IOM • OIM

GLOBAL CONFERENCE ON THE REGULATION OF INTERNATIONAL RECRUITMENT

DISCUSSION PAPER

JUNE 2019

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This paper was developed to support the proceedings of the Global Conference on the Regulation of International Recruitment being held in partnership between the International Organization for Migration (IOM), and Immigration, Refugees and Citizenship Canada (IRCC).

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1. EXECUTIVE SUMMARY

This discussion paper briefs participants for the Global Conference on the Regulation of International Recruitment, 2019, the first event of its kind. The conference represents an opportunity to bring together people who are engaged in the day-to-day job of drafting, implementing and enforcing the regulation of recruitment. The aim of this paper is to elaborate approaches to regulating recruitment: through licensing; recruitment fee regulation; monitoring & enforcement; bilateral, multilateral and multi-stakeholder approaches; and transparency and public procurement requirements. The paper also identifies key challenges in effective regulation as well as offering questions to guide participants' thinking in advance of the conference. We hope to stimulate thought-provoking and invigorating conversations, as well as future innovation in regulating recruitment.

Licensing: Licensing acts as a shorthand for states to grant legal status and formalise labour recruiters. In theory, licensing and registration makes it easier for regulatory agencies, including inspectorates, to enforce the law by distinguishing who legal and illegal actors are. Nearly all states in the industrialised world have implemented some form of licensing (or registration) of labour recruiters. Licensing requirements vary significantly, including by who or what is licensed, whether any restrictions are placed on which sectors or occupations license-holders are allowed to operate in, whether, and which, ancillary services license-holders can provide, whether up-front capitalisation and bonds are required to acquire a license and whether outsourcing is allowed. Some states also impose specific standards of behaviour as a condition of the license. One of the key challenges in effective licensing concerns the extremely high number of informal recruiters (including sub-agents) which operate outside, or partially outside, licensing frameworks.

National Legislation & Policies on Recruitment Fees: Many countries of employment have implemented legislation which prohibits the charging of recruitment fees to workers. Other destination states, and most origin states, allow recruitment fees to be charged up to a 'fee ceiling' (such as one month's salary or 10% of the expected monthly salary). In some cases, states only prohibit worker fees in specific sectors which are regarded as 'high risk'. One key challenge is the fact that not all national legislation and/or policies define what is considered a 'recruitment fee'. Moreover, migrants are often charged recruitment fees because employers do not pay the full (or often any) costs associated with recruitment. Yet, legislation in countries of employment does not generally require employers to pay.

Monitoring & Enforcement: Effective regulation of the recruitment industry demands monitoring and enforcement. States monitor the compliance of license-holding recruiters in a variety of ways: screening of applicants for licenses; inspections of license-holders or desk review of submitted documentation; emigration and immigration processes; and/or rating the compliance of license-holders. States also mount targeted action against illegal recruiters. The severest penalties are usually applied to cases of illegal recruitment (where the recruiter

is not licensed) and/or human trafficking (the recruiter may or may not be licenced). Effective monitoring and enforcement can be challenging. The international recruitment industry is complex and opaque, and often involves multiple actors across several territorial jurisdictions. Establishing liability in transnational cases can be difficult. Inspectorates may lack resources and training. Inspectorates may also lack sufficient coordination with relevant government bodies which have responsibility for overseeing migration and recruitment, and/or with other government departments which could contribute useful intelligence in monitoring compliance (such as tax affairs).

Judicial and civil remedy against recruiters: State-supported remedy can take many forms including formal apology, restitution, rehabilitation, compensation (financial and otherwise) and also formal court-ordered sanctions. In theory, migrant workers can lodge complaints in their own country or in the destination country via their embassies and consulates. In practice, migrants face numerous challenges in making effective complaints to the authorities and seeking remedy. Practical barriers include a fear of retribution by recruiters, a lack of free legal advice, unfamiliarity with the legal system in place and difficulties with language. Migrants also face the problem of collating sufficient documentary evidence which meets the standard for prosecutorial action to be taken. Moreover, establishing liability is as challenging for migrants wishing to sue their recruiter as it is for the inspectorates.

Bilateral & Multilateral approaches: Governmental agreements on migration are generally regarded as being an important way of regulating international migration processes and improving protection of migrant workers. Bilateral labour agreements (BLAs) have legal status while Memorandums of Understanding (MoUs) are non-binding, easier to negotiate and often preferred by governments. Many, but not all, include a reference to recruitment. However, where they do, they are rarely implemented with formal review and enforcement mechanisms. Successful implementation is also hampered by the unequal power relations between origin and destination countries. In attempts to overcome this factor, international organisations often support multilateral approaches.

Multi-stakeholder approaches: Locally and nationally, civil society organisations can provide physical facilities and/or websites for migrants to lodge official complaints and to support them. For regulators, increasing the numbers of migrants making official complaints can inform future enforcement action as well as which policies need to be improved or implemented more effectively. Increasingly, collaborating with the private sector, employers as well as the recruitment industry, is viewed as an innovation in tackling abusive international recruitment. Further, international organisations have developed bilateral and global initiatives which have brought companies to the table. These include the ILO's Fair Recruitment Initiative, as well as IOM's International Recruitment Integrity System (IRIS).

Transparency (in supply chains) & due diligence regulation: States have also begun to (indirectly) take action on the liability of corporate and public bodies to tackle abuses for which they can be considered indirectly responsible. The UN Guiding Principles on Business & Human Rights (UNGPs) make clear that every state has the duty to protect

abuses of their human rights by companies or other business actors. National transparency in supply chains legislation (in UK, California, France, Australia) requires companies which are headquartered in their territories to conduct, and report on, human rights due diligence in their international supply chains. While this does not necessarily include clauses on recruitment, in practice companies have begun looking at this issue as a result. A movement towards increasing due diligence in the international procurement practices of public bodies is also gathering pace. A key element of the UNGP is that public authorities must ensure human rights are respected when they enter commercial transactions with businesses, which includes public procurement and "contracting out" of public services. As yet however, taking action against abusive recruiters under either set of legislation is in its infancy.

2. INTRODUCTION

This paper briefs participants for the Global Conference on the Regulation of International Recruitment, 2019. This gathering is the first time a global event of this scale on the regulation of recruitment has occurred.[i] The conference represents an opportunity to bring together people who are engaged in the day-to-day job of drafting, implementing and enforcing the regulation of recruitment.

Why focus on recruitment?

Since the 1970s, fee-charging recruiters who organise international labour migration have increased in visibility, significance and impact across the world. Facilitating international migration is a highly profitable, as well as potentially exploitative, business.[ii] Recruiters charge fees to migrants for a variety of migration and employment-related tasks, with the purpose of relocating an individual from one country and organising her/his (usually temporary) employment in another. Rather than one recruitment business organising the 'end-to-end' process, recruiters in origin and destination states tend to operate through extended international networks comprising multiple actors. These include recruiters, travel agents, medical centres, insurance brokers and many others. In addition to brokering employment, recruiters organise immigration and emigration paperwork, employment contracts and travel, and sometimes accommodation. They often arrange health screening, pre-departure orientation and training, and insurance. Recruiters are a mixture of formal (that is, legally constituted recruitment businesses) and the informal (for example, illegal recruiters, brokers, and travel agents).

In low-paid, precarious sectors of the economy, such as agriculture, domestic work, construction, and manufacturing, abuses faced by migrant workers are common,[iii] including: deception about the nature and conditions of work, confiscation of passports, illegal wage deductions, debt bondage linked to inflated recruitment fees, threats if workers want to leave their employers and physical violence. At their most egregious, recruiters can be human traffickers. This reality needs to be made clear in order to effectively challenge it.

Well-documented concerns and coordinated civil society advocacy about the association international recruitment with forced labour and human trafficking have pushed it onto

global agendas. In 2016, the ILO adopted the General Principles and Operational Guidelines for Fair Recruitment with the aim of informing both current and future work of the ILO and of other organisations, national legislatures and social partners on promoting and ensuring fair recruitment. In 2017, IOM launched IRIS (International Recruitment Integrity System), a global initiative to promote ethical recruitment through advocacy, capacity building and voluntary certification supported by due diligence, independent monitoring and grievance procedures. In 2018, the Global Compact for Safe, Orderly and Regular Migration, was launched including a clause on fair and ethical recruitment to safeguard conditions that ensure 'decent work'. While many emerging initiatives are directed at the private sector, it is governments that are primarily responsible for protecting human rights, including through regulating business. As such, the IOM Global Conference on Regulation of International Recruitment will bring together learning on what works in regulating recruitment, as well as what does not work. The meeting will provide a forum to discuss problems and solutions. Ultimately, our aim is to promote better regulation of international recruitment.

What does this paper do?

The aim of this paper is to elaborate approaches to regulating recruitment, as well as to identify some of the key issues and challenges in effective regulation. The paper serves as a compact aide mémoire and a critical prompt for participants. Through it, we hope to stimulate thought-provoking and invigorating conversations. It is not a research report and does not claim to be exhaustive, in terms of the examples used, nor in the challenges raised.

Overarching challenges and questions

- Who or what is being regulated? Does this include informal recruiters and sub-agents?
- How can we generate better transparency in an opaque international process involving multiple actors crossing more than one regulatory jurisdiction?
- How does regulation governing recruitment interact with other forms of regulation (for example, the governance of migration, employment or other private sector activities)?
- How do we take account of the imbalances of economic, cultural, diplomatic and political power between origin and destination states?
- How do we ensure that migrants are able to access justice through civil and judicial

In the paper, we discuss licensing, policies on recruitment fees, and the monitoring & enforcement of regulation. This is followed by a discussion of bilateral and multilateral action, migrant workers' access to remedy, multi-stakeholder initiatives and corporate responsibility regulations. In each section we summarise the international labour standards, offer examples of the approaches taken by states as well as the challenges in doing so. Each section concludes with a set of questions which are intended to provoke critical thinking at the Global Conference. Following the event, an 'outcomes' paper summarising the ideas, experiences and collective learning shared during the two-day event will be circulated.

Definitions used in this paper

- The term **labour recruiter** refers to private employment agencies and all other intermediaries or sub-agents that offer labour recruitment and placement services. Labour recruiters can take many forms, operating within or outside legal and regulatory frameworks.
- The term **recruitment** includes the advertising, information dissemination, selection, transport, placement into employment and, for migrant workers, return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship.
- The term **migrant worker** means a person who migrates or has migrated to a country of which he or she is not a national with a view to being employed otherwise than on his or her own account.

3. NATIONAL LICENSING SYSTEMS

International standards on licensing

International standards require that states should determine the legal status of labour recruiters, either through licensing, certification or other forms of regulation determined under appropriate national law and practice.

Licensing acts as a shorthand for states to grant legal status and formalise labour recruiters. Where licenses are required, to operate without one, even if this is not explicit in the law, is by definition *illegal*. In theory licensing and registration makes it easier for regulatory agencies to enforce the law by distinguishing legal from illegal actors. However, it is rarely so straight-forward in practice.

Approaches to Licensing

Nearly all states in the industrialised world have implemented some form of licensing of labour recruiters. These days, many states place a list online so that employers and migrants can check which recruiters are licensed before engaging with them. Licensing requirements can vary significantly. As one example, California's recent (2015) state law is set out below.

California Foreign Labour Recruitment Law & US Federal Requirements

SB477 Foreign Labour Recruitment Law (2015), requires contractors (including recruiters) who hire foreign labour for any sector to register with the California Labour Commissioner. It also prohibits Californian businesses from using unregistered contractors. [iv]

Globally, states' approaches to **licensing /registration vary** according to the following:

a) Who or what is licensed: Most states only require recruiters domiciled within their territory to apply for a recruitment licence. However, the UK requires all agencies which supply workers to regulated sectors (agriculture, horticulture, seafood, and forestry), including those from other EU Member States, to apply for a license.

b) Ancillary services/ businesses: Recruitment enterprises often have business interests in areas other than recruitment, such as travel agencies, medical centres and insurance companies. These ancillary services are often a source of high risk for exploitation, forced labour and trafficking. Some states will limit which ancillary services / businesses license-holders can engage in. For instance, the Philippines prohibits license -holders from operating travel agencies.

c) Who can be legally recruited: Some states restrict license-holders as to who they can recruit. For instance, Bangladesh requires labour recruiters which recruit women for overseas jobs who are perceived to be vulnerable to apply for a special license. Ordinary license-holders are prohibited from recruiting women.

d) Which sectors & occupations license-holders can recruit into: Some states only allow license-holders to operate in particular sectors. For instance, licensed recruiters in Jordan are only allowed to operate in the domestic work sector. On the other hand, the UK only requires licensing in sectors which are deemed to be 'high-risk' (agriculture, horticulture, seafood, forestry).

e) Outsourcing: Some states, such as Malaysia, require recruiters which also act as outsourcing (employment) agencies to hold a separate license.

f) Capitalisation: In Asia, licensing bodies require applicant recruiters to demonstrate they have access to a certain level of savings/ capitalisation. The purpose is to avoid 'fly-by-night' or 'cowboy' operators entering the market.

g) Bonds/ escrows: To ensure that agencies are able to pay the costs of remediating migrant workers where harms have been perpetrated, some authorities require recruiters to deposit escrows/ bonds at the time of application.

h) Operating standards: Many states require licensed recruiters to comply with licensing standards as a condition of their permission to operate. Standards can cover the number of branch offices which recruiters are legally allowed to operate, recruitment processes, transport and accommodation standards.

Challenges

One of the most substantial challenges in effective licensing lies in the extremely high number of informal recruiters (including sub-agents) which operate outside, or partially outside, licensing frameworks. In migrant origin countries in Asia, the ILO has estimated that up to 80% of recruiters operate without licenses.[v] Some informal recruiters organise the whole process themselves and are consequently outside of the regulatory framework.[vi] Others act as sub-agents to license-holding recruiters and are therefore partially within the regulatory framework. The ILO General Principles and Operational Guidelines for Fair Recruitment advise that [recruitment] legislation should apply to the act of recruitment and not only to some categories of labour recruiters. In other words, that regulation should apply to all recruiters including those operating outside any specific regulatory framework.

Questions for discussion

1. Who or what do you grant licenses to?
2. Do you restrict licenses to particular sectors or groups of workers?
3. How long do you grant licenses for?
4. Do you publish and regularly update the list of approved licensed recruiters?
5. Do you share the list of licensed agencies with your counterparts in other countries?
6. Do you require license applicants to demonstrate capitalisation, and/or to deposit escrows or bonds?
7. Do you require license-holders to comply with any additional standards?
8. What strategy have you used to tackle the issue of sub-agents or other informal recruiters?

4. NATIONAL LEGISLATION & POLICIES ON RECRUTIMENT FEES

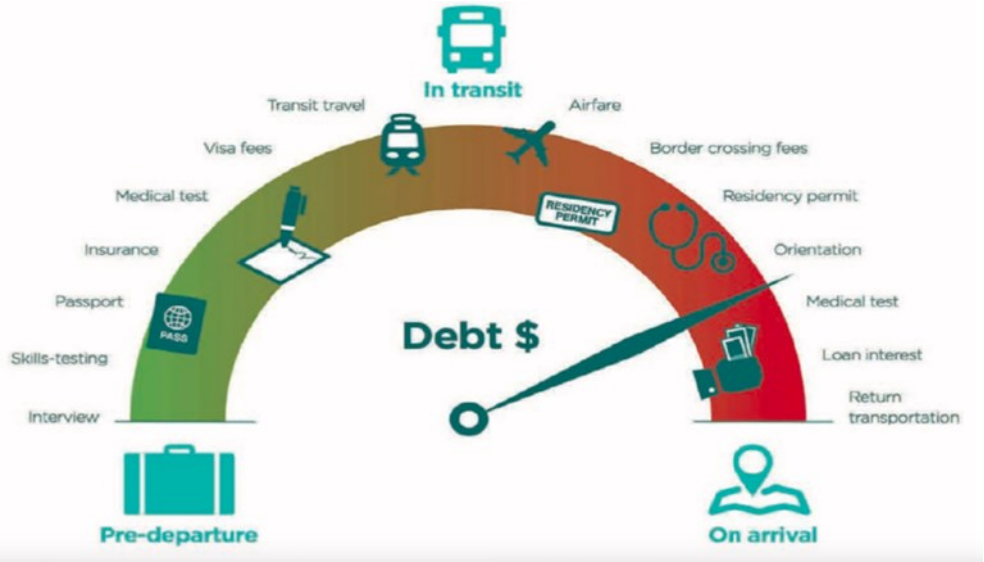
International Standards on Charging Recruitment Fees to Workers

The international standard is that *no workers*, including migrant workers, should be charged a recruitment fee. However, there is currently no international standard which requires that employers should pay the *full cost* of recruitment.

As mentioned above, international migrants are often charged fees of up to US $27,000 for their recruitment, visas and work permits.[vii] Other charges can be attached to: medical tests and vaccinations, pre-departure training, transportation, commissions and/or bribes to officials and administrative/document processing. Fees are mainly charged by recruiters in origin as well as in destination countries, but they are also charged by a series of sub-agents who may or may not have a business relationship with the main license-holder. Migrants may, in addition, be charged by the employer as well as travel agents, medical centres, training centres, accommodation providers, and corrupt officials. Some of the money paid goes towards the actual cost of preparing for migration, such as for processing visas and applying for a passport, or travel. However, even legitimate costs are often inflated with additional 'service fee' charges added.

The opportunities for exploitation across the recruitment process are rife, illustrated by the below diagram which sets out all the points in the recruitment process at which fees may be charged.[viii] What the diagram does not depict however is that recruiters charge recruitment fees not just because they are unscrupulous actors, but because employers do not pay the full cost of recruitment. If employers do not pay any or all of the costs, then recruiters will have to charge the costs to migrants. Furthermore, the diagram does not capture the hidden costs of corruption. Studies have shown that in some states, employing company

procurement departments often charge bribes to origin country recruiters.[ix] These 'kick-backs' are then included in the recruitment fees charged to migrants, inflating the cost even more.



Migrants may pay the total fee prior to their departure, often relying on loans, sometimes advanced by the recruiter/ broker who will coordinate departure and placement in employment. At other times, they are charged through deductions made from their salaries once in the destination country.

Approaches to Regulating Recruitment Fees

Approaches to regulating fees vary a great deal across the world. Many countries of employment have now adopted legislation which prohibit the charging of recruitment fees to workers. As an example, the UAE prohibits 'commission' and/or 'material rewards' being paid by workers. Other states allow recruitment fees to be charged up to a 'fee ceiling' (such as one month's salary or 10% of monthly salary), usually aimed at preventing the worst cases of debt bondage. Singapore and Hong Kong impose such ceilings. Others delineate what can be legally charged. For instance, Saudi Arabia, allows workers to be charged the cost of residence and work permits, as well as return tickets. In some cases, states prohibit worker fees in specific sectors which are regarded as 'high risk' but not in others. For instance, Qatar has separate policies for migrant workers recruited into the domestic work and construction sectors. The Philippines sets a maximum ceiling on recruitment fees and identifies related cost items that can be charged to workers recruited internationally, while prohibiting recruitment fees for domestic workers (though they can still be charged related costs).

Nepal's Free Ticket, Free Visa Scheme[x]

In 2015, the government of Nepal launched a highly ambitious and internationally recognized scheme to prevent high recruitment fees being charged to their nationals. This requires employers in Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia and UAE to pay the costs of airfares and visas for Nepali migrants. However, a report prepared in

House of Parliament International Relations and Labour sub-committee showed that the policy was regularly flouted. Migrant workers continue to pay high fees, both as a result of malpractice in the Nepal recruitment industry as well as the refusal of employers to pay the full costs. This was confirmed by another report published in April 2019 by Nepal's Office of the Auditor General, illustrating the substantial challenges for origin state governments in implementing a 'no fees' approach.

Challenges to Regulating Recruitment Fees

Firstly, as noted above, migrants pay recruitment fees because employers do not. In recognition of this, recent international initiatives on recruitment refer to the 'Employer Pays Principle'.[xi] Yet, even in states where worker fees are prohibited, there is usually no corresponding legislation *in countries of destination* requiring employers to pay the full cost of recruitment. This is a substantial 'loophole'. Some origin states (for instance, Nepal and the Philippines) have closed this gap. Yet, employers are outside their legal jurisdiction and this point is addressed further in the next section on monitoring and enforcement.

Secondly, not all national legislation and/or policies define what is considered a recruitment fee and associated costs. This makes it challenging for authorities to monitor compliance. The most detailed definitions include an overarching summary description together with a listing of prohibited or regulated fees and costs and, if applicable, cost-sharing arrangements (for instance in Pakistan, Philippines, Qatar, Uganda, UK and the US). To address this challenge, in 2018, the ILO facilitated a Tripartite meeting of experts to discuss and agree a comprehensive definition of recruitment fees which could be used by regulators and by companies.[xii] This definition refers to any or all fees, charges, expenses or financial obligations incurred in the recruitment process for workers to secure employment, regardless of the manner, timing or location of their imposition or collection, and whether they are deducted from wages, paid back in wages or benefit concessions, remitted in connection with recruitment, or collected by an employer or a third party, including but not limited to recruiters.

Questions for discussion

1. How does your country currently define recruitment fees?
2. Do you prohibit fees to workers and/ or require employers to pay the full cost of recruitment?
3. What can be done to help support countries which have not prohibited recruitment fees to workers to move towards this?

5. MONITORING & ENFORCEMENT

International Standards on Monitoring and Enforcement

Member states should provide for penalties, including prohibition for those agencies which engage in fraudulent practices and abuses. Member states should also establish adequate machinery and procedures to investigate complaints, alleged abuses, and

Effective regulation of the recruitment industry demands monitoring and enforcement. Monitoring and enforcement may be conducted by an agency specifically tasked with regulating the recruitment industry or it may be carried out by, or in collaboration with, a different agency, such as the police, labour/ manpower department or an immigration/ emigration department.

Approaches to monitoring & enforcement

States take action against illegal recruiters (informal recruiters and sub-agents) and monitor the compliance of license-holding recruiters in a variety of ways, including the following:

Screening of license applicants is a proxy indicator as to the likelihood of the license-holders' compliance with the rules. Most states screen the individuals whose name the license will be in as well as viability of the recruitment enterprise. For instance, Bangladesh requires that license-holders are of: "sound mind, declared by a competent court to be solvent, not been convicted of trafficking, money laundering, international terrorism or any other serious crime, or any crime involving 'moral turpitude". The Philippines, Viet Nam and India require that license-holders have a certain standard of education (a degree or a higher education diploma). Other states require applicants to submit documentation for desk review on a regular basis as part of compliance monitoring, or when the term of the license is due for renewal.

In many states, labour inspections of license-holders are rare unless the inspectorate or responsible authorities have received specific intelligence of wrongdoing. For instance, one study based on research with officials in South and Southeast Asian origin countries found that inspections only occurred in direct response to complaints lodged by returning migrant workers.[xiii] Investigations may be conducted in collaboration with related enforcement bodies, such as the police or labour market regulatory authorities. They may also be conducted in collaboration with officials from their counterparts in either origin or

'Intelligence-led' Approach to Policing Recruitment Industry

The UK Gangmasters and Labour Abuse Authority (GLAA) has developed an 'intelligence-led' approach to inspecting licensed recruiters in agriculture, horticulture, seafood, and forestry. Specially trained monitoring officers liaise with the other enforcement bodies in the UK, such as the tax and minimum wage enforcement body, to draw together intelligence about recruitment businesses. This intelligence is used to target recruiters for inspections which are suspected of non-compliance, and to not waste resources on those recruiters, which, the evidence suggests, are most likely to comply with regulation. The

to identify recruiters which are likely to be engaged in forced labour and trafficking. The GLAA also coordinates investigations and shares data with counterparts in Poland,

For origin countries, the emigration clearance system is, potentially, a powerful means for inspectorates and other enforcement agencies to have critical oversight of recruiters' activities. This is because many migrants, at least those travelling abroad via licensed recruiters, are normally required to obtain emigration clearance from national authorities. Officials who are responsible for processing work permits and emigration documents can verify that only licensed recruiters are involved. In particular, where they are available, properly resourced and trained overseas Labour Attachés who are based within embassies and other diplomatic missions occupy a unique position in this regard. They 'attest' the quality and compliance of emigration documents and may carry out checks on recruiters and employers. If the required documents are lacking, absent or forged then applications can be denied and recruiters potentially 'blacklisted'.

Philippines requirements for submission of employment documents for verification / authentication for deployment of domestic workers to Singapore

- Original copy of US $2,000 performance bond (which the Singapore employer is required to pay)
- Two original signed Standard Employment Contracts
- Two copies 'In Principle Approval' from the Singapore authorities (work permit approval)
- Two copies of Agency 'Undertaking' confirming business status
- Two copies of Employer 'Undertaking' confirming business status
- Two copies of prepaid ticket for migrant
- Two copies of worker's passport
- One copy of medical insurance purchased (as legally required) for migrant
- One copy of employers' insurance card
- One copy of Philippine recruiters' license

Some states have attempted to incentivise compliance and good practice through rating licensed recruiters. According to this system, agencies which fully comply with requirements, are awarded top ratings. Those who are non-compliant with one or more requirements are downgraded. The logic behind ratings is that the agencies rated in the top band will stay in business and work hard to retain their reputation and grading.

Sri Lanka's Ratings of License-holders

The regulatory authority in Sri Lanka has rated local agencies in 2012 and 2014. Points were awarded for a range of criteria including skill or market diversification, number

migrants recruited, successful resolution of disputes, educational qualifications of the agency staff, and up-to-date documentation. Ranked agencies receive benefits from the government in the form of preference in overseas promotions, access to marketing programs, and participation in international conferences and workshops. These rankings are publicly available online. Research found that rewarding high quality recruiters in Sri Lanka may have induced them to improve their service quality, recruit more highly skilled workers, remain in the market longer and receive more foreign demand. [xiv]

A key component to effective enforcement of regulation is to have a robust framework of sanctions available to prosecutors. In South and Southeast Asia, violating the rules on recruitment fee charging, making 'false promises' to migrants about the type of job, its salary and/or the terms and conditions of employment, confiscating passports or other identity documents, and deceiving individuals about their employment contracts are the most significant violations which should attract sanctions.

The severest penalties are usually applied to cases of illegal recruitment (where the recruiter is not licensed) and/or human trafficking (the recruiter may or may not be licenced). For instance, in Indonesia, offenders convicted of illegal recruitment can be sentenced to between two years and ten years in prison. Human trafficking legislation is not specifically targeted at recruiters but can be utilised in prosecutions. However, research finds that there is limited application of the full range of sanctions available to prosecutors and judges.[xv] Cases rarely reach court and prison sentences are rarely imposed on offending recruiters. Moreover, enforcement bodies tasked with addressing human trafficking and those commissioned with monitoring the recruitment industry do not always collaborate. Instead of prosecutions, regulatory authorities often rely on fines and/or suspensions and/or revocations of licenses. These sanctions are not regarded as being especially effective in deterring offenders.

Challenges Associated with Monitoring & Enforcement

Monitoring and enforcement are perhaps the most challenging aspects of regulation. The international recruitment industry is complex and opaque, involving multiple actors across more than one territorial jurisdiction. It is also a highly corrupt industry. The following - non-exhaustive - list includes some of the most substantial challenges which authorities and inspectorates commonly grapple with:

- In many states, given the large number of sub-agents and other illegal recruiters, it is impossible to find and prosecute all actors at any one time. Sub-agents and illegal recruiters rarely operate out of an office so are able to quickly and easily disappear. [xvi]
- Inspectorates often lack resources and training to conduct sufficient ongoing checks on license-holders. Inspectorates may also lack specialised units with trained personnel.
- Inspectorates also often lack coordinating mechanisms with all the relevant government bodies which have responsibility for overseeing migration and recruitment, and/or with other government departments which could contribute useful intelligence in monitoring compliance, such as tax affairs.

- Research has shown that 'one-off' screening processes for licensing applications often cannot predict the future compliance of recruitment agencies.[xvii] Application screening usually requires only a desk review of the documents submitted by applicants rather than in-person inspections or checks. [xviii]
- Monitoring what recruitment fees have been charged, when and by whom is immensely challenging when fees are legal. Migrants themselves may not know the total amount as formal itemised bills are rarely produced. Where they are, receipts can be easily forged. Where multiple, and according to current laws, legitimate, fees have been charged for aspects of the migration process, it is easier for recruiters to hide the excessive or illegitimate charges.
- Sanctions which are most commonly used are often not viewed as a deterrent by license-holders. Removing a license in response to complaints or as a result of an investigation is often ineffective as 'phoenix agencies' - those which have previously had their license removed by the authorities for offences, but which re-apply under a different name, are common worldwide. Collecting sufficient evidence which passes the standards for prosecution and presentation in a court of law is extremely challenging and resource-intensive.
- Investigating and taking enforcement action can be challenging given the cross-jurisdictional nature of international recruitment (that is, if non-compliance and/or illegal behaviour is uncovered by a regulatory authority in one country but it relates to wrongdoing in a second country). [xix]
- Establishing liability in cases can be difficult as offenders specifically try to avoid oversight by the authorities. For instance, in many origin states, license-holders utilise multiple sub-agents to mobilise workers and have little or no direct contact with recruits. This means that they can often avoid direct complaints.

Questions for Discussion

1. How and when do you monitor the compliance of license-holders, including of recruitment fee charging?
2. What are the main barriers or challenges you find in monitoring compliance of license-holders?
3. Is the resource and training of your inspectorate sufficient?
4. Which other enforcement bodies (e.g. police, tax authorities, minimum wage authorities, human trafficking units) do you collaborate with?
5. What type of information triggers an inspection of / investigation into a license-holder?
6. What are the available sanctions against non-compliant license-holders?
7. What is considered actionable evidence for the purpose of launching an inspection or a prosecution?
8. What kind of enforcement action do you take against illegal recruiters?
9. Does your inspectorate liaise with your counterparts in the main relevant origin or destination country?

6. JUDICIAL & CIVIL REMEDY AGAINST RECRUITERS

International Standards

States, under international human rights law, have an obligation to guarantee the human rights of all individuals under their jurisdiction, regardless of their nationality or migration status, including the right to access to justice and due process. This should be achieved without discrimination . [xx]

It is essential that migrant workers have access to state judicial and non-judicial (civil) remedy. State-supported remedy can take many forms including formal apology, restitution, rehabilitation, compensation (financial and otherwise) and also formal court-ordered sanctions.

Approaches to Complaints and Other (State) Remedy Mechanisms

In theory, migrant workers can lodge complaints in their own country or in the destination country via their embassies and consulates. Telephone or web-based 'hotlines' by which migrants can lodge complaints with destination country authorities are increasingly common in Gulf and Southeast Asian countries, although these are often limited in practice by capacity and availability. Some origin states have established specialist investigations units which can receive complaints from returned migrant workers.

Nepal Investigations Unit

In Nepal, an investigative unit, the Complaints Registration and Investigation Section, specifically tasked with receiving complaints has the legal power to take action against recruiters that have broken the law, such as imposing penalties or referring to the Police. However, a recent study found that effectiveness of the unit was hampered by an insufficient number of investigating officers, while other circumstances limited the time for and number of in-depth investigations.[xxi]

The Philippines has established requirements under which licence-holding recruiters based in that country are jointly and severally liable with the 'foreign principals' (employers and/ or destination country recruiters) in the recruitment process. Filipino nationals can sue their Philippines recruiter for claims that arise out of a misdeed which occurred during employment as well as during the recruitment process. Recruiter escrows which are posted as a condition of licensing can be drawn upon to cover such claims. However, a recent study found that although it is quite common for workers to recover compensation from recruiters under this provision, in many cases they receive less than the full amount owed. [xxii]

In a different attempt to establish extra-territorial jurisdiction, the US Trafficking Victims Protection Re-Authorisation Act (TVPRA) (2008) allows for the civil or criminal liability of any natural or legal person located in the US, for trafficking, forced labour and slavery

offences occurring anywhere in the world. This means that a US-based company that engages in severe labour exploitation, including fraudulent recruitment, in its operations in other countries could still be prosecuted or sued for damages in US courts for this conduct. Claims under this provision may be made against both primary offenders and those who knowingly benefit from forced labour, allowing victims the possibility of remedy from higher up the supply chain.

In the US, there have been numerous high-profile cases employing some or all of the above remedies to seek damages on the part of victims of labour exploitation, resulting in substantial pay-outs. This includes the case of David v. Signal International, LLC involving hundreds of guest workers from India who were fraudulently recruited and exploited by a New Orleans construction company in collaboration with India-based recruiters in the aftermath of Hurricane Katrina. A jury found that the company, its lawyer and India-based recruiter had engaged in labour trafficking, fraud, racketeering and discrimination, and awarded five of the workers USD 14 million in compensatory and punitive damages. Other workers subsequently settled their claims against the company for a further USD 20 million. Importantly, US law does not prevent undocumented workers from bringing labour claims.

Challenges with State Remedy Mechanisms

Migrants face numerous challenges in making effective complaints to the authorities and seeking remedy. Practical barriers include a fear of retribution by recruiters, a lack of free legal advice, unfamiliarity with the legal system and difficulties with language. Migrants also face the problem of collating sufficient documentary evidence that meets the standard for action to be taken - this is also the case for enforcement bodies. This is especially challenging for migrants who have already returned home. Migrants may also make a 'cost-benefit' decision that making a complaint will not be successful. Moreover, establishing liability is as challenging for migrants wishing to sue their recruiter as it is for the regulatory authorities.

Questions for Discussion

1. What complaints and/or remedy mechanisms do you have available for migrant workers?
2. Can undocumented workers bring complaints?
3. Does your country tend to encourage judicial or civil remedy channels for migrants who make complaints?
4. How can migrant workers be better supported in collating actionable evidence?
5. How do you address the issue of liability?

7. BILATERAL & MULTILATERAL APPROACHES

International Standards on Bilateral Labour Agreements

Where international recruitment is a significant issue, then member states should consider concluding a bilateral labour agreement to prevent abuses and fraudulent activity.

Governmental agreements on migration are generally regarded as being an important way of governing international migration processes and improving protection of migrant workers. Government-to-Government (G2G) agreements establish recruitment channels through public employment services. Bilateral labour agreements (BLAs) have legal status while Memorandums of Understanding (MoUs) are non-binding, easier to negotiate and therefore often preferred by governments. For destination countries, bilateral agreements help achieve a flow of labour that meets the needs of employers and industrial sectors, while providing for better management and promoting cultural ties and exchanges. For countries of origin, these agreements ensure continued access to overseas labour markets and opportunities to promote the protection and welfare of their workers. Ministries of Labour are normally parties to agreements except where dedicated Ministries of Migration exist. For instance, the agreements of Brazil, France and Spain involve dedicated ministries, but also the Ministries of Justice, Foreign Affairs and Interior.

Public Employment Services & E-Migrate Systems

Many states operate public employment services (PES) which organise international recruitment in addition to regulating private sector recruiters. Sometimes the same department is responsible for both. For instance, the state-owned Bangladesh Overseas Employment and Services Ltd (BOESL) sits within the Ministry of Expatriates' Welfare and Overseas Employment in Bangladesh. BOESL recruits Bangladeshi women and men to South Korea, Jordan, Malaysia and UAE. BOESL has a team of anti-corruption and complaint investigating officers that implement anti-trafficking initiatives. Independent accounts rate BOESL and its activities highly and indicate that it does indeed offer a 'safer and (mostly) ethical' route for Bangladeshi migrant workers into overseas employment in comparison to private sector recruiters. In an effort to cut out the role of private recruiters altogether, some governments have instituted e-migrate systems whereby all steps throughout the recruitment process are logged in an electronic database and overseen by government agencies in the country of origin. Such systems are in their early stages of development and use, so it remains to be seen how helpful they will be in mitigating corruption and abuse in the recruitment process.

Findings from a 2015 ILO study on BLAs and MoUs showed that many, but not all, include an explicit reference to recruitment.[xxiii] Where they do refer to recruitment, agreements tend to stipulate:

- That recruiters should be licensed;
- What recruitment fees can, and cannot, be charged to workers;
- That employers should pay the cost of recruitment; and/or
- What recruitment processes should be followed.

Since 2000, there has been a proliferation of bilateral MoUs on labour migration and recruitment in Asia. Nepal, Bangladesh and the Philippines, in particular, have been active in formalizing agreements with destination countries, with emphasis placed on agreements where migrant domestic workers are recruited and perceived to require additional protection. For instance, the Philippines (2013), Indonesia (2014) and Sri Lanka (2014) have all signed agreements with Saudi Arabia regarding the recruitment of domestic workers. Outside of Asia, Canada's longstanding Seasonal Agricultural Workers Program, which was introduced in the 1960s, is governed by MOUs between Canada and participating foreign governments.

Philippines' agreements with Canadian provinces

The Philippines has signed agreements with Canadian provinces, including Alberta, British Columbia, Manitoba and Saskatchewan under the Temporary Foreign Worker Programme. The agreements have established a clearly defined process for recruitment which must be legally followed by all involved parties, including private recruiters. These agreements stipulate that the cost of hiring workers from the Philippines must be paid for by the employers in Canada. Employers must seek permission from their domestic Employment and Immigration Departments to recruit from abroad. Once this is undertaken, the Canadian Departments inform the Philippines Department of Labour and Employment, which alerts licensed recruiters in the country to job opportunities in Canada. Only then are Canadian authorities supplied with a list of Philippines licensed recruiters which have permission to recruit for the program.

Nepal-Malaysia MoU (2018)

In October 2018, Nepal's Labour Minister and Malaysia's Minister for Human Resources signed a new MoU with Malaysia. This stipulates that the Malaysian employer is responsible for paying for the airfare, visa fee, medical check-up, and security screening. Any monies which workers have paid up-front for medical check-ups and screening will be refunded within one month of their job starting in Malaysia. The agreement came about as a result of increased media coverage of abuse of Nepali workers in Malaysia, including high fees charged, and direct advocacy by civil society. The Nepal government stopped processing work permits to Malaysia-bound Nepali workers in May 2018 in response to the high fees charged by companies subcontracted by the Malaysian government to process visas. As yet, Nepal is not yet fully processing work permits for Malaysia. A technical joint working group comprising officials from Nepal and Malaysia will work towards effective implementation and dissemination of the agreement.

In attempts to overcome the unequal power relations between origin and destination states in addressing fair migration and recruitment, international organisations have increasingly supported multilateral approaches. A major example of this includes the Colombo Process, which has a Secretariat supported by IOM.

The Colombo Process Thematic Working Group on Fostering Ethical Recruitment

The Regional Consultative Process on Overseas Employment and Contractual Labour for Countries of Origin in Asia (the Colombo Process) aims to provide a forum for Asian origin countries to share experiences, lessons learned and best practices on overseas employment, consult on relevant issues and propose practical solutions, and optimize development benefits. Participating countries include: Afghanistan, Bangladesh, Cambodia, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Viet Nam. The Colombo Process addresses eight thematic areas, including a thematic working group on "Fostering Ethical Recruitment". Supported by IOM with funding from the Swiss Agency for Development and Cooperation, the Working Group has held three regional symposiums on promoting regulatory harmonisation of recruitment intermediaries in the Colombo Process Member States. Current priorities of this group include addressing how to formalise informal agents currently outside licensing arrangements (sub-agents), introducing ratings of licence-holders to encourage compliance, transparency of recruitment fees and international recruitment processes, building capacity of license-holders in ethical recruitment, facilitating bilateral dialogue between recruitment associations in origin countries with employers' associations in destination countries, and

Challenges with bilateral agreements and MoUs

Bilateral agreements have challenges associated with them. Firstly, not all agreements contain specific provisions on recruitment. Where agreements include a clause prohibiting recruitment fees to be charged to workers, or requiring employers to pay the costs of recruitment, fees and costs are rarely defined. Secondly, the majority of agreements that do contain recruitment provisions are non-binding MoUs. These lack formal review and enforcement mechanisms. Thirdly, many agreements come about at the instigation of origin countries concerned to protect their nationals. Unequal power relations between origin and destination countries often mean that it is difficult for governments of the former countries to enforce their stipulated provisions.

Questions for discussion

1. Does your country currently have bilateral labour agreements or MoUs in place which include provisions for recruitment?
2. How should such agreements' implementation be reviewed?
3. Are there any complementary measures which could be taken to complement bilateral agreements and MoUs?
4. Should more time be invested in exploring the potential for G2G agreements which utilise public employment services?

8. MULTI-STAKEHOLDER APPROACHES

Multi-stakeholder approaches can be an effective tool to tackle recruitment abuses. At the national level, civil society and trade unions assist regulators in understanding where illegal recruitment behaviour is happening, where increased enforcement is required, as well as mount cases and lobby for legislative and policy changes.

Approaches to Multi-Stakeholder Involvement in Regulation

Increasingly, multi-stakeholder approaches are being developed at local, national and international levels. Civil society organisations can provide facilities and websites for migrants to lodge official complaints, and to support them through the process. For instance, Migrant Resource Centres (many supported by IOM) enable migrant workers to register official complaints, as well as to gather advice and access counselling. For regulators, increasing the numbers of migrants making official complaints increases understanding and knowledge about who and where illegal actors are. Engaging with civil society can inform future enforcement action and policy improvements.

Justice without Borders (JWB) (Indonesia, Philippines, Singapore, Hong Kong)

JWB bridges the gap in international justice through developing civil litigation in the host jurisdictions of Hong Kong and Singapore, where the rule of law is strong. Their target 'home' countries, Indonesia and the Philippines, have strong civil society organisations and legal aid that can support host country lawyers in collecting evidence and maintaining client contact. They are developing working partnerships among law firms, caseworkers, community organisations, government agencies, and migrant workers across the four countries. JWB is constantly innovating strategies, including with government agencies, to help migrant workers make effective civil claims. Innovations include opening up the courts in Hong Kong to video link from the Philippines so that victims could provide evidence. They also include using Singapore's and Hong Kong's personal data privacy laws to recover copies of contracts and other paperwork which can be used to generate an evidence trail and hence take action against recruiters or employers which break the law.

Increasingly, collaborating with the private sector, employers as well as the recruitment industry, is viewed as a useful innovation in tackling abusive international recruitment. International organisations such as IOM and ILO, as well as civil society networks like Migrant Forum in Asia, have partnered with private sector initiatives, including the Leadership Group for Responsible Recruitment.[xxvi] At the same time, international organisations have developed bilateral and global initiatives which have included companies in their activities.

Promoting Ethical Recruitment: Kenya to Qatar and UAE

During the last two years a number of organisations have worked together to examine the challenges and opportunities for establishing the 'safe and fair' supply and demand of ethical recruitment from Kenya to Qatar. This innovative work is led by the US-based non-profit Verité and IOM Kenya with support from the US Department of State's Bureau of Democracy, Human Rights, and Labor. One notable outcome has been the creation of ASMAK: the Association of Skilled Migrant Agencies of Kenya. ASMAK comprises recruiters which have publicly committed to ethical recruitment. Among other activities, Verité and IOM Kenya, in collaboration with the Fair Hiring Initiative, have also developed training programmes to raise awareness of new legislation and bilateral agreements protecting Kenyan workers in Gulf Cooperation Council (GCC) states.

In 2015, the ILO launched a global Fair Recruitment Initiative to prevent human trafficking and forced labour, protect the rights of workers, including migrant workers, from abusive and fraudulent recruitment and amplify the development potential of migration. This initiative is implemented in close collaboration with governments, employers' and workers' organizations, the private sector and other key partners. At a global level, a new online platform developed and maintained by the International Trade Union Confederation (ITUC) – Migrant Recruitment Advisor – was launched to allow migrants to rate labour recruiters and link those who face abuses to response systems. Migrant workers from the Philippines, Nepal, Malaysia and Indonesia have been rating their recruitment experience to provide useful guidance to other prospective labour migrants. Partners have also developed an ethical recruitment pilot from Nepal into the garment sector in Jordan, supported by a government-to-government agreement.

As noted in the introduction, in 2017 IOM established the International Recruitment Integrity System (IRIS). IRIS is a global initiative that is designed to promote ethical international recruitment, supported by a multi-stakeholder partnership comprising regulatory authorities, international business associations, global brands and civil society, including the labour movement, business and human rights organisations and migrants rights advocates. IRIS has defined a benchmark for ethical recruitment (the IRIS Standard), which forms the bedrock of a voluntary certification scheme for ethical labour recruiters, supported by robust due diligence, monitoring and grievance procedures.

Pilot-testing IRIS Standards

The IRIS Standard has been pilot tested to ensure it is fit for purpose in different geographical, jurisdictional and sectoral contexts. This has occurred in the context of broader labour supply chain mapping with companies interested to learn more about how workers are recruited into their supply chains. In partnership with Social Accountability Accreditation Services, IOM has tested the applicability of all components of the certification system, including in the Philippines and Nepal in 2018, with further activities planned for 2019. IRIS is being rolled out gradually, including through pilot projects like the one in the Philippines and the two Canadian provinces of Alberta and Saskatchewan, where IRIS has recently launched its first government to government pilot project. One aspect of IRIS roll-out focuses on assisting committed recruiters with building their capacity to meet the requirements of the IRIS Standard. This is followed by an IRIS

certification. During roll out, IRIS collaborates with other multi-stakeholder and private sector initiatives promoting ethical recruitment.

Questions for discussion

1. What is the best way to further encourage multi-stakeholder approaches in labour recruitment and ensure genuine collaboration between regulatory authorities including inspectorates, trade unions, the private sector and civil society?

2. What barriers exist to effective multi-stakeholder initiatives?

3. Should regulatory authorities have a broader education and advocacy remit to challenge abusive and illegal labour recruitment?

9. TRANSPARENCY (DUE DILIGENCE) & PUBLIC PROCUREMENT REGULATION

In addition to legislation which tackles the recruitment industry, states have begun to (indirectly) take action on the liability of corporate and public bodies to tackle abuses for which they can be considered indirectly responsible. In 2011, the UN Human Right Council adopted the Guiding Principles on Business and Human Rights (UNGPs). The UNGPs make clear that every state has the duty to protect people against abuses of their human rights by companies or other business actors.

Firstly, national due diligence legislation requires companies which are headquartered in their territories to conduct and report on human rights due diligence in their international supply chains. Legislation includes: the US (California Transparency in Supply Chains, 2010), the UK (Modern Slavery Act 2015), France (Duty of Vigilance Law (2017), and Australia (Modern Slavery Act, 2019). Regulation is targeted at addressing forced labour and human trafficking rather than specifically recruitment. However, as recruitment has increasingly been viewed as a significant risk factor for forced labour, it is generally considered as being indirectly covered by the legislation. The regulation offers opportunities to civil and criminal claims against companies which do not take action against fraudulent and abusive recruitment within their extensive supply chains.

Secondly, the global drive towards transparency regulation has been matched by a movement towards increasing due diligence in the international procurement practices of public bodies. The purchase of goods and services by the public sector (public procurement) is a major component of the overall economy with consequences for human rights. Governments are implicated in human rights abuses via their supply chains, in sectors including electronics, apparel, healthcare, infrastructure and agriculture. A key element of the

UNGP is that public authorities must ensure human rights are respected when they enter commercial transactions with businesses, which includes public procurement and "contracting out" of public services.

In the US, the Federal government has modified its procurement processes in recent years to impose obligations on contractors in relation to human trafficking and slavery. Executive Order 13267 on Strengthening Protections Against Trafficking in Persons in Federal Contracts prohibits federal contractors from engaging in practices that relate to or may lead to human trafficking. In 2013 the National Defence Authorization Act included similar provisions, allowing government agencies to terminate any contract or grant with any organization individual that engages in human trafficking, forced labour, or in "acts that directly support or advance trafficking in persons", such as confiscating identity documents or charging unreasonable recruitment fees. Globally, however, as yet, government action to prevent human rights abuses in public procurement, are lacking in most countries.[xxvii]

Federal Acquisition Regulation (FAR) Rules, 2015 (Amendment)

The 2015 amendments to the Federal Acquisition Regulation in the US strengthened protections against human trafficking in relation to US Government contracts. In addition to the existing prohibitions against severe forms of human trafficking, procurement of commercial sex acts and the use of forced labour in the performance of government contracts, the new FAR Rules prohibit federal contractors, subcontractors and their employees and agents from engaging in the following activities:

- Using misleading or fraudulent recruitment practices during the recruitment of employees or offering of employment;
- Using recruiters that do not comply with local labour laws of the country in which the recruiting takes place;
- Charging employees recruitment fees.

Questions for discussion:

1. Has any due diligence (transparency in supply chains) regulation been introduced in your state? If so, does this include any clauses specifically targeting abusive recruitment or any which could be used to establish corporate liability on recruitment?

2. Have mandatory human rights due diligence in public procurement been introduced in your state? If so, does this include any clauses on recruitment?

3. Are there any other relevant policies and regulation, for instance, anti-money laundering, anti-corruption or anti-bribery regulations which could be used to help inspectorates better regulate the international recruitment industry?

10. CONCLUSION

This paper has laid out both the substantial diversity in approaches towards state regulation and inspection of international recruitment, as well as the scale of the challenges facing the sector and all those involved in it. Through bringing together the key issues in this format we have highlighted the urgent need for a global gathering of this kind. We hope the paper provides useful background and key information to inspire a fruitful and wide-ranging discussion during the conference. We also anticipate that this conference is only our first collective step. We envisage that this first global conference will be mirrored by a roll out of similar dialogues at regional and national levels to encourage better regulation of recruiters and protections of migrant workers. To this end, we will produce an 'outcomes' paper following the event.

ANNEX 1: INTERNATIONAL STANDARDS ON RECRUITMENT

The main international standards which relate to recruitment or which include important clauses relating to recruitment, are:

- C181 Private Employment Agencies (1997)
- C188 Work in Fishing (2007)
- C189 Domestic Work (2011)
- Protocol to the Forced Labour Convention,1930 (2014).

Two of the above are sector-specific, while the first is specifically targeted at recruitment, including employment agencies. The Protocol requires states to develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour. This includes protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process. The Council of Europe supported the development of the Protocol and the process of EU Member States ratifying it.

In addition, the UN ('Palermo') Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) defines trafficking as the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, 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 having control over another person, for the purpose of exploitation." The Protocol does not mention corporate liability for recruitment abuses nor for complicity in supply chains specifically. However, the intention is clearly to criminalise any activity which promotes or aids trafficking, including through recruitment, in any form whatsoever. The Protocol includes requirements for states to raise awareness of trafficking as well as an obligation to criminalise anyone acting as an "accomplice" to any trafficking offence.

In Europe, the Council of Europe Convention on Action against Trafficking in Human Beings builds on the Palermo Protocol and seeks to strengthen the protections that it provides. It requires that each party to the Convention ensures that any legal person (including a company) can be held liable for a criminal offence that is committed for its benefit by a natural person. The natural person can either be acting individually or as part of an organisation of the legal person, if they are able to exercise control over the company. The Convention requires states to ensure that a company which benefits from human trafficking committed by a person of authority within that company commits a criminal offence.

As recruitment is a form of employment intermediation, other relevant international labour standards regarding freedom of association, collective bargaining, equal remuneration, discrimination, labour inspection also apply. Where migrant workers are recruited, the migration standards (Migration for Employment Convention, 1949; Migrant Workers

Supplementary Convention, 1975) also apply. To assist states in implementing fair recruitment standards, the ILO developed the General Principles and Operational Guidelines for Fair Recruitment. This resource incorporates all the relevant international labour standards as well as the main operational guidance relating to fair recruitment.

REFERENCES

[i] The Institute for Human Rights & Business (IHRB) in collaboration with the Consumer Goods Forum have previously convened global events on recruitment and the private sector.

[ii] *The Migrant Recruitment Industry: Profitability and Unethical Business Practices in Nepal, Paraguay and Kenya.* K Jones et al, ILO Geneva 2017. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_574484.pdf

[iii] See for example: The Migrant Recruitment Industry: Profitability and Unethical Business Practices in Nepal, Paraguay and Kenya. K Jones et al, ILO Geneva 2017. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_574484.pdf; IHRB research on recruitment fees https://www.ihrb.org/focus-areas/migrant-workers/briefing-recruitment-fees/

[iv] Legislation on foreign labour recruitment has also been proposed at the federal level but has failed to progress to law thus far. Federal Senate Bill 744 proposed creating a public registry of labour recruiters and explicitly prohibited foreign labour contractors from charging workers recruitment fees.

[v] B. Andrees, A. Nasri, P. Swiniarski (2015) *Regulating Labour Recruitment to Prevent Human Trafficking and to Foster Fair Migration: Models, challenges and opportunities*. ILO Geneva.

[vi] K Jones (2015) *Recruitment Monitoring & Migrant Welfare Assistance: What Works?* IOM Dhaka (Colombo Process).

[vii] *Recruitment Fees & Migrants' Rights Violations*. Open Working Group on Labour Migration & Recruitment. Policy Brief 1. (Migrant Forum Asia / MADE Network). Available at: http://www.madenetwork.org/sites/default/files/Policy-Brief-Recruitment-Fees-Migrants-Rights-Violations.pdf

[viii] https://www.ihrb.org/uploads/member-uploads/Migrant_Worker_Recruitment_Fees_-_The_Increasing_Debt_Burden.pdf

[ix] Endo, Isaku; Afram, Gabi G. (2011) *The Qatar-Nepal Remittance Corridor : Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process.* World Bank Study. World Bank. https://openknowledge.worldbank.org/handle/10986/2330

[x] https://www.nepalisansar.com/immigration/free-visa-free-ticket-scheme-fails-to-address-nepali-migrants-concerns/?fbclid=IwAR1AHfPSjGXuN4f6GdbbHpAoW5y3SANkF4o50Rm3dcI9ej9sby_xZB_8sHs ; http://kathmandupost.ekantipur.com/news/2017-08-10/free-visa-free-ticket-scheme-a-

[xi] See https://www.ihrb.org/focus-areas/migrant-workers/briefing-recruitment-fees https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_632651/lang--en/index.htm

[xii] S. Paleotti, E. Taylor-Nicholson, B. Sijapati, B. Farbenblum (2014) *Migrant Workers' Access to Justice at Home: Nepal*. OSF London. Available at: http://www.migrantworkerjustice.org/sites/default/files/migrant-nepal-report-english-20140610_1_0.pdf

[xiv] AF Fernando and N. Singh (2014) *Adverse Selection in Recruitment Agencies: Evidence from Sri Lankan Migration.* Available at: https://sites.tufts.edu/neudc2017/files/2017/10/paper_529.pdf

[xv] K Jones (2015) *Recruitment Monitoring & Migrant Welfare Assistance: What Works?* IOM Dhaka (Colombo Process). Available at: https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf

[xvi] B. Farbenblum, E. Taylor-Nicholson, S. Paleotti (2013) *Migrant Workers' Access to Justice at Home: Indonesia.* OSF London. Available at: http://www.migrantworkerjustice.org/sites/default/files/201310/Migrant%20Workers%20Access%20to%20Justice%20at%20Home-Indonesia-10-03-2013%20%28US%29_1.pdf S. Paleotti, E. Taylor-Nicholson, B. Sijapati, B. Farbenblum (2014) *Migrant Workers' Access to Justice at Home: Nepal.* OSF London.

[xvii] K Jones (2015) *Recruitment Monitoring & Migrant Welfare Assistance: What Works?* IOM Dhaka (Colombo Process). Available at: https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf

[xviii] K Jones (2015) *Recruitment Monitoring & Migrant Welfare Assistance: What Works?* IOM Dhaka (Colombo Process).

[xix] K Jones (2015) *Recruitment Monitoring & Migrant Welfare Assistance: What Works?* IOM Dhaka (Colombo Process).

[xx] Report of the Special Rapporteur on the Human Rights of Migrants. UN General Assembly (2018). Available: https://undocs.org/A/73/178/Rev.1?fbclid=IwAR11gyU809XlJTiLOox62CBHmVVHqdmTqlqy1G3M0xQCQE9_hL3hY2XoX20

[xxi] Farbenblum, E. Taylor-Nicholson, S. Paleotti (2013) *Migrant Workers' Access to Justice at Home: Indonesia.* OSF London. Available at: S. Paleotti, E. Taylor-Nicholson, B. Sijapati, B. Farbenblum (2014) *Migrant Workers' Access to Justice at Home: Nepal*. OSF London.

[xxii] J Gordon (2015) *Global Labour Recruitment in a Supply Chain Context*. ILO Geneva. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_377805.pdf

[xxiii] Wickramasekara, P (2015) *Bilateral Agreements & Memorandums of Agreement on*

[xxiv] https://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm
[xxv] https://iris.iom.int/iris-standard

[xxvi] https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment

[xxvii] https://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf