

Ref: IOR 40/2013.049

Office of the United Nations High
Commissioner for Human Rights
United Nations Office in Geneva
CH-1211 Geneva 10
Switzerland

12 June 2012

Dear Sir or Madam

GENERAL ASSEMBLY RESOLUTION A/RES/67/172 ON THE PROTECTION OF MIGRANTS AND HOW A HUMAN RIGHTS PERSPECTIVE CAN ENHANCE THE DESIGN AND IMPLEMENTATION OF INTERNATIONAL MIGRATION AND DEVELOPMENT POLICIES

Amnesty International acknowledges receipt of your Note Verbale dated 6 May 2013 (your Ref. RRDD/HRESIS/JS/PO/CH/is) and thanks you for the opportunity to provide information for the preparation of a report on the implementation of General Assembly Resolution A/RES/67/172 on the Protection of migrants, including an analysis of how a human rights perspective can enhance the design and implementation of international migration and development policies.

Amnesty International notes o.p. 4(h) of the above-mentioned Resolution, in which the General Assembly requested all states

“to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association”.

In this letter, the organisation would like to bring to your attention information on examples of migration policies that increase the risk of labour exploitation, as well as examples of obstacles to justice for migrant victims of labour exploitation.

MIGRATION POLICIES THAT INCREASE THE RISK OF LABOUR EXPLOITATION

Amnesty International’s research has found that migration policies which require the employer to apply for a visa or work permit for the migrant employee increase the risk of labour exploitation. In Italy, two regularisation measures for irregular migrant workers, in 2009 and 2012, allowed only the employer, not the worker, to submit an application. This and other limitations on the ability of migrant workers to participate effectively in the procedures to regularise their status made them completely dependent on the employer and increased their

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already heightened vulnerability to labour exploitation.¹ More generally, the legal requirement to have a formal labour contract makes migrant workers entirely dependent on their employer to obtain or renew a residence permit. 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.²

Migration policies which tie migrant workers to a specific employer have also been found to increase the risk of labour exploitation. This is the case, for example, of visas or work permits expiring immediately when a migrant workers leaves a job or is fired; and of visas or work permits which require permission by the first employer for the migrant workers to change jobs.

In **Qatar**, the *Sponsorship Law* (Law No 4 of 2009) requires migrant workers to obtain a sponsor's permission to leave Qatar or change employer. Amnesty International's research has found that the requirement to obtain the employer's permission for an exit permit or to move jobs, means in practice that some migrant workers suffering from labour exploitation are unable to leave the abusive employment without risking detention, deportation and loss of income. This is compounded by a widespread practice of employers confiscating workers' passports, which despite being illegal is inadequately policed by the authorities. The sponsorship system increases the likelihood of migrant workers being subjected to extreme forms of labour exploitation, including forced labour.

In **South Korea**, Amnesty International's research has found that restrictions on labour mobility, along with migrant workers being tied to their employers and excessive freedom of employers to terminate contracts, lead to a host of human rights abuses of migrant workers.³ Under the Employment Permit System (EPS), migrant workers have a greater chance of renewing their papers if they remain with one employer. This seriously hampers their ability to lodge complaints about abuses because they fear that antagonising their employers would lead to job loss and therefore, inability to renew their papers.⁴ Although the EPS does not prohibit change of workplace, various restrictions make the process difficult, such as the requirement of the employer's permission to change jobs and a limit on the number of possible changes.⁵ Amnesty International expressed concern that these measures discourage migrant workers from leaving exploitative working conditions.⁶

Under new rules introduced in April 2012, migrant domestic workers who travel to the **United Kingdom** with their employer cannot change employers. Several NGOs expressed concern that this limitation would deter migrant domestic workers from leaving their job to flee abuse and exploitation.⁷

¹ Amnesty International, *Italy: The regularisation process should protect the rights of migrant workers* (Index: EUR 30/016/2012), 2012.

² Amnesty International, *Exploited Labour: Migrant Workers in Italy's Agricultural Sector* (Index: EUR 30/020/2012), 2012.

³ Amnesty International, *South Korea: Amicus Brief in the matter of "Confirmation of Constitutionality of EPS Act article 25(4) and its Enforcement Decree 30(2)" under consideration by the Constitutional Court of the Republic of Korea* (Index: ASA 25/002/2010), 2010.

⁴ Amnesty International, *Disposable Labour: Rights of Migrants Workers in South Korea* (Index: ASA 25/001/2009), 2009.

⁵ For example, only small and medium-sized enterprises (SMEs) qualify to hire migrant workers through the EPS.

⁶ Amnesty International, *South Korea: New regulation will increase risk of exploitation for migrant workers* (Index: ASA 25/004/2012), public statement, 29 July 2012.

⁷ For example: Kalayaan, *Slavery by Another Name: the Tied Migrant Domestic Worker Visa*, May 2013.

OBSTACLES TO ACCESS TO JUSTICE FOR MIGRANT VICTIMS OF LABOUR EXPLOITATION

In some cases, irregular migration status is a direct obstacle to access to justice. The High Court of **Ireland** found that, as a result of the irregular migration status of an exploited worker, his contract of employment was illegal and therefore he had no standing to invoke the protection afforded by Irish employment legislation.⁸ The High Court noted that the migrant worker “has been the victim of the most appalling exploitation in respect of which he has no effective recourse” and transmitted the matter to the government for policy revision. An appeal to the judgment is currently pending.

In the **United Kingdom**, the notion of “illegality defence”, whereby courts can refuse to enforce obligations arising from an illegal contract, was used to stop an irregular migrant domestic worker from successfully bringing claims for unfair dismissal, breach of contract, unpaid wages and unpaid holiday pay before an Employment Tribunal.⁹ The case is currently pending before the UK Supreme Court.

In other cases, irregular migration status is an indirect obstacle to access to justice. Because entering and staying irregularly in **Italy** is a criminal offence, irregular migrant workers who are victims of crime or human rights abuses risk being detained and expelled if they approach public authorities. The criminalisation of irregular migration undermines efforts to detect and address cases of labour exploitation, including trafficking for labour exploitation.¹⁰

In the **United States of America**, legislation provides temporary legal migration status to migrants who are victims of certain crimes, including trafficking for labour exploitation. However, migrants are often fearful of reporting crimes committed against them, because interaction with the police may result in migration enforcement actions against themselves or others in their household. Survivors of trafficking, including trafficking for labour exploitation, often face considerable obstacles in getting access to justice, despite important protections under the law. Law enforcement officials may not actively cooperate in identifying who is entitled to the protections available while some appear not to be aware of relevant legal provisions. Stringent statutory requirements and the climate of fear within migrant communities caused by concerns about detention and deportation are further barriers.¹¹

Amnesty International hopes that the content of this letter is of interest and assistance to you. The information provided here can be made available on the OHCHR website. Please do not hesitate to contact me if you have any queries or would like to discuss this issue further.

Yours sincerely,



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⁸ Ireland, High Court, [2012] IEHC 364, 31 August 2012.

⁹ United Kingdom, Court of Appeal (Civil Division) on appeal from the Employment Appeal Tribunal, [2012] EWCA Civ 609, 15 May 2012.

¹⁰ Amnesty International, *Exploited Labour: Migrant Workers in Italy's Agricultural Sector* (Index: EUR 30/020/2012), 2012.

¹¹ Amnesty International, *In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the US Southwest* (Index: AMR 51/018/2012), 2012.