



MALDIVES MIGRANT WORKER SYSTEM ASSESSMENT REPORT 2015

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(A Photograph from Shaari's "Working Class Heroes" selection of photos exhibited at the "OTHERS - Exhibition Highlighting the Lives of Migrant Workers" Art Exhibition organized by Transparency Maldives.)

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ACRONYMS

ACC	Anti-Corruption Commission
ALAC	Advocacy & Legal Advice Centre
CSC	Civil Service Commission
DNP	Department of National Planning
DoIE	Department of Immigration and Emigration
EA	Employment Approval
ET	Employment Tribunal
ILO	International Labour Organisation
IOM	International Organisation for Migration
LRA	Labour Relations Authority
MACI	Maldives Association for Construction Industry
MATI	Maldives Association for Tourism Industry
MCSA	Maldives Civil Service Association
MED	Ministry of Economic Development
MFU	Maldives Fisherman's Union
MLU	Maldives Labour Union
MNTUC	Maldives National Trade Union Congress
MPND	Ministry of Planning and National Development
MPS	Maldives Police Service
MPWU	Maldives Ports Workers Union
MTCC	Maldives Transport and Contracting Company
MVR	Maldivian Rufiyaa
NCIT	National Centre for Information Technology
NGO	Non-Governmental Organization
POM	Pilots Association of Maldives
SOP	Standard Operating Procedure
TAM	Teachers Association of Maldives
TEAM	Tourism Employees Association of Maldives
TI	Transparency International
TIP	Trafficking in Persons
TM	Transparency Maldives
VoTs	Victims of Trafficking

1. INTRODUCTION

In comparison to other South Asian countries, the Maldives follows a relatively liberal labour policy and over the past 25 years migration has become a permanent feature in the Maldives labour market. Growing income inequality between countries in South Asia has added the incentive for South Asians to explore income-earning opportunities in other countries. As such, since 1990 there has been a significant expansion of the foreign migrant¹ workforce in the Maldives.

This study was commissioned by the Advocacy and Legal Advice Centre (ALAC) of Transparency Maldives (TM). Established in 2012, ALAC started out as the first free legal aid centre in the Maldives and over the years the majority of the clients that seek assistance from ALAC has been migrant workers - one of the most marginalised groups in the Maldives. ALAC has assisted migrant workers in accessing justice in relation to various issues, including human rights violations, immigration and labour related issues, and injustices related to corruption.

The purpose of the study was to develop a profile of migrant workers in the Maldives, identify the key stakeholders and issues related to the migrant worker system, and recognise migrant worker trends in the Maldives. The study was undertaken through the completion of a mapping exercise and evaluation of the state mechanisms and systems which deal with migrant workers in the Maldives, in an attempt to identify systemic gaps and loopholes that are supportive of the potential for acts of corruption. The study focuses on the practices, processes and procedures that are prone to corruption in relation to the migrant worker system at the national level.

This qualitative study utilises a multiple case study method to investigate the issues. Specifically, the research included a desk review of existing literature and media articles pertaining to the issue, a review of the existing anti-corruption laws and regulations relevant to migrant workers in the Maldives, the mapping of key stakeholders, focus group discussions with migrant workers, interviews with key informants, and stakeholder consultations. A national workshop was also conducted to discuss the findings and validate the study.

This study is not without its limitations. It should be noted that the migrant worker system covered in this study is constantly evolving, with frequent changes in policy and practice making it difficult to record and review the most updated positions. Given that the study focuses on a marginalised group and focuses on issues such as corruption, accessing information was also challenging. To support this, the study stressed the importance of privacy and confidentiality of the migrant workers and wider stakeholders involved in the research. Finally, it should be noted that the migrant worker system is

¹ The definition of 'foreign migrant worker' used in this report is taken from the International Labour Organization's (ILO) definition of a 'migrant for employment', as being 'a person who migrates from one country to another with a view to being employed otherwise than on his or her own account'.

broad and dynamic and involves multiple stakeholders, which necessarily limited the depth and breadth of the research undertaken within this project.

While this study is designed to be neither exhaustive nor conclusive, it is designed to provide baseline information on the Maldives migrant worker system. It is hoped that this assessment increase stakeholder understanding of the processes that enable corruption to occur within the mechanisms/systems which deal with foreign migrant workers in the Maldives. Most importantly, it is hoped that this study provides directions for stakeholders to undertake further investigation and research into the issues identified in this study, and ultimately design interventions to address the issues. Finally, through better understanding of the issues migrant workers face, TM hopes that ALAC, as well as other support service providers, are able to provide better support to migrant workers and migrant workers are empowered to address their grievances.

The assessment is divided into seven sections. Section two presents a brief overview of historical trends of the number, nationality and economic sectoral distribution of foreign migrant workers in the Maldives. Section three presents a review of the existing legal framework applicable to foreign migrant workers in the Maldives, followed by section four, which maps out the key stakeholders active in the migrant worker system. Section five identifies the key elements of the existing migrant worker system in the Maldives and section six presents migrant worker case studies for five key sectors: construction, community services, tourism, health, and education; and identifies the key issues and challenges in these sectors in relation to foreign migrant workers. Finally, section seven concludes with a summary of the issues and challenges within the Maldives migrant worker system.

2. PROFILE OF MIGRANT WORKERS

DEFINITIONS

The definition of 'foreign migrant worker' used in this report is taken from the International Labour Organisation's (ILO) definition of a 'migrant for employment', as being 'a person who migrates from one country to another with a view to being employed otherwise than on his or her own account'² (ILO 1949). This definition excludes the short-term entry of the liberal professionals, artists, and seafarers. Persons who move for work to another country are also commonly known as 'international migrant workers'.

Foreign migrant workers are considered 'regularly admitted' or 'regular' when their entry and work activity comply with the immigration laws of the country in which they work. When foreign migrant workers are employed without being regularly admitted, or without being able to produce evidence of their regular admission, they are considered 'irregular' or 'undocumented' migrant workers (ILO 2007).

If the irregular entry into the foreign country is deliberate and assisted by a person who derives a benefit from the violation of immigration laws, the migrant worker is classified as 'smuggled'. If the irregular entry does not result from consensual transaction, but from fraud with the intention to exploit a person, the person is defined as 'trafficked' (ILO 2007).

NUMBER OF MIGRANT WORKERS

There has been a significant expansion of foreign migrant workforce in the Maldives since 1990 (Figure 1). The number of regular foreign migrant workers increased from an estimated 8,689 in 1990 (MPND 2005) to 111,579 by December 2012 (Nafiz 2013). In 2012, more than 18,050 new regular foreign migrant workers joined the labour force at an average of 49 new workers per day (Nafiz 2013).

2 Article 11(1) of the Migration for Employment Convention (Revised), 1949 (No. 97)

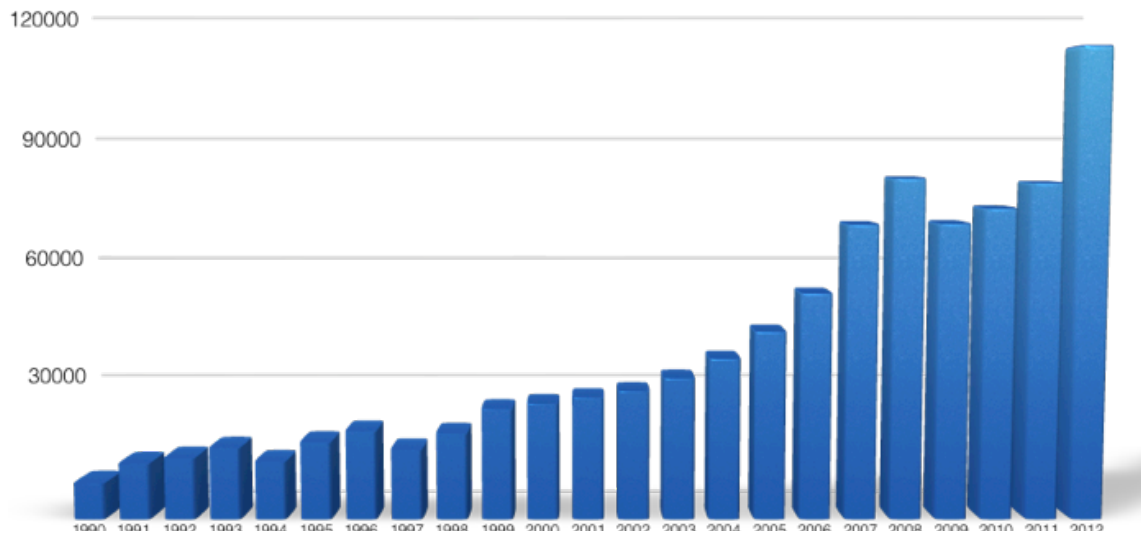


Figure 1: Regular foreign migrant workers in the Maldives 1990-2012³ (Source: data extracted from Statistical Yearbooks of Maldives, MPND, DNP 2012)

It is common knowledge that the official statistics under-report the real number of foreign migrant workers in the country. Disordered immigration processes and weak registration procedures have resulted in a lack of reliable statistics on total number of foreign migrant workers. Since 2012, the data on the number of foreign migrant workers in the country are not included in the statistical yearbooks of the Maldives.

MIGRANT WORKER SOURCE COUNTRIES

The historical trend since 1990 shows that the origin of foreign migrant workers in the Maldives is predominantly Asia, particularly South Asia (Figure 2). Sri Lankan workers dominated the regular foreign migrant workforce until 1999 when Indians became the highest foreign migrant worker group by nationality. In 2007, Bangladeshi migrant workers outnumbered Indian migrant workers to become the largest migrant worker group in the Maldives. More recently, Nepal and Philippines are emerging as growing source countries of foreign migrant workers to the Maldives. In 2011 Bangladeshi nationals accounted for 57% of the regular foreign migrant workforce, followed by Indians (23%), Sri Lankans (10%), and Filipinos (1.5%).

³ The data for year 2012 are from Nafiz 2013

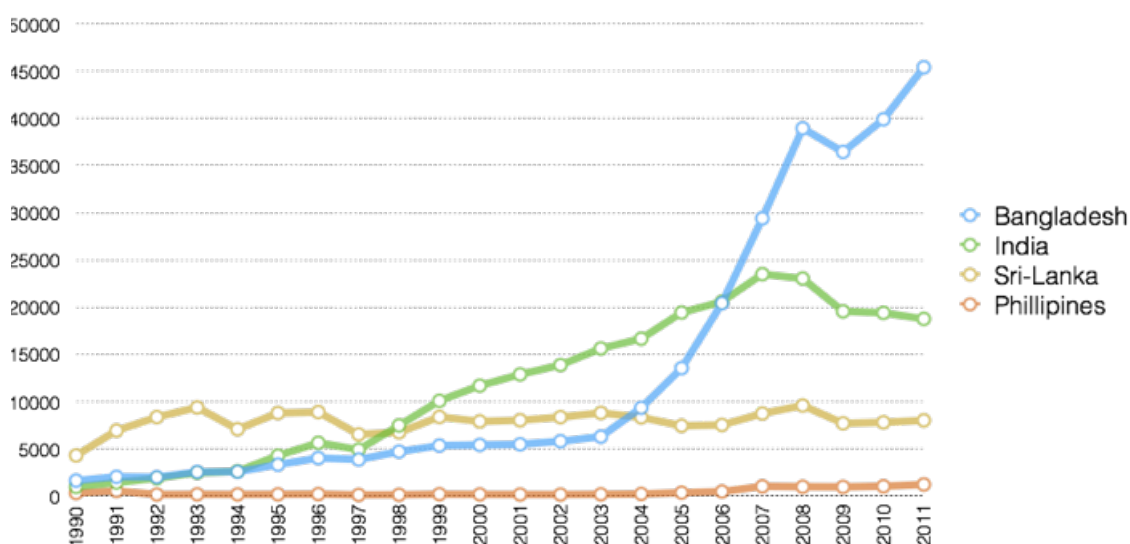


Figure 2: Regular foreign migrant workers by nationality 1990-2011 (Source: Statistical Yearbook of the Maldives, MPND, DNP 2012).

SECTOR DISTRIBUTION

According to the ILO conducted analysis of employment data, regular foreign migrant workers comprise more than 60% of employees in four economic sectors (ILO 2013). Foreign migrant workers dominate construction (88%), community and social services (78%), tourism (72%), and financial and business services sector (72%). The bulk of foreign migrant workers continue to be employed in the construction sector, mostly in elementary occupations, while in the financial and business service sector migrant workers primarily occupy professional jobs.

According to an analysis of the 2011 employment data gathered by the Department of National Planning (DNP) by ILO, foreign migrant workers account for 44% of workers in the 'professional' category and 21% of workers in the 'technician' category at the top end of occupational distribution (ILO 2013). At the low end of the occupational classification, foreign migrant workers account for 56% of 'service' workers, 61% of 'craft-related' occupations and 76 per cent of 'elementary' occupations (ILO 2013).

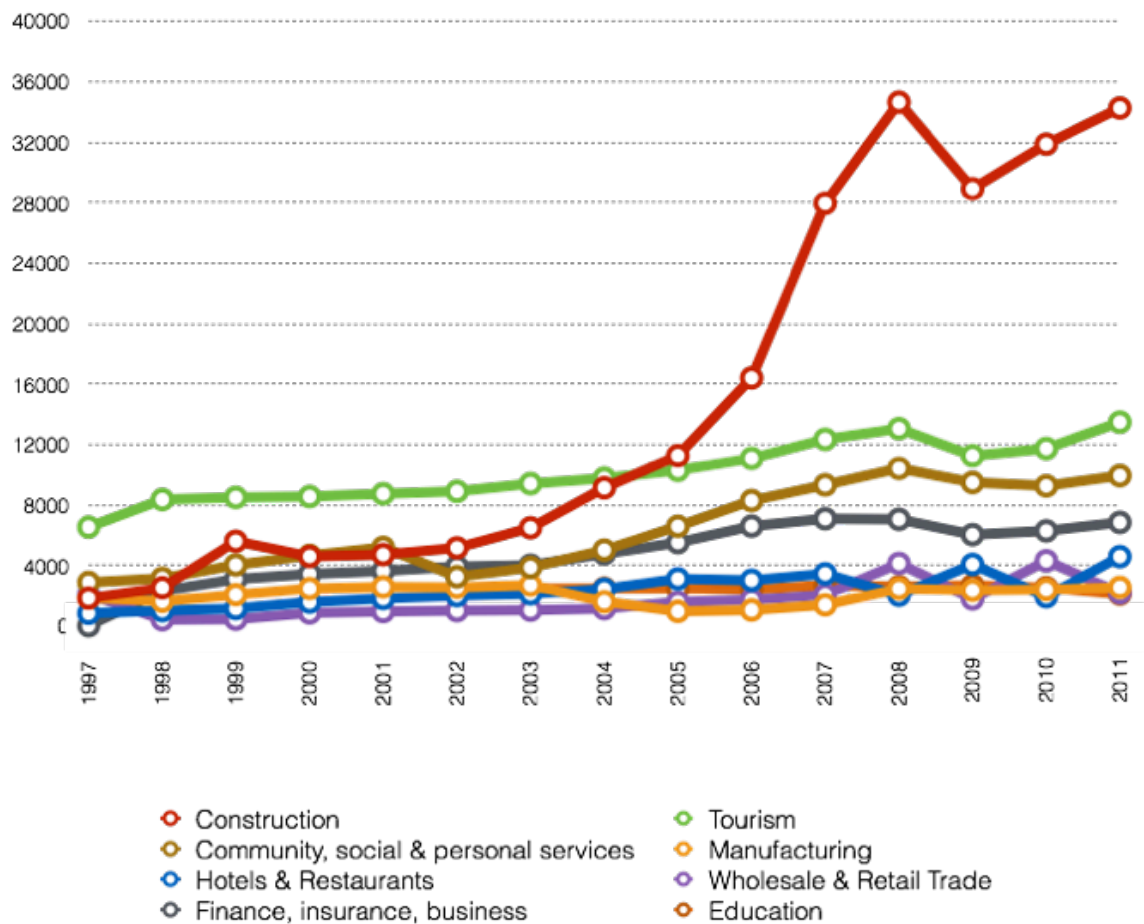


Figure 3: Sector distribution of regular foreign migrant workers 1990-2011 (Source: Statistical Yearbook of Maldives, MPND, DNP 2012).

3. EXISTING LEGAL MECHANISMS

The legal rights of foreign migrant workers and the framework they operate within is set out in a number of national laws and international commitments as set out below.

CONSTITUTION OF THE MALDIVES

The Maldives Constitution (2008) has an extensive fundamental rights chapter that encompasses many internationally recognized labour rights.

According to Article 17 of the Constitution of the Maldives, "Everyone is entitled to rights and freedoms without discrimination of any kind including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native land."

Article 25 states that "No one shall be held in slavery or servitude, or be required to perform forced labour" (except for compulsory military service or service required in cases of emergency or calamity).

Article 37 (b) enshrines that "Everyone is entitled to just and safe conditions of work, fair wages, equal remuneration for work of equal value, and equal opportunity for promotion."

Article 37 (c) prescribes that "Everyone has the right to spend time on rest and leisure, including limits on hours of work and periodic holidays with pay."

Article 37 (d) states that "Everyone has the right to spend time at rest and leisure. In order to provide this right to each employed person, the maximum numbers of working hours have to be determined as well as the length of paid holidays."

According to Article 30 (b) "Everyone has the freedom to form associations and societies including... the right to form trade unions, to participate or not participate in their activities." [...]

Article 31 specifies that "Every person employed in the Maldives and all other workers have the freedom to stop work and to strike in order to protest."

Article 32 states that "Everyone has the right to peaceful assembly without prior permission of the State."

According to Article 35, "Children and young people shall not be harmed, sexually abused, or discriminated against in any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour."

INTERNATIONAL COMMITMENTS

The Maldives is a party to major ILO conventions on fundamental labour rights. Maldives became the 183rd member state of the ILO on 15 May 2009.

On 4 January 2013, the Government of the Maldives ratified the 8 core conventions on the ILO's fundamental labour rights: the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); and the Worst Forms of Child Labour Convention, 1999 (No. 182).

There are three international standards that apply to foreign migrant workers. They are the ILO Migration for Employment Convention, 1949 (No. 97); the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

The ILO Convention 97 provides the foundation for equal treatment between nationals and regular migrants in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations. It sets out details for contract conditions, the participation of migrants in job training or promotion and offers provision for appeals against unjustified termination of employment or expulsion, and other measures to regulate the entire migration process.

ILO Convention 143 has two main objectives. First objective is to regulate migration flows, eliminate clandestine migration and combat trafficking and smuggling activities. The second objective is to facilitate integration of migrants in host societies. The convention contains minimum norms of protection applicable to migrants in irregular situation, or who were employed illegally, including in situations where their cannot be regularized. Article I established States to "respect the basic human rights of all migrant workers," independent of their migratory status or legal situation in the host State.

In 1990, UN Member States adopted the United Nations (UN) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). The ICRMW is recognized as the most comprehensive international instrument on the rights of migrant workers and it extended the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration. The ICRMW reaffirms and re-establishes the basic human rights norms that it considers necessary for migrant workers to have free and equal enjoyment of rights and dignity throughout all stages of labour migration. The above three Conventions (97, 143 and ICRMW) together provide a comprehensive basis for policy and practice regarding foreign migrant workers and their family members. The Maldives has not yet ratified these three conventions.

In 2002, the South Asian Association for Regional Cooperation (SAARC) adopted and signed the SAARC Convention on Prevention and Combating Trafficking in Women and Children. Under this Convention SAARC member states have established a regional taskforce to combat trafficking of women and children in South Asia.

EMPLOYMENT ACT

The legal framework to govern the rights and responsibilities of the migrant workers in the Maldives is included in the Employment Act (2/2008) that was ratified and signed into law in May 2008.

Article 63 of the Employment Act stipulates that the concerned Minister shall enact and publish regulations to govern the employment of foreigners in the Maldives, carrying out of employment by foreigners, employment and dismissal of foreigners and other related matters. Regulation on Employment of Foreign Workers in the Maldives (2011/R-22) was published on official gazette on 26 May 2011.

Article 64 of the Employment Act provides for the submission of complaints at the Employment Tribunal, by or on behalf of a foreigner in employment alleging breaches of the provisions of his/her employment agreement.

The Employment Act provides for the creation of a Labour Relations Authority, an Employment Tribunal and an Advisory Board on wages. Although these agencies have been established they are over-burdened because of issues in the law.

To date, four amendments have been brought to the Employment Act. The amendments were made through the following Acts: 14/2008; 12/2010; 3/2014; 14/2015. Of these amendments, the third and fourth amendments are directly relevant to foreign migrant workers in the Maldives.

Amendment 3/2014 passed by the Parliament on 3 December 2013 requires an employment approval for foreign migrant worker to be issued prior to arrival in the Maldives. The amendment also made a deposit mandatory for all foreign migrant workers to be paid by the employer.

Amendment 14/2015 is on Ramazan allowance for Muslim workers. The amendment makes it optional for employers of Muslim foreign migrant workers to pay them a Ramazan allowance.

THE MALDIVES IMMIGRATION ACT

The Maldives Immigration Act (1/2007) lays down the rules for entry, departure and deportation of foreign nationals. Article 15 of the Act provides for work visa: the permit to remain in the Maldives for the duration of a work permit granted to a foreign national visiting the Maldives for the purpose of working, where a work permit has been obtained by that foreign national consistent with the regulations of the concerned Government authority.

ANTI-HUMAN TRAFFICKING ACT

The Anti-Human Trafficking Act passed by the Parliament on 3 December 2013 and ratified on 8 December 2013 makes trafficking in persons a criminal offence in the Maldives. The purposes of the Act are to prevent trafficking of persons through and across the Maldives, establish the crimes of trafficking in persons and prescribe punishments, provide for prosecution of perpetrators of trafficking in persons; provide protection and assistance to victims of human trafficking, promote and protect the human rights of trafficked victims, and engage with local and international NGOs working against human trafficking.

The Act defines the crimes of trafficking, exploitation, and debt bondage. According to this Act, forced labour and fraudulent recruitment are considered human trafficking. The Act specifies the penalties for perpetrators of trafficking. The penalty for trafficking offence is a jail imprisonment up to 10 years that can be extended to 15 years if children are involved.

The Anti-Human Trafficking Act gives protection to victims of trafficking. Protection for victims of trafficking include the designation of specified public officials and NGO representatives authorized to identify potential victims of trafficking and entitlement to receive rehabilitative services under the law, including shelter, health care, counselling, translation services, and police protection. The law also created a 90-day reflection period, during which victims are eligible to receive services while deciding whether to assist authorities in a criminal case. However, identified victims who voluntarily entered Maldives illegally were subject to deportation. Foreign victims assisting an investigation or prosecution could receive a renewable visa. The law also permitted victims to make a civil claim for compensation and for judges to order compensation during a criminal case.

WORK VISA REGULATION

The Department of Immigration and Emigration has issued a Work Visa Regulation (2010/R-7) under the Maldives Immigration Act (1/2007). The Work Visa Regulation gazetted on 12 October 2010 requires foreign migrant workers who enter the Maldives

for the purpose of work to have a valid work visa. The conditions for entry of work visa holders as specified in the regulation includes the following: a passport with minimum six months validity, security deposit paid to DoIE 48 hours before arrival, truthful answers to questions posed by Immigration Officers, not prohibited from entry to the Maldives under article 4 of the regulation, specification of the purpose of entry, an employment approval from the concerned authority with a copy transmitted to DoIE, and being over 18 years of age.

Documents and payments necessary for a work visa include: completed visa application form (IM25), passport standard photograph, original of the employment contract or contract copy attested by a court or law firm, original of the employment approval, passport with 6 months validity, MVR 250 for monthly visa fee, original of the medical report, MVR 50 for annual visa card fee, Employer's National Identity Card or Registration Certificate of Company, and medical insurance documentation.

REGULATION ON EMPLOYMENT OF FOREIGN WORKERS IN THE MALDIVES

Employment of foreign migrant workers is regulated by the Regulation on Employment of Foreign Workers in the Maldives (2011/R-22) that was published on official gazette on 26 May 2011. This regulation is issued under Article 63 of Employment Act (2/2008) and Articles 32, 33 and 35 of the Maldives Immigration Act (1/2007).

The regulation (2011/R-22) requires employers to apply for a foreign worker quota, pay a security deposit for the foreign migrant worker, ensure that work permits are issued before a foreign migrant worker can commence work, apply for a work permit card within 15 days of arrival of the foreign migrant worker to the Maldives, apply for a work visa within 30 days of arrival of the foreign migrant worker to the Maldives, pay a work visa fee of MVR 250 per month, receive the foreign migrant worker at port of entry to the Maldives, and register the foreign migrant worker at the registry maintained by the applicable island council or city council.

4. KEY STAKEHOLDERS

The core stakeholders relevant to this assessment are the foreign migrant workers and their employers in the Maldives. There are several key stakeholder groups who serve this core community. The key stakeholders include the policy makers and advisory groups, government regulatory organizations, business and industry groups, union and labour organizations, and labour recruitment service providers.

POLICY MAKERS AND ADVISORS

The key policy makers and advisors relevant to migrant workers include but are not limited to:

- Labour Advisory Council
- Ministry of Economic Development
- Ministry of Tourism
- Ministry of Housing and Infrastructure
- Ministry of Education
- Ministry of Health
- Ministry of Fisheries and Agriculture
- Ministry of Foreign Affairs
- Ministry of Finance and Treasury
- Maldives Monetary Authority
- Attorney General's Office

The Labour Advisory Council is the main advisory group relevant to migrant workers. It is established as a tripartite consultative structure with government, employer, and worker representatives. The Ministry of Economic Development hosts the Secretariat functions of the Council. The membership of the Council includes Government agencies, employer representatives and employee representatives. The purpose of the Labour Advisory Council is to ensure that international labour standards are formulated, applied and supervised with the participation of employers and workers.

REGULATORY ORGANIZATIONS

The main regulatory organizations relevant to the migrant workers include:

- Department of Immigration and Emigration (DoIE)
- Labour Relations Authority (LRA)
- Employment Tribunal (ET)
- Maldives Police Services (MPS)
- Prosecutor General's Office

The Department of Immigration and Emigration (DoIE) is the main regulatory authority relevant for migrant workers in the Maldives. The DoIE controls and manages the border of the Maldives to prevent illegal entry into the country. The Immigration Act (1/2007) and the Work Visa Regulation (R-7/2010) stipulate that migrant workers who enter the Maldives for the purpose of working should have a valid work visa. The DoIE has the mandate to issue work visas for migrant workers. The DoIE is also responsible for issuing quotas to employers in different economic sectors. Upon application by employers holding the necessary quota, DoIE issues work permits for migrant workers to enter the country. The DoIE takes deposits from employers for each migrant worker to cover the cost of one-way economy class ticket to the migrant worker's country of nationality plus an estimated rate for food, and transportation to ensure smooth deportation of the migrant worker if needed.

The Labour Relations Authority (LRA) was established under Article 77 of the Employment Act. The functions of the LRA are: to observe compliance with the Act and its regulations and to implement the 'administrative steps' required to secure compliance, to facilitate creation of awareness of the Act and its regulations and to provide technical information and advice to employers and employees, to inform the Minister of issues that arise that are not covered by the Act and its regulations and any resultant unfair advantage, and to issue regulations governing employer and employee relations.

The mandate for labour administration is assigned to the Minister of Economic Development (MED) at cabinet level and the Director General of LRA reports to the Permanent Secretary of MED. The responsibility for dispute resolution is also mandated to Labour Relations Authority (LRA).

The Employment Tribunal is established under Article 64 of the Employment Act and focuses on individual rights disputes and adjudication processes. The Tribunal is composed of seven members appointed by the President for a five-year term. The President appoints a chairperson and a deputy chairperson from among the seven members.

BUSINESS AND INDUSTRY GROUPS

The key employer stakeholders in the Maldives are:

- Civil Service Commission (CSC)
- Maldives Association for Construction Industry (MACI)
- Maldives Association for Tourism Industry (MATI)

Maldives Association of Construction Industry (MACI), with more than 148 members, has been functioning as the representative for the construction industry since its establishment on 30 October 2001. MACI is chaired by a President elected from its members and governed by an executive board that decides on all matters of the association.

Maldives Association for Tourism Industry (MATI) was established on 12 August 1982, ten years after commencement of tourism in the Maldives. There are more than 85 active members and 19 associate members in MATI, and a 15-member executive board governs the association. The functions of MATI are provision of a forum for: discussion of issues of concern to the tourism industry of the Maldives, initiation and implementation of activities that will enhance the purposes of association, initiate and enhance mutual collaboration within the tourism industry of the Maldives, and opportunities that will positively contribute towards fulfilling the purpose.

UNION AND LABOUR ORGANIZATIONS

There are no registered unions and labour organizations in the Maldives. However, several civil society organisations registered under the Associations Act (1/2003) do specialise on worker rights. These associations address foreign migrant worker issues as well. The key workers associations in the Maldives are:

- Tourism Employees Association of Maldives (TEAM)
- Maldives Civil Service Association (MCSA)
- Maldives National Trade Union Congress (MNTUC)
- Maldives Ports Workers Union (MPWU)
- Teachers Association of Maldives (TAM)
- Pilots Association of Maldives (POM)
- Maldives Fishermen's Union (MFU)
- Maldives Labour Union (MLU)

LABOUR RECRUITMENT SERVICE PROVIDERS

There are several employment agencies registered in the Maldives. About 202 employment agencies were registered with Ministry of Youth and Sports between 1998 and mid 2014. In 2014 the registration function was transferred to Ministry of Economic Development (MED). In 2014, 25 employment agencies were registered with MED, and 16 agencies were registered in 2015. There is no mechanism to determine how many of these 243 registered agencies are now offering recruitment services.

5. KEY ELEMENTS OF MIGRANT WORKER SYSTEM

QUOTAS

In the Maldives, qualifying employers are provided a quota, limiting the number of expatriates who can be employed. Employers should obtain quotas from the DoIE before applying for employment approval.

According to the DoIE Standard Operating Procedures (SOP) for issuing quotas, DoIE staff have to verify the documents submitted by the employer (employment contracts, relevant approval from government authority, passport copies, etc.), and perform a site inspection prior to the issue of the quota.

DoIE employees check the documents submitted by the employer in three stages: preliminary check stage, verification stage, and approval stage. Documents submitted by the employer are checked in terms of relevance and reliability according to the SOPs. During the site inspection, DoIE employees are also required to verify that the information submitted is factually correct.

EMPLOYMENT APPROVAL (WORK PERMIT)

Employment Approval is the permissions granted by the DoIE to foreigners for employment in the country. Employment Approval should be obtained by individuals prior to obtaining a Work Visa and prior to entering the Maldives. The approval was previously called 'Work Permit'.

SECURITY DEPOSIT

The work visa regulation requires a security deposit. This is the amount of money that should be paid by the employer 48 hours before the arrival of a foreign migrant worker. Deposit is used to deport foreign migrant workers who violate the Immigration Act and the Regulations under the Act. The deposit rate reflects the economy class airfare and other expenses for accommodating a worker until the worker is sent home, if and when the situation arises.

WORK PERMIT CARD

The Work Permit Card is an identification card that all foreign migrant workers are required to carry with them at all times. Foreign migrant workers must show their work permit card to government officials when needed. A work permit card is issued for the duration of work visa and MVR 50 is charged for issuance of the card.

WORK VISA

A work visa is required to work in the Maldives. When an application is submitted requesting a work visa, the DoIE checks the submitted documents and issues the visa if the documents are in order. A valid work visa allows employees to enter the country repeatedly.

WORK VISA FEE

A monthly work visa fee of MVR 250 should be paid to Maldives Inland Revenue Authority (MIRA) for each foreign migrant worker working in the country.

XPAT ONLINE

Until 26 November 2012, the DoIE used a labour database to record data on foreign migrant workers. The DoIE now uses a new system called 'Xpat Online'. The National Centre for Information Technology (NCIT) developed this system. Xpat Online is now also used to issue quota and work permits.

6. SECTOR CASE STUDIES

The sector case studies investigate the process of recruitment of foreign migrant workers in the Maldives within three particular sectors dominated by foreign migrant workers: construction, community service, tourism, education, and healthcare. The case studies focus on the loopholes that pave the way for corruption to occur.

The case studies are based on existing secondary data and interviews with both employers and employees of companies who are directly involved in recruiting foreign migrant workers. Difficulties in obtaining data from the tourism sector should be noted, in part due to internal policies restricting the disclosure of some information by staff working in tourist resorts.

The investigation identified evidence of significant loopholes within the system that can facilitate corruption. Of particular note was the identification of the existence of foreign migrant workers who have established themselves as recruitment agents in the Maldives, and the confirmation that a significant portion of migrants within the sectors reviewed (other than highly skilled professionals) had paid large amounts of money as recruitment fees in order to migrate to the Maldives. Some of these fees are paid directly to Maldivian recruitment agencies, with other fees having been paid to migrants' home-based recruitment agencies as processing fees or service fees.

CONSTRUCTION SECTOR

The construction industry in the Maldives includes both large and medium sized private employer organisations as well as public-sector employers operating in the sector. The majority of companies are located in Male'. Most construction companies hire foreign labour through local recruitment agencies, both for skilled technical jobs and unskilled labourer roles. The majority of labourers are recruited from Bangladesh.

THE IMMIGRATION PROCESS

Quotas for foreign migrant workers are provided to construction companies by the DoIE, based on the company size, scale and reputation in the market. In an ideal situation, companies will apply for quotas from DoIE once construction projects are agreed, and DoIE will issue the quotas within 3 business days if all documentation is provided. This rarely occurs with the process sometimes taking 2 weeks to 3 months to complete. Delays are felt to impact particularly harshly on small and medium construction companies, who rely more heavily on recruitment on-demand models of employment.

Delays in obtaining quotas provide a window of opportunity for corruption to occur. Reports indicate that 'gifts' are sometimes given to DoIE staff members to speed up the process and gain approval. Likewise, employers are sometimes approached by

unlicensed freelance agents offering to speed up the quota approval process for fees ranging from MVR 5,000 to MVR 10,000 per migrant worker, plus an additional MVR 5,000 up-front fee for urgent matters or to provide workers who are already in the Maldives. It is not possible to estimate the scale of the problem since only limited information was available on the processes followed. However, it is evident that the unlicensed freelance agents are well-connected and operate as a network within the Maldives.

Participants in the research suggested that delays in obtaining quota approval from DoIE appear deliberate and planned. The automated system used by DoIE (Xpat Online) should remove many of the inconsistencies on processing applications and increase efficiency of the process, so the causes of delays to provide approval of quotas begs explanation.

THE RECRUITMENT PROCESS

Three types of agencies operate within the recruitment system – approved local agencies operating in the Maldives, foreign agencies operating in migrant workers' home countries, and unlicensed 'freelance' agents working in the Maldives on a commission basis. The majority of workers within the sector are initially recruited through recruitment agencies operating in their countries of origin, often in partnership with local recruitment agencies from the Maldives. Most workers are recruited from Bangladesh, India, Sri Lanka, Nepal, and the Philippines.

Construction companies pay fees to recruitment agencies (both local and foreign) to outsource the recruitment process. Recruitment agencies also receive fees from workers themselves to access jobs in the Maldives.

The key role of unlicensed freelance agents is to facilitate new foreign migrant workers to construction companies. The majority of these freelance agents are foreign migrant workers themselves, some of whom have permanent residence in the Maldives through marriage to Maldivians. Unlicensed freelance agents typically receive MVR 5,000 to MVR 10,000 per employee they recruit, depending on the urgency of the requirement.

Public sector construction companies choose local recruitment agencies to work with through a formal bidding process and are in theory selected on merit. These agencies play a significant role in recruiting foreign migrant workers in the public sector.

Investigations suggest that local agencies put significant pressure on senior managers in public sector companies to recruit from Bangladesh because Bangladeshi migrants pay more recruitment fees compared to other nationalities. Investigations suggest each migrant pays approximately USD 2,000 to recruitment agents to enter the Maldives. It is understood that bribes are paid (or have the potential to be paid) by local recruitment agencies to human resource officers in both public and private companies to promote

the recruitment of Bangladeshi migrant workers over workers from other countries. Amounts paid range from USD 100 to USD 200 per foreign migrant worker being recruited.

It was also reported that a second reason for preferring Bangladeshi workers over workers from other countries was because relaxed legal requirements in their home country makes it very easy for Bangladeshis to be in employment in a foreign country. In Sri Lanka and India, the recruitment process is formal and is not as easy as in Bangladesh.

After foreign migrant workers are hired into the construction sector, they directly deal with their local employers. Employers are known to retain workers' passports, work visas and other official documentation.

COMMUNITY SERVICE SECTOR

The community service sector covers domestic help and 'foreign maids' operating in the Maldives. The sector is the most complex in terms of identifying the recruitment channels, and operates more in the shadow than the other sectors studied for this report.

Domestic helpers are mostly recruited from India and Sri Lanka. The majority of recruitment takes place directly through connections between friends and family of foreign migrant workers already in in the Maldives. Both full-time and part-time domestic helpers work in the Maldives.

THE IMMIGRATION PROCESS

The immigration process for hiring foreign migrant workers as domestic helpers is structured, with the rules governing the employment and visa process for foreign domestic helpers being much stricter than for other professions.

Investigations suggest that at times employer households have sent 'gifts' to DoIE staff or pulled strings to speed up the process. However, research also suggested that, according to some households, the DoIE is flexible on regulating foreign migrant workers working as domestic helpers as there is a huge demand from the public for such workers.

Even though DoIE is aware of part-time domestic helpers and open visa domestic helpers working in Male', there is no follow up action as such. It was reported that if the Police arrest a foreign migrant worker working as a domestic helper in relation to a criminal offence, then DoIE takes action, and the foreign migrant worker may be deported.

It was also reported that the employers are often negligent in paying visa fees to DoIE. When irregularities in visa fees are identified, employers sometimes offer 'gifts' to the corresponding officials at DoIE to resolve the payment arrears.

THE RECRUITMENT PROCESS

Local recruitment agencies do not typically involve themselves in the recruitment of domestic helpers, since, according to the agencies themselves, the profit margins from doing so are comparatively low. However, well-established unlicensed freelance agents exist in this sector who specialise in recruiting domestic helpers for Maldivian households. These agents are primarily foreign migrant workers who have themselves been working in the Maldives previously.

Households contact these unlicensed freelance agents to recruit foreign migrant workers as maids, attendants or drivers. The agents ask for an initiation fee from the employers, but these fees are very symbolic compared to the amount paid by the foreign migrant workers. It was noted that foreign migrant workers operating in the sector frequently paid high fees as commissions to the unlicensed freelance agents to obtain jobs in the Maldives, with fees rising to more than USD 2,000. If the foreign migrant workers are unable to provide the full commission payment, some unlicensed freelance agents agree to accept monthly payments.

Unlicensed freelance agents also dictate the terms and conditions of salaries, accommodation and other benefits and often act as the negotiator between the foreign migrant workers and their respective employees.

Unlicensed freelance agents also arrange part-time domestic helpers for Maldivian households, particularly to meet a growing demand for laundry services. The provision operation of part-time domestic helpers is totally unregulated, with foreign migrant workers undertaking these roles often working illegally in the Maldives.

As within the construction industry, it was noted that those who recruit foreign domestic helpers (both the agents and employers) often retain the passports and other official documentation of the foreign migrant workers.

TOURISM SECTOR

There are two categories of foreign expatriates working in the tourism sector: those working in the high professional service category and those working in the unskilled labour category. Both groups of employees are recruited through agencies, with the major difference being that for professional services, the resort HR departments directly contact foreign recruitment agencies and pay a higher recruitment fee to the agents.

Local recruitment agencies are used to recruit the rest of the foreign migrant workers. Unlike the construction sector, a majority of these migrant workers are from Sri Lanka and India, although there are also a significant number of Bangladeshi workers used for specific jobs such as gardeners, cleaners and maintenance officers.

THE IMMIGRATION PROCESS

Unlike the construction industry, tourist resorts appear to rarely face quota issues and appear to be comfortable with the arrangements while dealing with DoIE. Resorts reported that the process for obtaining an approved quota from DoIE is generally smooth, without significant delays. However, there were reported cases where resort staff had to contact MATI or the Ministry of Tourism to speed up the process.

Resorts also reported being contacted by unregulated freelance agents who offered their assistance in speeding up the quota process, and who were aware of the resort recruitment process and application processes currently being reviewed by DoIE, indicating some form of information sharing between DoIE and the unregulated freelance agents.

THE RECRUITMENT PROCESS

From the interviews conducted, the tourist resorts report that they contact foreign employment agencies to fill professional and technical job roles such as chefs and bartenders. Foreign employment agencies are seen as high profile recruiters and the resorts contact them directly as they want to maintain standards and quality of their employees for the professional level job roles. Most of the resorts operating in the Maldives are international organisations following organisation-wide employment rules and regulations, which is reflected in their use of the services offered by foreign recruitment agencies. As a result of using perceived higher-quality recruitment agencies, the recruitment fees paid by the tourism sector to agents is significantly higher.

The process for the recruitment of unskilled labour is more consistent with other sectors of the Maldives. Local agents are used to provide labour, with reports again suggesting that it is usual for foreign migrant workers to have to pay fees to the agents to secure jobs in the Maldives. The pay within the tourism sector is significantly higher than in other sectors, which has led to agents being able to charge higher fees to foreign migrant workers – up to USD 3,000 per worker. There are also significant wage differentials within the sector, which are also reflected in the fees paid by foreign migrant workers to agents.

It was reported that the HR staff in some resorts operate their own recruitment agencies and foreign workers are asked to pay high fees to these agencies to secure well paid jobs in the tourism sector.

7. ISSUES AND CHALLENGES

There are multiple issues and challenges in the foreign migrant worker system that open doors for corruption and fraudulent acts. Many of those interviewed pointed out irregularities in the recruitment of unskilled migrant workers and referred to human trafficking. Interviewees also referred to corruption in the recruitment of foreign teachers, doctors, and nurses. Some of the key issues and challenges identified are:

MIGRANTS WORKERS PAYING FOR RECRUITMENT

According to a survey carried out by IMO (Fleischer 2014) in the Maldives majority of foreign migrant workers pay large amounts of money in recruitment fees to migrate to the Maldives for work. Most of the foreign migrant workers who pay to enter the Maldives, paid money to a local recruitment agency in their country of origin to enable their emigration. One out of ten migrants reported making payment to a Maldivian recruitment agency. Some migrant workers paid money in order to receive contacts/networks, for visa documents or to their future employer.

The IMO survey showed that the foreign migrant workers paid between USD 400 and USD 2500 in order to reach the Maldives. Of those foreign migrant workers who stated the amount of money paid to either a recruitment agency or to friends/relatives, all were Bangladeshi, except one Nepali who paid USD 400.

HUMAN TRAFFICKING

A source said that an internal government investigation into corruption at DoIE carried out in 2011 revealed corruption in the Department. It was found that high-ranking immigration officials were involved in human trafficking cases in which migrant workers were recruited by private companies and recruitment agencies with the lure of lucrative jobs. How the process works:

- A private company that does not have a need for additional migrant workers but still have received a quota is contacted by the local recruitment agency. The local recruitment agency, working with a rogue foreign recruitment agency, hires the migrant worker, offering lucrative jobs.
- The migrant worker has to pay approximately USD 1,000 to the recruitment agency at his/her country and another USD 1,000 to the Maldivian recruitment agency.

- The migrant worker, normally from a low-income family, has to mortgage a family land or farm to secure a loan to pay the recruitment agencies.
- The migrant worker arrives in the Maldives and finds that there is no job waiting for him/her.
- The migrant worker, trapped in a vicious cycle, and facing the prospect of losing the family property if the loan is not repaid, is absorbed into the groups of undocumented and illegal migrant workers in the Maldives. Although the worker entered the country with supposedly valid work permits issued by the immigration officials, the work permit is rarely renewed. The worker rarely maintains any contact with the private company that initially recruited him/her. The Maldivian recruitment agency or the private company that hires him/her usually retains the passport of the migrant worker.
- The profit earned through human trafficking is distributed among the foreign recruitment agency, the Maldivian recruitment agency, the Maldivian private company (which supposedly hired the worker) and the immigration officials.

Despite attempts by the authorities to clamp down on human trafficking in the Maldives, this process continues and thousands of migrant workers find themselves trapped in this cycle.

CHANGE OF EMPLOYERS

The LRA's resources are burdened with handling claims from foreign workers who want to return home but lack the funds to do so, or from foreign migrant workers seeking to change their employer. These matters are handled by the LRA's investigation officers. However, the number of cases are so high that inspectors are also required to assist from time to time. The LRA focus on foreign workers leaves little time for labour inspection, dispute prevention, and dispute resolution activities.

QUOTAS

The DoIE has developed a Standard Operating Procedure for issuing of quotas. However, according to an audit conducted by the Auditor General (AGO 2015), in 68% of the cases the quotas issued did not meet the criteria set by the DoIE. The audit found that quotas were issued even though site inspection was not carried out and relevant documents were not attached. The audit further noted that the DoIE had issued quotas despite site inspection highlighting problems in the sites. More quotas were issued for workers than permissible while some quotas issued did not meet the criteria set by the

DoIE.

The report by the Auditor General's Office also referred to:

- Quotas issued more than the number of quotas requested by the employer.
- Quotas issued to sites that does not exist.
- Quotas and work permits issued without considering the economic needs.

WORK PERMITS

Although the DoIE has developed criteria to be met before issuing employment approvals or work permits, the Auditor General found the following issues in the system.

- Discrepancies between information contained in various documents
- Salary stated in the letter of appointment differed from that stated in the contract.
- Year of birth differed between passport and contract.
- Occupation stated in the application differed from that stated in the contract.
- Indistinct certificates and letters of experience accepted.
- Letter of appointment not stamped in red or blue (to verify it as original) by the company to ensure the authenticity of the document.
- Employment approvals not linked to "migration" data in the system.
- Employment Approval issued for periods exceeding the contract period.

REFERENCES

AGO (2015) *Control of Expatriate Workers: Performance Audit Report, PER-2015-01*, Auditor General's Office, Male', Maldives.

DNP (2012) *Statistical Yearbook 2011*, Department of National Planning, Male', Maldives.

Fleischer, A (2014) *Results of the Field Survey on Human Trafficking in Male'*, Maldives, July 2014, International Organization for Migration, Male' Office.

ILO (1949) *Migration for Employment Convention (Revised), 1949 (No. 97)*, International Labour Organization, Geneva, Switzerland.

ILO (2007) *International Labour Standards on Migrant Workers' Rights, A Guide for Policymakers and Practitioners in Asia and the Pacific*, International Labour Office, Bangkok.

ILO (2013) *Employment Challenges in the Maldives*, International Labour Organization, ILO Country Office for Sri Lanka and the Maldives, Colombo, Sri Lanka.

MPND (2005) *25 Years of Statistics*, Ministry of Planning and National Development, Male', Maldives.

Nafiz, A, (2013) *Philippines Government vigilant over Philipino workers in Maldives*, Haveeru News, 06 July. 6.

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