

EMBARGOED: 7 April 2014

## **ABUSIVE LABOUR MIGRATION POLICIES:**

### AMNESTY INTERNATIONAL'S STATEMENT ON THE OCCASION OF THE UN COMMITTEE ON MIGRANT WORKERS' DAY OF GENERAL DISCUSSION ON WORKPLACE EXPLOITATION AND WORKPLACE PROTECTION

Ladies and gentlemen,

Amnesty International would like to thank the UN Committee on Migrant Workers and the Office of the High Commissioner for Human Rights for inviting the organisation to participate in this Day of general discussion.

My observations today will focus on abusive labour migration policies, i.e. labour migration policies that increase migrant workers' risk of suffering labour exploitation and other abuses at the hands of their employers.

These observations are based on field research on labour exploitation of migrant workers, conducted by Amnesty International in China (Hong Kong), Italy, Qatar and South Korea between 2009 and 2014. You will find more details in Amnesty International's written submission to the Committee.<sup>1</sup> Individual testimonies and detailed legal and policy analyses have been published in country-specific reports.<sup>2</sup>

**In many of the cases of labour exploitation that Amnesty International investigated, the abuses suffered by workers were not only due to the actions or failures of an individual employer, but were linked to systemic problems in the way migrant workers' employment is regulated in the destination country. We have found that, in many destination countries, labour exploitation is rooted in serious**

**flaws in the processes by which migrant workers are recruited and employed, which facilitate and enable employers to subject migrant workers to exploitative practices.**

Let me give you some details about two types of abusive labour migration policies:

1. Labour migration policies that give the employer control over the migrant worker's residence status;
2. Labour migration policies that tie migrant workers to a specific employer.

## **1. LABOUR MIGRATION POLICIES THAT GIVE THE EMPLOYER CONTROL OVER THE MIGRANT WORKER'S RESIDENCE STATUS**

Amnesty International's research has found that labour migration policies that give the employer control over the migrant worker's residence status increase the risk of labour exploitation.

In **Qatar**, the *Sponsorship Law* gives the employer the exclusive responsibility to complete the administrative procedures to issue or renew migrant workers' visas and work permits. This means that the employer has the power to arbitrarily make migrant workers irregular, even when they meet the relevant legal requirements about entry and stay.

Amnesty International researchers met hundreds of migrant workers arbitrarily left "undocumented" by their employers. Without the documents necessary to prove their migration status, migrant workers find themselves at constant risk of arrest by police, who regularly stop migrant workers to check their papers. This highly precarious situation reduces migrant workers' ability and likelihood to access assistance by the authorities in case of labour exploitation.

In **Italy**, the seasonal permits system has *de facto* become an unofficial regularisation mechanism for the many migrant workers in an irregular situation. As the procedure can only be initiated by the employer, irregular migrant workers are completely dependent on their employer's willingness to apply for the documents necessary to regularise their status. The employer's effective power to determine the worker's migration status can easily become a tool to intimidate or threaten workers, undermining their ability to negotiate better wages and working conditions.

Amnesty International's research has shown that the promise of regular documents is often used by employers to induce migrant workers to accept exploitative labour conditions. The non-payment of wages or arbitrary wage deductions, which are common instances, are often justified by the employer as payments for his/her "cooperation" in the process to obtain documents.

## **2. LABOUR MIGRATION POLICIES THAT TIE MIGRANT WORKERS TO A SPECIFIC EMPLOYER**

Amnesty International's research has found that labour migration policies that tie migrant workers to a specific employer increase the risk of labour exploitation.

This is the case, for example, of:

- a. Visas or work permits which require permission by the first employer for the migrant worker to change jobs;
- b. Visas or work permits immediately or rapidly expiring when a migrant worker leaves a job or is fired.

#### **A. VISAS OR WORK PERMITS WHICH REQUIRE PERMISSION BY THE FIRST EMPLOYER FOR THE MIGRANT WORKERS TO CHANGE JOBS**

Some countries impose limitations on the labour mobility of migrant workers, requiring them to obtain permission by their first employer in order to change jobs. In **Qatar**, such a permission is known as “No objection certificate”, or NOC; in **South Korea**, the employer signs a “release” document.

If workers find that they have been deceived about the terms and conditions of their contract during the recruitment process, or are subjected to abuse by their employer, the question of whether or not they can change jobs depends on their employer. Where permission to change jobs is not granted, migrant workers who leave their job lose their regular migration status, thus risking arrest, detention and deportation.

Amnesty International’s research has found that the employer’s power to prevent workers from leaving their job can be used to pressure them to continue to work in situations where they are subjected to exploitation or when the individual simply wants to resign and return home. These practices are inconsistent with the right of everyone to the opportunity to gain a living by work which he or she “freely chooses or accepts” (Article 6, International Covenant on Economic, Social and Cultural Rights).

#### **B. VISAS OR WORK PERMITS IMMEDIATELY OR RAPIDLY EXPIRING WHEN A MIGRANT WORKER LEAVES A JOB OR IS FIRED**

Visas or work permits that expire immediately or shortly after a migrant worker leaves a job or is fired, leaving them in an irregular migration situation, increase the risk of labour exploitation because they greatly reduce the likelihood that the worker would seek help from the authorities in case of abuse, for fear of being detected as irregular and deported.

This is the case for visas that do not allow the worker to change employer, thereby expiring when the employment relationship with the first employer ends, such as the United Kingdom's visa for migrant domestic workers.

However, the same risk of labour exploitation arises with respect to labour migration policies that allow migrant workers only a very short time to find a second employer after the end of the employment relationship with the first one, such as the Two-Week Rule in **Hong Kong**, China and the Employment Permit System in **South Korea**.

Migrant workers who lodge a complaint against their employer are likely to have their contract terminated. Labour migration policies that impose on them a very short time to find another job leave them with little choice but to remain in abusive and/or exploitative conditions or accept jobs with unfavourable work conditions in order to maintain their regular migration status. Fear of losing their job and quickly becoming irregular increases migrant workers' reluctance to complain about abusive labour conditions.

## **RECOMMENDATIONS**

Amnesty International recommends that the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) requests states parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to provide detailed information on the following aspects of their labour migration policies:

- Labour migration policies that give the employer control over the migrant worker's residence status;
- Labour migration policies that tie migrant workers to a specific employer;

- Measures taken to ensure the right of all migrant workers to the opportunity to gain a living by work which he or she freely chooses or accepts;
- Measures taken to ensure that all migrant workers are able to report instances of labour exploitation and obtain an effective remedy for human rights violations.

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<sup>1</sup> Amnesty International, *Abusive labour migration policies: Submission to the UN Committee on Migrant Workers' Day of general discussion on workplace exploitation and workplace protection, 7 April 2014*, Index: IOR 42/002/2014, April 2014.

<sup>2</sup> Amnesty International, *Disposable Labour: Rights of Migrants Workers in South Korea*, Index: ASA 25/001/2009, October 2009.

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