



FACULTY OF LAW
Lund University

Oksana Riazantseva

Labour migration in the Gulf: the responsibilities of sending and receiving states. Case study of Bangladeshi migrant workers in Qatar

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SUMMARY

The labour migration to the GCC states and Qatar in particular remains substantial. 94 % of Qatari labour force is migrant workers. After Qatar was awarded to host the FIFA World Cup 2022, migration is on the rise and Qatar is expected to welcome at least 1 million workers to build infrastructure for hosting the world-famous event. While Qatar is luring more workers, Asian sending countries are also trying to send more, because such labour migration is beneficial for both sides. However, hardship and diverse human rights violations of those who are behind the economic growth of sending and receiving states are often overlooked. The research identified violations, which migrant workers face during different stages of migration. Starting with deceptive practices by recruitment agents and subagents in the sending state, migrant workers suffer from dangerous working and living conditions in the country of destination. On the example of Bangladesh as a sending state and Qatar as a receiving state, the research continuously emphasized that both sides are responsible and have their obligations for migrant workers protection as members of international community.

The research has analyzed the international law related to the protection of migrant workers and the corresponding obligations of sending and receiving states. The analysis of the existing national legislation of Qatar and Bangladesh concluded that international obligations were not substantially incorporated in their national laws and are lacking the practical implementation. In Qatar, the restrictive sponsorship system remains under the national legislation and is the source of massive human rights violations; the freedom of association, collective bargaining, the right to strike are restricted, so migrant workers are unable to exercise them. In regards to the Bangladeshi obligations, the government is taking small steps in complying with its obligations; however, the legislation remains weak, systems of institutions and practices ineffective and are in need of reformation.

It was concluded that both Bangladesh and Qatar are responsible for the situation, migrant workers currently experience and they should take actions in order to comply with their obligations under the international law. Lastly, international organizations, non-governmental organizations and FIFA should rapidly act and put pressure on the government of Qatar to improve the existing legislation, practices and institutional system.

Key words: *Law, Human rights, Labour Law, ILO, Migrant workers, Qatar, FIFA.*

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ABBREVIATIONS

BAIRA	Bangladesh Association of International Recruiting Agencies
BMET	Bureau of Manpower, Employment and Training
BOESL	Bangladesh Overseas Employment Services Limited
BWI	Building and Wood Worker's International
CFA	Committee on Freedom of Association
DEMO	District Employment and Manpower Offices
DOLE	Department of Labour and Employment
ESCWA	United Nation Economic and Social Commission for Western Asia
FIFA	International Federation of Association Football
GCC	Gulf Cooperation Council
HRW	Human Rights Watch
ICCPR	International Convention for Civil and Political Rights
ICESCR	International Convention for Economic Social and Cultural Rights
ILO	International Labour Organization
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
MEWOE	Ministry of Expatriates' Welfare and Overseas Employment
MoLSA	Ministry of Labour and Social Affairs
MWC	International Convention on the Protection of the Rights of All Workers and Members of Their Families
NGO	Non-governmental organization
NHRC	National Human Rights Committee
NLRC	National Labour Relations Commission
OECD	Organization for Economic Co-operation and Development
OWWA	Overseas Workers Welfare Administration
PDOS	Pre-departure orientation seminars
PEOS	Pre-employment orientation seminars
POEA	Philippine Overseas Employment Administration
POLO	Philippines Overseas Labour Offices

QF	Qatar Foundation
QFMS	Qatar Foundation Mandatory Standards
SC	Supreme Committee
SCWWS	Supreme Committee Workers' Welfare Standards
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UN	United Nations

1. INTRODUCTION

1.1. Background of the study

1.1.1. Historical overview of migration in GCC

The Gulf Cooperation Council (GCC), which includes the membership of Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates have emerged to be the largest region relying on temporary labour migrants since the early 1970s. Nowadays migrant workers are involved in many development activities in the Gulf, contributing to the economic growth and development of the receiving countries. The rate of the population growth in the GCC is to be one of the highest in the world: from 4 million in 1950 to 40 million in 2006,¹ which was caused by the intense influx of foreign workers. With discovery of oil, the immense development began in the GCC states. However, as they were clearly lacking the local workforce, they began bringing expatriate workers and thus the migration process intensified.

To understand the on-going situation with migrant workers in the Arab Gulf, it is important to understand that during different stages of migration to the GCC, different nationalities were dominating. In the beginning of migration influx, the GCC governments were mostly attracted to employ Arab workers. Between 1970 and 1975 the majority of migrants was Arab population,² who migrated due to the unstable political situations in their home countries (Palestine, Yemen, Syria, etc.). However, between 1976-1979 the composition changed as far as Arab countries could no longer supply sufficient number of migrants. Even though they were still sending large numbers of workers, the number of Asian workers employed in the Gulf grew. By the second oil price hike in 1979, the government revenue rose sharply, which in turn intensified the migration flow. As an example, by 1980 Saudi Arabia welcomed an additional 700 000 migrant workers and the number of Indian workers alone exceeded 500,000 by 1980.³ Starting from this stage the process of migration can be characterized as the decline of the Arab migrant workers and the increase of the Asian.

The next migration stage can be characterized by the decline of oil prices in 1982, which was followed by the reduction of the development projects and demand on the migrant workers.⁴

¹ United Nations, Kapiszewski A., *Arab Versus Asian Migrant workers in the GCC countries*, UN Expert Group Meeting on International Migration and Development in the Arab Region UN/POP/EGM/2006/02, p. 3.

² Stalker P., *The work of strangers*, International Labour Organization, 1994 p. 240

³ supra note 2, p.239

⁴ supra note 2 p.8

In the 1990s with the end of the Cold War new migrant workers started to arrive, mainly from China and independent states of the former Soviet Union. It should also be mentioned that the Gulf Wars had impact on the migration process – it resulted in the displacement of 1,5 million people, as an example, one million Yemenis were expelled from Saudi Arabia and 200,000 Jordanians, 150,000 Palestinians, and 158,000 Egyptians (most of whom left Kuwait).⁵ The latter created working places, which were filled by South Asian migrant workers. For example, in Saudi Arabia, the percentage of Arabs went down from 91 % in 1975 to 33 % by 2004, while in Kuwait, the decline was from 80 % in 1975 to 30 % in 2003.⁶

Looking through diverse stages of the migration process clearly shows that the perceptions of Gulf States' governments and attraction towards Asian migrant workers were changing. Why was it happening? Firstly, Arab nationalities were prioritized due to linguistic, religious and cultural similarities, which were important for authorities in order to keep social and political stability. However, these views changed and governments decided to welcome Asian migrant workers, who were cheaper to employ, easier to lay off and believed to be more efficient, obedient and manageable.⁷ As an example, in Saudi Arabia in 1987, Asian migrant workers could be hired for construction for only half the price of what the Arab workers could command and by 1989 – by one-third.⁸ Additionally, Asian governments became actively involved in the recruitment process of their citizens, facilitating the steady flow of migrant workers to the Arab Gulf, which was in need of workers. Moreover, local religious Arab population was supporting such a wave of migration, as there is a big number of Muslims among Asians. Thus, for aforementioned reasons, the Gulf became and still is especially opened and welcoming towards Asian workers.

1.1.2. Why do workers migrate? The benefits of migration for sending and receiving states

This paper does not intend to discuss particular reasons for migration in detail, because they are usually individual and differ from one migrant to another. However, there are common pull and push factors, which enormously contribute to the migration flows, and should be

⁵ *ibid* p.8

⁶ *supra* note 1, p. 9

⁷ Ghobash M. *Immigration and Development in the United Arab Emirates*, Cairo: Al Waf Press 1986; *supra* note 1 p.7.

⁸ *Supra* note 2, p. 242

mentioned to better understand the whole process of labour migration. Either combined or separate elements of the political, economic or social situation most often create such conditions, when individuals or groups choose to emigrate. The influencing factors include poverty, unemployment, inequality between rich and poor, political or civil conflicts, demand of the labour market, the desire to improve the living standards of their families and enhance incomes, etc. For example, for Bangladeshi migrants, in addition to the aforementioned ones, push and pull factors include high wages in countries of destination, assistance of relatives living abroad, landlessness and lack of development in rural areas are influential.⁹

According to economic migration theories, under appropriate conditions the labour migration has a potential to offer benefits to all: migrants and their families (e.g. benefits of higher wages, new work-related skills), countries of origin (benefits from remittances, outlet for the excessive supply of labour, etc.) and countries of destination (meet their market needs, increased supply of labour reduces the wage growth thereby raising national income, etc.). However, remittances are the most tangible aspect of the labour migration. The World Bank study highlighted the fact that remittance flows were the second largest source, behind Foreign Direct Investment, of external funding for developing countries.¹⁰

As an example, dimensions of remittances sent by Bangladeshi migrant workers increased from US\$ 23.7 million in 1976 to US\$ 2,617.9 million in 2002.¹¹ According to data, in 2012 they sent home 1,22 billion in remittances, contributing to over 10 per cent of the national income.¹² The earnings from migrant workers' remittances are higher than those from the garment sector, which is the central industry in Bangladesh economy.¹³ However, all those numbers are official numbers, which in reality are much higher, because of widespread use of unofficial methods for remittances flow. For example, in Bangladesh it is called the hundi system – when the migrant gives money to an intermediary, who contacts an agent in Bangladesh, who, in turn, gives to the recipient in Bangladesh, the equivalent of the money the migrant has given to the intermediary.¹⁴ Despite the fact that the hundi system is mostly based on trust, it is more

⁹ ILO: *The Cost: Causes of and redress related to the high recruitment and migration costs in Bangladesh*, 2015, p.2

¹⁰ Ratha D., Global Development Finance, “*Workers’ remittances: An important and stable source of external development finance*”, 2003, p.157 available at

<http://siteresources.worldbank.org/INTRGDF/Resources/GDF2003-Chapter7.pdf>

¹¹ Ahn Pong-Sul, *Prospects and Challenges of Out-Migration from South Asia and its Neighbouring Countries*, Labour & Development, Volume 11, №1, June 2005, p.14.

¹² Equal times, News at work, *Special Report Qatar*, p.5 available at http://www.equaltimes.org/IMG/pdf/equal_quatar_en.pdf

¹³ supra note 11, p.14.

¹⁴ IOM: De Bruyn T., Kuddus U., *Dynamics of Remittance Utilization in Bangladesh*, IOM Migration Research Series, №18,

widespread than official channels. The effect of remittances on the development of communities is highly debated by scholars. On the one hand, opponents of labour migration connect it not only to drain migrant sending areas of their labour and capital, depressing the local production and encouraging the importation of foreign goods,¹⁵ but also with a widespread inflation in some labour sending states.¹⁶ On the other hand, proponents of the labour migration believe that it brings development in societies and help “to raise income, obtain funds to invest in new activities, and insure against income and production risks”¹⁷. Remittances go to migrants’ households, improving the living conditions of families, including better nutrition, housing, health and education. For example, Kuhn and Menken found evidence in one of the district areas in Bangladesh that if there were no remittances, “children’s access to education would have been severely hindered”¹⁸. Furthermore, according to Kuhn¹⁹, in Bangladesh remittances are the social security resource base for elderly, which are used to take care of the aging population.

Mostly, authorities from countries of origin view the impact of migration and remittances in particular as positive, especially because of the need for the foreign exchange to finance large trade deficits and external debts.²⁰ To exemplify the latter, the Bangladeshi Foreign Minister said that the government is aiming to increase the number of migrant workers and professionals to Qatar for the World Cup 2022 preparations,²¹ which is connected to contributions migrant workers make for the national income.

In regards to receiving countries, the migrant workers provide the cheap basic workforce contributing to the economic growth of the state. Only 6% of the work force constitutes Qatari citizens that are not involved in unqualified and underpaid construction work. Thus, the latter proves that Qatar is, among the other GCC states’ economies, and will be dependent on the manual labour of migrant workers, who are basically building the economy of the state.

To sum up, the movement of labour might be seen as beneficial from aforementioned perspectives, however it is also viewed as a challenging one, as far as it can be seen as

2005, p.30

¹⁵ Halliday F., Transnational Institute Amsterdam, *Labour Migration in the Arab World: The Ugly Face of the New Economic Order, Labour Capital and society* 15:1, 1982, p. 21.

¹⁶ *ibid*, p.21

¹⁷ *supra* note 14, p. 41

¹⁸ *supra* note 14, p. 42

¹⁹ *ibid*

²⁰ International Labour Conference, 92nd Session, *Towards the fair deal for migrant workers in the global economy*, Report 6, 2004, p.25

²¹ *supra* note 12, p.5

contributing to inequality.²² In Bangladesh, the gap in the socio-economic differences between remittance receiving and non-receiving families widened due to the inflow of remittances.²³ Moreover, labour migration creates the dependency of migrant workers on the remittances, which can endanger the living of migrant workers and their families, if the political, economic situation in host countries changes. As it was concluded in the research by IOM, in Bangladesh, many families will struggle meeting their basic needs if they are deprived of the income they get from remittances.²⁴

1.1.3. Who are they? Identifying the migrant workers in the GCC

What is the profile of an average migrant worker who is coming to the GCC states seeking a better future? Firstly, according to N.M.Shah²⁵ there is a greater demand for male workers to fill occupations, which are male dominated (only 28,4 % were women among non-nationals). To exemplify the latter, according to a survey by the United Nations Economic and Social Commission for Western Asia,²⁶ in Qatar 23,4% of non-nationals are women, while in Saudi Arabia the corresponding figure is 31,2%. Even though there is a huge demand for Asian domestic workers in the Gulf states, and the proportion of female migrants is growing, there is still a tremendous gender imbalance.

In regards to data from sending countries, men are in majority and significantly outnumber women. As an example, according to the ILO working paper regarding the migration flows from Bangladesh, the predominant number of migrants are men, which can be connected to temporary bans, imposition of government restrictions on the migration of unskilled and semiskilled female workers.²⁷ However, on the other hand, countries such as Indonesia, the Philippines and Sri Lanka are generally sending more women than men. For example, the number of female migrant workers, sent from the Philippines was fluctuating between 69% in 2000 and 52,8% in 2009.²⁸ Thus, it is clear, that there are differences in gender distribution between sending countries.

²² IOM: *Country Migration Report. The Philippines*, 2013, p. 26, p.119

²³ supra note 14, p. 43

²⁴ ibid

²⁵ Shah N.M., *Labour Migration from Asian to GCC Countries: Trends, Patterns and Policies*, Middle East Law and Governance 5 (2013), p. 51

²⁶ ibid, p.51.

²⁷ ILO: Siddiqui T. *International labour migration from Bangladesh: A decent work perspective*, Working paper № 66, 2005, p.10

²⁸ supra note 25, p. 53.

Concerning the level of education and skills, the majority of migrant workers are unskilled or low-skilled (various countries use different occupational groupings for presenting data by skill level). As an example, low-skilled workers comprised about 73% of the migrant flows from Bangladesh in 2010, while unskilled workers comprised half of all workers from Pakistan in 2007.²⁹ The majority – more than 90% of all foreign workers of each GCC country, except UAE, according to the GCC Secretariat data - are employed in the private sector. As example, the lowest percentage was in Qatar (92,6%), while the highest – in Bahrain (98,5 %).³⁰ The latter means the private sector consists of unskilled and low-skilled migrant workers, with very few skilled workers.

In regards to the distribution by occupation, the Asian workers in the Gulf are concentrated in production work and low-qualified labour, while nationals are occupying administrative and clerical positions. A review of available data shows that most migrants are concentrated in construction, hotels and restaurants, wholesale and retail trade, and domestic work with possible variations due to differences in economic and population structures. The latter is confirmed by data from Oman for 2007, which reveals that the majority of foreign workers are concentrated in construction, repairs, domestic service, agriculture and forestry, and manufacturing.³¹

According to research conducted by Gardner A. the majority of migrant workers in Qatar are men with low-income, who were staying in the Arab Gulf temporarily.³² Generally, the average intended stay for migrant workers from some states was lower, than for other states. For example, migrants from Bangladesh, India, Philippines, Nepal were intended to stay between 2 and 6 years, while those from Pakistan and Egypt – not less than 6-7 years.³³ In regards to the profile of migrant workers from Bangladesh in the GCC states, according to the aforementioned data, is predominantly a male phenomenon.³⁴ According to the data, over 75% of returned migrants went as unskilled workers to the Gulf, while almost 60% had primary education alone

²⁹ Ibid, p.53.

³⁰ ibid, p. 56.

³¹ Arab Employment Forum Beirut, *International labour migration and employment in the Arab region: Origins, consequences and the way forward*, Thematic Paper, October 2009, para 20

³² Gardner A., Pessoa S., Diop A., Al-Ghanim K., Le Trung K., Harkness L., *A Portrait of Low-Income Migrants in Contemporary Qatar*, Journal of Arabian Studies 3.1 (June 2013), p. 4

³³ ibid.

³⁴ Rahman Md Mizanur, *Bangladeshi labour migration to the Gulf states: patterns of recruitment and processes*, Canadian Journal of Development Studies, Volume 33, №2, June 2012, p. 219.

or no formal education at all.³⁵ The data of age of migrant workers indicate that the most migrants are young, more precisely – 15-30 years of age.³⁶

1.2. Statement of the problem

According to the Qatar Ministry of Development and Statistics, the total population of Qatar is more than 2,3 million people,³⁷ with only around 278 000 of Qatari nationals.³⁸ Qatar is one of the GCC states, and of these states it has the highest per-capita income and the lowest level of unemployment. Oil and gas account for 92% of export earnings and 62% of government revenues.³⁹ Rapid development is inherent to the GCC states, but the lack of a local labour force consequently triggers the rapid growth of migration flow. 94 % of the Qatari labour force is composed of migrant workers.⁴⁰ After FIFA voted to award the 2022 tournament to Qatar, the country started preparations for the big sport event, building up new infrastructure projects. It is estimated that Qatar will spend US\$117.5 billion of capital on infrastructure and diverse building projects⁴¹ before the World Cup. The latter indicates the need for labour in Qatar and the influx of workers from outside. It is estimated that at least 1 million migrants will be needed to get the country ready to the World Cup.⁴²

The majority of the workers who are coming to the GCC and Qatar in particular are from the following Asian countries: the Philippines, Nepal, Bangladesh, Pakistan, India and Sri Lanka. Generally the estimated annual outflow of migrants from five abovementioned countries totals 2.5 million people, 60-96% of whom are going to the GCC states.⁴³ For example, 96% of all Indian migrant workers and 60% of all Bangladeshi migrant workers go to the Gulf states.⁴⁴

To evaluate closer the situation with Bangladeshi workers, according to the available statistics from 2013 the number of migrant workers was 409 000, around 60 000 of whom were

³⁵ Plant R., *Temporary Contract Labour in the Gulf States: Perspectives from two countries of origin*, summary paper based on studies commissioned by ILO for the Gulf Forum on Temporary Contractual Labour, Abu Dhabi, 2008, p. 10

³⁶ supra note 14, p.19

³⁷ not including people with resident permits and Qatari nationals that were outside the country at the time

³⁸ Population in Qatar by nationality, available here <http://www.bq-magazine.com/economy/2013/12/population-qatar>

³⁹ CIA, *The world Factbook: Qatar*, Economy-overview, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/qa.html>

⁴⁰ Amnesty International, *Qatar: Treat Us Like We Are Human: Migrant Workers in Qatar* 2013, p.2 available at <http://www.amnesty.org/en/library/info/MDE22/011/2013/en>

⁴¹ ibid, p. 10

⁴² The Guardian, *Qatar World Cup construction 'will leave 4,000 migrant workers dead'*, available at <http://www.theguardian.com/global-development/2013/sep/26/qatar-world-cup-migrant-workers-dead>

⁴³ Labour Market Trends Analysis and Labour Migration from South Asia to Gulf Cooperation Council Countries, India and Malaysia p.5-6

⁴⁴ ibid

employed in Qatar.⁴⁵ However, the GCC governments do not always reveal statistics on the composition of their workforces by nationality, and data from secondary statistics and interviews with embassy officials often differs. According to the latter, the number of Bangladeshi workers in the GCC states is 1.7 million workers, 137 000 of whom are employed in Qatar.⁴⁶ This number will definitely continue to grow as far as the government tends to send more workers in connection with the 2022 World Cup.

Obviously, migration has become beneficial for both countries of destination and origin, assisting their economic growth and development, however, it also appears as complex and exploitative phenomena. Migrant workers in Qatar face hardships and violations of their human rights and labour rights in particular during stages of recruitment in the country of origin, transit, arrival and stay in the country of destination. Thus, the problem of migrant workers protection concerns both countries, Bangladesh as an example of a country of origin and Qatar as a receiving country. It is essential not to neglect the important role of the sending country and its obligations to protect migrant workers, which is often overlooked in researches.

Qatar remains one of the states on the international arena, which has ratified the least number of international instruments for human rights protection; with the remaining strict sponsorship system, which tremendously limits the rights of migrant workers. Bangladesh also lacks the comprehensive framework of legal protection of human rights of migrant workers. The lack of recognition of international instruments of human rights' protection, inadequate national legislation and lack of effective policies result in difficulties to list obligations, which states have towards protection of migrant workers' rights and which obligations they fulfill in practice. The policies existing in Bangladesh and Qatar need reforms in line with their obligations under international human rights law.

1.3. Objectives and research questions of this study

The main objective of this study is to understand challenges, which migrant workers face during the whole process of migration to the Gulf and in the example of Qatar and Bangladesh to explore what obligations sending and receiving states have. The analysis of international laws, which those two states are bound by, the national legislation, policies and practices will be

⁴⁵ *ibid*, p.5,7.

⁴⁶ *Ibid*, p.8.

needed in order to assess how states comply with their obligations in protection of migrant workers rights and their fundamental right to work. The research will underline the important role which sending state plays in the protection of migrant workers. The best practices of the Philippines will be analyzed to exemplify how the sending state can more effectively protect migrant workers' during the migration process through national institutions and existing policies, which it implements in practice. The introduction of the Philippine best practices as a sending state – will be beneficial for reaching the final recommendations and conclusions of this paper.

Furthermore, the research tends to conclude and emphasize what should be done by Bangladesh and Qatar to better minimize risks and promote safe migration for the labour migrants.

Thus, based on the objectives the research questions of this paper are:

- 1) What are the challenges the construction migrant workers face during the different stages of migration to Qatar?
- 2) Is the national legislation of Qatar and Bangladesh in compliance with the international obligations on migrant workers protection, which they have?
- 3) Do the existing practices and policies on migrant workers satisfy the obligations of receiving and sending states in regard to protection of migrant workers? If they meet the minimum legal requirements, could they be improved, as a practical matter and how?

1.4. Methodology

The research is based mainly on the qualitative data analysis, which is focused on fulfilling objectives and research questions of the paper. Due to the lack of official information and lack of civil society organizations operating inside the countries of focus, this research is extensively based on the secondary sources. The thesis is based on press reports, statistics, reports of the governments, reports and studies of international organizations and civil society. It will also analyze the existing national legislation in the countries of focus – Bangladesh and Qatar.

1.5. Significance of the study

The issue, which this study will focus on, is current and up-to-date in connection to the World Cup 2022, which will be held in Qatar. Despite the numerous number of international reports and publications on the situation of migrant workers in the GCC and Qatar in particular, little was done on the actual obligations, which not only the country of destination has, but also the sending state. Furthermore, assessing two particular legal regimes of countries, which are parts of labour migration process, is important to identify whether the country of destination and the country of origin are complying with obligations, undertaken with ratification of the international human rights legislation. The research is relevant for picturing the situation Bangladeshi construction workers face in Qatar during the preparations to the Qatar World Cup. The analysis of best practices of the Philippines as another migrant sending state, will be a good example how the state puts efforts to follow its obligations on migrant workers' protection.

The present study might be beneficial for the stakeholders engaged in the protection of the migrant workers in the Gulf such as NGOs, governmental institutions and scholars focused on those issues. It will be an example of how to understand and define the role of receiving and sending states and how the practices and policies adopted in countries correspond to their obligations, which they have in the process of labour migration.

2. CHALLENGES OF THE MIGRANT WORKERS

This chapter provides the overview of challenges, which migrant construction workers face during the entire process of migration. Identification of recruitment channels, which are used to employ Asian migrant workers in the Gulf will be beneficial to understand what human rights violations workers experience during the stage of recruitment, while being in the country of origin. Further, the chapter provides an overview of the situation, faced by migrant workers in the country of destination. False promises of high salaries lured workers to the oil-rich Gulf countries, where they are forced to endure hazardous living and dangerous working conditions, lack of access to medical care, etc. The sponsorship system will be examined as one of the sources of violations of human rights and workers' rights in particular. In addition, restrictions on freedom of association and collective bargaining, lack of labour inspection and problems of non-, under - and unequal payments will be analyzed in this chapter.

2.1. Recruitment practices and violations of human rights of migrant workers during the stage of recruitment

2.1.1. Recruitment channels

Migrant workers start facing challenges in the country of their origin, during the initial stage of migration. There are diverse channels, which are used by migrant workers to facilitate the recruitment process. According to a report of the Qatar Foundation there are four types of recruitment which are used in the Asian sending countries: direct employer recruitment, government employment services, individual brokers with access to migrant networks and private employment agencies.⁴⁷ A brief description of those channels is necessary in order to understand violations, which they are involved in during the initial stage of the recruitment.

Through the government employment services all sending countries are trying to encourage and regulate migration processes. Examples of such governmental bodies are the Philippines Overseas Employment Administration or the Ministry of Expatriates' Welfare and Overseas Employment in Bangladesh. In Bangladesh there is also the Bureau of Manpower, Employment and Training (BMET), which operates as a governmental regulator, and Bangladesh Overseas Employment Services Limited (BOESL) – a government-run recruitment agency. However, only a handful of potential migrant workers use governmental agencies for seeking jobs abroad, because of the high number of private agencies and sub-agents, who work on the local level, which makes their services more comfortable and accessible for potential migrants. For example, in Bangladesh, according to the IOM between 1976-2000, there were only 2% of migrant workers who used governmental channels to get a job abroad.⁴⁸

There have been a remarkable outspread of private agencies and according to the ESCWA report, 90 % of labour recruitment in Bangladesh, India, Pakistan, Sri Lanka is done through the private agencies.⁴⁹ In Bangladesh, for example, private recruiting agencies are licensed by the Government and more than 800 recruiting agencies are operating there.⁵⁰ The private recruitment agencies recruit and guide migrants through the migration process in diverse

⁴⁷ Jureidini Ray, *Arab Gulf States: Recruitment of Asian Workers*, Gulf Research Centre Knowledge for all, Gulf Labour Markets and Migration, №3/2014, p. 51.

⁴⁸ Supra note 9, p. 13.

⁴⁹ Jureidini R., *Migrant Labour Recruitment to Qatar*, Report for Qatar Foundation Migrant Workers Welfare Initiative, 2014, p.53

⁵⁰ Economic and Social Commission for Asia and the Pacific, *Inter-Regional Report on Labour Migration and Social Protection*, 2013, p. 29.

locations. The private agencies collect information about vacancies and demand letters for placement of the workers from the concerned foreign employer.

However, the usage of sub-agents and intermediaries for the migration is widespread. In Bangladesh about 53 % of migrant workers migrated through using the service of illegal intermediaries and sub-agents.⁵¹ Sub-agents usually have a role of mediators in the recruitment process, between the recruitment agencies and migrants – taking the fee from both.⁵² They are also connected to the illegal intermediaries in the country of destination, who identify vacancies on the ground.

Due to the fact that licensed recruitment and governmental agencies are located in main cities, potential migrant workers tend to use services of local sub-agents, even if such channels are not safe and more expensive. Sub-agents tend to gain trust easily, because they usually represent rural religious, economic or political elites based in towns and villages.⁵³ However, such sub-agents operate outside the regulatory framework, thus there is no control over the information they provide the potential migrant workers with, what fees they charge for services and how to make them responsible for their acts.⁵⁴

It should also be noted that amount of workers who were employed in the Gulf States happened to be there through friends, relatives or other social networks. According to a research done by Plant R., based on studies commissioned by the ILO, in Pakistan and Bangladesh, social networks are the major source of information and job opportunities abroad.⁵⁵ Usually the cost of migration through their own contacts is lower than through the use of registered recruiting agents; however, this type of migration is also dependent on bribes, purchase of employment visas, which keep the all-in-all cost quite high.⁵⁶ Thus, the broad system of recruiting channels creates the situation that recruiting agents and/or sub-agents evade responsibility for violations of human rights of migrant workers.

⁵¹ Supra note 9, p.15

⁵² supra note 49, p.59

⁵³ *ibid.*

⁵⁴ supra note 50, p. 29

⁵⁵ supra note 35, p. 11,12

⁵⁶ supra note 9, p.18

2.1.2. Violations of human rights of migrant workers during the stage of recruitment

The private recruitment agencies most often are the main actors in the migration process during the first stage of migration, which are also responsible for many serious malpractices committed against migrant workers. Those include open and hidden costs for visa fees, medical test, insurance, emigration clearance and airfare, false promises about the salaries and type of jobs, payment terms and terms of contracts, etc. Firstly, recruitment fees, which migrant workers have to pay in order to migrate, are the key factor of exploitation and abuse on this stage of migration across the Gulf.⁵⁷ According to the research done by HRW on Qatar, those fees are ranging between 726 \$ and 3, 621\$.⁵⁸ HRW researches⁵⁹ on the different GCC countries prove that workers are willing to migrate and get jobs, so they borrow money, mortgage properties, take loans from recruiting agencies with monthly interest rates. Due to the high interest rates (varies from 3-5 % per month to 100 % interest rate on their debt per year)⁶⁰ they usually have to repay the loans for several years. The latter results in a big deduction of their monthly income.

Secondly, the common practice among intermediaries and recruiting agencies, which puts a worker in a vulnerable position and increases the cost of migration, is the practice of “visa trading”.⁶¹ Because the demand for visas to the Gulf is largely outnumber the supply,⁶² the visa-trading market is blooming. It is usually practiced with so called “free visas” – a visa, where the recipient is not restricted;⁶³ it is procured by the employer, who will not employ the migrant in the end.⁶⁴ This kind of visas is legal, but paradoxically when a free-visa holder starts working for others, he becomes illegal by law and vulnerable to deportation.⁶⁵ Such “free visas” are sold to several recruiting agents, who later offer the same work place to few potential migrant workers in the country of origin. As a result, those who arrive later to the receiving country, face the

⁵⁷ Human Rights Watch, *The Island of Happiness Revisited*, 2012.

⁵⁸ Human Rights Watch, *Building a Better World Cup. Protecting Migrant workers in Qatar Ahead of FIFA 2022*, 2012, p.52.

⁵⁹ Human Rights Watch, *Building a Better World Cup. Protecting Migrant workers in Qatar Ahead of FIFA 2022*, 2012; Human Rights Watch, *Building Towers, Cheating Workers. Exploitation of Migrant Construction Workers in the United Arab Emirates*, 2006; Human Rights Watch, *The Island of Happiness Revisited*, 2012.

⁶⁰ Supra note 58, p.52

⁶¹ supra note 49, p.90.

⁶² United Nations, Shah Nasra M., *Restrictive labour immigration policies in the oil-rich Gulf: effectiveness and implications for sending Asian countries*, United Nations Expert Group meeting on Social and Economic Implications of Changing population Age structure UN/POP/EGM/2006/03 5, 2006, p.7.

⁶³ supra note 49, p.90.

⁶⁴ ibid.

⁶⁵ Rahman Md Mizanur, *Recruitment of Labour Migrants for the Gulf States: The Bangladeshi Case*, Institute of South Asian Studies, working paper №132, September 2011, p. 14.

threat of being deported because someone else have taken their job and they become undocumented migrants.⁶⁶ Migrants desperately looking for job, are ready to pay to get one and prices are not regulated, thus it has become a multi-million dollar industry,⁶⁷ which is very hard to curb.

Migrants are most often unaware of payment terms, salary deductions and terms of contracts, which results in the increased vulnerability of migrants. Many of those problems begin with deception by recruitment agents and subagents in the country of origin,⁶⁸ who give false promises about the work conditions, salaries, type of work, etc. There are many examples where the actual salaries of workers were only half the one that was promised by agents.

According to the HRW report migrant workers either did not sign contracts before migrating, or signed one contract before departure and a new contract upon arrival in Qatar.⁶⁹ Another factor, which contributes to the vulnerability of migrant workers, is the low level of literacy. It precludes their understanding of terms and conditions of contracts, net pay and salary deductions, because contracts are usually offered either in English or in Arabic. Many workers reported to sign contracts under coercive conditions: some workers said that employers forced them to sign contracts on the spot, sometimes at odd hours, without explaining their contents.⁷⁰ While other workers interviewed claimed that employers in Qatar simply signed their contracts for them.⁷¹

In the study by the IOM it was concluded that in Bangladesh, 90% of workers do not see the contract prior to departure, which covers the information on the nature of the work, salary, duration and other conditions.⁷² After arriving to the country of destination, 21% of those Bangladeshi migrant workers, who had job contracts found that the job, which they are supposed to do is different from the one promised and 46 % of migrants did not get the remuneration they were promised.⁷³

To sum up, in the majority of cases when the worker finds out that he was cheated, he has

⁶⁶ supra note 9, p. 36.

⁶⁷ Supra note 62, p. 7.

⁶⁸ DLA Piper, *Migrant Labour in the construction sector in the State of Qatar*, 2014, para 144.

⁶⁹ supra note 58, p. 57

⁷⁰ supra note 58, p. 60

⁷¹ ibid .

⁷² supra note 9, p.35

⁷³ ibid.

no other choice than to accept the offered conditions. The employers are counting on the vulnerability of workers, due to debts they and their families turned out to be in.

2.2. *Exploitation of migrant workers in the country of destination*

2.2.1. The kafala system

Kafala is a sponsorship system in the GCC countries, including Qatar, which migrant workers are subjected to. The authorities have claimed that the sponsorship system is a necessary instrument used to control the large movements of migrant workers and protect employers who invested money into bringing the workers to the country.⁷⁴ However, these claims are inadequate for keeping the legislation, which exposes migrant workers to abuses and exploitation due to the inordinate control given to the employers.⁷⁵

The kafala system ties the foreign workers to a single sponsor (who can be either an individual or a company), who are basically in charge of the hired workers. Migrant workers need sponsors' permission for changing jobs, issuing/prolonging their residence permits or even leaving the country. Such an unequal power relationship makes workers vulnerable to exploitative conditions. The most frequent cases include the confiscation of passports and work under abusive living and working conditions due to sponsor's refusal to give the permission to change a workplace. By denying to issue exit permits, employers prevent workers from returning home at the end of their contracts, keeping them working for longer. The latter gives rise to circumstances of apparent forced labour.⁷⁶ According to Amnesty the employers through sponsorship laws are provided with legal tools that are used to intimidate workers and force them to continue working, precluding them from taking actions against their employers.⁷⁷ Thus, many construction migrants workers face the situation when they are "trapped" in abusive working conditions, not having any other choice but to continue working, because they lack the ability to change employer and also have debts to repay.

2.2.2. Living conditions

After arrival to the country of destination, among other violations, the majority of

⁷⁴ ITUC, *Union View №21*, 2011, p.16

⁷⁵ supra note 58, p. 69

⁷⁶ supra note 68, p.45

⁷⁷ supra note 40, p.4

migrant workers suffer from the poor accommodation and squalid living conditions. ITUC reported that migrants complain that the smaller companies provide with the most degraded housing, while the bigger international companies are trying to improve conditions and provide a better housing.⁷⁸ Mostly, construction migrant workers are placed in “labour camps” – dormitory-style dwellings on the outskirts of urban areas.⁷⁹

Amnesty, HRW, ITUC in their reports exemplified what are the real conditions of living for the migrant workers in the Gulf. According to the Amnesty report on Qatar, in the Industrial Area it is a routine to be 10-15 people in a small rooms;⁸⁰ sometimes workers had to sleep on wooden planks on the cement floors⁸¹ or even in shifts because of lack of spacing;⁸² air-conditioning is broken or not installed at all,⁸³ etc. Allegations in the labour camps also include poor sanitation, as the water and electricity supply is very limited. Qatar National Human Rights Committee surveyed 1,114 construction workers for their study and concluded that 17.3 % of those surveyed said that their employers did not provide drinking water at their accommodation. Thus, the workers are facing difficulties in maintaining hygienic environment in labour camps because of the lack of resources and flagrant living conditions. The latter causes that migrant workers in the Gulf become extremely vulnerable to diverse infectious diseases.

2.2.3. Working conditions or safety and health under threat

According to the number of reports, there is a high level of accidents in the construction industry in the Gulf States, because of the hazardous working conditions, which result in injury and death of workers. There is a lack of data and statistics on accidents in the workplace, and those, which exist, are not complete and available numbers are usually lower than the real ones. For example, the Dubai Municipality reported 34 deaths of construction workers at their workplaces in 2004 and 39 – in 2005, however, according to the independent investigation by the Construction week and record of the Indian embassy in Dubai – there were around 88 only

⁷⁸ supra note 74, p. 10

⁷⁹ Human Rights Watch, *Building Towers, Cheating Workers. Exploitation of Migrant Construction Workers in the United Arab Emirates*, 2006, p. 23 available at <https://www.hrw.org/report/2006/11/11/building-towers-cheating-workers/exploitation-migrant-construction-workers-united>

⁸⁰ Amnesty International, *The dark side of migration. Spotlight on Qatar's construction sector ahead of the World Cup*, 2013, p.47.

⁸¹ supra note 74, p.9

⁸² supra note 80, p.48

⁸³ ibid.

Indian migrant workers, who died in 2004 because of site accidents.⁸⁴

It is widely reported by HRW, Amnesty and ITUC, that construction workers suffer many diseases because of high temperatures. According to Dubai chapter of the World Safety Organization, heat-related illnesses are the primary health issues construction workers face.⁸⁵ Due to the high heat and lack of drinking water, the probability of heart attacks is very high, especially in summer months. For example, the investigation by the UK Guardian newspaper in Qatar found that at least 44 Nepalese workers died between 4 June-8 August 2013, more than half dying of heart attacks, heart failure or workplace accidents.⁸⁶ Despite the fact that ministries of Labour issue diverse decrees on banning outdoor activities in the midday between June and August, companies disregard those, and workers continue to work during those hours of extreme heat. To exemplify the latter, HRW reported that in summer 2005 after the ban was enforced in UAE, more than 60 % of inspected companies did not follow it and no company was fined for breaking the law.⁸⁷

The safety of migrant workers is blatantly disregarded and workers suffer from serious occupational injuries. HRW and Amnesty report that some workers were provided with safety trainings and some protection from their employers, while the majority did not receive any trainings nor safety equipment. For example, migrant workers told HRW and Amnesty that they were provided with boots and overalls, but not always with helmets,⁸⁸ other claimed to be forced to pay fully or partly for their own equipment.⁸⁹ It was also reported that in case of inspection the workers got instructions from employers to hide until the inspection finishes.⁹⁰

Such poor accommodation and dangerous working conditions have a strong impact on the health, however there are problems with the access to healthcare for migrant workers in the Gulf. The access to the medical care is denied if a worker was not given a residency permit. Furthermore, there are examples when workers are not treated, but simply sent back to their home countries; when workers have to cover medical fees themselves; when they are forced to work while being sick or their salaries are cut because of sicknesses. In addition, Amnesty

⁸⁴ supra note 79, p.40.

⁸⁵ Sönmez S., Apostolopoulos Y., Tran D. and Rentrope S., *Human rights and health disparities for migrant workers in the UAE*, Health and Human Rights, Vol. 13, No. 2 (December 2011), p. 4.

⁸⁶ The Guardian, *Revealed: Qatar's World Cup 'slaves'* available at <http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves>

⁸⁷ supra note 79, p.42

⁸⁸ supra note 80, p. 46

⁸⁹ supra note 58, p.68.

⁹⁰ supra note 80, p.46

reported that when workers got badly injured, the companies immediately cancelled their residence permits, so they will get the treatment in the country of origin, instead of treating them in Qatar.⁹¹

Moreover, the vulnerability of migrant construction workers increases due to the lack of labour inspectors on working sites. According to the information provided by the Special Rapporteur in 2014, there were around 150 inspectors in Qatar. According to the Amnesty investigation, the number of inspectors was increased to 243 in May 2015.⁹² However, in the investigation done by the ILO on the complaint on the forced labour in Qatar, the Government claims that the number of inspectors has risen to 294, which is in conformity with the number indicated by the ILO (1 inspector per 10000 workers).⁹³ Thus, it is difficult to measure the changes in this problematic area.

2.2.4. Low and late wages, underpayment or non-payment of wages

The majority of migrant workers in the GCC states face the problem of low, non-regular, and underpaid wages. Usually the majority of migrant workers in the Gulf have families and dependent children, thus it is of utmost importance to be paid on time to support them and repay the loans. The HRW research on Qatar concluded that 33,9 % of workers interviewed did not get their payments on a regular basis.⁹⁴

There is a number of widespread practices used by the employers, which aggravate the situation of migrant workers even further. The GCC states use practices of “deposit salary”–withholding between one and three months’ wages to prevent workers from quitting jobs earlier or running away;⁹⁵ “no salary” policy, when workers reported to work without being paid, and the company was suddenly closing for a month and opening again, and continued the same practice without remunerating the workers.⁹⁶ Importantly, what was mentioned by Amnesty and HRW is that non-payment or underpayment of wages for months is more widespread in the small

⁹¹ supra note 80, p 44.

⁹² Amnesty International, *Promising little, delivering less. Qatar and migrant labour abuse ahead of the 2022 Football World Cup*, 2015, p.3, available at <http://www.amnestyusa.org/research/reports/promising-little-delivering-less-qatar-and-migrant-labor-abuse-ahead-of-the-2022-football-world-cup>

⁹³ Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), made by delegates to the 103rd Session (2014) of the International Labour Conference under article 26 of the ILO Constitution

⁹⁴ supra note 58, p.63.

⁹⁵ ibid

⁹⁶ supra note 80, p. 41

companies, which employ 50-200 workers. As mentioned above, workers always receive way lower amounts compared to those salaries, which were promised to them upon the arrival.

Another problem which migrant workers experience in the Gulf countries is a problem with unequal pay. The payment is rather based on nationality, gender and other demographic characteristics, than on skills and individual experiences. It was proven in the research by Qatar Foundation that workers of different nationalities in the same company who are doing the same job, receive different salaries in return.^{97 98}. Additionally, many workers interviewed by HRW complained that their salaries are failing “to keep up with inflation”.⁹⁹ While expenses are increasing the salaries of unqualified workers remain the same regardless “whether the worker worked at the same company for two or ten years”.¹⁰⁰ However, as HRW states in September 2012 salaries for Qataris working for the government were increased between 60 and 120% in regards to inflation rate.¹⁰¹ Thus, the workers remain extremely economically vulnerable due to the harsh practices and underpayment.

2.2.5. Other violations migrant workers face in the migration process

The other problem, which exists in the Gulf States, is the restriction on freedom of association and collective bargaining. For example, Qatar, UAE, Saudi Arabia have legal regulations, which restrict workers’ organizations in such a way that effective trade unions cannot exist. The existing legislation contains the excessive requirements, which impede freedoms of association, collective bargaining and right to strike.

According to ITUC, in Qatar among the other GCC states, the chances to exercise the right to strike, which is technically established in the law, remain very little due to restrictions and procedural barriers. The response for such actions can be really harsh and include force, threats of deportations or arrests. It was reported in the media that 90 Nepali workers of a construction company were arrested in Qatar and deported for striking against a company, which

⁹⁷ four masons from India were receiving different salaries, which varied between 202-243\$, however, masons from Turkey in another company received 1135\$. The other example is two Nepalese, working in the same company, were getting different salaries, which were between 162-176\$, while 2 carpenters who arrived only 2 months apart were receiving salaries between 162 and 216 \$ respectively.

⁹⁸Supra note 49, p.110.

⁹⁹ supra note 58, p.62.

¹⁰⁰ ibid

¹⁰¹ supra note 80, p.62

violated agreement with them.¹⁰² ITUC reported that around 70 Bangladeshi workers were arrested and then deported from Dubai, who were among 3, 000 construction workers protesting for an increase of salaries, which were incredibly low.¹⁰³

Currently the realization of the right of access to justice for migrant workers who are the victims of labour exploitation is quite complicated, lengthy and expensive. Workers do not rely on the mechanisms of protection too much, due to the number of obstacles they face. There are financial, language or physical barriers of bringing claims to the relevant authorities. Other reasons also include the lack of knowledge about the mechanisms of redress and the risk of abuse, workers face for filing formal complains.

3. LEGAL FRAMEWORK FOR THE PROTECTION OF MIGRANT CONSTRUCTION WORKERS

International legal framework on protection of migrant workers' rights includes the legal mechanisms adopted by the UN and the ILO. It is important to analyze the international instruments and define the obligations of the sending and receiving states according to the international law. This paper does not intend to analyze all legal documents in detail, which concern the protection of migrant workers, but to concentrate only on those, which Governments of Bangladesh and Qatar has ratified. It will be beneficial to better understand the particular obligations those states have under international law. It is important to consider the ILO complaints against Qatar, which provide with useful analyses of its national legislation and international obligations, which are not fulfilled. The analyses of national laws gives the overview of how the situation is regulated on the national level and how it corresponds their international obligations.

3.1. International Legal Framework on protection of migrant construction workers

3.1.1. The UN standards

The Universal Declaration of Human rights (UDHR) is the core document for human

¹⁰² Migrant Rights, *Nepali workers deported from Qatar for daring to strike*, available at <http://www.migrant-rights.org/2010/09/nepali-workers-deported-from-qatar-for-daring-to-strike/>

¹⁰³ supra note 74, p.3.

rights protection at the international level, and it is highly recognized among states as a customary law. From interpreting the norms of UDHR it is clear that it applies both to nationals and non-nationals of states¹⁰⁴. In relation to the rights of migrant construction workers it prohibits forced labour (art.4), guarantees the right to work and rest (with reasonable limitations of working hours and paid holidays), free choice of employment, just and favourable conditions at work and protection against unemployment, right to equal pay, just and favorable remuneration and social protection, right to form and join trade unions. Additionally, it also includes the right to justice and effective remedy (art.7).

Additionally, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are two other important UN instruments, which also include standards on protection of migrant workers. Both of them include the non-discrimination clause (art. 2-1, art. 4 ICCPR; art. 2-2 ICESCR) and apply to protect migrant rights, no matter the nationality status. The ICCPR guarantees prohibition of forced labour, provides such rights as right to form and join trade unions (art. 22-1) and right to effective remedy (art. 2). The ICESCR recognizes the right to work (art. 6), favorable and just conditions of work (art.7), such as equal pay and equal opportunities to be promoted, safe and healthy working conditions, paid vacation; trade unions and the right to strike (art. 8).

3.1.1.1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (later the MWC)

The MWC takes an important place in the international framework, which regulates the rights of migrant workers. It reaffirms basic human rights norms and embodies them in the instrument, applicable for migrant workers and their families.¹⁰⁵ It is built on the aforementioned core human rights instruments and the ILO's Conventions and is the first universal codification of rights of migrant workers and members of their families in a single instrument.¹⁰⁶ After adoption by the General Assembly, the Convention had been welcomed without much enthusiasm from other States¹⁰⁷ and it still remains one of the least ratified UN Conventions.

¹⁰⁴ Looking at the preamble: "the people of territories under the jurisdiction", usage such terms like "everyone", "all".

¹⁰⁵ The legal and normative framework of international migration A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration by Susan Martin p.10

¹⁰⁶ Promoting and Protecting Rights of Migrant workers, Asia Pacific Forum, p.11.

¹⁰⁷ Migrant workers: The ILO standards Cécile Vittin-Balima Senior Specialist International Labour Standards and Labour Legislation ILO Office in Harare, p. 7

The Convention provides a wide protection of rights of migrant workers and their families during different stages of migration.

All the fundamental human rights at work are included in the Convention. The number of articles is dedicated to the economic and social status of migrants. Equality with nationals in the host country with respect to remuneration, conditions of work, including hours of work, weekly rest, paid holidays, termination of the employment relationship, safety conditions and other terms of employment are emphasized in the MWC (art 25).¹⁰⁸ Equality with nationals is also extended to the right to receive emergency medical care, which should not be refused by reason of any irregularity with regard of stay or employment (art.28). Additionally, art. 26 pertains to the right of migrant workers to join and take part in trade unions. Under the Convention migrant workers have the right “freely to choose their remunerated activity”¹⁰⁹, however, some restrictions and conditions might apply. The MWC also guarantees migrant workers and their families the right not to have their documents of identity confiscated or destroyed (art. 21), and right not to be subject to arbitrary or collective expulsion (art. 22).

Importantly, the MWC prescribes responsibilities on states of origin, employment and transit in order to protect migrant workers from the outset. It follows from the MWC that receiving states are obliged to guarantee all the aforementioned workers’ rights under articles 21, 22, 25, 26, 28, 52 of the Convention. There are additional obligations prescribed in the MWC, which employment states should follow: to protect the liberty and security of migrant workers and their families;¹¹⁰ ensure that the working and living conditions of migrant workers are in keeping with the standards of fitness, safety, health and principles of human dignity;¹¹¹ enable migrant workers and members of their families to enjoy equal treatment with nationals of the State before the courts of law and tribunals.¹¹² In regards to states of origin, their responsibilities include: to inform migrant workers and members of their families about all conditions applicable to their admission, stay and employment;¹¹³ to regulate the recruitment of workers for overseas employment by restricting it to public services or bodies; recruitment by agencies, employers and their agents should be subject to authorization, approval and supervision;¹¹⁴ to provide adequate

¹⁰⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25

¹⁰⁹ art. 52, MWC

¹¹⁰ article 16, MWC

¹¹¹ article 70, MWC

¹¹² article 18, MWC

¹¹³ article 37, MWC

¹¹⁴ article 66, MWC

consular and other services required to meet their social, economic, cultural and other needs;¹¹⁵ to assist in an orderly return to their home country.¹¹⁶ To summarize, it is clear that the MWC became the most comprehensive and detailed UN instrument, which regulates the rights of migrant workers and also the obligation of states of the parties to the Convention.

3.1.2. The ILO standards

The ILO was created to adopt international standards to improve the situation of working people. According to the ILO mandate it adopts Conventions – binding on countries which have ratified them - and also Recommendations, which indicate the best practices and have the force of declarations.¹¹⁷ The ILO has identified four categories of “fundamental” principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; and the elimination of discrimination in respect of employment and occupation, the effective abolition of child labour. Those principles are applicable to all people in member States of the ILO, and member States have the obligation to respect, promote and realize them even if they have not ratified Conventions to which they refer.¹¹⁸ It is important to look into the fundamental ILO principles, which apply to migrant workers based on the fact of the ILO membership of States.

Firstly, the rights to organize and defend workers interests freely, without any interference, and also bargain collectively, are regulated under basic conventions (the Freedom of Association and Protection of the Right to Organise Convention C 87 and the Right to Organise and Collective Bargaining Convention C 98) and are important means for migrant workers, which can be used to secure their working conditions and other labour rights.

Secondly, the ILO obliges states to suppress forced or compulsory labour under the Forced Labour Convention (C 29), which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”¹¹⁹. The definition comprises of three main elements: “work or services”,

¹¹⁵ article 65(2)), MWC

¹¹⁶ article 67, MWC

¹¹⁷ Lee Swepton, *Human Rights at Work. The International Labour Organization and Human Rights. Access to the ILO*, available at <http://www.leeswepton.net/moller.htm#ft1>

¹¹⁸ supra note 20.

¹¹⁹ art.2 C 29.

“under menace of any penalty” and “voluntarily”. Additional interpretation is needed to understand the latter two. The definition of forced and compulsory labour should be exacted under the “menace of penalty”, which might take the form of the loss of rights or privileges.¹²⁰ Such privileges can cover the loss of legal residency status, the ability to work legally, the loss of the right to return to one’s own country,¹²¹ etc. In regards to the freedom of choice and “voluntary offer”, there can be many subtle forms of coercion. The ILO Committee of Experts stated that the interference with the workers’ freedom can result from acts of authorities and also from employers’ practice. The latter includes practices where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer, such practices clearly represent a violation of the Convention 29.¹²²

Thirdly, basic principles of equality and prohibition of discrimination are enshrined in the Equal Remuneration Convention (C 100) and the Discrimination (Employment and Occupation) Convention (C 111) and also protect migrant workers. C 111 provides equality in opportunity and treatment in respect of employment and occupation, including: access to vocational training, access to employment and occupation, terms and conditions of employment.¹²³ Importantly, the access to employment and occupation covers: access to recruitment services, opportunities in selection and recruitment processes and access to particular occupations.¹²⁴ Terms and conditions of employment cover hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, social security measures and welfare facilities and benefits provided in connection with employment.¹²⁵ Migrant workers are protected if they are victims of discrimination in employment, based on such grounds as: race, colour, sex, religion, political opinion, national extraction and social origin.¹²⁶

The ILO also adopted standards specifically concerning migrant workers rights: the Migration for Employment Convention (Revised) (No. 97), the Migrant Workers (Supplementary Provisions) Convention (No. 143). While C 97 promotes equal treatment of

¹²⁰ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B), International Labour Conference, 96th Session, Geneva, 2007, p. 20.

¹²¹ Supra note 58, p.70.

¹²² supra note 120, p. 20.

¹²³ Art. 1 C 111.

¹²⁴ International Labour Conference, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf

¹²⁵ R111 - Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

¹²⁶ *ibid*, art.1-1 (a).

national and foreign workers, C 143 also promotes equality of opportunities, as equality in regards to access to employment, trade union rights, cultural, individual and collective freedoms.¹²⁷ The main focus of C 143 is to promote equality of treatment and opportunities for all migrant workers including undocumented ones, and bring migration flows under control.

Additionally, there is a number of other Conventions, which are useful for protection of migrant workers. Firstly, the *Private Employment Agencies Convention (C 181)*, which protects workers recruited by agencies and guarantees the fundamental rights at work for them. It provides a system of licensing and certification, prohibits charging any fees or costs by private agencies on workers, includes the prohibition for private agencies to engage in fraudulent practices and abuses¹²⁸ and establishes the responsibilities of employment agencies to provide such rights as collective bargaining, occupational safety and health, minimum wage, etc.¹²⁹ The states which ratified C 181 have obligation to guarantee all the aforementioned.

Secondly, the *Occupational Safety and Health Convention (C 155)*, the *Occupational Health Services Convention (C 161)*, the *Safety and Health in Construction Convention (C 167)* have important roles in improving working conditions of construction workers. The Conventions oblige states, which ratified them to take measures to guarantee safety and health at the workplace and construction sites in particular. The latter is secured through the system of inspection, which is regulated under the *Labour Inspection Convention (C 81)*. The states under C 81 are obliged to maintain the system of labour inspections in workplaces. Additionally, the *Protection of Wages Convention (C 95)* is also relevant in the context of protection of migrant workers in Qatar. C 95 prohibits deductions from wages for payments to fee-charging agencies for the purpose of obtaining or retaining employment.¹³⁰ It also prohibits employers from in any manner limiting the freedom of the worker to dispose his wages.¹³¹

Lastly, the *ILO Workers' housing Recommendation (R 115)* provides certain minimum standards, which should be followed if workers are provided with housing. It is clearly stated that the recommendation applies both to national and migrant workers, encouraging “equality of treatment between migrant workers and national workers”¹³². Thus, the ILO standards are very

¹²⁷ supra note 20, p.75.

¹²⁸ art. 8-1 C 181

¹²⁹ art. 11-1(b), C 181

¹³⁰ art. 9 C 95

¹³¹ art. 6 C 95

¹³² Workers' Housing Recommendation, 1961 (No. 115), Suggestions concerning the method of application, 1-5

detailed and vital because they are providing a strong basis for the legal protection of labour rights for migrant workers.

3.2. The National legal framework

3.2.1. Qatar

International obligations of the Government of Qatar fall below an average standard,¹³³ as it has not ratified either the basic international instruments, which are focused on protection of human rights (such as ICCPR and ICESCR), or the special UN instrument for protection of migrant workers - MWC. Among the UN Conventions ratified by Qatar are: CERD, CEDAW, CAT, CRC. Even though those are significant for protection of human rights, ICCPR and ICESCR “reflect international best practice in protecting human rights”¹³⁴ and are of utmost importance for migrant workers protection. Qatar is a Member of the ILO since 1972, and has ratified only five out of the eight fundamental Conventions: C 29, C 105, C 111, C 138, C 182. Besides five core conventions, the other Convention which was ratified by Qatar is the Labour Inspection Convention №81. Qatar failed to ratify Conventions, which guarantee the right to collective bargaining and freedom of association - one of the core rights at work. Qatar also did not ratify any other ILO conventions mentioned in the sub-chapter 3.1.2, which provide protection for migrant workers and their labour rights.

Even though the Qatari Constitution mentions that “the Qatari society is based on the values of justice, freedom, equality...”¹³⁵, Qatar does not have a comprehensive national framework to provide rights for migrant workers and protect them from discrimination. However, there are some regulations, which provide protection of labour rights of migrant workers, set up in the Labour Law of Qatar №14 (further - *the Labour Law*). First of all, the Labour Law allows recruitment only through a person authorized and licensed to do so¹³⁶ by the Department of Labour. According to article 33, the authorized persons are prohibited to charge workers any recruitment fees,¹³⁷ however it does not mention recruiting agents and their cooperation in the sending countries that charge such fees in practice. Under art. 145, a violation

¹³³ supra note 58, p. 46

¹³⁴ ibid

¹³⁵ Permanent Constitution of the state of Qatar, art.18.

¹³⁶ Labour Law of Qatar №14, 2004, art. 29.

¹³⁷ Ibid, art.33.

of the latter may lead to a fine, imprisonment (up to one month) or closure of the office and cancellation of the license of the recruitment agency. However, these provisions usually are not functional in practice.

Additionally, the practice of contract substitution, which is often used during the initial stage of recruitment, is not regulated. In accordance with the law, an employer should be provided with three copies of employment contracts, which should be given to the employee, the employer and the Department of Labour.¹³⁸ However, as described in Chapter 2, employees are not given copies of contracts and employers, violating their rights, usually face no legal penalties. Additionally, the contracts and other documents should be in Arabic according to the Labour Law, and the employer “may accompany such documents with translation into other languages and in case of any difference the Arabic text shall prevail”¹³⁹, what further jeopardizes migrant workers’ rights.

According to art. 73 and 74 the maximum working week is 48 hours per 6 working days, meaning that it is 8 hours a day and the employer should provide overtime pay for additional hours of work. The Law also provides the annual paid leave and weekly paid rest of not less than 24 hours. Part six of the Law is dedicated to wages and it is guaranteed that: workers employed on an annual or monthly wages shall be paid at least once in a month,¹⁴⁰ payment of amounts of wages are specified in the contract,¹⁴¹ and the worker should be granted an annual leave. However, the Labour Law does not have any standards of minimum salary, which should be paid to workers, what further puts them in a vulnerable position. According to the Labour Law there is a number of reasons when the worker can terminate his contract before it expires, what basically includes situations of physical assaults, safety and health danger for the worker or misleading information given about the terms and conditions of work to the worker by the employer or his representative.¹⁴² However, it does not cover situations, which were described in the chapter 2 - when the recruitment agents mislead workers during the recruitment process.

The Labour Law includes provisions, which impede the realization of the right to freedom of association and collective bargaining. Firstly, under art. 3 it excludes several categories of workers from the application of the law, thus - also from forming or joining unions.

¹³⁸ Ibid, art.15.

¹³⁹ Ibid, art. 9.

¹⁴⁰ Ibid, art. 66.

¹⁴¹ Ibid, art. 65.

¹⁴² Ibid, art. 51.

Those categories are: government workers; armed forces, police, workers employed “at the sea”; casual workers, domestic workers (including drivers, nurses, cooks, gardeners and similar workers), family members of an employer and agriculture and grazing workers.¹⁴³ Secondly, it is forbidden under art. 116 for non-Qatari workers to be members of a labour organization – “workers’ committee”. Furthermore, under the same article enterprises, who employ less than 100 Qatari workers are not provided with rights of employees to join unions. Moreover, under art.116 para 4 of the Law workers in the establishment can only form a single “workers’ organization”, openly prohibiting multiple organizations. Art. 127 of the Law refers that the Government regulates the rules, procedures of collective bargaining, the method of representation of parties, contents, scope and the means of reaching a collective agreement.

The Labour Law regulates that workers may go on strike only if “the amicable settlement of the dispute between them and the employer becomes impossible”¹⁴⁴ and if they follow other measures prescribed by Law. Those include: two weeks’ notice for the employer about the strike, obtaining the prior approval about the time and place of the strike, obtaining the approval from three-fourths of the workers’ committee in their trade or industry. Additionally, the Law prohibits striking for workers in “vital public utilities”, defined as “petroleum and gas-related industries, electricity, water, seaports, airports, hospitals and transportation”.¹⁴⁵ Thus, excessive conditions hinder the ability of migrant workers to practically exercise their right to strike, which is technically established under the Qatari Law.

The Labour law also covers the regulations on safety and health through obliging the employer to provide workers with safety equipment without any deductions from workers’ wages, first aid kits, inform about occupational hazards and provide with nurse or nurse and doctor depending on the number of workers in the company, etc.¹⁴⁶ It also obliges employers to report workplace injuries and deaths¹⁴⁷ and to provide the injured workers with medical treatment appropriate for his condition.¹⁴⁸ Thus, despite the number of legal provisions in the Law, the implementation of existing provisions remains inadequate and weak.

Another important law, which is in the line with the second research question of the

¹⁴³ Ibid, art. 3.

¹⁴⁴ Ibid, art. 120

¹⁴⁵ Ibid, art. 120, para 4

¹⁴⁶ Ibid, art. 99-104

¹⁴⁷ Ibid, art. 107

¹⁴⁸ Ibid, art. 109

paper, is the *Law № 4 Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship* (further the Sponsorship Law), which is one of the most restrictive in the Gulf region, and immensely suppresses labour and other human rights of migrant workers. It should be noted that under the international pressure to reform the existing sponsorship system, on 27th of October 2015, a new law №21 on Entry, Exit, and Residency of Foreign Nationals was ratified. The new Law will, according to authorities, apply “after one year has elapsed after its publication in an official newspaper”.¹⁴⁹ However, it is still doubtful if the law will actually be enacted and it is not just a smokescreen for the international community, which the government uses. Thus, it is important to compare both laws, and see improvements in the new law, which the government claims to be “one of the major steps taken to protect rights of migrant workers, in addition to safeguarding their interests”.¹⁵⁰

According to art. 18 of the currently enforced Sponsorship Law every expatriate granted a visa to enter the state “shall have a sponsor”¹⁵¹, who is legally responsible for the worker and supervise his stay in the country. There are many restrictions on the workers’ rights and freedoms, which are prescribed in the law, such as: prohibition to change jobs without the employer consent (art. 22), even in case of failure by the employer to provide proper safety and working conditions, or to pay the competitive wage, etc.; prohibition to leave the country without an exit visa, which is provided by the sponsor (art. 26). Art.12 prescribes the opportunity of temporary transfer of the sponsorship in case if there are “any suits filed between the sponsor and expatriate worker” or “in the event of abuse by the employer or as required by public interest”.¹⁵² However, this norm is practically ineffective due to a number of barriers in the existing system. The Sponsorship Law obliges employers “to deliver the passport or travel document to the sponsored person once the procedures for issuing or renewing the residence permit are accomplished”¹⁵³, but the practice of passport confiscation remains very widespread among migrant workers and it is not monitored by labour inspectors. Moreover, due to the non-existent possibility to leave or change employer if the sponsor refuses, some workers decide to leave their sponsors without permission. Such acts are breaching art. 11 of the Sponsorship Law and can be

¹⁴⁹Law №21 on Entry, Exit, and Residency of Foreign Nationals, unofficial translation by Doha News, available at: <http://dohanews.co/qatar-law-no-21-of-2015-governing-foreigners-in-english/> art. 50

¹⁵⁰ supra note 93

¹⁵¹ Law №4 Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship, 2009, art.18

¹⁵² ibid, art.12

¹⁵³ ibid, art.9

punished with a jail term of up to 3 year or heavy fines.¹⁵⁴ The employer is required under art.24 of the Sponsorship Law to report workers who escaped, or otherwise they will face heavy fines. Such workers become illegal residents in the country and anyone who will employ “any expatriate not sponsored by such person“ will be obliged to pay “the deportation expenses in addition to the applicable penalties”.¹⁵⁵

The new law №21, which is called “new sponsorship law” does not abolish the kafala (sponsorship) system, but simply changes some of the conditions of the sponsorship system. Firstly, the term “kafeel” (sponsor) is changed to the “recruiter” – the party, employer, head of household or host who recruits the foreign national, or who receives transfer of his residency. Secondly, conditions under which it is permitted to change the employer were altered compared to the current legislation. The migrant worker can change the employer before his contract ends or in case of the open-ended contract - after five years of working for the employer, by obtaining permission from the employer and the competent authorities.¹⁵⁶ In case of “death or dissolution of the body corporate for any reason”, the employer can be changed by the Ministry of Labour and Social Affairs (further MoLSA). The new law also allows an employer, after getting permission from the MoLSA, to “loan his foreign national laborer to another employer”¹⁵⁷ without the worker’s will. Thirdly, the system of exit permits remains in place, however it was altered. Every time the worker leaves the country, the MoLSA should be notified either by worker himself or by the employer 3 days earlier.¹⁵⁸ Additionally, the new body of appeal for situations when the worker was refused to exit - Foreign Nationals Exit Grievances Council - is prescribed under art. 7. In case of emergency situation facing the migrant worker “the council must take an action within three working days”.¹⁵⁹ The Committee of Experts in its recent report on the Application of Conventions and Recommendations stated that according to the law № 21, freedom of movement for migrant workers is limited; there is no effective mechanism of employment termination in cases of abuse, no legal provisions prescribed against passport confiscation or contract substitution etc¹⁶⁰. Therefore, the Committee of Experts emphasized on

¹⁵⁴ *ibid*, art. 51

¹⁵⁵ *ibid*, art. 21 (1)

¹⁵⁶ *supra* note 149, art. 21

¹⁵⁷ *ibid*, art.23

¹⁵⁸ *ibid* art.7

¹⁵⁹ *ibid* art.7

¹⁶⁰ Application of International Labour Standards 2016 (1), Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILO, p. 211

the need to urgently modify the law №21 and ensure the full enjoyment of rights for migrant workers.

Thus, comparing with the Sponsorship law, the new law contains some changes, however it still leaves the actual exploitative sponsorship system in place, where employer plays a significant role and some bureaucratic procedures are added to the regulatory system. It is unclear how the law will be implemented and whether it will change existing practices of workers' rights violations. Human rights activists describe such legislative step as "too late and too little"¹⁶¹ in order to achieve the just labour system for migrant workers.

3.2.1.1. The ILO Complaint mechanisms in cases against Qatar

Importantly, the ILO has a unique supervision system with a number of distinctive complaint mechanisms, which are used as a guarantee of compliance with the ILO standards. Firstly, when the state is not respecting a Convention that it has ratified, complaints can be filed by: another state that has ratified the same Convention; delegates of the ILO (under art. 26 ILO Constitution); employers' and workers' organizations, which may make "representations" under art. 24 of the Constitution.¹⁶² Secondly, in 1951 the ILO set up another supervisory mechanism – the Committee on Freedom of Association (CFA) - for the further supervision of the basic principle of freedom of association. Under the mechanism employers' or workers' organizations can submit complaints against the state alleging violations on freedom of association, even when the member state concerned has not ratified the relevant ILO Conventions. Follow-up to the various complaints mechanisms include a number of procedures, in extreme cases, the Commission of Inquiry to investigate allegations in depth.¹⁶³

In connection to the situation with migrant workers, some of the complaint instruments were used against the Government of Qatar. Firstly, under art. 26 of the ILO Constitution, the delegates to the 103rd session of the International Labour Conference, submitted a complaint, alleging non-compliance of Qatar of the Forced Labour Convention (C29) and the Labour Inspection Convention (C81).¹⁶⁴ The complaint addressed the systematic and well-documented

¹⁶¹ Kathmandupost, *Qatar Government makes changes in sponsorship law*, available at

<http://kathmandupost.ekantipur.com/news/2015-10-29/qatar-government-makes-changes-in-sponsorship-law.html>

¹⁶² Rodgers G., Lee E., Swepston L., Van Daele J., *The International Labour Organization and the quest for social justice 1919–2009*, International Labour Organization, 2009, p. 21

¹⁶³ *ibid.*

¹⁶⁴ *supra* note 93

violations of C29, which affect the majority of the Qatari population – migrant workers. It covered the practices of contract substitution, high recruitment fees, passport confiscation, remaining restrictive sponsorship system, inadequate inspection and justice system, which impede migrant workers’ rights. The delegates who initiated the complaint also requested the establishment of the Commission of Inquiry. The Government in the submitted information tried to downplay the reality by providing promises of legislative changes, replacing the sponsorship system and strengthening the inspection system. After the numerous meetings with diverse ministries and departments, which are involved in the regulation of migrant workers’ protection, meetings with state-owned companies actively participating in the construction for FIFA 2022, visits to the construction sites, and accommodation facilities, which were presented in fine fashion, the ILO mission arrived at some conclusions. Those include: the necessity of amendments to the Labour Law to regulate non-payment and late payment of wages; draft of the law, which will replace the sponsorship system; the need to strengthen the capacity of labour inspectorate, especially in the ability to communicate with workers; need to improve the complaint mechanism and make it less “difficult”, “confusing” and “cumbersome”¹⁶⁵ for migrant workers. However, with regards to the newly adopted sponsorship law and other measures taken by the Government of Qatar, the ILO Governing body in November 2015 requested to provide an official copy of Law №21, to receive high-level tripartite visit to assess all measures taken to address the issues raised in the complaint, and deferred further consideration on setting up a commission of inquiry¹⁶⁶ until its next session in March 2016.

Secondly, the complaint against the Government of Qatar was filed by the ITUC to the CFA alleging restrictions on the rights of workers, without distinction whatsoever, to establish and join organizations of their own choosing, to strike and bargain collectively, as well as excessive State control of trade union activities. The ITUC basically criticizes the Labour Law, which violates principles of the freedom of association, organization and collective bargaining and addresses flaws, which were analyzed in the previous sub-chapter of this research paper. The ITUC claims that the lack of a collective voice, which could empower workers to stand against

¹⁶⁵ *ibid*, para 44

¹⁶⁶ Decision on the tenth item on the agenda: Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), made by delegates to the 103rd Session (2014) of the International Labour Conference under article 26 of the ILO Constitution, Available at http://www.ilo.org/gb/decisions/GB325-decision/WCMS_424088/lang--en/index.htm

dangerous working and living conditions, results in the enormously high number of deaths.¹⁶⁷ The Government of Qatar claims in response that the complaint is “malicious” and “seeks to undermine the reputation of the state”, that the reference to legislation should be confirmed by the well-documented facts and examples from local workers’ organizations to conclude that there are violations of workers’ rights.¹⁶⁸

In line with the abovementioned, the CFA concludes that the Government should take measures and ensure the right of freedom of association and collective bargaining without distinction on the basis of occupation, nationality, political opinion, etc. Thus, civil servants, workers employed in both private and public sector should have the right to establish and join organizations of their own choosing. The only exceptions, which can be excluded from the application of the rights are workers of the armed forces, the police or public servants engaged in the administration of the state.¹⁶⁹ Thus, the norms, which exclude non-Qatari citizens and certain categories of workers from exercising fundamental rights, should be amended. Also the Committee stated that the right to organize should not be dependent on the size of the enterprise or the number of workers employed in it.

In regards to the right to strike, the CFA concludes that the Law prescribes excessive conditions to be fulfilled to exercise the right to strike, which could hinder the possibility of carrying out the strike.¹⁷⁰ The CFA refers that right to strike may be restricted or prohibited in “essential services”, however the petroleum sector, ports, transport generally, airplane pilots, production, transport distribution and distribution of fuel are not covered under this provision. Moreover, even with essential services, certain categories of employees, such as hospital labourers and gardeners should not be deprived of the right to strike.¹⁷¹ Additionally, the CFA finalizes that provisions in the Law, which “generally prohibit any political activities by trade unions for promotion of their objectives”¹⁷² are contrary to principles of freedom of association. Lastly, the CFA concludes that workers who were prejudiced because of their trade union activities should have access to means of redress, which are expeditious, inexpensive and fully impartial. Thus, the Government should remove the existing restrictions on the freedom of

¹⁶⁷ Governing Body 320th Session, Geneva, 13-27 March 2014, 371st Report of the Committee on Freedom of Association, case 2988 (Qatar), para 818

¹⁶⁸ *ibid*, para 820

¹⁶⁹ *ibid*, para 843

¹⁷⁰ *ibid*, para 850

¹⁷¹ *ibid*, para 851

¹⁷² *ibid*, para 856.

association of migrant workers, as they constitute more than 90 % of working population in Qatar.

3.2.2. Bangladesh

As a migrant sending state, Bangladesh has ratified a number of international instruments and included norms on protection of migrants and their labour rights in national instruments. Among the relevant UN instruments Bangladesh has ratified are ICCPR and ICSECR, CERD and MWC (2011). Importantly, the ratification of the MWC by Bangladesh is an important guarantee for the protection of labour rights of migrants, as it clearly defines obligations of Bangladesh as a sending state. In regards to the ILO instruments, the Government of Bangladesh has ratified the fundamental ILO Conventions and C 81, however a number of other conventions, important for migrant workers' rights, remains non-ratified. Those are: two specific migrant workers' Conventions (C 97, C 143), the Private Employment Agencies Convention C 181, the Protection of Wages Convention (C 95).

In regards to the national legislation, the Constitution of Bangladesh lays out that “respect for fundamental human rights and for the dignity and worth of human beings”¹⁷³ as the fundamental principle of the State. It also prohibits discrimination (art.28), all forms of exploitation (art.14) and forced labour (art.34), guarantees equality before the law (art. 27), freedom of movement, assembly and association (art. 36-38), which are important from the perspective of rights of migrant workers. However, Bangladesh enacted a number of laws, which specifically regulate migration and concern rights of migrant workers. Firstly, it is the Overseas Employment and Migrants' Act (The Migrants' Act), which in 2013 replaced the Emigration Ordinance (1982) and is an effort of the Government to bring the national legal framework in line with obligations under international labour and human rights treaties it has ratified. A big part outlines norms on regulation of migration, which include requirements for becoming recruitment agents, eligibility for license and duties of recruitment agents. According to the Migrants' Act, no person can exercise any recruitment-related activity without “issued license”.¹⁷⁴ The licensed recruitment agents are obliged to protect interests of migrant workers, ensure wages, working conditions and other benefits in accordance with the terms and conditions

¹⁷³ Constitution of the People's Republic of Bangladesh, 1972.

¹⁷⁴ Overseas Employment and Migrants' Act, 2013, available at <http://www.ilo.org/dyn/migpractice/docs/169/Act.pdf>, art. 9

of the contract.¹⁷⁵ Among the requirements of eligibility for licensing are: citizenship of Bangladesh (or in case of the company – 60% of shares should be controlled by Bangladeshi citizens), no criminal record for a number of serious crimes (e.g. human trafficking, money laundering, etc.), and the person is in sound mind, etc.¹⁷⁶ It also prescribes reasons, when licenses can be cancelled or suspended, which implicitly covers a variety of ways in which migrant workers have been cheated, exploited or abused by agents and illegal intermediaries. The license will be renewed after three years if the agency complied with excising rules and regulations.¹⁷⁷ Detailed provisions, which regulate licensing of recruitment agents, and other aspects of their work, are prescribed in the Recruiting Agents’ Conduct and License Rules (2002).

Importantly, the Migrants’ Act also includes the provision that the Government may “prescribe the ceiling of the cost of migration to be charged for the purpose of recruitment and overseas employment”;¹⁷⁸ the requirement to state in the employment contract such regulations as worker’s wage, accommodation facilities, duration and cost of emigration, etc.¹⁷⁹ The practice of standard contracts is not used in Bangladesh. Recruitment costs charged by private agencies are burdensome and not regulated, thus Bangladesh is considered to have “the most expensive”¹⁸⁰ migration costs.

The Migrants’ Act also covers specific rights, which should be guaranteed for migrant workers as: the right to information, the right to legal aid, the right to file civil suit and the right to return home with a necessary assistance from the Bangladeshi mission. Additionally, the “Labour Welfare Wing” should be established in the Bangladesh Mission in countries of destination, the representatives of which would inspect the place of work of Bangladeshi nationals, meet with employer upon the necessity.¹⁸¹ Annually such representative should send a report to the Government about the situation of migrant workers in the concerned country.¹⁸² Lastly, there are provisions in the Migrants’ Act, which cover violations migrant workers face on the initial stage of migration. The latter includes penalties for recruitment agents, who send workers by giving false promises regarding employment, working conditions, charge unlawful

¹⁷⁵ *ibid*, art.15

¹⁷⁶ *ibid*, art. 10

¹⁷⁷ *ibid*, art. 11

¹⁷⁸ *ibid*, art.21

¹⁷⁹ *ibid*, art.22

¹⁸⁰ *supra* note 9, p.25

¹⁸¹ *supra* note 174, art. 23, 24.

¹⁸² *supra* note 174, art. 24 (2)

fees, publish unauthorized advertisements, etc.

Additionally, the Emigration Rules (2002) provide details on the procedure of migrants' registrations, monitoring of international migration, assistance of workers in country of destination through "labour attaché" and complaint procedure. However, rules do not fully address the penalties for violation of the Rules.¹⁸³

3.3. Bilateral agreements between Qatar and Bangladesh

The ILO has recognized bilateral agreements as a good practice in order to govern the migration flows, protect rights of migrant workers and increase positive outcomes for migrant workers in countries of origin and destination.¹⁸⁴ It is important that bilateral agreements are functioning within a multilateral context of international standards, and that bilateral and multilateral levels are mutually supportive.¹⁸⁵ According to art. 25 of the Bangladeshi Migrants' Act, it promotes the conclusion of bilateral agreements in order to increase opportunities of migration, improve management of labour migration and ensure rights for Bangladeshi migrant workers and their families. Generally, there has been reluctance among the receiving states in concluding bilateral agreements with Bangladesh that are legally binding.

Qatar and Bangladesh have concluded the agreement between the Government of the State of Qatar and the Government of the People's Republic of Bangladesh in the field of Manpower Employment in the State of Qatar (1998) and the Additional Protocol to the Agreement on the Regulation of the Employment of Bangladesh Citizens (2008). It is the only instance, where the Government of Qatar regulated the minimum wages requirement through a bilateral agreement with Bangladesh.¹⁸⁶ However, the agreements still lack regulations in regards to informing migrant workers about their rights and duties and responsibilities of states in those regards.

¹⁸³ Winrock International's Actions for Combating Trafficking-in-Persons Program Bangladesh, *Review of Laws against Human Trafficking in Bangladesh*, available at http://www.academia.edu/9498745/Review_of_Laws_against_Human_Trafficking_in_Bangladesh_prepared_for_Winrock_Internationals_Actions_for_Combating_Trafficking-in-Persons_ACT_Program

¹⁸⁴ ILO: Wickramasekara P., *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, 2015, p. 23

¹⁸⁵ *Supra* note 20, para 268.

¹⁸⁶ Americans for Democracy and Human Rights in Bahrain, *Slaving Away: migrant labour exploitation and human trafficking in the Gulf*, 2014, p.35, available at <http://www.adhrb.org/2014/06/slaving-away-migrant-labor-exploitation-and-human-trafficking-in-the-gulf/>

4. PRACTICAL REGULATION OF MIGRATION IN QATAR AND BANGLADESH: INSTITUTIONS, NATIONAL POLICIES AND PRACTICES

This chapter will analyse the role of governmental institutions of Qatar and Bangladesh and their work on the enhancing of migrant workers' protection, which policies and practices exist in the sending and receiving states towards the protection of migrant workers. The latter will be beneficial in order to assess how effectively the states comply with their international obligations. It is also important to look into the standards on migrant workers' protection, which were adopted in Qatar in connection to the World Cup 2022 and what is the FIFA's stand on the on-going situation with migrant workers. As far as the role of the sending state in the migration process should not be underestimated, the Philippine model will be used as an example of how to regulate the migration process and to better provide protection to migrant workers. The analyses of the existing Philippine model will help to answer the last research question and draw recommendations on how Bangladesh can improve its practical regulations of migration.

4.1. Practical regulation of migration in Qatar

In 2008, Qatar National Vision 2030 was launched – the programme, aiming to achieve development in four spheres: economic, social, human and environmental development. According to the strategy, the vision would be “inclusive and helpful” for citizens and residents in various aspects of their lives.¹⁸⁷ The National Development Strategy 2011-2016, was prepared to achieve some goals of the National Vision 2030. In regards to labour rights, strategy offered to revise labour laws, especially “rights and safety standards of all expatriate workers in accord with international norms and standards”.¹⁸⁸ As was seen from previous analyses there are quite a few legislative changes done to achieve those goals. However, Qatar has developed a wide system of institutions on the national level to address the issue of protection of migrant workers.

The important role is given to the Ministry of Labour and Social Affairs and Ministry of Interior. According to the information submitted to the ILO by the Qatari Government under the complaint on forced Labour, analysed above, the Ministry of Labour follows up on the work of

¹⁸⁷ Ministry of Development, Planning and Statistics, Pillars of Qatar National Vision 2030, available at http://www.gsdp.gov.qa/portal/page/portal/gsdp_en/qatar_national_vision

¹⁸⁸ UN, Human rights Council, Report of the Special Rapporteur on the human rights of migrants, Francois Crepeau, Mission to Qatar, 2014. A/HRC/26/35/Add 1., para 24.

recruitment agencies.¹⁸⁹ It is also responsible for labour inspections through the specifically established Department on occupational Safety and Health. According to the information provided by the Government, the department has five internationally trained experts, who provide trainings to inspectors on occupational safety and health once every three months.¹⁹⁰ However, this number is insufficient in order to train a higher number of inspectors, which are needed due to the influx of migrant labour in connection to the Qatar 2022. If companies breach the Labour law, for example - fail to pay workers on time - the Ministry of Labour can blacklist them. According to the media from June 2015, there were more than 800 blacklisted companies, which means that they are “banned from applying for government contracts or requesting warehouse units” or “to hire any new staff while the penalty is in place”.¹⁹¹ However, sanctions and their enforcement remain unclear, there is a lack of information on its outcomes, which further questions the effectiveness of the “blacklisting” mechanism.

Additionally, the Ministry of Labour is responsible for receiving complaints from migrant workers. The government claims that it can be done through the hotline by phone and e-mail and also through filing complaints in offices, which are established around Qatar. However, no reliable information is available about the practical access to these complaint systems, which brings lots of doubts on its effectiveness.

The Ministry of Interior is also actively engaged in the protection of migrant workers’ rights through its role in the processes of entry and exit of migrants, sponsorship system, transfer of sponsorship. A special department of the Ministry is responsible for deportation of migrants. Additionally, according to Qatari reports, submitted to the ILO, there is an on-going coordination between the Ministry of Interior and the Ministry of Labour to ensure the safe storage of migrant workers’ passports and also to control that those passports are not confiscated.¹⁹² However, it is not practically ensured, as was concluded in the second chapter of this paper. The Ministry of Interior has a Human Rights Department, where a complaint unit is established to handle complaints, mainly related to labour relationships between workers and sponsors. Due to different complaint mechanisms on different levels, it becomes more complicated for migrant workers’ to understand the whole mechanism of filing a complaint.

¹⁸⁹ Supra note 93, Para 5

¹⁹⁰ *ibid*, para 10

¹⁹¹ Doha News, Qatar authorities ‘blacklist’ 800 companies over labor law violations, available at <http://dohanews.co/qatar-authorities-blacklist-800-companies-over-labor-law-violations/>

¹⁹² *supra* note 93 para 6

Another important institution, which works to enhance the protection of migrant workers in Qatar, is a national human rights institution – the National Human Rights Committee (further the NHRC) established in 2002. The NHRC is involved in awareness raising through training sessions on workers’ rights for community leaders.¹⁹³ However, according to its annual reports, the frequency of such trainings is low – it is conducted not even annually. The NHRC also published Workers Rights Book in seven languages, where the Labour Law is explained easily. The NHRC receives complaints related to labour rights issues from migrants and tries to resolve them by approaching the company directly. In addition, it assists with legal aid in filing complaints to the Ministry of Interior and Ministry of Labour. The NHRC is formally independent, however, it is in a strong relationship with the state. Gardner concludes in his study that due to the latter, the level of trust is low, and therefore the number of migrants seeking protection through the NHRC is low.¹⁹⁴

Thus, despite the diverse support and protection of migrant workers, which exists on different institutional levels, it still seems complicated and lacks effectiveness. Complaint mechanisms, which are inherent to the Ministry of Labour and Social Affairs, Ministry of Interior and also to the NHRC are complex and confusing. There is also a lack of practices, such as trainings, awareness raising activities, and campaigns, initiated by the Government, which are focused on the issue of the migrant workers’ protection.

4.2. Standards on protection of migrants in connection with the World Cup

After Qatar was chosen to host the FIFA tournament in 2022, the international pressure regarding the treatment of migrant construction workers increased. As a response to that, two charters for workers’ protection were released: the Qatar Foundation Mandatory Standards (further QFMS) (2013) and the Supreme Committee Workers’ Welfare Standards (further SCWWS) (2014). These documents set standards and try to ensure the protection of labour rights of migrant workers which are also intended to be used as a condition for choosing business partners “on the basis of their compliance with the standards”¹⁹⁵ by the Qatar Foundation and the Supreme Committee.

¹⁹³ Gardner A., Pessoa S., Harkness L. Labour Migrants and Access to Justice in Contemporary Qatar, Middle East Centre, 2014, p.43, available at <http://www.lse.ac.uk/middleEastCentre/publications/Reports/LabourMigrantsQatarEnglish.pdf>

¹⁹⁴ *ibid* p.43

¹⁹⁵ Engineers against poverty, Wellz J., Fetnz B., *Improving employment standards in construction in Qatar*, Final Report, July 2014, p.20.

It should be mentioned that Qatar Foundation for Education, Science and Community Development (further QF), which adopted mandatory standards, was founded as a nonprofit organization, promoting the human, social and economic development in Qatar through education and research.¹⁹⁶ However, QF has also become a “major client of the construction industry”,¹⁹⁷ thus it tried to ensure protection for workers involved into the QF-funded projects, through the development of the Mandatory Standards. It sets up mandatory requirements, which should be fulfilled by contractors and subcontractors when performing construction work for QF projects.¹⁹⁸ Based on national labour laws, with references to the international instruments (including the ILO standards), ratified by Qatar, QFMS extensively covers standards related to the workers’ welfare, such as accommodation, transport and catering. Importantly, QFMS place responsibility for compliance on the main contractors, who are to incorporate the standards in all subcontract agreements.¹⁹⁹ In order to monitor the compliance with standards, QFMS sets up the system of audits: self-audits –self-assessment reports by contractors or/and subcontractors of their adherence to the requirements of the Labour Law and QFMS, and the periodic audits performed either by QF employees or through third-party auditors appointed at the QF’s discretion.²⁰⁰ Additionally, the QFMS “does not clearly state what constitute a material breach of the contract”,²⁰¹ what diminishes confidence in standards. Despite the adoption of these standards - guidelines for QF in choosing its business partners - which should be strong incentive for contractors to improve their labour conditions in order to win contracts,²⁰² little is known about the impact of them due to the lack of reliable information.

Furthermore, in connection to the tournament, the Supreme Committee for Delivery and Legacy (further SC) was formed and assigned responsible for infrastructure projects related to the World Cup stadiums. It adopted a set of standards - Supreme Committee Workers’ Welfare Standards - similar to the aforementioned standards by the Qatar Foundation, however, aimed at contractors, working on the SC’s projects. As estimated by the ILO mission to Qatar, those

¹⁹⁶ *ibid* p.4

¹⁹⁷ *ibid*

¹⁹⁸ Qatar Foundation, QF Mandatory Standards of Migrant Workers’ Welfare for Contractors and Subcontractors, Rev. 20.04.2013, para 5.3 available at <http://www.qf.org.qa/app/media/2379>

¹⁹⁹ *supra* note 194

²⁰⁰ *supra* note 198, para 9.5, 9.6.

²⁰¹ ITUC, *The case against Qatar. Host of the FIFA 2022 World Cup*, Special report, March 2014, available here http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf, p.16

²⁰² *supra* note 195, p. 4

contracts would eventually cover 74 000 workers.²⁰³ The SCWWS require from contractors and sub-contractors to respect the following principles in the treatment of workers: health and safety, employment, equality, dignity, working and living conditions and wages.²⁰⁴ According to the SCWWS, incorporation of those principles in contracts, will help SC to ensure that companies working on SC projects are operating in line with universally accepted principles of human rights²⁰⁵ and recognize respect and dignity of individual workers. The SC relies on a three-tier system for auditing: self-audit by contractors, audit by the SC's appointed auditor and the labour inspections conducted by the Ministry of Labour. However, the objectivity and frequency of inspections conducted, the professionalism and awareness about human rights standards of labour inspectors remains unclear. Additionally, SCWWS clearly aims not to punish contractors who violate the aforementioned standards, but rather to encourage contractors to self-remedy its non-compliance.²⁰⁶ The contract termination is prescribed under the SCWWS, however, it is unclear how effective it is.

It is too early to measure the effect on those sets of standards, however the ITUC has minor hopes on them, claiming them to be ambitious but hard to implement in practice.²⁰⁷ Both sets of standards omit to regulate the rights to freedom of association, self-organization and minimum wages for migrant workers. Both workers' charters have limited scope – the only apply to projects funded either by the QF or the SC, or other activities under the SC control. As stated above, the compliance mechanism, which relies only on the system of audits, and a lack of functional enforcement mechanisms need to be adapted for those standards to be effective.

It is also important to mention that FIFA does not include any clear obligations of the host state to respect workers' rights and guarantee decent working and living conditions. However, the Building and Wood Worker's International (BWI) in its complaint to the OECD against FIFA mentioned that "FIFA has responsibility under OECD Guidelines for multinational enterprises to respect human rights of migrant workers who are building infrastructure for FIFA 2022"²⁰⁸ and FIFA "can be expected to intervene with the Qatari government and encourage

²⁰³ supra note 93, p.24

²⁰⁴ supra note 188, part 9, para D.

²⁰⁵ Supreme Committee for Legacy and Development, *Workers Welfare*, available at <http://www.sc.qa/en/delivery-and-legacy/workers-welfare>

²⁰⁶ Supreme Committee Workers' Welfare Standards, para 23.2., available at <http://www.scribd.com/doc/206643598/Sc-Workers-Welfare-Standards-Edition-1#page=25>

²⁰⁷ supra note 201, p. 18.

²⁰⁸ Building and Wood Workers' International (BWI) Specific Instance

them to initiate labour reforms”.²⁰⁹ The research has shown that after continuous pressure from the ITUC, FIFA agreed to include labour concerns as critical for future bidding rules.²¹⁰

Previously, under the pressure from local unions, FIFA undertook big steps to successfully demand labour law reforms and to guarantee labour rights protection for workers in South Africa and Brazil. FIFA also played an active role in collaboration with the ILO in the elimination of child labour in the soccer ball industry, when the image of soccer and its own vulnerability was at stake, which could have had an economic implication.²¹¹ However, the situation is different in Qatar, where no local union performs pressure on FIFA, because those are prohibited from organizing, and even major international organizations, except the ITUC, avoid strong demands towards FIFA. A research by Erfani A. has shown that FIFA is able to send strong demands to the Government and take extreme measures, but only when their own liability is on the line.²¹²

4.3. Practical regulation of migration in Bangladesh

Bangladesh was the first country in South Asia to formulate a policy towards managing the overseas employment and providing a guiding strategy for the governmental actions focused on rights and welfare of migrant workers. Under the Overseas Employment Policy (2006) the Government is committed to “reducing irregular emigration and increasing the scope of regular emigration from all areas of Bangladesh at a reasonable cost”.²¹³ The government had its own aims and benefits by adopting the Policy: expansion of existing and exploration of new markets for overseas employment; export of more-skilled workers, preparation and training them; increasing the flow of remittances through the official channels.

The Policy includes a number of activities addressed towards the regulation of the migration process. Firstly, the Policy was intended to fix reasonable migration costs for diverse jobs in different countries of destination and to disseminate such information in the media. Despite the fact that the Government fixed maximum recruitment and migration costs, they were

Against the FIFA to the Swiss National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, available at <http://www.bwint.org/pdfs/BWI%20Complaint%20to%20Swiss%20NCP%20on%20FIFA%20May%2028%202015.pdf>

²⁰⁹ BWI Files OECD-Complaint against FIFA, available at <http://www.bwint.org/default.asp?Index=6382&Language=EN>

²¹⁰ Erfani A., "Kicking Away Responsibility: FIFA's Role in Response to Migrant Worker Abuses in Qatar's 2022 World Cup," Jeffrey S. Moorad Sports Law Journal: Vol. 22: Iss. 2, Article 6, 2015, p.649, Available at:

<http://digitalcommons.law.villanova.edu/mslj/vol22/iss2/6>

²¹¹ *ibid.* p. 656.

²¹² *ibid.* p.623.

²¹³ *supra* note 50, p.28

not applied in practice, and the information was not disseminated.²¹⁴ Secondly, according to the Policy, the government committed to protect migrants' assets by controlling that all types of financial transactions involved in the recruitment process are done through the banking system, and recruiting agents who do not comply – will be held accountable.²¹⁵ However, due to the lack of awareness and weak implementation mechanisms, it is hard to ensure practically. Having the goal to eradicate irregular migration and establish respect for rights and security of migrant workers, the policy intended to control recruitment through computerized registration and establishing a database of workers willing to migrate. According to the ILO research, the Government achieved quite a success with the online registration of potential migrant workers.²¹⁶ Furthermore, the Policy intended to establish an incentive-based mechanism for evaluating the work of recruiting agents in accordance with their contribution in opening new markets, sending more and ensuring recruitment of migrant workers, etc.²¹⁷ However, according to the ILO research referred to above, nothing was done to practically implement the incentive-based approach for evaluation of recruitment agents.

According to the policy, the Government is committed to support migrant workers in the process of reintegration, both socially and economically. It seems to be an ambitious policy, which, if implemented, would have solved many existing problems. However, there is no action plan for its implementation, monitoring and evaluation, which results in its practical ineffectiveness in the situation with migrant workers. However, since 2006, in order to implement the policy, there were allocation of resources and development of institutions, which are responsible for protection of migrant workers' rights.

According to the Policy, the Ministry of Expatriates' Welfare and Overseas Employment (further - MEWOE) is required to control, monitor and coordinate activities of all governmental and private institutions, and to undertake different activities for protection of rights and welfare of migrant workers.²¹⁸ In the institutional system, four more ministries are involved in the regulation of international labour migration: the Ministry of Home Affairs, the Ministry of Foreign Affairs, the Ministry of Finance and the Ministry of Civil Aviation and Tourism.²¹⁹

²¹⁴ supra note 9, p.46

²¹⁵ ibid

²¹⁶ ibid

²¹⁷ supra note 9, p.47

²¹⁸ supra note 27, p.5.

²¹⁹ supra note 50, p.28

However, their roles and responsibilities are not coordinated and there is a lack of cooperation between the institutions involved in the regulation of migration.²²⁰

The MEWOE has its executing agency – the Bureau of Manpower, Employment and Training (further – BMET), which carries out tasks assigned by the Ministry to ensure the maximum benefits from migration for Bangladeshi workers. BMET has several District Employment and Manpower Offices (further - DEMOs) under its administrative control. BMET is responsible for the control and regulation of recruiting agents through licensing process, registration of job seekers for local and foreign employment (together with DEMOs) and resolving legal disputes. Additionally, it plays an important role in the implementation of the state obligation to inform migrant workers about their rights in the country of destination, conditions of stay and work. BMET is responsible for the development of training programs in response to specific labour market needs and training workers in its technical training centers. BMET organizes a 1-hour pre-departure briefing training for migrant workers and issues a personal clearance card to those who completed all pre-departure formalities.²²¹ However, the effectiveness of such trainings is very doubtful, because it does not comprehensively cover the information workers will need in the country of destination. Moreover, many recruiting agents help potential labour migrants to avoid pre-departure briefings for additional pay.²²²

In regards to the complaint mechanism, migrant workers, whose labour rights were violated, can lodge a complaint to BMET either directly or through an online procedure. However, lack of information and access among migrant workers to the procedure of filing the complaint, lack of transparency and effective remedies are the main drawbacks of this mechanism.²²³

In regards to the licensing of the recruitment agents, BMET monitors and supervises them and every year recommends to the Government those of them, which should be renewed. The renewal depends on whether the agent performed lawfully and in accordance with license regulations. The licensing system is criticized that overseas recruitment agents are not required to

²²⁰ supra note 9, p.49

²²¹ Omelaniuk I., *Global Perspectives on Migration and Development GFMD Puerto Vallarta and Beyond*, 2012, p.35 available at

<https://books.google.se/books?id=I2AcQo5VFXAC&pg=PA34&lp=PA34&dq=overseas+employment+policy+2006+bangladesh&source=bl&ots=ZY22rFWoMD&sig=jIxyoUzbSGztyAyksl9qdRLjyp0&hl=sv&sa=X&ved=0CGMQ6AEwCTgKahUKEwj5mcPdh43JAhVH2CwKHa2YDnU#v=onepage&q=overseas%20employment%20policy%202006%20bangladesh&f=false>,

²²² supra note 9

²²³ National Human Rights Commission Bangladesh, conducted by Hoque R., *Protecting Migrant Workers from Bangladesh: A Study of Legal Compliance with Migrant Workers' Rights*, 2014, p.140

demonstrate their competence and skills, clear understanding of the entire process of migration and their role in it.²²⁴

In cooperation and support of the Bangladeshi Government another institution, which works to ensure the welfare of migrant workers, was established – Bangladesh Association of International Recruiting Agencies (BAIRA). It is a self-regulatory body of the licensed recruiters, which according to the Policy has duties like monitoring activities of its members, preventing the exploitation of migrant workers by brokers and middlemen, ensuring transparency and accountability of the recruiting agents.²²⁵ However, after several attempts, BAIRA did not create any internal mechanism of compliance and monitoring, no ethical code of conduct was adopted. The high number and popularity of informal agents, involved in the migration process, which is not institutionalized, makes it harder for BAIRA, to fulfill its functions.

Bangladesh Overseas Employment Limited (further – BOESL) is the government-owned company established for overseas employment, as a model institution for the private recruitment sector. BOESL is responsible for enhancing labour migration overseas, thus it processes foreign employment demands and manages the database of available jobs.²²⁶ However, due to the enormous number of private recruitment agencies and other recruiting channels, the role of BOESL in the regulation of labour migration process is less visible.

The Bangladeshi system also has the National Human Rights Commission – a state body independent from the Government, which has been established to “protect, promote and adequately ensure the enjoyment of human rights”.²²⁷ By implication the Commission has the mandate to take steps in protection of rights of migrant workers, towards the realization of Bangladeshi obligations under the MWC. However, there is a lack of practical influence of the Commission and lack of cooperation with abovementioned institutions focused on protection of migrant workers both in Bangladesh and receiving countries.

The Ministry of Foreign Affairs and foreign missions are supposed to be influential bodies in the countries of destination in regards to the protection of migrant workers, as they are the contact point for workers in the country of destination. According to the Policy, labour attachés are involved in the assistance of migrant workers, helping to solve problems and

²²⁴ *ibid*, p. 84

²²⁵ *ibid*, p.101

²²⁶ *supra* note 9, p.9.

²²⁷ preamble to The National Human Rights Commission Act, 2009.

engaging in the dispute resolutions between the worker and the employer in the receiving countries. However, despite the fact that labour attachés are submitting the annual report of their work, there is no mechanism to monitor their work or validate reports they submit. From the research done, it seems that Bangladeshi labour attachés in the receiving countries do not play an effective role in the process of migrant workers' protection. As mentioned above, the government is not actively involved in the international cooperation and concluding bilateral agreements, which reduces its influence over the governments of receiving states in addressing the issues related to Bangladeshi workers.

Thus, the analysis shows that Bangladesh as a party to a number of UN instruments, including MWC and also a number of the ILO Conventions, tries to comply with its obligations through establishing institutions, which are involved in the regulation of migrant workers' issues. Despite the existence of mechanisms and institutions involved in realization of Bangladeshi obligations through: informing migrant workers about their rights, facilitation of transfer of migrants' earnings, complaint procedures and legal assistance for those whose rights were violated, procedure of licensing and sanctioning of private employment agents, etc., the system is not sufficient and needs to be reformed in order to reach its effect.

4.4. Best practices of regulating migration on the example of the Philippines as a sending state

Among the Asian states, which are famous for their high migration rates, the Philippines has served as a model for regulating migration for several countries in the region. In this subchapter, I will look into the Philippine model to understand which policies and practices it has regarding regulating migration, which institutions are involved and how they are organized and cooperating. Obviously, the Philippine model is not the perfect and universally applicable one, therefore might not be fully established on the Bangladeshi ground, which has its own aspects and characteristics in regards to the migration process. However, it can be useful to compare the measures and practices and to use some of them as a good example of how to organize and regulate the process of migration better.

The overseas employment in the Philippines was legally recognized by the Labour Code (1974) and regulated in more detailed manner by the Overseas Filipino Act of 1995 (further – the Act), which was amended in 2009 and the Rules and Regulations Governing the Recruitment and

Employment of Land-Based Workers. The Overseas Filipino Act was a groundbreaking legal document dedicated to the regulation of overseas employment and protection of migrant workers' rights and it established important provisions, which laid some of the best practices. Firstly, the deployment of workers was allowed only to countries, where their rights were protected; to satisfy the latter the host country was expected to enact labour laws, sign multilateral conventions, establish bilateral arrangements and take other steps for protecting migrant workers.²²⁸ Secondly, the Act established criminal offences and strict penalties of imprisonment and fines for illegal recruitment and violation of rules of employment by licensed agencies. Thirdly, the Act with its amendments introduced the regime of joint responsibility of the employment agency and foreign employer for any violations of contract and also for money claims.²²⁹ In case of contract violations, the worker can apply for assistance from the recruitment agency, which can put pressure on the employer. Even though, the joint responsibility is seen as a good practice, it most often ends with the sole responsibility of the recruitment agency without involvement of the employer.²³⁰

Information dissemination and empowerment of workers is another good practice, existing in the regime of the Philippines and established by the legislation. Information is delivered to potential migrant workers during pre-departure orientation seminars (further -PDOS) and pre-employment orientation seminars (further - PEOS). The first one is a compulsory programme, which should be completed and proved with a certificate of attendance as one of the requirements for processing documents of migrant workers. The latter one is an introductory seminar about migration in general, procedures migrants face in countries of destination, etc., which provides the necessary information to make a rational decision whether to become a migrant worker or not. In regard to the PDOS the session covers more substantial information about rights, responsibilities of workers, financial management, workplace safety, deportation costs, information of cultural differences, etc. Such diversity of topics is included in a 6-8 hours session, which the private agency is responsible for providing through the Overseas Workers Welfare Administration (OWWA). Apart from educational programs, the information about migration, individual experiences, human rights and policies on labour migration is spread

²²⁸ The Philippines: Overseas Filipino Act, № 10022, available here <http://www1.umn.edu/humanrts/research/Philippines/RA%2010022-%20%20Migrant%20Workers%20Act.pdf>, Section 3.

²²⁹ Ibid, section 7.

²³⁰ IOM, *Labour Migration in Asia Protection of Migrant Workers, Support Services and Enhancing Development Benefits*, p.58, available here http://publications.iom.int/system/files/pdf/labour_migration_asia_2.pdf

through media channels and online platforms. Migrant workers are provided with some useful information after their arrival to the country of destination on the basis of resource centers and embassies.

Another practice, with the help of which the government managed to establish the existing regime of migrant workers' protection is a strict system of licensing and renewal of licenses. The regime, established by the aforementioned laws and regulations, guarantees the selection of more reliable agents, which will be involved in the labour sending market. A license to operate a private recruitment agency can be granted to Filipino citizens or corporations created under the law with 75% of its capital owned or controlled by Filipino citizens.²³¹ Other requirements include proof of financial capacities - minimum capital, deposit and surety bond, which are very high comparing to Bangladesh. Moreover, the application fee is higher (200\$) if comparing with Bangladeshi requirements. The applicant for licensing should have a clean criminal and derogatory record. The license is valid for 4 years and the performance is annually evaluated. Those who comply with the regulations, deploy many people and provide welfare assistance to workers are awarded with performer awards and receive some incentives. The latter includes certain operational flexibilities, such as extension of licenses without submitting the usual documentation, fast processing of documents or the referral of clients from the Philippine Overseas Employment Administration (POEA).²³² Thus, such performance-based approach was shown to be effective for private recruitment agencies in complying with regulations and guaranteeing human rights for migrant workers.

The legislation of the Philippines also established a system of institutions and their functions, which are involved into the regulation of migration and protection of rights of migrant workers. It is well developed and contains diverse institutions. To start with, the Department of Labour and Employment (further DOLE) is the national governmental agency involved in the formulation and implementation of policies regarding the migrant workers' protection. DOLE also has a number of field offices, which are strategically located in the countries of destination²³³ - Philippines Overseas Labour Offices (further POLOs) - and are established in order to support and have influence on the spot. DOLE provides overall policy guidelines, directions and

²³¹ POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, available here <http://www.poea.gov.ph/rules/POEA%20Rules.pdf>

²³² supra note 230, p.28.

²³³ supra note 228, section 23.

coordination through the following bodies: the Philippine Overseas Employment Administration (POEA), the Overseas Workers Welfare Administration (OWWA), and the National Labour Relations Commission (NLRC). Firstly, it is the POEA - an authority, which solely regulates activities of private recruitment agencies, through issuing licenses and monitoring them, hears complaints against recruitment agencies and foreign employers (recruitment violations and other administrative cases), assists them in the process of emigration by holding trainings and seminars, education and information campaigns. Secondly, OWWA has the responsibility to promote the welfare of migrant workers and protect interests,²³⁴ by providing social benefits, educational benefits by training workers before their departure, providing assistance, such as psychological counseling, repatriation program for distressed workers, reintegration into society upon their return, etc.²³⁵ According to research, OWWA operates through its regional welfare offices in different parts of the country and international offices in 28 countries²³⁶. In regard to the educational trainings, PEOS are implemented by POEA,²³⁷ while the PDOS is the responsibility of OWWA.²³⁸ It should be mentioned that OWWA is not a dispute resolution body, this is the role of NLRC and in the overseas situation the Welfare Attaché mediates job disputes.²³⁹ Therefore, NLRC is a quasi-judicial body, which has the exclusive authority to resolve disputes involving employer and employee and decides claims for compensation for cases of violation/non-compliance with overseas employment contracts. According to the research done by IOM the effectiveness of NLRC is quite high, and out of 5000 cases filed annually, 70-80 % of them are resolved, with workers receiving compensation for more than 2 billion pesos.²⁴⁰

Furthermore, a positive feature of the Philippine model is that it contains a quite developed system of protection of Filipino workers in the countries of destination. As was mentioned previously in this paper, migrant workers experience lots of violations of their rights after arrival. To assist and protect migrant workers abroad, the government of the Philippines established a wide structure of bodies within the Department of Foreign Affairs. Firstly, POLOs

²³⁴ Supra note 22, p. 172

²³⁵ International Human Rights Clinic, *The Protection of Rights of Migrant Domestic Workers in a country of origin and a country of destination: Case studies of the Philippines and Kuwait*, 2013, John Hopkins School of Advanced International Studies, p.99.

²³⁶ Overseas Workers Welfare Administration, available here <http://owwa.gov.ph/?q=content/contact-us>

²³⁷ supra note 228, section 14.

²³⁸ supra note 230, p.108

²³⁹ supra note 230, p.101

²⁴⁰ supra note 22, p. 6

are important field offices, which promote the use of Filipino manpower in the host countries and provide welfare assistance and negotiations assistance in dispute resolution with foreign employers.²⁴¹ POLOs also are involved in the verification of employment documents for workers and company documentation.²⁴² POLOs usually consists of a Labour attaché, a number of assistant labour attachés and welfare officers, and are under the supervision of the Philippines embassies in the countries where they are situated. Secondly, offices for Legal Assistant for Migrant Workers Affairs were created and are located in the Philippines and countries of destination. Their mandate includes the legal representation in courts and assistance to repatriation of migrant workers for those, whose rights were violated. Moreover, Filipino's Workers Resource Centers were established on the basis of Philippine embassies. This body is beneficial for migrants as it provides legal counseling, welfare assistance, information advisory and social interaction, which is important on the post-arrival stages of migration to countries of destination. According to IOM research there are around 20 Centers operating in different receiving countries of Filipino workers.²⁴³ Advantageously, this body is under the supervision of Philippine labour attachés, which means that they can be held accountable for not fulfilling their functions and obligations.

In regards to other good practices, established in the Philippine model, setting the minimum standards for the employment of Filipino migrant workers in form of overseas employment contracts should not be overlooked. The minimum provisions of employment contract cover: free transportation to and from the worksite, free food and accommodation or provision of off setting benefits, fair or authorized causes for termination of employment.²⁴⁴ In terms of wages, the authorities established benchmarks for the salary of Filipino workers, which can't be lower than the prevailing minimum rate for the same skills or occupation in the host country, lower than minimum wage standards set under bilateral agreements or international conventions duly ratified by the host country and the Philippines, and in no case lower than the prevailing wage in the Philippines.²⁴⁵ The government also adopted the guiding rate equivalent for unskilled, low-skilled and domestic workers of 200\$ per month.²⁴⁶ In order to enforce those

²⁴¹ supra note 230, p.21

²⁴² supra note 230, p.31

²⁴³ supra note 230, p.21

²⁴⁴ supra note 230, p.34

²⁴⁵ supra note 230, p.35

²⁴⁶ ibid

minimum standards the Philippines actively facilitate signing bilateral agreements with host governments.

This existing system of institutions proves that the government of the Philippines is putting important emphasis on the regulation of the migration process by foreign representations in countries of migrants' destination. The existing laws, policies and active foreign representations of the Philippines exemplify that the Government is trying to summon countries of destination for shared responsibility in protecting rights of migrant workers. Either through bilateral agreements, or through high-level missions, joint consultations or discussions, the Philippines tries to engage the authorities of host states in actions towards the protection of Filipino workers. In countries, which are not ready for the aforementioned level of cooperation, the only feasible measures are the imposition of standard employment contracts and enforcement of joint liability on the recruitment agency and foreign employer, which exist under the system established by the POEA.²⁴⁷ Thus, the Philippines works actively towards ensuring the international cooperation in migrant workers' protection in host states.

To conclude, the legal and institutional framework of the Philippines is comprehensive, because it includes diverse mechanisms and instruments for protection and promotion of rights of migrant workers. However, there are problems in practical implementation of norms and guarantees, prescribed by law. For example, the coordination between the large number of agencies, mentioned above, remains problematic and it is hard to identify the wrongdoings, which appear in the institutional system. Despite the system of developed institutions abroad, migrant workers complained about "indifference and neglect" of personnel, when workers were seeking assistance and support.²⁴⁸ There are deficiencies in the existing system of pre-departure information dissemination, which are reported to be conducted "hasty and superficial"²⁴⁹ on the part of outside trainers, who are not fully aware and prepared to coach such sessions. Thus, even though other governments of Asian countries use the model for migrant workers' protection, created by the Philippines as model in governing labour migration, it is not perfect and also has its flaws.

²⁴⁷ supra note 230, p.58

²⁴⁸ Alcid M.L., *Country study: the Philippines*, Friedrich Ebert Stiftung Project on Migrant Labor in Southeast Asia, available here http://www.fes.de/aktuell/focus_interkulturelles/focus_1/documents/7_000.pdf, p.16

²⁴⁹ ILO, Ofreneo R.E., Samonte E.A., *Empowering Filipino Migrant Workers: Policy Issues and Challenges*, 2005, p.14.

5. CONCLUSIONS AND RECOMMENDATIONS

Migration in the Gulf and Qatar in particular remains massive. Qatar attracted an influx of migrant construction workers after winning the bid for the World Cup 2022, which is still seven years ahead. However, the situation of migrant workers in regards to their human rights remains blatant and needs immediate actions from the Qatari side, and also the international community, who can influence the government and facilitate the changes. The research paper identified, on the example of Bangladeshi migrant workers, challenges, which they face through the stages of migration. It was concluded that at the initial stage of migration recruitment agents and sub-agents are involved in a number of violations, such as deception in regards to salaries, types of jobs, payment terms and terms of contracts, visa trading and hidden contract substitution. The extreme vulnerability of workers due to debts, poverty, and unemployment in the country of origin, forces them to accept the offered conditions. Upon arrival to Qatar, workers face the sponsorship system, which by itself immensely undermines their rights and gives enormous power to the employer. They are exposed to dangerous working and living conditions, safety in the workplace is blatantly disregarded and labour inspections are not effectively performed. Workers are also in an extremely vulnerable position because the right to strike, freedom of association and collective bargaining are restricted in such a way that it is impossible to exercise those rights effectively.

International framework regarding the protection of rights of migrant workers is extensive. Both general human rights instruments, the specific ILO Conventions and instruments dedicated to migrant workers rights, thoroughly provide protection of migrant workers' rights by assigning obligations on sending and receiving states. The research has identified that both sending and receiving states are responsible for protection of human rights of migrant workers. Bangladeshi obligations were mainly formulated based on MWC, which Bangladesh has ratified. Bangladesh has responsibilities to provide workers with information regarding their overseas employment, regulate and supervise recruitment agents involved, provide adequate consular services and assistance in case of violation of their rights or in orderly return home. On the other hand, this research paper identified Qatari obligations towards protection of migrant workers rights, which were mainly based on the ILO instruments and fundamental rights at work. Thus, Qatar has responsibilities to guarantee the right to freedom of association, collective bargaining,

right to strike, elimination of all forms of forced or compulsory labour, take measures to provide safety and health at the workplace through the system of labour inspection.

The thesis examined whether existing legislation, policies and institutional practices are in compliance with international obligations, which states have. In chapter 3 of this thesis it was concluded that the current Labour Law impedes the realization of freedom of association and collective bargaining, forbidding non-Qatari workers to be a member of workers' organizations, and also establishing excessive conditions for migrant workers to practically exercise the right to strike. The sponsorship system in Qatar is another source of massive violations of human rights, which limits migrant workers' rights and freedoms. The Government of Qatar has given numerous promises to the international community, which were not substantiated in the legal reform. The government recently announced the adoption of the new law, which, leaves the exploitative system of migrant workers in place with the central role of the employer, just amending the procedures for getting permission to change the sponsor, exiting the country after the end of a contract, however not banning sponsorship system completely. The conclusion drawn in this paper is that those few international Conventions, which Qatar ratified, are not substantially incorporated in the national legislation and lack the practical implementation. For example, the mechanism of "blacklisting" recruitment agents, who breached the Labour law is unclear, short term and lacks enforcement, and does not lead to the systematic investigation and prevention of workers' exploitation.

Even strong critics in the international community through the ILO complaints mechanisms on two occasions - non-compliance of Qatar of the Forced Labour Convention (C29) and the Labour Inspection Convention (C81) and on restrictions on the right to freedom of association, collective bargaining and right to strike – did not improve the situation of migrant workers in practice. While the death toll of migrant workers in the construction is growing, the government is using promises of reform as a smokescreen to avoid international pressure for reforms and encourage companies to continue doing businesses in Qatar.

Chapter 4 of the thesis concluded that the system of institutions involved in the implementation of norms regarding protection of migrant workers in Qatar remains complicated and not practically efficient. Despite the fact, that the Government adopted the National Vision 2030 - the program for economic, social, human and environmental development, with one goal, out of several, to provide rights and safety standards of all expatriate workers in accordance to

international norms and standards, little has been done in practice to achieve the goal. Even the adoption of two charters for workers' protection by bodies responsible for infrastructure projects in Qatar, as a response to the international pressure in connection to FIFA 2022, did not bring any improvements. It was shown that there are examples where FIFA under the pressure of local and international labour unions, demanded judicial and legislative changes (in South Africa and Brazil). However, in case of Qatar, FIFA have not yet taken any strong measures to influence the Qatari government, and is in such a way ignoring the migrant workers' plight.

Bangladesh has, as a sending state of migrant workers, taken small steps towards fulfilling its obligations under the international human rights law, even though many of the ILO instruments remain non-ratified. The examination of the Bangladeshi legal system showed that, overall, the country adopted the Migrants' Act, Recruitment Agents' Conduct and License Rules, Emigration Rules - in order to fulfill its responsibilities. However, the implementation of those instruments remains weak, recruitment fees lack proper regulation, penalties for violation of the law are not addressed in the full manner, no standard contract was adopted which would properly cover migrant workers plight.

In order to comply with its obligations, Bangladesh also makes further efforts through policy making, practices and establishing institutions focused on protection of rights and welfare of migrant workers. For example, practices include, among others, informing migrant workers about their rights, legal and complaint procedure for those whose rights has been violated, licensing and sanctioning of recruitment agents for misconducts. It was concluded that both systems of institutions and existing practices are lacking in effectiveness and are in need for reformation. Thus, the example of the Philippines was used to introduce the best practice existing in the Asian region, focused on regulating labour migration not only through the legal and institutional regulation, but also practical implementation. The Philippine model was beneficial for drawing final recommendations to reform the current Bangladeshi system.

In conclusion, international organizations, NGOs and FIFA with its influential role in Qatar for the upcoming World Cup 2022 should call for actions and strongly pressure the government of Qatar to change existing legislative and institutional practices and their implementation. On the other hand, both Bangladesh and Qatar as sending and receiving countries should share their responsibilities in protection of rights of migrant workers, who have become an integral part of the economies of both sides.

5.1. Recommendations for Qatar

Legal reforms: The government needs to eliminate the sponsorship system and to amend the current Labour Law. The sponsorship system should be abolished and replaced by the regulated and open labour market, where employees are free to change jobs or get exit visas to leave the country. The legislation, which prohibits passport confiscation by employers, should be actively enforced and those who violate the law should be severely punished. The labour law should be amended so migrant workers will be able to exercise the right to strike, freedom of associations and collective bargaining without any barriers. An effective complaint system should be established. Qatar should ratify and implement international instruments for the protection of human rights and migrant workers in particular – ICCPR, ICESCR, MWC; the ILO instruments: C 97, C 143, C 87, C 98, C 181.

Reforms of recruitment practices: The recruitment process should be regulated by establishing a centralized body for recruitment, work with certified agencies in sending countries and curb practices of visa trading and open-visas. It should be ensured that workers are provided with exact information about jobs they take and require that workers obtain a copy of their contracts written in their native language before migrating to Qatar. Investigations and penalties for those employers involved in the exploitation, deception and other violations should be prescribed by law and enforced in practice. In order to regulate recruitment practices the recruitment model contract should be developed and should cover the agreed salary, work position, working and living conditions, etc. The mandatory standards of migrant workers' welfare of Qatar Foundation and Supreme Committee can be used as a model. The inspection system should be developed and include a sufficient number of inspectors, who will monitor construction sites through unannounced inspections and investigate injuries and fatalities at the worksites. Inspectors should be trained in labour standards and international human rights and be able to communicate with workers either themselves or provided with competent interpreters.

Awareness raising and information dissemination: There is a clear need of public information campaigns and training programs for migrant workers on issues of workers' rights, remedies and Qatar labour policies. The information should be distributed in languages most widely spoken by

migrant workers. Additionally, measures should be taken to collect and publish data on cases of injuries, fatalities, and illnesses at workplaces.

Involvement of FIFA: FIFA should ensure and take a strong stand that all partners and companies involved in the construction for the World Cup should act in accordance with international human rights and labour standards. FIFA should push the Qatari authorities for the legislative reform towards protection of migrant workers.

5.2. Recommendations for Bangladesh

Legal reform: The government should initiate the ratification of international standards on migrant workers' protection, in particular the ILO Conventions, such as C 97, C 143, which guarantee more profound protection of labour rights for migrant workers. To comply with its obligations under international law, the national legislation needs to be amended especially in terms of regulating activities of recruitment agents, strictly penalizing the illegal practices of recruitment agents, establishing the shared responsibility of both sides of the migration process, detailing grounds on which licenses should be granted or cancelled, strict requirements for licensing of recruitment agents.

Institutional and policy reform: A new policy should be created, which will incorporate all aspects of international labour migration and focus on protection mechanisms. Due to lack of credible and comprehensive information and surveys on the issue, the government should conduct the profound research, possibly in cooperation with receiving states and international organizations. The Policy should include establishment of the mechanism for monitoring the Policy implementation, it should clarify the complaint mechanisms and also encourage international cooperation with labour receiving states, such as Qatar. To address the gaps in coordination between institutions, their functions should be revised. Following the Philippine model, the government of Bangladesh should make one principal agency responsible for the protection of rights of migrants (for example, BMET) in order to balance responsibilities, accountabilities and functions of agencies.

Reform of the recruitment agents system: There is a need to regulate activities of private recruitment agencies and curb the role of illegal intermediaries and subagents, which are involved in massive violations of human rights of migrant workers. The government of Bangladesh should, by all possible means (awareness raising campaigns, government to government initiatives of countries of origin and destination, strengthening the agencies, implementing the system of incentives, etc.) recreate trust to formal migration channels, so that the illegal channels will be less used. Moreover, the government should take measures to regulate and control migration costs, which recruitment agents charge during diverse stages of migration.

Awareness raising and information dissemination: Taking the Philippine example under consideration, the system of providing migrants with information about vital issues on all stages of migration should be developed. Personnel of institutions working with migrant workers, foreign missions, labour attachés and recruiting agents should be trained and equipped with knowledge in regards to the legal aspects of migration, risks workers face and system of their protection. Responsible agencies in cooperation with NGOs and international organizations should adapt existing systems and make training sessions for migrant workers obligatory, comprehensive and effective in terms of protection of their rights. The number of training centers should be increased in order to effectively disseminate the necessary information. Following the model of the Philippines, the information should be disseminated both for potential migrants, who need to know more about the whole migration process and its challenges, and also for those who are ready to leave to the country of destination. Additionally, the information about the migration process should be updated on agencies' websites in local languages, and be disseminated through diverse media channels and campaigns, so that migrants could easily access necessary information.

Cooperation with countries of destination: The government of Bangladesh should actively participate in the diplomatic work, strengthen its foreign missions and negotiate bilateral agreements with countries of destination for common minimum standards of migrant workers' protection and take measures to facilitate smooth transfer of earnings. Bilateral agreements can also facilitate the establishment of an organized database, which will be beneficial for regulating

the migration process. Foreign missions should establish effective centers and institutions for protection in the countries of destination, which will provide legal counseling, welfare assistance, information assistance, etc. Representation through labour attachés should be strengthened and they should be widely represented in the countries of destination. Labour attachés, despite their assistance function, should actively participate in the evaluation and control of working environment in the countries of destination. Foreign missions should also be held responsible for investigation and reporting concerning the repatriation, deaths, and accidents of every Bangladeshi citizen in host countries.

Cooperation with international organizations: The Government of Bangladesh must cooperate with international organizations, such as the ILO, which can be a mediator in balancing interests of both countries (Bangladesh and Qatar). The networking with the ILO – the main body on protection of labour rights – will also be beneficial in terms of assisting legislative and institutional reforms. The cooperation with other international agencies and organizations, for example IOM, will be beneficial for technical support as they may assist in research, expertize and surveys on various issues of migration.

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