

Critique on the MOA between the GRP and the GUAE in the field of Manpower and Implementation of the UAE Employment Agreement for Domestic Workers and Sponsors

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The United Arab Emirates is a federation composed of seven emirates, Dubai, Abu Dhabi, Sharjah, Ras Al Khaimah, Um Al Quain, Ajman, and Fujairah which was formed in 1971. The Federal Supreme Council (FSC) of UAE is the highest constitutional authority composed of the hereditary rulers of the seven emirates. It has both legislative and executive powers. Next is the Federal National Council, a consultative assembly of 40 representatives half of whom were indirectly elected since December 2006. The council monitors and debates government policies but has no power of veto.

The UAE is a member of the Organisation of Petroleum Exporting Countries (OPEC) and the Gulf Cooperation Council (GCC). It used to be called Trucial States under the United Kingdom until it gained independence in 1971.

While oil and gas extraction remains important, the UAE has been successful in diversifying its economy. Other industries include aluminum, cement, fertilizers, commercial ship repair, petrochemicals, construction materials, pharmaceuticals and tourism. It has also established free (economic) zones which accounted for 15% of its export receipts in 2005. It is also on a US\$350 billion construction binge and has a thriving service sector. Its GDP per capita income of US\$42,275 is one of the highest in the world at 17th according to the International Monetary Fund.

It had a population of 4.1 million in 2005 with nationals comprising only 21.9% and non-nationals: 78.1%. Most of the latter are migrant workers and according to the Gulf News they numbered 2.738 million in the same year

Situation of Overseas Filipino Workers (OFWs) in UAE

A great majority of the estimated 500 to 700 Filipinos who enter the United Arab Emirates on tourist visas everyday go there to look for work. Filipino workers in the UAE can be found mostly in huge free-trade zones in Dubai, Abu Dhabi, Sharjah and Ras Al Khaimah.

Out of the 3.1 million labor force in the UAE, Filipino workers, together with migrant workers of other nationalities, comprise 99% of the private sector and 91% of the public sector workforce. Like in other countries within the Gulf Cooperation Council, they receive the lowest wages. According to the Gulf News, blue-collars worker receive the following wage in 2004:

Unskilled workers: Dh400 to Dh650 (US\$109 – US\$177)

Skilled workers: Dh750 to Dh1, 500 (US\$204 – US\$408)

Other labourers: Between Dh2.5 to Dh6.5 an hour (US\$0.68 – US\$1.77)

Filipino migrant workers who enter the UAE are also mostly skilled and semi-skilled. This is due to the UAE's massive economic campaign of encouraging foreign investors and projecting the Emirates as the number one trading centre in the Gulf.

For instance in Dubai, the Jebel Ali free-trade zone has about 35,000 migrants working in 800 different industries and offices. There are about 5,000 Filipino migrants working in this free-trade zone with about 700 of them working directly with the free-trade authority as toll clerks and crane operators. They receive a salary ranging from US\$500 to US\$1,000 depending on their work experience and length of service at the zone. Other Filipinos in the free-trade zone are working in garment factories, electronic assembly plants and offices. Most of them are documented and legal migrant workers.

In Dubai dry-docks, about 1,600 Filipino migrants are working as welders, mechanical fitters, platers (silversmith), electricians, riggers, painters, and stagers. Skilled workers receive a salary of Dh8.11 per hour (US\$2.25) while the semi-skilled receive a salary of Dh6.93 per hour (US\$1.93). The company provides free living quarters and free meals. Most of the Filipino workers in the dry docks are former workers of the US military base in Subic, Philippines.

Duty-free shops at the airport employ mostly Filipino women workers. More than 200 of them are working in Dubai and about the same number in Abu Dhabi. They receive a salary range of US\$500 to more than US\$1,000 depending on their position and length of service while company provides them with free accommodation.

Almost all private and publicly owned hospitals employ Filipino nurses. In Dubai ambulance department alone, there are more than 500 Filipino nurses and paramedics that receive US\$2,000 salary per month. Almost all big hotels and restaurants in every Emirate employ Filipinos. Hotel and restaurant workers usually receive a salary of US\$200 to US\$400 and they work as waiters, chambermaids, housekeepers, receptionists, and office clerks.

Other skilled and semi-skilled workers are those working as musicians who receive a salary of US\$600 per month. There is a significant number working as sales representatives or brand promoters in shopping malls with a salary range of \$700 - \$1,500. Others are working in small shops, small offices and auto repair shops with salary from \$400 - \$800.

Undocumented migrant workers

From the period of June to September 2007 the Supreme Council of UAE declared an amnesty for illegal migrants working in the emirates to regularize status or leave the country without paying heavy penalties or being jailed. Usually, the UAE government charges a penalty of Dh100 per day of overstay. According to the Philippine Embassy, about 5,000 illegal Filipino migrants in the emirates availed of the amnesty.

Due to severe exploitative condition, many domestic workers also ran away from their employers. Runaway maids are sheltered temporarily at the POLO – OWWA and number not less than 50 or more than 90 during Ramadan and Christmas. However, there are still significant

numbers of runaway maids who seek shelter with their relatives and friends and who work illegally in the UAE.

The Condition of Domestic Workers

In the Gulf countries, domestic workers are the most exploited migrant workers. It is not that different in the UAE.

Similar to other Gulf countries, domestic helpers have no day-off and vulnerable to different forms of exploitation and abuses. They are treated like slaves by their employers and like commodities by the Philippine government. This is even reflected in the MOA on domestic workers and which is dealt with further below. Also, domestic helpers in the emirates are not covered under the provisions of the labour laws.

Complaints and problems raised by domestic workers are considered as immigration or police matters depending on the nature of complaints. Most of them receive a salary of US\$150 per month and even much lower or are not given monthly salary at all due to high cost of requirements for recruiting domestic workers. It should be noted that the minimum salary for a domestic helper as of POEA (Philippine Overseas Employment Administration) guidelines in 2007 is US\$400 and they must be provided with regular day-offs. In the UAE, they work without regular day-off and usually work for 15 to 20 hours a day.

According to the Philippine Labour Centre in Dubai, domestic workers cannot enter UAE on a direct hire basis, meaning they need to process their papers through an agency in the UAE or in the Philippines. Those who work for diplomats and are the only ones allowed to be hired on a direct hire basis. But entering UAE through an agency does not mean that domestic helpers are safe from abuses.

Critique of the MOA in the Field of Manpower and Implementation of the UAE Employment Agreement for Domestic Workers and Sponsors

The Memorandum of Agreement (MOA) between the Government of the Republic of the Philippines and the Government of the United Arab Emirates (UAE) in the field of Manpower and Implementation of the UAE Employment Agreement for Domestic Workers and Sponsors signed in 2007 are measures supposedly to improve the labor conditions of OFWs especially those of domestic workers.

Reality and practice, however, show otherwise.

1. Contract substitution is a rampant practice that violates the rights of migrants as workers

Even if there is a provision in Article 6, no. 2 in the MOA between the two countries which states that all stipulations in the labor contract signed by the worker and employer should not deviate from the contract signed by the same worker and employer submitted to the UAE Ministry of Labor and the Philippine government for verification purposes, contract substitution

is still rampant in the UAE especially for skilled and semi-skilled workers and professionals. Simply put, the original employment contract in the Philippines is not followed because the UAE government has no respect for this even if such an article is stipulated as stated above.

The employment contract signed in the Philippines is non-binding in the UAE because it is only an agreement between the placement agency and migrant worker. This stipulates the wage, working hours, benefits, etc. and also includes provisions that state that he/she agrees not to join any union or will file any complaint against his/her employer.

When the OFW arrives in the UAE, the above agreement is not honored and a new employment contract between the employer and worker is signed and approved by the UAE Ministry of Labor. Usually the content in the contract is already different from what was signed in the Philippines and the OFW is forced to accept these even if the wages are much smaller and their job category is changed into another.

There are even cases whereby the hiring of sales ladies and office clerks is converted into domestic workers in UAE. This is done by employers/sponsors because the hiring of domestic workers which is termed servant in the contract is very costly for expatriates and local Arabs as well. The problem with this is that it is not sure under what government authority should the workers fall under.

All migrant workers except domestic workers fall under the jurisdiction of the Ministry of Labor and they are protected by the UAE labor law. Domestic workers on the other hand are under the Naturalization and Residence Department and they are not covered by the labor law.

Because of the confusion brought about by this condition and the lack of support from Philippine Embassy officials, OFWs in distress are easily urged by the Philippine government to just go home and get whatever amount from their employers as damages.

If one is an expatriate, he/she needs to earn at least Dh6,000 (US\$1,634) a month in order to be eligible to hire a domestic worker. Then they have to pay the following fees to the Abu Dhabi Naturalization and Residence Department (ANRD):

Entry Permit Dh100	(US\$27)
Expedition of Entry Permit Dh100	(US\$27)
Plus postal charges Dh15	(US\$4)
After which Non refundable fee for visa Dh5000	(US\$1,362)
Renewal of Visa after a year (x12 of DW monthly wage) Dh7200	(US\$1,961)
Total expenses including airfare, medical, insurance, etc	Dh15,000 (US\$4,085)

On the other hand, a UAE national can hire a domestic worker no matter what their salary is. They do not have to pay the Dh5,000 annual fees during the time of issuance of entry permit and the fees during the time of the renewal of the visa. The validity of the visa is also longer at two years while it is only good for one year for expatriates.

2. OFWs who abscond are denied of any rights in cases of disputes

The main problem of the UAE Employment Agreement between Domestic Workers and Sponsors is found in Article 10 on conflict between two parties. It states in number 2 the following: Without setting aside the punishment that is mentioned in the entry and residency law, the second party's rights are null & void if the second party absconds.

Those who are familiar with the conditions of domestic workers in the Middle East know that this is grossly unfair. Many of these workers abscond from their employers because of physical and sexual abuse including rape, non-payment of salaries, long working hours, no days off, and lack of sleep, heavy workload and others. In effect, this provision in the contract gives the license for abusive employers to treat their domestic workers cruelly because they very well know that if their workers escape, no charges can be filed against them including rape.

3. Domestic workers are not recognized as workers

As stated earlier, domestic workers who are officially called servants are not covered by the labor law of the UAE and fall under the jurisdiction of the Naturalization and Residence Department (NRD).

How can an Immigration department which implements immigration laws and rules and not labor ones be competent to decide on legitimate complaints of the former? Other migrant workers of other job categories have the right to go to a labor court while domestic workers cannot. This is because being under the NRD is discriminatory and connotes that “servants” are not workers.

Besides the points above, one other problem with the NRD is that the language used if there are disputes is only Arabic. This is already to the advantage of employers who are Arabs and locals. There are many cases like unfair working and labor conditions filed by migrant workers which are overturned or not taken up because the employers file civil cases against their workers. However there are few cases handled by groups like Migrante – UAE which win their cases.

Additionally, there is no provision in the contract guaranteeing paid day off for domestic workers. What is only stipulated is the work is organized with the agreement of both parties, including adequate breaks (underscoring ours). This is one of the reasons why a number of domestic workers run away from their employers as some only have 4 hours of rest especially during the Ramadan.

4. The contract provides a probationary period for domestic workers wherein their rights and condition of work are not specifically stated

Article 3 of the contract stipulates that:

The sponsored person work for the second party should be under testing for four months duration with the decided fees. In case the sponsored person passed the testing duration. The contract continues from the beginning of contracting.

The problem here is that this provision does not stipulate how much should the monthly wage should be during the probationary period. That is why there are cases whereby unscrupulous employers cite this provision when they do not pay any wage to the workers during said period. There are even cases whereby the placement agency pockets the wage of the migrant workers when they press the employer to pay this or if there is an agreement between them and the employer that the migrants should receive no pay at all during the four month testing period. Sometimes this even lasts up to six months.

Overall, the MOA between the GRP and the GUAE and its implementing guidelines between the sponsors and domestic workers are basically useless for OFWs. This is just a charade between the two governments to impress to the international community and for the Philippine government to make an impression to its own people that they are sincere in upholding the rights and welfare of OFWs in the UAE.

Recommendations

Based on the critique, we offer the following policy recommendations.

1. That the employment contract signed in the Philippines should be binding and not subject to contract substitution in the UAE. This is to ensure that the wages, benefits and working conditions are not altered to the detriment of the migrant workers.
2. That absconding from the employer should not make null and void the legitimate complaints/grievances of domestic workers. If this is not ensured, the employer would have the legal license to abuse the worker because they know that they are not legally liable for any offense whether labor or criminal if the domestic worker absconds.
3. That the domestic workers be under the protection of the Labor Laws of UAE and not under the Naturalization and Residence Department (NRD). Domestic work should be considered work and as such should also be protected under the Labor Law. At the same time, how would an Immigration Department solve a labor issue?
4. That the domestic workers have the right of one paid day off a week and be stipulated in the contract. This is enshrined in the International Covenant on Economic, Social and Cultural Rights of the United Nations which states in Article 7; letter D which the following:

Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

And the UN further states that such rights are not granted or given to workers by governments or employers - they are basic universal human rights that we all are entitled to by virtue of our humanity.

5. Those under the probationary period should have regular wage stipulated in the contract. Even when one is under this period, she already does regular work and in most countries which have migrant workers those who are probationary are paid the regular wages as stipulated in their contracts.

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