

Policy Brief No. 9: PROVIDING SHELTER FOR DISTRESSED MIGRANT WORKERS: A RIGHTS-BASED APPROACH



BACKGROUND

The shelter exists because of the real and stark human cost of labour migration and restrictive immigration systems for low-income international Asian migrant workers. Protection of migrant workers must ultimately begin with prevention of human and labour rights violations of all migrant workers, regardless of immigration status; so that the demand for shelters would be significantly diminished. Given the failure to protect migrant workers, rights-based shelters can provide migrant workers who have been exploited and abused with vital support and assistance. Ensuring justice for the victims of rights violations remains essential for credible protection

WHAT IS A SHELTER?

The answer to this is complex when considering shelters for low-income Asian migrant workers. However it is important to explore given the significant implications on their lives. What a shelter 'is', is not just shaped from within by conceptual frameworks for governance and operation, but also by its political, economic, social, cultural and relational context. How a shelter is viewed varies considerably between different stakeholders. Thus the shelter is the interrelation between several perspectives, and thus its 'success' in being effective in offering protection and having an impact on prevention and justice for migrant workers, requires multiple responses with respect to its operation and creation of an enabling process and context.

The types of shelters are diverse

Shelters are located in both sending and receiving countries. They can be state-run shelters, including those attached to embassies or managed by CSOs, charities, faith based organisations, recruitment agencies, private or others in both urban and rural settings. Shelters in different locations within a country provide for greater access for the worker abroad or returnee migrant workers. Given that shelters for migrant workers may operate differently within a national context, it is important that the shelters communicate and coordinate strategies to prevent undermining the overall protection of migrant workers.

This policy paper will focus only on shelters in receiving countries given there are different complex issues for those located in sending countries related to long-term reintegration. However it is important to note that wherever possible the development of a transnational relationship between shelters (and/or migrant rights CSOs) in sending and receiving countries can prove beneficial to migrant workers given the inter-relational nature of their problems.

What is a shelter?

A product of the Labour migration system

The establishment of shelters in receiving countries was a response to the demand for a space for workers who fled their employers due to labour and human rights violations created by the absence of a rights-based approach to labour migration and restrictive immigration systems. The delegation by the state of control over migrant workers to employers and recruitment agents with weak regulation and either no legal protection or limited implementation of the law; fosters the conditions for exploitation and abuse. Policies governing entry, employment and residence frequently disadvantage migrant women and increase their risk of abuse. It is the failure of the system to protect low-income migrant workers from poverty, gender discrimination and prevent rights violations that produces 'victims', not just a single perpetrator.

They suffer forced labour, underpaid or unpaid wages with debt from illegal recruitment fees and physical, psychological and sexual abuse. The protection they subsequently receive depends largely on how they are framed, which appears polarised between ‘victim’ and ‘criminal’, though the reality is far more complicated.

Many factors created by the system act to prevent the worker leaving the abusive workplace exacerbating the negative impact.

The migrant worker may remain too long confined in the dangerous workplace because of the denial of a safe and legal exit. Employers routinely confiscate their identity documents, refuse to release workers from their contracts, forcibly confine them and use threats and violence as a means to impose control. Migrant workers are prevented from terminating or changing jobs under restrictive immigration systems or employers refuse to let them return home, in countries where they control their exit visa. Significantly, they may be subject to criminalisation once they leave the workplace thus coercing them to remain in the workplace. In some GCC countries under the restrictive Kafala sponsorship system they are considered to be ‘absconded’ workers and can be criminally charged preventing them from leaving the country until their court case is resolved. The migrant worker, a victim, thus must find a way to escape the workplace with the prospect of facing state penalties for having left and being made undocumented. Rather than ensuring they do not lose their immigration status because of violence and /or labour exploitation and being guaranteed protection and access to justice.

The pathway to a shelter for these victims is somewhat arbitrary.

Migrant workers in distress who turn initially to the recruitment agency or shelter may be forced to return them to their employer, or forced to stay in the agency and possibly face further exploitation; including increased debt as they are forced to pay for their accommodation. Others will risk even worse rights violations as undocumented workers (or fall prey to traffickers) because they face poverty and are denied the right to work. Migrant workers may be rescued first by CSOs who run shelters. Some migrant workers who reach shelters will be permitted to enter deemed deserving of protection, others will be forced into the shelter by authorities once they are captured; others will be treated as criminals and face detention and deportation; some have no shelter available by virtue of their nationality; whilst some migrant workers who are unable to escape may suffer years of abuse and /or die in their workplace.

Different institutional responses

The conceptual frameworks employed inside the shelters are diverse, thus what they offer and the impact on migrant workers varies considerably. Broadly ranging from housing support, a traditional humanitarian response to new humanitarianism (the use of the rights concept to underpin the humanitarian agenda) and a specific-rights-based approach. Faith-based organisations may also include tenets of their faith.

The rights-based approach identifies the migrant workers as ‘rights-holders’, and the shelter staff becomes their advocates. This approach is informed by national and international standards that recognise and promote human and labour rights. Thus it tends to highlight the aspects of such situations that relate to current or past breaches of relevant legal obligations, such as to constitute abuse or denial of rights. This approach focuses on the question of root causes, political responsibility of states, and gives rise to a justice-oriented agenda that is both corrective and preventive, concerned to expose, prevent and punish perpetrators of exploitation and abuse of migrant workers.¹ Thus the shelter is understood and operated as having an impact on the overall process of labour migration.

In some receiving countries the context imposes challenges for operating with a comprehensive rights-based approach. Committed shelter staff can face the dilemma that by being a rights advocate they may jeopardise securing the space of a shelter for migrant workers. The concern in these situations is that although the shelter may offer vital support, it may undermine prevention by mitigating the worst effects of the labour migration and restrictive immigration systems.

A confined space

In some receiving countries, such as the GCC the mobility of low-income migrant workers in public spaces is controlled to ensure their social exclusion and produce a cheap captive labour force. An internal border system acts to confine them in the workplace or inside a shelter or a detention centre before they can be repatriated, deported or imprisoned. Migrant workers who resist the system are made undocumented and face possible punitive measures thus live in fear, producing labour that is easy to dominate, discipline and thus exploit. Xenophobic and racist attitudes reinforce the exclusion from society to a confined space. Migrant workers with higher incomes are more favoured in their mobility, thus less controlled.

¹ Informed by paper VeneKlasen, L, Miller, Clark, C and Reilly, M, *Rights-based approaches and beyond: challenges of linking rights and participation*, IDS Working Paper 235, Institute of Development Studies, Brighton, UK, Dec 2004.

Confinement for women migrant workers can be present throughout the labour migration process; beginning in sending countries recruitment centers thus systemic gender discrimination also plays a role. Violence as a means to impose control occurs with impunity. Shelters in this context can act as a continuation of this exclusion by being a confined space that restricts the freedom of movement of migrant workers, presenting the paradox of securitisation whilst offering protection. The criminalization of a migrant worker who leaves the shelter means they could be imprisoned, effectively locking them into the shelter. This has led to migrant worker complaints of feeling like a 'prisoner' in some shelters and expressing re-victimization as it reproduces the forced confinement of the workplace from which they fled.

A space predominantly for low-income women migrant workers

The women in the shelter can be: domestic workers, caregivers, beauticians and factory workers that have fled exploitative and abusive workplaces; women that are victims of labour and sex trafficking; pregnant migrant workers²; women with children; lesbians and migrant wives on spousal visas, who are victims of domestic violence; women who are ill and/or disabled. Each group requires specific protection measures. The numbers are high for women who escape terrible conditions in their workplace, evidence that the system is failing to protect them. E.g. Between November 2013 and April 2014, over 5000 domestic workers left their workplace in Saudi Arabia.³ In general they require shelter to: begin recovery, to obtain indemnities for unpaid wages, access justice for abuse, because they are made undocumented having left their workplace, are awaiting a trial or a transfer of employment (where this is permitted) and await repatriation.

Who is excluded from the shelter?

Shelters are often only open to women and sometimes children⁴; despite male migrant workers also being rendered vulnerable by the system and experiencing labour and human rights violations. Whilst rare, there are examples of male shelters in receiving countries such as one offered by a CSO in Taiwan. Temporary shelter for male migrant workers has also been provided under extreme situations. E.g. when undocumented women and men sought refuge at the Philippine embassy during the amnesty period in Saudi Arabia. The male migrant worker denied a safe space is may be detained and deported, be sent home by a 'repatriation company' that may use illegal tactics to expel them,

pay their own plane ticket home, live with fellow nationals or become homeless living in constant fear under the threat of arrest, detention and deportation given their undocumented status. Committed people may support these male victims, (and undocumented women) but may unbelievably risk their own criminalization in some countries for helping them, including offering them shelter. Prohibiting outreach to undocumented migrants risks increasing their suffering and loss of life. Suicide has been the tragic reaction of some men to being trapped in this situation. Some male migrant workers may attempt to access justice by filing a labour case and sometimes more rarely collectively through labour organising. They under-report and do not overtly seek support or access to justice for physical, psychological and sexual abuse, possibly given dominant cultural constructed masculinities that deny males the right to complain and shame them into silence. There must be an integration of a gender perspective into protection of migrant workers. Research is required to ascertain what type of protection male victims and survivors would want, including whether or not it would be access to a shelter in receiving countries.

Some CSO and embassy-run shelters only open to their own nationals. Other shelters such as in Lebanon and Bahrain are open to migrant workers of different nationalities, who are victims of labour exploitation, trafficking and abuse.

Why do women migrant workers seek informal shelter rather than enter a shelter? Low-income migrant workers who have been exploited and abused may seek shelter with relatives, friends or other workers; despite the risks associated with being undocumented in a space not officially sanctioned by the receiving country. They describe feeling able to recover better because they feel more secure, are able to communicate in their own language and have a familiar support system they can trust. Others do not know about shelters and are too afraid to stay with a broker or agency. Other migrant workers are desperate to earn wages rather than be repatriated given: debt bondage, previous non-payment or underpayment of wages and also facing poverty back home.

A hidden space: the precarious existence of some shelters

Some CSO and embassy-run shelters are not officially recognised as existing, rendering them somewhat hidden and hence also the labour and human rights violations. Local laws that criminalise migrant workers who escape labour exploitation and abuse, officially only respond with punitive sanctions of detention or gaol, which can be profoundly damaging to these human beings. The criminalisation of

² Credible protection of pregnant migrant workers requires much greater development, particularly to ensure they receive quality healthcare and are not criminalized or denied the right to work.

³ <http://www.arabianbusiness.com/5-000-maids-run-away-in-saudi-in-6-mths-552603.html>

⁴ Children's rights and mothering practices are negatively affected by being in the shelter. Specific protection measures must be developed for children in shelters.

migrant workers thus undermines their recognition and protection as victims and their right to recognition as a person and a rights holder before the law. This places these shelters in a precarious position where they are ‘tolerated’ which can act to silence efforts at advocacy due to the threat of closure. Transparency about the operation of the shelter and data related to the rights violations of the victims and survivors is also obscured. This can also create conditions for abuse and exploitation within the shelter, particularly when outside communication is restricted.

WHO SHOULD BE RESPONSIBLE FOR PROVIDING SHELTER?

Both the sending and receiving country should deliver on their obligation to respect and realise the right to social and legal protection for all migrant workers, regardless of status. This includes the duty to fulfill the rights of migrant workers who are victims and survivors of human and labour rights violations that seek the protection of a shelter.⁵

A rights-based framework for shelters requires the commitment of adequate financial and human resources. Shelters frequently lack resources to secure the right to protection including finance for the cost of operating a shelter and enough staff with capacity to fulfill the mandate. For example: It may be difficult to secure work visas for professional staff to work in a CSO shelter. Committed volunteers in one embassy-run shelter regularly liaise with corporate business houses and individuals to provide the monthly basic provisions such as soap, vegetables and rice. Fundraising can be limited by delays in granting permission to hold events. Some CSO shelters have resorted to the practice of charging ‘rent’, thus

making migrant workers pay for their own recovery acting to internalize the blame for the rights violations. The inadequate state funding reflects the neoliberal desire that labour migrants should not have an economic or social cost, whilst still contributing remittances. The states emphasis is thus placed on the individual responsibility of the worker instead of fulfilling their duty to provide social protection.

States have an obligation to provide for protection through law, policy, administration and extension in budgeting. Though the duty remains that of states, shelters could be run by CSOs with state funding (without conditions that undermine a right-based approach). In some GCC countries this would require the lifting of restrictions imposed or granting legal permission for CSOs to operate shelters. Migrant workers, who find state-run shelters too bureaucratic, often support this option. Ultimately, credible protection of migrant workers requires states implement a rights-based approach to labour migration; that includes a rights-based framework in shelters.

STRENGTHENING THE RIGHTS-BASED AND GENDER SENSITIVE AND RESPONSIVE FRAMEWORK OF SHELTERS

Shelters offer diverse responses to the right to protection of victims and survivors of rights violations. A few shelters operate with a rights-based approach, some shelters lack the safeguard of clear transparent shelter policies and procedures; some sending countries such as India have no clear uniform policy for embassy-run shelters, whilst others such as the Philippines display a significant gap between policy and practice creating conditions where women migrant workers and children can be at risk of further violation of their rights.

A rights-based approach in shelters is essential for credible protection to prevent re-victimisation, particularly through the reproduction of the dangerous conditions of the workplace from which the migrant worker fled. ‘Protection’ should not come at the price of victims and survivors

forfeiting their rights. Protection in shelters can only be realised with the creation of a safe, secure, supportive and enabling environment in which the victim and survivor of rights violations can begin recovery in dignified conditions; and finally secure their rights. The challenge remains for how to apply a rights-based approach in an operational context of receiving countries and sending country embassies if the primary duty-bearer (the state) has proven itself unwilling or unable to fulfil its obligations.

Reform of the shelter alone is ineffective for addressing the rights violations of migrant workers. Protecting victims and survivors should be accompanied by a shelter focus on prevention through advocacy for change to systems that create the conditions for rights violations and also negatively shape the shelter and punishment for

⁵ The Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both provide for a basic right to shelter.

the perpetrators of labour exploitation and abuse. Reform of the framework for operating shelters should not act as a substitute for the ultimate goal of prevention, which would reduce the demand for shelters.

The following acts as a contribution to the discussion and development of a rights-based and gender sensitive/responsive framework for shelters for migrant workers:

Gender-sensitive and responsive operation of shelters

It is unclear whether women's rights are specifically addressed in shelters despite systemic gender discrimination and gender-based violence contributing significantly to the plight of women migrant workers. Domestic workers often at a minimum experience sexual harassment as a condition of employment, whilst migrant mothers are often penalized and sometimes prosecuted. There is some suggestion that gender-sensitivity is addressed by having female staff. Mainstreaming gender does not end in simply increasing the number of women within a specific institution.⁶ Awareness raising and capacity building for staff should focus specifically on the development of indicators for implementation of a gender-sensitive and responsive culture for shelters with systems for monitoring and evaluation.

Entering the shelter

States should make greater efforts to rescue those at risk and offer safe and legal routes for abused and exploited migrant workers to access protection in the shelters. Given the risk of re-victimisation, the admission policy of shelters should be 'admission first' and 'ask questions later'. There should be uniform protocols for admission to guard against subjectivity or false hierarchies between labour violations and other abuse. E.g. the 'walk-in migrant' maybe disqualified from entry. Migrant workers should be advised of their rights and shelter procedures both verbally and in writing, including the right to access a lawyer. There should be a clear protocol for assessing, identifying and responding to allegations of exploitation, abuse, torture and trafficking. It is also an important opportunity to ensure that the reasons they seek shelter are properly recorded in a register. Some shelters also assign a caseworker to the migrant worker to ensure a coordinated approach.

Conditions in the shelter

"I saw how crowded the shelter is, people even sleep in the stairs."

The right to an adequate standard of living.⁷

Government-run shelters are underfunded and frequently critiqued for overcrowding and thus substandard conditions. This can result in reproducing the sleep deprivation of the workplace and inhibiting their recovery. Provision of basic toiletries for health, cleanliness and dignity is often not adequately funded, despite the fact that many workers escape a workplace with only the clothes on their back. This includes gender-specific hygiene products which should be provided free of charge. Instead of sending /receiving countries assuming responsibility, migrant communities, charities and relatives back home attempt to fund the necessities. The importance of outdoor exercise for one's mental and physical well-being is widely recognized, yet despite being in recovery and possibly confined an outdoor area is not always provided. Adequate measures must be taken to provide a standard of living that guarantees their subsistence and protects their dignity, physical and psychosocial health.

Non-discrimination

Many CSOs have active equality and non-discrimination policies to ensure all women are treated equally with regard to access to assistance and basic goods in the shelter. There are more discrimination complaints by migrant workers about preferential treatment by staff and officials in some State-run shelters. E.g. Priority is given to victims originating from the same region in the sending country as an official.

This discrimination in the shelter often leads to conflict between residents and creates conditions for abuse inside the shelter. This undermines the safe and secure environment necessary for recovery from rights abuses. Allocation should be fair and equitable within the shelter.

Right to freedom of thought, conscience and religion.⁸

Some migrant workers complain that there is not availability of food required to observe their religious beliefs. Others complain of pressure to adopt a religious belief system they have not previously practiced when they

⁶ The assumption inherent is that 'women helping women' will ensure protection and power is based on stereotypical presumptions that women are naturally compassionate and caring and thus would not violate the rights of women migrant workers. However this denies the power relations between women, that they may not necessarily share the same interests; and female staff may lack awareness and/or capacity for a rights-based and gender sensitive/responsive operation of shelters.

⁷ Article 11 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976.

⁸ Article 18 International Covenant on Civil and Political Rights (ICCPR), 1976.

are vulnerable or focus only on forgiveness of perpetrators rather than being supported to access their right to justice.

Some shelters allow the residents to leave to attend religious institutions or provide in-house space and opportunities for worship, which can support them in their recovery. Religions or beliefs of all kind should be respected and protected in the shelter. Some shelters have only one main full-time staff member overseeing the day-to-day operation, which is sometimes a qualified social worker. It is important that this person's capacity building and support is prioritised and their labour rights upheld. Additionally, victims and survivors are sometimes asked to fulfill the role of preparing meals and cleaning the shelter rather than employing staff.

This practice has created a debate within the migrant rights field. Whilst it may be due to underfunding, for some regular mandatory duties without pay invites an accusation of using migrant workers as cheap labour. For others migrant workers engagement in these activities has a positive impact on them and the shelter environment. For example meal preparation: Many migrant workers prioritise being involved in buying and cooking their own food. Autonomy in decision making to choose and cook their food the way they like it empowers the migrant worker, whilst the group activity builds relationships between the residents of the shelter. In a male shelter, the responsibility of preparing meals provides an opportunity for men unable to cook to learn essential life skills and may contribute to challenging gender stereotypes that deem this daily role the responsibility of women only.

Communication with family and significant others⁹

Migrant workers complain that in State-run shelters they are often denied or restricted in their right to communicate with the outside world. They have a right to freedom of expression thus should not be prevented from communicating with others outside of the shelter reproducing the practice of social isolation in the workplace that impedes their ability to actively reflect, complain or seek emotional support and assistance. Access to a support network is imperative to: ensure their safety inside the shelter whilst in a dependent position; for recovery from exploitation and abuse (particularly when abroad); and preparation for possibly returning home.

As is the practice in many CSO run shelters, to facilitate this, they should retain their mobile phones and a shelter separate telephone to ensure privacy and confidentiality should be made available. Internet access should also

be made available where possible. Migrant workers should be responsible for communicating with their families unless they give permission to staff members to contact them on their behalf. The latter should seek consent from the worker on what information should be shared and what they want to remain confidential. Incoming calls should be unmonitored and uncensored.

Direct Interventions in the Shelter

“The employers should not know what is happening inside the shelter, it should be confidential. The agency and employer knows what is the next move of the worker. This is the complaint that I got from talking to workers who are staying in the shelter.”

A right to privacy, informed consent and confidentiality should underpin all interventions in the shelter. Some migrant workers complain that their information has been leaked to fellow migrants, employers, recruitment agencies and family. No personal information about the migrant workers should be shared outside of the shelter without the consent of the woman. Confidentiality including the identity of the victim and survivor is essential for a sense of safety in the shelter to facilitate self-disclosure and promote reporting of abuses. It is doubly important in the case of gender-based violence to protect the confidentiality, as well as the specificity of the data. There should be a policy, which includes consequences for staff that breach this. For example: one CSO gives an initial verbal warning, then written warning followed by dismissal of the staff member. The policy on confidentiality should include restrictions on photography and audio records. There must also be a firewall to completely delink shelters and their interventions from immigration enforcement.

Access to a qualified and impartial interpreter for interventions, which does not have a vested interest in the outcome of interventions. Even when available State-run shelters sometimes elect not to pay, leaving the migrant worker to struggle to comprehend a court decision.

The State should have funds to provide an interpreter in all legal cases involving migrant workers interpreters for legal proceedings. Some shelters employ bilingual staff and pay for an interpreter as required. Shelter policies and procedures and rights of the resident in the shelter and any other information should be provided in language they can understand and in which they can communicate.

⁹ Article 14 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. No migrant worker or his or her family member shall be subjected to arbitrary or unlawful interference with his or her privacy... correspondence or other communications... ..

The right to the enjoyment of the highest attainable standard of physical and mental health¹⁰

Full and equal access to timely medical interventions. All health professionals to ensure quality interventions when working with the shelter should receive mandatory training in: migrant rights, gender sensitivity/response; specialised training to identify and treat victims / survivors of torture, trafficking and sexual and gender-based violence and other trauma; and also how to conduct effective investigation and documentation of abuse. Some shelters have the good practice of only referring to trained professionals for forensic examinations. There should be a protocol for responding to allegations of rights abuse, including within the shelter. Medical treatment should preferably be provided in the community. E.g. some shelters have established a relationship with a local hospital. This should include access to sexual and reproductive health care services free of discrimination and coercion, particularly for pregnant migrant workers.¹¹ There should be no forced medical procedures or those conducted without informed consent. Providing support for pregnant migrant workers in shelters requires further assessment and development. Health staff should be guaranteed complete clinical independence in the treatment and care of migrant workers. Migrant workers should be provided with a copy of the medical reports (in part for continuity of care when they return home) and the contents explained to them in accessible language.

Psychosocial interventions. The psychosocial health of migrant workers who flee dangerous workplace conditions to shelters remains a neglected area, despite it being a significant consequence for those who have suffered exploitation, violence and other forms of abuse. Additionally there is the potential detrimental impact of being stranded in a shelter living with an uncertain future or residing in a shelter without effective safeguards. Some shelters have counsellors and/or a psychologist, however even if this is available there should be awareness raising and capacity building of all staff to ensure they promote and protect rights in this area.

This should not lead to a focus on diagnosis, rather an emphasis on creating a safe, supportive and enabling environment to: prevent and alleviate the immediate effects of abuse and exploitation; where women can easily report instances of violence and staff can hear

them, removing the stigma of being a victim and survivor of violence; and for early intervention to avoid any unnecessary psychiatric hospitalisation. Education could be provided to assist the migrant worker to identify and understand his or her signs of trauma.

“It is important that the service provider has the skills and the heart to manage cases.” Feedback from a group of Filipino migrant workers.

Staff will also benefit by contributing to their own well-being through prevention of burnout and vicarious traumatisation. Staff can be at risk of becoming burnout and desensitised by the contradiction of having to respond to the weight of responsibility of supporting victims of human rights violations and having too little actual power to affect the larger system. Thus opportunities for advocacy, like the migrant worker, can also be important for staff well-being.

Empowering staff through capacity building in knowledge and skills has a direct bearing on the well-being, safety and rights of the women in the shelter by potentially positively affecting attitudes and behaviours. Shelter staff must turn the gaze onto themselves, not just the migrant worker as a subject. Possible areas include: how to utilise International instruments, basic counseling skills and specific areas such as: self-care, responding to depressed migrant workers with suicidal ideation; recognizing and caring for traumatised people; responding to gender-based violence, including sexual violence with awareness-raising around the importance of post rape care and recognition of victim blaming; and understanding the cycle of violence.

Interviewing skills for admission, (including the unique approach for trafficked persons) and when to make referrals for specialist intervention. Regular educational sessions should also be conducted to ensure that staff remain up-to-date on changes in the destination country that impact on migrant workers, such as in immigration law. Hiring and evaluation of staff performance should include their relational capacity to empathize, as well as their commitment and attitude to facilitating the rights of victims and survivors.

¹⁰ The International Convention on Economic, Social and Cultural Rights, in Article 12 – The right to the highest attainable standard of health. Article 12.1 – States parties recognizes the right to everyone to the enjoyment of the highest attainable standard of physical and mental health. Connecting with Article 12, Article 2.2 – the principle of non-discrimination, applies the right to health to non-citizens or migrants. In 2000, the Committee on Economic, Social and Cultural Rights further expounded Article 12 in the form of a General Comment (No. 14) stipulates that one aspect of the obligation to respect the right to health is to refrain from denying or restricting the equal access of irregular migrants to preventive, curative and palliative health services.

¹¹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and the Committees General Recommendation No.26.

The right to access justice

All migrant workers irrespective of their legal status should be able to claim the right to access justice when their rights are violated. Some shelters lack resources to hire a lawyer whilst others provide access to free legal assistance from sending country lawyers; though access to justice is significantly enhanced by also having an interpreter and local lawyer. The many reasons why access to justice remains elusive for migrant workers are sadly becoming too familiar.¹² Implementation requires an enabling environment, which includes that inside a shelter. To pursue a legal case they may have to wait months stranded in a crowded shelter with little information, whilst going without wages often due to being denied the right to work. Domestic workers who were starved, beaten and abused by employers dropped the charges to escape the shelter and avoid being stranded.¹³ To expedite their departure sometimes they are requested/coerced to sign a waiver that they will make no more claims against their employer or agencies so that they can go home ultimately denying them the right to access justice. Repatriation in this instance appears to act as a 'reward' for silence; obscuring the impact of the exploitative and abusive system on people.

In situations where the migration status of the victim and survivor is in the control of the perpetrator, an independent visa should be issued. Receiving countries should allow all survivors, including those who have been trafficked the option to remain and choose employment in situations where they are awaiting legal proceedings.

Some migrant workers who file a case whilst in the shelter encounter an alleged retaliatory criminal charge from their employer to deter them pursuing the case to secure their rights. E.g. In some Gulf countries, if a woman migrant worker files a case of rape against her employer; they can file a counter charge of seduction, which can carry a greater penalty. The victim is subsequently criminalized, transferred to detention and then either deported or imprisoned, denying them both protection and justice. They should be evidence-based evaluation of the implementation of this intervention. For example: documenting how many cases were filed and how many migrant workers actually receive their claims after successful prosecutions. Additionally, sending country embassies should strengthen their capacity for handling employment disputes rather than over relying on CSOs.

Rights training is an intervention offered by many CSO run shelters for staff and for migrant workers to know their rights. The content generally covers International standards for human and labour rights and how to engage with duty bearers who should protect their rights. Sometimes it also covers basic documentation for filing cases. State-run shelters may also provide primers on these subjects. It should also reinforce rights within the shelter environment and identify and counter cultural issues and social norms that might undermine claiming rights. E.g. the culture of indebtedness or gratitude, which prevents some Filipino workers from speaking out, could be exploited in the shelter. This important area requires further research regarding the content and effectiveness of this intervention.

Activities. The damaging effects of boredom will undermine recovery, thus some shelters offer activities.

Creating a safe and secure environment in the shelter

Protection involves creating a safe, secure, supportive and enabling environment conducive to claiming rights, beginning recovery and ensuring human rights remain secure inside the shelter. People in shelters safety should not be at risk due to being dependent on the disposition of staff given the obvious power differential; reproducing a similar situation to the workplace. That rights are more reliable than the kindness of someone who holds power over you; is constantly evidenced by the seriousness and extent of rights violations of migrant workers.

Right to liberty and security

"We cannot move. We are not allowed to go out we are like prisoners; our passports were confiscated. We ask them why, they told us it is prohibited but did not explain why."

Migrant worker, Embassy-run shelter UAE.

Right to freedom of movement should be respected and protected by not restricting or prohibiting the movement of the migrant. This right includes being able to freely decide whether to remain in or leave the shelter. Victims of torture, trafficking or other physical, psychological or sexual violence should be offered a place in a rights-based shelter. They should never be detained in detention as they are already psychologically vulnerable due to trauma and it will deepen the severity of these symptoms.

¹² For further discussion on this area see research report by Caritas Lebanon & ILO, 'Access to Justice of Migrant Domestic Workers in Lebanon, June 2014.

¹³ Human Rights Watch 2008 report *As If I'm not Human: Abuses against Asian Domestic Workers in Saudi Arabia* chronicled cases where the abused domestic workers dropped their legal cases in order to escape being stranded in the shelter.

Many CSO shelters operate with a policy of informing staff prior to leaving the building and an evening curfew. An informed discussion of possible consequences is held with a migrant worker who wishes to permanently leave the shelter. A written waiver may also be taken before the voluntary departure of the worker from the shelter. Some shelters ensure a worker continues to receive assistance even after they chose to leave the shelter and allow re-admission should the migrant worker change their mind. State-run shelters appear to frequently violate the workers' right to freedom of movement, recreating the forced confinement of the workplace. Being able to choose to leave is an important factor for creating a safe shelter. Turning victims into detainees is contrary to what a shelter should be, as a place of protection.

External threats: acts of coercion

The safety and security of shelter staff and residents can be threatened by: traffickers, employers, recruiters, family members and others. This situation is created in the absence of the prosecution of recruiters and/or employers guilty of rights violations. There should be a clear policy regarding who can enter the shelter.

Receiving countries should ensure adequate law enforcement against those who threaten anyone inside the shelter. If traffickers are able to access women in the shelter, there should be an impartial investigation of the case to determine how this was possible and to prosecute all those who aided the crime. Some migrant workers have reported that embassy officials have given into employers or recruitment agencies they consider powerful, by sending them back to their employer thus denying them protection.

Internal threats

Women's right to live free from violence¹⁴ There must be a zero-tolerance policy of re-victimisation of women due to all forms of violence,¹⁵ especially sexual violence in shelters. As violence acts to silence, it is important that this is never

tolerated within shelters. There must be timely investigation, and prosecution of the perpetrators regardless of the status of the victim with witness protection for victims and their families.¹⁶ This serious violation of women's rights was recently rendered visible in the Sex for Flight scandal in which several Filipino labour attaches in Gulf countries were accused of sexually assaulting and/or harassing female migrant workers during 2013.¹⁷ Increasing female staff members to protect against sexual violence is often the main response. However more must be done to identify and address the challenges in this area particularly when perpetrators often go unpunished. Awareness raising and capacity building of all staff to prevent and respond to violence is necessary and a confidential reporting mechanism to promote an end to the silence surrounding this issue. Shelters should also have sexual harassment and bullying policies.

Adequate security and privacy measures for victims and survivors are crucial to encourage their participation in legal proceedings against their exploiters or abusers.¹⁸

A code of conduct for staff (including government officials) which they are trained in and sign. It should include not using threats, intimidation or coercion with residents in the shelter and have appropriate disciplinary measures, with strict penalties for violation of human rights, including prosecution possible under law. Embassy staff that violates migrant workers' rights within the shelter should be prosecuted not just deployed to another country.

There should be a clear formal complaint mechanism inside the shelter to discuss, contest any aspect of the conditions in the shelter and to report any allegations of ill treatment. It should respect privacy and guarantee confidentiality and a level of protection from retaliation; with monitoring to ensure complaints have a tangible outcome. There should also be an option of anonymous feedback. Shelters practice of this mechanism should be monitored and evaluated.

¹⁴ Violence against women is defined in the 1993 UN Declaration on the Elimination of Violence against Women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or at the time the privation of liberty, with occurring in public or in private life. Women's right to live free from violence is upheld by international agreements such UN declaration above and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), especially through General Recommendation 12 and 19.

¹⁵ Sexual violence includes rape, marital rape, gang rape, forced prostitution, sexual exploitation, and sexual harassment.

¹⁶ In the Declaration on the Elimination of Violence against Women (1993) governments are obliged to "prevent, investigate... and punish acts of violence against women, whether these acts are perpetrated by states or by private persons".

¹⁷ The Sex for Flight scandal involves several labour attachés in Kuwait, Saudi Arabia, Jordan and Kuwait accused of sexually assaulting and/or harassing female overseas Filipino workers (OFWs) during 2013. These women were fleeing dangerous working conditions from their Saudi Arabian employers and seeking refuge at the Embassy. The Committee on Overseas Workers Affairs (COWA) prompted the investigation and hearings in June 2013 then handed the cases over to the Department of Justice (DOJ) in December 2013. To read more on the background of this issue and a recap of the last COWA hearing on the Sex for Flight scheme, please see: <http://asianparliamentarians.mfasia.org/news/42-sexforflightscheme>.

¹⁸ International Labour Office, Strengthening Action to End Forced Labour Report IV(1) International Labour Conference, 103rd Session, Geneva, 2014, p49.

Providing lockers to guard against theft of valuables. Some shelters encourage residents to deposit their valuables in the shelters safe deposit box. However where possible, it would be preferable to provide individual lockers so as not to reproduce the conditions they encountered in the workplace and in keeping with good practices of deinstitutionalization.

Length of stay in the shelter

Repatriation. Countries of origin must be responsible for facilitating migrant workers timely right to return and a comprehensive plan for long-term reintegration. There are migrant workers who call for more timely and efficient facilitation of their right to return,¹⁹ whilst there are also those who do not wish to return home questioning the idea of voluntary repatriation. For those who wish to return home, the initial relief at having escaped one situation can be short lived when faced with long-term physical and psychological consequences of their exploitation and abuse, debts and the same poverty and circumstances which led to their migration.

Lack of access to fair and efficient protection procedures heightens the risk of a prolonged and unnecessary stay in the shelter. Delays in repatriation can be due to waiting for the government to clear an ‘absconding’ charge despite fleeing an abusive workplace; time and resources required to recover passports that employers have confiscated, failure of either the recruitment agency or employer to pay for the air ticket, corruption,²⁰ employers refusal to issue an exit visa when it is required; pending court cases, complicated bureaucracy; insufficient staff to oversee the mandate and lack of government resources to fund the return journey.

CRITIQUE AND ANALYSIS

The right to protection for migrant workers stranded in a shelter requires more than being mere recipients of individual interventions. The dynamic aspect of the process within the shelter must be developed to empower migrant workers to ensure that they recognise their rights and are in a position to access, exercise and enforce their rights. Migrant workers, who were abused and exploited in a subjugated position in the workplace, will not begin to

There should be a sufficient budget provided for repatriation, so that migrant workers are not dependent on fundraising by CSOs, fellow nationals or their family. The latter is discriminatory if their family is too poor, whilst families who manage to pay are often not compensated. Some migrant workers complain that shelter staff have negotiated unfair wage settlements in exchange for their employer’s permission to leave the country.

Migrant workers should not be prevented from exercising their other human rights in order to claim their right to return. Speedy repatriation should not come at the expense of removing the evidence of rights violations and denying them access to justice. There must be a timely confidential mechanism to keep migrant workers well informed regarding their situation and advance notice of transfers or repatriation.

Alternatives to repatriation. Many migrant workers prioritise their right to economic security and thus often express that in the shelter they would prefer support to find a new employer, rather than being repatriated. The system should not force victims and survivors to choose between the risks associated with being an undocumented worker outside of the shelter and forced repatriation. Those who are sheltered as trafficked persons should have the right to work. Victims and survivors of exploitation and abuse should not be prosecuted or penalized; instead their documented status should be maintained and they should have the right to change employer without the consent of the original employer. In some countries such as Bahrain this is possible already.²¹ How best to facilitate new employment should be explored with migrant workers. Alternate community options for accommodation should be provided.

recover if the shelter environment reinforces their feelings of powerlessness. To effectively implement a rights-based approach, shelters must build processes for participation and decision making for migrant workers to articulate their priorities and claim genuine accountability; and staff must become critically self-aware and address inherent power inequalities in their interaction with migrant workers.

¹⁹ Facilitating the right to return: States parties should ensure that women who wish to return to their countries of origin are able to do so free of coercion and abuse (article 3); CEDAW

²⁰ Case example: a migrant worker filed a complaint against a welfare officer that kept the money paid by her employer for her return air ticket. The victim was then transferred to a detention centre and deported.

²¹ In 2009 the Government of Bahrain reformed the Kafala sponsorship system to give migrant workers the freedom to change employer without the consent of the original employer. The Labour Market Regulatory Authority must facilitate such moves. However, a legal requirement introduced in 2011 obliges workers to remain for at least one year with their first employer before they can move.

Migrant workers defining their own issues

It is important that the type of knowledge emanating from the shelter is based on that of the shared migrant worker experience. There must be commitment and capacity training of staff to create an empowered position for migrant workers in shelters to ensure that their voice is not limited and obscured by professionalism, paternalism (i.e. ‘we know what’s best for you’) or sexism. Migrant workers are more than a victim and survivor of violence or exploitation; they have a unique knowledge based on their experience that they can draw on in order to make systemic changes: they are the real ‘migration experts’.

Mechanisms by which the voice of migrant workers can be heard and reported subjectively in the language they communicate in, is essential to realise the right to protection.

Migrant workers shaping the environment and interventions of the shelter. It is important to guard against the negative impacts of one-sided institutionalisation that increases the state and staff’s powers, while leaving survivors without an institutional role. The shelter should be built upon the interests and values of the migrant workers to ensure that it is relevant to their struggles for survival and dignity. In the absence of this grounding, there is a risk of shelter approaches being merely a neoliberal technical fix based on expert-driven interventions. The quality and content of interventions in the shelter cannot be assumed to be positive simply by being coupled with the language of protection.

The goal of any intervention should be determined by the migrant worker and evaluated by these goals rather than that of government or shelter staff. It is important to create mechanisms that ensure that migrant workers are given realistic power to design, critique and challenge any type of intervention or aspects of the environment to prevent disempowerment.

Every shelter should clearly outline the structures of participation for migrant workers to exercise their right to advocate about the governance and operation of the shelter. They should be guaranteed protection from any adverse reaction to the expression of their opinion. Feedback could be done collectively in a group with individuals identity kept confidential or anonymously as individuals. Example: conduct satisfaction surveys, regular feedback and complaint mechanisms, evaluations several times throughout the year. Shelters should provide evidence of this practice.

Oversight: monitoring the human rights standards and gender responsiveness of shelters

Whilst there are migrant workers who report a positive experience of shelters, there are also some migrant workers that cite a lack of commitment from some embassy and shelter staff to hear their voice and report encountering coercion when expressing their own perceptions, interpretations and when making decisions in shelters limiting their ability to secure their rights. Yet some shelters have little or no independent oversight in many receiving countries to act as a crucial safeguard to ensure that the conditions in shelters uphold certain minimum international standards necessary for a right to protection.

This should be effective independent, impartial (by those who do not have conflicts of interest or political ties with authorities) and transparent inspection and monitoring of the measures adopted and the implementation and quality of the rights-based approach, follow-up on allegations of ill-treatment and identify areas for improvement. They should also employ gender responsive monitoring of indicators. There must be a mandate to make unannounced visits particularly in shelters when migrants are deprived of their liberty. There should be independent CSO (who advocate for migrant rights) involvement in the state-run shelters. Migrant workers should engage in policy development of shelters E.g. Form a committee composed of migrant workers who have been in shelters that can solicit and identify the shared problems in shelters and suggest possible solutions to them, whilst in their country of origin.

Limiting survivor advocacy to the shelter

Many migrant workers emphasise that making visible what has happened to them and fellow workers is important for their empowerment and recovery. Many shelters facilitate migrant workers to claim particular rights as individuals, whilst others also support and encourage migrant workers to speak out about their human and labour rights abuses and lobby for the protection of their rights.

Survivor advocacy remains limited if confined only to the inside of the shelter. Whilst some migrant workers in receiving countries such as Taiwan have the right to speak out and take action in public on their rights violations, others are denied the right to freedom of expression, association and peaceful assembly. If vulnerable workers are organised they are better able to collectively demand their rights and resist coercion and call for system change rather than individual remedy.

RECOMMENDATIONS

- Adopt a cohesive approach to protection of rights violations of low-income migrant workers that prioritises systemic prevention, protects victims and survivors and ensures punishment of perpetrators.
- Establish in national law specific procedures for the quick, safe and effective rescue of abused and exploited migrant workers. Remove all barriers that confine and prevent the victim from escaping the abusive workplace.
- Police, immigration officials and other government agencies should establish teams that are trained in victim support and gender-sensitive procedures to ensure the safe and timely transfer of all migrant workers who decide to enter the shelter.
- Ensure that victims and survivors of rights violations do not lose their immigration status because of abuse and exploitation and are not prosecuted or punished for status-related offences.
- Migrant workers should be able to terminate the employment relationship if they experience abuse and /or any form of exploitation in the workplace. This should be stipulated in a standard employment contract, aligned with international standards.
- Reform laws on work permits to enable migrant workers to change employers without the consent of the sponsor or employer and abolish the exit visa requirement. Victims and survivors in shelters should be able to choose new employment as an alternative to repatriation.
- End the impunity for employers who illegally confiscate the passports of migrant workers.
- Mainstream a gender perspective through all legislation policies and procedures related to protection of victims and shelters. Research and develop protection measures for male victims and survivors of labour exploitation and abuse.
- Allow migrant women who are victims and survivors of domestic violence to apply for a resident permit independently of abusive spouses. Adopt and implement domestic violence legislation that establishes legal protection against such violence with punitive measures.
- Trafficked, pregnant women, women with children and victims of forced labour should not be detained, prosecuted or punished for offences caused by or directly linked to the victimization. Victims and survivors should be entitled to and offered rights-based shelter and never held in detention.
- All penalties should be eliminated for all women who are the victims of sexual violence.
- Remove barriers to sexual and reproductive health rights of women migrant workers. There should be no coercion, discrimination, detention or prosecution of workers who are pregnant, with children and with partners.
- Shelters should offer rights-based protection and establish indicators to ensure they are gender-sensitive / responsive.
- Shelters should never violate the migrant workers right to freedom of movement. There must be no social justification used for specifically denying women their right to freedom of movement.
- Women migrant workers and victims and survivors of rights violations should have the option of independent accommodation, rather than being forced to live in the employer's home, recruitment agency or in a shelter.
- Authorities must ensure a firewall to completely delink access to justice, health services and shelters from immigration enforcement. Shelters should have clear policy and procedures with disciplinary measures to safeguard victims right to confidentiality, privacy and informed consent.
- End the impunity against all acts of violence, exploitation and coercion against women in shelters perpetrated by people in positions of authority or others by investigating, punishing and prosecuting those responsible. Anyone who allows traffickers, recruitment agents, employers or others seeking to coerce, exploit or abuse access to the shelter should be brought to court.
- Conduct psychosocial awareness raising and capacity building of shelter staff to ensure that victims are identified and to create an enabling process and environment; where victims and survivors can self disclose rights violations without fear of stigma, in their native language with staff who are trauma-informed, able to listen, relate with empathy and respond effectively.

RECOMMENDATIONS

- Victims of labour rights violations irrespective of status, whether inside or outside the shelter should have access to all legal remedies available under law to ensure they receive compensation and access to justice.
- Establish strong empowerment for the rights holders in the shelter as an essential component for a rights-base framework. Strengthen the knowledge and adoption of participatory approaches and methods for the daily operation and governance of the shelter.
- Acknowledge and emphasise the social and not just the individual nature of rights. Migrant workers should have a right to freedom of association and peaceful assembly and collective bargaining in both sending and receiving countries. Ratify ILO conventions (no. 87 and 98).
- Collect disaggregated data on the rights violations that lead victims and survivors to escape their workplace and seek protection in shelters.
- Establish special protection measures for children in shelters in line with the UN Convention on the Rights of the Child, 1989.
- Ensure that sending countries are responsible for facilitating migrant workers timely right to return at no cost to the worker. They should strengthen their capacity and establish a set budget to fulfill this mandate. Sending countries should provide effective comprehensive long-term reintegration for migrant workers and their families.
- Develop and conduct public awareness campaigns in receiving countries to challenge and reduce: dehumanising language such as ‘runaway’ for victims, criminalization, xenophobia and victim blaming discourses that significantly reduce protection.
- Systematically assess the impact of shelters for women migrant workers.
- Advocate for the ratification and implementation of ILO Domestic Workers Convention, 2011 (No.189) significant for improving social protection, thus the prevention of rights violations. Extend labour rights and protection in national legislation to domestic workers and caregivers.
- Advocate for the ratification of the International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights.

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This policy paper was developed through many discussions with Migrant Forum Members (MFA) and partners including during a caucus on shelters, dedicated sessions in MFA programmes; via an online survey on shelters and through feedback on drafts. Migrant workers additionally provided quotes and comments during group discussions and online interview. Names of migrant workers were withheld at their request.

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RECRUITMENT reFORM.org

RecruitmentReform.org is an initiative of the civil society Open Working Group on Labour Migration and Recruitment. With members from civil society organizations across the world, the Open Working Group is committed to knowledge sharing and collective advocacy to reform migrant labour

recruitment practices globally. Building upon years of civil society advocacy on labour migration, human rights, and recruitment reform, the Open Working Group was initiated in May 2014 by Migrant Forum in Asia and the Global Coalition on Migration (GCM) together with other civil society organizations. The Working Group is coordinated by Migrant Forum in Asia and forms part of the Migration and Development Civil Society Network (MADE).

If you are interested in joining the **Open Working Group on Labour Migration & Recruitment**, please email us at mfa@mfasia.org to express your interest. Please visit recruitmentreform.org/contribute-to-the-open-working-group/ to see how members can contribute to the working group!



Step It Up: Dignity, Rights, Development is the global campaign launched by the Migrant Forum in Asia network and affiliated civil society organizations, trade unions, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, and the International Labour Organization, which highlights the significance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW / UN Migrant Workers Convention). 18 December 2015 marks the 25th anniversary of the adoption of the Convention that specifically guarantees the rights of all migrant workers and members of their families.

The 25th anniversary of the UN Migrant Workers Convention is the perfect occasion for the migrants' rights movement to magnify the unwavering advocacy for further ratification and implementation of this international human rights instrument, which looks after the human rights and labor rights of migrant workers and extends protection to members of their families. Launched on 18 December 2014, the Step It Up campaign encourages all stakeholders – States parties, trade unions, employers' organizations, civil society organizations, migrant workers and members of their families to take part in this year long global initiative, beginning on 18 December 2014 to 18 December 2015. Activities relating to the promotion of the human rights of migrant workers and members of their families as well as engagements with States to ratify the CMW will find space here, in the online platform of the Step It Up campaign.

The online platform of the Step It Up campaign centers on the following themes: promotion of the ratification of the UN Migrant Workers Convention, children of migrant workers, particularly ending immigration detention of children, migrant domestic workers, contributions of migrant workers in the countries of origin and destination, and situations of forced labor, human trafficking and slavery-like practices that migrant workers experience. The campaign also links up with other ratification efforts, including the ILO Convention on Domestic Work No. 189 (C189), ILO Convention No. 97 (Migration for Employment Convention), ILO Convention No. 143 (Migrant Workers Convention) and the ILO Forced Labour Protocol. These themes and the ratification of international human rights and labor rights treaties directly impact the lives and the realization of the rights of all migrant workers and members of their families. The Step It Up campaign through the online platform strives to weave together these interrelated issues and underscores that migration is not an isolated matter but is tied to various dimensions of peoples' struggles for equality, dignity, decent work and human rights.

To know more about the campaign, please visit <http://cmw25.org>

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