

UPDATED
LAW UPDATE

Rationale of framing new emigration law

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LABOUR migration from Bangladesh is governed by the Emigration Ordinance 1982. This Ordinance was framed in a historical context when Gulf countries formally encouraged movement of workers through providing various incentives to the recruiting agencies as well as to the migrants. Decent wage, holidays, yearly vacations, overtime, commission to recruiting agencies were part of the labour recruitment deals. Over the years, Gulf and Southeast Asian labour market where the Bangladeshi migrants mostly participate became a buyers' market. Exploitation and fraudulence both within Bangladesh and the countries of destination became rules rather than exception. The complexities of current labour migration could no longer be attended by the 1982 Emigration Ordinance. Civil society organisations have been demanding for updating the law since 1998.

In 2009 the Ministry of Expatriates' Welfare and Overseas Employment (EWOE) decided to update the law and formed an inter-ministerial committee including civil society representation from Refugee and Migratory Movements Research Unit (RMMRU) and Manusher Jonno Foundation. The committee suggested revision of few selected section of the Ordinance. The Law Commission of Bangladesh initiated another review process. RMMRU is providing technical expertise to review the existing law. In 2009 a high level committee was formed comprised of government functionaries from Ministry of EWOE, BMET, Law Commission, legal and migration experts. In the meantime the government of Bangladesh has ratified the 1990 UN International Convention on

Protection of Rights of All Migrant Workers and Members of Their Families. Therefore, it became expedient and necessary to reflect the Convention in national legislation. Keeping in mind the need for reflection of the 1990 Convention to national legislation, the committee thoroughly reviewed the existing Ordinance as well as Emigration Act of India, Nepal, Sri Lanka, Pakistan and the Philippines. The high level committee drafted a new law and in April 2011 it handed over the draft to the EWOE Ministry. The Ministry organised a civil society consultation and more or less accepted the new draft law. The draft is now ready to be placed before the Parliamentary Standing Committee and the Law Ministry.

Laws are framed with the understanding that it will govern future activities for at least 30 to 40 years. It is therefore, immensely important to get comments and analysis from a wider community. To generate such discussion main features of the law has been presented below.

Important features of the draft law
The committee suggested a new name of the law - 'Overseas Employment Act 2011' consisting of 32 sections.

The most important feature of the draft law is that it highlights the rights aspect of the migrants and designed to curb out fraudulent activities in labour recruitment process. It renamed the head of the implementing authority from 'Registrar' to 'Protector of Emigrants' and includes principle of non-discrimination.

In the preamble it takes into account all the ILO Conventions and the UN Convention 1990.

It introduces the concept of renewal of license of recruiting agencies on the basis of performance. Establishment of accountability of sub-agent is an important addi-

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tion to the previous Act. The recruiting agencies can appoint sub-agents with prior approval of the government and is liable to provide ID to its sub-agents. On the other hand, in the section of cancellation of license recruiting agencies right to appeal has been ensured. The draft law in section 16 says: (1) No license or authority shall be used, directly or indirectly, by any person other than the person in whose favour it was issued or at any place other than the

place mentioned in the license nor shall the license be transferred, conveyed or assigned to any person or entity. (2) No transfer of the business address or designation of any agent or sub-agent or representative mentioned in the license shall be made without prior approval of the Government.

In Lieu of provision for special court in seeking remedy, the proposed draft suggests the institution of a Protector of Emigrants, who would file cases on behalf

of the migrants. If the Protector of Emigrants fails to do so within a stipulated period the migrant has the right to file a criminal case under Section 154 and 200 of the Criminal Procedure Code. Here is the relevant provision of the draft:

- **S. 27. Special courts:** Offences under the Act shall be tried in accordance with Criminal Procedure Code in the court of Judicial Magistrate. Provided that a criminal case against a recruiting agent for offences under this Act shall be filed by the Protector of Emigrants or an official authorized by him or by the concerned Ministry. Provided further that a complainant shall file a complaint to the Protector of Emigrants for offences committed against him and in case of failure to file a case by the Protector of Emigrants within the prescribed period, the complainant may file a criminal case under Section 154 and 200 of the CrPC.
- **S. 28. Civil Suit:** Nothing in this Act shall bar a complainant to file civil suits and such civil suits may proceed independently of criminal case, if any.
- **S. 29. Alternative Dispute Resolution:** Parties to a suit may settle their disputes through mediation and/or arbitration as per Section 89 (A) and (B) of CPC.

The new draft reflects the interests of the migrants and provides for different avenues of remedy against malpractices. It is hoped that this piece of legislation would render food for thought to the concerned authorities and a new 'Overseas Employment Act 2011' would see the light of the day within a remarkably short time.

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LAW INTERVIEW

The Domestic Workers Convention Interview with ILO's Manuela Tomei

The landmark treaty setting standards for the treatment of domestic workers that was adopted at the International Labour Conference in Geneva has been widely hailed as a milestone. The Convention and accompanying Recommendation on decent work for domestic workers aim at protecting and improving the working and living conditions of domestic workers worldwide - estimated to number anywhere between 53 million and 100 million. ILO Online spoke to Manuela Tomei, Director of the ILO's Conditions of Work and Employment Programme.

Why is this Convention needed?

Decent work deficits among domestic workers are huge. For over 56 per cent of domestic workers the law does not establish a limit on how long a working week can be. About 45 per cent of all domestic workers are not entitled to at least one day off per week. About 36 per cent of female domestic workers have no legal entitlement to maternity leave. Domestic workers are amongst the most vulnerable categories of workers, those who are already at the margin and least equipped to face the consequences of economic upturns. They comprise mainly women and girls who, to a large extent, work informally. Decent work for domestic workers means affording them respect and dignity and contributing towards their transition from informality to formality.

How does the Convention impact the status of domestic workers?

This instrument sends a very strong political signal. It constitutes an international commitment to work on improving the living and working conditions of a very large segment of the work force which has been historically excluded, either totally or in part, from the protection of labour law. When it ratifies the Convention, a country opens itself to international scrutiny and this puts pressure on member States to ensure that their laws and policies are in conformity with the Convention. The accompanying Recommendation, which is a non-binding instrument, provides practical and useful guidance on how to give effect to the obligations embedded in the Convention. The new standards on domestic workers are both robust and flexible.

They guarantee minimum protections to domestic workers, while allowing for considerable flexibility and wide ratification and continuous improvement of their working and living conditions.

What concrete changes will it bring for domestic workers?

The very first one is that they are recognized as workers and are entitled to the minimum protections that all other categories of workers enjoy, at least legally. The Convention establishes the right of domestic workers to be informed, in a manner they could understand, of what the terms and conditions of their employment are: what is the work they need to carry out, how long they are expected to work, and how much, when and in what manner will they be paid. It also establishes limits to the proportion of remuneration that can be paid in kind, and provides for a weekly rest of at least 24 consecutive hours. The Convention also provides for special measures to address the vulnerability of particular groups of domestic workers: young domestic workers those above the minimum age of employment and below 18 years of age live-in domestic workers, as well as migrant domestic workers. For live-in workers, it sets minimum requirements in terms of accommodation and privacy. It requires member States to set a minimum age of employment for admission to domestic work, and to adopt measures so that child domestic workers can finish compulsory schooling, if they have not been able to do so because they engaged in domestic work at a very young age, and to facilitate their further education and vocational training.

For migrant domestic workers the Convention requires that they be provided with a written job offer or contract of employment before crossing the boundaries to take up the new job in the country of employment. Member States are also requested to take measures geared towards affording progressively domestic workers with minimum protections in respect of social security, including maternity benefits, on par with other categories of workers. Another important provision relates to private employment agencies, which play a very important role in the domestic work labour market. The Convention requires

is work is a very important step toward gender equality in the world of work, because domestic work mainly employs women. Everywhere in the world, regardless of the degree of socio-economic development, the vast majority of domestic workers are women: 90 to 92 per cent of the domestic work force comprises women and girls. The new instruments, by establishing the principle that domestic workers, like any other workers, are entitled to a minimum set of protections under the labour law, redress the historic undervaluation of domestic work. The mere fact of regulating this form of work is an acknowledgment of the

study very carefully the possibility of ratifying. Brazil, for instance, has indicated that it would like to be the first country to ratify this important Convention.

Will it have an impact on those that don't ratify it?

I definitely think the reply is yes. The impact of any ILO Convention goes beyond ratification. It becomes a framework of reference that can help member states lay the ground for ratification in cases where socio-economic conditions and realities might not be ripe for an immediate ratification. The impact also will be significant because the standard-setting process has been followed very closely beyond the ILO constituency. There has been a very strong mobilization from human rights activists, NGOs, domestic workers associations and women activists, so this instrument will be a very lively document that will lend legitimacy to the vindication of domestic workers.

How much work has the ILO put into bringing about this Convention?

It was the ILO that embarked on this standard-setting project. There had been a lot of research in order to get a more accurate picture of the numbers and profiles of domestic workers around the world, of the extent of legal protection they are afforded in different countries and of the type of legal protection that would help make a difference in their lives. ILO colleagues in the field have also played an important role in bringing this standard-setting process to the attention of the ILO's constituents and assisting them in contributing to it.

ILO concern about domestic workers dates back to the early 1930s. In the thirties there was recognition that domestic workers were a category of workers subject to considerable abuse, but there was the belief that this category of workers was doomed to disappear as a result of socio-economic progress and technological innovation; that vacuum cleaners, washing machines would replace them. History has proven this assumption wrong. Not only are there large numbers of domestic workers across the world, but they have been growing very significantly in the past decade.

Source : International Labour Organization (ILO)



Manuela Tomei

states to have clear rules and procedures to prevent the type of fraudulent or abusive practices that unfortunately some unscrupulous private employment agencies have engaged in. The Convention recognizes the specific context in which domestic work takes place, namely the home, and strikes a balance between the right to workers' protection and the right to privacy of household members.

What is the impact on gender equality?

The impact is tremendous. The mere fact of stating unambiguously that domestic work

crucial social and economic contribution of care work.

What are the next steps before the Convention comes into force?

There must be two ratifications. Before they can ratify, governments have to verify to what extent their current legislation and practices are in conformity with the obligations laid down in the Convention, and if this is not the case, to work to align them with the Convention. We have received encouraging signals from some member States that have expressed willingness to