



## **ILO Regional Office for the Arab States**

### **Regional Tripartite Conference on ILO Convention No. 189: Raising Awareness and Sharing Knowledge on Decent Work for Domestic Workers Cairo-Egypt**

**22-24 October 2012**

#### **Background Note: Regulating Private Employment Agencies**

##### **The role of Private Employment Agencies in facilitating the recruitment of migrant domestic workers in the Arab States**

The high demand for foreign domestic workers in countries of the region has created a flourishing market for private employment agencies and informal brokers that supply labour from mainly Asian and African source countries. Migration regulations in Arab States ensure a high turnover of these foreign “contract workers” which in turn generate a profitable revenue stream for private agencies and freelance operators, some of whom have specialised in recruiting domestic workers only. There are no precise figures on the number of registered PrEAs operating along the Asia/Africa-Middle East migration corridors, but ILO research suggests that there are many thousands, in addition to informal brokers and criminal traffickers.<sup>1</sup> Some agencies have affiliates in source or transit countries; others work in partnership. PrEAs are involved in assessing demand, negotiating employment conditions, selecting and transferring workers. By default, they may also act as intermediaries in employment disputes. Due to the lack of data, it is difficult to assess the size of the industry in terms of profits. Statistics of the International Federation of Private Employment Agencies (CIETT) show that 34 per cent of the world’s 72,000 private employment agencies are based in the Asia-Pacific and 8 per cent in Africa but most of these agencies are temporary staffing agencies that are not involved in cross-border migration.<sup>2</sup>

Studies from Bangladesh, India and Pakistan suggest a significant decline of the role of PrEA in cross-border labour migration, from an estimated 70 – 90 per cent down to 20 – 45 per cent.<sup>3</sup>

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<sup>1</sup> Afsar, R. (2009): *Unravelling the Vicious Cycle of Recruitment. Labour Migration from Bangladesh to the Gulf States*, ILO Geneva; Rajan, S.I.M. et al. (2008): *Overseas Recruitment Practices in India*, ILO Bangkok; Arif, G.M. (2009): *Recruitment of Pakistani Workers for Overseas Employment: Mechanisms, Exploitation and Vulnerabilities*, ILO Geneva

<sup>2</sup> CIETT (2011): *The agency industry around the work*, Brussels. CIETT has no data for Arab States.

<sup>3</sup> See footnote 1.

While generalisations cannot be made on the basis of these limited survey samples, these data indicate that personal networks and direct contacts between migrant workers and “sponsors” have gained in importance. Furthermore, traditional countries of labour supply, such as Thailand, Philippines, and countries from South Asia are faced with increasing competition from African countries, such as Ethiopia. As a result, many PrEAs are involved in cut-throat competition to place as many workers as possible.

### **Vulnerabilities and violation of fundamental rights**

While PrEAs play a legitimate role in the labour market, with many of them providing high quality services, competition and lack of stringent government oversight has fostered an “illegal market” where abuse and deception are rampant. This is particularly the case when workers are placed across borders and in unregulated sectors as is often the case with domestic workers. Many of the women who seek domestic work in Arab States come from a poor background and are in a weak bargaining position due to the lack of skills, information and capital.<sup>4</sup> They are willing to pay stiff premiums for an opportunity to be placed abroad and who are returned to the agency if the employer is not satisfied. Their vulnerabilities can be easily exploited which have been widely documented by various organisations, including the ILO. One of the main drivers of vulnerability is the fact that most domestic workers arrive highly indebted in destination countries of the Arab region. ILO has documented recruitment fees in key source countries, which include costs for visas, transfer and clearance but also actual placement fees. A web of agents and sub-agents, spanning across villages, cities and countries, contributes to a steady increase of these fees as everyone in the chain will take a cut. Migration costs can therefore run into thousands of dollars which many workers borrow while using their future employment as collateral.<sup>5</sup> These debts are like “concealed chains” which will prevent workers from leaving even highly exploitative employment relationships. Employers in most Arab States are equally required to pay placement fees and some may not even be aware that agencies charge at both end of the migration corridor.

The most commonly forms of abuse relate to non-payment of wages or illegal wage deductions to offset recruitment fees and restrictions of the freedom of movement, which are imposed on live-in domestic workers. Some are intimidated, threatened and physically abused. Many report long working hours, often combined with squalid living conditions. Such abuse can also amount to human trafficking and forced labour which should be prosecuted under criminal law. According to ILO estimates, workers in forced labour forego 21 billion US\$ annually due to unpaid wages and illegal recruitment fees. In the Middle East and countries of North Africa, the “costs of coercion” are as high as 3.2 billion US\$. Given the high proportion of domestic workers in the region and their

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<sup>4</sup> According to IOM, about two third of all migrant workers arriving in the Arab States are either illiterate or have very low education levels. See IOM (2010): Intra-Regional Labour Mobility in the Arab Work, Cairo; Agunias, D.R. (2012): Issue in Brief: Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor, IOM Bangkok, Issue No 4

<sup>5</sup> Esim, S. Kerbage, C.: The Situation of Migrant Domestic Workers in Arab States: A Legislative overview, ILO unpublished; ILO study on the process of trafficking in the Middle East (forthcoming)

vulnerability to trafficking and forced labour, it can be assumed that they carry a major burden of these “costs”.<sup>6</sup>

Another key factor that exacerbates the vulnerability of domestic workers is the lack of access to effective remedies. Workers’ organisations are either not permitted in Arab States or do not represent foreign domestic workers. When filing complaints to government institutions (e.g. Ministry of Labour, police, labour inspection), they are often treated as criminals rather than workers in need of protection. As a result, PrEAs are often the only resort for these workers to seek help. Ill equipped to settle disputes and eager to protect their own financial interests, agencies tend to side with employers rather than workers.

### **Towards common principles and effective enforcement**

ILO standards, such as the Private Employment Agency Convention, 1997 (No 181), if effectively implemented, create a level playing field and ensure fair mediation in employment. One of the most fundamental principles of C. 181 is the prohibition to charge fees to workers except under special circumstances (Art. 7). During the discussion leading to the adoption of C. 181, ILO constituents widely agreed that employers, not workers are to be charged for recruitment services. There was also broad consensus that PrEAs have to be properly regulated and monitored in order to prevent abusive practices.<sup>7</sup>

*Designing and implementing effective regulations on private employment agencies  
Guidance from C. 189 and R.201*

- Establish procedures for the investigation of complaints, alleged abuses and fraudulent practices
- Provide adequate protection for and prevent abuses of domestic workers recruited by private employment agencies
- Conclude bilateral, regional or multilateral agreements to prevent abuses
- Ensure that fees are not deducted from the remuneration of domestic workers
- Promote good practices by PrEAs by taking into account principles in C. 181 and the Private Employment Agencies Recommendation No. 188

The key challenge is to ensure wide acceptance and enforcement of these standards across source and destination countries so that law-abiding agencies are not outsmarted by illegal competitors. So far, most PrEA legislation is limited to one jurisdiction. An exception is the Private Employment Agency Proclamation of Ethiopia (632/2009) under which agencies based in Ethiopia and abroad are jointly held liable. Regulations in Arab States, where they exist, vary widely. The Ministry of Labour of the U.A.E. issued an Ordinance in 2011 according to which only U.A.E. citizens are granted

<sup>6</sup> ILO (2009): The Cost of Coercion, Global Report under the follow-up of the ILO Declaration on Fundamental Principles and Rights at Work, Geneva

<sup>7</sup> For more information on ILO C. 181 and national practices see: ILO (2007): Guide to Private Employment Agencies: Regulation, monitoring and enforcement, Geneva

licenses to run a private employment agency but this has not prevented informal recruiters from engaging in iniquitous activities. The regulation prohibits agencies to charge fees to workers. Regulations in Jordan and Lebanon explicitly prohibit and punish physical abuse of domestic workers by agencies, and they also prohibit fees charged to workers.<sup>8</sup> By contrast, most source countries (Ethiopia being an exception) allow agencies to charge service fees to workers, albeit under rather strict limitations.

The “Colombo Process” and “Abu Dhabi Dialogue”<sup>9</sup> provide a platform to develop multilateral approaches and to build consensus around key principles that should govern the operations of PrEAs. The 2011 Dhaka Declaration for example called for the development and streamlining of policies to “eliminate unethical practices concerning migrant workers including deduction/non-payment in violation of contractual provisions, rationalize migration costs, promote transparency and openness in recruitment processes, strengthen monitoring and supervision of recruitment practices, and prevent slippage of regular migrant workers in to any form of irregularities.”<sup>10</sup> Similarly, the “Abu Dhabi Declaration of Asian Countries of Origin and Destination”, adopted at a Ministerial Conference in 2008, “recognized the joint responsibility of countries of origin and destination to enforce compliance by recruitment agencies and other parties engaged in the recruitment process with the requirements of national laws and regulations pertaining to the employment of temporary contractual labour, thus providing further protection to workers.”<sup>11</sup>

Despite growing international commitment to decent recruitment and employment practices, based on ILO principles, many challenges still remain. The inconsistencies between regulations in source and destination countries as well as loopholes in existing laws and regulations create opportunities for unscrupulous agencies to exploit the system. Experience has shown that bans on the recruitment and deployment of migrant workers, which often affect domestic workers disproportionately, are difficult to enforce and drive the recruitment process further underground. Similarly, regulations that put too many undue burdens on agencies without creating a viable business environment tend to increase rather than decrease informal recruitment practices. Smart regulation and enforcement are required that can weed out fraudulent agencies, bring informal brokers under the remit of labour law and that clearly delineate the responsibility between employers, recruiters in source and destination countries as well as workers.

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<sup>8</sup> See MoL Regulation No 89 (2009) for Jordan and MoL Decision No. 1/13 (2009) for Lebanon.

<sup>9</sup> Member States of the Colombo Process are Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam. Observer countries are: Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates. The Abu Dhabi Dialogues consists of all Colombo Process member States and the following destination countries: Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia, Singapore, United Arab Emirates, and Yemen

<sup>10</sup> Dhaka Declaration of Colombo Process Member Countries, April 2011, paragraph 1 (v), download at: [http://www.colomboprocess.org/images/docs/dc2011/dhaka\\_declaration.pdf](http://www.colomboprocess.org/images/docs/dc2011/dhaka_declaration.pdf)

<sup>11</sup> Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia, “Abu Dhabi Dialogue”, 21-22 January 2008, download at: <http://www.colomboprocess.org/images/stories/abu%20dhabi%20declaration.pdf>