



GLOBAL ACTION PROGRAMME ON MIGRANT DOMESTIC WORKERS AND THEIR FAMILIES



International
Labour
Organization

Regulating International Labour Recruitment in the Domestic Work Sector: A Review of key issues, challenges and opportunities

Based on a report elaborated by Leanne Melnyk

Summary

This brief on international labour recruitment is part of a series on issues and approaches to promoting decent work for domestic workers. The work aims to highlight the specific needs and vulnerabilities of migrant domestic workers during the recruitment process and main issues and challenges as well as innovative practices for improving regulation of international recruitment in the domestic work sector.

There are 67 million domestic workers employed in private households across the globe. Approximately 11.5 million of these are international migrants, drawn to countries where there is a demand for private care services.¹ In many regions labour recruiters, both public and private, assist families and migrant domestic workers with job matching and immigration formalities. While labour recruiters, when properly regulated can provide important services, there have also been an increasing number of reports about the exploitation and abuse of migrant domestic workers by unscrupulous private employment agencies (PrEAs) and informal agents. Exploitative practices include deception (primarily about working and living conditions and the type of employment); charging unauthorized fees to workers; retention of identity documents with the aim to control jobseekers and workers; threats and intimidation including verbal and psychological abuse (often when a worker wants to leave the employment situation); wage retention; interferences with domestic workers' privacy; and recruitment of children below working age.²

Labour recruitment agencies are particularly prevalent regarding migration within Asia, and from Asia and Africa to the middle East, where migration flows

for domestic work are largely circular with temporary employment tied to a specific employer.³ Many temporary labour migration programs involving “low-skilled” workers are based in structural and income inequalities between developing and developed economies.⁴

Migrant domestic workers (MDWs) are considered to be especially vulnerable to exploitation due to a variety of factors including precarious working conditions, migrant status, long-standing gender inequalities and cultural devaluations of care-based work. Nearly 75 per cent of all MDWs are women.⁵

Fair Migration Agenda

There is growing international consensus that stronger measures must be taken to combat abusive labour recruitment. In 2014, the ILO launched its Fair Migration Agenda, drawing attention to the need for fair recruitment and equal treatment of migrant workers to prevent exploitation.⁶ Fair recruitment was also at the centre of discussions surrounding the adoption of the 2014 Protocol to the Forced Labour Convention, 1930, and its accompanying Recommendation (No. 203).

The new instruments create specific obligations for states to eliminate abusive and fraudulent recruitment practices including through the promotion of inter-state coordination to eliminate recruitment fees and to regulate, license and monitor labour recruiters and employment agencies. In 2014 the ILO also launched the Fair Recruitment Initiative, which aims to support the knowledge base for industry-

led change. At the same time it works alongside governments and social partners to strengthen laws, policies and enforcement mechanisms; promote fair business practices; and empower workers and provide access to remedies in select countries.

International labour recruitment in the domestic work sector

PrEAs are part of an increasingly powerful migration industry that has grown in size and profitability since the mid-1990s, in line with the rise in international labour migration.⁷ In 2013, 60.9 million people gained access to the labour market in one way or another through the employment & recruitment industry. As of 2014, there were some 140,000 PrEAs around the world. It is important to note that the international recruitment industry is not homogenous. There are multinationals and large businesses offering a full range of human resource services. They coexist with many small and medium sized PrEAs, often specializing in a particular field or sector.

PrEAs in the domestic work sector wield a high degree of power, by virtue of their role as immigration consultants and employment agencies.⁸ Many are family-owned enterprises with a small staff, limited financial capital, and local client base.⁹ In many countries former domestic workers have themselves set up recruitment agencies. These realities mean that smaller businesses specializing in international recruitment must forge business relationships to complete the end-to-end recruitment process.

While the recruitment model in the domestic work sector varies significantly depending on the country and/or individual context, the most common scenario involves cooperation between PrEAs in the country of origin and the country of destination. The PrEA in the country of destination (often referred to as a placement agency) manages relationships with prospective employers (families seeking domestic workers), assists with job matching and is responsible for processing the necessary immigration documentation. The PrEA in the country of origin receives job requests, screens potential workers, processes the necessary emigration documentation and prepares workers for departure.

While many PrEAs are formal and subject to both legal and industry standards, others, including sub-agents, may be unregistered and with limited accountability. In many countries the absence of PrEAs at the village/rural level means that sub-agents take on the task of mobilizing potential migrant workers and introducing them to the local recruitment agency. Some countries such as Nepal, have taken steps to recognize sub-agents and register them with a PrEA. The registration of sub-agents can be an important step in ensuring agents are held legally accountable for their actions.

Finally, the proportion of the PrEAs in the domestic work sector is not geographically balanced. The number of PrEAs in operation is much higher in countries of origin with a regulated policy of employment-driven emigration policy and countries of destination with a dependence on private care-giving services. While PrEAs specializing in the domestic work sector are in operation all across the globe, in some regions such as Latin America migrant domestic workers rely more on family and personal connections than private agencies to find a job.¹⁰ Additionally, some countries have prohibited international recruitment by PrEAs.

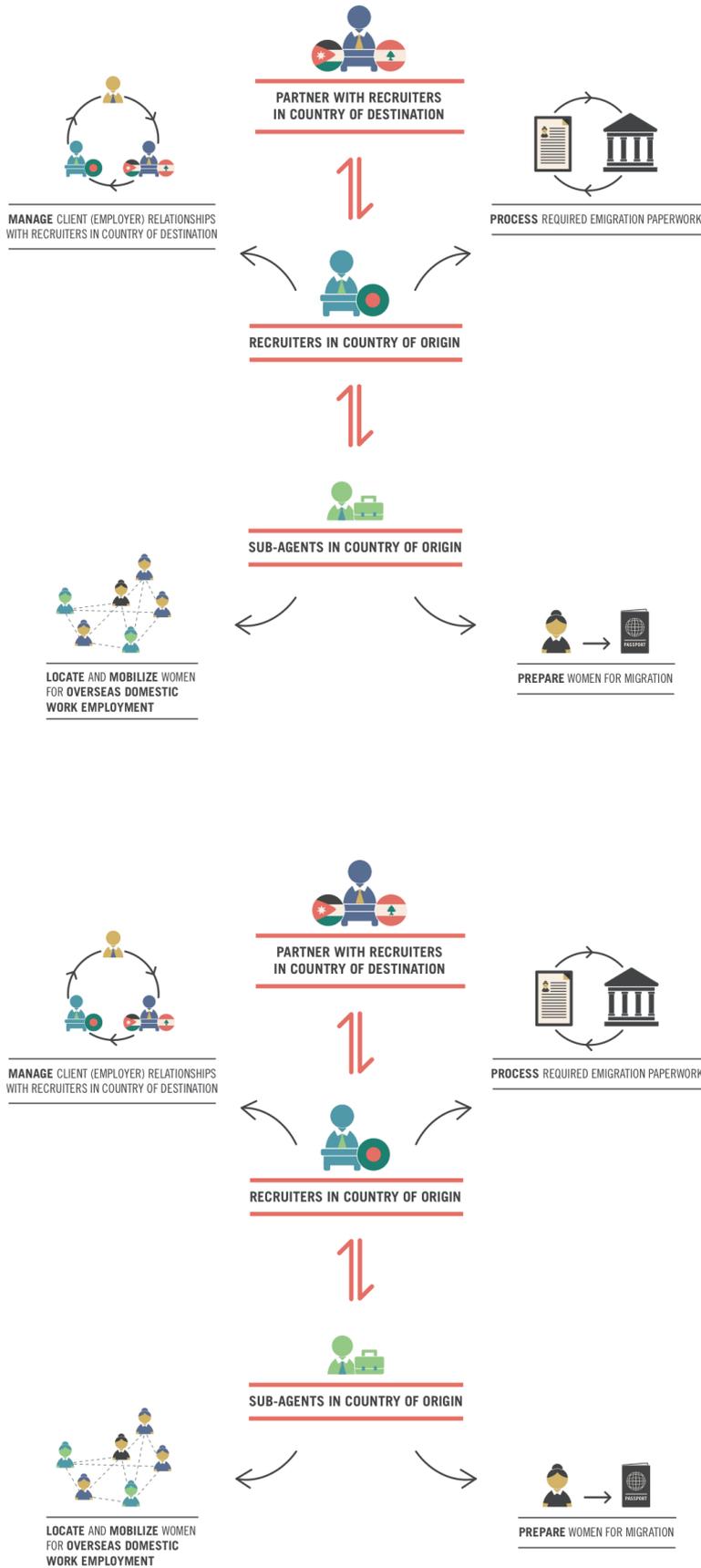
Why do employers and MDWs use private recruitment agencies?

In many countries, families are able to directly recruit a migrant domestic worker, nonetheless, most of them continue to pay hefty recruitment fees to PrEAs for their services. This trend reflects the fact that in the domestic work sector, the employer is a family and not a business hence, many employers are not familiar with managing recruitment processes and don't have the necessary contacts in countries of origin.

One of the first services offered by PrEAs is job matching. When a PrEA receives a job request it will work with labour recruiters in countries of origin to find a suitable candidate. The job screening process entails verification of workers' credentials (education, experience, formal training etc.). In many cases criminal records are checked and medical tests are undertaken.

Many workers, by contrast use PrEAs due to the PrEA's connection to employment opportunities in the destination country. PrEAs also assist

Figures 1 and 2 describe the division of labour between destination and origin country agencies and sub-agents



families and workers to navigate the often complex set of immigration and employment laws in the relevant jurisdictions. The facilitation of the end-to-end recruitment is an attractive option for busy employers and first-time migrants. It may also speed up what can otherwise be a lengthy process, with bureaucratic delays.

In most cases the services of a PrEA do not stop when the domestic worker arrives at the home. Many agencies provide advice to employers on topics such as rights and obligations under the law, and how to engage with and treat their domestic worker. In the same respect, some PrEAs provide advice to workers on how to interact with their new employer. In the domestic work sector, workers may live with a family, however in the context of an employment rather than a familiar relationship. The two are frequently from very different cultural backgrounds and social strata, with a high risk for differing expectations and related conflicts. In light of this, many PrEAs guarantee to find a replacement domestic worker for the family and in some cases a new job for the worker. In some countries the PrEA is legally responsible – under certain circumstances – for providing the family with a replacement worker.¹¹

Regulation of private recruitment agencies in the domestic work sector: models for addressing key issues and challenges

Using bilateral or multilateral agreements and joint liability schemes to prevent abuses

One of the key challenges to regulating the international labour recruitment industry in the domestic work sector is coordinating regulation and enforcement between different national and international legal systems.

At all ends of the spectrum individual labour recruiters and other intermediaries (e.g. travel agents, insurance representatives) may be present. Where “migration bans” are in place, workers often must transit via a third country, adding further to a complex situation.

Institutionalized cooperation and harmonization of efforts between countries of origin, (transit where applicable) and destination; and internally between different ministries and levels of government are key elements for the effective regulation of international labour recruitment. The government of the Philippines for example has taken commendable steps to establish better cooperation with four provinces in Canada who have received Filipino domestic workers through Canada’s Caregivers Programme. In one province, British Columbia, the memorandum of understanding facilitated the alignment and incorporation of Canadian employment standards into the Philippines official guidelines on recruitment. These efforts have helped to mitigate the risk of Filipino workers being recruited for fraudulent jobs or otherwise being exploited.¹²

In addition, the Kingdom of Saudi Arabia (KSA) and the Philippines in 2013 signed a domestic worker agreement that contained specific provisions for joint regulation of PrEAs. This included provisions ensuring that workers were only sent through agencies accredited in both countries, and assurances that the domestic workers would not pay recruitment costs or placement fees. The agreement was the first of its kind to be signed by a country of origin in Asia and a destination country in the Middle East.

Some countries and provinces have gone further by instituting legislation that allows for joint liability clauses between the recruiters and employers.¹³ This allows countries of origin to hold PrEAs accountable for violations experienced by migrant domestic workers while in countries of destination. Joint liability clauses are however notoriously difficult to enforce because of the jurisdictional boundaries inherent in national legal systems. In addition, very few legal frameworks in countries of destination hold employers liable for abuses perpetrated by the recruitment agency.

Establishing procedures for the monitoring of PrEAs and investigation of complaints, alleged abuses and fraudulent Practices

One of the key lessons learned from enforcement of laws and policies regulating the recruitment industry in the domestic work sector, is the need to have a proactive mechanism of monitoring and investigation. In many countries, PrEAs are only monitored and investigated upon submission of a complaint. Often this requires the domestic worker to take the initiative to submit the complaint to the relevant authority or, in some cases, a civil society organization. The complaint-based mechanism rarely works in the case of migrant domestic workers because of the latter’s precarious status in the country and the difficulty in changing employers. Additional barriers such as language and finances mean that domestic workers will often try to mediate a resolution with the recruitment agency or leave the claim unreported.

Good practice examples of proactive approaches to enforcing regulations in the recruitment industry

In Canada, the province of Manitoba has dedicated resources to a Special Investigation Unit that identifies and investigates alleged violations of Manitoba’s employment laws, including the activities of PrEAs. During 2014-2015, the Unit conducted over 400 investigations and identified violations in 80% of the cases.

While the primary responsibility for monitoring the activities of PrEAs and enforcing laws and policies rests on the state, the social partners and other key stakeholders can also take an active role in promoting fair recruitment. Trade unions for example can prevent recruitment malpractices by alerting workers to their legal rights and maximum fees payable and drawing attention to violations. The role that trade unions can play in preventing recruitment abuses of migrant domestic workers however is often constrained by restrictions on migrant workers ability to form and join trade unions, and the general absence of MDW organizing in some destination countries.¹⁴

The bi-national cooperation between the Alliance of Progressive Labor (APL) (now known as SENTRO) in the Philippines and the Progressive Labour Union of Domestic Workers in Hong Kong (PLU-APL), represents a **best practice example** of how trade unions can monitor the activities of recruitment activities. In 2013, the two trade unions surveyed 1400 Filipino DWs in Hong Kong in order to analyse the recruitment problems, practices, policies, patterns and critical factors in the Philippines and Hong Kong. The report “License to Exploit” was submitted to the Philippines Overseas Employment Administration (POEA) who looked into the claims and suspended or cancelled the licenses of the offending agencies.

Recommendations for effective protection for Migrant Domestic Workers and prevention of abuses by private employment agencies

There are three main sets of regulations that govern international labour recruitment in the domestic work sector: **immigration regulations, labour regulations and regulation of labour recruiters**. In many countries, immigration is heavily regulated, while less oversight and resources are dedicated to the regulation of labour standards and activities of PrEAs. **Governments have a responsibility to ensure that there are sufficient regulations in all three spheres to provide adequate protection for, and prevent abuses of domestic workers.**

Licensing Requirements

One common method of preventing migrant worker abuse during the recruitment process is to restrict and carefully monitor who may act in the recruitment, introduction and placement of migrant domestic workers.¹⁵ Licensing implies that the government establishes special administrative procedures to set minimum standards for operation, maintains a list of licensed agencies, monitors the activities of licensed agencies and issues penalties in case of non-compliance. Requiring PrEAs to pay bonds is one common licensing requirement.

In some countries, the licensing requirements are more stringent for PrEAs recruiting women in the domestic work sector. Some countries also subject agencies recruiting foreign nationals to a more extensive vetting and supervision process than those recruiting nationals.

Stringent licensing of PrEAs has led, overall, to a decline in the number in operation.¹⁶

Registration

In some countries, agencies come under a general registration scheme. Registration becomes even more effective when coupled with strict monitoring and cooperation between the country of origin and destination. To combat unfair treatment of temporary foreign workers, the province of Manitoba passed the *Worker Recruitment and Protection Act* which requires the registration of two parties (1) the employer and (2) foreign worker recruiters. In the case of Filipino workers, the Provincial Government cooperates with the PoEA to supervise the registration of the contract between the employer family and the domestic worker.

Ensure that fees are not being charged to domestic workers

Charging fees for job placement services is a key concern in the area of international labour recruitment in the domestic work sector. The payment of high recruitment fees contributes worker vulnerability given the debt burden this implies. Many workers borrow money to pay recruitment fees and are paying extremely high or illegal interest rates. The ILO Convention on Private Employment Agencies No. 181 and the Forced Labour Protocol and Recommendation No. 203 prevail on states to eliminate the charging of recruitment fees and costs to workers to prevent debt bondage and other forms of economic coercion.

In the case of domestic work, because of the blurring of immigration and employment services offered by foreign worker recruiters, it can be difficult to distinguish charging of fees for job placement versus fees for other “payable services”. In British Columbia, Canada for instance the Employment Standards Act prohibits agencies from charging for job placement.

Research on employers of domestic workers in Lebanon and Malaysia suggest that there is a strong correlation between an employer’s payment of high recruitment fees and restrictions on the domestic worker’s freedom and rights.¹⁷

In Jordan an employer insurance scheme was created to provide the employer with coverage in case the domestic work leaves, provided no human or labour rights abuses have taken place. While the insurance programme is still relatively new it is an interesting model that could potentially mitigate fear of financial loss and reduce the risk of workers being coerced into an employment situation against their will.

Promote good practices by PrEAs by taking into account principles in The Private Employment Agencies Convention No. 181 and Recommendation No. 188

Employer organizations can also play a key role in overseeing the activities of their members. The organized recruitment industry is represented in part by the International Confederation of Private Employment Agencies (Ciett). It has taken a public stance on no-fee charging and the promotion of the ILO Private Employment Agencies Convention, 1997 (No. 181). Ciett has developed specific tools to ensure that quality standards and regulation (whether by law or collective bargaining) are being enforced: In France (CPPNTT), Belgium (CNT) and the Netherlands (SNCU & SNA), bipartite bodies are in place to monitor and ensure compliance with existing regulation of agency work. In Belgium and Portugal, an Ombudsman has been established to deal with complaints from agency workers and to look for remedies.¹⁸ Unfortunately, Ciett does not represent many PrEAs in the domestic work sector.

Some agencies specialized in the recruitment of domestic workers also have organized into national associations including in Nepal, Bangladesh, Canada, the United Kingdom and the United States.¹⁹

Some national nanny associations such as the Association of Nanny Agencies (ANA) in United Kingdom do provide their members with information on no-fee charging. It should be noted that there are also several independent domestic worker agencies that have taken a committed stance on fair recruitment, including no-fee charging.²⁰

Unfortunately, as most specialized nanny agencies are not part of the international federations or associations, their voices are not well represented in industry discussions or training on fair recruitment. At the same time, where governments do rely on international labour mobility to fulfil employment needs in the domestic work sector, it is imperative that training and sensitization activities be available for nanny agencies on Fair Recruitment, as this ensures agencies know the rights and responsibilities that are owed to workers, families and themselves.

End Notes

- 1 ILO Global estimates of migrant workers and migrant domestic workers: results and methodology / International Labour Office - Geneva: 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf p. XIII.
- 2 ILO, Regulating labour recruitment to prevent human trafficking and to foster fair migration; models, challenges and opportunities (2015) p. 10.
- 3 ILO Multilateral Framework on Labour Migration states that temporary work schemes should respond to established labour market needs, and respect the principle of equal treatment between migrant and national workers (Article 5.5).
- 4 Fay Faraday, "Profiting from the Precarious: How recruitment practices exploit migrant workers" April 2014, p. 23.
- 5 ILO Global estimates of migrant workers and migrant domestic workers: results and methodology / International Labour Office - Geneva: ILO, 2015 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf p. XIII.
- 6 ILO: Fair migration: setting an ILO agenda, Report of the Director-General to the International Labour Conference, 103rd Session, 2014.
- 7 Ciett "2015 Economic Report" p. 10.
- 8 Temporary Work Agencies and Unfree Labour; Insecurity in the New World of Work, Judy Fudge and Kendra Strauss "Placing Filipino Caregivers in Canadian Homes: Regulating Transnational Employment Agencies in British Columbia", p. 70.
- 9 ILO, For a Fee The business of recruiting Bangladeshi women for domestic work in Jordan and Lebanon (June 2015) p. 15.
- 10 ILO Forthcoming Paper on Recruitment along Brazil-Paraguay corridor.
- 11 In Jordan Regulation No. 12 of 2015 on Recruiting Non-Jordanian House Workers states a recruiter must replace a worker who refuses to work or is found to be pregnant or unfit to work within a limited time period. Similar mandatory "replacement policies" exist in the GCC and MENA countries. In many other countries recruitment agencies voluntarily provide this guarantee as a business strategy.
- 12 Judy Fudge and Kendra Strauss, Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work "Placing Filipino Caregivers in Canadian Homes pp. 79 & 85.
- 13 In the Philippines, the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002 state that labour recruiters must provide a verified undertaking that they "Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations."; See also, Overseas Employment and Migrants Act 2013 (Bangladesh): "For the purpose of the employment contract, the recruitment agent shall be deemed to be a representative of the overseas employer, and as regards liabilities arising from the contract, the said recruitment agent and the employer shall be liable jointly and severally.
- 14 Varona, R., License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hong Kong, report for Alliance of Progressive Labor & Progressive Labor Union of Domestic Workers in Hong Kong, Quezon City, Philippines, Oct. (2013) <http://archive.idwfed.org/resource.php?id=100>.
- 15 Fay Faraday, "Profiting from the Precarious: How recruitment practices exploit migrant workers" April 2014, p. 50.
- 16 Judy Fudge and Kendra Strauss, Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work "Placing Filipino Caregivers in Canadian Homes p. 89.
- 17 Lebanon, Ordinance No. 1/1 of 2011 (Article 18). Note that the article does not apply where employers have violated the workers' rights.
- 18 Ciett, Adapting to Change How private employment services facilitate adaptation to change, better labour markets and decent work, (2012) p. 14.
- 19 See for example, the Association of Caregiver & Nanny Agencies Canada, the Association of Nanny Agencies in the United Kingdom and the International Nanny Association in the United States.
- 20 See for example the not-for-profit agency "Fair Employment Agency" in Hong Kong <http://www.fairagency.org/>.



Project partners

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www.unwomen.org



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Labour Migration Branch (MIGRANT)

Conditions of Work and Equality Department

International Labour Office

Route des Morillons 4
1211 Geneva 22
Switzerland

Tel: +41 22 799 6667
www.ilo.org/migrant
Email: migrant@ilo.org



This project is funded by
The European Union

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ISBN 978-92-2-131030-3

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ISBN 978-92-2-131030-3



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