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Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor

ILO White Paper
Dr Ray Jureidini

Regional Office for Arab States

In collaboration with the Regional Office for Asia and the Pacific



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ILO Regional Office for Arab States
P.O.Box 11-4088 Riad El Solh 1107-2150
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Foreword

As the first step in a cycle that brings millions of Asian migrant workers to the Arab States region, the recruitment stage can determine whether a worker has a positive migration experience, with the opportunity to acquire skills and remittances; or an exploitative one, characterized by debt, bondage, and low earnings. While high-skilled migrant workers tend to fare well, it is the women and men migrants in manual labour who are most vulnerable to exploitative recruitment practices.

Private recruitment agencies in the interconnected regions of Asia and the Arab States lie at the heart of the recruitment process, acting as important and often predominant labour market mediators in a globalized process of recruiting and dispatching workers across national borders. While some are ethical and legally compliant operators, many if not most, intentionally structure agreements with employers so that low-skilled workers are forced to pay high charges for recruitment. In contrast, recruitment fees and costs of high-skilled workers tend to be paid for by employers. In addition, some recruitment agencies, employers and labour supply agencies engage in illegal practices such as contract substitution, where the (low-skilled) migrant workers are obliged to accept different and worse contract conditions on arrival in the destination country to what they had been promised before departure.

The ILO and its constituents – 187 member States along with workers’ and employers’ organizations – have identified ‘fair’ recruitment as crucial in ensuring fair migration. Subsequently, the ILO’s Governing Body decided in 2016 on the development of fair recruitment principles and guidelines through a Tripartite Technical Meeting of Experts (in September 2016). Lowering migration costs, including those during recruitment, will also feature as one of the themes of the Global Forum on Migration and Development to be held in Dhaka, Bangladesh in December 2016.

Inter-regionally, the countries of the Gulf Cooperation Council – which host more than 15 million migrant workers – and Asian countries of origin, have “resolved to work together to prevent and sanction exploitative recruitment practices that place workers at great risk and undermine their fundamental rights” (Third Ministerial Meeting of the Abu Dhabi Dialogue, November 2014). Recruitment will feature prominently again on the agenda of the upcoming Fourth Ministerial Meeting (in January 2017), and in the ILO’s quadrennial Asia and the Pacific Regional Meeting in Indonesia (December 2016). The commitment of the interrelated Arab and Asian regions to tackling flawed recruitment means that there is now real potential for radical change.

With its comprehensive analysis of core issues in the recruitment industry and innovative solutions, this paper on the “Ways forward in the recruitment of low-skilled migrant workers in the Asia-Arab States corridor” comes at an opportune time, and we hope will help to facilitate meaningful policy dialogue, reform, and ultimately, concrete change in the lives of women and men migrant workers.

Ruba Jaradat
Assistant Director-General and Regional Director
ILO Regional Office for Arab States



Tomoko Nishimoto
Assistant Director-General and Regional Director
ILO Regional Office for Asia and the Pacific



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Introduction

The large-scale migration of workers from Asia to the Arab States is increasingly facilitated by an interregional network of private recruitment agencies.^a Private recruitment agencies, when appropriately regulated at both origin and destination, play an important role in the efficient and equitable functioning of labour markets. However low-skilled^b migrant workers^c in sectors such as construction, agriculture and services (including domestic work) in the Arab States are prone to abuse by recruitment agencies, as well as placement agencies, employers and manpower outsourcing agencies.^d

Fraudulent practices at the recruitment stage can leave low-skilled workers extremely vulnerable. These practices might include debt bondage linked to payment by low-skilled migrant workers of excessive recruitment fees, costs and charges^e and deception about the nature and conditions of work, often leading to detrimental contract substitution and human trafficking for labour exploitation. A complex and opaque web of intermediaries including sub-agents and outsourcing agents facilitate visa trading and drive up recruitment charges for low-skilled migrant workers. Collusion between labour brokers at origin and destination can perpetuate these practices, through such methods as kickback payments. National laws and enforcement mechanisms have proven to be inadequate in preventing or responding to these crimes, and with the difficulties migrant workers face to access complaints mechanisms, unscrupulous actors can continue to profit.

Practices such as these are in breach of international standards pertaining to human and labour rights, and have been heavily criticized internationally. The excessive payments by low-skilled migrant workers and other recruitment related abuses significantly reduce the amount of money that workers are able to spend at the destination country, or remit home. In the construction sector, fraudulent practices at the project tendering stage and reliance on layers of intermediaries mean that large corporate contractors are profiting from a lack of transparency in their supply chains. These practices also lead to distortions and inefficiencies in labour market mobility and inefficient job matching.

In response to these challenges, the International Labour Organization has launched a global “Fair Recruitment Initiative” to help prevent human trafficking; protect the rights of workers,

^a “Private recruitment agency” is used as a more specific term to describe the entity that this report is mainly concerned with. This is in contrast to the ILO’s more generic use of “labour recruiter”, which includes both private and public entities; or “private employment agency”, which includes manpower outsourcing agencies.

^b The definition of low-skilled workers is based “either on the skills required for the job performed, or according to the educational level of the worker... [namely] less than upper secondary.” OECD (2008) *Management of Low Skilled Migration*, International Migration Outlook, Part II, SOPEMI 2008 Edition: 127. ‘Low-income’ (less than US\$549 per month) has also been used to characterize the same segment of the GCC workforce - see Gardner, Andrew, Pessoa, Silvia, Diop, Abdoulaye, Al-Ghanim, Kaltham, Le Trung, Kien and Harkness, Laura, “A Portrait of Low-Income Migrants in Contemporary Qatar”, *Journal of Arabian Studies* 3.1 (June 2013), pp. 1–17: 3.

^c This paper uses the term “migrant worker” in accordance with the international definition in the UN Migrant Workers Convention (1990), as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. It is nonetheless important to note that a number of Arab States prefer to use the term “temporary contract worker” or “expatriate worker”.

^d The distinction is made here between “recruitment agencies” that operate and recruit in origin countries and “placement agencies” that operate and place migrant workers with employers in destination countries.

^e For the purposes of this paper, “fees” are defined as payments to private recruitment and placement agencies, and other intermediaries for their services. “Costs” are the actual costs for recruitment processing, such as documentation, work visa and contract attestation, medical tests, insurance, transportation fees and transport costs. “Charges” are the amounts that migrant workers are charged for labour recruitment that can vary widely, but which can include fraudulent charges for kickback payments. In other words, “charges” are often far more than the fees and actual costs combined.

especially migrant workers, from abusive and fraudulent practices during the recruitment process; and reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination. This multi-stakeholder initiative is implemented in close collaboration with governments, representative employers' and workers' organizations, the private sector and other key partners. The initiative is embedded in the Fair Migration Agenda presented by the ILO Director-General to the International Labour Conference in 2014 (and endorsed by that Conference), which includes fair recruitment as one of its main pillars.² Under this initiative, ILO Guidelines for Fair Recruitment are currently being developed for discussion with a view to adoption at a tripartite technical meeting in September 2016. These guidelines are envisaged to include a clarification that 'fair' recruitment means 'recruitment carried out within the law and with respect for human rights, without discrimination and protecting workers from abusive situations'.^f

Within the Asia-Arab States corridor, the ILO Regional Office for Arab States (ROAS) and the ILO Regional Office for Asia and the Pacific (ROAP) have collaborated with constituents to promote fair migration during several forums. This white paper serves to further stimulate policy dialogue for fair migration in the interlinked Asia-Arab States region. It outlines – in Section 1 – the main challenges to fair recruitment in the Asia-Arab States corridor, and proposes concrete measures for reform (in Section 2). Reform will require harmonizing legislation, accreditation and monitoring between countries of origin and destination, as well as significant cooperation with the private sector for the review of business practices by corporate contractors and employers of domestic workers.

^f Recruitment is usually the first act in establishing an employment relationship. The ILO's recruitment guidelines are likely to cover the selection, transport, placement into employment and return to the home country of workers if needed. This includes both jobseekers and those who establish an employment relationship. The full phase of the recruitment process includes: selection, transportation, placement into employment and return if needed or wanted. It does not include conditions of work and treatment of workers, except as the recruitment process may influence this. Recruitment occurs in three main ways: a) direct recruitment of a worker by an employer; b) recruitment through labour recruiters, including both public employment services and private employment agents of different kinds, including various intermediaries and those operating inside and outside the law; c) assignment of workers by outsource manpower suppliers (private employment agencies) to user enterprises as temporary workers.

SECTION 1: Overview of recruitment challenges to be addressed

1. Worker payments to recruitment agencies

The current practice of private recruitment agencies charging low-skilled migrant workers amounts far beyond the maximum allowable by origin country governments⁸ is at the heart of fraudulent behaviour within the recruitment industry. While employers of higher-skilled migrant workers normally cover recruitment costs, lower-skilled migrant workers in construction, agriculture and services (including domestic work) pay agencies between US\$500 to \$5,000, or equivalent to between 1 to 15 months of their earnings abroad.³ This can be seen as status or class discrimination, based upon skill-level, education and training and is the exploitation of the vulnerability (and desperation) of the much larger supply of poor, low educated, low-skilled migrant labour from Asian countries. The practice of low-skilled workers paying for recruitment services has been the norm for decades, which has had a deep intergenerational impact that will be discussed further below as a ‘culture’ of payment expectations. Although not addressed here, evidence shows that low-skilled workers still pay when recruitment is through social and familial networks.⁴ Preliminary results from the International Organization for Migration (IOM) (2016) study of recruitment between United Arab Emirates (UAE) and Nepal; and UAE and India (Kerala) suggested increasing preference by smaller companies to recruit through family and friends who act as ‘referees’ for the candidates, but who still pay them as intermediaries.⁵

It is important to understand why so much money is taken from migrant workers. First, contractors and subcontractors “outsource” recruitment costs to private recruitment agencies in origin countries as a means to circumvent local labour laws that prohibit workers paying recruitment fees.⁶ Second, employing companies save money and increase their competitiveness by not paying for recruitment costs. Third, private recruitment agencies compete internally and internationally to obtain labour supply contracts by providing kickback payments to employing company personnel and placement agencies in the destination countries. The costs of this collusion between the private recruitment agencies, employing companies and placement agencies are passed onto low-skilled workers. The remittances that migrant workers send home are thus partly offset by hundreds of millions of dollars from worker payments being sent by private recruitment agents to employers and agents in destination countries as kickback payments for labour supply contracts. A World Bank study in 2011 estimated that US\$17 to \$34 million per year was transferred from Nepal to Qatar (5 per cent of recorded remittances from Qatar to Nepal) in kickback payments to employers and placement agencies in Qatar using the informal *hawala* system of money transfer.⁷ The same observations have been documented for India.⁸

A number of studies have shown that migrant workers take loans from moneylenders and their recruitment agencies at high interest rates (30 to 60 per cent),⁹ sell family assets, and use their savings in order to pay the charges for recruitment.¹⁰ Worker payments are also a vital element in the control over the low-skilled labour force that can facilitate other forms of exploitation, such as long hours without overtime pay, non-payment of wages or wages less than stipulated in the contract. Some, who are trapped in a position of ‘indebted labour’ or ‘debt bondage’, are often forced to accept lower wages and poorer conditions than they had been promised.¹¹ Wage

⁸ Regulations that allow private recruitment agencies to charge workers breach international labour standards, i.e. ILO Private Employment Agencies Convention, 1997 (No. 181).

deductions by employers to pay for recruitment costs are also a common and invisible form of exploitation, particularly with migrant domestic workers. This vulnerability is exacerbated by a lack of adequate and safe complaints mechanisms, as well as the absence of workers' organizations and pro bono legal clinics to represent workers.¹²

Despite local labour laws in Qatar,¹³ the Kingdom of Saudi Arabia¹⁴ and the UAE¹⁵ that prohibit charging fees to workers,¹⁶ these laws have sometimes been interpreted by employers and recruitment agencies as a prohibition of the deduction of wages for recruitment fees in the *destination country*. Thus, the fees are taken prior to departure in the origin countries. The exception is the UAE, where the law includes the prohibition of accepting or demanding payment from workers "whether before or after recruitment" (Article 18 of UAE Labour Law No. 8, 1980). ILO Convention 181 (Article 7) stipulates clearly that workers should not pay recruitment fees or costs - anywhere.¹⁷ It should be the combined responsibility of both origin and destination country governments, agencies and employers to ensure this principle is complied with. Some analysts make reference to the actual amounts paid as "excessive fees".¹⁸ Some have referred to worker payments as a 'bribe' for the job,¹⁹ but it is more appropriate to view it as 'extortion' that has become an acceptable institutionalized business norm in the labour recruitment industry.

Employers at destination are obliged to pay certain recruitment costs, such as the work visa and costs associated with obtaining the residency permit and are thus seen to be operating within the law. The kickback payments by recruitment agencies may be wholly or partly a reimbursement of these costs that go to the employing company, but they are more likely to just go into the pockets of particular individuals. Further, where employers pay all recruitment fees and costs without requiring kickback payments or reimbursement, private recruitment agencies can still charge workers because workers expect to pay. Thus, the agency can profit from both the employer and the migrant worker, taking from both sides.²⁰

There is also a control factor. Employers are well aware that if they are not paying recruitment costs, their employees are paying them. They are also well aware that their employees are trapped in debt and unable to leave if they are in poor working or living conditions, or if they are receiving a salary less than they were promised.²¹

A recruitment agency may be selected on the assumption that not only will the workers pay high recruitment charges, but also the payments will be sufficient to pay off personnel at the employing company.²² The migrant workers are generally not given receipts for the amounts of money they pay recruitment agencies,²³ so the transactions are opaque, even though the practice is well-known by all stakeholders. Worker payments are also used by some private recruitment agencies to pay various local officials in origin and destination countries to process paperwork more quickly or to prevent deliberate delays.²⁴ There is little or no oversight of such fraudulent practices by origin or destination country governments. It is often accepted as merely a function of 'free' market forces of supply and demand that cannot, or should not, be interfered with.

Indirect payments can also be made by colluding with employers to illegally deduct recruitment fees and costs from workers' wages over a period of time that can last for over a year or for the term of the employment contract. There has been little government regulation over these practices because the monitoring and inspection of pay-slips may be beyond the scope of destination country governments. Electronic bank transfers that automatically

reconcile payments with contracts and include overtime pay and deductions may be an efficient means of surveillance, but need consistent monitoring.

Assuming that the total number of foreign nationals in the GCC workforce is around 13 million and 80 per cent²⁵ (around 10 million) are from Asian countries where workers pay private recruitment agencies; and assuming each worker pays an average of US\$1,000 over and above the actual costs,²⁶ we can conclude that unauthorized cash transactions have potentially amounted to around US\$10 billion over the past decade or so, and continues on a daily basis. Thus, fraudulent charges by private recruitment agencies feed a multi-billion dollar recruitment industry, largely paid for by its low-skilled foreign workforce.²⁷ Recruitment of low-skilled migrant workers thus take place not solely on the basis of qualifications, skill and experience, but also on the basis of who is willing and able to pay. This skews the labour market in terms of proper skill-job matching as well as impacting on the development potential of migration.

2. Project tendering – the beginning of labour demand

Any analysis of the problems in recruitment should begin at the point where labour demand in the destination countries begins. In the case of construction, this is when a building/engineering project has been decided upon and a budget drawn up. Competitive tendering for capital projects lacks adequate transparency in relation to labour recruitment and recruitment costs, as these costs are only aggregated at the end of the commercial evaluation phase of tenders, where the lowest bid is most likely to be awarded the contract. Cost-cutting measures by tendering contractors often include non-payment of recruitment costs, relying on workers themselves to pay those costs in order to maximize the contractors' competitiveness in the bidding process. The same applies to subcontractors that are a fundamental but indirect part of the tendering process. The financial and time pressures on contractors and subcontractors are major factors in seeking such cost-cutting measures. There is a responsibility to maintain a transparent oversight of procurement and facilities management departments in the awarding of building/engineering projects and any other projects that call for competitive tenders. This responsibility extends from government to government instrumentalities, contractors and subcontractors throughout the supply chain.

The practice of contractors and subcontractors not paying recruitment costs is facilitated by two factors: first, the thousands of private recruitment agencies in origin countries competing with one another for business in supplying labour to the Arab States; and second, the almost infinite supply of poorly paid or unemployed workers in Asian countries who are willing or forced to pay for their recruitment.

3. Manpower outsourcing agencies^h

Manpower, or labour outsourcing firms are the direct employers of migrant workers and act as third party intermediaries between origin country recruitment agencies and contractors in the destination country. They are responsible for recruitment, negotiation of employment contracts, payment of wages, housing, food and insurance. As an alternative to direct hire,

^h Sometimes referred to as a "labour supply agencies", "manpower labour suppliers", "temporary work agencies", "private employment agencies", "staffing agencies" or "staffing companies." See Gordon, Jennifer (2015) *Global Labour Recruitment in a Supply Chain Context*, ILO, Geneva. "Manpower outsourcing agency" is used here because it is more commonly used and understood in construction and other industry sectors in the region.

contractors in the construction industry use outsource labour suppliers mainly for ad hoc, temporary and short-term needs, but may also be engaged long term. Destination country governments determine who is issued a license to operate. Some firms do not identify themselves as manpower outsource agencies, but register as contractors or traders, obtain visas (which may include ‘free visas’ discussed below) and ‘warehouse’ the migrant workers in labour camps or other accommodation sites, until jobs can be found.

Workers are then hired out to other companies, typically in construction but also in services such as cleaning (companies and households) and security guards. The manpower outsource firm charges contractors for the labour hire, but the former pays the wages of the worker. Thus, workers from an outsource supplier are typically not included by contractors (or subcontractors) in headcounts because they are not on their payroll but employed indirectly from a third party broker.²⁸ The process can act as a ‘corporate veil’ where the contractor does not formally acknowledge outsourced workers at their work sites nor check whether they may be victims of trafficking or other forms of exploitation, or living in substandard conditions.²⁹

The practice of outsourcing is a high-risk element in global supply chains because of the lack of transparency. The involvement of multiple intermediaries should be viewed as a “red flag” warranting investigation and monitoring. Reports of fraudulent practices by outsource manpower supply companies include withholding of passports, low wages, non-payment of wages, poor accommodation and lack of work, during which time workers may not get paid.³⁰

4. Contract substitution

While corrective measures are being undertaken in some GCC countries, contract substitution is common. With the lack of central regulation and document monitoring from recruitment to arrival in the destination country, it is very easy for contract substitution to take place. This is made possible because workers are not in a position to complain or refuse a contract due to the recruitment debts they have incurred. Electronic registering and monitoring of contracts and actual wage payments can assist in overcoming this problem without requiring migrant workers to initiate a formal complaint, as they are often not in a position to do so. In the UAE the letter of job offer, given to workers before departure, is now to be signed and filed with the UAE Ministry of Human Resources and Emiratization prior to issuing of the work permit. The UAE government advises workers that the signed contract must match the job offer and this is checked upon arrival. Requiring employers to pay wages into bank accounts offers a further measure for oversight (for example, by reconciling payments with original contracts). The extent to which the Arab States’ authorities are able to perform electronic audits that reveal contract substitution is not yet clear. For example, there must be a mechanism whereby migrant workers can report irregularities in their electronic payments that differ from their contracts.

5. Trading of ‘free visas’

‘Free visas’ are not free in the monetary sense, but free of an employer or job. The sponsor named on the visa does not actually employ the worker. Sometimes, fake companies are registered simply to obtain and sell free visas.³¹ This is a practice that is illegal in most Arab States, which places the worker in a precarious legal situation. Most Arab states have sought to stop visa trading and penalise those involved. From the perspective of recruitment, the trading of ‘free visas’ is a major source of irregularity, mainly by small and medium-sized companies.

Although free visas are well known in the labour origin countries, the critical question is whether the migrant worker knows there is no actual job before departure. Irregular workers under these circumstances may or may not be victims of deception, fraud and possibly trafficking.

It has been estimated that up to 15 per cent of the workforce in the GCC states have in the past entered on free visas, amounting to hundreds of thousands of irregular workers.³² The scale of this problem is difficult to quantify, particularly when there are regular crackdowns that result in deportation as well as amnesties to regularize papers or allow irregular workers to return home without penalties. These measures indicate a concern by destination countries to address the problem, but greater transparency of the data for analysis would be welcomed.³³ In this local underground labour market, unscrupulous sponsors not only receive an income from the sale of the visa itself, but the migrant worker has continuing value in the event he or she obtains employment by further charging the worker for a no objection certificate (NOC) to change sponsors/employers, return a passport or return home. Workers are willing to pay these costs to get the work they need and to ensure regularization of their papers.

6. Migrant domestic workers

Migrant domestic workers in the Arab States work as cleaners, carers of children and the aged, cooks, gardeners, house security guards, drivers and others who are employed to work in a household for the benefit of their employer/sponsor and his/her family. With an estimated total of 3.16 million migrant domestic workers in the Arab region in 2013, just over half (50.6 per cent; 1.6 million) are women.³⁴ Far more attention in recent years has been given to female domestic workers. Domestic workers' particular vulnerabilities and invisibility from public view has resulted in an ILO Convention for domestic workers.³⁵ However, most Arab States exclude domestic work from the protection of the labour law and domestic worker regulation falls under the mandate of interior ministries rather than labour ministries.

In the domestic work sector, agencies have a vested financial interest in preventing workers from 'absconding' during their probation period, and may encourage employer practices such as delayed payment of wages and passport confiscation.

Most female migrant domestic workers in the Arab States are recruited from Indonesia, Bangladesh, Sri Lanka, India, Nepal, the Philippines and Ethiopia. Due to the many complaints and violations of domestic workers' rights, some countries have issued bans against their deployment to Arab States.³⁶ Most of these bans were lifted after one or two years and some almost immediately. In the case of the Philippines, for example, the lifting of the ban occurred after a 'household reform package' was introduced that included increases in age limits, higher wages, upgraded training and no payment of fees.³⁷ Age limits have also been legislated,³⁸ and Sri Lanka banned women with children below the age of two from travelling abroad for work.³⁹ The age and child limitations have faced criticism from women's organizations including UN Women as constituting gender, age, marital and maternity discrimination.⁴⁰ Arab States have also enforced restrictions on women's migration. For example in 2011, the Kingdom of Saudi Arabia stopped issuing visas for domestic workers from the Philippines and Indonesia because they could not agree on terms of wages and conditions. Agreements were eventually signed with the Philippines in 2013 and Indonesia in 2014.⁴¹

Historically, such bans and limitations have not prevented people from migrating abroad for work. Workers will find irregular means to leave, rendering them even more vulnerable to human trafficking and forced labour. A recent ILO study found that Nepalese women simply travelled to India or Bangladesh and were deployed from there.⁴² Those who are underage commonly obtain false birth certificates.⁴³ Women migrants are particularly vulnerable to being forced into the sex trade.

Origin country governments have done much to try and specifically address the recruitment of migrant domestic workers, such as requiring the workers to have agencies in both origin and destination countries as third party points of contact. Most have also banned recruitment agencies from charging migrant domestic workers although some are surreptitiously charged and others have wages withheld or deducted.⁴⁴ Destination country governments such as Jordan (2015) and Kuwait (2015) have made some (limited) legislative efforts to recognize and improve the rights of migrant domestic workers, and domestic worker-specific bilateral recruitment agreements have been developed. Bahrain's labour law does cover domestic workers in a limited number of articles, covering contracts, termination, payment of wages, annual leave and individual labour disputes. It is sometimes argued that the cultural constraints of gender-based attitudes and beliefs in Arab States make reform for migrant domestic workers difficult. However, gender-based exceptionalism cannot be acceptable if it is discriminatory and contrary to international standards.

While this section focussed on the key challenges experienced by migrant workers, the following section offers ways forward to address some of these issues.

SECTION 2: Ways forward to address recruitment challenges

ILO Conventions recognize the legitimacy of private recruitment agencies, but also note that it is essential to carefully regulate their establishment and operations and hold them accountable for non-compliance and criminal actions.⁴⁵ This is necessary not just to punish wrongdoing, but to prevent abuses and protect workers.⁴⁶ More effective measures are required to ensure adherence to the rule of law and effective enforcement as a deterrent against abuse by recruiters. Changing the mindsets of migrant workers, employers and recruitment agencies to compliant, fair and ethical recruitment where workers do not pay for their recruitment is crucial. The fundamental tenet of the ILO Private Employment Agencies Convention, 1997 (No. 181) is that “...agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.”⁴⁷

Recruitment legislation and practices must comply with international labour standards⁴⁸ and must contain explicit provisions relating to the protection of migrant workers, such as stipulations on employment contracts, as well as decent working and living conditions.⁴⁹

The UN Guidelines on Business and Human Rights make it clear that governments have an obligation to protect against human rights abuses by business enterprises in their territory. The Guidelines spell out the duties of governments and businesses to protect human rights. These Guiding Principles are grounded in recognition of:

- (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- (c) the need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles are intended to apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.⁵⁰

Recruitment reforms must also benefit migrant domestic workers and take into consideration the gender dimensions of employment and recruitment.⁵¹ Although there have been reports and proposals to establish special laws or comprehensive provisions to grant protection to migrant domestic workers, none have been forthcoming, except for Jordan and Kuwait, and coverage of domestic workers under the labour law of Bahrain. These are elaborated below (Part 9).

It is important to note that references to ‘migration costs for migrant workers’, for example as referred to in the World Bank KNOMAD study on recruitment costs,⁵² are often an aggregate of actual ‘costs’ (fixed costs and variable costs, including fees for services) and extra ‘charges’ that migrant workers pay to recruitment agencies, employers or officials. Thus, migration costs refers to both the regulated cost of recruitment as well as ‘informal payments’ - referred to by some economists as ‘leakage’. As such, the large discrepancies between the amounts migrant workers pay and the regulated costs may be explained by fraudulent kickback

payments to employer personnel, placement agencies or outsourcing firms at destination, as well as officials.

What follows are suggested ways forward to improve migrant worker recruitment practices:

1. Employer-only payments to recruitment agencies

Labour origin country governments should repeal legislation that currently allows recruitment agents to charge workers for recruitment. Destination country governments should set recruitment fees and costs and mandate that no visas will be issued to workers who are required to pay anything for their recruitment. The onus on establishing a prohibition of worker payments does not just apply to the origin countries, but also (perhaps more importantly) to destination countries. Exploratory research into workers no longer paying fees and the impact on recruitment industry stakeholders should be conducted.

The requirement of worker payments to recruitment agencies has become entrenched in the expectations of potential and returnee migrant workers to Arab States. There is a culture of employing companies not paying for recruitment fees and charges⁵³ to increase their competitiveness, and a culture in the origin countries of workers expecting to pay - so much so, that offers of jobs without payment are mistrusted.⁵⁴ Only when origin country governments ban worker payments altogether, will the expectation by workers to pay for jobs change. Officially allowing workers to be charged one, two or three month's salary for service fees has led to as much as ten times this amount being charged, with no demand for accountability by regulatory bodies. A no-fee policy is far easier to implement and monitor than a ceiling on fees.⁵⁵

However, the current status quo is perceived as a winning situation for all stakeholders. The employing company reduces its costs by not paying recruitment fees and other costs, giving it an advantage in project tendering; employing company personnel get paid for issuing labour supply contracts; the intermediary recruitment and placement agencies can extort large profits from workers and employing companies; and the migrant worker sees payment as a guarantee of, or investment in, obtaining work and an income that will repay the initial cost over time.

Changing this culture is imperative: first, by repealing regulations in origin countries that allow recruitment agents to charge workers; second, a large-scale education and awareness-raising program informing prospective migrant workers paying agents for jobs in Arab States is prohibited; and third, informing employers at destination that they are required to pay recruitment costs and must ensure that their prospective employees have not paid anything. It is the employer that contracts for the services of the agency to recruit. The contractual conditions should specify that only the employer pay for the agency's fee for service and other costs.

Importantly, education and awareness-raising programs must be introduced prior to recruitment. Perhaps being made aware of how their money is spent, not just on costs of recruitment but on fraudulent activities, migrant workers may better understand reasons behind the policy and begin to trust no-cost for workers recruitment. For example, in 2016 the UAE distributed a "welcome pamphlet"⁵⁶ to all new worker airport arrivals in UAE. In this pamphlet, the Ministry of Human Resources and Emiratization explained its new labour

regulations, including a new ministerial decree on termination conditions for employers and employees.⁵⁷ It states clearly:

UAE law requires your employer to pay the costs of your recruitment and deployment. These include any fees paid to a private recruitment agency that is accredited by the government of your country, the costs of the issuance of an entry visa and travel to the UAE, and the costs of post arrival processing requirements such as medical tests in the UAE and the issuance of your residency permit.

The pamphlet urges workers in need of help to attend any Labour Office, adding, “Your Labour Office will both assist you and protect you.” The promise of protection is important as it can provide workers with the confidence to raise questions about their circumstances. Under “Important Things for You to Know” it states:

“Your employer must pay for your recruitment costs and travel to the UAE.”
“Your employer must pay for your residency permit.”
“Keep the receipts for anything you are asked to pay for.”
“Keep a copy of your signed job offer.”
“Your contract must match your job offer.”
“Keep a copy of your signed contract in a safe place.”
“You have the right to leave your job at any time but be aware of your contractual obligations.”

The UAE’s effort in establishing a program of education and support for arriving migrant workers such as this is welcome progress. However, informing workers on arrival of the employers’ duty to pay recruitment costs and the need for receipts is rather late. It would be more effective if it was distributed before recruitment, and if it was accompanied with information on remedies.⁵⁸ Once recruitment has begun and workers are committed, they are vulnerable and likely to follow whatever demands are made on them. Prospective migrant workers should not make any payments to recruitment agencies. In those cases where workers do pay, they should be informed that it is in their interests to ask for receipts for the full amount that they paid and that it is against the law not to provide these receipts.⁵⁹ Origin countries should mandate that all payments to recruiters (whether from workers or employers) should be made through bank transfer along the same lines as the wage protection systems in the GCC, for proper auditing.

The joint and several liability arrangements may overcome this by forcing recruitment agents to reimburse the workers they have received money from (see Part 7 below). The difficulty in this, as has been shown in the past, is the burden of proof of payment, for receipts are rarely given for the amounts that workers pay.⁶⁰ If any receipt is given, it will only show the maximum allowable by law.

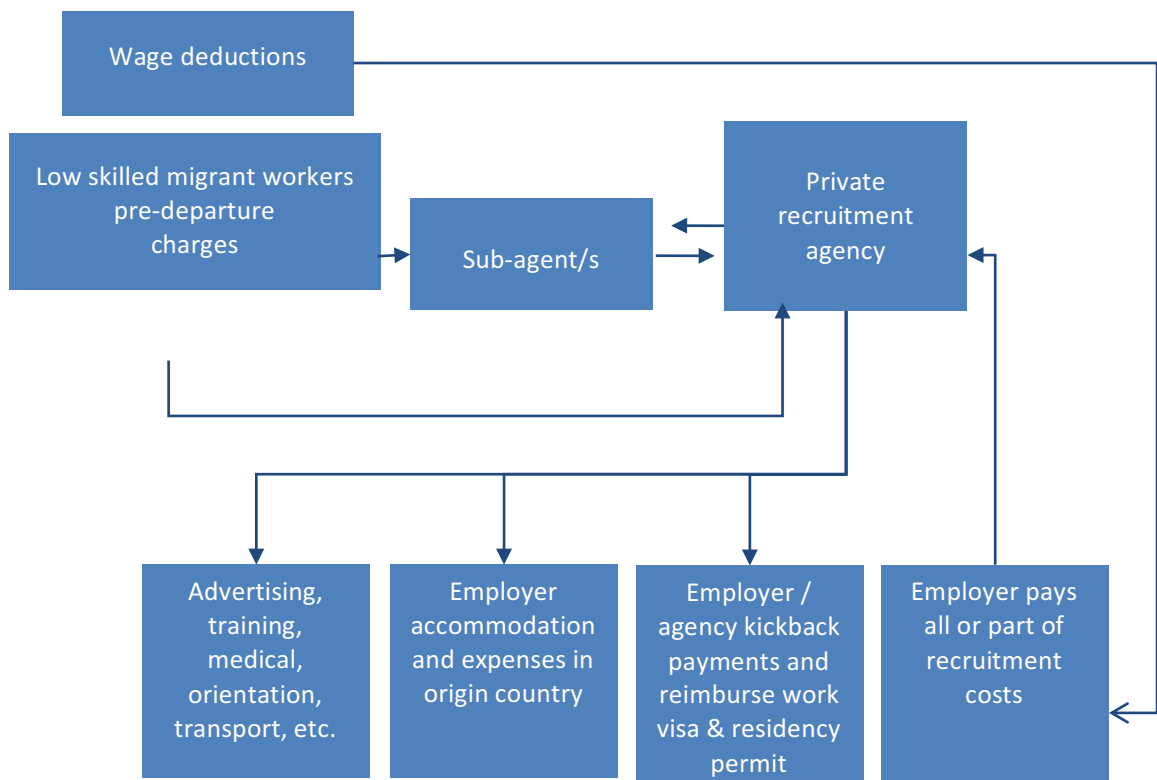
Countries of origin are losing hundreds of millions of dollars that are taken from their citizens (migrant workers) and paid to agents and employer personnel in the destination countries. If only employers paid recruitment agencies there would be a substantial financial gain for origin countries in foreign currency earnings.

Proponents of recruitment reform that advocate zero-cost for migrant workers often receive responses by employers, recruitment agencies and government officials lamenting that it is

“too difficult” to abolish the practice. It has also been argued that a ‘sudden’ banning of worker payments will drive the practice ‘underground’.⁶¹ However, given the current and past practices as described in this paper, there does not seem to be any easily enforceable maximum recruitment fees mechanism for workers because the extra charges are already underground due to the lack of receipts and accountability.

Employers and authorities in Arab countries are implicated in the debt and usury practices in the origin countries. Even if the debt is being incurred in the country of origin, it has been shown that much of it is being siphoned away on bribery and extortion by employers and agents in destination countries.⁶² Such practices are arguably contrary to Islamic finance ethics rules against charging interest (*riba*) or usury. Thus, allowing, encouraging or turning a blind eye to the usurious debt that workers accrue can also be considered contrary to religious obligations. More effective, of course, is the elimination of these recruitment payments by workers altogether, obviating the debt.⁶³

Figure 1. Example of fraudulent recruitment flow of charges



Comparisons can be made from models of high-skilled worker recruitment, where fees tend to be paid by employers and perhaps a small fee for the job seeker to register with the agency. As has been suggested, multinational agencies such as Adecco, Manpower Group and Randstad Holdings (all three with offices in Arab States) could provide large-scale recruitment services for low-skilled workers,⁶⁴ if they can be assured of compliance with fair sourcing from Asia and other origin countries. As demand for low-skilled labour remains in the Asian region, these

multinationals must rely on existing fair and ethical agencies that do not use sub-agents or they must establish their own local offices.⁶⁵

Banning worker payments will also require addressing the level of influence that private recruitment associations may have over origin country governments. The Nepal-Qatar agreement on fair and ethical recruitment has not been successful to date because of private sector pressure (see Box 1). Given they have superior bargaining power,⁶⁶ the Arab States which want to abide by the principle that workers should not pay any recruitment fees must make it clear to origin country governments, recruitment agency associations and agencies themselves that it is not acceptable. It is recommended that destination country governments set recruitment fees and costs, and mandate that no visas will be issued to workers who are required to pay anything for their recruitment. It should be specified that only employers at destination are to pay all recruitment fees and costs. In the specific cases of Qatar, UAE and the Kingdom of Saudi Arabia, it should be made clear that it is unlawful to charge workers for recruitment under the countries' labour legislation. In this sense, the onus on establishing a prohibition of worker payments does not just apply to the origin countries, but also (perhaps more importantly) to destination countries.

Establishing a “no-cost for workers” practice can be a multilateral process between the Arab States and Asian origin countries, where only employers pay. The fact that origin countries allow worker payments while destination countries do not is highly problematic. Bilateral labour agreements to promote fair migration⁶⁷ can provide specific provisions to address the gaps and contradictions in legislation between origin and destination countries.⁶⁸ Bilateral agreements are deemed to have more contractual traction than Memoranda of Understanding (MOUs) because objectives and outcomes are typically monitored and assessed and allow for more focused ongoing dialogue.⁶⁹ Such agreements or MOUs should include appropriate measures for fair and ethical recruitment, coordinating rights-based contracts with clear termination conditions as well as procedures to prevent contract substitution.⁷⁰

In cases where there is a placement agencyⁱ in the country of destination, the amount received in kickbacks by employers may be reduced because of the extra intermediary involved. In such cases, the placement agency will receive the kickback payments from the country of origin recruitment agency and pass a proportion of this to the employing company personnel. For example, from a recent interview with a placement agency in Qatar, a written quotation was provided from a Bangladesh recruitment agent offering a kickback payment, per worker, of \$1,500 for ‘helpers’ (labourers) and \$1,800 for electricians and plumbers, as well as providing five-star accommodation for their visit to Dhaka. The quotation stipulated that 40 per cent would be paid on print out of the visa and 60 per cent on arrival of the worker at destination.⁷¹

Annex I provides estimations of the actual fees and costs and compares these with the charges that migrant workers are required to pay to recruitment agencies.

The IOM has undertaken research into the business costs that agencies seek to recover, such as the costs of maintaining an office, international travel, including hospitality costs, “entertainment” and business class airfares for employer representatives.⁷² Such transactions are likely to be forms of bribery and will invariably be borne by the migrant workers. It may be argued that it is not merely a “flawed business model”, but a “fraudulent business model”. A

ⁱ A ‘recruitment agency’ is referred to as the intermediary in the labor source country, while a ‘placement agency’ resides in the destination country.

more objective model of a service fee structure for recruitment agents needs to be developed in conjunction with employers to ascertain what they are willing to pay and how agents can recover their costs with a reasonable margin of profit. Employers should be wary of agents who quote low service fees, because they will invariably charge workers to be competitive and to maintain their operations. Recruitment agents, on the other hand, should not accept to pay for employer representatives' travel and living expenses requested to undertake skills testing and selection of workers in the country of origin. Thus, it is incumbent upon all stakeholders in destination countries to identify and prevent company personnel and placement agents from taking or receiving kickback payments from private recruitment agencies in origin countries.

With increasing demand for fair and ethical recruitment which stipulates that the employer must pay for all recruitment costs, it is important to make clear that only employers are to pay for recruitment.

A significant expansion of systematic empirical research is required to generate more precise data on the differences between “fees”, “costs” and “charges” in the various corridors of labour migration from Asian origin countries to Arab States. Such studies must conduct interviews (or audits) with a large range of recruitment agencies and check the veracity of their cost quotations with government ministries and departments of origin countries that are dedicated to regulating recruitment.

2. Project tendering procurement procedures

Project tenders should include a separate detailed transparent 'Labour Recruitment Cost Analysis' within the bidding proposal that details variable and fixed costs of recruitment, including labour costs of subcontractors.

Complying with this recommendation would ensure that the intention of tenderers and their subcontractors is to pay for all recruitment fees and costs related to labour, accommodation, recruitment, and training. Labour cost details may be an intermediary step introduced between the technical and commercial evaluation phases, or along with the commercial evaluation. Clearly, labour recruitment costs should not be calculated after a tender has been awarded. If properly documented and audited, unfair recruitment can be more easily detected before the projects are awarded.

In a white paper to the US government, FSI Worldwide⁷³ argued for raising the threshold in the evaluation of contract tenders. Using a “lowest price technically acceptable” (LPTA) policy can miss and possibly facilitate trafficking violations unless there is a transparent breakdown of recruitment fees and costs within the tender where an “auditable trail should be created and inspected in relation to such payments.” The recruitment agencies to be used must also be documented within the tender and shown to be licensed, audited and accredited as fair, ethical and compliant recruitment practices that do not charge fees or costs to workers. Any contractor or subcontractor indicating in a bid that they will conduct the labour recruitment themselves should come under special scrutiny. FSI notes that “in our experience such a declaration is often used to escape the requirement to name an unscrupulous or unlicensed recruitment agent. Very few prime or sub-contractors hold licenses to recruit in source countries and nearly all will rely on agents.”⁷⁴

It may be that some contractors do not arrange subcontractors until months after the contract has been awarded. Yet contractors must practice due diligence with their subcontractors who

should go through the same tender evaluation procedures including labour cost evaluation. Typically, time and financial pressures build up, giving subcontractors more bargaining power to cut costs by forcing workers to pay recruitment fees, costs and other charges and thus the cycle of fraudulent practices continues.

“Blockchain” technology⁷⁵ that is used for transparency in product supply chains has much potential as applied to subcontracting supply chains in construction and other industries to ensure transparency and detect fraudulent activity. It may offer a solution to overcome the problems associated with multiple parties that do not trust each other, such as in fragmented supply chains.⁷⁶ The application is increasingly being tested in labour recruitment and human resource management to provide secure traceability of certification and other data.⁷⁷

Governments of Arab States should legislate tendering policy procedures that mandate transparency in migrant labour recruitment costs for both contractors and subcontractors. Lowest bids should be more carefully scrutinized to ascertain whether cost reductions are at the expense of migrant workers being recruited.

3. Fair and ethical recruitment in compliance with laws

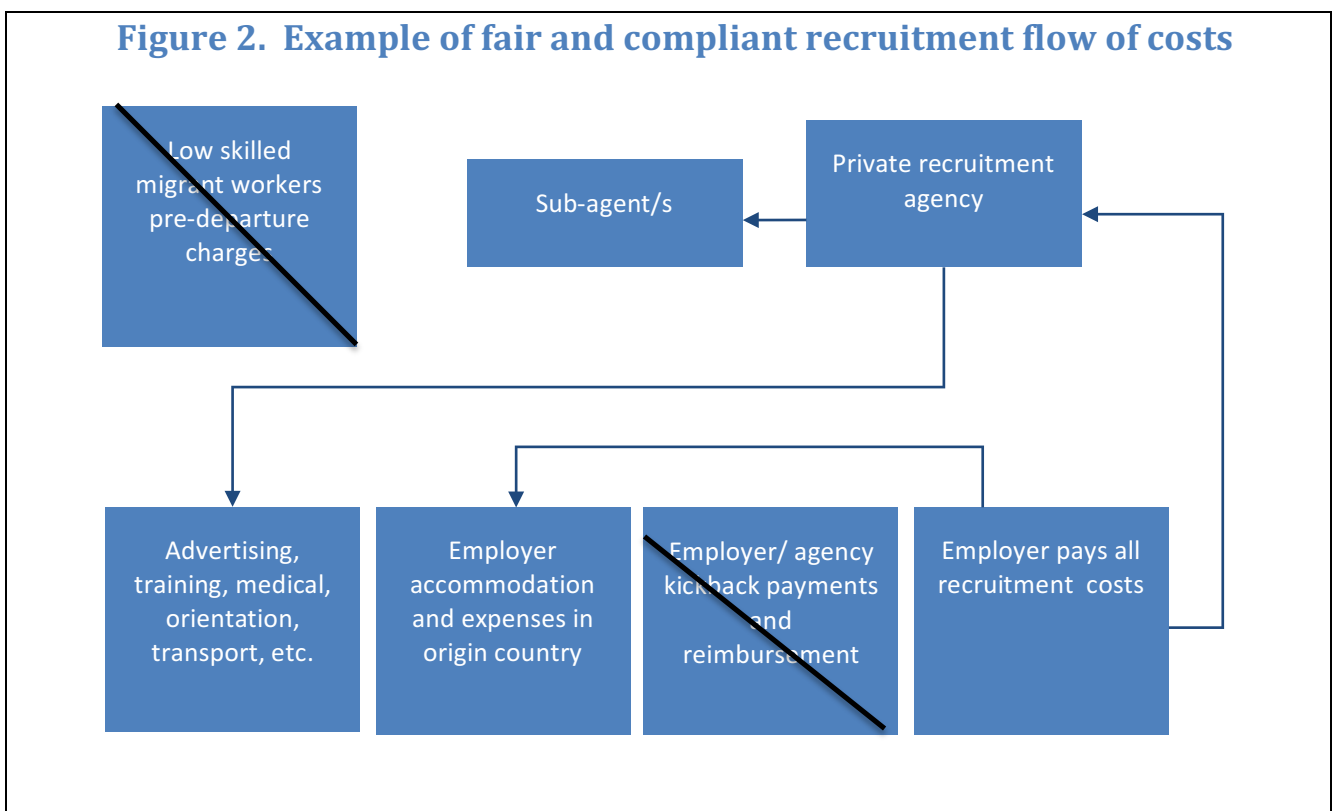
Regional coordination is required between origin and destination country governments to establish licensing and accreditation of fair and ethical recruitment agencies in origin countries as exclusive labour suppliers to Arab countries. This should also apply to placement agencies and manpower outsourcing agencies in destination countries. Multilateral cooperation is needed to establish consistent laws between origin and destination countries in a harmonization of fair recruitment regulation and enforcement.

The idea of ‘ethical’ recruitment has come to be accepted as a method of reforming the recruitment industry, particularly private recruitment and placement agencies. However, the term ‘ethical’ is often considered to be voluntary and subjective – what is acceptable business practice and what is not. In this sense, the ethical focus is upon the person instead of the process and can lead to misguided trust. The recommendation here is on the need for a multi-layered systemic approach to addressing problems in labour recruitment. It is therefore appropriate for ethical recruitment to include ‘compliance’ with laws, regulations and contractual obligations in the recruitment process. Indeed, compliance is contained within the ILO definition of ‘fair recruitment’, namely: “recruitment carried out within the law and with respect for human rights, without discrimination and protecting workers from abusive situations”. The ILO’s Fair Recruitment Initiative also provides for other actions, including: improving laws, policies and enforcement to promote fair recruitment; promoting fair business practices; and empowering and protecting workers through social dialogue.⁷⁸ Compliance requires internal controls, checks and balances, external audits, training and reporting as a minimum for any corporate compliance program.⁷⁹

However, a recruitment agency can be ‘compliant’ under national legislation that may not be in line with international standards and hence not be ‘fair/ethical’. Compliance suggests the existence of a sound legislative framework, which is not the case in many countries of origin and destination alike, particularly where national legislative frameworks and enforcement mechanisms are weak. Therefore, multilateral cooperation is needed to establish consistent laws between origin and destination countries in a harmonization of fair/ethical recruitment

regulation and enforcement – with a higher benchmark than currently exists and scope for continuous improvement.

Fair and ethical recruitment in compliance with the law is the best means by which recruitment at no charge to the worker can be trusted. A number of agencies do exist that are strictly ethical and compliant in their recruitment of labour by not charging workers and abiding by national laws and international conventions that pertain to labour rights of migrants. Large multinational companies such as Manpower, Adecco and Randstad and members of the International Confederation of Private Employment Agencies (CIETT) exist, but they mainly serve workers in higher skilled sectors. Smaller examples such as FSI Worldwide (specializing in security personnel, but expanding), the new Fair Hiring Initiative in the Philippines,⁸⁰ and the Fair Employment Agency for domestic workers in Hong Kong were established precisely to offer fair and ethical recruitment services. More common is for recruitment agencies to accept fair and ethical recruitment practices based on demand from employers. This means they may be ethical for business in one country, or with one employer, but unethical when it is not specifically required or demanded of them. It is therefore incumbent on employers to ensure they are dealing only with fair, ethical and compliant recruitment agencies and monitor their activities.



To assist in this, the development of an extensive official accreditation program for ethical recruitment agencies can be established, either on a country-by-country basis, or as a standard model for all Arab countries. Fair and ethical recruitment agencies in origin countries accredited by the destination countries can be listed as the exclusive labour suppliers to Arab States. Government authorities can either conduct these accreditation programs themselves, or authorize credible and independent authorities to do so, but this should not be seen as relieving origin countries of their obligations to regulate recruitment and protect workers.

Such programs will offer an accreditation framework for fair recruiters that require no fees for workers, no passport retention, transparency in supply chains and a complaints and referral mechanism for migrant workers. Ideally, such programs will be based on ILO guidelines on how to achieve fair recruitment.

In addition to an accreditation system, all recruitment agencies should meet standards for registration and licensing, with criteria that ensure fair recruitment and decent work at destination.⁸¹ Bangladesh, India, Indonesia, Nepal, the Philippines and Sri Lanka all require private employment agencies to obtain a licence prior to sending workers abroad.⁸² 'Good character tests'⁸³ without relying solely on police checks, as well as provision of education, training and examination on industry standards and labour law should also be a part of the licensing procedure. Some Arab States have taken steps to regulate the activities of private employment agencies with ministerial decrees in the UAE and Qatar requiring private employment agencies to acquire a license in order to carry out their operations.⁸⁴ This is critical for the recruitment of migrant domestic workers, where a corresponding placement agency in the destination country is required. However, for the majority of workers, it is imperative that both recruitment and placements agencies are licensed and accredited in both origin and destination countries, to allow for bilateral monitoring.

Origin country government accreditation⁸⁵ of fair and ethical recruitment is likely to face resistance from existing agencies, particularly private sector agencies whose primary income is derived from migrant labour recruitment and who are reliant upon the extra income from exorbitant worker payments (see experience of Nepal outlined in Box 1 below). Thus, relying upon origin country governments to introduce or mandate zero-fee recruitment may be difficult because of the collective influence of the industry. This highlights the important role of governments of destination countries in the determination of fair and ethical recruitment practices.

Destination countries through an accreditation and licensing process can mandate preferred fair and ethical labour suppliers in both origin and destination countries. For example, in February 2016, the Bahrain Labour Market Regulatory Authority publicly listed 120 approved manpower firms. However, such lists must include accredited fair and ethical companies in destination countries with links to (or branches of) fair and ethical agencies in origin countries. Such arrangements can be determined by bilateral agreements after more rigorous registration and licensing procedures.

Associations of recruitment agencies are important in the dissemination of reform of the industry. However, they are often influenced by their membership and by sub-agents to resist zero-fees policy. While associations may publicly indicate that they are taking the lead on fair and ethical recruitment, there is little evidence that action has been taken. As can be expected, there is little appetite for zero worker fee recruitment because it is so lucrative for sub-agents, private recruitment agencies and their clients in destination countries.

Box 1: Nepal-Qatar case study on recruitment charges and costs⁸⁶

In Nepal, on 6 July 2015, a ministerial directive was issued for a “free-visa free-ticket” policy for seven destinations - Malaysia, Qatar, Saudi Arabia, United Arab Emirates, Kuwait, Bahrain and Oman; pursuant to which, workers going to these countries would have the costs of their visa and ticket covered by the recruitment agency. The average one-way air ticket from Kathmandu to most GCC states at the time was around US\$360 and the cost of a work visa around US\$80. The directive included the provision that workers could pay up to a maximum of NR 10,000 (approx. US\$100) as a service fee in the event that the employer in the destination country refused to pay commission to the agency as well as NR 8,000 (approx. US\$80) to cover the cost of the welfare fund, NR 1,000 (US\$10) for the health check and NR 7,000 (US\$70) for orientation/training-related expenses.

In February 2016, Nepal Association of Foreign Employment Agencies (NAFEA) issued an ultimatum that agencies will go on strike if the provision was not reviewed. In the same month, police raided 18 recruitment agencies for overcharging, tax fraud, document fraud and adopting illegal channels for deployment of migrant workers.⁸⁷

Private recruitment agencies went on strike for 17 days. The strike ended with a 31-point agreement with the NAFEA and the Government of Nepal, including the possibility of increasing the service fee to be charged by the recruitment agency. The government of Nepal established a joint 11-member panel to review the policy, including five representatives of NAFEA. The panel visited the destination countries and found all but Malaysia were in favour of the free visa free-ticket policy. The government argued that the money sent by Nepalese recruitment agencies to ‘agents’ in the destination countries amounted to around US\$400-500 million per year. In 2014-15 around US\$113 million was transferred to brokers in Malaysia alone.

It could be argued that including a “free visa” in the Nepal free-visa free-ticket policy is potentially misleading, because the employer will have already paid for the work visa before its issue. There is no financial outlay by the recruitment agency for the work visa, so they have no right to ask the migrant worker for reimbursement. If the agency is under instructions from the employer to have the worker pay for the work visa (i.e. to reimburse the employer) it will be a clear violation of the laws in Qatar, Saudi Arabia and UAE and the employer should be liable for prosecution. Indeed, given that recruitment agencies in origin countries are given power of attorney to act on the employer’s behalf, the legal liability rests with employers in destination countries where it is unlawful to charge workers. Thus, the practice of workers being required to pay for the visa before deployment may be perceived as visa trading.

Allowing some payment by workers and the lack of effective monitoring has meant recruitment agents in Nepal are still charging workers as they did before the no-fee policy.

Fair and ethical recruitment also means avoiding the use of networks of sub-agents both inside and outside the main cities where the major agencies have their offices. Although illegal in most origin countries,⁸⁸ networks of sub-agents (*dalals*) are relied upon a great deal, but they may

deceive prospective workers and charge them fees independently. The larger the number of intermediaries the more the worker can be charged. Thus direct recruitment is preferable, but sub-agents can be brought into a licensed recruitment agency on a formal contractual basis, paying them a salary, plus commission, thus legalizing their activities.⁸⁹

The consequences for unfair and unethical practices are also critical. Given the scale of finances in the recruitment industry, if the objective is to outlaw fraudulent practices, the penalties must be severe enough to outweigh the financial benefits that can be gleaned by the illicit market for low-skilled migrant worker funds⁹⁰. Financial penalties for non-fair and ethical practice by contractors and subcontractors may not always prove effective because they can be offset over the life of the contract, particularly in the construction sector. For example, as there are usually hundreds of clauses in a contract, there are often requests for variations that are complied with but for extra costs and charges. For example, between the beginning and end of a large project, the cost may increase from US\$50 million to US\$75 million because of variation requests. Fines can be offset in these extra charges. Thus, there is a need for more effective and credible enforcement that includes confiscation of assets, suspending or revoking licences, public blacklisting and bans on future tendering, particularly if the ban is applied in all Arab States.

4. Standardized contracts, contract substitution and minimum wages

Establish standardized contracts for all Arab countries with measures against contract substitution.

Legal reform in Arab countries should devise or improve standard contracts for migrant workers in different sectors.⁹¹ Compliance means not only compliance with laws, but also with the provisions contained in the standard contract. This is critical where there are contradictions in the laws between origin and destination countries. Therefore, the contract (backed by effective civil or contract law) creates the standard to which the employer must comply⁹² and the law should stipulate that in case of disputes, the language version that is understood by the migrant worker will prevail.

The Qatar Foundation's 2014 Mandatory Standards for Migrant Worker Welfare requires that contractors make explicit in their contracts with recruitment agencies, subcontractors and their employees that "workers are not to pay any recruitment fees, costs or charges". The statement is also required on any advertising for positions available in origin countries. By establishing this condition within legally binding contracts, all parties can be held accountable for non-compliance.

A standard contract has been recently developed by the UAE with extensive articulation of termination conditions.⁹³ Along with new legislation that confers legal contractual status on the letter of offer before departure, the UAE initiative provides uniformity for both origin and destination countries that militates against illegal contract substitution. It is recommended that other Arab states and countries of origin make similar agreements regarding standardized contractual arrangements.

Establishment of standardized minimum occupational wage levels, standardized across GCC countries and other Arab States.

Different wage levels dependent on a migrant worker's nationality can be common. While the governments of India and Nepal (and formerly the Philippines) provide guidelines for minimum wages according to occupation and destination country, discrepancies according to nationality still exist. In Qatar, for example, the Indian embassy (2014) lists US\$411 for a labourer and US\$460 for a steel fixer, while the Nepal embassy (2014) lists US\$247 for a labourer and US\$301 for a steel fixer. This may be seen as a function of competition in the international labour market, but it results in the violation of the principle of "equal pay for equal work" in countries of destination. Two people doing the same job, but having different wages because of their nationality is discriminatory, breaches equity guidelines and creates disaffection in the workplace.^j

5. Government-initiated regulation and oversight opportunities: central clearing houses and e-recruitment

Establish 'central clearing houses' in GCC countries and other Arab States for implementation and oversight of fair and ethical recruitment.

The logic of low-skilled workers paying large sums of money means that non-compliant recruitment agents and employing company personnel have a financial interest in maximizing the number of workers recruited. A central clearing house could be established in the destination countries for recruitment, run by the government authorities, where possible in conjunction with employer and employee associations. The central clearing house would be responsible for registering and monitoring entering and exiting migrant workers, and for storing information/documentation regarding the workers' qualifications, experience, contracts, conditions of their recruitment and other data. This data could be accessed by government, employers, workers and their representatives and would improve national statistics on labour migration, allowing for more targeted labour inspection, among other things. Workers who have completed their contracts, or been made redundant, can be redirected through the clearing house to other employers, without having to leave the country. Utilising centralisation strategies such as this, may offer financial savings for further recruitment endeavours. A central clearinghouse can serve as a public placement agency and can offer direct recruitment by accredited employers.

The Bahrain Labour Market Regulatory Authority (BLMRA) is an example which could be replicated. The BLMRA registers and monitors recruitment agencies and can investigate fraudulent recruitment practices. They are required to attest to the validity and authenticity of documentation for work visas and to verify the existence of an employer and workplace so workers are not left stranded and undocumented. A blacklist is maintained on employers and recruitment agencies that have committed offenses or misled migrant workers in the past, banning them from future hiring. An explanatory brochure is provided to all arriving migrant workers in their own language, and a SIM card which can be used to report grievances and violations. All information concerning their work permit is transferred to the SIM card.⁹⁴

Online recruitment can also be encouraged to minimize the number of intermediaries involved. The more the number of intermediaries, the more there is a risk of fraudulent practices to the detriment of all.⁹⁵ Countries like Bangladesh, for example, have already started using online

^j The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1 defines discrimination as, *any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.*

registration processes for their nationals seeking employment abroad. This government process involves registration by SMS as well as smart cards containing basic information such as passport number, date of birth, family name, and contact phone numbers in their country of origin.⁹⁶

A few other examples include:

- EURES (the European Job Mobility Portal) - a European cooperation network which provides information as well as labour recruitment and placement services. It has a portal network of 1,000 EURES advisors who maintain daily contact with employees and employers across Europe.⁹⁷
- NAKURI.COM, an online job website in India with a database of 41 million registered jobseekers' resumes; and NAKURIGULF.COM that focuses on the GCC states for Arab, European and South East Asian job seekers.⁹⁸
- An e-hiring system announced recently between the Kingdom of Saudi Arabia and Sri Lanka⁹⁹ and a new e-portal for migrant domestic workers in the Kingdom of Saudi Arabia.¹⁰⁰
- Bayt.com, an online application for candidates to find jobs in the GCC, also offers an 'online labour market' that allows for faster recruitment, greater transparency, and simplicity with better job-candidate matching.¹⁰¹

In addition, although it has come under much critical scrutiny, the early guest worker (*gastarbeiter*) program between Germany and Turkey and other countries in the 1960s is an example of bilateral agreements for the orderly recruitment of temporary workers to fill labour shortages in German industry. A joint German-Turkish Employment Service office established in Istanbul operated as a foreign bureau for the German Ministry of Labour. Turkish authorities screened applicants, pre-selected the candidates and arranged interviews. German employers paid the costs of search, transportation and training.¹⁰² Germany also has a short-term seasonal foreign workers program based upon MOUs with labour origin countries (mainly Polish), but there has been criticism of the quality of some worker accommodation that is provided.¹⁰³ The 'circular migration' project run by Unió de Pagesos (UP) in Catalonia recruits seasonal agricultural workers from Morocco, Colombia and Eastern Europe, supported by agricultural worker unions. Government employment agencies organize the reception, travel, job placement and accommodation of the migrant workers.¹⁰⁴ In a legislated arrangement, the UP and the Federation of Farmers (FPS) pay all recruitment costs at the beginning, but later deduct from the worker's wages the amount corresponding to half the cost of the international travel.¹⁰⁵

6. Government-to-government recruitment

Destination country governments should diversify arrangements through the increased use of origin country government recruitment agencies where they exist.

Bilateral agreements and MOUs for government-to-government recruitment and placement are to be encouraged because there is evidence that suggests far fewer fraudulent activities and much lower costs to workers when such agreements are in place.¹⁰⁶ These should include harmonizing recruitment regulation and enforcement among the respective countries of origin and destination. Bangladesh, India, the Philippines and Nepal have established bilateral agreements with Arab states over the years.¹⁰⁷ However, recent examples from Bangladesh and Nepal indicate private recruitment agencies and their associations are well organized and

can place much pressure against excluding them. Indeed it has been suggested that private recruitment agencies and their associations are powerful and able to withstand origin country government legal and policy frameworks regulating recruitment fees.¹⁰⁸ Recruitment by public employment services such as the Bangladesh Overseas Employment and Services Limited (BOESL) and the Sri Lanka Foreign Employment Agency (SLFEA) have not been particularly active and have often clashed with private agency associations.¹⁰⁹ Often bilateral agreements are made but the recruitment is conducted by private recruitment agencies¹¹⁰ that more resemble trade agreements that do not always comply with international labour and human rights standards.¹¹¹ Several promising examples exist, including Korea's Employment Permit System (EPS) - a government-to-government recruitment program first introduced in 2004, which brings workers from 15 countries to work in Korea's small and medium-sized businesses.¹¹² A major achievement is the reduction in the average cost paid by a worker from US\$3,509 under the previous trainee system in 2002 to US\$927 under the EPS system in 2011.¹¹³ The Government has also introduced standardized employment contracts for employers and workers. While not a model in all respects, the EPS is a better conceived, funded and implemented foreign-worker programme than most in the region.¹¹⁴

Another example is the Germany-Philippines bilateral agreement for health workers in which social dialogue plays an important role in implementation. Signed in March 2013, the agreement facilitates the entry of Filipino nurses to the German health care system through a government-to-government hiring scheme with fair and ethical recruitment and a joint committee responsible for monitoring and evaluating the implementation of the agreement involving trade unions.¹¹⁵

Arab countries may wish to apply greater government intervention such as these examples suggest. By coordinating agreements with governments of origin countries and employing companies, much is to be gained by reducing the costs of intermediary brokerage and ensuring payment of fees and costs by employers, while enhancing the focus on skills, training and productivity in the migrant labour work force.

7. Joint and several liability schemes

Establish joint and several liability schemes in both country of origin and destination for recruitment and placement agencies as well as contractor and subcontractor employers.

The logic of joint liability arrangements is that the lead enterprise at the top of the supply chain decides how to structure its operations for any given project. Subcontracting diffuses costs, risk and legal liability down the supply chain. However, lead companies do maintain control of the work that is outsourced with authority to monitor and cancel contracts if the work is not up to standard, particularly in migrant labour recruitment practices. Because the lead company profits from its subcontractors, they are liable for the standards, abuses and fraudulent activities of those subcontractors, and have the power to correct them.¹¹⁶ Firing, banning, or suspending subcontractors in the construction industry does occur,¹¹⁷ but it is difficult because of time pressure to replace them. In such circumstances, contractors and state authorities must work with them to bring them into line and find models to compensate migrant workers for damages that might include contractors, recruitment agencies, the state or combinations of stakeholders.

The Philippines, Indonesia and Ethiopia are the only countries where national legislation forces recruitment agencies to be financially liable for any wage discrepancies between what was

promised to the migrant worker and what was actually paid, although few migrant workers have the confidence to bring a lawsuit against an agency.¹¹⁸ The Philippines law provides administrative liability for the possible suspension or termination of the license of a recruitment agency, as well as criminal liability of managers and other staff members of the recruitment agency. This system of “joint and solidary liability” holds that, because the employer is beyond the jurisdiction of Philippine courts, responsibility lies with the recruitment agency.¹¹⁹ In principle, this is to deter recruitment agencies from dealing with unscrupulous employers.¹²⁰

These arrangements are critical for both worker and employer recourse to compensation for fraudulent recruitment and treatment. In the Philippines, for example, licensed recruitment agencies assume joint and solidary liability with the employer for all claims and liabilities that may arise in connection with the implementation of the contract, including wage discrepancies. Under the joint and solidary responsibility clause, the jurisdiction issue is immaterial as the recruitment agency, in effect, acts as co-employer. The limitation of the joint liability clause concerns acts committed by subcontractors or intermediaries that are not recognized by the recruitment agency or employer.¹²¹ The Philippines arrangement is powerful because recruiters are held liable in cases of exploitation at destination where the exploiter cannot be charged.^k

In the Netherlands, there is a combined legal and voluntary system of joint liability. All contractors are liable for violations of their subcontractors, including recruitment practices where migrant workers at destination can seek compensation in the courts for joint liability claims. The certification and licensing of recruitment companies is voluntary but regular government audits do often result in suspensions and penalties.¹²²

In Canada, another destination country to consider, a government-led approach to supply chain liability can be seen in the Manitoba Worker Recruitment and Protection Act (WRAPA), a licensing system for agencies recruiting migrant workers that provides for a proactive enforcement mechanism. WRAPA bans recruiters from charging any fees to foreign workers and prohibits employers from recovering recruitment fees from workers. Comprehensive information on all facets of employers, employees and recruitment agents are required. Employers are liable for recruitment fees charged to workers if the employer recruited the worker with an unlicensed recruiter. The Act also includes specific offenses for employers who utilize unlicensed recruiters.¹²³

In the United Kingdom, the Gangmaster Licensing Authority (GLA) requires origin country recruitment agencies “to also apply for a license with the GLA and to comply with its terms and conditions. In other words, the GLA imposed an extra-territoriality aspect to the licensing conditions. This has led to a number of cross-border contacts and initiatives with regulatory authorities in those countries.”¹²⁴

^k For example, in October 2013, the Philippines Overseas Employment Administration (POEA) cancelled the license of a recruitment agency because of contract substitution in the case of seven Filipina women deployed to Saudi Arabia as nurses. Items in the first contract such as salary, transportation allowance, food allowance, and lodging were either reduced or totally omitted in the new contract. The agency had also taken excessive recruitment fees from the workers and did not issue receipts for the amounts paid. These all violated the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers. The agency was suspended and ordered to refund the workers the excess charges they had paid. See “POEA cancels recruiter’s license for contract substitution”, Press Release, 25 October 2013, at: <http://www.poea.gov.ph/news/2013/PROct2013AllSkills.pdf>

In the Arab countries authorities have a licensing procedure, but the law only refers to licensed recruitment agencies in the Arab States. By expanding the licensing region to recruitment agencies in the origin countries. Arab countries could encourage fair and ethical recruitment practices and ensure joint liability.

Although countries of destination often assume they have no jurisdiction over recruitment practices in labour origin countries, they can demand that fair and ethical requirements are met through the joint-liability approach.¹²⁵ They can insist that the contract of employment meets the minimum standards, complies with terms agreed upon, protects the employee and includes provisions on the ability to change employer. Joint-liability through bilateral agreements should also focus on combating contract substitution and other inconsistencies and that the minimum standards are understood by employers and recruiters on both sides of the migration corridor.¹²⁶ Joint-liability practices rely heavily on inter-governmental cooperation¹²⁷ and require commitment from countries of origin and countries of destination equally. Information-sharing programs between the destination country and country of origin must support legal reform and joint-liability approaches.¹²⁸ Addressing concerns by origin countries for their market competitiveness for migrant workers, some experts argue, “a joint liability approach has an advantage over efforts to control recruitment by an origin nation on its own. Such regimes take recruitment costs out of competition, which should be the ideal from the origin country perspective. When the employer is the principle target of enforcement, and the liability attaches to recruitment from any country (as it should)... it does not matter where in the world that employer looks for workers: all recruiters will have to comply with the same baseline standards.”¹²⁹

Private recruitment agencies maintain responsibility for workers from deployment until the end of the probation period (usually 3 months), for if the employment relationship does not work out, agreements may require a replacement at the agency’s cost.¹³⁰ Where larger contractors send personnel to the origin countries to conduct skills testing and selection, the employer usually accepts the replacement responsibility. Increasingly, private recruitment agencies insist on employer personnel visiting the country of origin to conduct skills testing and selection of candidates in order to delegate replacement responsibility to the employer.¹³¹

Making lead contractors liable for recruitment abuses in their global supply chains has also been a focus of legislation in the UK (Bribery Act, Modern Day Slavery Act), the European Union (Non Financial Disclosure Directive), and the United States (Foreign Corrupt Practices Act and the California Transparency in Supply Chains Act). International human and labour rights organizations as well as non-governmental organization, and the media can also bring violations to the attention of the public that motivate internal and independent reviews and assessments of supply chain violations. Gordon’s comprehensive study of supply chain liabilities showed multiple types of action, such as high media profile campaigns in the United States by the grassroots based National Guestworker Alliance (NGA) targeting large brand companies to reveal recruitment violations.¹³² In some cases, voluntary codes of conduct have also been established by the private sector, through which members pledge that neither they nor their subcontractors will charge workers recruitment costs (one example is the Code of Conduct by the Electronics Industry Citizenship Coalition - a nonprofit coalition of leading electronics companies).¹³³

Clients of the state and their contractors must ensure fair and ethical recruitment and insist upon it for all subcontractors in the supply chain. Commercial requirements for proper

standards of fair and ethical recruitment can be more powerful than legislation because they can be established as pre-requisite contractual requirements for doing business.

8. Addressing malpractices through free visas, visa trading and manpower outsourcing agencies

Greater surveillance over the issuing of visas is required by Arab countries to minimize visa trading on the black market.

Careful inspections of employers that may have been established as trading companies, but which trade in visas or act as manpower suppliers (without the requisite 100 per cent local national ownership) need to be stepped up. Workers who are placed unwittingly into irregular status can be regularized if state authorities are willing to inquire into the circumstances of their recruitment.¹³⁴ Destination country governments should ensure due diligence in ascertaining the reasons for irregular migrant workers' presence, minimize costly detention and deportation and maximize regularization of migrant workers who became irregular beyond their control with willing employers.¹³⁵ Wage protection systems mandating that employers pay wages into bank accounts are one way to check that sponsors are in fact employing and paying the workers under their sponsorship.

Visa trading arises in a number of ways. For example, companies awarded a contract for a project apply for a "block visa" and routinely apply for much larger numbers of work visas than is actually required. In addition, visas provided are not always commensurate with the application in terms of occupation and nationality. Thus visas are given to workers whose actual job is different from that which is stated on the visa.¹³⁶

Free visas are work visas where there is a sponsor, but no real employer on arrival, in practice enabling migrant workers to for instance manage a shop or work for themselves. The selling of these visas (that may go through a number of intermediaries) is ultimately reliant upon workers being charged sufficiently to cover all the profits being made. Greater diligence needs to be undertaken by destination government authorities to verify the legitimacy of visa applications with follow-up that the sponsor is the actual employer or that proper secondment arrangements have been granted official approval. Embassies of origin countries also are required to check the *bonafide* of work visas, particularly during the attestation procedures. In this sense authorities in both countries of origin and destination have responsibilities in identifying visa abuses before they are marketed. Regular crackdowns in Arab states that have resulted in prosecutions of company executives should also result in more stringent procedures with checks and balances to prevent free visas being issued in the first instance.¹³⁷

The scale of this problem is difficult to quantify, particularly when there are regular crackdowns that result in deportation as well as amnesties to regularize papers or allow irregular workers to return home without penalties. These measures indicate a concern by destination countries to address the problem, but greater transparency of the data for analysis would be welcomed.¹³⁸ While regularization efforts are a positive step, it is critical that irregular workers under these circumstances are not criminalized, but rather dealt with under civil law. For example, a worker apprehended because of an 'absconding' notice by the sponsor should not be placed into detention and penalized. Rather, the authorities need to determine whether they are victims of abuse, trafficking or unwitting recipients of 'free visas'.¹³⁹

Non-work visas are also implicated in visa trading, where business visas and tourist visas are sold to migrant workers for entry. Applications to convert these into work visas should raise red flags and inquiry into the possibilities of visa trading. Again, if the culture of migrant workers paying for recruitment and the jobs they are obtaining were curtailed, visa trading will be largely stopped.

As “third party” employers, greater due diligence by contractors and sub-contractors is required, through means such as inspections and inquiries about the personnel they use from manpower outsourcing agencies in destination countries - and should be held legally responsible for non-fair and unethical practices. For example, contractors and subcontractors should refuse to do business with manpower outsourcing agencies that do not comply with laws on recruitment, housing and food provisions; or those who do not agree to the level of transparency required. Of course, criminal laws, particularly anti-trafficking legislation that includes exploitation through forced or compulsory labour, can be brought to bear on both contractors and manpower outsource agencies.¹⁴⁰ In this sense the corporate veil of manpower outsource agencies needs to be lifted. Governments should introduce stricter licensing as well as monitoring and inspections of manpower outsource agencies. Manpower outsource agencies in turn need to carry out due diligence on organizations that hire migrant workers from them. The proposed ILO fair recruitment guidelines state that, “it is necessary to ensure that the responsibilities of the temporary employment agency and of the user enterprise are clearly defined, for the protection of the workers, of the employment agency and of the user enterprise.”

9. Migrant domestic workers

Arab countries should be encouraged to bring migrant domestic workers under the protection of their labour laws.

Migrant domestic workers in Arab states are excluded from the protection of the labour law in all countries except Bahrain.¹⁴¹ In Saudi Arabia, a ministerial decision (310) of 2013 mandates domestic workers receive nine hours of rest per day, one day per week off and one month vacation after two years of service. Kuwait enacted a separate law for domestic workers in June 2015 that includes migrant domestic workers’ right to one day off per week, 30 days annual paid leave, a maximum 12 hour day with rest periods and an end of service gratuity of one month per year of service.¹⁴² Although there are significant limitations to the legislation, as it does not afford full recognition under the labour law, it is considered a step forward.¹⁴³

Reasons for the exclusion of domestic workers from labour laws and restrictions on their freedom of movement have been threefold. First, domestic workers are considered to be in a personal relationship with the members of the household, rather than in a formal employee-employer relationship. A second and related reason is that domestic workers are privy to the intimate relationships within the family and it is important to them that such information is not shared publicly or to other households. Third, because of the high costs in recruiting migrant domestic workers, restrictions are seen as a measure by employers to prevent them from running away and thus protecting their ‘investment’.¹⁴⁴ It should be noted, that the ILO’s Employment Relationship Recommendation, 2006 (No. 198) suggests that states “should take particular account in national policy to ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including women workers, as well as the most vulnerable workers...” (Article 5).

The ILO has recommended that international cooperation for targeted awareness-raising campaigns, especially for those who are most at risk of becoming victims of forced labour, to inform them, *inter alia*, about how to protect themselves against fraudulent or abusive recruitment and employment practices.¹⁴⁵ NGOs have also been taking steps to improve pre-departure rights awareness, grievance mechanisms and communication channels.¹⁴⁶ Recruitment agreements and contractual requirements should guarantee possession and use of a mobile phone with a SIM card in Bahrain. Pre-departure orientation programs can educate domestic workers and empower them to use such facilities that might also include hotlines and human rights organizations that are available to them in the destination country.

Under the Philippines' active governance of out-migration, it has introduced significant regulations for the protection of overseas Filipino workers, particularly domestic workers. It serves as a good case study for origin countries. The Philippines Overseas Employment Administration (POEA) is the government agency responsible for processing workers' contracts and conducting pre-deployment checks, as well as for licensing, regulating, and monitoring private recruitment agencies. In 1995, the Migrant Workers and Overseas Filipinos Act¹⁴⁷ was passed to provide a legislative framework for protecting overseas Filipino workers. Among other provisions, it promised direct assistance to workers abroad (including legal assistance), penalties for illegal recruiters, reintegration services and the establishment of resource centres in countries of destination.

A specific requirement in the deployment of domestic workers from the Philippines is that recruitment agencies are not to charge them any fees and, since 2006, domestic worker contracts must be for a minimum of US\$400.¹⁴⁸ In reality, agencies in the Philippines can secretly charge, even if the employers also pay and it is common for deductions to be taken from wages. In Lebanon, for example, it is common that the first two or three month's wages are not paid.¹⁴⁹

Attempts by origin country governments to regulate and protect migrant domestic workers in destination countries are important. However, there is no empirical evidence demonstrating what difference the establishment of blacklists of employers, recruitment and placement agencies has made, particularly since no impact assessments have been undertaken. It remains the 'luck of the draw' whether migrant domestic workers are placed in decent households that treat them well. It may be suggested that renewal of permits for employers of domestic workers be conditional on a visit to the premises and a confidential interview with the previous domestic worker, which could be conducted at the airport before they return home. There are also possibilities with new online initiatives where employers and migrant domestic workers can conduct mutual interviews and hiring on a website with no charge to the domestic worker.¹⁵⁰ Such arrangements, however, will have to be approved by both destination and origin country authorities where the law requires the use of licensed recruitment agencies.

The greatest impediment to the monitoring and protection of migrant domestic workers is that the work takes place in a private household, out of the purview of labour inspection and other enforcement and regulatory mechanisms. The isolated work and living environment and emotionally charged space of the family home results in much of the abuse, while 'freelance' domestic workers have greater independence and report less rights violations.¹⁵¹ Allowing domestic workers to live outside of the household as freelance workers who organize their own living arrangements would offer significant prospects for a reduction in exploitation, but it is unlikely to meet with cultural acceptance in Arab states. Many domestic workers also prefer live-in arrangements, as they save money on accommodation, travel to work, clothing

and household expenses such as food. The ILO Domestic Workers Convention, 2011 (No. 189) urges Member States to ensure that domestic workers: a) are free to reach agreement with their employer or potential employer on whether to reside in the household; b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and c) are entitled to keep in their possession their travel and identity documents (Article 9).¹

Another alternative to live-in arrangements may be more encouragement of labour supply agencies that recruit and hire out cleaning services on an hourly or daily basis, provided that these services are monitored. These could also include workers who have training and qualifications in childcare and care of the elderly and disabled. This of course does not cater for families that want in-house workers and require them to be readily on call, even though they should not be on call outside working hours. The ILO's exploratory work on migrant domestic worker associations or cooperatives also offers alternative means by which domestic workers themselves can establish organizations that serve both their economic and social interests.¹⁵²

10. Credible complaints mechanisms

Establish easy, simple and safe access for migrant workers to express their grievances and make formal complaints that are followed up without fear of retribution.

Migrant workers have had little access to effective complaints mechanisms in both in origin and destination countries. While telephone hotlines and online complaints facilities on Ministry websites have been established, there is little evidence that more than a few have accessed these and no knowledge as to what extent they have led to complaints remedies. In Qatar, the National Human Rights Committee has established community desks at its premises for direct personal, telephone and internet access but there has been no impact assessment to date and no statistics on the number of worker complaints that led to further actions and compensation paid. Governments need to be more transparent with data on complaints issues to allow better analysis and suggestions for remedies, and to demonstrate the effectiveness of their law enforcement.

In the Philippines, the Philippines Overseas Employment Administration (POEA) has mandated that licensed private employment agencies that recruit domestic workers must maintain a Facebook account for their businesses. These accounts serve as a communication platform for domestic workers abroad with the hope of preventing 'disputes', official registration of complaints, and requiring employment agencies to file reports to the POEA on the status and condition of their deployed workers.¹⁵³ In February 2016, the Ministry of Overseas Pakistanis and Human Resource Development (MoOPHRD), developed an online complaint system allowing migrant workers and overseas Pakistanis to submit legal complaints in cases during recruitment or employment, accompanied by a tracking system that will enable the complainant to track the status of their complaint.¹⁵⁴ Recruitment complaints that are registered could also be linked to employers or placement agencies at destination to keep them informed of possible fraudulent activities with their counterparts.

¹ There is provision in the ILO Domestic Workers Convention (189) (Article 17) for "effective and accessible complaint mechanisms ... labour inspections ... [where] conditions under which access to household premises may be granted, having due respect for privacy. ...[and]... enforcement and penalties with due regard for the special characteristics of domestic work"

Again, the key to any complaints provision is the empowerment of migrant workers to make complaints - to provide them with the confidence that they can make a complaint without fear of retribution. That level of empowerment should be developed prior to departure with clear instructions on the kinds of problems they may face with their employers as well as other employees, supervisors and management alike.

11. Pre-departure medical screening and regular health assessments in Arab states

Countries of origin and destination should ensure proper and more comprehensive pre-departure medical assessments and include health education in pre-departure and post-arrival orientation programs.

As a mandatory requirement in labour recruitment, all migrant workers require a medical screening test before they can be deployed. They are also screened again as a precondition for the residency permit in country of destination. Examinations can require laboratory tests for HIV and AIDS, Hepatitis B and C, malaria, tuberculosis, drug use and pregnancy. Destination countries do generally not accept results from tests done in origin countries because there are still possibilities for contagion and pregnancy between pre-departure results and arrival. It has been suggested that, “because these mandatory procedures involve interactions with government entities and the payment of fees for discretionary decisions, they represent an elevated risk of corrupt or improper payments.”¹⁵⁵ Both origin and destination country governments should take more cognizance of international law regarding the discriminatory nature of practices such as pregnancy tests and other medical screening, particularly HIV. For example, provisions in the ILO’s HIV and AIDS Recommendation, 2010 (No. 200) prohibit mandatory HIV testing of migrant workers and their exclusion from migration “by the countries of origin, of transit or of destination on the basis of their real or perceived HIV status.”¹⁵⁶

Summary of Recommendations

	Issue	Recommendations
1	Employer-only payments to recruitment agencies	<p>With interregional coordination:</p> <ul style="list-style-type: none"> • Change the culture of worker payments for recruitment, instituting employer-only payments for recruitment with wide-ranging education and awareness-raising programs. • Labour origin country governments should repeal legislation that currently allows recruitment agents to charge workers. • Destination country governments should set recruitment fees and costs and mandate that no visas will be issued to workers who are required to pay anything for their recruitment. The onus on establishing a prohibition of worker payments does not just apply to the origin countries, but also (perhaps more importantly) to destination countries. • Comprehensive institutionalization of recruitment cost transparency. • Identify and prevent company personnel and placement agents from taking or receiving kickback payments. • Introduce a significant expansion of systematic empirical research to generate more precise data on the differences between “fees”, “costs” and “charges” in the various corridors of labour migration from Asian origin countries to Arab States. • Conduct exploratory research into the impact on recruitment industry stakeholders of workers no longer paying fees, costs and other charges.
2	Project tendering procurement procedures	<ul style="list-style-type: none"> • Project tenders should include a separate detailed and transparent ‘Labour Recruitment Cost Analysis’ within bidding proposals that detail variable and fixed costs of recruitment, including labour costs of subcontractors. • Lowest bids should be more carefully scrutinized to ascertain whether cost reductions are at the expense of migrant workers being recruited.
3	Fair, ethical and compliant recruitment	<ul style="list-style-type: none"> • Multilateral cooperation to establish consistent laws between origin and destination countries in a harmonization of fair recruitment regulation and enforcement. • Regional coordination is required between origin and destination country governments to establish licensing and accreditation of fair and ethical recruitment agencies in origin countries as exclusive labour suppliers to Arab countries. This should also apply to placement agencies and manpower outsourcing agencies in destination countries. • Avoid the use of unregulated and unlicensed sub-agents. • Employers must ensure they are dealing only with fair, ethical and compliant recruitment agencies that do not charge workers and monitor their activities.
4	Standardized contracts, contract	<ul style="list-style-type: none"> • Establish standardized contracts for all Arab countries with measures against contract substitution.

	substitution and minimum wages	<ul style="list-style-type: none"> Establish minimum occupational wage levels, standardized across Arab States.
5	E- Recruitment: Central labour clearing house	<ul style="list-style-type: none"> Establish central clearing houses in Arab countries for implementation and control of fair and ethical recruitment. Encourage online recruitment to minimize the number of intermediaries involved.
6	Government-to-Government	<ul style="list-style-type: none"> Destination country governments should diversify arrangements through the increased use of origin country government recruitment agencies where they exist.
7	Joint and several liability schemes	<ul style="list-style-type: none"> Establish joint and several liability schemes in both country of origin and destination for recruitment and placement agencies as well as contractor and subcontractor employers. Ensure lead contractors are liable for recruitment abuses in their supply chains, including manpower outsource agencies. Establish stringent and substantial financial and reputational penalties for non-compliance with fair and ethical recruitment practices.
8	Malpractices through free visas, visa trading and manpower outsource agencies	<ul style="list-style-type: none"> Greater surveillance on the issuing of visas by Arab states to minimize leakage to the black market of 'free visas' and other forms of visa trading. Greater oversight and auditing of manpower outsource agencies/firms to ensure fair, ethical and compliant recruitment.
9	Migrant domestic workers	<ul style="list-style-type: none"> Bring migrant domestic workers under the protection of the labour law in the Arab States. Explore new fair and ethical online recruitment initiatives.
10	Credible complaints mechanisms	<ul style="list-style-type: none"> Establish accessible procedures and improve support services for migrant workers to express their grievances and make formal complaints that are followed up without fear of retribution.
11	Pre-departure medical screening and regular health assessments	<ul style="list-style-type: none"> Countries of origin and destination should ensure proper and more comprehensive medical assessments and include health education in pre-departure and post-arrival orientation programs. Countries of origin and destination should operate health assessments in line with ILO Recommendation No. 200.
12	ILO Conventions	<ul style="list-style-type: none"> Countries of origin and destination should consider ratification of relevant ILO Conventions, namely all the ILO fundamental Conventions, the 2014 Protocol to the Forced Labour Convention, Private Employment Agencies Convention (No. 181), Domestic Workers Convention (No. 189), Migration for Employment Convention (No. 97) and Migrant Workers (Supplementary Provisions) Convention (No. 143).

CONCLUSION

The history of Asian-Arab states labour recruitment has often been characterized as a “blame game”, where the destination country blames agents in the origin country for charging workers; and vice versa; or where both agents and governments in origin countries blame employers for being unwilling to pay recruitment costs. In the reality of a mature market, it seems clear that there is collusion between intermediaries in origin countries and employers and agencies in destination countries. Knowing that workers are in debt for the recruitment charges, employers can be certain of their compliance until their debts have been paid, a condition that is an indicator of forced labour. In an age of globalization and multilateral relations, hiding behind arguments that the sovereignty of nation states cannot be interfered with does not seem convincing. Turning a blind eye to the fraudulent circumstances by which workers are recruited should no longer be considered acceptable.

Further, as a part of this 'blame game', it is often suggested by Arab nationals that the real perpetrators are the foreign nationals who manage the employing companies. After all, they are in a position to exploit their own nationals. This may well be true, but in the GCC, foreign companies are required to be at least 51% owned by a GCC national. The role of the controlling owner, or partner, is often considered to be a passive one that merely allows the foreign company to operate legitimately, in what has been referred to as a rental (or rentier) arrangement.¹⁵⁷ But just as any landlord, it would seem incumbent upon the controlling partner to take responsibility for the actions of the tenant company; namely, to ensure that the other shareholders, management and personnel are not breaking the law or violating human and labour rights on their behalf, or in their name, for ultimately it is also the reputation and conscience of Arab nationals and their nations that is at stake.

To assist reform-minded country of origin governments in resisting the lobbying power of private recruitment agencies, it is incumbent upon Arab states to insist that a strict condition of entry is that migrant workers have not paid the recruitment agency or the employer for the position. Apart from reputational and fair and ethical grounds, it is in the interests of Arab countries to adopt this position because of the current inefficiencies. For example, as much recruitment is based upon the selection of low-skilled migrant workers on the basis of their willingness and ability to pay large sums of money that can be used as kickback payments to employing company personnel and others, there is a high risk that they are less than properly qualified and will not be as productive. This includes workers in construction, agriculture as well as domestic workers. Because migrant workers pay so much, most recruitment agencies are motivated to deploy high volume, rather than high quality labour. Typically, the number of workers on construction sites in the Arab States are abnormally high, in order to compensate for low productivity.¹⁵⁸

It may be anticipated that preventing worker payments may mean that the profile of current recruits will change, with employers seeking higher skilled workers and reducing the size of their labour force. This may mean reduced job opportunities for low-skilled, low educated workers from the poorer regions of developing Asian countries. It may be suggested that past and current practices of sourcing workers from Asia for the construction industry in Arab countries has been seriously inefficient and costly, at least partly because of the unethical motivations for current and past decisions on migrant labour recruitment.¹⁵⁹ There is a momentum for reform and as they take place there will no doubt be unforeseen and unintended consequences. There are always risks of fraudulent behaviour and threats to

vulnerable migrant workers, so it is important to develop concerted multilateral and multidisciplinary models that can protect them.¹⁶⁰

In this regard, recent initiatives by the Philippines on certification through national occupation skills standards as well as pre-employment, pre-departure and post-arrival orientation modules promise more systematic, comprehensive information programs that will increase the awareness of migrant worker access to fair and ethical recruitment and deployment.¹⁶¹ Further initiatives by the UAE in establishing visa services centres in countries of origin advances fair and ethical recruitment to Arab states. With four centres completed in Sri Lanka, Indonesia, Kenya and Bangladesh, plans are underway for further such service provision centres elsewhere.

It has been clearly shown that laws in the destination country that ban worker payments for recruitment costs simply does not stop it from happening in reality. In this paper, and in many reports over the last few years, it has been suggested that reform should operate on a number of levels and arenas towards fair and ethical recruitment practices. Given their relative wealth and humanitarian activities in many parts of the world, it would be consistent for Arab States to take the moral and practical high ground with an active insistence that in the interests of dignity, adherence to the rule of law, equity and justice, low-skilled migrant workers entering the Arab States workforce must do so without paying anything for their recruitment. They should enter debt-free, just as the more highly skilled sectors of the expatriate workforce do.

ANNEX I: Fees, costs and charges

There are both fixed and variable costs in recruitment, some of which are negotiable, such as agency commissions.

Table 1. Example costs for low-skilled worker recruitment per person: Nepal-Qatar

Nepal	US\$	Qatar	US\$
Variable costs		Variable costs	
Internal travel, good, accommodation	50-100	Airfare (one way)	300-350
Sub-agent Commission	75-100	Agency commission	250-450
Total (average)	163	Total (average)	670
Fixed Costs		Fixed Costs	
Medical test	25	Work visa	82
Orientation	10	Visa attestations	150
Welfare fund	10	Residency permit	320
Life insurance	20	Medical test	30
Airport tax	5	Health insurance card	30
Advertising	10		
Sub-Total	80	Sub-total	612
Combined total	243	Combined total	1,282
Overall Total: US\$1525			

Source: placement/recruitment agency and employer in Qatar

Table 1 is based on information obtained from interviews with placement agencies and employers in Qatar. It shows an approximation of actual costs of recruitment between Nepal and Qatar. Airfares can vary in accordance with distance from destination and season. The total estimated recruitment cost is around US\$1,512 from recruitment to actual employment (not just arrival at destination). This includes the costs the employer must pay by the end of the probation period (3 months) for residency permit and ID, medical test, fingerprinting and health card (insurance). Sub-agent and agency fees (or commission) in Table 1 are conservative estimates and can be far more widely variable than indicated, depending on the country of destination, the occupational category and wage level - whatever the market will bear, or whatever the migrant worker is willing to pay.¹⁶² Internal costs such as transport, accommodation and food are incurred by workers from outer regions going to the capital city office of the agency for interviews and paperwork. These costs are sometimes paid for by the candidate, sometimes by the recruitment agency or shared between them. In some cases, the employer may reimburse these costs if receipts are obtained. A recent IOM study found Nepalese workers were paying agents between US\$800-2,200.¹⁶³ This indicates that not all costs are being paid or reimbursed by charges to migrant workers and kickback payments are not always being made.

A study by Verité International reported kickback payments for workers from Nepal and Myanmar of between US\$300-500 per worker to employers or their agents. Employers and their agents also paid between US\$115-600 per worker in kickback payments to “a range of

government officials in both origin and destination countries to fraudulently approve a host of applications or facilitate discretionary decisions including, but not limited to, foreign worker quotas, demand set attestations, visas, medical certificates, and work permits.”¹⁶⁴

It is important to note that “fixed costs” in reality can be variable, not only according to country of origin, but also according to recruitment agent quotations in countries of origin. For example, another agency from Nepal quoted US\$45 for medical expenses, US\$35 for life insurance and US\$15 for advertising. In other words, recruitment agencies can manipulate their quotations (adding extra profit margins) for what are supposed to be fixed costs in their tenders for labour supply contracts. Employers who do not require official receipts for these charges, or do not shop around for the lowest costs, may be charged more than actual costs. Where employers are not paying, or being reimbursed by the workers along with kickback payments, these marginal differences will be of little or no concern.

By comparison, Table 2 shows approximations of recruitment costs from Bangladesh to Qatar. Differences include higher charges for almost all categories. Significantly higher charges are for the medical test, orientation seminar and advertising and the addition of costs for government training, emigration stamping, skills test and administration, which were not included in the costs quoted for Nepal.

Table 2. Example costs for low-skilled worker recruitment per person: Bangladesh-Qatar

Bangladesh	US\$	Qatar	US\$
Variable costs		Variable costs	
Internal Travel, Food, Accommodation	50-100	Airfare (one way)	360-450
Sub-agent Commission	75-100	Agency commission	250-450
Total (average)	163	Total (average)	755
Fixed Costs		Fixed Costs	
Medical test	70	Work visa	82
Orientation	25	Visa attestations	150
Welfare fund	10	Residency permit	320
Life insurance	13	Medical test	30
Administration	25	Health insurance card	30
Government training	85		
Skills Test	35		
Emigration stamping	36		
Advertising	108		
Sub-Total	377	Sub-total	612
Combined total	540	Combined Total	1,367
Overall Total: US\$1907			

Source: placement/recruitment agency and employer in Qatar

A KNOMAD study cites Bangladeshi workers going to Kuwait paying US\$3,136 and US\$3,650, and up to US\$1,000 per worker in kickback payments, arguing that the lack of transparency causes these discrepancies.¹⁶⁵

Thus, in the above scenario, the difference between the costs of US\$1,907 (Table 2) and charges of US\$3,136 being paid by Bangladeshi workers is US\$1,229. This difference may be accounted for, or seen as an indicator, by the presence of kickback payments to employers and their agents in destination countries, to officials in origin countries, and to the recruitment agency (i.e., extra profit).

References

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- ⁶ ILO (2015) *Issue Paper: Fair Recruitment for International Labour Migration Between Asia and the Gulf Cooperation Council Countries*, ILO Regional Office for Asia and the Pacific; ILO Regional Office for Arab States: 4; Endo Esaku & Afram, Gabi (2011), *The Qatar-Nepal Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process*, World Bank, Washington.
- ⁷ Esaku & Afram, above n6.
- ⁸ Rajan, S. Irudaya, Varghese, V. J. & Jayakumar, M. S. (2011) *Dreaming Mobility and Buying Vulnerability: Overseas Recruitment Practices in India*, Routledge, New Delhi.
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- ¹⁴ Article 40: “An employer shall incur the fees pertaining to recruitment of non-Saudi workers, the fees of the residence permit (*iqama*) and work permit together with their renewal and the fines resulting from their delay, as well as the fees pertaining to change of profession, exit and re-entry visas and return tickets to the worker’s home country at the end of the relation between the two parties.” Saudi Labour Law, 2005.
- ¹⁵ Article 18: “It is not permissible for any licensed labour agent or supplier to *demand or accept* from any worker *whether before or after his recruitment*, any commission or material reward in consideration for arranging such recruitment, nor may he obtain from him any expenses except as may be decided or approved by the Ministry of Labour and Social Affairs.” (author’s emphasis) UAE Labour Law, No. 8, 1980. Nor can any visa fee be deducted from a worker’s salary (Article 60).
- ¹⁶ Saudi Arabia’s labour law only stipulates that employers shall pay recruitment fees, while Qatar and UAE labour laws state specifically that employees should not pay. However, Section a, Article 6 of the UAE Ministerial Resolution 52 (1989) also requires “An undertaking from the employer to the effect that he shall sponsor and be responsible for the recruited Labourer, the bearing of his recruitment expenses and his employment in accordance with the employment contract in a way not prejudicing the provision of the Federal Law No (8)/1980 referred to herein.” Labour laws in Oman, Kuwait and Bahrain do not mention recruitment fees and who should pay them.
- ¹⁷ International Labour Organization, Private Employment Agencies Convention C181, 1997/2000 Article 7. 1. “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.” Part 2 of Article 7 provides an exception clause that is often used to justify worker payments, but it should only be when it is deemed to be in the interest of workers concerned and after consultation with the most representative organizations of employers and workers. In 2014 the ILO urged member states to take preventative measures such as: “promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion.” ILO Recommendation No. 23 on Supplementary Measures for the Effective Suppression of Forced Labour, 2014 (Article 4i; see also Article 8).
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- ²⁶ Abella, Martin, & Yi, above n3.
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- ³⁴ ILO Global Estimate of Migrant Workers, December 2015: 18, Table 2.9.
- ³⁵ ILO Domestic Worker Convention, 2011 (No. 189). Although the convention recognises that, globally, this is a female-dominated occupation, the convention does provide a framework of protection for both men and women in domestic work, and specifically addresses the challenges faced by migrants.
- ³⁶ Some examples are the Philippines in 2006, 2008, 2011, 2014; Nepal in 1998, 2008, 2010, 2012; Bangladesh in 1981; Sri Lanka in 2013; Indonesia in 2011, 2014; and Ethiopia in 2013.
- ³⁷ Nepal is also likely to impose a similar restriction on women, by not allowing women with children below the age of two years to leave for work. Also, starting from 2017, Indonesia will not allow migration of live-in domestic workers.
- ³⁸ Nepal, under 30 years of age in 2012; Sri Lanka. 21 years increased to 25 years in 2013; Bangladesh, 35 years in 1997, reduced to 25 years in 2003.
- ³⁹ The recently amended and endorsed "Guidelines Regarding Sending Domestic Workers on Foreign Employment, Sri Lanka, 2015" prohibits women with child(ren) below the age of two from migrating for foreign employment.
- ⁴⁰ UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, General Recommendation 26; ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- ⁴¹ Qatar did the same with the Philippines in 2012, but no agreement has since been signed. See Jones, Katherine (2015) *Recruitment Monitoring & Migrant Welfare Assistance*, International Organization for Migration, Dhaka, Dhaka House: 40.
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- ⁴⁹ ILO, above n46. Of course there are Islamic principles that recognize the rights of both employer and employee. Islamic ethics and jurisprudence is against forced labour and the exploitation of labour and dictate that employers must honour contractual agreements and pay employees the agreed upon wage, and without delay - see Mattar, Mohammed (2010) *Combating Trafficking in Persons in Accordance with the Principles of Islamic Law*, New York, United Nations Office on Drugs and Crime: 23.
- ⁵⁰ United Nations Guiding Principles on Business and Human Rights: Implementing the "Protect, Respect and Remedy" Framework, 2011: 1
- ⁵¹ ILO, above n6

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- ⁵² Abella, Martin, & Yi, above n3
- ⁵³ See Abella, Martin, & Yi, above n3; but also, there is no definition of recruitment fees in internationally recognized labour and human rights standards. Although it is too all-encompassing for practical usage and analysis, the US Senior Policy Operating Group to Combat Trafficking in Persons draft definition of recruitment fees states: “Recruitment fees include but are not limited to the following fees, charges, or costs: a) for soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, or placing potential employees; b) for covering the cost, in whole or in part, of advertising; c) for certifying labour applications; d) for processing petitions; e) for visas and any fee that facilitates an employee obtaining a visa such as appointment and application fees; f) for government-mandated costs such as border crossing fees; g) for procuring photographs and identity documentation, including any nongovernmental passport fees; h) fees charged as a condition of access to the job opportunity, including procuring medical examinations and immunizations and obtaining background, reference and security clearance checks and examinations; and i) for an employer’s recruiters, agents or attorneys, or other notary or legal fees. 2. Any fee, charge, or cost may be a recruitment fee regardless of whether it is deducted from wages, paid back in wage or benefit concessions, paid back as a kickback, bribe or tribute, remitted in connection with recruitment, or collected by an employer or a third party, including but not limited to agents, recruiters, staffing firms (including private employment and placement firms), subsidiaries/affiliates of the employer and any agent or employee of such entities”.
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- ⁵⁵ Jones, Katherine (2015) *Recruitment Monitoring & Migrant Welfare Assistance*, IOM, Dhaka, Dhaka House: 87.
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- ⁶⁴ Martin, above n60.
- ⁶⁵ Curiously, in 2012, Nepal banned licensed recruitment agencies from establishing offices in outer regional areas, forcing a greater reliance on sub-agents. However, Nepal allows sub-agents to register so that they can operate in a formal manner. There is also a national association of sub-agents, although very few sub-agents are registered. Nepal is currently reviewing its 2007 Foreign Employment Act. One proposal allows recruitment agencies to establish district level offices, and prohibits sub-agents, but it is not clear whether this will be adopted.
- ⁶⁶ Jones, Katherine (2015) *Recruitment Monitoring & Migrant Welfare Assistance*, International Organization for Migration, Dhaka, Dhaka House: 40.
- ⁶⁷ ILO Migration for Employment Convention No. 97 calls for Member States to adopt bilateral agreements when there is sufficiently large movements of migrant workers. The Convention assumes that the agreements should conform with international labour standards (See Article 10).
- ⁶⁸ Gordon, above n45.
- ⁶⁹ ILO, above n22
- ⁷⁰ Jones, above n66: 110.
- ⁷¹ See also Abella, Martin, & Yi, above n3.
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- ⁷⁸ See ILO Fair Recruitment Initiative: <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>
- ⁷⁹ Sam McCahon of McCahon Law Offices, Washington, - personal communication.
- ⁸⁰ In 2006, the Philippines Association for Professionalism in Overseas Employment (ASPROE) was formed with the requirement for membership being that they could not charge placement fees, but it has very few members.
- ⁸¹ Gordon, 2015: 7-8.

- ⁸² Beate Andrees, Alix Nasri & Peter Swiniarski, *Regulating Labour Recruitment to Prevent Human Trafficking and to Foster Fair Migration: Models, Challenges and Opportunities*, ILO, 2015: 66.
- ⁸³ For example, an agent may be disqualified where the authorities reasonably suspect that the person has been involved in human smuggling, trafficking, a crime involving torture or slavery, or a crime that is of serious international concern, whether or not they have been convicted of such an offence. Background checks can be obtained from business associates, former clients, etc.
- ⁸⁴ Andrees, Nasri & Swiniarski, above n82.
- ⁸⁴ ILO, above n46.
- ⁸⁵ This of course assumes a more robust system of registration, licensing and regulation, based upon ILO fair recruitment guidelines that should be in place first before any supplementary accreditation system.
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- ⁸⁷ Some of the points included in the agreement include the possibility of increasing the service fee to be charged by the recruitment agency. The 11-member team formed (which includes 5 representatives of NAFEA) is given the responsibility of carrying out the assessment on this possibility. The other point included representation of NAFEA in the technical committee formed to review and amend the Foreign Employment Act, 2007.
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- ⁸⁹ *Ibid.*
- ⁹⁰ *Ibid.*
- ⁹¹ Andrees, Nasri & Swiniarski, above n82: 71.
- ⁹² Greater clarity is required on legal remedies for breach of contract where the labour law does not apply, such as with migrant domestic workers. In Lebanon, for example, contract law has not been effective. See Jureidini, Ray & Moukarbel, Nayla (2004) "Female Sri Lankan Domestic Labour in Lebanon: Contractual, Slavery-like Practices and Conditions" in *Journal of Ethnic and Migration Studies*, Volume 30, No. 4, July, 2004, pp. 581-607.
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- ⁹⁴ United Nations Office on Drugs and Crime (UNODC) (2015) *The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons*, United Nations, Vienna. https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf
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- ⁹⁷ EURES website. Available: <https://ec.europa.eu/eures/public/eures-services>
- ⁹⁸ Infoedge website. Available: <http://www.infoedge.in/businesses-recruitment.asp>
- ⁹⁹ Sify News (2016) "Sri Lanka, Saudi Arabia ink e-hiring system for migrant workers", Sify News (22 March 2016) <http://www.sify.com/news/lanka-saudi-arabia-ink-e-hiring-system-for-migrant-workers-recruitment-news-international-qdwsKpidchdgi.html>
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- ¹⁰⁷ For an overview of these bilateral agreements, see International Organization for Migration (2015) *Recruitment Monitoring & Migrant Welfare Assistance: what works?* p 60-61. https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf
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- ¹⁰⁹ Wickramasekara, Piyasiri (2013) *Regulation of the Recruitment Process and Reduction of Migration Costs: Comparative Analysis of South Asia*. Chapter 3, in Proceedings of the Intergovernmental Regional Seminar on Promoting Cooperation for Safe Migration and Decent Work, 1-2 July 2013, Dhaka, Bangladesh October.

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- ¹¹⁵ See Public Services International (PSI) website at <http://www.world-psi.org/en/psi-symposium-german-philippines-bilateral-agreement-health-workers>.
- ¹¹⁶ Gordon, 2015: 19
- ¹¹⁷ See recent actions in Qatar, for example - <http://www.sc.qa/en/news/statement-on-behalf-of-the-sc>
- ¹¹⁸ It may be noted that the Philippines' "joint and solidary liability" clause does not apply to any direct hiring arrangement or hiring through Government-to-Government.
- ¹¹⁹ See Labour Code of the Philippines Presidential Decree No. 442, Article 109, "Solidary Liability".
- ¹²⁰ Lawyers Beyond Borders (2011) "Building Partnerships for Justice for Migrant Workers" Conference Report, 23-25 November 2011 Bangkok, Thailand.
- ¹²¹ Gordon, 2015: 32.
- ¹²² Gordon, 2015: 27-28
- ¹²³ Beate Andrees, Alix Nasri & Peter Swiniarski: *Regulating Labour Recruitment to Prevent Human Trafficking and to Foster Fair Migration: Models, Challenges and Opportunities*, ILO, 2015: 47-48.
- ¹²⁴ *Ibid.*, p. 79.
- ¹²⁵ Gordon, 2015: 30; See also Andrees, Nasri and Swiniarski, above n123.
- ¹²⁶ Andrees, Nasri and Swiniarski, above n12.3
- ¹²⁷ ILO (2014) *Realizing a Fair Migration Agenda: Labour Flows between Asia and Arab States: Summary Report of the Interregional Experts' Meeting, 3-4 December 2014, Kathmandu*: 9.
- ¹²⁸ Gordon, 2015: 48.
- ¹²⁹ Gordon, 2015: 44
- ¹³⁰ Under joint and several liability, this may not apply with Philippine recruitment agencies who are asked to assume full responsibility for the life of the contract to the return of the worker at the point of hire. Philippine law prohibits probationary periods for migrant workers but allows provisions in the contract on "just causes" for termination by the employer and employee.
- ¹³¹ Jureidini, above n20.
- ¹³² Gordon, 2015: 20-21.
- ¹³³ EICC Code of Conduct, available at: http://www.eiccoalition.org/media/docs/EICCCodeofConduct5_1_English.pdf
- ¹³⁴ Jureidini, Ray. (forthcoming) "Irregular Migration in Qatar: The Role of Legislation, Policies and Practices" in Philippe Fargues & Nasra Shah (eds) *Irregular Migration in the GCC States*, Gulf Research Council, Cambridge University Press.
- ¹³⁵ States should formulate "coherent policies, such as employment and labour migration policies, which take into account the risks faced by specific groups of migrants, including those in an irregular situation, and address circumstances that could result in forced labour situations." ILO Recommendation No. 203 on Supplementary Measures for the Effective Suppression of Forced Labour, 2014 (Article 4h).
- ¹³⁶ This is acknowledged in the UAE *Arriving Guest Workers Pamphlet*. It asks, "No work upon arrival? ... Report to the Labour Office."
- ¹³⁷ Jureidini, above n133.
- ¹³⁸ Shah, above n31; Kapiszewski, Andrzej. (2001). *Nationals and expatriates: Population and Labour Dilemmas of the Gulf Cooperation Council States*. Garnet Publishing Limited, Reading UK.
- ¹³⁹ See for example: Crepeau, Francois *Report of the Special Rapporteur on the human rights of migrants: Mission to Qatar*. United Nations Human Rights Council, Twenty-sixth session, 24 April, 2014, Geneva.
- ¹⁴⁰ United Nations Office on Drugs and Crime (UNODC) (2015) *The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons*, United Nations, Vienna; Beate Andrees, Alix Nasri & Peter Swiniarski: *Regulating Labour Recruitment to Prevent Human Trafficking and to Foster Fair Migration: Models, Challenges and Opportunities*, ILO, 2015: 82.
- ¹⁴¹ Bahrain Labour Law No. 36, 2012. Domestic workers are covered by Articles (6), (19), (20), (21), (37), (38), (40), (48), (49), (58), (116), (183) and (185) and in Parts Twelve and Thirteen.
- ¹⁴² Kuwait Ministerial Decree No. 68, 2015.
- ¹⁴³ Labour law No. 6 of 2011 specifies an 8 hour day and an hour of rest every 5 hours. The domestic worker law requires a maximum of 12 hour a day with unspecified "hours of rest" and one day off per week. Instead of 15 days paid sick leave, employers of domestic workers are required to provide medical treatment. Human Rights Watch (2015) *Kuwait: New Law a Breakthrough for Domestic Workers*, June 30, 2015. <https://www.hrw.org>; MigrantRights.Org (2015) *Another Look at Kuwait's Laws for Domestic Workers*. <http://www.migrant-rights.org/2015/08/another-look-at-kuwaits-new-laws-for-domestic-workers/>

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SUMMARY

Fraudulent practices at the recruitment stage can leave low-skilled workers extremely vulnerable. These practices might include debt bondage linked to payment by low-skilled migrant workers of excessive recruitment fees, costs and charges and deception about the nature and conditions of work, often leading to detrimental contract substitution and human trafficking for labour exploitation. A complex and opaque web of intermediaries including sub-agents and outsourcing agents facilitate visa trading and drive up recruitment charges for low-skilled migrant workers. Collusion between labour brokers at origin and destination can perpetuate these practices, through such methods as kickback payments.

Within the Asia-Arab States corridor, the ILO has collaborated with constituents to promote fair migration during several forums. This White Paper serves to further stimulate policy dialogue for fair migration in the interlinked Asia-Arab States region. It outlines the main challenges to fair recruitment in the Asia-Arab States corridor, and proposes concrete measures for reform. Reform will require harmonizing legislation, accreditation and monitoring between countries of origin and destination, as well as significant cooperation with the private sector for the review of business practices by corporate contractors and employers of domestic workers.

For more information, contact:

**International Labour Organization
Regional Office for the Arab States
Aresco Center, Justinien Street, Kantari
P.O.Box 11-4088 Riad El Solh 1107-2150
Beirut – Lebanon
Tel: +961-1-752400
Fax: +961-1-752405
Email: beirut@ilo.org**