

Responsibilities of Origin Countries for Their Migrant Workers

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Abstract

If migrant workers are well managed and are well protected against abuse and exploitation, they can be of great benefit to both the origin (labour sending) and destination (labour receiving) countries. In reality, the situation is rendered complex by that fact that many do not enter the destination countries legally. While international migration can be a positive experience for migrant workers, many suffer poor working and living conditions, including low wages, unsafe working environments, a virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia. The origin and destination countries share the responsibilities to protect the rights of migrant workers. But their respective responsibilities are different. Myanmar is a major labour sending country and it is responsibility for protecting the migrant workers. Therefore the government should amend the Law Relating to Overseas Employment, 1999 including strong and practical migration protection policy.

Key words: migrant workers, responsibilities, origin countries

Introduction

Migration of people to other countries in search of employment has occurred throughout history and is not new phenomenon. Labour migration is an important issue and applies to most countries in the world. Because of most countries today are countries of origin, transit and destination for international migration. This can be beneficial for the countries of origin (labour sending countries), the destination countries (labour receiving countries) and the migrant workers themselves. As migrant workers develop the two countries, these countries are responsible for protecting their rights. The three basic stages in the labour migration process are before workers leave their home countries, after they leave and while they work in destination countries, and after they return to their home countries.

Material and Methods

- Studying on the Law Relating to Overseas Employment, 1999
- Studying on Constitution of the Republic of the Union of Myanmar (2008)
- Studying on books and articles including on the internet

Aim and purpose

- To know the responsibility of labour sending countries
- To know the rights of migrant workers
- To know the duties licence holder

Labour Migration and Responsibilities of its Origin Countries

Article 2(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990 mentions migrant workers refer to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. There are two kinds of migration, regular and irregular. Irregular migration should not be treated in isolation from regular migration. Migrant workers and particular vulnerable categories, such as women domestic workers and temporary and irregular migrants, continue to suffer abuses and malpractices at the hand of employer, government officials and the population in receiving countries.

It is primarily the responsibility of origin countries to protect migrant workers during the pre-departure stage when migrants are still within their borders. The period during which individuals decide whether or not to migrate for work is crucial. It is most important that reliable and accurate information be provided before they take important steps towards migrating, such as paying fees to recruiters. Origin countries should provide concrete assistance in finding employment, if possible, as well as information concerning, among other things, the cost of obtaining jobs, the migration process, and actual terms and conditions of work in the destination country.

In addition to working to foster the protection of their nationals employed abroad, countries of origin also need to ensure that their policy on labour migration is consistent with national employment policies and development strategies, and that the parts of the government tasked with administering the policy have the capacity and resources to do so. The key regulatory policies and practices for migrant origin countries, which can be and often are mandated and enabled by legislation, include:

- Close government supervision and monitoring of employment agency recruitment activities, to minimize malpractice and abuses against nationals recruited for employment abroad;
- Criminal proceedings against serious offenders and revocation of their licences if registered;
- Supervision of the recruitment and deployment of workers especially vulnerable to malpractices and abuses, such as female domestic workers and low-skilled workers;
- Pre-employment orientation seminars and intensified information campaigns, to help prospective migrants make informed decisions;
- Support services such as pre-departure orientation and a welfare fund;
- Accurate and reliable information on the rights of migrant workers and support for community-based organizations, to empower migrant workers and help make their voices heard in policy design and implementation;
- Activities to raise workers' skill levels to higher standards to improve their employment opportunities abroad, taking into account any concerns relating to the depletion of human resources at home ("brain drain");
- Training and deployment of labour attachés to countries where nationals are employed to provide them with the necessary support and services;
- Measures to monitor and enforce employment contracts at foreign worksites, in particular through labour attachés and arrangements with host country governments;
- Steps to ensure that the transaction costs of remittances sent home by their nationals to support families and communities are as low as possible and, while recognizing that remittances are private funds, enhance their productive investment, including towards creation of small enterprises; and
- Inter-state cooperation between countries of origin and destination, including the adoption and effective implementation of bilateral agreements or MoUs in conformity with the international human rights and labour standards described in previous chapters of this handbook.

The labour sending countries are responsible for supervising their migrant workers to travel legally on the receiving countries.

Labour Migration from Myanmar

Myanmar is a major labour sending (origin) country. In 2019, according to the Government, Myanmar was sending workers to 18 destination countries through 273 licensed overseas employment

agencies and especially, Thailand, Malaysia, Singapore, Korea, UAE, and Japan.

Myanmar is a member of the Association of South-east Asian Nations and it is geographically situated at the strategic hub of the South-east Asian region. According to the Statistical Yearbook for Asia and the Pacific 2011, unemployment rate of ASEAN countries is 5.2 percent, the World, 6.3 percent and Myanmar, 4 percent. The country sees some job opportunities because about three million Myanmar workers are now working in foreign labour market. In today male and female workers were sent to foreign countries. Labour Exchange Offices serve as proxy for connection of job seekers and job opportunities.

It is thought that as much as 10 per cent of the labour force is working abroad, with almost 2 million Myanmar migrant workers employed in Thailand and Malaysia alone (Ministry of Labour Thailand, December 2019, and Ministry of Human Resources, Malaysia, September 2019). According to the World Bank, an estimated US\$3.035 billion was remitted by migrants in 2019, approximately 4.6 per cent of GDP (World Bank, 2019), which does not include the millions that are informally remitted through brokers or hand carried back home to family members.

Migrant workers not only reduce unemployment for Myanmar but also generate foreign income. Therefore the government of Myanmar has responsibility to protect their migrant workers.

Constitution of the Republic of the Union of Myanmar (2008)

Section 380 of the Constitution of the Republic of the Union of Myanmar (2008) provides that "Every citizen who has relations with foreign countries shall have the right to seek protection of the Union at home or abroad." The Constitution protect all Myanmar citizen whether migrant workers or not.

Law and policy for migrant workers

Myanmar has already enacted to protect their migrant workers, Laws Relating to Overseas Employment, in 1999. Section 2 of this law provided that the definition of worker. "Worker" means a worker in any overseas employment or worker appointed to join overseas employment or a person appointed as apprentice.

The objectives of this Law are as follows;

- (a) To enable the beneficial and employment systematic utilization of human resources of the State building a modern and developed State;
- (b) To enable those seeking oversea employment to get employment opportunities and to secure such employment systematically;
- (c) to ensure that there is no loss of rights and privileges of the workers and that they receive the rights they are entitled to;

- (d) to enable the systematic utilization within the country of the knowledge experience and skills gained abroad, according to the type of overseas employment undertaken

Myanmar has Supervisory Committee under the Central Committee to provide guidance relating to overseas employment. The Supervisory Committee ensures that the workers who will travel abroad are accorded swift and smooth process with minimum expense and Myanmar Workers are also granted the rights and privileges in consistent with the Labour Laws from receiving countries and also assist workers who want to return back home by various reasons.

Overseas Employment Supervisory Committee has been formed three Sub Committees to review, coordinate and supervise the existing and procedure on the matters concerning dispatch Myanmar Workers abroad.

- Labour Administration sub Committee
- Labour Security and Protection sub Committee
- Labour Beneficial sub Committee

A person who wishes to carry out service agency business shall apply to the Department for issue of Service Agent Licence in accordance with the stipulations. The licensed agents have the power to recruit and send Myanmar migrants in according with Law to employ in foreign countries.

Just as the sending country is responsible for protecting its migrant workers, they are responsible for obeying the Law Relating to Oversea Employment.

Section 20 to 23 of this Law states that the duties a worker. A worker before going abroad:-

- (a) shall undergo a medical examination as directed by the Supervisory Committee, and obtain a health certificate,
- (b) shall have obtained a certificate of registration issued by the Department as supporting evidence.

A registered worker who has gone abroad and has been working there shall report any unusual condition of work to the Service Agent in accordance with the stipulations. If it is not a case of working there after communicating with the Service Agent he shall report to the Myanmar Embassy or to the Consular Office in accordance with the stipulations. If there are no such offices he shall report to the Department.

A worker who has returned to Myanmar and is about to go abroad to join overseas employment other than the present one he has been working in, shall depart only after complying with the provisions of section 20. A worker shall pay the service fees determined by the Central Committee either to the Department or to the Service Agent. Although migrant workers are subject to the duties imposed by the Law, there are many migrant workers illegally.

In regards to labour migration, Myanmar signed a new Memorandum of Understanding (MoU) with Thailand regarding formal migration channels in June 2016. Documentation has been a particular challenge given that irregular migration flows dominate

migration from Myanmar to Thailand. A range of responses have been tried, starting in 1992 with the first registration of undocumented migrants in Thailand. After 2009, the Myanmar government also started to respond to the problem, and coordinated with the Thai authorities to issue temporary passports to migrants holding a Thai migrant worker registration card. In 2017, the Myanmar government will issue Certificates of Identity to migrants with the longer term goal of these migrants applying for a full passport in the future and returning to work in Thailand legally documented. Taking into account the large numbers of undocumented migrants in Thailand, these processes remain challenging and demand on-going processes to allow for all migrants to gradually be documented. MOU is beneficial for both migrant workers in both countries.

This worker also has the rights. A Worker-(a) has the right to claim through the Service Agent full compensation or damages to which he is entitled for injury sustained at a foreign worksite, (b) has the right to take civil or criminal action for loss of his rights and privileges relating to overseas employment

The Law Relating to Overseas Employment, 1999, provide that the recruitment of migrant workers which entitles migrant workers to take civil or criminal action for loss of rights and privileges relating to overseas employment. The Law does not include specific provisions on the process for handling of complaints, but it does establish the right for migrants to make a complaint, the institutions responsible for the protection of migrant workers, and the particular offences related to overseas employment that can be brought to court.

The Department of Labour within the Ministry of Labour, Immigration and Population (MOLIP) is mandated to accept complaints from migrant workers. In mid-2013, two complaint centres were set up in Nay Pyi Taw and Yangon by the Department of Labour's Migration Division, which provide 24-hour service through a hotline. Complaints may also be submitted by phone, email, letter, or in-person at one of the 77 Labour Exchange Offices throughout Myanmar, which are then processed at the Nay Pyi Taw Complaint Centre (ILO, 2016c). The concerned authorities shall make every effort to inform the migrant workers and the public that is possible.

Origin countries should pay attention to educating and warning all potential migrants, in particular women, about the special problems they could face as migrant workers, such as trafficking, and about the conditions of certain forms of work held predominantly by women, such as domestic work. They should provide information wherever private recruiters, traffickers and smugglers search for persons to transport across borders for work, whether in cities, small towns or the countryside. Most migrant workers should be informed by the sending state that they are not aware of the receiving countries' policies, law and other situation.

Section 25 of this law mentions duties and rights of service licence holder.

A Service Agent Licence holder -

- (a) shall observe the conditions of the Service Agent Licence;
- (b) shall pay the Service Agent Licence fees in accordance with the stipulations;
- (c) shall, where there is a written agreement, carry out his duties, as agreed upon in the document, for the worker;
- (d) shall communicate with the overseas employer concerned and undertake responsibility for obtaining in full the rights and privileges in the case of loss of rights and privileges of workers;
- (e) shall submit to the examination by the investigation committee or a person assigned by the Supervisory Committee or by the Department;
- (f) shall submit the accounts and information relating to overseas employment to the Department in accordance with the stipulations;
- (g) shall inform in writing to the Department of any change of address of place of work or any change of his deputed administrative manager;
- (h) shall work for obtaining enhanced overseas employment opportunities;

Section 29 mentions, 'Any Service Agent Licence holder who violates any of the rules, procedures, orders or directives issued under this Law shall, on conviction be punished with imprisonment for a term which may extend to 1 year or with fine of Kyats 5,000 or with both.'

Section 26 provides that penalties for non licence holder, shall on conviction be punished with may extend to 7 years shall also be liable to a fine.

Violations of the Law Relating to Overseas Employment by any of the more than 200 registered employment agencies in Myanmar can result in the Department of Labour suspending or revoking their license to operate imprisonment, and/or fines. The Department also has the authority to order financial compensation be paid to complainants. If the agency cannot pay the amount directly, it is withheld from the US\$5,000 security deposit paid by the employment agency to obtain its license. The Ministry of National Planning also maintains a list of employment agencies that have been blacklisted for their involvement in complaints of serious violations against migrant workers (ILO, 2016c). Licence holders are required to enter into legally enforceable work contracts with workers seeking employment abroad.

Myanmar law does not contain concrete social security entitlements. The welfare protection of Myanmar migrant workers is an issue that has been indicated as a key issue in both the National Labour Migration Policy, and the National Plan of Action for the Management of International Labour Migration (2013–2017).

Myanmar government to protect their migrant workers, Labour Attaché has been appointed since 2012. Now they are being appointed in Thailand, Republic of Korea and Malaysia to handle and monitor the employment of Myanmar migrant workers. Functions of Labour Attaché are to protect

migrant workers, to enjoy the rights of migrant workers, to provide necessary assistance to migrant workers facing difficulties and to cooperate NGOs, INGO, UN at the destination country.

International Organization for Migration (IOM) Myanmar is rolling-out an information campaign and is conducting outreach activities in Southeast Myanmar, in collaboration with the Ministry of Labour, Employment and Social Security (MOLES), partner NGOs and association, and local communities. The IMO is currently working on establishing Migrant Resource Center (MRC) in migrant source areas of Myanmar; Myawaddy, Malwamyie, Hpa-An, Magway, and in Yangon.

MCRs are physical structures typically located in source areas and in destination countries, They are essentially a "one –stop-shop" that offers various services to men and women before they migrate, in destination countries, as well as back in the home country after migration. MRC services usually include; information for potential migrants about regular migration procedures, migrants' rights and responsibilities, and ways for migrants to protect themselves; advertising job vacancies and conducting job-counselling; enabling migrants to make complaints against unscrupulous brokers and employers; and support to refer migrants to a range of other essential social services (e.g) health care centers, vocational training centers, local employment offices, etc.

Despite this, migrant workers are now living illegally and being exploited. The government must provide awareness campaigns for migrant workers with clear information about safe migrations.

Findings

Myanmar has yet to formulate a comprehensive return and repatriation policy or programme. Myanmar law does not contain concrete social security entitlements. The welfare protection of Myanmar migrant workers is an important issue. Myanmar government should amend the Law Relating to Overseas Employment, 1999 including strong and practical migration protection policy, together with destination countries of migrants, embassies, civil society, employers and migrant communities and organizations so as to address the uncontrollable abuse and exploitation of its workers overseas. This Law should also include social protection and establishment of warfare fund.

Conclusion

International migration is an integral part of globalization. Migrants can contribute greatly to their home and destination countries if they are protected from abuse and exploitation. The disparities of income, employment etc, between states creates the migration. Labor migration is generally defined as a cross-border movement for purposes of employment

in a foreign country. There are two kinds of migration, regular and irregular migration. All States have the sovereign right to develop their own policies to manage labour migration. Development gains accrue to both origin and destination countries. There are three basic stages in the labour migration process during which migrants' rights must be protected.

Most migrant workers should be informed by the sending state that they are not aware of the receiving countries' policies, law and other situation. This lack of awareness puts migrants at risk and undermines orderly migration. Information dissemination helps fill this void by providing migrants with the basis to make informed decisions. Licence holders are required to enter into legally enforceable work contracts with workers seeking employment abroad. Bilateral agreements are a valuable means of addressing migration issues that affect two states.

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