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Labour migration and the
emergence of private
employment agencies in

Tajikistan

A review of current
law and practice



**Labour migration and the emergence of
private employment agencies in Tajikistan:
A review of current law and practice**

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The International Organisation for Migration (IOM) is committed to the principle that human and orderly migration benefits migrants and society. As an intergovernmental body, IOM acts with its partners in the international community to assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and uphold the human dignity and well-being of migrants.

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Preface

Labour migration from Tajikistan has grown rapidly in recent years with an estimated 600,000 workers having left, mostly for seasonal work in the Russian Federation and other countries. Although the majority of these migrants leave through their own informal networks, a range of intermediaries that provide services to migrants in search of employment abroad have emerged. Some of them are legally registered Private Employment Agencies (PrEAs), others operate on a semi-legal or illegal basis.

This study is the first in-depth analysis of the normative framework regulating PrEAs in Tajikistan. It also describes practical experiences of the industry including various abusive practices that require the attention of law makers. It is the result of a collaborative effort between the International Labour Office (ILO) and the International Organization for Migration (IOM) whose specific mandates and roles have helped to strengthen policy dialogue with the Government of Tajikistan, in particular with the Ministry of Labour and Social Protection, the Migration Service and with social partners. The research was funded by the United Nations Trust Fund for Human Security and the European Union. A draft of the report was discussed at a round table in Dushanbe in May 2008 and its recommendations incorporated in the final chapter of this report.

The ILO acknowledges the positive role that PrEAs can play in the functioning of national and international labour markets. With the adoption of the ILO Convention on Private Employment Agencies (No. 181) in 1997, important international standards were set for the regulation of these agencies in order to protect the rights of workers and to prevent exploitative practices. In addition, ILO Conventions on Migrant Workers (No. 97 and No. 143), both ratified by the Republic of Tajikistan, provide guidance on the recruitment of migrant workers. In 2007, the ILO published a *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement* that explains Convention No. 181, highlights good practice examples and stresses the importance of linking comprehensive legislation to effective enforcement mechanisms.

IOM attaches great importance to this research designed to contribute to the development of external labour migration policy and practice at national level and globally. Its main objective is to enrich policy debates through research, innovative operational approaches and activities in order to facilitate safe migration. Where legal migration channels are restricted, labour migrants largely depend on illegitimate recruiters or their own social networks. The challenge for government agencies is therefore to promote legal migration inter alia through creating a legal base for PrEA operations and to regulate the market for PrEAs in order to protect labour migrants from abuses as well as to curb unfair competition in the recruitment process. A regulatory framework should be based on international norms and good practice and should take into account the particularities of the recruitment industry, the types of services provided and the challenges faced by PrEAs in the country.

As this study indicates, Tajik legislation already contains basic parameters for the regulation of PrEAs, and yet the industry struggles against unfair competition from informal or illegal intermediaries. Tajik enforcement authorities have also prosecuted cases of illegal and abusive recruitment but more needs to be done in this respect.

We hope that this report will provide useful information for further policy dialogue, involving lawmakers and representatives of government, workers' organizations and the industry.



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Abbreviations

BAIRA	Bangladesh Association of International Recruiting Agencies
BMET	Bureau of Manpower, Employment and Training, Bangladesh
CIETT	International Federation of Private Employment Agencies
CIS	Commonwealth of Independent States
CJSC	Closed Joint Stock Company
FBCCI	Federation of Bangladesh Chambers of Commerce and Industry
IALM	International Association of Labour Migration
LLC	Limited Liability Company
MLSP	Ministry of Labour and Social Protection
NES	National Employment Service
POEA	Philippine Overseas Employment Administration
PrEA	Private Employment Agency
SUE	State Unitary Enterprise
TLSS	Tajikistan Living Standards Survey

1 Introduction

1.1 *Objectives and structure of the report*

Since its independence in 1991, Tajikistan has experienced high levels of emigration involving about 10 per cent of its population. According to Government estimates, the total number of labour migrants ranges from 500,000 to 600,000. Most of them leave for seasonal and low-skilled employment in the construction industry of neighbouring countries. The Ministry of Labour and Social Protection estimates that 95 to 97 per cent of all Tajik migrants leave for the Russian Federation, whereas the remaining 3 to 5 per cent seek employment primarily in other CIS countries. Due to the visa-free regime established with many CIS countries, most migrants leave informally and without prior registration.

One of the peculiar characteristics of the Tajik migration process is the limited role played by private employment agencies (PrEAs) in job placement, training and organization of travel. Unlike other major labour sending countries, particularly in Asia, PrEAs seem to be the “weakest link” in the migration process. Legally established PrEAs face competition from informal intermediaries and private migrant networks and thus find their business hardly viable. Nonetheless, a nascent recruitment industry has emerged over recent years, focusing its activities mainly on cross-border placement.

This report seeks to analyse the evolution of the Tajik recruitment industry in the context of labour migration, the problems faced by the industry and the legal regulations in place. Furthermore, the report presents several cases of abuse that were reported in the local media and/or were brought to court. The analysis is based on the premise that a well-managed recruitment process is an important milestone towards better protection of Tajik migrants abroad. There is ample evidence that people who have been lured into employment abroad under false pretences are more vulnerable to exploitation and abuse (ILO, 2005). The nexus between human trafficking and deceptive recruitment will be further discussed in the report.

The report is structured as follows: the next section explains the methodology used to prepare this study. Chapter 2 provides a brief overview of migration dynamics from Tajikistan and the main recruitment channels. Chapter 3 explains the evolution of the PrEA industry in the context of migration, legal regulations and practices as well as problems faced by the industry. Chapter 4 reviews judicial cases as well as media reports on abusive recruitment agents. Chapter 5 compares the situation in Tajikistan with major labour sending countries in Asia where the private recruitment industry plays a vital role in the migration process. In particular, this Chapter highlights some good practices and international standards that are relevant for Tajikistan. The final Chapter 6 summarizes the findings of the study and makes recommendations for further action in this field. Recommendations are not only based on the findings of this study but also on the outcomes of a tripartite workshop held in Dushanbe in May 2008.

1.2 Methodology

Background research for this report was carried out between the spring and autumn of 2008. A first assessment, based on secondary reports and a limited number of expert interviews, some of which were with PrEA representatives, was presented by an international consultant from Pakistan. A national consultant was then hired to complement the first assessment by in-depth data collection in various regions of Tajikistan. Given the lack of quantitative data and the relatively small size of the recruitment industry in Tajikistan, qualitative methods were used in both assessments.

The core information of this report was collected through 36 semi-structured interviews carried out with representatives of PrEAs, the National Employment Service (NES), judges and prosecutors, defence attorneys as well as key representatives of the Government, including the Ministry of Labour and Social Protection, the Migration Service as well as local governments (see Annex 1 for a list of persons interviewed). The following research sites have been covered by the study: Dushanbe city, Khujand, Istarvshan, and Kurgan-Tyube. Interviewees were given the opportunity to provide additional information on various questions during the interview and were also asked to fill out a questionnaire with open-ended questions. The overall response to this research was positive. The experts interviewed demonstrated a high degree of awareness about problems and challenges related to the recruitment of migrant workers and provided substantial assistance in carrying out this research.

With a view to better understanding current business practice, documentation used by PrEAs such as agreements, questionnaires for job seekers, etc. were reviewed. Legal documents and media reports relating to court cases heard by the Khujand City Court and other courts were also studied. Besides, judges and defence attorneys who were responsible for prosecution in criminal cases between 2006 and 2008 were interviewed for the purpose of this report.

The media review covered publications of the same period, from the following sources: Asia-plus, Vecherni Dushanbe, Varorud, Business and Policy, Djumkhuriat, and People's newspaper. Mass media reviews were also accessed through the Internet, mainly via the following two websites: www.regnum.ru and www.tribun.tj.

This report should be seen as a first qualitative assessment of recruitment practices in a nascent private recruitment industry in Tajikistan. More in-depth research covering other regions of the country and involving informal recruitment agents such as travel agencies or individual intermediaries as well would be necessary to draw a comprehensive picture of the present situation. The report nonetheless shows some clear trends and identifies problems that could be addressed through legal and policy changes. The report should therefore be seen as a contribution to the ongoing policy debate in Tajikistan.

2 Labour migration from Tajikistan: trends and regulations

2.1 Recruitment for employment abroad

It is well known that poverty and the prospects of higher earnings abroad are major driving forces of migration. Tajik workers experienced both these during the civil war and the protracted transition process from a planned to a market economy. According to data from the Tajikistan Living Standards Survey (TLSS), 2003, paid labour did not keep families out of poverty and economic growth did not lead to a significant increase in formal employment. TLSS data indicated that unemployment declined to some degree in the period 1999-2003, from about 16 to 12 percent (World Bank, 2005). But more recently, a UNDP household survey carried out in 2006 showed that 26 percent of the available labour force is unemployed. At the same time, there is an unsatisfied demand for labour in all branches of the economy, in particular in agriculture, industry, construction, trade and services (Olimov, 2007). Representatives of the NES who were interviewed in the course of this study also confirm the existence of vacancies that cannot be filled. This persistent gap between supply and demand can be explained by the inadequate skills level of the labour force and by the fact that wages in the country are lower compared to expected earnings in neighbouring countries, particularly Russia.

The emerging private recruitment industry is closely linked to patterns of migration from Tajikistan to other countries in the region. There are no official statistics on labour migration from the country; however, the government estimates the total number of Tajik migrants working abroad at 500,000 to 600,000.¹ According to an IOM survey, carried out in 2003, 18 per cent of the adult population, or 632,000 people had left the country to seek employment abroad (Olimova and Bosc, 2003). A subsequent IOM survey, carried out in 2006, found that 46 per cent of all migrants are young people under 30, and 31 percent are between 30 and 39 years old (Olimova and Kurbanova, 2006, draft).

After independence, there has been a significant flow of skilled experts who found permanent employment in Russia or other destination countries. But most Tajiks migrate temporarily. They are generally men, mostly married, who leave their families behind, often for a year or more, to seek temporary work elsewhere. While many migrants have secondary education, their professional skills are often inadequate to meet employers' demand for skilled labour in either Tajikistan or Russia. The majority of migrants are thus employed in low-skilled jobs, primarily in construction. In addition to seasonal or temporary employment, labour migrants are also involved in shuttle trades.

In principle, labour migrants from Tajikistan can find employment abroad through:

- Offices of the National Employment Service;

¹ At the time of writing, the World Bank had commissioned a labour force survey which will focus inter alia on migration.

- Private Employment Agencies;
- Informal intermediaries or migrant networks, or by
- Direct employment (e.g. through media announcements or direct contact with employers).

Migration networks play a central role in the organization of labour migration. A survey of 4,000 respondents, carried out by the Tajik research centre “Sharq” found that 67.5 per cent of them belonged to an *avlod* – a patriarchal community of blood relatives. *Avlod* are particularly strong in rural areas from which many migrants originate given that more than 70 percent of Tajikistan’s population live in rural areas. Information about employment opportunities is channelled through these networks which also influence individual decisions to migrate. Ties based on *avlod* overlap with ethno-regional loyalties that are an additional layer in the creation of migrant networks. Experienced members of these networks who have been working abroad for several years, provide newcomers with information. They also assist in the organization of the trip, in completing administrative procedures and in finding an employer. According to the 2003 IOM survey, 52.6 per cent of all interviewed migrants stated that they had helped relatives finding a job abroad (Olimova and Bosc, 2003).

In 2003, the ILO carried out a non-representative survey involving 151 Tajik migrants who had previously worked or were still working in the Russian construction industry. More than 90 per cent of respondents working at construction sites in Moscow (50 in total) said that they found their current employer through social networks or on their own. Most of them had no written contracts (ILO, 2004). According to the same study, intermediaries played a more significant role in the early years of Tajik migration. In the past, they used to select migrants, accompany them to Moscow or other destinations, and took care of registration and employment procedures. With the establishment of migrant networks, they have apparently come to play a less significant role.

A recent ILO study states that only 1 – 1.5 percent of migrants use formal (private or public) channels of recruitment. The dominance of informal recruitment practices can also be observed in the domestic labour market. According to a non-representative survey involving 100 Tajik employers, informal networks and patronage are the most popular form of recruitment, followed by media vacancy announcements and open competitions. Recruitment through the NES or PrEAs is the least popular form.²

These findings are also corroborated by the present study. Almost all the representatives of PrEAs that were interviewed pointed out that skilled migrants and/or those who have worked abroad for 2 to 3 years find employment through their own contacts or networks. However, informal intermediaries are still important points of contact for first time migrants without the necessary support of *avlod*. In those cases, the intermediary promises a job in Russia, pays for travel expenses, and provides accommodation at the place of destination. Since many migrants do not receive a written contract from their employer, the intermediary often plays a

² ILO: Migration and Development: Tajikistan Country Study, Moscow (forthcoming).

powerful role, even after placement, and ensures the recovery of the debt incurred by the migrant. This was confirmed in an interview with a migrant in Khujand city (Resource Centre for Labour Migrants) who stated:

“I found a job for the first time via an intermediary. The employer was paying me 20,000 Roubles (USD628) a month. I handed 10,000 (USD314) to the intermediary the first and second month of employment to pay off my debts”.

Informal intermediaries tend not to advertise their services openly to avoid conflict with law enforcement authorities.

Recent media and NGO reports have blamed travel agencies, in particular tour bus companies, for deceiving and exploiting irregular migrants from Tajikistan. Lured by attractive prices, migrants with meagre financial means choose to travel in buses or trucks instead of by plane. Tour operators offer itineraries that run through Uzbekistan or Kyrgyzstan, via Kazakhstan on to Russia. Cases have been reported where migrants were deceived with regard to their travel documents and were deported back to Tajikistan en route (IWPR, June 2007).

Despite the limited empirical range of this study, some regional peculiarities of informal recruitment were discovered. In the Sogd Province, for example, employment through intermediaries is more common. This is due to the fact that there is a market for truck haulage in this part of the country, and truck drivers engage in informal job mediation. According to certain defence attorneys that were interviewed, other informal employment channels have emerged recently. They involve young students aged between 21 and 27 who apply for language programmes in the USA and other countries. Once accepted into the programme and sent to the destination country, some of them abscond to major cities and work as irregular migrants.

To conclude, available survey data suggests that more than 90 per cent of all labour migrants from Tajikistan find employment through their own networks or with the help of an informal intermediary. Only a few leave the country with the help of the public employment service or private recruitment agencies. This can be explained by several factors: First, the visa-free regime with Russia makes travelling relatively easy; second, kinship and ethno-regional networks provide mutual support and are seen as more trustworthy than formal institutions. Other factors are related to administrative regulations and lack of awareness. These will be discussed in more detail below.

2.2 Tajikistan’s migration policy

The government’s policy on economic development includes the promotion of legal migration, the attraction of remittances and the social protection of Tajik migrants abroad. According to the National Bank of Tajikistan, official remittances increased from 78 million USD in 2002 to 465 million USD in 2005. They account for about 12 percent of GDP (World Bank, 2006).³ Despite these financial flows, the situation of most Tajik migrants abroad is still characterized by hardship and abuse. The Poverty Reduction Strategy Paper states that: “social and legal vulnerability of labour migrants

³ See the forthcoming ILO report, *Ibid.*

leads to numerous violations of their rights and freedoms” (Republic of Tajikistan 2002, p28). Policymakers and experts agree that a reduction of irregular migration and better protection of Tajik migrants abroad would significantly enhance the volume and impact of remittances.

In 1999, the Migration Service was established to play a key role in policy development and its operational implementation. In January 2006, the Government adopted a “Programme on external labour migration of the citizens of the Republic of Tajikistan for the years 2006-2010” (No. 61).⁴

The programme aims at establishing an efficient system for the social protection of Tajik citizens by:

- providing social and legal protection to temporary workers abroad and within Tajikistan;
- ensuring regulation of migration flows and decreasing the volume of irregular migration;
- developing state insurance systems to ensure the full disposal of funds remitted to Tajikistan;
- increasing the level of professional and social skills of labour migrants;
- developing external labour migration; and
- promoting monetary savings and investments of labour migrants.

The programme proposes a mix of methodologies to implement these objectives, such as amendments to the law, conclusion of bilateral migration agreements, implementation of projects to foster economic development and investments, development of information systems serving labour migrants, strengthening the institutional capacity and coordination with local government authorities and training of personnel serving in the migration service.

The Coordination Committee for implementation of the programme comprises 12 state ministries, the Fund for Social Protection of the Population, state executive bodies, the National Bank of the Republic of Tajikistan, trade unions and civil society organizations.

It must be noted that Tajikistan has adopted an anti-trafficking provision in its Criminal Code (Article 130.1) which prohibits trafficking for the purpose of sexual exploitation, forced labour, slavery or practices similar to slavery. Amendments were made to it in 2008 (prior to the completion of this research). According to national experts, however, enforcement is very difficult and has not yet led to increased prosecutions. Most trafficking-related offences are prosecuted under other provisions. In 2007, authorities reported 12 trafficking cases being investigated, compared to 34 in 2008 (US State Department, 2008). Cases of labour trafficking, however, are rarely investigated. There are several reasons for the shortcomings in law enforcement: lack of financial resources to carry out complex investigations, usually involving another

⁴ The programme was drafted and submitted by the MLSP. Since labour migration is now the responsibility of the Ministry of Interior, it is this ministry that is in charge of the implementation of this programme.

country; weak mechanisms of cooperation (despite existing agreements on mutual legal assistance), and lack of awareness among law enforcement authorities and judicial bodies as well as among potential victims of human trafficking.

Besides adopting legislation, the government has concluded bilateral cooperation agreements with neighbouring countries, namely the Russian Federation, Kyrgyzstan and Kazakhstan. The first cooperation agreement on migration and social protection of labour migrants was concluded with the Russian Federation in 1994. Both parties to the agreement recognize diplomas and certificates of education as well as other documents relevant for being employed in either country. In October 2004, a new agreement was signed between the two countries stipulating that:

- employment contracts should be signed in writing and must comply with the labour law of the receiving country;
- remuneration and working conditions shall not be less favourable than those of citizens of the receiving state performing similar work and having similar qualifications; and that
- employers are responsible for the provision of medical services to migrant workers.

The agreement further provides for the possibility of setting up offices of competent authorities in the territory of the receiving state to ensure protection of migrant workers.

There is also increasing cooperation among social partners, particularly trade unions, with regard to labour migration. Tajik and Russian construction worker trade unions concluded a bilateral agreement that allows for joint membership and provides for the protection of migrant workers, an aspect that is often lacking in practice due to the lack of financial and human resources. A similar cooperation agreement was concluded with the trade unions of construction and construction material industry workers in Kazakhstan on 26 May 2008 for the period 2008-2010. The main objective of the agreement is harmonization of activities with the aim of increasing protection of the rights of labour migrants from Tajikistan who are members of the Tajik trade union of construction and construction material industry workers, who are legally working in the construction industry of Kazakhstan and who have joined the Kazakh trade union.

The Tajik trade union is responsible for the dissemination of information booklets and professional pre-departure training of potential migrants according to their employment contracts. It also has to inform departing migrants about possibilities of joining the trade union in Kazakhstan. The trade union in Kazakhstan lobbies the Kazakh authorities to ensure the protection of migrant workers' rights, prevention of undeclared employment and forced labour. It will further advocate for an incremental quota for migrant workers, monitor employers to ensure that they fulfil their obligations related to the employment of migrant workers on the basis of equal treatment and provide legal counselling.

The Law on Migration of the Population contains more specific regulations, which are also relevant for the functioning of PrEAs. These will be explained in more detail below. As can be seen from this brief overview, better regulation of labour migration and protection of Tajik migrants abroad is high on the policy agenda of the Tajik Government. This is also demonstrated by the fact that it has ratified both ILO

Conventions on Migration (No. 91 and No. 143) that stipulate protection measures for both, regular as well as irregular migrant workers (also see Chapter 5). An important challenge for the years to come is effective implementation of these policies and enforcement of legislation.

3 Evolution of the private recruitment industry in Tajikistan

3.1 Current laws and practice

In the former Soviet Union, state employment services held a monopoly over recruitment and job placement within and across republics. As an independent state, Tajikistan has retained a NES even though it now plays a less significant role in job placement. The Regulation of the State Agency for Social Protection, Employment and Migration (No. 102 of 3 March 2007) stipulates that the NES should collaborate closely with other entities (including PrEAs) to promote employment and professional training. But collaboration between private and public employment services is still in its infancy.

New organizations have emerged that are semi-private. Among the first was the State Unitary Enterprise (SUE), *Tojikhoridjakor*, which organises the exchange of young people under the Committee for Youth, Sports and Tourism. In 1993, the Law on Employment of the Population (No. 908) was enacted which recognized for the first time the role of PrEAs in the domestic as well as international labour markets. Various types of agencies emerged in subsequent years but it seems that only two types of PrEAs are viable at present: agencies recruiting Tajik migrants for employment abroad, mostly in Russia; and agencies recruiting people for work in Tajikistan. But even within this market niche, PrEAs find it difficult to sustain their business.

There are no reliable statistics on the number of migrants that public or private employment agencies send abroad. According to the head of the State Government Recruitment Agency, about 1600 workers were sent abroad from 2005 to 2007. The agency was established in 1996 but could not operate effectively due to the civil war and its aftermath.⁵ It cooperates closely with the Russian International Association of Labour Migration (IALM) that was established in 2002 as a business association of PrEAs.

The Law on Promotion of Employment of the Population 2003 defines job mediation as

“the promotion of employment on behalf of the national employment service and other organizations”.

There are two other laws that regulate the activities of PrEAs in Tajikistan in more detail. First, the Law on Licensing certain types of Activities (No. 37) was enacted in May 2004 and is complemented by a more specific regulation (No. 172) that was revised in April 2007. The law defines activities that require a licence, specifies conditions for obtaining one and complying with standards and quality requirements. Activities of PrEAs that require a licence are defined as

“employment related activities and the provision of services to the citizens of Tajikistan and foreign citizens in search of paid employment within the

⁵ Interview with Mr. Rahimov Kalimjon, Director, carried out by Rashid Mughal.

Republic of Tajikistan and beyond, including obtaining a work permit in a foreign state or in the Republic of Tajikistan, and the conclusion of a labour contract with foreign or domestic employers.”

Second, the Law on Migration of the Population (No. 881) enacted in December 1999 carries important provisions on the conditions under which workers can be sent abroad and on attracting foreign jobseekers. Both laws stipulate that PrEAs have to facilitate the conclusion of an employment contract between the jobseeker and the employer. In practice, as will be seen below, this norm is almost never respected.

The PrEA licence is valid for up to five years, but state officials often issue licences for only one to three years to ensure that all conditions are being met. According to Regulation No. 37, the responsible institution for issuing licences is the Ministry of Interior which has assigned the task to the Migration Service.⁶

The table below provides an overview of the number of licences that were issued since 2001. However, some licences have since been withdrawn while some other licence holders have gone bankrupt. According to the Migration Service, the current number of PrEAs recruiting for employment abroad is **26**.

Table 1: Licences issued to PrEAs

Year	PrEA for employment abroad	PrEA for employment of foreigners in Tajikistan
2001	3	-
2002	10	-
2003	19	26
2004	11	5
2005	10	7
2006	19	97
2007	32	86
2008	24	32

Source: Migration Service/MLSP

PrEAs are required to maintain a data base of job seekers who want to go abroad. The protection of the jobseeker’s privacy, however, is not regulated and the review of PrEA documents shows that contracts between jobseekers and agencies do not contain provisions about the confidentiality of personal data. This is striking given that jobseekers are required to disclose sensitive information, including information on health and family status, military service, previous convictions if any and employment history. According to the law of the Russian Federation, potential migrants have to provide medical certificates showing that they have not contracted diseases like tuberculosis, leprosy, sexually transmitted infections or HIV/AIDS.

⁶ Previously, the issuance of licences was under the responsibility of the MLSP.

The source of information for the database is a questionnaire designed by the PrEA. In principle, agencies should not charge for the registration and provision of questionnaires, even though some do. Each agency has its own system of data management and some still have only a manual filing system. Some PrEAs do not keep a data base as they consider this ineffective. Representatives of PrEAs who were interviewed for this research noted that jobseekers, in particular potential labour migrants, are highly mobile. By the time, a PrEA receives a job offer from an employer the registered jobseeker may already have left the country through other channels. PrEAs are also required to keep records of employment contracts, and most do so for a period of one to three years. Others only keep a copy until the start date of the contract.

As part of the application process, jobseekers are required to sign an undertaking stating their obligations. They are required to comply with the law of the destination country, to respect the demands of their employers, to abstain from creating labour unrest, to behave according to the ethics and culture of the destination country and to find the necessary financial means to pay for their travel. In some applications, jobseekers agree to work for not less than one year; failing which they will be required to reimburse the employer's expenses. Some PrEAs even request jobseekers to provide an agreement that he or she has signed with parents or other family members. This is because some migrants do not send remittances or maintain contact with family members who may have provided the financial support for their travel. In some of these cases, relatives have made claims against the PrEA that facilitated the recruitment process. Whatever the content of these agreements, PrEAs have little or no means to ensure their enforcement after recruitment. It is also evident that some of these agreements are without a legal basis or even violate legal provisions, in particular, labour law.

As a rule, these contracts contain the following provisions: obligations and responsibilities of the parties, order of payments, period of validity, and the procedure for dispute resolution. PrEAs are responsible for selecting a suitable candidate for the job, preparing documents for travel and employment abroad, reserving tickets, taking out an insurance policy, and providing information and support. Jobseekers are required to provide reliable information regarding their departure, submit all documents on time, buy a compulsory medical insurance and pay for the services of the PrEA. Some contracts have clauses in case certain provisions are not fulfilled. For example, if the agency is unable to find a job, the registration fee (if it has been charged at all) is returned with a deduction of 10 percent. If a jobseeker cancels certain services as specified in the contract prior to confirmation of his/her employment abroad, 25 per cent of the total fee is withheld (75 per cent in case his/her employment has already been confirmed). Some contracts even stipulate that the service fee is non-reimbursable. It is evident from the review of contracts that obligations and sanctions for violations of contracts weigh heavier on jobseekers than on agencies.

A review of contracts concluded between PrEAs and labour migrants revealed a number of potentially abusive or illegal clauses, such as:

“The customer (jobseeker) is obliged to work until the end of the term under the agreement. Otherwise, the expenses of the employer will be borne by the customer as per current laws of the Republic of Tajikistan”.

“In case the worker refuses to work and does not carry out the work required by the employer, or abandons his work place without authorization, the worker is liable to pay a fine of 25,000 Roubles (USD784).”

“In case the worker refuses to travel to the place of employment after obtaining the necessary permission, leaves the work place without authorization, or violates the conditions of this agreement in any other way, he must compensate for the expenses incurred by the employer as well as the loss of profit through cash payments or through transferring his property or the property of his parents or other members of the family.”

Similarly, the agreements concluded between the PrEA and a foreign employer may be in violation of laws in Tajikistan or the Russian Federation. A major problem is that some of these agreements do not specify which law (Tajik or Russian) will apply. Sometimes, their provisions may contradict each other. Some agreements make the PrEA responsible for the “*deportation of a worker from the Russian Federation for a gross violation of labour rules, public order, disciplinary offences [...]*”. Return or deportation of foreign workers, however, is the responsibility of state authorities.

As Tajik legislation does not prohibit fee-charging to workers, as a rule, PrEAs charge their jobseekers. The regulation does stipulate, however, that PrEAs recruiting for employment abroad

“must not charge fees in advance except for the payment of employment-related services prior to the conclusion of a labour contract between the citizen of the Republic of Tajikistan and a foreign employer”.

The PrEA usually signs a civil law contract with the jobseeker, which is written in Russian. It specifies the services offered with regard to job placement abroad. According to the PrEA representatives interviewed, jobseekers do not pay sufficient attention to the content of these contracts. Agency staff therefore have to explain each item of the contract in order to protect the agency from future claims. Fees vary from 8 to 60 USD.

Tajik law allows for contracts that constitute a triangular employment relationship even though it is not very common in practice (see the cases described in Chapter 4). In a triangular employment relationship, the employer concludes a civil law contact with the PrEA, and the PrEA concludes an employment contract with the jobseeker. The jobseeker is thus under the authority of the PrEA and hired out to a user enterprise. This practice is not foreseen under Russian law.⁷ For example, the leader of an LLC (Service for voluntary work of youth) from Khujand City concludes employment contracts with migrants. According to the interviewee, all expenses, including candidate selection and pre-departure preparation are covered by the foreign

⁷ A draft law is currently pending in the Duma but trade unions continue to reject the possibility of a triangular employment relationship.

employer who sent the request.⁸ Another example is LLC “Dusti Amirkhan”, an agency that covers the Polish labour market. The agency concludes employment contracts with jobseekers and thus acts as their employer. It sends migrants to Poland to work on construction sites. Prior to departure, all required documents are processed by the LLC, including tickets, work permits, and medical insurance. The costs are advanced by the user enterprise and then deducted from the worker’s salary.

Representatives of PrEAs noted that the process of document collection can sometimes be challenging. Russian authorities request the following documents: foreign passport, medical certificate, including negative HIV/AIDS test, diploma and work book. In 2008, it was rather difficult to obtain international passports as the departure of migrants coincided with the lack of relevant forms in the Ministry of Interior. National identity cards can only be used for air travel.⁹ Many agencies, however, send their jobseekers by train or bus via Uzbekistan, a journey that requires a transit visa for which an international passport is necessary. Based on the joint order of the Ministry of Interior and the Ministry of Health (No. 617 of 19 December 2007), medical commissions were established that issued medical certificates for labour migrants. PrEAs often assist migrants in the collection of these certificates.

Some PrEAs offer pre-departure information to their jobseekers, in particular with regard to migration laws in the destination country. They organize meetings with potential migrant workers, provide information material and booklets or hold individual meetings with jobseekers. For example, the Migration Coordination Centre “Tajikairtour” and LLC “Centre for Economic Opportunities” conduct training sessions on the legal aspects of labour migration, sometimes with the participation of international experts, such as IOM officials. Training can last between 3 hours and 2 days. Migrants also receive contact addresses of the Migration Service and the Ministry of Interior of the Republic of Tajikistan. But some PrEA representatives noted that most migrants do not make use of these contacts. Some PrEAs even organise professional training courses for potential migrants. But so far, these courses have not been effective due to the lack of professional training specialists and equipment.

Once all documents are collected and the pre-departure training concluded, the PrEA is required to submit a list of final candidates to the Migration Service, but only a few do so. Migrants usually travel in a group. If there are between 30 and 50 persons, a representative of the agency accompanies the group. If the number is lower, a senior person of the group, called the “brigadier”, is appointed to provide guidance to the group and to remain in contact with the agency.

PrEAs also conclude civil law contracts with foreign employers according to which employers are responsible for the reception and registration of candidates, request for

⁸ Based on FOO Centre for Human Rights : Access to information and awareness of labour migrants about their rights, Sogd Province, 2007

⁹ Resolution No. 574 of 21 September 2005 of the Government of Russia stipulates that national identity cards give Tajik citizens the right to stay in the territory of the Russian Federation.

work permits from the authorities, accommodation and meals. Most importantly, since migrants do not sign an employment contract prior to their departure the employer is expected to conclude such a contract upon their arrival. Tajik regulations however stipulate that PrEAs must provide an employment contract signed by nationals of the Republic of Tajikistan and foreign employers or those assigned by them. Such an employment contract should be handed over to the migrant prior to his or her departure. As this research has revealed, most agencies do not comply with this regulation.

Such a procedure is particularly risky for migrants as they may face a situation where written employment contracts are not provided at all or where the provisions of the contract deviate from the promises made by the PrEA. Without a written contract prior to departure, migrants have little proof of the types of jobs, salaries etc. that were offered to them. In addition, PrEAs have limited possibilities to monitor the situation and to resolve conflicts. They lack skilled professional staff to lead negotiations with foreign employers and may not have the financial means to compensate for losses. In principle, however, most conflicts are settled outside court.

In the case of conflicts, the “brigadier” of the group informs the agency by phone. The agency then has to determine whether the employer or the worker has violated the agreement. Employers usually fail to obtain work permits or delay payment of wages. Migrants may have provided false information about their professional qualifications, their state of health or may leave the job and seek more attractive job offers. Employers can then make claims against the PrEA and request compensation. The agency in turn may impose a fine on the jobseeker. It can also find alternative employment for the worker if the employer failed to implement his or her part of the agreement.

So far, there is no functioning state monitoring mechanism that would ensure proper implementation of all regulations and protect migrants from violations of their labour rights. In principle, the Migration Service of the Ministry of Interior has the authority to carry out periodic checks, reject the application for a licence or suspend a licence. According to the Regulation of the Migration Service of the Ministry of Interior of the Republic of Tajikistan (No. 101, 20 February 2007), it should:

- control compliance with licensing conditions;
- take appropriate measures in the event that legal provisions are violated, including suspension or cancellation of licences and application of administrative penalties;
- keep data on legal entities and natural persons (including records of employment contracts concluded between workers and employers); and
- examine proposals, applications and complaints of citizens.

In exceptional cases, officers of the Migration Service have been to Russia to inspect workplaces and to settle disputes. Although these officers check the documents submitted for obtaining a licence, there is no systematic follow-up of the activities of the licensee. This would require more staff and financial resources, and above all, clear regulations on penalties. Under article 4 of the law “On Licensing certain kinds of Activities” one of the conditions for obtaining a licence is the protection of legal rights of citizens by the relevant state body assigned to exercise control of the implementation of the licensing regulations. As can be seen from the above, there is need to review the enforcement of current regulations.

It should also be noted that PrEA staff are not fully aware of the unequal bargaining position between migrants and foreign employers. For example, it is common practice among some employers to keep identity documents of their workers for a long period of time, supposedly to register them with the authorities. They may also limit the freedom of movement of their workers or restrict communication with outsiders, including with relatives. In one of the interviews, for example, the staff member of a PrEA referred to a situation where a Russian employer withheld the passports of migrant workers, kept them in isolation and did not pay their salaries. Instead of referring the case to law enforcement authorities, the agency decided to resolve the conflict simply by looking for an alternative employer.

Some PrEAs, however, keep records of employers who have violated agreements. The head of SUE “Tojikhorijakor” said during the interview:

“We take the issue of cooperation with Russian employers very seriously. In case of repeated gross violations of labour migrant’s rights, we cease our cooperation with the employer. If possible, we also inform our colleagues about these unethical employers.”

But not all PrEAs adhere to this principle, and they thereby create a situation of unfair competition. Some PrEA representatives suggested introducing a minimum wage for migrant workers that could be used as a benchmark in their negotiations with Russian employers. Furthermore, there is no quality control of services offered by PrEAs in relation to the fees that are charged to jobseekers.

Current legislation does not delineate responsibilities between the three parties, in particular between the PrEA and the foreign employer. The analysis of available internal documents leads to the conclusion that PrEAs take advantage of unclear liability regulations and shift responsibility for labour law or other violations to the foreign employer. The fact, that most of them conclude civil law contracts with jobseekers and are not involved at all in the preparation of employment contracts with foreign employers makes it relatively easy to avoid charges.

Practically all PrEA respondents pointed out that the qualifications of Tajik labour migrants do not match expectations of foreign employers. They also noted that the recruitment and placement of migrants is a very difficult task since many of them have no education or professional qualification and lack money to pay for the services of the PrEA. As a consequence, many agencies do not even check documents provided by migrants. Only a few of the agencies interviewed had a clear recruitment procedure. As the head of LLC Service for voluntary labour of the youth explained:

“We have rather tough principles for the selection of candidates for employment. Instructors are specialised in many areas and carry out a preliminary selection of candidates. We also aim to attract migrants with whom we have worked before”.

3.2 Factors behind the low profile of PrEAs in Tajikistan

Compared to other major labour sending countries, particularly in Asia, PrEAs play no significant role in Tajikistan. This is puzzling given the high number of Tajiks working abroad and the legal possibility of seeking employment abroad through private agencies. There are several factors that explain this phenomenon. Some are

related to the industry itself, others refer to the broader context of labour migration from and to Tajikistan. This section will explain some of these factors more in detail.

Lack of qualified agency staff

The number of staff varies from 3 to 10 persons per agency. Apart from the head of the agency, all the PrEAs have a case manager working with migrants and an accountant. In addition, some PrEAs have a psychologist, an IT specialist, a clerk and a driver. According to legal regulations, PrEAs are expected to employ at least one lawyer. But the interviews and review of documents carried out for this research show that not all agencies employ one, which explains why some of the contracts concluded between the PrEA, jobseekers and employers are of little legal value (see the previous section). The absence of lawyers in the industry is also problematic given that many PrEAs have to settle disputes with foreign employers.

Negative image of the industry

Frequent cases of abuse reported in the national media and a general lack of trust in formal institutions contribute to a negative image of the industry. Due to low entry barriers, PrEAs are set up quickly without a viable business strategy. As some respondents representing PrEAs noted, their activities are closely related to the evolution of the national labour market and regulations on migration. They claim that there is a trend towards more “civilized” market development, referring to an increase in formal institutions and regulations. Some PrEAs have set up an *Association of Employment Agencies* with the aim of promoting the role of PrEAs in labour migration, strengthening the capacities of PrEAs and representing interests of the industry vis-à-vis the government. Apart from the current licensing regime, there is no certification system or voluntary code of conduct that would help to distinguish between law abiding and fraudulent agencies. The industry also needs to develop a marketing strategy to improve its image and raise awareness about its contribution to labour market development. Such a strategy will only be successful if major players are able to raise professional standards of the industry.

Lack of cooperation

Many PrEAs fight a lonely battle. They have not developed the strategic partnerships that are necessary for successful cross-border placement. There are nascent attempts to establish mechanisms of cooperation with foreign partners but they would need further support to have an impact. As mentioned above, the Russian IALM has been instrumental in developing partnerships between PrEAs in Tajikistan and Russia. Cooperation with foreign employers’ organizations or chambers of commerce is not yet developed, probably due to the weak organisational structure of the industry. Many PrEAs are also unable to maintain contacts with foreign employers or to scout for new jobs due to financial constraints. In addition, there is very little, if any, cooperation between PrEAs and the NES. This is partly due to the fact that PrEAs have not yet emerged in the domestic labour market as serious players.

Lack of government support

Major labour sending countries, such as the Philippines, have developed strong government institutions that monitor labour migration and the activities of PrEAs in this process. They dispose of a mix of sanctions and incentives to support a thriving and law-abiding recruitment industry and to raise awareness of migrant workers' rights. For example, the government publishes lists of licensed agencies and of those who have been "blacklisted". They invite PrEAs to participate in foreign missions and provide support in the case of disputes. Above all, they openly promote legal migration through PrEAs. The Migration Service of Tajikistan could potentially play such a supportive role but its weak capacity has hampered more effective government intervention. There is a need for more dialogue and exchange between private and public stakeholders.

Unclear regulations and weak enforcement

As discussed above, existing regulations are not sufficient, in part because they are not related to the Labour Code. Instead, they fall under the Law on Migration and the Law on Licensing certain types of Activities, inter alia those of PrEAs. According to the Head of the Labour Market Department of the MLSP, the State Parliament (Majlisi Oli) submitted a bill on PrEAs in June 2008 for review. It was based on the draft model law currently discussed by the Inter-Parliamentary Assembly of the Eurasian Economic Union. The MLSP found many provisions of the bill inconsistent and returned it to the State Parliament with recommendations for further improvement. In fact, the MLSP does not foresee a separate law on PrEAs. Instead, it seeks to amend the Law on Employment of the Population 1998 and the Law on Assistance towards the Employment of the Population 2003 to incorporate provisions relating to PrEAs.

Such amendments, even though highly desirable, would not resolve the problem of weak law enforcement. PrEAs face unfair competition through illegal recruitment practices and unless these practices are prosecuted and sanctioned it will be difficult for PrEAs to remain in business.

The power of informal networks

Better regulations and enforcement will not overcome the dominance of informal networks based on kinship or region of origin, at least not in the short run. A major change in perceptions and traditions would be required for migrants to trust formal institutions, whether private or public. To be sure, informal networks will always play a role in facilitating migration. But viable alternatives to seek employment abroad can co-exist with these networks. In the case of Tajikistan, however, only a friend or relative who provides information and access to foreign employers is seen as trustworthy. There is an implicit assumption that kinship or similar networks are benign. This is not always the case, however, and deceived migrants will find it even more difficult to receive justice on the basis of informal contracts and arrangements.

Single market orientation

At present, more than 90 percent of Tajik migrants find employment in the Russian Federation, mainly in the construction industry. There will be continued demand for labour in Russia; however, the almost exclusive orientation towards this market is a

risky strategy. First, the visa-free regime makes travelling fairly easy. While potential migrants still have to register and obtain work permits in Russia, these can be easily arranged through informal networks or intermediaries. Second, Russian migration law has been changed and a quota system has been introduced. While the new law has made it easy for migrants to regularize their status, the new quota system effectively increases the barriers to legal employment.

Some representatives of PrEAs mentioned that Kazakhstan is the least attractive destination country since Kazakh legislation makes it very difficult to send workers there legally. Here again, informal migration channels and irregular employment dominate. Some PrEAs have already made efforts to develop new markets, notably in Poland and the USA. They have also initiated contacts with employers in the Baltic States, Eastern Europe and Canada. Such market development is an important strategy to diversify migration flows and create new opportunities for Tajik migrants. Government policy has an important supportive role to play. As mentioned above, there are few bilateral agreements to date and PrEAs receive little if any support in their attempt to expand their business beyond Russia.

4 Media reports and court cases

4.1 Media reports

Over recent years, Tajik media as well as the Russian language media of the neighbouring countries have covered various aspects of labour migration. Some print media even have special columns on the subject. However, these rarely carry information on legal employment possibilities abroad and the activities of registered PrEAs. A review of articles published on the subject reveals that these fall into two categories:

- Articles providing general information on employment opportunities through state employment agencies; and
- Those relating negative experiences of migrants placed abroad by PrEAs. Some of these articles did not present facts objectively and tended to blame PrEAs without having adequate proof.

Annex 2 has a comprehensive list of articles reporting on activities of PrEAs and informal intermediaries. The following cases received wide media coverage.

Case 1: “Dusti Amirkhan”, a PrEA from Khujand

LLC «Dusti Amirkhan» concluded an agreement with the Polish organization J.W. Construction for the recruitment and dispatch of construction workers from Tajikistan to Poland. A competition was announced for the selection of candidates and, based on the results, a group was formed and sent to work in Poland in April 2007. However, after completing part of the work some of the migrant workers returned home. This case was covered in detail by the newspaper *Vecherni Dushanbe*. Excerpts of the article are given below:

A complaint from migrant workers

A group of migrant workers who are residents of Khudjand city and Bobodjongafurovski District appealed for help to the Khudjand office of the Republican Bureau for Human Rights and made a complaint to the prosecutor of Sogd Province, Mr. Khairullo Saidov. In their application, the returnees expressed the hope that the prosecutor’s office would, fairly and in accordance with the law, clarify the situation regarding the deceit of the group of workers sent in April 2007 to Poland for work by LLC «Dusti Amirkhan».

The complaint says that in February 2007 the radio station «Tiroz» broadcast an announcement for workers to be sent to Poland by LLC «Dusti Amirkhan». Interested candidates who contacted the firm were informed by one of its staff members that they would be sent to Warsaw city to work on a construction site as masons, tilers, electricians, sanitary technicians, plasterers, painters, etc., and will be paid the equivalent of 500 (minimum) to 1500 Euros in the national currency –Somoni¹⁰, depending on the volume of work. Recruitment was done through a competition during which candidates worked without pay for 3-4 days painting, plastering and performing other kinds of construction work on

¹⁰ 1 Tajikistan Somoni (TJK) = USD 0.22778

the second floor of the building of LLC «Dusti Amirkhan». Sixty-two persons were selected for employment in Poland. Prior to departure, LLC «Dusti Amirkhan» organized a workshop to teach the workers ethics, languages, etc. The workshop was conducted by the Association of Scientific and Technical Intelligentsia. LLC «Dusti Amirkhan» provided visas for one year for all members of the group. It was orally agreed that the duration of the contract would be 6 months. This was, however, not put in writing. On 12 March 2007, LLC «Dusti Amirkhan» signed contracts with each member of the group, under which the company hired them as part of a construction brigade for work with a Polish construction company. Before signing the contract some members of the group tried to make some changes to the agreement, but representatives of LLC «Dusti Amirkhan» categorically refused to accept any change. Because of this, two members of the group dropped out.

Under the conditions of the agreement, LLC «Dusti Amirkhan» was to bear all expenses for obtaining entry visas to Poland, medical insurance, transportation of the brigade to the destination country, provision of meals and temporary accommodation of workers during their stay in Poland. Further, it guaranteed their legal and safe stay in Polish territory. As for conditions of payment for work, the contract says that there is an attachment with information about piece-rate wages, but workers claimed that they never received such an attachment. On 3 April 2007 the group of 60 workers, accompanied by representatives from LLC «Dusti Amirkhan» left for Poland. Upon arrival, they were accommodated in the dormitory of a hotel called «Margrant».

The next day they were instructed about safety measures. The group was then split into five sub-groups: tilers, masons, concrete mixers, sanitary technicians and electricians. The group of nine sanitary technicians was sent to work in Lodz which is approximately 200 kms away from Warsaw. The brigade started working on the construction of a residential house on 13 April. Some groups started work on three days later. As for working conditions, the workers were not provided with the required tools. Many members of the brigade worked 12 hours a day, from 7 a.m. till 7 p.m. The complaint states that the food was very poor, and the workers always felt hungry and weak at work. One of the workers, U. B. lost 15 kilos during his stay in Warsaw and another, Sh. Sh. lost 10 kilos. The sanitary technicians had to do many additional tasks for which they were not paid. The medical insurance, allegedly paid for by LLC «Dusti Amirkhan», proved to be invalid. Some of the workers who approached medical institutions with various health complaints were refused medical care because of this.

«After a month of work we started asking for our salaries, because we wanted to know how much we had earned for the month's work (we did not know the exact sum, because payment depended on the volume of work, but it was to be not less than 500 Euros)», - reads the text of the complaint. After working for a month and seeing that the conditions of the contract were not fulfilled by LLC «Dusti Amirkhan», four workers - Sh. Sh., U. B., A. M., D. A., refused to do work that did not correspond with their level of expertise (for example, sanitary technicians refused to carry tiles). The representative of LLC «Dusti Amirkhan» kicked these people out of the hotel without paying them for the work already done [...].

This information was categorically refuted by LLC «Dusti Amirkhan» who said that some of the workers returned home only because of their low qualification and failure to cope with the work of sanitary technicians, tilers, masons, etc. Besides, they violated the provisions of the contract signed between them and LLC «Dusti Amirkhan». Deputy General Director of the firm, Mukhabbat Rakhimova, said: "We brought suits against those who had violated the concluded contracts for reimbursement of expenses made by the company in sending workers to Poland. The expenses per person totalled 4,471 Somoni (USD 1,018). This money must be returned by the workers who violated the contract", - said Rakhimova [...]."

Case 2: Informal recruitment of Tajik migrants for the purpose of forced labour

Sub-human treatment on a garbage dump

Inspectors of the Office for Combating Organized Crime of the City Office of the Interior, Rostovskaya Province, discovered about fifty illegal migrant workers from Tajikistan on one of the landfills of the garbage processing plant of Rostov-on-Don city. This was reported on 11 July 2008 to IA REGNUM by the press service of the City Office of Interior, Rostovskaya Province.

Apparently, these people had been recruited in Tajikistan with the promise of a well-paid job in the Russian region. Employers showed them photos and told them that they would work at the plant for production of plastic containers and live in a large, well-lit dormitory. When the Tajiks were brought to Russia, their documents were taken away from them and they were made to work for nothing but their food. They had to sort out different types of garbage in a large, stinking pavilion. The workers lived on the landfill itself. Long plank beds in several layers served as beds and wooden walls of a quickly constructed barrack was their house. It contained a storage place for food, a kitchen and a shower room. The employers allowed them to build a makeshift mosque for praying *namaz*.

Officers from the criminal investigation department found out that the masters were buying their workers from recruiters for 5,000 Roubles (USD157)¹¹ per person. Once the deal was made, the labourer could be used endlessly by his "master". The workers were unaware of the deal. The territory of the garbage processing plant was guarded by two large Caucasian sheep dogs. At present, officers from the criminal investigation department are identifying all the members of the gang that is illegally exploiting the labour of foreigners so as to bring criminal charges against them. Almost all the Tajiks who were released did not have work permits for the Territory of the Russian Federation. Now they are being checked by officers from the Federal Migration Service.¹²

¹¹ 1 Russian Rouble (RUB) = USD 0.03137

¹² Source: www.regnum.ru/news/1026506.html 11.07.2008.

4.2 Court cases

Few cases relating to abusive practices in the context of employment abroad have been filed in courts. There are two reasons for this: Firstly, there is no special procedure for these types of cases. They are treated either as civil or criminal code cases and the militia and prosecutor's offices are in charge of investigating alleged criminal activities. Secondly, court procedures are time consuming and expensive and migrants have little trust in law enforcement bodies of either source or destination countries. They therefore seek to settle disputes out of court, often with the help of NGOs. As explained in Chapter 3, there is no pro-active law enforcement strategy that would actively seek to identify criminal practices or other breaches of law.

It is therefore not surprising to find only few cases that have been submitted to court. With regard to the activities of PrEAs, two writs were examined in the civil court in Sogd Province during the period under review (2006 – 2008). In 2006, the Khujand City Court examined the writ of a citizen against SUE "Saiekh". In the following year, a writ was submitted by another citizen against SUE "Tojikhoriyakor" in Khujand City. In August 2008, several writs were submitted to Khujand City Court by LLC "Dusti Amirkhan" against citizens of Tajikistan who were sent to Poland for construction work (see media case above). These civil cases are currently being examined by the judges. The three cases described below highlight current court practice.

Case 1: Dastoni Zarin

On September 5 2007, the Department of Interior of Sogd Province filed a case against a national of Tajikistan, B.S., accusing him under Art. 247 (4) (b), Art. 259 (2) (b) and Art. 132 (3) (b) of the Criminal Code of Tajikistan.

The Bill of Particulars states that at the beginning of 2003 citizen B.S. recruited and sent labour migrants from Tajikistan to the Russian Federation without having the necessary licence to do so. He would introduce himself as a temporary staff member of the Department for training of professionals of the Executive body of Sogd Province. Thus, he managed to recruit 19 persons in Shakhristanski District and 23 persons in Ganchinski District of Sogd Province for implementation of works in Chelyabinskaya Province of the Russian Federation.

The investigation showed that before sending labour migrants to Russia, the accused, would gain the confidence of the migrants and advise them to deposit their money with him for safe keeping telling them that many persons could extort money from them while they were in transit. He promised to return the money as soon as the migrants arrived at their destination. However, the money was never returned.

Upon arrival, part of the group was sent to the farm called Argazinskoe and another part to the farm called Chernovskoe in Chelyabinskaya province. The groups were engaged in agricultural work until November 2003. On 17 September 2003, B. C. took 40,000 Roubles (USD1,255) from labour migrants working in the farm «Argazinskoe» allegedly for purchasing return tickets. After receiving the money, he disappeared. As a result, the workers had to return to Tajikistan on their own. B. C. had also gone to the farm «Chernovskoe» and demanded that labour migrants pay him

2,000 USD each claiming that he had the right to 2% of the value of the harvest. He promised that if the migrants paid him this money, he would not demand his 2% from the employer at the end of the harvest and that money would be paid to the migrants for their work. Thus, he managed to take the sum of 32,000 Roubles (USD 1,004) from the migrants on that farm as well.

In January 2006, he set up LLC «Dastoni Zarin» and started carrying out employment activity without a permit. In May 2006, he sent 32 residents from B. Gafurovski District to work in Chelyabinskaya Province. Before departure he organized several meetings for labour migrants, during which he informed them about working conditions, accommodation, free meals, and promised a salary of 250-300 USD. Some labour migrants were sent to LLC «Cascade», others – to CJSC (Closed Joint Stock Company) «Patriot» in Chelyabinskaya Province. Labour migrants, who worked in CJSC «Patriot» till November 2006, were exploited by the employer. They were made to work from 6 a.m. till 10-11 p.m. against their will. The employer justified this by saying that B.S. brought fewer migrants than they had agreed.

At the beginning of June 2006, B. S. sent 44 persons, residents of B. Gafurovski District, to Chelyabinskaya Province. He had guaranteed them employment, free meals and accommodation. He received 5,764 Somoni (USD 1,313) from the migrants for employment services. Upon arrival 17 of them were sent to work for CJSC «Karatabanskoe» of Chelyabinskaya Province and the rest of the migrants were sent to the farm «Agros». They were exploited on those farms too. In mid June 2006, B. S. sent 10 labour migrants for employment to the farm «Agros» in Chelyabinskaya Province. In December 2006, the labour migrants realized they were deceived, because the salary they were paid was hardly enough to return home.

In January 2008, investigation of this criminal case was completed. Ten victims, mainly migrant workers, were identified under the case which was brought before the court. The court of Zafarabadski District, Sogd Province, after examining the criminal case on 10 July 2008, decided to forward it for additional investigation to the prosecutor's office of Sogd Province. The court decision did not state the reasons for forwarding the criminal case for additional investigation.

Case 2: A.N. versus SUE «Saiekh»

In 2006, citizen A.N. filed a suit in Khudjand City Court «On levying moral and material damage» against defendant, SUE «Saiekh». The applicant stated that at the beginning of 2004 she learned from the media that SUE «Saiekh» was recruiting seamstresses and packers to work in Moscow. The organization guaranteed that the workers would be accommodated in rooms for four persons, four hot meals a day would be provided and the working day would last eight hours. The plaintiff paid 150 Somoni (USD34) to the organization for employment services. No agreement was concluded with her except for a verbal arrangement about transportation to the work place and employment. On 25 August 2004 she left with the group for Moscow. On their way, the «Saiekh» representative took away all passports, allegedly for crossing the border. The plaintiff could get her passport back only in December, when she was returning home. Migrants were brought to Moskovskaya Province, Klin town, to a hosiery factory. There it became clear that they would not be paid 300-500 USD as promised but instead 2,000 to 3,000 Roubles (63 - 94 USD). Living and working

conditions did not correspond either with what had been agreed earlier. They had to live in a room for 15 persons instead of four and the food was very poor. The plaintiff was not used to such poor food. Besides, working hours exceeded the norm and treatment by the administration was rather offensive. Though the plaintiff, due to her young age (she was 20 years old) was provided more favourable conditions compared to other workers, (she worked as a secretary), nevertheless, due to the low salary, poor food and limited freedom of movement, the plaintiff did not want to continue to work at the factory. In December 2005 the plaintiff got sick with constant high temperature.

She managed to get her boss to allow her to make one phone call. She called an acquaintance, said she was sick and asked him to take her from that factory. After it became known that she'd called someone and complained, she was prohibited from even approaching the phone. Only two weeks later, due to her acquaintance's help, she managed to leave. Her salary for the last month of work was not paid to her. In order to save money for the return, the plaintiff had to work for about four months doing different jobs. Upon return she was examined by doctors who said that she had become weak due to catching frequent colds and had developed tuberculosis. She then started a course of treatment which was rather expensive for her family. In her writ the plaintiff pointed out that the firm «Saiekh» was responsible for her developing tuberculosis as the firm provided false information about the character and conditions of work. In this regard, the plaintiff requests the court to satisfy her claim for 4,000 Somoni (911 USD) for the material damage caused and 20,000 Somoni (4,556 USD) for moral damage caused, 20,000 Somoni (4,556 USD) for the damage caused to her life and health, and 6,000 Somoni (1,367 USD) for the damage caused by negligent implementation of responsibilities towards workers.

In the course of the hearing in court, the representative of the defendant did not support the plaintiff's claims saying that she could not develop tuberculosis during her trip to Moscow. Working conditions, accommodation, food at the factory «Gratsia», Klin town, were very good. The leadership of the organization treated labour migrants very well and nobody ever ran away. The defendant asked the court to reject the plaintiff's claims.

Witnesses K.B. and D.M. while testifying in the court mentioned the fact that they reached Moscow by bus after facing many difficulties. They said that working conditions at the factory in Klin town were very hard, the salary was very low and the meals were the worst of all. Fourteen persons lived in one room, though the plaintiff lived in a separate room with one person. The witnesses knew that the plaintiff got sick, and her mother called from Khudjand and demanded that her daughter return home.

Witnesses D.Sh. and B.B. testified that the working conditions were good enough; they worked 12 hours a day and were given hot meals four times a day. The average monthly salary was around 5,000 Roubles (USD 157). Living conditions of the plaintiff were good; the room was warm, with a TV and a refrigerator.

Witness U.R. testified that the plaintiff had the best working conditions compared to others, but as the plaintiff lost some important documents which were stored in her computer, she was not paid a salary for three months. She had no information about the plaintiff's disease.

Witness U.O., a specialist from the SUE «Saiekh» testified that rumours about indecent behaviour of the plaintiff reached their organization. The «Saiekh» management sent him to Moscow to check that information and in November 2004 he went to the factory in Klin town with the purpose of sending the plaintiff back home. However, she had no intention of going back. To discuss the issue, he organized a meeting with women, who had arrived from Khudjand, with the participation of the head of the workshop. At that meeting, the plaintiff did not complain about working conditions or meals.

In its decision of 7 March 2006 the court gives the following reasons for the rejection of the suit:

«Under Article 1079 and 1110 of the Civil Code of the Republic of Tajikistan, the damage caused to a citizen as a result of illegal acts, the damage caused to life and health as a result of non-implementation of contractual obligations must be compensated fully by the person who caused the damage. The court found out that during the trip from Khudjand City to Moscow, the plaintiff did not have any difficulties and, moreover, lived in better conditions than others. At the factory «Gratsia» in Moscow, good working and living conditions were arranged for the workers from Tajikistan as well as four meals a day for all. The plaintiff lived in a room with one person, had a TV and a refrigerator. As for the fact that women, including the plaintiff did not like the food provided by the organization, the court believes that the plaintiff got used to having different food in her parents' house, that was why she brought those arguments. But they are groundless and are only whims on the part of the plaintiff. She returned to Khudjand in December 2004 and followed a course of treatment from June 22 to August 26. Referring to the testimony of witnesses, the Court rules that her disease has nothing to do with her trip to Moscow».

The Court therefore resolved, under Art. 197 to 203 of the Civil Code, to reject the plaintiff's claims. She made an appeal, but under the ruling of the Sogd Province Court of June 2006 the decision of Khudjand City Court of 7 March 2006 regarding the claim «On levying moral and material damage» was upheld. The Court of Appeal based on Art. 1079 and 1110 of the Civil Code decided that

«as the county court had declared, the damage to life and health of the plaintiff was not caused by illegal action of the SUE «Saiekh and «Gratsia» factory of Klin town, Moscow Province ».

Case 3: M.K. versus SUE «Tojikhoriyakor» and citizen N. M.

Citizen M.K filed a suit in Khudjand City Court «On levying material damage caused to health, and moral damage». Under the writ, in April 2004, local TV stations broadcast an announcement about the recruitment of migrant workers for seasonal agricultural work in Volgograd city of the Russian Federation. The plaintiff contacted the office of SUE «Tojikhoriyakor» of Sogd Province, and was told that the work involved weeding and harvesting. The salary was fixed at 3,000 Roubles (USD 94), for six working days a week of not more than ten hours a day, with accommodation in a nice dormitory.

“On 27 April 2004 we went by bus to Volgograd city. The representative of «Tojikhoriyakor» N.M. was appointed the senior person in the bus. On May 15 we arrived in Volgograd city. N.M. collected our passports and gave them to the leader of the farm, where we had to work. Instead of the dormitory we were housed in tents which we put up ourselves; we worked from morning till evening; nobody concluded a labour contract with us. Working conditions were hard, we slept in tents, the food was poor and we had no days off.”

The complaint says that after 35 days of work, N.M. took the plaintiff's passport without his knowledge from the head of the farm where he worked, and gave it to a private farmer, where he then worked for four months. In the writ the plaintiff points out that N.M. asked him to come and collect his passport; but when he came to her, she said she was busy, gave him 100 Roubles (3\$) and said to come back later. He bought food with that money and walked back to the place he was staying in temporarily.

«I had to walk 25 kilometres in the snow. I lost my way, it became dark. I fell asleep right in the snow. In the morning I did not feel my feet, they were frozen» - the plaintiff writes in his writ.

In the course of the trial the defendant did not support the plaintiff's demands. She gave the following explanation to the court:

«Under the labour contract concluded with N.M. on 22 January 2004 on sending migrant workers abroad, she took the responsibility of accompanying a group of labour migrants to their destination and arranging for their accommodation. During his work in the farm «Novozhiznenskoe», Volgograd Province, M. K. violated labour discipline frequently by drinking alcohol. The management of the farm reprimanded and admonished him several times. As reprimands had no effect, the employer decided to fire him from the farm. M.K. was then self-employed».

She also added that the organization searched for jobs abroad for citizens, and that after they were employed its responsibilities ended. The migrant worker then enters into an employment relationship with the employer based on the legislation of the destination country.

«As Musabaev K. left his work place and was self-employed for 6 months, he himself is responsible for what happened to him» - said the defendant.

Co-defendant Nizomova N. indicated that following the request of the plaintiff's mother she included the plaintiff in the group of migrants that were leaving and did not take money from the plaintiff for travel or for services. She claimed the plaintiff was keen on alcohol and quit his job on the farm «Novozhiznenskoe» himself. Being drunk he lost his way to the place where he lived and fell asleep in the snow; as a result his feet were frozen. She believes that the responsibilities assigned to her for transporting the group to the place of destination, i.e., Volgograd city, were completely fulfilled.

In the course of the trial witnesses pointed out that they were transported to Volgograd city by Nizomova M., they were provided with work and accommodation, but labour agreements with them were not concluded. One of the witnesses said that he did not like the working conditions and accommodation offered and that was why he left the farm on his own and started searching for a job independently.

The Court, after examination of the materials, witnesses' testimony and resolution of the prosecutor in its decision of 11 January 2007 came to the following conclusion:

«The plaintiff worked for the employer for 35 days. The plaintiff and other migrants expressed their dissatisfaction because working conditions and accommodation contradicted previously provided information and labour contracts were not concluded. Under the cooperation agreement between the office of the SUE «Tojikhoriyakor and LLC «Novozhiznenskoe» Volgogradskaya Province, the Russian Federation, the parties had to fulfil their obligations fully. As a result of non-implementation of obligations regarding migrant workers, some of them, including M.K., had to look elsewhere for work, as confirmed by the testimony heard. Under para 2.2 of the labour contract concluded between co-defendant N.M. and the office of «Tojikhoriyakor» of 22 January 2004, she had to take labour migrants to the place of destination and ensure conclusion of labour contracts. Arguments of the defendant that N.M. was not on their staff, but only assisted in transportation, were considered groundless by the court. Besides, Musabaev was number 32 in the list of sent labour migrants. The Court, after comprehensive and objective examination of the plaintiff's evidence on the issue of compensation for material damage, ruled that 6,500 Somoni (1,481 USD) must be levied on the defendant. While defining the sum for the moral damage caused, the court was guided by Art. 1115 and 1116 of the Civil Code of the Republic of Tajikistan and took into consideration the circumstances of the incident, namely, the fact that the plaintiff himself fell asleep being drunk, in the snow, as a result of which his feet were frozen. The sum for the moral damage caused was estimated at 1,500 Somoni (342 USD)».

The plaintiff, who did not agree with the sum attributed for the damage caused, appealed against the decision of the court. The defendant who disagreed with the decision of the court, also made an appeal. In particular, it was pointed out in the appeal on behalf of the defendant that the plaintiff had not concluded an agreement for assistance during employment and never met with them prior to departure. During his work in Russia, the plaintiff drank alcohol which was a gross violation of labour discipline. The plaintiff was warned by the management of the farm but he would not stop drinking. Under the ruling of the Court of Appeal of 28 March 2007, the appeals made by the plaintiff and the defendant were rejected and the decision of the County Court upheld. The case is under examination by a supervision order.

To conclude, there is an emerging judicial practice regarding abusive recruitment of Tajik migrants abroad. Civil law seems to be applied more often than criminal law. Though there is no systematic evidence, it can be assumed that most cases are either settled outside court or that claims are not being made in the first place. The cases also demonstrate the difficulties of delineating responsibilities between workers, PrEAs and foreign employers.

5 International standards and good practice

5.1 ILO Standards

Since its establishment almost 90 years ago, the ILO has been concerned with the protection of workers from unscrupulous intermediaries. Based on the conviction that labour should not be traded like other commodities, it has established international standards that give priority to public employment services that would provide information and job placement free of charge. The protection of migrant workers has also been an early concern of the organization and became the subject of standard setting after World War II.

Early standards on PrEAs, such as the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) called for the establishment of public employment services and the gradual abolition of private agencies. Not all member States were convinced about this standard and in the 1980s a new discussion on temporary work agencies emerged. Eventually, these debates led to the adoption of a new Convention on Private Employment Agencies in 1997 (No. 181). This new Convention marked a fundamental change in the ILO's approach to private recruitment agencies, temporary work agencies and related service providers. To date, C. 181 has been ratified by 21 member States. Tajikistan has not yet ratified it.

There are some important provisions in C. 181 that can be challenging to transpose in national law, in particular in countries with weak public employment services and enforcement capacity as well as in countries where PrEAs play a major role in sending workers abroad. Nonetheless, the Convention and its accompanying recommendation are important legal benchmarks. It should also be pointed out that other CIS countries struggling with problems similar to those of Tajikistan, namely Moldova and Georgia, have ratified C. 181. They have also received technical assistance from the ILO to integrate the Convention into national law and practice.

Annex IV contains the full text of the Convention. In the following paragraph, some key standards will be mentioned. First, the Convention recognizes that apart from job matching and services related to job seeking, PrEAs can also be part of a triangular employment relationship (Art. 1). This applies to all categories of workers (including migrant workers) but does not apply to seafarers. National lawmakers, after consulting with the most representative workers' and employers' organizations, can exclude certain economic activities (Art. 2.4). The conditions governing the activities of PrEAs should be specified through a system of licensing or certification or other appropriate mechanisms in accordance with national law and practice (Art. 3). Workers should not be prevented from joining trade unions and they should be treated without discrimination (Art. 4 and 5.1). PrEAs also have to respect the privacy of workers when processing personal data (Art. 6).

Perhaps the most controversial provision of C. 181 is Art. 7 which prohibits any fees being charged to workers. Exceptions are only possible if they are in the interest of the workers concerned and if the most representative workers' and employers' organizations have been consulted. The scope and implications of Art. 7 have raised many debates, in particular with regard to the cross-border placement of workers. Of particular relevance to this subject is Art. 8, which contains provisions to prevent

abuse of migrant workers. Members are requested to enact laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses. They should also consider concluding bilateral agreements to prevent abuse in the recruitment, placement and employment process. In addition, a mechanism should be established to receive complaints about alleged abuses (Art. 10).¹³

Another important ILO Convention is the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Tajikistan ratified this Convention in 2007. Part 1 of this Convention deals with migration in abusive conditions and requests Members to “*suppress clandestine movements of migrants for employment*”. Appropriate measures shall be adopted against the organisers of such clandestine movements (Art. 3).

Finally, Tajikistan is also a party to ILO’s fundamental Conventions against forced labour, child labour, and discrimination in employment and for freedom of association. It has also ratified the Palermo Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organized Crime. Recruitment of any person for the purpose of exploitation, including forced labour or slavery like practices, should therefore be punished under criminal law. But as mentioned before, convictions on the basis of trafficking-related offences are few, and limited to trafficking for the purpose of sexual exploitation.

As can be seen from this brief review of international standards, Tajikistan has already taken important steps towards ratification of and compliance with international standards. The ongoing efforts to amend the labour code in order to introduce provisions on PrEAs could further strengthen the legal framework in line with C. 181. A key challenge, however, remains enforcement of these regulations, including, in the last resort, criminal enforcement.

5.2 Recruitment for employment abroad: the experience of Asian countries

There are only 26 licensed PrEAs sending Tajik workers abroad as compared to 1,500 in the Philippines, 1,800 in Pakistan, 700 in Bangladesh and 600 in Sri Lanka. About 70 – 90 percent (300,000 to one million annually) of migrant workers from these countries are sent abroad through these agencies. Labour sending countries in Asia have also developed institutional structures, comprehensive legal regulations and bilateral agreements with a range of destination countries. As a consequence, the majority of migrant workers are sent abroad through legal channels. Abusive practices, such as excessive fee charging, deception and even debt bondage or forced labour nonetheless exist and have been documented elsewhere.¹⁴

¹³ See ILO: Guide to Private Employment Agencies: Regulation, Enforcement, Monitoring, Geneva, 2007.

¹⁴ See for example: ILO studies on Pakistan, Bangladesh and India (forthcoming), ILO Special Action Programme to Combat Forced Labour

Some receiving country policies have perhaps an unintended effect of forcing migrants to use recruitment agencies to get foreign jobs and of increasing the cost of such jobs to migrants who often have to borrow money at high interest rates. For example, requiring employers to pay levies to receive permission to hire migrants can mean that employers pass on the levy charge to agencies that in turn charge levies to migrants, thus raising the overall costs of migration. In some countries, work visas are auctioned, which means that agents who buy them pass on the costs to migrants. Many of the agreements that agents and sub-agents make with migrants are oral, and migrants often sign contracts they do not understand. Thus, migrants can go abroad and find wages and conditions that are different to what they expect, but it can be very difficult to determine exactly what was promised to them and by whom.

The following section is based on a review of good practices in Bangladesh, India, Pakistan, Philippines and Sri Lanka. It demonstrates that though problems in the protection of migrant workers still persist, governments have established mechanisms to address various kinds of abuse and to monitor the recruitment industry.

5.2.1 Mandates and institutions

The principle responsibility for migration policy lies with Ministries of Labour. In some of these Asian emigration countries, there is a full-fledged Ministry responsible for running Labour Migration Programmes. For example, in the Philippines it is the Department of Labour and Employment and the Philippine Overseas Employment Administration (POEA) under the Ministry of Labour. In India, it is the Foreign Employment and Manpower Export Bureau under the Ministry of Overseas Indian Affairs. In Bangladesh, the Ministry of Expatriates Welfare and Overseas Employment is responsible for labour migration. The Bureau of Manpower, Employment and Training (BMET) is attached to the Ministry and responsible for the licensing and monitoring of PrEAs. At the same time, it maintains 14 Technical Training Centres throughout the country and is also involved in enhancing the skills of Bangladeshi migrants. Finally, there is the Sri Lanka Bureau of Foreign Employment under the Ministry of Labour and the Bureau of Emigration and Overseas Employment under the Ministry of Labour and Manpower in Pakistan.

Ministries of Labour are best placed to develop migration policies in accordance with employment objectives. In most countries, they also have the mandate to regulate and inspect PrEAs, to promote vocational training and other measures to enhance professional skills of the population. If migration policies are to be managed successfully by Ministries of Labour, they require sufficient human and financial resources. This is often problematic since Ministries of Labour tend to receive few resources. Close cooperation with other Ministries, in particular Ministries of Interior and Foreign Affairs, is also crucial.

5.2.2 Cooperation between public and private institutions

PrEAs in Asian emigration countries have been very active in organising their industry and establishing constructive dialogue with their respective governments. This has paid off in many respects. First, the industry association is consulted for standard setting within the industry and helps the government in its supervisory and inspection tasks. Second, governments have developed a range of positive incentives

to foster collaboration and ethical recruitment practices, such as tax breaks for law-abiding agencies, participation in foreign missions, awards or simplified licensing renewal procedures. Whatever model is being chosen, it is essential to establish a dialogue between industry representatives, workers' organizations and relevant government ministries.

The Bangladesh Association of International Recruiting Agencies (BAIRA), for example, has about 700 members licensed by government and is one of the largest trade bodies in Bangladesh. It is affiliated to the Federation of Bangladesh Chambers of Commerce and Industry (FBCCI). The FBCCI was established in 1984 with a view to catering to the needs of the licensed recruiting agencies who are engaged in developing labour markets abroad for the benefit of Bangladeshi workers. Similarly, the Pakistan Overseas Employment Promoters' Association is registered with the Chamber of Commerce in Pakistan and has four regional branches.

The POEA collaborates closely with agencies that are standard setters of the recruitment industry in the Philippines. It publishes a list of officially licensed PrEAs on its website, including agencies that are "Excellent and Top Performer Awardees". These agencies have been conferred awards in recognition of their outstanding and exemplary performance in the field of overseas employment.

In some countries, governments have set up state overseas employment agencies that should act as a role model for the private sector. For example, under the patronage of the Government, the Bangladesh Overseas Employment Services Ltd was set up in 1984 with the objective of encouraging the private sector to further develop the recruitment of workers for overseas employment. The board of directors is selected by the government.

5.2.3 Licensing and control of illegal activities

All selected Asian emigration countries have mandatory licensing schemes for overseas employment agencies. It is essential that such licensing schemes do not unnecessarily increase barriers for law-abiding recruitment agencies but effectively target those that are trying to undercut market prices through unfair competition. Licences should thus aim at establishing a level playing field.

In Bangladesh, licensing procedures are regulated by the Emigration Act adopted in 1985. There is an arrangement to sue alleged illegal recruitment agents in the Criminal Court with the help of BMET. The government has established a ceiling for migration costs (Taka 70.000, USD1,035¹⁵) but it is frequently reported that PrEAs charge jobseekers more than the maximum stipulated. Migration costs are often conflated due to sub-agents that often work on an irregular basis. In an attempt to eliminate the system of sub-agents, the government has established a computerised database, linked to BMET, BAIRA and the airport in which it is required to register the names, professions and skills of overseas jobseekers. Recruitment agencies can select candidates directly through this computer system and may hence rely less on sub-agents.

¹⁵ 1 Bangladeshi Taka (BDT) = USD 0.01425

In Sri Lanka, there are 600 licensed PrEAs. A jobseeker interested in foreign employment usually registers through a Licensed Foreign Employment Agent who in turn is contracted by overseas recruiters. The agent has to seek clearance from the Sri Lanka Bureau of Foreign Employment. Once clearance is given, the agents source the required labour directly or through their sub-agents placed at community level.

The Licensing and Regulation office of the POEA regulates operations of PrEAs in the Philippines, conducts pre-employment orientation seminars, spearheads the government's programme against illegal recruitment and provides airport assistance to departing migrants. Under its campaign "Stop illegal recruitment" it provides advice to migrants on how to avoid illegal recruiters and describes the modus operandi of illegal recruiters, including penalties.

In Pakistan, a PrEA applies to the Bureau of Emigration and Overseas Employment to request a licence for overseas employment. Upon approval, the application is then referred to the Secretary of the Labour and Manpower Ministry on the same day for decision. One month before the expiry of the licence or at the end of each calendar year, the PrEA submits an application for its renewal. The Pakistani Federal Investigation Agency is closely involved in the monitoring of licensed PrEAs, but in particular in the detection of irregular recruitment activities, such as smuggling or scam operations of those disguised as travel agencies. It publishes a list of licensed PrEAs on its website, as well as those that had their licences revoked and are subject to criminal investigations.

5.2.4 Complaints procedures

Many illegal recruitment activities are only discovered following complaints lodged by deceived or abused migrant workers. Bangladeshi migrants, for example, can file complaints with BMET that is responsible among others for the welfare of Bangladeshi migrants. During 2001 – 2002, 241 complaints were filed against 165 agencies. They resulted in the following punishments:

Disposed off after inquiry:	147
Cancellation of licence:	2
Withholding of licence:	12
Compensation realized against complaints:	Taka 9165 Lakh (USD 13.5 million)

In the Philippines, the Adjudication Office of the POEA hears and decides cases filed against PrEAs, foreign employers and Filipino migrant workers who have allegedly violated POEA rules and regulations. It maintains a roster of workers serving penalties for violation of the Code of Conduct for Overseas Workers and a list of suspended, cancelled, banned or de-listed PrEAs.

Complaints against PrEAs operating in Pakistan are first probed by the Protector of Emigrants who calls both parties for a hearing to reach a settlement. If no settlement of the dispute can be reached, the case is referred to the Director General who again calls both parties for a hearing. In case of serious violations of licensing conditions, the PrEA is suspended and its security deposit is forfeited. Pakistan, like other Asian labour sending countries, also maintains a network of Labour (or Community

Welfare) Attachés. Based in major destination countries, these labour attachés not only manage information on foreign employers and conclude contracts for jobseekers, they are also a first point of referral for lodging complaints.

6 Conclusions and recommendations

The report has shown that there is a nascent recruitment industry in Tajikistan that is particularly relevant in facilitating labour migration to neighbouring countries, above all Russia. Several factors have been analysed that explain why recruitment through legal and private channels, namely licensed and law-abiding PrEAs, is nonetheless minimal. Compared to major Asian labour sending countries, laws and institutions to protect migrants from abuse are still weak in Tajikistan. However, based on a limited number of cases, the report has demonstrated that public awareness is increasing. The media and the judicial system play an important role in this process.

The visa-free regime with many CIS countries, particularly Russia, makes it difficult to monitor the recruitment process. Most migrants leave through their own social networks. Although the visa-free regime has many merits, it severely limits government interventions to protect migrants prior to their departure. While a mandatory registration system may neither be feasible nor desirable, some incentives could be introduced to stimulate voluntary registration, through PrEAs for example, and to raise awareness among potential migrant workers.

The main conclusions and recommendations of this report, however, are related to the recruitment industry itself as well as its regulation. It has been argued that better regulation and effective enforcement, linked to positive measures to promote ethical recruitment practices, contribute to a reduction of irregular migration and illegal recruitment practices. By creating an environment that is conducive to regular migration and employment legally operating PrEAs may be in a better position to resist unfair competition from informal or illegal recruiters. Below is a brief summary of recommendations, some of which have been discussed at the ILO – IOM workshop in May 2008.

Public awareness and trust

One of the factors explaining the low profile of PrEAs in Tajikistan is the lack of trust in formal institutions generally and in the recruitment industry more specifically. Stories about abuse and deception dominate in media reporting and very few agencies indeed are able to survive while playing by the rules. It is thus important to systematically involve PrEAs in information campaigns on migration, to enhance such public awareness-raising measures in cooperation with the media, government institutions and social partners. Existing institutions in Tajikistan, such as the Migration Information Centre supported by IOM, the NES or vocational training schools could also raise awareness among their clients. Cooperation with foreign-based agencies and business associations such as IALM should also be enhanced to create trust among foreign employers and to facilitate legal placement of migrant workers.

Legal framework and enforcement

The review of current laws and practice has brought to light two shortcomings: first, loopholes in current law, such as with regard to data protection and fee charging; and

second, lack of enforcement. The current regulation under civil, migration and criminal (related to trafficking) law is insufficient to fully address the employment-related dimensions of recruitment and job placement. The pending draft law, which the government envisages as an amendment to Tajikistan's Labour Code, is an important step towards better regulation. In this context, ratification of ILO Convention No. 181 should be considered as it provides an internationally accepted framework to guide national legislators. PrEAs need to receive clear guidance regarding their obligations and the consequences of violations of legal provisions.

The revised law, however, will only be effective if linked to a functioning monitoring and enforcement mechanism. Since the industry's business is by and large related to migration, the Migration Service, currently responsible for licensing and dispute settlement, is best placed to monitor the situation. Its institutional capacity needs to be strengthened, and this report has provided examples from Asian labour sending countries for further consideration. In the future, closer cooperation and joint training of judicial authorities, police, labour inspectors, trade unions and the Migration Service could further enhance enforcement.

Promotion of PrEA industry and social dialogue

It will require time before a nascent recruitment industry such as in Tajikistan can cut significant corners in a market that is largely informal. But there are important steps that industry leaders can take to support this process. First and foremost, they should create their own business association and seek to learn from good practice in other countries. Such an association could be linked to the National Employers' Federation but it would address specific concerns of the industry and participate in policy dialogue. In countries with a mature labour market, strong trade unions and a thriving private recruitment industry, social dialogue is the main channel to solve disputes and to protect labour rights.

In addition, PrEAs can take their own measures to regulate the industry, that complement those of the government. Codes of conducts, awareness raising activities and dispute settlement mechanisms could be part of this strategy to enhance the reputation of the industry. Cooperation with enforcement authorities and foreign partners, such as IALM, are also recommended. The International Federation of Private Employment Agencies (CIETT), based in Brussels, has institutional and corporate members from all over the world. It has adopted a baseline code of conduct to guide self-regulation at national or company levels. Workshops with international experts could be organised to exchange good practice and to learn from their experience.

The recommendations listed above are necessarily broad. Further dialogue would be necessary to establish priorities and to link them to other policies, in particular migration and employment policies. This report should be seen as a first attempt to document current practice, shortcomings in law and its enforcement as well as to suggest avenues for further action.

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7 Annex I: List of persons interviewed

#	Name	Organization
1	Mr. Jalilov Said Manager	LLC – “Grand”
2	Mr. Norov Miroj Manager	LLC – “Aviatrans”
3	Mr. Usmonov Furugzod General Director	LLC – “Thomson”
4	Mr. Kabutov Abduroziq Deputy Director	Youth Labour Exchange
5	Ms. Muhiddinova Salima Director	LLC – “Vostok – Farm”
6	Mr. Akramov Kamol Director	“Tojikaviatur”
7	Mr. Khaydarov Rakhmatjon Director	LLC – “Zolotoy Vek”
8	Mr. Rakhimov Khalimjon Director	State Unitary Organization - “Tojikhorijakor”
9	Mr. Jabborov Makhmadali Head	State Agency for Social Protection of the Population and Migration, Dushanbe
10	Mr. Akmalkhojaev Azamat Manager	Migration Support Bureau
11	Mr. Mirzoev Bakhrom Director	Youth Voluntary Work Service
12	Mr. Sadulloev Abduahad Lawyer	LLC - “Dusti Amirkhan”
13	Mr. Shorajabov A. Director	Center for Economical Opportunities, Istravshan
14	Mr. Paygomali Madaminov Manager	LLC – “Zarnisor”
15	Mr. Sharifov Manager	LLC – “Somon Lada”
16	Mr. Yarbabaev Alisher Head of department	President’s Office, Department for social protection of the population and migration
17	Mr. Temur Tabarov Senior specialist	President’s Office, Department for social protection of the population and migration
18	Mr. Aslov Sadridin Lieutenant Colonel of Police Head of Department	Department of External Labour Migration. Migration Service of MIA
19	Mr. Boy Sharipov Captain of Police Head of Department	Department of Emigration Control. Migration Service of MIA
20	Mr. Akhmedov Shukhrat	Head of Migration Service of MIA for Sogd region
21	Ms. Boronova Nigina	Head of Migration Service of MIA for Badakhshan region

22	Mr. Ismoilov I. A.	Head of Migration Service of MIA for Khatlon region
23	Mr. Ashurov Subkhon Deputy Minister	Ministry of Labour and Social Protection of the Population
24	Ms. Shoeva Tatyana	Ministry of Labour and Social Protection of the Population
24	Mr. Babaev Anvar Deputy Director	State Agency for Social Protection of the Population and Migration, Dushanbe
26	Mr. Renat Atabiev Deputy Head	Main Agency for Social Protection of the Population and Migration, Sogd region
27	Mr. Nazarov Rustam Deputy Chief	Court of Sogd region
28	Ms. Mirzoeva Mavluda	Judge of the Gafurov District of the Sogd region court
29	Mr. Urunov Asatullo	Public Prosecutor's Office of Sogd region
30	Mr. Atoev Ramazon	Prosecutor General's Office of RT
31	Ms. Tatyana Khatyukhina Attorney	Centre for Human Rights, Khujand
32	Mr. Nazarov Nazar Attorney	Attorney, Board of Sogd
33	Mr. Marufov Yaqub Attorney	Social Organization «Imran»
33	Ms. Abdulloeva Nodira	Centre for Human Rights, Dushanbe
34	Mr. Alimov Azalkhon Lawyer	Informational Resource Center for Labour Migrants in Khujand
35	Mr. Zaripov Muzaffar Manager	IOM Resource Center for Labour Migrants in Dushanbe
36	Ms. Burkhanova Mukarrama	Combating Human Trafficking Programme Manager, IOM

8 Annex II: List of media articles (2006-2008)

Title	Source	Date
Adventure	“Vecherni Dushanbe”, # 36 (563)	4 September 2008
“Badakhshonkhoridjakor” sent more than 200 people for work...	IA «Pamir Media», Khorog/Sukhrob Khakim «Asia-Plus»	14 July 2008
Militia discovered <i>gustararbeiters</i> from Tajikistan in Rostov city landfill	http://www.regnum.ru/news/1026506.html	7 July 2008
Tajik slaves in Russia	“Farazh” #19 (73)	7 May 2008
Labor exchange of the youth helps employ migrants	«Asia-Plus»	13 March 2008
Russian employers are getting rapidly disappointed in Tajik migrants	Review of Mass Media of the Republic of Tajikistan http://www.regnum.ru/news/fd-abroad/uzbek/medicine/886532.html	10 – 16 September 2007
«Badakhshonkhoridjakor» concluded 13 agreements with employers from CIS countries	IAA Varorud http://www.varorud.org/index.php?option=com_content&task=view&id=9035&Itemid=101	17 August 2007
Employment of migrants in Dagestan	«Business and Policy» #34	1 September 2006
«Fariedi maro ba fariedras rasoned»	«Varorud» №28 (214)	12 July 2006
“Tajikvneshtrood” (Tajik migrant labour). The time of loaders and unskilled workers has passed...	http://www.tribun.tj/main.php?c=3&i=43	
Actual problems and perspectives of agencies in Tajikistan working for employment abroad	http://www.tajnews.ru/2007/09/05/kakovy_problemy_i_perspektivy_raboty_agentstv_po_trudoustrojstvu_za_rubezhom.html	

Title	Source	Date
A group was denounced in Dushanbe which was sending Tajik people into slavery to Russia	Analysis of the situation of Human Rights compliance in Tajikistan May 1-31, 2008. Open Society Bureau on Human Rights and compliance with the law, Dushanbe	
Labour slavery: Tajikistan for a week	http://phoenixnews.ru/culture/news_2008-05-23-09-37-28-676.html	
We are not slaves, slaves are not us	http://www.asiaplus.tj/articles/94/1582/html	
Sogd migrants in Russia became victims of their compatriot	http://www.varorud.org/index.php?option=com_magazine&func=show_article&id=4206	
40 citizens of Tajikistan released from "slavery" in Rostov city	RIA «News http://www.centrasia.ru/newsA.php?st=1215936420	
Citizens of Uzbekistan and Tajikistan were released from slavery	Peter Plakhotnikov: National Information Agency “Kazinform” www.inform.kz	

9 Annex III: Background information on Asian labour sending countries

EXISTING REGULATORY FRAMEWORK IN MANPOWER EXPORTING COUNTRIES OF ASIA

Country	Regulating Authority	Headed by	Ministry responsible
Pakistan	Bureau of Emigration & Overseas Employment	Director General & Protector of Emigrants	Ministry of Labour, Manpower & Overseas Employment
India	Protectorate General of Emigration	Protector General	Ministry of Labour & Overseas Indian Affairs
Philippines	Philippines Overseas Employment Administration	Administrator	Ministry of Labour & Employment
Bangladesh	Bangladesh Overseas Employment & Services Limited	Registrar of Emigrants	Ministry of Expatriates Welfare & Overseas Employment
Sri Lanka	Sri Lanka Bureau of Foreign Employment	Chairman	Ministry of Foreign Employment Promotion

EXISTING LEGAL FRAMEWORK IN MANPOWER EXPORTING COUNTRIES OF ASIA

S.No.	Country	Law	Enforcing Ministry
1.	Pakistan	Emigration Ordinance 1979 and Emigration Rules 1979	Ministry of Labour, Manpower & Overseas Employment
2.	Philippines	i) Migrant Worker & Overseas Filipino Act, 1995 ii) Rules & Regulations Governing Recruitment & Employment of Land based Workers (2002)	Ministry of Labour & Employment
3.	India	Emigration Act 1983	Ministry of Labour & Overseas Indian Affairs
4.	Bangladesh	Emigration Ordinance, 1982	Ministry of Expatriates Welfare & Overseas Employment
5.	Sri Lanka	Bureau of Foreign Employment Act, 1985	Ministry of Foreign Employment Promotion

POLICY ON EXIT CLEARANCE/REGISTRATION FOR EMPLOYMENT OF VISA HOLDERS

S.No.	Country	Pre-departure Registration/ Clearance	Mode of Registration/ Clearance
1.	Pakistan	Required	Registration clearance on Passport from P.E. (Protector of Emigrants)
2.	India	Required (certain categories exempted)	Endorsement on Passport by PE
3.	Philippines	Required	E-receipt or Overseas Employment certificate from Administrator (special counter at airports for labour migrants) Exemption from Travel Tax & Airport Tax.
4.	Bangladesh	Required	Registration at Registrar's office
5.	Sri Lanka	Required	Registration at SLBFE

LABOUR MIGRATION STATISTICS, NUMBER OF WORKERS DEPLOYED & FOREIGN EXCHANGE REMITTANCES

S.No.	Country	No. of Labour Migrants	Foreign Exchange Remittances	No. of Recruiting Agents PrEAs
1.	Pakistan	285000 (2007)	US\$ 5.5 Billion (2007)	1800
2.	Philippines	1.2 Million (2007)	US\$ 12.5 Billion (2007)	1500
3.	Bangladesh	225000 (2002)	US\$ 3 Billion (2003)	700
4.	Sri Lanka	231000 (2005)	US\$ 1.4 Billion (2003)	600

NUMBER OF PRIVATE EMPLOYMENT AGENTS

S.No.	Country	No. of PrEAs (Recruiting Agents/ Overseas Employment Promoters)
1.	Pakistan	1800
2.	India	4000 (Both Local and Foreign employment)
3.	Philippines	1500
4.	Sri Lanka	600
5.	Bangladesh	700
6.	Tajikistan	26

DISPOSAL OF COMPLAINTS IN PROTECTOR OF EMIGRANTS OFFICE (FLOW CHART)

STEP-I

Complainant approaches Protector of Emigrants Office to lodge complaint

STEP-II

Both the Overseas Employment Promoter and the complainant are called for a private hearing in the Protector of Emigrants' office

STEP-III

Protector of Emigrants tries to resolve the problem of the worker. In case of non-settlement, the matter is referred to the Director General along with Protector of Emigrant's Report/suggestion/recommendation.

COMMUNITY WELFARE ATTACHE/LABOUR ATTACHE

STEP-I

Complainant approaches Embassy/Community Welfare Attaché to lodge complaint.

STEP-II

Community Welfare Attaché approaches the employer to find out the facts

STEP-III

In case employer does not solve the problem, the matter is referred to the host government authorities

STEP-IV

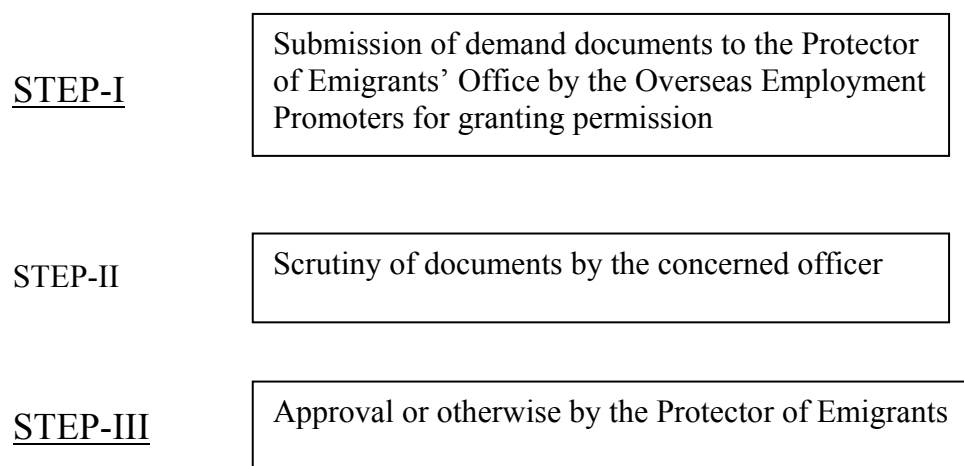
In case the matter is not settled Embassy/Community Welfare Attaché advises the worker to approach the local court whose decision is final and informs the concerned host government authorities of the attitude of employer and asks for appropriate action against him.

STEP-V

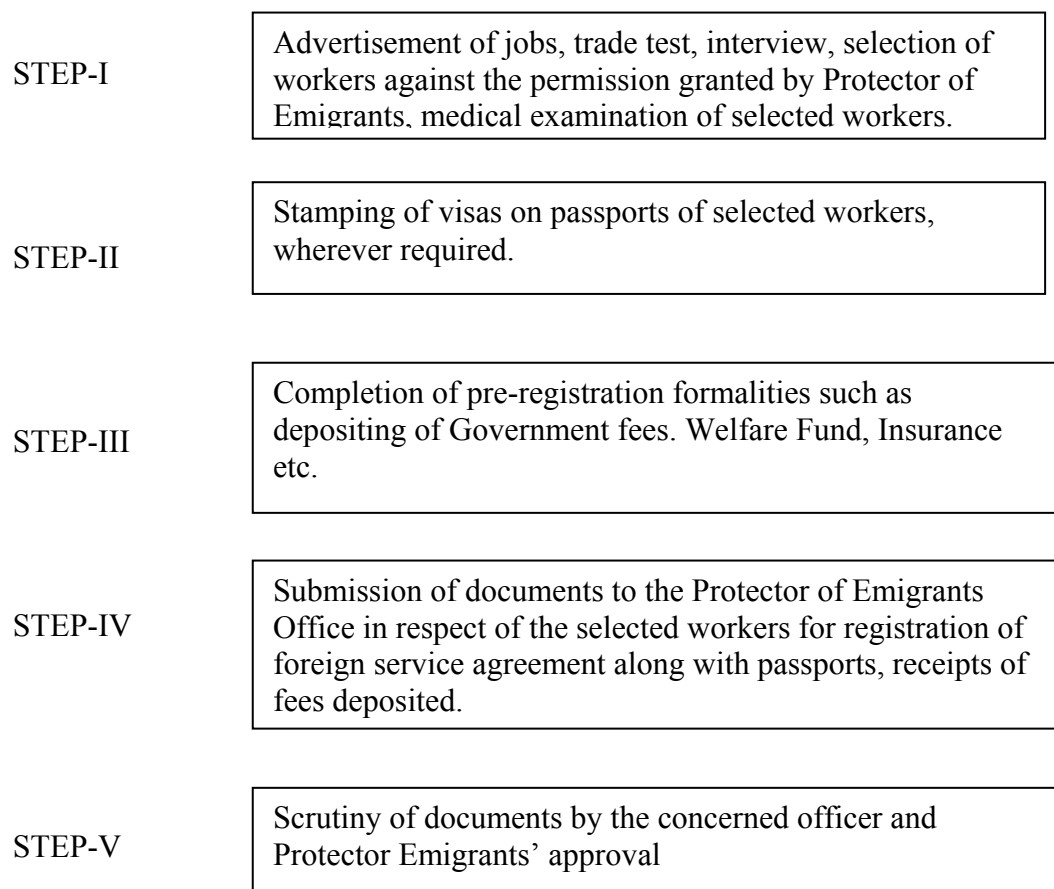
In case of involvement of the Overseas Employment Promoter, the Community Welfare Attaché refers the case to the Director General for appropriate action against the overseas employment Promoter and black-listing of employer.

FLOW CHART SHOWING THE MECHANISM FOR OVERSEAS
EMPLOYMENT THROUGH OVERSEAS EMPLOYMENT
PROMOTERS/AGENTS

A) GRANTING OF PERMISSION FOR PROCESSING OF MANPOWER
DEMAND



B) REGISTRATION OF EMIGRANTS THROUGH OVERSEAS EMPLOYMENT
PROMOTERS/AGENTS



10Annex IV: Private Employment Agencies Convention, 1997 (No. 181)

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Noting the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949, and

Being aware of the importance of flexibility in the functioning of labour markets, and

Recalling that the International Labour Conference at its 81st Session, 1994, held the view that the ILO should proceed to revise the Fee-Charging Employment Agencies Convention (Revised), 1949, and

Considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when the above-mentioned Convention was adopted, and

Recognizing the role which private employment agencies may play in a well-functioning labour market, and

Recalling the need to protect workers against abuses, and

Recognizing the need to guarantee the right to freedom of association and to promote collective bargaining and social dialogue as necessary components of a well-functioning industrial relations system, and

Noting the provisions of the Employment Service Convention, 1948, and

Recalling the provisions of the Forced Labour Convention, 1930, the Freedom of Association and the Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Discrimination (Employment and Occupation) Convention, 1958, the Employment Policy Convention, 1964, the Minimum Age Convention, 1973, the Employment Promotion and Protection against Unemployment Convention, 1988, and the provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Convention, which may be cited as the Private Employment Agencies Convention, 1997:

Article 1

1. For the purpose of this Convention the term **private employment agency** means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

(b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;

(c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

2. For the purpose of this Convention, the term **workers** includes jobseekers.

3. For the purpose of this Convention, the term **processing of personal data of workers** means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

Article 2

1. This Convention applies to all private employment agencies.

2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.

3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.

4. After consulting the most representative organizations of employers and workers concerned, a Member may:

(a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic

activity in the provision of one or more of the services referred to in Article 1, paragraph 1;

(b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.

5. A Member which ratifies this Convention shall specify, in its reports under article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefor.

Article 3

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.

2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

Article 5

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

Article 6

The processing of personal data of workers by private employment agencies shall be:

(a) done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice;

(b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

Article 7

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.

3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

Article 8

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Article 9

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

- (a) freedom of association;
- (b) collective bargaining;
- (c) minimum wages;
- (d) working time and other working conditions;
- (e) statutory social security benefits;
- (f) access to training;
- (g) occupational safety and health;
- (h) compensation in case of occupational accidents or diseases;
- (i) compensation in case of insolvency and protection of workers claims;
- (j) maternity protection and benefits, and parental protection and benefits.

Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- (a) collective bargaining;
- (b) minimum wages;
- (c) working time and other working conditions;
- (d) statutory social security benefits;
- (e) access to training;
- (f) protection in the field of occupational safety and health;
- (g) compensation in case of occupational accidents or diseases;
- (h) compensation in case of insolvency and protection of workers claims;

(i) maternity protection and benefits, and parental protection and benefits.

Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies.

2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

(a) formulating labour market policy;

(b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.

3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

(a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;

(b) for statistical purposes.

4. The competent authority shall compile and, at regular intervals, make this information publicly available.

Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

Article 15

This Convention does not affect more favourable provisions applicable under other international labour Conventions to workers recruited, placed or employed by private employment agencies.

Article 16

This Convention revises the Fee-Charging Employment Agencies Convention (Revised), 1949, and the Fee-Charging Employment Agencies Convention, 1933.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides -

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.



ILO Special Action Programme to Combat Forced Labour
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