

Regional Conference on Labour Migration Recruitment Reform

16-17 December 2014 — Amman, Jordan

REPORT



Summary

Reforming migrant labour recruitment policies has been at the top of the agenda for migrant workers, migrant civil society organizations, and trade unions for many years. The recruitment process in labour migration poses particular challenges for effective regulation, and gaps in current regulatory practices, both in countries of origin and destination, result in increased risk for migrant workers.

Recognizing the global scope of this issue and understanding that civil society groups have been advocating for recruitment reform in various regions of the world for many years, Migrant Forum in Asia (MFA) and the Global Coalition on Migration (GCM) in partnership with the Migration and Development Civil Society Network (MADE) formed the Open Working Group on Labour Migration & Recruitment following a series of meetings during the Global Forum on Migration & Development in Stockholm in May 2014. The Open Working Group was established to bring together the multiple advocacies on recruitment reform taking place globally.

Since its establishment, the Open Working Group on Labour Migration and Recruitment has initiated a number of activities, including the creation of the working group listserve, the launch of an online portal—www.recruitmentreform.org, a series of online discussions on recruitment reform, and a global study on gaps and challenges in recruitment policies.

On 16-17 December 2014, MFA, in partnership with Tamkeen Fields for Aid, GCM, and MADE convened the second international meeting of the Open Working Group on Labour Migration & Recruitment in Amman, Jordan. The conference brought together 53 participants, including civil society and trade union partners, representatives of foreign missions, and lawyers who take up migrant worker cases, from Asia, Europe, and North America to define a common program of action and to develop the campaign for Recruitment Reform.

Throughout the two-day conference, a number of key themes were explored, including the International Labour Organization's Fair Recruitment initiative, ethical recruitment initiatives headed up by private recruitment agencies, and the merits and drawbacks of bilateral agreements and memoranda of understanding in regulating migrant labour recruitment regimes. Substantive discussions took place on potential campaigns, including zero tolerance for recruitment fees and engaging the private sector on ethical recruitment standards, and on the need to enhance knowledge within the working group on the various recruitment regimes in place internationally.

The conference resulted in the formulation of a common action plan, setting out our next steps for action as a working group.

Open Working Group Survey on Recruitment Gaps & Challenges

Rex Varona, lead researcher for the Open Working Group's quantitative study on gaps and challenges in migrant labour recruitment, and Kathryn Abrigo, research assistant, explained the objectives, scope, and methodology of the ongoing study and presented preliminary findings based on the initial coding of survey results.

Rex explained that in analysing international migrant labour recruitment, there exists a wealth of anecdotal evidence, but hard data is not as readily available to bolster calls for government action. The Open Working Group's effort is to conduct exploratory research in as many countries of origin and destination as possible to better understand recruitment problems and to identify weaknesses or gaps in labour migration policies.

In July and August 2014, the research team developed two comprehensive questionnaires—one for data collection in countries of origin and one for data collection in countries of destination. Members of the Open Working Group as well as members and partners of Migrant Forum in Asia were called upon to administer the survey to a random sample of migrant workers in their countries. In order to gather additional country-specific data, participants in some countries developed additional questions to serve their own research purposes.

The survey is a descriptive action study on the recruitment issues affecting migrant workers going abroad. It includes situational analysis related to overseas recruitment and labour migration; policy-and-practice analysis on weaknesses, gaps, and failures resulting in recruitment problems; and recommendations in addressing these issues. The target respondents of the survey are migrant workers themselves. Partners and members engaged in this recruitment research follow the same research design in their data collection.

Using Slovin's formula to determine sample size, the research team determined that a minimum of 110 fully completed surveys were necessary to achieve 90% validity in survey findings. To achieve maximal reliability, 410 surveys per country is needed, and some organizations have agreed to take this on. From September to November 2014, the survey was translated into Burmese and Bengali, and 1,136 surveys were completed and returned to MFA for coding using SPSS software. To date, 736 have been coded. This research effort has been undertaken entirely on a voluntary basis.

Rex and Kathryn presented some of the preliminary survey results for countries of origin and destination. As the research is ongoing, more robust reports and analysis at the regional and country level will be released throughout 2015.

To take the research forward, MFA staff is committed to continue supporting the research efforts by communicating with organizations interested in participating, coding survey responses and providing initial statistical reports, producing a regional report, and working with organizations at the country level to produce country reports. There was considerable enthusiasm among the conference participants to explore ways to take this research forward and to ensure that it becomes global in scope.

Open Forum

- In analysing the survey data, it is important to see how the information can be translated into action through the publication of more easily digestible materials
- Can consider creating popular reports from survey results
- Important to extend the survey beyond Asia to make it more international in scope
- Would be interesting to look at the issue of forced labour in the analysis and to potentially rank countries based on severity

- Logical next step might be to deepen the analysis by conducting a series of qualitative interviews with key informants

Next Steps (for 2015)

Rex led a side meeting of the Open Working Group members who conducted the recruitment survey. Attendees of the meeting were representatives from INSAN, WARBE, BOMSA, MWPS, PNCC, Asian Forum, CIMS, MWG, CMA, TWC2, HRDF, and MSQ. Representatives were encouraged to look into the possibility of continuing their research efforts to complete a minimum of 410 surveys to achieve 95% confidence in the results. The agreed initial deadline to complete the surveys was set at February 2015, and a final deadline of March 2015. To date, members and partners in Nepal, Bangladesh, and Thailand have agreed to work towards completing 410 surveys. In addition, Open Working Group members CDM and the ILWRG have agreed to explore the prospects for conducting the study in the context of the Americas.

International Labour Organization: Fair Recruitment Initiative

Alix Nasri, ILO Technical Officer, presented the ILO's new Fair Recruitment Initiative.

The ILO's Special Action Program on Forced Labour is looking closely at migrant labour recruitment issues. This is a new initiative and working in progress, open to civil society feedback and collaboration.

In 2013, the ILO held a technical tripartite meeting on labour migration. A key recommendation was for the ILO to develop guidance on labour recruitment that respects international labour standards and that identifies good practices in labour recruitment. As Chair of the Global Migration Group in 2014, ILO attempted to put recruitment on the agenda. Last year, a significant milestone was the adoption of the Forced Labour Protocol—an instrument designed to modernized the ILO Convention on Forced Labour. This Protocol states that governments should take measures to protect workers from fraudulent recruitment practices.

The Fair Recruitment Initiative was launched to serve as an umbrella for all of ILO's work on the topic, and is particularly focused on Asia and the Middle East. The aim is to provide guidance to governments at a global level. The objectives of the Fair Recruitment Initiative are as follows:

1. To consolidate knowledge on migrant labour recruitment

The ILO is looking at laws and regulations that have been successful to date, challenges to achieving fair recruitment, and promising schemes (e.g., joint liability clauses for employers and recruiters). Identified practices will be documented and a global report will be published at the end of 2015.

2. Working with governments and identifying alternatives to 'unfair' recruitment practices

In considering alternative solutions, the ILO is looking at alternatives to private employment agencies. For example, the ILO is looking at cooperatives engaged in providing labour orientation services as a potential model, and is considering how to encourage the creation of public employment services. It is hoped that the Forced Labour Protocol will give some impetus for states to ratify C181.

3. To promote fair business standards through the development of fair recruitment principles

Before April 2015, the ILO will produce a document that consolidates all of the international labour and human rights standards, as well as the principles of other initiatives, related to labour recruitment. The

idea is to consolidate a global vision of fair recruitment, with a view to determining what we are asking of recruitment agencies.

4. To work with trade unions on the issue of labour recruitment

The ILO intends to build the capacity of trade unions on labour migration governance and recruitment, and to work with CSOs to see how to improve migrant worker protections. This objective includes working with partners to improve complaints mechanisms and access to redress.

How to engage?

Alix listed a number of ways that civil society (including the Open Working Group and its membership) can support the Fair Recruitment Initiative.

- Support and initiate campaigns for the ratification of the Forced Labour Protocol, highlighting the clauses specific to international labour recruitment
- Work with the private sector to provide concrete guidance on fair recruitment principles
- Continue to work on campaigns for access to legal remedies and assessing the performance of different dispute mechanisms

Forthcoming ILO Publications

In the coming months, the ILO will be publishing a number of reports on recruitment, including:

- Research on the recruitment business models in Jordan, Lebanon, Bangladesh, and Nepal
- Research on joint liability models and how firms at the top of the supply chain can influence recruitment practices
- Research on recruitment practices in Paraguay and Brazil (already published)

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- How do you see the Fair Recruitment Initiative meshing with anti-trafficking programs?

There is a clear link between recruitment and trafficking. Some workers have gone through ‘normal’ recruitment procedures (with licensed agents, etc.) and still end up in situations of exploitation. We see a clear link between recruitment and exploitation, especially among those who have borrowed money. Improving recruitment is a direct prevention strategy.

- ILO plans for Fair Recruitment Corridor

The ILO is looking at implementing Fair Recruitment corridors with a view to demonstrating the positive impact that fair recruitment can have on workers and employers. The ILO approach is one of standard-setting. Other initiatives, such as private certification and accreditation schemes and recruiter self-regulation should be supported, but the ILO strongly believes that standard setting and regulation should be the key pillar.

- ILO Convention 181 was developed with national agencies in mind, not considering cross-border recruitment.

We need to consider how the cross-border issues of recruitment can be covered in these guidelines. Also,

C181 has few ratifications. The provisions and standards of the convention are strong, but need to be interpreted such that they also apply to migrant labour.

- Next steps for the Open Working Group?

More discussion on how to link up with the Fair Recruitment Initiative. One way is to include a complaints mechanism on the RecruitmentReform.org web platform.

Fair Hiring Initiative: Ethical Recruitment

Marie Apostol from Fair Hiring Initiative, a newly licensed ethical recruitment agency in the Philippines, explained the business perspective on how to combat labour recruitment abuses and the associated problems of debt bondage, forced labour, and trafficking through a market-led approach.

The goals of Marie's recruitment agency are as follows:

- To ensure that workers have a safe channel for migration
- To increase the number of ethical recruitment players in different markets
- To increase the number of workers who migrate without paying fees

There is no official definition of "ethical recruitment." However, the term is used broadly to describe those recruitment agencies that do not charge fees to workers and that adhere to codes of conduct that strive to protect workers in the recruitment process and throughout the supply chain. Ethical recruiters apply these standards across all of their markets, not just in select markets where they will see some particular advantage to good practices.

Recruitment Fees

In considering the issue of recruitment fees, it is necessary to understand not only the initial fee that workers pay, but to see how their salaries are broken down. Workers see deductions for broker service fees, sending country fees, interest on loans in sending countries, forced savings, board and lodging, etc. Marie presented a breakdown of deductions for a Filipino worker to Taiwan wherein the worker would only receive 28% of their expected earnings as a result of fees. The upshot of such a system is that workers feel compelled to stay in their employment relationship, even if it is exploitative or abusive, because they need to recoup their investment; i.e., forced labour.

More data on fee breakdowns and expenses paid by workers can be seen in Marie's PowerPoint slides, with numbers provided by VÉrite. These fees and expenses vary across countries and depend as well on the worker's country of origin.

Legal Drivers for Ethical Recruitment

Some jurisdictions have begun putting legal provisions in place to insist that businesses and brands guarantee ethical recruitment throughout their supply chains, largely stemming from concerns about forced labour and human trafficking. Examples include:

- California Transparency in Supply Chains Act (2011): Requires all companies operating in California to report on their initiatives to guard against trafficking and force labour in their supply chains.

- New California Law (September 2014): Requires companies to move beyond reporting, but to be proactive in training their staff on how to eliminate trafficking and forced labour in their supply chains.
- US Executive Order: Requires all businesses that provide goods and services to the federal government to ensure that there is no forced labour or trafficking within their supply chains. This order has a particular clause requiring no-fee recruitment for migrant workers involved in any supply chain step related to US federal government procurement.
- Destination country laws insisting on 0 fees (e.g., Qatar, UAE, and other destination countries)
- Sending country laws insisting on 0 fees (e.g., Philippines)

These legal drivers provide incentives to many businesses to thoroughly examine the practices of sub-contracted businesses within their supply chains and to purchase only from those with clean records. These legal incentives are particularly effective for businesses with major brands to protect from criticism and scrutiny (e.g., Apple, Adidas, Nike, etc.). While adopting codes of conduct and complying with such standards is voluntary, a business case can be made for enforcing such codes.

Business-driven initiatives and codes of conduct

A number of professional associations and watchdog organizations have set standards to guard against forced labour and exploitative practices in labour recruitment. Most of these codes have foundations in ILO standards.

- Electronic Industry Citizenship Coalition: Looking at recruitment in supply chains for electronics companies, particularly in the wake of the Vérite report published in 2014 on forced labour in Malaysia's electronics manufacturing supply chains.
- Roundtable on Sustainable Palm Oil: This group has a working group looking at forced labour and debt bondage in recruitment to palm oil estates. Major players include Pepsi and its subsidiaries.
- Fair Labour Association: This group looks at ethical recruitment in the footwear industry
- Qatar Foundation's Mandatory Standards for Worker Welfare: Chapter 11 of this code of conduct mandates zero fees for workers recruited for construction in Qatar.
- World Health Organization: The WHO has set guidelines and assessment tools for their labour supply chain.
- International Confederation of Private Employment Agencies (CIETT): Vérite assisted in the development of the CIETT code of conduct, which includes principles to be applied to labour agents and private recruitment agencies.

The practical use of codes of conduct is to distinguish good from bad practices. Such codes are instructive in the development of "whitelists" of recruiters. However, in creating such "whitelists," robust assessment and monitoring is required by independent agencies. A major problem is that recruiters may follow a code of conduct in one market, but not in another. Ethical recruiters must be accountable and transparent, and follow ethical principles across all of their markets.

Currently, government regulations are entirely punitive, designed to penalize recruiters that violate state laws and regulations. Such a punitive system does not lead to performance improvement or help to articulate what we

want to see in recruiters. The legislative environment must be favourable to encourage the establishment of more ethical recruitment agencies, while crowding out the ‘unethical’ recruiters.

Challenges for zero fees from the business perspective

For recruitment agencies, zero fees is the biggest challenge. This is because there are legitimate costs associated with recruitment. If recruiters charge employers to cover these costs, they have to compete with one another to keep the cost low. However, if they charge workers, they are able to make more money, because workers are willing to pay if they think it will secure them a good job abroad. Established recruiters are unlikely to change their practices, especially if it means they will make less money.

However, there are a few recruitment agencies committed to a “no-fees for workers” model. These agencies struggle to compete with established, fee-charging agencies. Also, regulatory frameworks tend to be unfavourable for upstart ethical recruiters.

To improve the situation, the playing field needs to be levelled. One way to do this is to encourage governments to sign C181 and to adopt no-fee policies. Governments should look at mechanisms to support the development of ethical recruiters while crowding out recruiters operating on the old system. Recruitment costs should always be paid by employers, and workers should be informed and empowered to demand this from recruitment agencies.

We should recall that recruitment systems were not always managed this way. Governments used to manage migrant labour recruitment, and costs were borne by employers. However, with the surge of demand for jobs abroad, governments began to look to private recruiters to take on the recruitment work. Strong lobbies from the private sector resulted in the collection of fees from both employers and workers.

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- Suggestion: we should share the names of ethical recruiters in our countries as a first step to creating a “white list” of trusted recruiters
- Open Working Group should create a campaign to change the environment such that the emergence of new players can be encouraged. The Colombo Process, GFMD, and other intergovernmental spaces are good opportunities to take this forward.

Government-to-Government Recruitment

Given the interest and advocacy among some MFA and Open Working Group members for government-to-government recruitment via bilateral agreements and memoranda of understanding as a means of overcoming recruitment abuses, Misun Kim from JCMK was invited to speak about South Korea’s experience of government-regulated recruiting. This was followed by a short intervention by MP Charles Santiago from Malaysia, who spoke about the G-to-G recruitment between Malaysia and Bangladesh.

South Korea’s EPS Recruitment System

South Korea previously only had a system in place whereby workers were brought to the country as “trainees,” i.e., students paid stipends for their work and who were not covered by labour laws. This system hindered their ability to exercise their rights. After 10 years of struggle, the system was changed to the Employment Permit System (EPS), seen as a model in the region. There are currently 15 countries with MOUs under the EPS.

Under EPS, workers can stay in the country for a maximum of 4 years + 10 months, but can apply for a contract renewal of another 4 years + 10 months once their first contract expires, provided they meet certain conditions (e.g., they cannot have changed employers at any time during their first contract). Every year, the government sets EPS quotas.

Under the EPS system, exploitation and human rights violations continue to be serious problems. The government claims that the system has introduced transparency in recruitment processes and has reduced fees considerably. They claim that minimum wage laws are properly applied, that there are mechanisms in place to address labour disputes, that undocumented migration has declined, and that the satisfaction rate among migrant workers is very high. However, CSOs continually call attention to the fact that EPS is an employer-centred system. Migrant workers are tied to their employers and cannot easily change jobs. Recruitment fees vary across countries of origin, with Filipino workers paying the least and Pakistani workers paying the most; it is unclear why these fees differ. Passport confiscation is a regular occurrence, and employers regularly violate minimum wage rules.

Thus, before advocating for G-to-G migrant labour regimes, it is important to consider very carefully what kinds of provisions these agreements should entail and determine how to hold governments to account.

MOU between Malaysia & Bangladesh

Malaysia also has a series of MOUs. However, the MOU with Bangladesh is particularly interesting due to the level of “regulatory capture” — recruitment agencies on both the Bangladesh and Malaysia side have had undue influence on the content and application of the MOU.

In Malaysia, there are currently 2.9 million documented migrant workers and 4 million undocumented workers (although this number could be much higher). There is no need for additional migrant labourers to be recruited to Malaysia, as there is an ample supply of workers already in the country. However, an MOU was signed with Bangladesh to bring in 12,000 more workers. It seems that this MOU was only signed because of the pressure of the recruitment industry. This issue of regulatory capture is extremely important to look at in our campaigns on recruitment reform.

Open Forum

- Suggestion: Run an online discussion for the Open Working Group on government-to-government recruitment with a view to preparing a critical paper on how to assess this governance framework.

Side Meetings

A series of self-organized side meetings were also held during the conference, as the meeting afforded an important opportunity for Open Working Group members to explore specific areas of common interest and advocacy.

Recruitment into the fishing industry

Alex Au (TWC2) led a short session wherein he introduced the topic of men recruited into the fishing industry. From TWC2's experience (albeit not many cases, due to difficulty in accessing the men involved) there is much deception in recruitment, exacerbated by contract substitution and loss of personal autonomy once on board the vessel. Issues like medical care, correct payment of salaries, communication with families, and shore leave have also surfaced.

These issues are compounded by the highly cross-border nature of this trade, with trawlers registered in one country, owners from a second, captains from a third, manning agents from a fourth and the recruits from a fifth country. Moreover, with trawlers on the high seas, jurisdictional denial is easy. One participant remarked that some of these abuses might easily be considered trafficking. Another noted that he had heard of similar cases in East Malaysia.

While the brief discussion yielded no immediate solutions, participants were urged to raise awareness of this issue, and to document any cases they hear of.

Open Working Group Action Plan

Through a series of small group discussions in which participants were asked to review and prioritize issues, advocacy spaces, and positions, the following campaign priorities were agreed upon:

Summary: Recruitment Reform Campaign Action Plan

Goals	Initiatives
Influence international pronouncements on migrant labour recruitment	<p>Series of policy papers (developed through online consultations)</p> <ul style="list-style-type: none"> • Recruitment Fees (in process) • Government-to-government recruitment • Contract substitution • Employer-tied visa regimes (e.g., kafala) • Recruitment bans • Pre-departure & post-arrival orientations • Role of sub-agents • ...other topics as emerge from OWG discussions <p>Intergovernmental Processes</p> <ul style="list-style-type: none"> • ILC side events • HRC side events • GFMD – priorities and preparation to be developed • UPR reporting • Regional Consultative Processes (determine best ways to engage in each region)
Establish Recruitment Reform campaign visibility in key spaces national, regional, international	<ul style="list-style-type: none"> • Develop print materials on each campaign priority and policy area (MFA) and disseminate among OWG members for use in various advocacy spaces • Website developments (RecruitmentReform.org) <ul style="list-style-type: none"> ○ Highlight “existing initiatives” of OWG membership ○ Highlight initiatives specific to the OWG as a group ○ Invite OWG members to write commentaries on policies ○ Highlight ethical recruitment and fair recruitment initiatives
Increase access to information for migrant workers and develop organizing tools to enhance migrant worker knowledge of their rights	<ul style="list-style-type: none"> • Translate materials (website and print) into French, Spanish, Arabic • Support existing initiatives of OWG members and encourage recruitment reform messaging to be part of their service delivery
Achieve ‘0’ recruitment fees	<ul style="list-style-type: none"> • Finalize policy brief on recruitment fees (see above)

for all migrant workers	<ul style="list-style-type: none"> • Add extra chapters to policy brief analyzing no fee policies in place currently and examining alternatives to fees-for-workers modalities to develop strong recommendations for no fees
Zero tolerance for contract substitution	<ul style="list-style-type: none"> • Host online discussion and create policy brief on contract substitution modalities (see above) • Advocate for standard contract to be included in BLAs/MOUs
Enhance support among the business community (recruiters and employers) for ethical/fair recruitment	<ul style="list-style-type: none"> • Work with ethical recruiters to develop a whitelist of ethical recruiters by country • Organize dialogues/national forums with recruitment agencies to raise awareness of ethical recruitment practices
Ensure that as a working group we identify common definitions and interpretations to advance our advocacy	<ul style="list-style-type: none"> • Create a glossary of terms used in the campaign
Increase research and data collection efforts to strengthen calls for ethical recruitment	<ul style="list-style-type: none"> • Complete MFA-led recruitment study (see details above) • Prepare country-level and regional-level analysis • Popularize findings

It was agreed that Migrant Forum in Asia would continue to act as secretariat of the Open Working Group on Labour Migration & Recruitment, and that the MFA team would follow up with working group members to move the agenda forward.