparently more sensitisation for the needs of expatriates and migrants in the Middle East (Ministry of Foreign Affairs, interview January 2005).

### **c) Political rights**

Under Articles 41 and 84 of the UN Convention, Sri Lanka is obliged to extend voting rights to migrant workers, but there is no policy or programme in place to do so. As many countries do in fact have such facilities, which demonstrates its feasibility, extending such political rights to migrant workers must be seen as integral part of strengthening the democratic process in the country (ILO 2003).

Prior to the 2000 National Election, the National Workers Congress together with NGOs made representations to the Commissioner of Elections on behalf of migrant workers to request voting facilities for those working abroad. But the request was rejected and NGOs have continued their lobbying for an Absentee Voting Bill.

### **d) Recruitment**

Recruitment for employment overseas is handled by the Sri Lanka Foreign Employment Agency Ltd., a subsidiary of the SLBFE and private sector recruitment agencies. Approximately 72% of emigration for employment is organised by private recruitment agencies, 27% by individuals and 1% by foreign employers (ILO, 2003). Officially, the Foreign Employment Agency's functions include: formulating emigration policies, giving licences to national recruitment agencies, setting minimum standards for employment contracts (although see reservations below), approving contracts that meet those standards, prosecuting violators of recruitment standards, arbitrating of disputes, campaigning against trafficking, providing pre-departure information to nationals, collecting information on recruitment malpractices and violations of rights and providing assistance to nationals in the host countries (ILO, 2003).

According to the SLBFE, it carefully scrutinises the credentials of these agencies before they are approved and processed. On the SLBFE website, it blacklists a number of foreign agencies which are not allowed to recruit Sri Lankan workers (see [www.slbfe.lk/s\\_foreign\\_top.html](http://www.slbfe.lk/s_foreign_top.html)). NGOs, however, take a more cautious outlook on the *actual* operation and monitoring of recruitment agencies – and the involvement of middlemen – in Sri Lanka itself as well as at the destination. They report many problems or loopholes in the recruitment processes that work to the disadvantage of many individual migrants. They specifically demand that there must be a duty check of contact agents in the destination countries by Sri Lankan agencies.

Also, SLBFE deals with recruitment through private agencies, which are represented on the board of SLBFE (but no NGO or trade union is). A certain percentage of the fees paid by agencies goes to SLBFE for administrative costs (training, insurance), and nobody knows how much profit SLBFE makes. Furthermore, it is suspected that recruitment agencies use indirect methods to retrieve these fees from migrant workers.

#### **e) Information/training**

Pre-departure training was in fact already provided for before ratification of the UN Convention, but the overall quality was, and still is, rather basic. It is carried out by the Ministry of Education and lasts six weeks to three months depending on destination and type of migrant. There are 29 centres all over the country (but none in the North-East, the area controlled by the Tamil Tigers), of which 22 belong to SLBFE and 7 are privately owned (which are apparently being monitored). In 2004, 50,000 housemaids in total were trained. There is training for garment workers also. The courses usually involve language training (even the migrants' own language), use of electrical equipment but not much on support services and human rights. The content and certification of training courses is handled by the SLBFE.

Country specific booklets have been produced recently (developed and funded by the Canadian International Development Agency). The IOM offers a separate training program, and the Korean government has set up a course for Sri Lankan trainees departing for Korea. Migrants who are bound for the Middle East take part in a 12-day training course; migrants going to Cyprus, Singapore, Malaysia and Hong Kong obtain a 21-day course because it involves English language training. But the IOM has argued that the Middle East programme should be expanded and the curriculum should include the issue of rights and HIV/AIDS. So far, SLBFE has resisted this but with the new chairperson in place, this might change (IOM interview January 2005). Although the pre-departure training at SLBFE has improved somewhat, NGOs complain that the methodology used is a schoolroom type of teaching, not a participatory method. Women are trained to be 'good' domestic workers, meaning compliant and obedient (Action Network interview January 2005).

IOM has prepared a booklet with contact information for migrants and has printed 40,000 copies in each language to be handed out by SLBFE. A big problem for IOM is that donor agencies do not fund work on migrants' rights. Hence, such practice needs institutionalisation on a grand scale by SLBFE.

According to the chairman of SLBFE, another big issue for the future is the building up of skill levels and thus, the improvement of the quality of migrants, most of whom are currently women. More men should get the opportunity to work abroad also and women should be able to stay at home. Training should be done in Sri Lanka but provided by the destination country to improve migrants' skill level according to the needs of the receiving country. The future plan, therefore, is to set an admission test for trainees and an evaluation test and to increase the number of training days.

### **3.4 External effects**

The Sri Lanka Government is concerned with keeping good relations with destination countries that employ its workers. With the Middle East being the main destination region and even more competition arising on the 'foreign worker market', the Government



especially pleads with the Middle East not to employ other workers, e.g., Nepalese workers, but to continue giving jobs to Sri Lankans.

There have been no public protests by workers in Sri Lanka or by Sri Lankans abroad to highlight their vulnerable situation. Hence, there is no strong pressure coming from civil society and a general attitude of servility seems to dominate. Too much competition among sending countries over low skilled migrants and dependency on remittances means little agitation against receiving country. In Sri Lanka, there is no NGO that works in the receiving countries (like some of the Filipino NGOs).

The IOM does not push for using the Convention externally. Their approach is to ensure implementation in Sri Lanka itself first before accusing others and pushing for more ratifications.

Implementation of rights vis-à-vis receiving countries is perceived as difficult because of non-ratification by the destination countries and the different power positions. There are no bilateral agreements yet, but they are being discussed now and even negotiated with Korea and Malaysia. Some Memoranda of Understanding exist or are about to be signed (such as with Jordan) but they are treated as secret documents and their content is not disclosed. NGOs suspect that they are purely about quotas and recruitment procedures without any reference to rights (Ministry of Labour, interview, January 2005).

The Convention clause on cooperation between sending and receiving countries does not seem to have had any obvious effect as yet but the Colombo and Manila Labour Ministers' meetings have addressed this issue. The major problem is that receiving countries do not typically attend these meetings – which however might change with the third labour ministerial meeting to be held in Bali in September 2005

### **3.5 Statistical background and evidence of changes**

Since the 1970s, the numbers of migrants have steadily risen. Today, Sri Lanka has roughly one million workers resident abroad on temporary visas. They earn and remit up to 14.5 billion rupees annually through official channels into the state sponsored NRFC scheme.

The quantity and occupational structure of out-migration is largely determined by the demand for jobs in the labour receiving countries. Migration for employment grew rapidly after decisions were taken at the Non Aligned Conference in 1976 to grant more job opportunities in the Middle Eastern region to Asian countries which have labour surpluses. Since then the number of labour migrants for overseas employment has increased gradually. Middle Eastern destinations have been the major market for Sri Lankan labour since the late 1970s. Available statistics reveal that the foreign employment industry has been growing steadily since the 1980s.

Compulsory registration for foreign employment was initiated in 1995. Before then, airport surveys conducted by the Bureau (1990-95) show that nearly 125,000 persons migrated for foreign employment annually but 55% of them had not registered with the Bureau. The migration statistics before 1995 therefore show low migration rates due to the large number that had migrated without registering. This clearly indicates that the sudden boom in 1995 was not due to a large increase of departures but was the result of an increase in documented migration.

It seems as if implementation of welfare packages for migrant workers along with the compulsory registration system reduced illegal and undocumented migration, to around 10%.

The number of migrant employees who departed for foreign employment in 2003 was around 209,000. It has seen a steady increase since 1999. The foreign employment industry of Sri Lanka is growing steadily under the present favourable international labour market conditions. The total number who migrated for employment in 2003 grew by 2.47% in contrast to the contraction of 10.74% in 2002.

In the early stages of the industry, the migration of men was recorded as the highest. However, it has gradually changed into female dominance since 1988. The female participation rate has increased to 64.5% of the total in 2003.

*Table 3.1: Departures for Foreign Employment, 1986 – 2003*

Year	Male No.	%	Female No.	%	Total
1986	11,023	66.98	5,433	33.02	16,456
1987	10,647	66.02	5,480	33.98	16,127
1988	8,309	45.09	10,119	54.91	18,428
1989	8,680	35.11	16,044	64.89	24,724
1990	15,377	36.11	27,248	63.92	42,625
1991	21,423	32.97	43,560	67.03	64,983
1992	34,858	28.00	89,636	72.00	124,494#
1993	32,269	25.00	96,807	75.00	129,076#
1994	16,377	27.22	43,791	72.78	60,168
1995	46,021	26.68	126,468	73.32	172,489
1996	43,112	26.52	119,464	73.48	162,576
1997	37,552	24.99	112,731	75.01	150,283
1998	53,867	33.71	105,949	66.29	159,816
1999	63,720	35.45	116,015	64.55	179,735
2000	59,793	32.82	122,395	67.18	182,188
2001	59,807	32.50	124,200	67.50	184,007
2002	70,522	34.61	133,251	65.39	203,773
2003*	74,089	35.48	134,714	64.52	208,803

Note: \* Provisional

Sources: Information Technology Division – SLBFE, #Airport Survey-SLBFE, 1991-1993

No data could be found on incoming migrants. It is said that they often come as tourists and work for some time here, such as doctors and nurses from India. Eastern European and other women are also known to have entered the sex industry in Sri Lanka but there are no data available on them.

### **3.6 Preparations in place for monitoring/assessing the impacts and reporting to the UN**

The two meetings arranged by IOM/ILO had among their aims to assist the Government with its reporting obligations. The Ministry of Labour is in charge of writing the report and when interviewed in January 2005, the report was still being compiled. The Ministry of Justice and SLFEB have also assisted. The draft report was not available to the research team.

This Convention requires a different type of report than that for ILO conventions, which are seen as easier to report on because of the clearer, shorter format. Also, with the ILO, the social partners are involved. There is a requirement for any report to be sent to trade unions and employer associations. This is not the case with the UN convention.

The NGO network that exists in Sri Lanka is planning to write a shadow report but is not entirely certain how to go about this. In the interviews NGO representatives indicated that assistance from the OHCHR was needed to help them do this.

### **3.7 Concluding remarks**

Most rights set out in Part III of the Convention are provided for by Sri Lanka. The problem is to what extent these rights are provided in the destination countries, with West Asia constituting a particularly problematic region. This could be dealt with by bilateral agreements while promoting ratification of the ICMR in destination countries. The Sri Lankan Government, however, seems to keep a low profile in confronting receiving countries.

On the legal side, despite some regulations and existing legislation, the Government to date has not enacted sufficient legislation to cover the full breadth of the ICMR. In addition, there is a need to:

- translate the Convention into the national languages (partly done by IOM) and to distribute it to would-be-migrants;
- make available the services of a legal counsel at the Sri Lankan embassies abroad;
- assist the migrant workers at times of need, to educate or inform would-be-migrants in more detail of the social, cultural, and economic conditions and to explain the (labour and other) laws and customs of the host country;
- ensure that the employment contract is made available to the workers in his/her own language;
- make available free interpretation in the language of the migrant workers when needed in the host country;
- ensure the voting rights of the migrant workers;
- provide the necessary training to would-be-migrants;
- regulate the private agencies more rigorously and to ensure that all the irregular migrant workers are documented.

These are the main obligations under the Convention, which the Government of Sri Lanka has not fully implemented, to date.

Socio-economic issues that still need dealing with are:

- better quality training for migrants to get better jobs and better protection (diversification from the low-wage housemaid jobs);
- increasing skill level according to market requirements of receiving country;
- recruitment agencies should not have sub-contractors/middlemen;
- problem of how to get receiving countries to fulfil their obligations;
- conflict of interest: SLBFE-Embassy-Recruitment Agency relations — agents are not interested in the enforcement of contracts and they have 'good' relationships with SLBFE and embassies;
- promotion of Convention should include: a) guidelines for training; methods, rights information as part of it; b) requirement that certain percentage of fees or remittances must be ploughed back for welfare services; c) post-migration reintegration;
- complaint mechanism (in case of non-payment of wages etc.) need sorting out as there are too many loopholes in the existing system;
- the Board of SLBFE should include trade union and NGO representatives to represent migrants and to have some say in how the fees/levies are spent.

There are no signs that migration has decreased since ratification and there has been little use of the ICMR, vis-à-vis receiving countries, by government representatives. The changes in statistics that exist seem to be mainly due to different measuring methods used or new policies/regulations.

NGO and trade unions need to build a stronger alliance and engage in more forceful lobbying for policies. Unlike in the Philippines, NGOs do not seem to target individual Senators to speak out on migrants' behalf.

On the whole, despite ratification of the UN Convention, the general perception is that Sri Lankan migrants are frequently subjected to indecent working conditions, non-payment of wages, physical and psychological harassment and discriminatory practices. Many exploitative practices start at the time of recruitment. There seems, therefore, plenty of room for better regulation, implementation and monitoring of the requirements of this Convention. It is to be seen how fruitful the efforts by the Working Group, instigated and supported by IOM and ILO, will be.

## **Chapter 4: Impact Conclusions**

### **4.1 Introduction**

This chapter will summarise the progress to date in implementing the Convention in the two countries under study. They are at quite different levels in terms of migration management and the comparison will enable an understanding of the range of issues that countries face. Then it will try to assess the impact of ratification against a number of criteria.

The impact of international conventions has never been evaluated and so this report represents a first. Data collected in interviews in the Philippines and Sri Lanka do highlight the way in which such conventions set a framework or provide an umbrella under which various groups can advocate or lobby, as well as providing human rights norms that are deemed to be universally acceptable. These are some of the intentions of international conventions but they also have wider goals of education for government and communities. They set a benchmark that is the ideal to be achieved but it is up to governments to translate them into domestic law.

Trying to assess the impact of ratification, the stated objective of this project, is a difficult task but one that deserves further attention. It is very clear that the impact does not occur in the short term and is not just the result of ratification. The whole process leading up to and following ratification involves a great deal of government and community input, awareness raising and education of all, especially the migrant community.

Encouraging and teaching people to know their rights and demand that they be met is no easy task. Even if people know their rights, they are often unwilling to press for them or insist on them. This is particularly the case for migrant workers who are often disempowered, poor and unwilling to jeopardise their current or future job. For this reason, activism by governments and migrant advocacy groups is essential. Without it, migrant workers will continue to be vulnerable.

### **4.2 Comparative findings**

Sri Lankan migrants seem to suffer higher levels and incidence of exploitation than Filipinos who are seen as better equipped to deal with the situation. Filipinos tend to receive better pre-migration training and orientation and are much more willing to speak up if necessary. Their higher levels of English and preponderance of tertiary education put them in a stronger position in foreign labour markets. But as Diaz points out, even highly skilled Filipinos are still open to abuse and mistreatment.

The very large numbers of Filipinos going overseas to work make this a very contentious issue inside the country. As a consequence there is a much greater level of awareness in the Philippines about the issues. Many people oppose the 'costs' of the program in terms of the loss of skilled workers, the mistreatment of many workers by domestic recruiters, offshore recruiters and employers, the absence (largely of women) from families and problems of reintegration while others realise that the program is essential due to the lack of domestic opportunities.

Many civil society participants have become involved in a whole variety of aspects in the Philippines: for example, in providing training and pre-departure orientation; in raising questions about the 'entertainment' industry: in highlighting the problems of absentee parents; in emphasising the rights of all migrants workers, including irregular migrants; and in the paucity or failure of reintegration programs, to name a few. Many NGOs are internationally connected, often via the web, and operate in both source and destination countries.

In addition, in the destination countries Philippine embassies seem to do a better job of having legal counsel attached who are working with human rights organisations for the protection of their workers. The Philippines Government has also implemented extensive legislation, especially RA 8042, which embodies many elements similar to the ICMR. The two pieces of legislation were developed concurrently and so there is a great deal of complementarity. The Philippines also manifests more concrete implementation of its laws and policies.

In spite of all these positive aspects, there is still scope for improvement in the Philippines. The ICMR does not seem to have been wholly absorbed by the legislature and constant agitation by NGOs serves to highlight the need for extra effort to fully implement the ICMR.

On the other hand, Sri Lanka is much less experienced and a later comer to substantial overseas labour migration. On the whole, despite ratification of the UN Convention, the general perception is that Sri Lankan migrants are frequently subjected to indecent working conditions, non-payment of wages, physical and psychological harassment and discriminatory practices. Many exploitative practices start at the time of recruitment. There seems, therefore, plenty of room for better regulation, implementation and monitoring of the requirements of this Convention. It is to be seen how fruitful the efforts by the Working Group, instigated and supported by IOM and ILO, will be.

There is still a low level of activism by civil society and their representation on boards, committees, etc is minimal. For example, on the board of the SLBFE there is, so far, no representative of migrants through trade unions or NGOs. NGO and trade unions need to build a stronger alliance and engage in more forceful lobbying for policies. Unlike in the Philippines, NGOs do not seem to target individual Senators to speak out on migrants' behalf.

There are no signs that migration has decreased since ratification but likewise there has been little use of the ICMR vis-à-vis receiving countries by government representatives. The changes in statistics that exist seem to be mainly due to different measuring methods used or new policies/regulations. Sri Lanka is heavily reliant on a number of destinations for their overseas labour markets. These are mostly in the Middle East where 'power' exerted by the Sri Lanka Government to influence the conditions and fulfilment of the rights of migrant workers is very limited.

The ICMR was ratified largely in response to outside pressure rather than as a response to pressure from inside the country. The lack of awareness of people about their rights is an ongoing problem. People appear to be much less informed and active than in the Philippines. NGOs have been mainly engaged in service provision in Sri Lanka and to a much lesser extent in advocacy and lobbying. Migrant NGOs rally mainly around the issue of voting rights and social security (especially pension rights).

### **4.3 Assessing impacts on the basis of the following obstacles to ratification of the ICMR that have been identified**

The attribution of an improvement in migrants' rights to the ratification of the ICMR is clearly difficult. It is an ongoing, two-way process involving government, migrant workers and their representatives. Nevertheless, it provides a framework for what is desirable and therefore sets the parameters of the goals that should be sought after.

We have described the impacts of ratification in the Philippines and Sri Lanka. There seems little evidence of negative impacts thereby dispelling the concerns of many of the non-ratifiers. The following criteria will be used for this assessment and have been taken from our first report (Piper and Iredale, 2003) and the Global Commission on International Migration's paper on Migration, human rights and the United Nations (Pecoud & de Gutcheneire, 2004: 21):

#### **1. Cost of providing greater awareness-raising and general education about the rights of migrant workers**

The Philippines has achieved this to a much greater extent, largely as a result of the efforts of individuals and NGOs rather than as initiated by Government. Media attention to the issues is significant and unions, interested professionals and other social activists have become involved and are outspoken on particular issues.

Sri Lanka has progressed less far in this regard and it needs a much greater effort to spread information and awareness about migrant workers' rights. One union, the MSC, is active but the media, other unions and professionals need to engage more forcefully in disseminating information and educating people about their rights.

#### **2. High costs of implementation**

The costs of implementation are not available at this stage for either country. Clearly the Philippines has engaged/is engaging in substantial legislative and policy change but this is attributed more to the implementation of RA 8042 than to ICMR.

**National legal outcomes** — these will be documented in the reports to the MWC. A significant number of bills are under discussion and debate as part of an ongoing process of reform in the Philippines but there is much less activity in this regard in Sri Lanka.

**National policy outcomes** — these will also be documented in the report. Review of policies is underway in both countries but until affected workers have a loud enough 'voice' their concerns may go unattended. The right to vote for Filipino overseas workers is a major step forward and this, together with the strengthening of political parties that take on their interests, should lead to great policy scrutiny and change. Overseas Sri Lankans have the right to vote but few exercise it.

#### **3. Difficulty (partly due to lack of transparency) and high cost of monitoring**

The process of monitoring is just being developed in each country. A long report on each of the clauses in the ICMR is required. This does appear to be excessive but neither country voiced any concern at this point. The process set up by the MWC seems to allow some scope for the way that the process is handled and its emphasis on advocacy, seems to be a good starting point.

The allegedly high level of collusion between government officials and those involved in the business of sending off workers (recruitment agencies) in some countries makes transparency a problem. There is some concern amongst civil societies that accurate monitoring may not be done for fear of what might be exposed.

The creation of an environment of 'good governance' is needed and this requires broad reforms. The impact of the ICMR in promoting this is difficult to assess. We can just assume that the level of activism and scrutiny in the Philippines will produce a better result than when governments are left to their own devices, without openness and oversight.

#### **4. Loss of markets**

It is evident that neither country has suffered economically in terms of a loss of markets as a result of their ratification of ICMR. Alternatively, the Philippines has engaged in a very active process of trying to be more selective and particularly locate more skilled labour markets where their workers will be better rewarded and hopefully better treated. There is still an awareness, however, that too much activism or drawing attention to problem countries will potentially lead to a loss of markets.

Sri Lanka has not experienced a noticeable change but there has been much greater reluctance to push for the rights contained within the ICMR by Government and the low level of development of civil society means that NGOs, trade unions, are relatively inactive in this area, focusing instead on welfare aspects.

#### **4.4 Conclusions**

The ICMR represents a unique agreement by many countries 'on the minimal degree of legal protection that migrants should enjoy' (Pecoud and de Gutcheneire, 2004: 22). But there is not global agreement and this makes ratification and implementation a slow process.

So far, only countries that are mainly sending countries have ratified the Convention. This weakens the Migrant Workers Committee in pushing for implementation of the Convention's comprehensive rights as it is not balanced and can only focus on one set of provisions only (i.e. those for countries of origin). At this stage, the Committee members therefore agree that the focus should be on the advocacy aspect in order to boost the number of ratifications – and hopefully achieve the first ratification of a receiving country soon.

An important advocacy role is seen to be with or through the UN system. The UN general secretary, Mr. Kofi Annan, himself has given migration a higher profile. The High Commissioner for Human Rights, however, has not yet done enough to promote the rights of migrants as set out by this Convention. Despite NGOs engaging vividly in advocacy, they need coordinating and encouragement to engage in policy making. Even more importantly, they need to be supported by the UN agencies involved in migration.

This report demonstrates that countries that have ratified the ICMR have not suffered, economically, socially or politically. Filipino workers have benefited, often due mainly to domestic changes, but the role of the ICMR in setting minimum standards and raising awareness cannot be ignored. The benefits should result in less complaints, better working conditions, better jobs and remuneration, higher remittances and better



reintegration on return. These gains will be manifested as positive outcomes. Neither country indicated the high costs of monitoring as being a major problem.

But capacity-building is required if countries that have ratified are to implement the ICMR fully and effectively. The Sri Lanka case demonstrates that locals need to be trained in the implications of the Convention for their own legal and policy instruments. The capacity of the state, and of civil society, needs to be improved. A wide range of actors, such as media, employers, union and others, need to be better informed about migrants' rights under the ICMR.

A regional effort needs to be undertaken to expand knowledge of this Convention and call for more ratifications. The IOM has initiated regional consultative processes at which this Convention gets mentioned: at the Colombo (April 2003) and Manila (September 2004) Labour Ministers meetings, in particular. Mostly sending countries have attended these meetings but stronger efforts should be made to incorporate some of the receiving countries – which is something IOM is trying to achieve at the third meeting in Bali (September 2005). Countries that are both senders and receivers, such as China, India and Thailand, do attend and there may be scope here for arguing for more ratifications. The countries that have ratified, such as the Philippines and Sri Lanka, should take the lead in emphasising the benefits and dispelling myths about the 'costs'.

It is absolutely vital for this Convention to become more influential or significant that at least one receiving country comes on board as a ratifier. Usually, a lot of pressure is put on developing countries by western countries to become state parties to certain conventions but no pressure at all has been asserted with regard to this Convention (for the obvious reason: no western country has ratified). Maybe more education on this Convention is needed in the developed countries – an area for UNESCO to get more active on (Sri Lanka Ministry of Foreign Affairs, Personal interview, January 2005).

In another five years, if only developing countries ratify this Convention it will become meaningless. A developed country's ratification is urgently needed. For this, the UN agencies should form a coalition and so should the major NGOs.

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## **Appendix 1: List of Interviewees**

### **Sri Lanka**

#### NGO/research institutes

CENWOR (Centre for Women's Research)

Migrant Services Centre

National Workers Congress (trade union)

Asian Migrants Action Network (chairperson and several representatives of member NGOs)

#### International organisations

ILO

IOM

former UN Special Rapporteur for the Human Rights of Migrants

#### Government

former SLFEB employee

Ministry of Foreign Affairs, Mr. Prasad Kariyawasam (Chairman of the UN Migrant Workers' Committee)

Ministry of Labour, Labor and Foreign Relations Division, Mr. Athukarola

SLBFE (welfare officer; training officer; head of research department and chairperson)

### **Philippines**

#### NGO/research institutes

Braga-Regalado, Connie - Chairperson, Migrante Sectoral Party, Manila.

Sana, Ellene – Secretary and Executive Director, Center for Migrant Advocacy, Philippines.

#### Government

Apostol, Millet - Secretary, Committee on Foreign Affairs, House of Representatives.

Brillantes, Ambassador Jose - Undersecretary, Office of the Legal Assistant for Migrant Workers Affairs, Department of Foreign Affairs.

Calvez, Susan - Welfare Services Branch (WSB), POEA.

Casco, Liberty – Director, Marketing Head, POEA.

De Castro, Celeste, Committee on Labor and Employment House of Representatives, Philippines.

Lumibao, Christopher - Acting Secretary, Special Committee on Overseas Workers Affairs, House of Representatives.

Mendoza, Clarinda - Designation: Senior Technical Staff, Senate committee on foreign relations.

Soriano, Teresa, Director, Institute of Labor Studies, Department of Labor and Employment (DOLE)

Tanpiengco, Gemma - Committee Secretary, Senate committee on labor employment and human resource development.

## **Appendix 2: Provisional Guidelines regarding the form and contents of initial reports to be submitted by States parties under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**

### **INTRODUCTION**

1. Article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families provides that States parties undertake to submit to the Secretary General of the United Nations for consideration by the Committee a report on the measures they have taken to give effect to the provisions of the Convention. The Committee has agreed to the following guidelines in order to give indications to States parties on the form and contents of their initial reports.

2. Those States parties whose initial reports are already in preparation at the time of transmittal of these guidelines can complete and submit their report to the Committee even if the report has not been prepared in conformity with the present guidelines.

#### **A. PART I. INFORMATION OF A GENERAL NATURE**

3. This part should:

a) Describe the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements in the field of migration entered into by the reporting State party.

b) Provide quantitative and qualitative information, as disaggregated as possible, on the characteristics and nature of the migration flows (immigration, transit and emigration) in which the State party concerned is involved.

c) Describe the actual situation as regards the practical implementation of the Convention in the reporting State and indicate the circumstances affecting the fulfillment of the obligations of the reporting State under the Convention.

d) Include information on the measures taken by the State party for the dissemination and promotion of the Convention and on the cooperation with civil society in order to promote and respect the rights contained in the Convention.

#### **B. PART II. INFORMATION IN RELATION TO EACH OF THE ARTICLES OF THE CONVENTION**

4. This part should provide specific information relating to the implementation by the reporting State of the Convention, in accordance with the sequences of the articles and their respective provisions. In order to facilitate the reporting procedure for the States parties, the information may be provided per clusters of articles as follows:

a) GENERAL PRINCIPLES:

- Articles 1(1), 7: non discrimination;
- Article 83: right to an effective remedy;
- Article 84: duty to implement the Convention.

b) PART III OF THE CONVENTION: Human rights of all migrant workers and members of their families:

- Article 8:  
Right to leave any country including own and to return.
- Articles 9, 10:  
Right to life; prohibition of torture; prohibition of inhuman or degrading treatment.
- Article 11:  
Prohibition of slavery and forced labour.
- Articles 12, 13 & 26:  
Freedom of opinion and expression; freedom of thought conscience and religion; right to join a trade union.
- Articles 14, 15:  
Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property.
- Article 16 (§1-4), 17 & 24:  
Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law.
- Articles 16 (§5-9), 18, 19:  
Right to procedural guarantees.
- Article 20:  
Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfill a contractual obligation.
- Articles 21, 22, 23:  
Protection from confiscation and/or destruction of ID and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection.
- Articles 25, 27, 28:  
Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical care.
- Articles 29, 30, 31:  
Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families.
- Articles 32, 33:  
Right to transfer in the state of origin their earnings, savings and personal belongings; right to be informed on the rights arising from the Convention and dissemination of information.

c) PART IV OF THE CONVENTION: other rights of migrant workers and their families who are documented or in a regular situation:

- Article 37:  
Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activity.

- Articles 38, 39:  
Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment.
- Articles 40, 41, 42:  
Right to form associations and trade unions; right to participate in public affairs of their State of origin and to vote and be elected at election of that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment.
- Articles 43, 54, 55:  
Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity.
- Article 44 & 50:  
Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage.
- Article 45 & 53:  
Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family.
- Articles 46, 47, 48:  
Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle.
- Articles 51, 52:  
Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity.
- Articles 49 & 56:  
Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion.

d) PART V OF THE CONVENTION: Provisions applicable to particular categories of migrant workers and members of their families

The State party should indicate the provisions or measures adopted for the particular categories of migrants indicated in articles 57 to 63 of the Convention, if any.

e) PART VI OF THE CONVENTION: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

The State party should indicate the measures taken to ensure promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families. In particular:

- Article 65:

Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families.

- Article 66:  
Authorized operations and bodies for the recruitment of workers for employment in another State.
- Article 67:  
Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration.
- Article 68:  
Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation.
- Article 69:  
Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to take into account in case of regularization procedures.
- Article 70:  
Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.
- Article 71:  
Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death.

#### **PRESENTATION OF THE REPORT**

5. The report should be accompanied by sufficient copies (if possible in English, French or Spanish) of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. It is desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

6. States parties may wish to present their initial report under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in conjunction with the Common Core Document referred to in document HRI/MC/2004/3 which contains draft guidelines for its preparation. This option has been encouraged by the third inter-committee meeting held in Geneva on 21-22 June 2004 (see document A/59/254, Report of the Sixteenth Meeting of the Chairpersons of the Human Rights Treaty Bodies).

7. Initial reports under article 73 of the Convention should be submitted in electronic form (on diskette, CD-rom or by electronic mail), accompanied by a printed paper copy. The report should not exceed 120 pages (A4-size paper, with 1.5 line spacing; and text of 12 points in the font Times New Roman).