

**Civil Society Contributions to the
Special Rapporteur's Report to the
UN Human Rights Council
on Migrant Labour Recruitment**

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Submitted by: Migrant Forum in Asia on behalf of the
Open Working Group on Labour Migration & Recruitment



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Migrant Forum in Asia (MFA), a membership network of migrant organizations, migrants' rights advocates, trade unions, faith based organizations and individuals working to protect and promote the rights of migrant workers and members of their families. MFA currently has more than 200 members in 16 countries in Asia. www.mfasia.org

Open Working Group on Labour Migration & Recruitment is a global civil society initiative to bring together the multiple advocacies on recruitment reform taking place regionally. Established by the Global Coalition on Migration and Migrant Forum in Asia in 2014 during a series of meetings at the Civil Society Days of the Global Forum on Migration & Development and People's Global Action on Migration, Development, & Human Rights, the Open Working Group works on knowledge sharing and global strategizing for recruitment reform. Migrant Forum in Asia serves as the secretariat for this working group with funding from the European Commission via the Migration and Development Network (MADE) Project of the International Catholic Migration Commission. www.RecruitmentReform.org

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Preface

The problems inherent in migrant labour recruitment regimes globally have been of considerable concern for migrant communities and civil society advocates for many years. This is particularly the case in the Asia-Pacific region, as the South Asia / West Asia and Southeast Asia / West Asia migration corridors can be particularly dangerous for migrant workers due to restrictive migration regimes in host countries and lax or inexistent regulation of the recruitment industry in origin and destination countries. However, this is not just an Asia-Pacific concern, as migration for work is a global phenomenon; similar recruitment patterns are seen in every migrant labour corridor.

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) held a series of meetings on recruitment during the Civil Society Days of the Global Forum on Migration and Development and the parallel People's Global Action on Migration, Development, and Human Rights in Stockholm, Sweden in May 2014. Among the outcomes of these meetings was the decision to establish the Open Working Group on Labour Migration & Recruitment, with MFA serving as the secretariat with funding from the European Commission via the MADE Project of the International Catholic Migration Commission (ICMC).

The Open Working Group on Labour Migration & Recruitment, with members from civil society

organizations (CSOs) across the world, are committed to knowledge sharing on recruitment trends and to collective advocacy aimed at reforming migrant labour recruitment systems globally.

As its first major initiative, the Open Working Group launched RecruitmentReform.org — an online platform that strategically aggregates information on campaigns, policies and initiatives, events, news, laws, and international conventions on labour migration and recruitment. It is used to provide continuous updates on the realities of migrant labour recruitment and the initiatives that exist to address, or that in some cases exacerbate, migrants rights concerns. We invite the Special Rapporteur to visit this website and to make use of any and all resources made available for his data gathering and analysis.

To respond to the Special Rapporteur's call for CSO inputs to his upcoming report on labour migration and recruitment, the Open Working Group circulated a call for inputs among its membership and hosted online discussions via email, online forums, Facebook, and Twitter. The report that follows aggregates the information collected through this online membership consultation with previous consultations of MFA, Migrants Rights International, and GCM, and shares our emerging analysis and recommendations on migrant labour recruitment from CSO and migrant community perspectives.

Introduction

It is well known that migrant workers from across the Global South seek access to the attractive job markets of the richer countries of the Global North. This migrant labour phenomenon yields billions of dollars in remittances for migrant countries of origin (\$404 billion in 2013¹ according to the World Bank), and many developing countries have come to rely on labour export to shore up their GDPs and relieve the pressure of high unemployment rates locally.

The international discourse linking migration and development, as promoted by governments in such spaces as the Global Forum on Migration and Development (GFMD) and through the activities of intergovernmental agencies like the International Organization for Migration (IOM), continually positions migrants as economic engines for poorer states, placing the burden of development on their shoulders.

Highly unregulated migrant labour recruitment regimes in countries of origin combined with restrictive migrant labour policies in countries of destination and systemic corruption on both sides disadvantage migrant workers from the start, putting them at risk of human and labour rights violations and hindering their ability to seek and access justice when such violations occur. Where recruitment regimes are regulated by recruiter licensing or bilateral agreements, the informal nature of many recruitment operations, systemic corruption among officials, insufficient monitoring mechanisms, and

unhealthy competition for labour market placements among countries of origin stymie their effectiveness.

Some private sector initiatives have emerged in recent years wherein recruiters committed to ethical recruitment practices have joined efforts to draft and implement codes of conduct for their sector, some in partnership with the International Labour Organization and the UN Office of the High

“Serious gaps exist between procedures as proscribed by laws/policies and the actual experience of migrants as they navigate the recruitment process. These gaps leave workers vulnerable to mistreatment, abuse, and exploitation on the part of unscrupulous recruitment agencies and their subagents”
— MFA Working Paper, January 2011

Commissioner for Human Rights. Also, civil society, grassroots organizations, trade unions, and migrant communities have advocated for governments to implement stronger rights-based pre-departure orientations, and have implemented their own pre-departure programming in various forms to help workers make informed decisions and avoid being misled by deceitful recruiters and their subagents.

While these are welcome initiatives, we maintain that it is the responsibility of governments of both countries of origin and destination to reform the migrant labour recruitment regime such that the human and labour rights of migrant workers are protected and respected.

¹ <http://www.worldbank.org/en/news/press-release/2014/04/11/remittances-developing-countries-deportations-migrant-workers-wh>

Current recruitment practices and their impact on the human rights of migrants

To guard against abuses in the system of migrant labour recruitment, many countries of origin have established government agencies to oversee the process of labour migration and recruitment.² For those countries without specific agencies, responsibility generally falls to the Ministry of Labour. While recruitment processes and the procedural elements of government oversight vary, the general trend towards the protection of migrant workers is to channel job offers from placement agencies abroad through these government offices. In some cases, the government agency approves job orders from agencies abroad, approves the print advertisements for these jobs issued by approved recruitment agencies in-country, and issues emigration clearance (as in the cases of Sri Lanka, India, and Bangladesh).

These processes are designed such that government intervenes in the recruitment process to oversee the activities of recruiters. However, significant gaps in these processes put migrant workers at risk, both in the country of origin and destination.

Role of Subagents

In most major migrant countries of origin, recruitment for work placements abroad begins at the village level. The so-called ‘subagents’ of

recruitment agencies based in the country’s major cities, who are often returnee migrants and residents of the villages in which they recruit, are tasked with directly linking prospective migrants to the jobs on offer by the agency. Subagents typically have no formal employment affiliation with the recruitment agencies they represent, working instead as subcontractors at arms-length from the agency itself. These subagents are paid commissions for the workers they recruit, and often provide subcontracted services for more than one agency at a time.

The recruiters of the Indian migrant women domestic workers are primarily family, friends or individuals from the extended village network. The entire process of recruitment is unregulated, unauthorized, and illegal.

— Mehru Vesuvala, Indian Community volunteer based in the Kingdom of Bahrain

Subagents often charge prospective migrants fees above and beyond that which recruitment agencies legally charge. These fees are said to cover a range of services, from transportation from the village to the city to meet with the recruitment agency, to forged or modified documents. The prospective migrant’s connection with subagents is a largely unregulated step in the recruitment process, and is often the starting point for human and labour rights violations that take place in both country of origin and destination. As the first point of contact for prospective migrants, they often come to rely on the subagents, trusting them for information and advice

² E.g., Philippine Overseas Employment Administration, Sri Lanka Bureau for Foreign Employment, Ministry of Overseas Indian Affairs, Department of Overseas Employment (Nepal), Ministry of Expatriates’ Welfare and Overseas Employment (Bangladesh), among others

even if they are being (knowingly or unknowingly) exploited in the process.

The informality of subagents' operations presents a challenge for states in regulating their activities. They are often difficult to identify and/or contact, as most operate independently and are accessible only via mobile phone. Recruitment agencies that subcontract such agents claim that they would not be able to reach prospective migrants without their services, as the agencies are generally located in cities; subagents help them to reach distant rural areas. The subcontracting system enables recruiters to distance themselves from the illegal and unethical activities of their subagents, and subagents profit from the lack of regulation—a mutually beneficial and reinforcing arrangement.

Recruitment Fees

When asked about the barriers to the protection of the human rights of migrants in the recruitment process, CSOs and migrant community members overwhelmingly responded that recruitment fees are the most serious and urgent concern. Migrant workers across the world take on considerable debts to pay exorbitant (and often illegally collected) recruitment fees to agencies and their subagents.

*We encounter Bangladeshi men who are paying 5-10 per cent a month interest on recruitment debt, and it takes them on average 17 and a half months to repay their recruitment costs: if their bosses fire them and send them home before that, they will be worse off than if they'd stayed at home and not gone to work abroad.
—TWC2, Singapore*

Such debts have considerable implications for the human and labour rights of migrant workers, as they often lead to debt bondage and forced labour.

Employers are often aware (or assume) that their employees are carrying significant debt-loads, and use this to their advantage to exploit and perpetuate violence against their employees. Combined with the tied visa regimes in many countries of destination, such as the kafala system, which prevent workers from changing employers, migrant workers are often forced to work despite mistreatment and abuse. To pay their debts to their

recruiters, migrant workers are much more apt to accept substandard working conditions and wages, unsafe work, and exploitative conditions in countries of destination.

Access to Rights-based Information

Most countries of origin have, to some degree, mandated that low-skilled migrants participate in pre-departure orientations (PDOs) as a step in the recruitment process (for migration through regular, state-sanctioned channels). However, many workers from impoverished villages have little education and illiteracy rates are high, thus absorbing the information presented may be difficult. Also, many CSOs and migrant community advocates have called into question the quality of the information presented in PDOs, pointing out that information on human and labour rights is often absent from state-designed PDO curricula. Indeed, awareness of rights and access to justice when rights violations occur are not the same.

Recruiters and employers often exploit the ignorance of migrant workers, providing them with misinformation and making false promises. PDOs are often the last step of the recruitment process, once the process of migration (securing a job offer, preparing documents, etc.) is well underway. Migrants are generally personally and financially invested in the process at this point, and if s/he were to learn information during a PDO session that would make him/her want to reconsider the decision to migrate, it would be difficult and likely expensive to halt the process.

Extensive Role of Private Recruiters

In many contexts, the role of the recruitment agency does not end once the worker has been deployed abroad. Because they are hired by employers to recruit workers on their behalf, recruitment agencies are often consulted when a dispute arises between the worker and the employer. In some cases, recruiters are even legally responsible for the repatriation of the worker and for finding a replacement should the employment arrangement dissolve.³ As such, the recruiter has a vested interest

³ This is the case in Lebanon and other countries in West Asia

in ensuring the worker “behaves”. Physical and sexual violence against migrant workers

***Among the chief grievances reported by migrant domestic workers in Lebanon is physical and sexual abuse inflicted upon them by recruitment agencies. In survey by Moukarbel, 15% of MDWs in Lebanon admitted to being physically abused (hit) by a local agent. More extreme forms of violence were also reported. In a much publicized incident, a domestic worker from Ethiopia was severely beaten and raped by the agent at the recruitment agency after she was sent there following a disagreement with her employer. —
Insan Association, Lebanon***

(particularly women migrant domestic workers) is thus commonplace as a mechanism of discipline and control.

Initiatives for improving recruitment practices and their implications for the human rights of migrants

National Policies and Legal Frameworks to Regulate Migrant Labour Recruitment

Many countries of origin have set up elaborate government agency infrastructures and legal regimes, purportedly to ensure that migrants' rights are protected in the process of migration. Despite the resources (human and financial) allocated to the functioning, monitoring, and oversight of these agencies, rights violations continue to occur and migrant workers remain at risk of exploitation and abuse on many levels.

CSOs and migrant community advocates have articulated the following criticisms of government initiatives to facilitate labour migration:

Corruption and lack of transparency: Officials responsible for overseeing recruitment and emigration are often accused of bribery and collusion with recruitment agencies and their subagents.

Lack of expertise among those tasked with ensuring rights protection: This critique is particularly strong in relation to embassy officials who are often on the frontlines of working with migrant workers in distress. Officials often lack clarity on the labour migration process, making them unqualified to offer assistance in many cases.

Lack of inter-agency cooperation and coordination: Many countries have multiple agencies responsible for different elements of the migration process,

ranging from departments of labour to workers' welfare offices, to foreign missions, to departments of foreign affairs. Institutional leadership in collaboration among the multiple departments involved in recruitment and migration is often weak, and the implementation of monitoring and oversight functions is inconsistent and lacking as a result.

Inconsistent service provision: A common complaint is that the level of service and assistance a migrant worker can expect from government agencies depends largely on individual employees and their dedication to ensuring migrants' rights are respected.

The safety of the [migrant workers] is still very much contingent on people, i.e. whether the person running the agency abides by human rights standards by their own initiative.
—*Insan Association, Lebanon*

Bilateral Agreements

Government-to-government recruitment (G2G), governed by bilateral agreements and memoranda of understanding, is a mechanism that some countries of origin have pursued in an attempt to strengthen the protection of migrants' rights in the migration process. Such agreements are seen in a variety of national contexts globally and have varying degrees of effectiveness depending on the agreement's terms and monitoring mechanisms in place. CSOs globally have called for the

implementation of bilateral agreements in the absence of widespread reforms to recruitment regimes, as they endeavour to provide a framework for recruitment that requires government involvement at every step and also establishes mechanisms for accountability under the law.

That said, G2G recruitment does not guarantee that the human and labour rights of migrants will be respected in the recruitment process or in employment in countries of destination. There are significant problems of the transparency of bilateral agreements. Migrants' rights defenders working in West Asia have long called attention to the fact that the text of bilateral agreements is often not made available to the public, limiting their effectiveness as a tool in advocating for human rights protections.

In addition, as seen in many contexts globally, the unhealthy competition among countries of origin for labour market placements for their nationals results in problematic compromises on the part of

The placement agencies in the country of origin and the broker agencies in Taiwan have profit as their number one objective and are not interested in protecting the human rights of migrant workers. The Ministry of Labour is more interested in promoting capitalism and cheap migrant labor than the human rights of migrant workers. – Hinschu Catholic Migration Centre, Taiwan

governments and recruiters alike. In negotiating bilateral agreements, countries of origin are often willing to accept lower standards for their workers in terms of wages and contract terms to secure these labour market placements, setting up labour export arrangements with countries with appalling human rights records. Recruitment agencies are also motivated by demand and profit, and will recruit workers for countries irrespective of the number of complaints or the country's human rights record.

Emigration Bans & Age Restrictions

In response to egregious human rights violations, some governments have instituted migrant labour deployment bans or age restrictions, most often for

migrant women seeking employment as domestic workers.⁴

Such bans also take on a problematic gender dimension, as they often target migrant domestic workers (predominantly women). Constructed as inherently vulnerable on account of their gender, state restrictions on women's mobility is often seen by governments as a justifiable and necessary response to halt the rights violations and gender-based violence they experience in the recruitment

[India's] ban on young women workers' mobility does little to protect their rights and often puts them into more precarious and insecure work environments... What happens now is the conflation of women's mobility and migration with trafficking. It is necessary to distinguish human trafficking from women's labour mobility. Currently it is caught in the question of morality (particularly when women cross the borders!) and state refuses to see them as full workers who contribute significantly to the state economy. – Individual Contributor from Academic Institution, India

process and in foreign workplaces.

CSOs and migrant communities have long criticized such bans and mobility restrictions, as they create a market for unauthorized recruitment agencies and the illicit activities of subagents to facilitate irregular migration at even higher than normal fees, putting migrant workers, particularly women, in increasingly vulnerable situations in both country of origin and destination.

Licensing Rules & Industry Self-Regulation

Licensing rules are also typically in place for recruitment agencies, and some countries have instituted blacklists of agencies that circumvent recruitment regulations. However, in many countries of origin unlicensed recruitment agencies operate with impunity.

In most cases, blacklisting is tied to the company itself rather than to the individual running the company. As such, the business owner is often able to open a new recruitment agency under a new

⁴ E.g., India prohibits low-skilled women under the age of 30 from migrating for work

name, undermining the value of license revocation and blacklisting. Reports from CSOs working in major countries of origin note that corruption among government officials and collusion between officials and recruitment agencies hampers the effectiveness of licensing regimes.

In the absence of effective state-led industry regulation, some “ethical recruiters” have organized country-level industry associations to undertake self-regulation initiatives.⁵ Such associations have set sectoral codes of conduct and attempt to ensure transparency in the recruitment process. However, these associations do not typically have authority over all recruitment agencies in a country, and adherence to codes of conduct is voluntary and difficult to enforce. While an important initiative, governments should not see such industry self-regulation as an alternative to government action to reform the recruitment system.

Joint & Several Liability

Some countries, including the Philippines and Nepal, have instituted legal regimes in which recruitment agencies in countries of origin can be held jointly liable with the foreign employer for rights violations experienced by a migrant worker at the hands of his/her employer in the country of destination. Such claims can be pursued in the courts of the country of origin, and returnee workers may be entitled to legal remedies.

In practice, a number of barriers prevent migrant workers from pursuing this legal recourse. The process of pursuing such a case can take a long time, especially if the recruitment agency contests the worker’s claim in appellate courts. This can also be a costly endeavour, given the need for the assistance of a lawyer in pursuing such claims. In addition, it is often difficult for workers to provide sufficient documentary evidence to corroborate their claims.⁶

⁵ E.g., Association of Licensed Foreign Employment Agencies (ALFEA) (Sri Lanka), Bangladesh Association of International Recruiting Agencies (BAIRA), Syndicate of the Owners of Recruitment Agencies (SORAL) (Lebanon), among others.

⁶ Atty. Henry Rojas, Center for Migrant Advocacy – Inputs at Lawyers Beyond Borders conference organized by MFA and Caritas Lebanon Migrant Centre, Beirut, September 2014

Another weakness of the model is that the likelihood of successfully holding the foreign employer to account legally from the country of

If the foreign principal/employer has no assets in the Philippines, there is no viable mechanism to enforce the judgment against the foreign principal/employer. This joint and solidary liability provision is premised on the assumption that there is no viable mechanism to enforce the migrant worker's claim against the foreign employer/principal, hence the resort against the local recruitment agency. —Center for Migrant Advocacy, Philippines

origin is slim. However, in principle holding the recruitment agency jointly liable for the actions of employers has the potential to improve accountability for recruiter actions.

Grassroots & Civil Society Initiatives

Recognizing the significant gaps in recruitment regimes globally and the implications for the human rights of migrant workers, CSOs and migrant community organizers have implemented multiple projects to address these concerns.

Dissemination of rights-based information: A number of organizations have developed country-specific and multilingual resources for migrant workers, outlining their rights and providing emergency contact information in countries of destination. Some grassroots organizers collaborate with government agencies in countries of origin to improve the rights-based content of PDOs.

Reporting for improved transparency: A number of projects using social media and a variety of online platforms are under development to map recruitment violations and provide migrant workers with platforms to share information about recruiters and employers.

National, regional, and international advocacy: CSOs have been actively calling on governments to reform recruitment systems globally for the protection of migrants’ rights, and continue to do so. Increased collaboration across regions is amplifying these calls for governmental and intergovernmental action on this important issue.

Recommendations

The following recommendations to governments to improve recruitment regimes globally have been compiled from the online consultation of the Open Working Group on Labour Migration & Recruitment.

Ratification of Key International Instruments Protecting Migrants' Rights

Countries of origin and destination should ratify and implement the following international instruments that protect the rights of migrants in the recruitment process, during their work placements, and upon return to their countries of origin:

- International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- ILO Convention 97: Migration for Employment (Revised) (1949)
- ILO Convention 143: Migrant Workers (Supplementary Provisions) Convention (1975)
- ILO Convention 181: Private Employment Agencies Convention (1997)
- ILO Convention 189: Decent Work for Domestic Workers (2011)

Rights-Based Recruitment Reform

- Governments of countries of origin and destination must reform the entire recruitment system such that it respects, protects, and promotes migrants' human and labour rights.
- To overhaul existing recruitment regimes, governments must work with migrant

communities, civil society organizations, trade unions, ethical recruiters, and the International Labour Organization to ensure that reforms reflect migrant community needs and respect human and labour rights.

- Governments, through their membership in the International Labour Organization, must pursue global norms and standards for international labour recruitment.

Eliminate Recruitment Fees

- Migrant workers should not be required to pay placement fees in the recruitment process.
- Governments must cancel the licenses of brokers and recruitment agents that charge illegal placement fees to migrant workers.
- Agencies must be compelled to provide receipts and a detailed breakdown of any charges incurred by recruited migrant workers for their services.
- Governments should widely publicize the legal costs associated with labour migration such that migrant workers can make informed decisions and avoid being misled by unscrupulous recruiters.

Government-to-Government Recruitment & Bilateral Agreements

- International labour recruitment should be exclusively facilitated through G2G agreements that protect the rights and welfare of migrant workers and their families.

- The full text of bilateral agreements and MOUs for labour recruitment must be made publicly available.
- The terms of bilateral agreements must be strictly implemented and monitored.
- Governments should avoid sending workers to areas far from major cities where they have little access to the assistance of their embassies or community organizations and where the regular monitoring of working conditions is more difficult to guarantee.
- Tied visa systems (e.g., the kafala system and its variants) must end; migrant workers must be able to leave their employer if that employer does not honour the agreed contract terms or threatens or engages in violence of any kind (physical, sexual, psychological).

Age Restrictions & Bans

- Age restrictions, emigration bans, and policies that restrict labour mobility must not be pursued in response to rights abuses, as they contribute to undocumented migration, increase the costs of migration, and create a greater market for the activities of unlicensed labour recruiters and subagents.
- Existing emigration bans and mobility restrictions must be lifted.

Registration & Monitoring of Recruitment Agencies and their Subagents

- Recruitment agencies operating in both countries of origin and destination must be licensed by the competent government agency and their activities must be closely monitored for compliance with licensing requirements.
- Subagents and any intermediaries recruiting on behalf of a recruitment agency must be licensed and their activities monitored for compliance with recruitment regulations.
- Laws prohibiting recruitment agencies or employers from confiscating identity documents, such as passports and work permits, must be enforced.

- Confiscation of mobile phones and personal property from migrant workers by recruiters or employers must be treated as theft and punished.

Access to Information

- Pre-departure orientations must be based on strong rights-based curricula and made mandatory for all migrant workers as a part of their recruitment process.
- Language and skills training should be available for all migrant workers prior to migration.

Labour Laws & Labour Rights

- Countries of destination must include domestic workers under the purview of their labour laws to protect their labour rights and provide social protection.
- All migrant workers must be guaranteed the minimum wage paid to workers in their country of destination.
- All migrant workers should be assisted in opening bank accounts in their own name on arrival in their country of destination, and all salaries should be paid into those accounts.
- All migrant workers should receive itemized pay slips every month, including basic pay, overtime pay, and deductions.

Access to Assistance

- Migrant workers must have access to a toll-free number, administered by their embassy, with service available in a language in which they can communicate in case of emergency.
- Governments must implement mechanisms by which migrant workers can report abuses and seek assistance for redress where applicable.
- Governments of countries of origin must ensure their embassies and consulates are appropriately staffed on the basis of the number of migrant workers (both documented and undocumented) in the country of destination.