



POLICY BRIEF #3

# IMPLEMENTING GENDER-RESPONSIVE EMPLOYMENT CONTRACTS

## For Women Migrant Workers from South Asia



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Since 2001, UN Women's Regional Programme on Empowering Women Migrant Workers in Asia has advocated for the protection and promotion of the rights of women migrant workers in Asia and the Pacific. UN Women works to ensure that women migrant workers contribute to sustainable development and benefit from reduced social and economic inequality through decent work and safe migration, focusing on three key areas:

1. We work with governments and regional bodies to ensure that labour and migration policies promote and protect the right of all women to safe migration and decent work, free of discrimination and exploitation;
2. We work with government, private sector, and recruitment agencies to ensure that women workers have increased access to gender-responsive information, procedures, training, services and justice; and
3. We convene, mobilize and invest in women workers so that governments, employers, and community members understand, recognize and value women migrant workers' rights and contributions.

This policy brief series forms part of the regional *Empowerment of Women Migrant Workers in South Asia through Implementation of Standard Terms of Employment* project, supported by the Swiss Agency for Development and Cooperation (SDC). Implementation for this project is from May 2015 to June 2019, with the overall goal to protect and promote the rights of women migrant workers through improved terms of employment, with a focus on women migrant workers from Bangladesh, India, Nepal, and Sri Lanka who are migrating or are based in countries of destination in the Middle East.

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Rights-based, gender-responsive employment contracts are a key tool in ensuring women migrant workers are able to exercise their right to decent work and safe migration. In the absence of full legislative protection, the rights of women migrant workers to decent working and living conditions are to a significant extent determined and protected through employment contracts.

The first two policy briefs in this series made recommendations to strengthen governance processes and develop employment contracts that effectively protect the rights of women migrant workers. Once improved terms of employment are established, it is crucial to ensure these rights are translated into improved living and working conditions for women migrant workers. This final brief in a series of three examines systems for implementing and monitoring contracts and makes recommendations to strengthen systems so they are effective, ensuring women migrant workers are able to realize their right to safe migration and decent working conditions.



## The issue

Establishing labour migration policies and frameworks that work effectively for women (as discussed in Policy Brief No. 1) and developing employment contracts that address the real needs of women migrant workers (as discussed in Policy Brief No. 2) are critical steps towards effective protections for women migrant workers. Once protections are in place in law, contracts and through bilateral agreements, systems of accountability and monitoring are required to ensure that improved standards are realized in practice.

In the absence of monitoring and accountability systems the extent to which employment contracts provide genuine protections for migrant women – in particular domestic workers – is largely reliant on individual compliance. While regulatory systems exist, compliance largely relies on the application of contract terms in the employment relationship itself, and on the extent to which parties to the contract are held accountable through grievance and justice mechanisms.

This Policy Brief analyses current methods used to monitor the implementation of contracts and makes recommendations to strengthen accountability against the terms of employment contracts. This includes strengthening the role of labour inspectors in monitoring employment conditions of women migrants, in particular domestic workers, and the role that embassies and labour attachés have in monitoring employment conditions. It also examines ways to strengthen respect for and compliance with contract terms among recruitment agencies and employers. Finally, social change to deepen understanding of and commitment to employment contracts and legal protections for women migrant workers is necessary to ensure the implementation of employment contracts.

## Monitoring systems

Formal, regulated and government-led systems for monitoring implementation of employment contracts are essential to the effective protection of migrant workers' rights. A labour inspectorate may be in place to monitor employment conditions, while recruitment agencies, employer federations, and employers, who are points of contact for migrant workers throughout the migration cycle, play a vital role in these efforts. Self-monitoring by workers in the domestic work sector is essential to complementing these efforts.

## Labour inspections

The International Labour Organization (ILO) has set out strategies for establishing labour inspections and other compliance mechanisms for the domestic work sector, including:<sup>1</sup>

- Developing a national labour inspection strategy setting out the different approaches to monitoring compliance with employment conditions for domestic workers;
- Establishing a system of household visits to assess living and working conditions;
- Conducting focused advocacy to improve employers' understanding of specific approaches to improving conditions for domestic workers;
- Implementing a mechanism to ensure all migrant workers are accounted for and benefit from standard employment contracts;
- Having access to judicial authorization to terminate an employment arrangement where there is actual or reasonably perceived threat of physical harm.

The Global Compact for Safe, Orderly and Regular Migration identifies the need to strengthen the abilities of labour inspectors and other authorities to better monitor recruiters and employers, as a key way of ensuring fair and ethical recruitment and decent work. The role of labour inspectors is specifically identified because they are often one of the few bodies mandated to enter and inspect workplaces and assess compliance with standards in terms of employment and occupational safety and health (OSH) conditions. Labour inspectors are typically government officers – for example from ministries of labour – and therefore play an official role in ensuring compliance with national legislative requirements. Their mandate may sit within the national labour law or other regulatory systems which empower them to make recommendations and impose sanctions on employers who are not complying with legal and regulatory standards.

Because the labour inspectorate has authority under the labour laws of a country, their mandate is usually limited to sectors of employment covered by the labour law, and therefore excludes informal employment. Domestic work is usually excluded from those laws, and labour inspections are not generally conducted in

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the private homes where women migrant workers are employed. There are currently very few countries with specific legislation authorizing inspectors to enter a private residence to perform a workplace inspection, and the issue over the extent to which states should have the power to order this is subject to debate at the global level.

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Article 8 of the Labour Inspection Convention, 1947 (No. 81) and Article 10 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129) require that both men and women are eligible to be appointed as inspection staff.

Where labour inspectors have the mandate to inspect a workplace, the criteria of their inspection will commonly be governed by the provisions of the labour law (in relation to hours of work, wages and OSH requirements). If the employment contract or agreed standard terms of employment require a higher standard than the labour law, the inspectorate will nevertheless inspect only what is required by the law. For example, the Standard Terms of Employment (STOE), or Memoranda of Understanding (MOU) or Bilateral Labour Agreement (BLA) may specify that the worker must receive at least the minimum wage in a country, even where the law does not guarantee this right to migrant workers. Nevertheless, the labour inspectorate would be unable to sanction an employer for non-compliance with the contract and would only be able to sanction the employer for violations of the national law. This limits the effectiveness of employment contracts which stipulate standards higher than those ascribed by law.

#### Good practice: United Arab Emirates

The Government introduced a system of electronic monitoring of wages paid to foreign workers, and a team of inspectors were authorized to enforce proper payment of wages by bank transfer.<sup>2</sup>

The Ministry of Human Resources and Emiratisation has the power to inspect the premises of a domestic worker in certain circumstances, mediate disputes and attend to complaints made by either party.<sup>3</sup>

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Adequate financial and human resources is essential to ensuring the labour inspectorate is supported to effectively monitor the implementation of legal standards. In addition to resourcing, there are several ways inspectorates can be strengthened to support the implementation of decent living and working conditions for women migrant workers:<sup>4</sup>

- Develop indicators and checklists for standardized assessments that are gender-responsive and target the specific challenges facing migrant women;
- Conduct an enterprise analysis, by gathering gender-disaggregated data and making observations based on the positions, conditions and salaries of workers to highlight where discriminatory practices may be present;
- Use inspections to discuss and raise awareness on the rights of women migrant workers;
- Train inspectors to understand and identify the specific challenges facing women migrant workers (including salary deductions; sexual and gender-based violence; OSH concerns and onsite accommodation issues);
- Assign suitably trained women inspectors to worksites where women migrants are employed;
- Encourage the recruitment, training and promotion of women in the inspectorate.

Labour inspectors are not always limited to inspecting workplaces. The labour inspectorate may also be given the mandate to inspect recruitment agencies (both in the country of origin and destination), with powers to sanction or suspend operations when exploitative or illegal activities are identified.

#### Good practice: Bahrain

The Ministry of Labour and Social Affairs supervises and conducts regular inspection of employment agencies. Between 2002 and 2010, authorities closed 105 agencies that were accused of confiscating migrant workers' passports, switching contracts or withholding salaries.<sup>5</sup>

Codes of conduct do not replace contractual agreements but may be used to enhance them. They are a means to establish a commitment from employers to comply with the conditions of the contract and to treat the worker with dignity and respect.

#### Codes of conduct

Codes of conduct are another vehicle for increasing the accountability of employers and recruitment agencies to agreed employment conditions. Codes of conduct are promoted by organizations that support employers or recruiters to meet minimum compliance standards.

Because they are often developed by an umbrella bodies or federation (for example of employers or recruitment agents) the code of conduct establishes a commitment by the employer or recruiter to a higher body of peers, rather than to the worker alone. This enhances the level of accountability of the employer or recruiter to comply with contractual terms.

#### Good practice: Jordan

In 2006, Jordan launched the "Golden List" aimed at improving compliance with the Labour Law within the apparel sector. Employers who complied with the code of ethics and conduct, received benefits including expedited customs procedures.<sup>6</sup>

Codes of conduct are increasingly used to improve employment conditions in sectors where the signatory employs numerous workers, but it has been more challenging to engage employers of domestic workers to commit to such codes. Some companies have started to consider the role they can play in protecting the rights of migrant domestic workers, by taking a supply chain and reputation risk perspective when their own employees hire domestic workers. In these instances, companies have developed internal policies for their employees, who are requested to meet certain standards when employing domestic workers. This method enhances accountability of employers of domestic workers to uphold the contract terms, because they make a commitment to their company, its brand, and their own employees and colleagues.



This method uses supply chain pressure, an approach adapted from other sectors. Demand for transparent, rights-based and gender-responsive employment conditions ultimately comes from the end consumer. To meet consumer expectations, companies put pressure on the whole supply chain to increase compliance with employment contracts. The use of supply chains as an entry point to strengthen compliance with labour protections can be seen within the wider international context of laws such as the United Kingdom Modern Slavery Act 2015, the California State Supply Chains Act 2010 and a law enacted in February 2017 in France on corporate human rights and environmental due diligence on supply chains.<sup>7</sup>

In some cases, recruitment agencies have contractual liability for the workplace conditions of the migrant worker. In practice, the level of contractual liability is inconsistent and, in many cases, does not exist at all. Federations of recruitment agencies can play a critical role by developing codes of conduct for their members that include obligations to monitor standards of employment and workplace conditions. Compliance with such codes of conduct is monitored and enforced through the peer to peer network of recruitment agents within the federation itself.

**Codes of conduct can be used to clarify the roles, responsibilities and accountabilities of the employer, the worker and the recruitment agency.**

Codes of conduct can include measures to ensure the monitoring of conditions of employment and compliance with employment contracts. They can also be used more broadly to specify that recruitment agencies must ensure that workers are fit and prepared for work and understand their obligations under the contract.

**Good practice: Lebanon**

A Code of Conduct developed jointly by the Lebanese Ministry of Labor, the Syndicate of Owners of Recruitment Agencies in Lebanon (SORAL) and Caritas Lebanon’s Migrant Center was launched in June 2013. It provides guidance to recruitment agencies on promoting and protecting the rights of migrant domestic workers in the country.<sup>9</sup>



Photo credit: UN Women/SHAISTA CHISHTY

**Self-monitoring**

Migrants themselves play an important role in monitoring the implementation of employment contracts. Most commonly, this occurs at the point of complaint, dispute or termination of employment. With the right support, structures and capacity development training, this self-monitoring role can also pre-empt, mitigate and mediate issues, thereby preventing complaints from arising in the first place.

**Good practice:** The International Domestic Workers Federation launched the “My Fair Home” campaign in 2015, which asks employers of domestic workers to make a pledge covering the following elements:<sup>8</sup>

- Fair wages, reasonable work hours and time to rest.
- Negotiated terms and conditions of employment, ensuring a mutual understanding through a written agreement.
- Access to decent health care.
- A work environment that is free from abuse, harassment and violence.
- Decent living conditions and a safe, secure and private bedroom.
- Ability to spend their free time wherever and however they choose.

Employers from Saudi Arabia, Lebanon and Jordan have made the pledge.



Photo: UN Women/MR. SHAISSON P. OUSEPH

In Qatar, the new free-visa scheme provides 48,000 migrants with the opportunity to self-sponsor. The scheme is supported by a mechanism by which the migrants report back directly to the Government. While currently only 7 per cent of self-sponsors are women, this initiative for self-monitoring and direct reporting has potential for monitoring the conditions of isolated workers, in particular domestic workers.

Self-monitoring can be supported through post-arrival orientation in the country of destination. Post-arrival orientation provides an important point of contact to enable migrants to report if their contract, working or living conditions are not as expected, and equip workers with information how to seek further advice and support. The Abu Dhabi Dialogue has paired member States (Saudi Arabia – Bangladesh; United Arab Emirates – Philippines; United Arab Emirates – and Sri Lanka) to pilot Comprehensive Information and Orientation Programme (CIOP) to develop sector-specific customized orientation programmes.

**Good practice: Jordan**

The Jordan Domestic Workers Network was established in 2014. More than 400 domestic workers have benefited from network activities with support from the International Domestic Workers Federation, which also connects the workers with affiliate associations in countries of origin.<sup>10</sup>

In many cases, domestic workers are not permitted to join or form unions, but there is evidence that women migrant workers are navigating alternative avenues for information sharing and support, through informal collectives within apartment blocks, across balconies and through social engagement (in particular religious groups).<sup>11</sup> Increasingly, women also connect through online networks. Through informal collectives, women can share information and support on working conditions and methods of accessing advice and services.

Networks can also enable some monitoring of the women themselves, as peers may recognize and report when members of their network disappear or cannot be reached.

**Social connections and peer networks increase the visibility of workers and enable monitoring of workplace conditions and access to support if employment contracts are violated.**



## Complaints, blacklisting, civil society and trade unions

### Formal complaints mechanisms

Women migrant workers may direct workplace complaints to a number of different actors, including recruitment agents, embassy staff, civil society or trade union representatives. Depending on the country of origin there may be a formal mechanism for complaints and disputes that will record and track the complaint to ensure that it is resolved, however this practice is not standard across all countries.

#### Good practice: Jordan

All employment contracts of domestic workers must be placed on record with the Ministry of Labour. When the Ministry receives information or complaints regarding violations of worker's rights, it may summon the employer and worker to reach a settlement. Home inspections regarding the domestic worker's accommodation can be made with the consent of the householder. Where consent is not given, the Ministry of Labour may take "other appropriate measures".<sup>12</sup>

Embassies and labour attachés play a crucial role in implementing employment contracts for migrant workers. Along with recruitment agencies, embassy staff and attachés from countries of origin provide "on-the-ground" support for migrant workers. Embassies and labour attachés should be available and accessible to migrant women who are seeking advice, or to protect their rights. Countries have policies determining the number of migrant workers in place before labour attachés are appointed to a country. Good practice would ensure that the proportion of labour attachés who are women would reflect the proportion of women migrants in the country.

While they do not generally have an on-the-ground monitoring or enforcement role, labour attachés and embassies play a critical role in receiving complaints from women migrants for breach of an employment contract. Much of the limited resources of embassies is used on responding to migrant worker complaints.

In a consultation with labour attachés held in Kuwait in 2017, representatives identified challenges in discharging their obligations to women migrant workers, including:

- Lack of a complaint categorization system or a system to identify and refer cases that are outside the capacity of embassy staff;
- Lack of financial and human resources, in particular in relation to case investigation, service provision (shelters, psychosocial care) and repatriation of migrants;
- Language barriers within countries of origin, which mean that the embassy is unable to communicate with the worker;
- Lack of capacity to appropriately and effectively respond to complaints related to exploitation and abuse.

#### Good practice: Jordan

In Jordan, the Ministry of Labour's Department of Inspection manages a free multi-lingual hotline, which mainly files migrant workers' complaints. In 2010 it responded to 891 complaints.<sup>13</sup>

#### Good practice: Sri Lanka

An online portal for complaints was established to share information between officers in destination and origin countries. Inquiry officers at the Sri Lanka Bureau of Foreign Employment can lodge complaints and update the system, which is accessible on the destination side. The embassy in the destination country can then try to contact the domestic worker, the sponsor and recruitment agency in the country.

#### **CEDAW General Recommendation 26**

Paragraph 26 (c) (i) Promulgate and enforce laws and regulations that include adequate legal remedies and complaints mechanisms, and put in place easily accessible dispute resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse

## Blacklisting employers and recruitment agents

Systems for blacklisting employers and recruitment agents can be instrumental in supporting the work of actors who are monitoring the implementation of employment contracts. Systems already in place include:

- A system of sharing information with countries of destination on blacklisted agents, established by the Government of Sri Lanka.
- Musaned, an online platform through which the Ministry of Labour and Social Development in Saudi Arabia publishes information on blacklisted employers and recruitment agents who have been accused of abuses in dealing with domestic workers.

Currently approaches to documenting or sharing this information on blacklisted recruitment agencies and employers is focused on particular countries or migration channels, which means that recruitment agents and employers can refocus efforts on a different sector of employment for migrant workers or geographical location with impunity.

**The systematic sharing of information on blacklists by countries of destination, and across countries of origin, has the potential to significantly impact on the ability of recruitment agencies and employers to maintain abusive or negligent practices.**

The effective use of blacklisting is a good way of reducing non-compliance with employment contracts, by putting pressure on recruitment agencies and employers to demonstrate that they are complying with contractual terms.

## Civil society and trade unions

Civil society organizations and trade unions play a key role in supporting migrant workers to protect and defend their rights. This includes monitoring compliance, providing direct support where employment contracts are breached, and advocating for sanctions against exploitative recruiters and employers.

## Global Compact for Safe, Orderly and Regular Migration

Objective 17 of the GCM commits to eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration. In particular, Article 33 (f) calls for Member States to: *Promote awareness-raising campaigns targeted at communities of origin, transit and destination in order to inform public perceptions regarding the positive contributions of safe, orderly and regular migration, based on evidence and facts, and to end racism, xenophobia and stigmatization against all migrants.*

In Jordan, in addition to raising awareness about the working conditions for migrant workers, the Tamkeen Centre for Legal Aid and Human Rights provides legal advice and representation to victims of abuse. The Adaleh Centre for Human Rights Studies advocates to improve rights through CEDAW principles.<sup>14</sup>

Despite the barriers to joining or forming trade unions in countries of destination, women migrant workers still benefit from trade union support. This includes advocacy for improved rights, including the right to freely associate and collectively bargain. At the international level, the International Trade Union Conferences consider issues related to women's rights in the Middle East.

In Jordan, after much direct advocacy, migrant workers in textile factories were permitted to join unions (but not to vote or lead such unions). Some unions also have women's committees which enable women to provide feedback on their working conditions, in particular in relation to access to health care and to report sexual harassment at work.<sup>15</sup>



Photo: UN Women / NARENDRA SHRESTHA



## Strengthening implementation through changing attitudes and behaviours

Ultimately, the treatment of women migrant workers is often determined by accepted norms and behaviours, and the extent to which attitudes and opinions of individual employers and recruitment agents are normalised. In both countries of origin and destination, this may include opinions that women migrants are uneducated, low-skilled and subservient. Attitudes can be discriminatory in nature, grounded in the intersecting identities of the women (as women, as migrants, and as South Asians).

Attitudes and opinions have a strong influence over the actions and behaviours that employers and recruitment agents consider appropriate or acceptable. At best, this may be limited to discouraging empowerment of women migrant workers; at worst this manifests as restrictions on rights to movement, decent work and safe working and living conditions. In the case of domestic workers, some employers or recruiters may see subservience as a positive quality. Challenging these notions among society broadly, is critical to ensuring that women migrant domestic workers can be

empowered to actively choose and therefore remain in employment, perform work to the best of their abilities, and generate optimal outcomes for themselves, their families and employers.

Targeted action is needed to reach out to employers and the public at large to address attitudes and opinions around women migrant workers, particularly those in domestic work. Changing norms around acceptable treatment of migrant women can directly improve compliance with employment contracts.<sup>16</sup>

**Ultimately, an employment contract is a document which governs the relationship between a worker and their employer. Understanding this relationship is crucial to ensuring employment contracts effectively capture and govern this relationship.**

Research into knowledge, attitudes and practices of both domestic workers and their employers is important for identifying ways to address social, attitudinal and behavioural factors which limit the effectiveness of employment contracts.



## Recommendations

### Inspection

- Explore options to extend the mandate of labour inspectors to all sites where women migrant workers are employed;
- Develop a system for the inspection of domestic workers' workplaces, including private residences;
- Strengthen the liability of recruitment agencies for the working conditions of migrant women, incorporating obligations on them to inspect work sites at regular intervals to ensure compliance with contractual terms;
- Establish systems of "remote monitoring" for countries of origin through digital technology and/or mobile messaging apps with backstopping protocols that guide the embassy or recruitment agent in the event that the worker makes no contact;
- Countries of origin should advocate to ensure MOUs and BLAs have provisions for workplace inspection for all migrant workers, including domestic workers.

### Self-monitoring

- Empower women to understand, monitor and report on their workplace conditions, and form supportive formal and informal peer networks;
- Strengthen advocacy and pressure on employers of domestic workers (including through supply chain and employment relations) to make a pledge to comply with decent work standards for domestic workers, and monitor working conditions at home;
- Countries of origin should pilot new mechanisms for regular and direct reporting by migrant women; using technology-based interventions where workers can check in on a regular basis providing feedback on conditions;
- Assess the Qatar self-sponsorship scheme to measure the effectiveness of self-monitoring and identify options to replicate the scheme.

### Worker, helper, auntie, maid?

In 2016, ILO and UN Women conducted a joint study to pave the way for more evidence-based policies and practices that are in line with the ILO Domestic Workers Convention, 2011 (No. 189), focusing on Malaysia and Thailand.<sup>17</sup>

By exploring the social dynamics and public attitudes influencing the employment experiences of migrant domestic workers, this study creates a more comprehensive picture of the domestic work sector, including with reference to the care economy.

### Complaints mechanisms

- Countries of origin should establish and strengthen formal complaints mechanisms, to include online reporting, complaint categorization and systemic assessment and referral on complaints;
- Labour attachés should be provided with training on how to categorize, respond to and refer complaints from migrant women;
- Countries of destination can establish transparent systems for publishing information on blacklisted recruitment agents and employers that migration actors in countries of origin can access.

### Awareness raising

- Countries of origin in collaboration with countries of destination could engage in research, awareness raising and advocacy campaigns focused on changing attitudes towards migrant women;
- Civil society and trade union groups in countries of destination (supported by international development partners) should develop campaigns, alongside community and religious leaders and youth groups, to change attitudes and accepted behaviours around migrant women workers and their contributions.



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