The international law violations of Cuba’s “international collaboration” (service export) arrangements

The Cuban State’s large “cooperation agreements” to sell the services of its citizens as temporary workers—in health and other fields—to other governments or corporations violate the following international agreements ratified by Cuba and most of the countries where the workers are sent. These norms are generally reflected in the internal legislations of the destination/host countries.

**The Trafficking in Persons (or Palermo) Protocol**
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, is one of three “Palermo Protocols” supplementing The United Nations Convention Against Transnational Organized Crime, adopted by the UN General Assembly on 15 November 2000, entered into force on 29 September 2003 and accepted by Cuba on June 20, 2013, with one exception regarding the settlement of disputes.¹ The Trafficking Protocol establishes:

- “Trafficking in persons means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, …of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, for the purpose of exploitation.” (Art. 3, subpara (a)).
- “The consent of the victim to the intended exploitation is irrelevant once it is demonstrated that deception, coercion, force or other prohibited means have been used.” (Art. 3 subpara. (b))
- “Exploitation shall include, at a minimum, …forced labour or services, slavery or practices similar to slavery, servitude…” (Art. 3 subpara (a))
- Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences intentional conduct set forth in article 3 of this Protocol. (Art. 5).

**ILO (International Labour Organization) Conventions**

- **Convention No. 95 of 1949 on the Protection of Wages** stipulates:
  ◦ “Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages.” (Art. 6.)
  ◦ “Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.” (Art. 8.)
  ◦ “Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.” (Art. 9.)
- **Convention No. 29 of 1930 on Forced or Compulsory Labor** defines “forced labour” as: “All work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily.”
- **Convention No. 87 of 1948 on the Freedom of Association and Protection to Organize**
  grants workers the right to associate themselves voluntarily and to establish unions.
- **Convention No. 98 of 1949 on the Right to Organize and Collective Bargaining.**

¹ Cuba’s exception reads: “The Republic of Cuba declares that, in accordance with the provisions of Article 15, paragraph 3 of the Protocol, it does not consider itself bound by the provisions of paragraph 2 of that Article.” (Art. 15 is on “Settlement of Disputes” and its paragraph 2 establishes arbitration and the option of referral to the International Court of Justice. (See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.)
• Convention No. 111 on Discrimination (in Employment and Occupation) grants workers equality of opportunity and of treatment in employment and occupation.

• Convention No. 122 on Employment Policy that requires representatives of the persons affected employment measures to be taken, and in particular of employers and workers, to be consulted concerning employment policies with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
The C.A.T. entered into force in 1987 and was ratified by Cuba in 1995. It defines “torture” as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (excluding pain or suffering arising only from, inherent in, or incidental to lawful sanctions).

The Universal Declaration of Human Rights
Its Article 23 states that:
1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Universally-accepted norms and standards
Servitude. Early drafts of the Trafficking in Persons Protocol defined servitude as the status or condition of dependency of a person who is unlawfully compelled or coerced by another to render any service to the same person or to others and who has no reasonable alternative but to perform the service. (Combating Trafficking in Personas: A Handbook for Parliamentarians, United Nations, No. 16, 2009.)

Slavery. The League of Nations 1929 Convention on Slavery, Servitude, Forced Labour and Similar Institutions and Practices states: “The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

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