

Toolkit on the benefits of ratifying ILO Convention on Private Employment Agencies, 1997, No. 181



INDIA

TABLE OF CONTENTS

Why should countries ratify Convention No. 181? / p.1

Conclusion / p.6

India: Why ratify ILO Convention No. 181? / p.6

Why should countries ratify Convention No. 181?

The World Employment Confederation is the global organisation representing reputable and ethical private employment agencies. The World Employment Confederation calls for appropriate regulation to be adopted on the industry and strives for the highest quality standards to be adopted. The World Employment Confederation recognizes that the Private Employment Agencies Convention, 1997 (No. 181) of the ILO is a critical component of a well-functioning labour market as the Convention helps create good working conditions and increased protections for workers; it enables ethical employment and recruitment agencies to bring more people into employment and to make a better and faster match of labour supply and demand. It is also important in protecting human rights with regard to cross border labour migration. As a professional organization representing the interests of the employment and recruitment industry around the world, we welcome appropriate regulation of private recruitment agencies, especially through the ratification and effective implementation of Convention No. 181.

In general, Convention No. 181 helps develop the appropriate economic and legal environment in which all players in the private employment agencies industry follow the same rules and get an equal opportunity to operate. The equal playing field raises the level of good competition in the sector to enable it to improve the overall provision of quality services both to workers and to user companies while marginalizing rogue agencies and eradicating abuses. In addition, it helps workers placed by private employment agencies to achieve decent work by ensuring they are protected to international standards, with appropriate mechanisms to penalize agencies who fail to meet their obligations.

Furthermore, when bringing national regulatory framework and enforcement mechanisms in line with ILO Convention No. 181, governments can potentially help to realize employment growth through a more efficient and effective labour market. As well, it is implementing an important pillar towards achieving full, productive and freely chosen employment and eventually can help to transition informal workers into the formal economy. Governments that aim to ratify the Convention are doing so with the Sustainable Development Goals in mind, in particular towards achieving targets 8.7 (end of forced labour and human trafficking), 8.8 (protection of labour rights)¹, 10.7 (facilitate orderly and responsible migration) and 10.c (reduce the transaction costs of migrant remittances). Governments can avail itself of ILO technical assistance in order to help develop and execute the appropriate national legislation fitting their national context.

¹ The UN Sustainable Development Goals and the respective targets can be accessed at: <https://sustainabledevelopment.un.org/sdgs>. Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

RESEARCH² BY THE INDUSTRY SUPPORTS BENEFITS OF RATIFICATION

World Employment Confederation research has identified that governments which have adopted appropriate regulation on the employment and recruitment industry are competitive. They enjoy better functioning labour markets with job creation, higher participation and inclusion rates as well as lower levels of youth unemployment. Likewise, workers placed by private employment agencies enjoy more protection in countries that have ratified Convention No. 181. There is a positive correlation between the World Economic Forum's Global Competitiveness Index and markets that score best in terms of smart regulation of the employment and recruitment industry. By balancing flexibility with security for companies and workers alike, these countries enjoy higher levels of agency work penetration, which supports job creation and a greater range of employment forms and contracts.

The World Employment Confederation's recent assessment of the Convention has revealed that countries which have ratified it have seen:

1. Lower levels of informal employment and undeclared work
2. High correlation with democracy
3. Increased cooperation between public and private employment agencies
4. Greater protection for freedom of association
5. Full respect for the right to strike
6. Meaningful and constructive social dialogue in the temporary agency work sector
7. Better protection of agency workers by forbidding fee-charging
8. Better wages for agency workers
9. Controlled and mitigated development of the industry

C181 IS A NECESSARY BUILDING BLOCK FOR EMPLOYMENT GROWTH

The 2010 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations³ indicated that there are three fundamental steps to achieving full, productive and freely chosen employment. The first step is to make a political commitment towards this goal and in this regard identified the Employment Policy Convention (No. 122) as the priority convention to do so. As well, the Declaration of Social Justice for a Fair Globalization identifies Convention No. 122 as the most significant instrument for governance of employment.

The second fundamental step is to develop appropriate institutions necessary to achieve full employment and note that Conventions Nos 88 (Employment Services Convention) and 181 together form the "*necessary building block for employment growth*". In particular, where there is coordination of efforts as required in Article 13 of Convention No. 181. A third fundamental step is to support the training and retraining of workers, which is often done with workers engaged by reputable private recruitment agencies.

It is interesting to note that there are 110 ratifications of Convention No. 122, 90 ratifications of Convention No. 88 and 32 of Convention No. 181. If governments seek the necessary building block for employment growth, this is the package of Conventions the ILO recommends to enable it yet few countries have ratified all three.

² Retrieved from Ciett at:

http://www.ciett.org/fileadmin/templates/ciett/docs/Position_papers/ciett_assessment_C181_and_C96_with_infographics.pdf

³ All references throughout the document retrieved from:

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_123390.pdf

C181 ENCOURAGES COOPERATION OF PUBLIC-PRIVATE EMPLOYMENT SERVICES

A major benefit to governments ratifying ILO Convention No. 181 is the flexibility in relating its provisions to national law and practice and the engagement of the social partners in doing so. Convention No. 181 recognizes the benefits of combining the complementary strengths that public and private employment agencies have. It promotes a collaborative approach to enhance labour market participation, as it calls for increased cooperation between public employment services and private employment agencies. It is important to note that both public and private employment services are key actors in the labour market and can mutually benefit from cooperation, as their common aim is to ensure a well-functioning labour market and the achievement of full employment. Such consultations and cooperation enable the government to profit from the expertise and views of the social partners, while respecting the fact that governments retain authority over employment policy and are free to determine how this cooperation is met with their input.

More specifically, Article 13 in the Convention states:

"...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."

Cooperation can help:

- Enhance the matching of labour demand with supply
- Pooling of information
- Implement Joint skills development programmes
- Implement joint projects for the long-term unemployed
- Increase the rate of transition from unemployment to work

C181 ENSURES PROTECTION OF WORKERS EMPLOYED VIA PRIVATE EMPLOYMENT AGENCIES

It is important to recall that labour is not a commodity and that there is a need to protect workers against abuses. Article 11 of the Convention requires member States to ensure that workers employed by private employment agencies are permitted protections such as Freedom of Association. Under Article 12, consultations with the social partners determine and allocate the responsibility between employment agencies and user enterprises for the following:

- Collective bargaining
- Minimum wages
- Working time and other conditions
- Statutory social security benefits
- Access to training
- Protection in occupational safety and health
- Workers compensation
- Maternity and parental protection and benefits

In addition to these, Convention No. 181 contains a general provision in Article 7 that prohibits the charging of fees or other costs, directly or indirectly, to workers⁴. Furthermore, it promotes user friendly

⁴ There is, however, a possibility to charge for certain categories of workers or specific types of services, after consultation with the social partners.

written contracts of employment (per national law and practice) clearly specifying their terms and conditions of employment in local language, and the worker's assent obtained without coercion.

Social Dialogue, where it is strong, is also a key element to ensure that workers served by private employment agencies are protected to international standards, as consultation with the social partners is promoted throughout the articles of the Convention. For example, Article 10 of Convention No. 181 promotes the engagement of the social partners for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

C181 CAN HELP REDUCE INFORMAL OR UNDECLARED WORK

More than half to three-quarters of all non-agricultural employment in developing countries is part of the informal economy. Workers are often women, migrants and other vulnerable groups who are excluded from other opportunities.⁵ Negative consequences for governments with large informal economies include poor competitiveness and low growth rates, incomplete coverage of formal social programmes, the undermining of social cohesion and law and order, and lost revenue from employers and workers not reporting economic activity.

Governments that seek to transition to a formal economy could benefit from ratifying and implementing Convention No. 181, as the World Employment Confederation research indicates that there are lower levels of undeclared work in countries which have ratified it. In addition, the guidance in the Private Employment Agencies Recommendation (No. 188) promotes the use of written contracts to formalize the relationship. Licensing private employment agencies permits the industry to work in a controlled way with government oversight, creates fair competition and separates the good from the rogue agencies that can abuse workers and avoid formal inclusion.

Article 3 of Convention No. 181 states that:

"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."

C181 PROTECTS MIGRANT WORKERS

*"The failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries"*⁶

Migrant workers provide a significant amount of income for their families in developing economies. Remittances from migrants to developing countries are estimated to have reached \$441 billion, of 600 billion overall in 2015 with an estimated 250 million migrant workers globally.⁷ With the total number of migrants increasing annually and such significant contributions to national economies, it is becoming more urgent to protect migrant workers in countries of origin and destination.

⁵ Retrieved from: <http://www.ilo.org/global/topics/employment-promotion/informal-economy/lang--en/index.htm>

⁶ Preamble to the ILO Constitution

⁷ World Bank, *Migration and Remittances Factbook, Advance Edition*, Washington, 2016. Retrieved from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf>

As member States of the ILO, governments should recall their commitment to the improvement of working conditions and the *“protection of the interests of workers when employed in countries other than their own”* as stated in the Preamble of the Constitution. Governments determine the legal framework for labour migration within their country. Some develop bilateral agreements with specific recipient countries and some integrate it in regional cooperation. Governments also have an opportunity to improve the governance of migration globally through the multi-lateral system.

Recognizing that private employment agencies have a large role to play in facilitating fair labour migration, we encourage appropriate regulatory action regarding private recruitment agencies at the national and international levels. Convention No. 181 specifically relates to the protection of migrants and such regulation is essential to eradicate abuses by rogue operators, which engage in human trafficking and/or violate rights enshrined in the ILO fundamental Conventions. Furthermore, it helps governments meet obligations under the ILO Declaration on Fundamental Principles and Rights at Work, and helps to achieve targets 8.7, 8.8, 10.7 and 10.c⁸ of the Sustainable Development Goals.

Private employment agencies are a facilitator of human resources management services and when properly regulated can contribute to decent work. With 32 ratifications to date, the ILO’s Private Employment Agencies Convention, 1997 (No. 181) is part of a larger structure of coordinated international guidance and support promoting decent employment creation and a well-functioning labour market that includes the protection of migrant workers’ rights with specific regard to fair recruitment. Therefore, Convention No. 181 should be seen as an important aspect of a much broader initiative of protections for migrant workers, as the elements of it, when implemented appropriately, play a major role in fair migration through an appropriately regulated private employment industry.

ILO CAN OFFER TECHNICAL ASSISTANCE TO RATIFY C181

The ILO provides technical assistance in order to help governments draft national legislation in line with Convention No. 181 and to help address issues in legislation and practice. Various national ILO programmes currently exist in order to help develop appropriate regulatory frameworks. The ILO has also produced a Guide to Private Employment Agencies⁹ to support governments in drafting legal frameworks in line with Convention No. 181. It is a useful resource to identify potential gaps in legislation and develop solutions appropriate for national context. In addition, the Fair Recruitment Initiative is valuable resource to support the tripartite constituents with regard to the specific challenges of cross-border labour migration and fair recruitment.

⁸ See footnote 1 above

⁹ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_083275.pdf

Conclusions

In closing, it is important to recall that Convention No. 181 helps to create a level playing field in the private recruitment agency sector by controlling it and creating a more socially responsible industry by marginalizing rogue agencies-especially with regard to abuses of overseas workers. It helps divide the responsibilities in delivering improved working conditions while delivering protections to international standards and accommodating diversity of national contexts. Good working conditions for workers recruited through agencies, as stipulated in the Convention, enable agencies to deliver a better protected and quality workforce that is essential to improve the general level of service offered by the agency to its clients. The ideal environment for the protection of migrant workers engaged by private employment agencies is when both countries of origin and destination ratify and implement Convention No. 181 and engage in bi-lateral agreements to ensure that protections are enforced.

India – Why ratify ILO Convention No. 181?

- Ratifying the Convention is a major and simple opportunity to reign in some informal economic activity. Per the ILO, more than 84% of Indian workers are employed in informal work, with the highest concentrations in the trade, transport, construction and manufacturing sectors. Regulating private employment agencies through the Convention can help reduce the size of the informal economy by relying on licensed private employment agencies to offer people formal employment opportunities. This will help increase the share of formal work to the detriment of informality, and therefore increase the revenues of the Government through proper reporting of economic activity as well as the payment of taxes.
- The World Employment Confederation recognizes the critical importance of migrant workers to India's economy as both a sending and receiving country, and the fact that the Bangladesh to India migrant corridor is the third largest in the world. Ratifying ILO Convention No. 181 is an important measure to help improve the situation for many of the workers migrating with the help of private employment agencies. The Convention not only helps to protect migrants to and from foreign countries, but the large amount of internal migrants too.
- India's economy relies heavily on the US\$ 72 billion in remittances received from migrants as according to the World Bank it is the largest remittance country in the world. But it is not just families that benefit from the income, the Government has relied on these remittances in times of need to issue diaspora bonds to help offset their balance of payment needs. It would be in the best interest of all to regulate the activities of private employment agencies in order to create fair playing field in the sector, to safeguard the workers producing this valuable source of income and ensure proper demarcation of responsibilities between the agencies and user companies.
- The Indian Staffing Federation (ISF), the Indian member of the World Employment Confederation, identifies that Retail, Telecom, Hospitality, Pharmaceuticals, Manufacturing, and Agriculture sectors are increasingly shifting to the flexi staffing model. Strong demand for flexi-staff is rapidly increasing in retail with substantial growth of the sector forecasted around 12% annually. This means a significant higher amount of workers going through private employment agencies that will need the social protections that Convention No. 181 offers, and additional government revenue since agency workers would be part of formal economy.

- The Convention is a necessary building block for employment growth and part of the fundamental steps to achieving full, productive and freely chosen employment. India has ratified the Employment Policy Convention, 1964 (No.122) and the Employment Services Convention, 1948 (No.88). This is a compelling argument for ratifying and implementing Convention No. 181, as the three Conventions in force would foster employment growth and help India towards achieving “*full, productive and freely chosen employment*” as it has set out to do when ratifying Convention No. 122.
- Convention No. 181 is relevant in helping to meet basic principles and rights at work, especially those relating to the four core conventions on non-discrimination and forced labour that India has ratified. With an unregulated private recruitment sector, abuses and discrimination can be prevalent and can prevent the government from fully realizing its obligations in these core conventions and obligations under the Declaration of Principles and Rights at work.
- The World Employment Confederation recognizes that India is moving forward with a review of labour legislation and in particular considering the Contract Labor Act. This is an important step and we encourage Convention No. 181 to be considered in this process. It gives India the flexibility to apply the various provisions according to the national context and in consultation with worker and employer representatives. The ISF has identified that India already has legislation on many of the provisions in the Convention, so the Government would only need to fine tune the existing Acts to explicitly address the unique staffing industry situations. The main task will be to draw a clear demarcation of the respective responsibilities of the private employment agencies and the user companies.

About World Employment Confederation

As the international confederation of private employment services, WEC is the authoritative voice representing the interests of the employment and recruitment industry across the world.

Founded in 1967, WEC consists of 50 national federations of private employment agencies and eight of the largest staffing companies worldwide: Adecco, GI Group, Kelly Services, Manpower Group, Randstad, Recruit, Trenkwalder and USG People.

Its members provide 71,9 million workers with access to the labour market each year, 67 million of whom work in agency work. Worldwide, over 1.6 million people work in an employment or recruitment agency.

The employment and recruitment industry is leading in a changing world of work. It does so by acting as enablers of the labour market, offering a full range of HR services: agency work, recruitment, career management, and RPO/MSP services. The industry enables work, enables adaptation, enables security, and enables prosperity.

WEC’s main objective is to help its members conduct their businesses in a legal and regulatory environment that is positive and supportive.

WEC is divided into six regional organisations: Africa/Near East, Northern Asia, Southern Asia, North America, South America, and Europe.

World Employment Confederation

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