

# POLICY BRIEF

## on PRACTICES AND REGULATION OF RECRUITMENT TO GARMENT WORK



There is a growing interest among policymakers and practitioners in improving recruitment practices and regulations to reduce vulnerability to human trafficking and forced labour among girls and women migrants in the garment and textile work sector. This document maps common recruitment practices and regulations observed along recruitment pathways to garment and textile work in India, Bangladesh, Nepal, Jordan and Lebanon. Examples from other regions are also highlighted. Given the complexity of cross jurisdictional and multi-tier recruitment practices and regulations, this brief looks at common practices and regulations, pointing to where and how they constitute better practices. The mapping and analysis are based on research and lessons learned from the ILO's Work in Freedom Programme recruitment pilots within South Asia and/or from South Asia to the Middle East. There are two sections to this brief, first – describing common recruitment practices and regulations, and second – giving examples of better recruitment practices and corresponding regulations.

# PRACTICES AND REGULATION OF RECRUITMENT TO GARMENT WORK

| COMMON RECRUITMENT PRACTICES  | COMMON RECRUITMENT REGULATION <sup>1</sup>   |
|---|--|
| <p style="text-align: center;"><i>informal mediation</i></p> <p><b>1. Recruitment through personal informal connections</b></p> <p><b>Example:</b> Local self-employment through personal connections. This can involve (a) experienced workers and will tend to occur at higher rungs of the supply chain or organizational hierarchy; (b) self-employed contract workers.</p> <p><b>Vulnerability:</b> In contexts where sponsorship is practiced, workers who are unable to retrieve their personal documentation from previous employers may become undocumented and vulnerable to arrest, long periods of detention and deportation. Contract workers are often denied statutory entitlements otherwise given to regular workers such as pension fund contributions, social security, special leave entitlements, etc.</p> | <p style="text-align: center;"><i>restricting workers movements</i></p> <p><b>1. Mobility restrictions on migrant workers</b></p> <p><b>Example:</b> (a) Migration bans for women migrants in country of origin (e.g. ECR<sup>2</sup> requirement in India), or countries of destination choosing not to issue permits to some nationalities, (b) Migrant interception through anti-trafficking laws in countries of origin, and (c) mobility restrictions such as those resulting from sponsorship systems.</p> <p><b>Challenge:</b> Migration bans are always discriminatory on the basis of gender, age, family status, education, occupation or nationality.</p> <p>If both compulsion to migrate and demand for migrants is high, migrants find more risky circuitous routes often requiring additional informal intermediation. This makes bans ineffective.</p> <p>At destination sponsorship systems (e.g. the Kafala system) strengthen power asymmetries of employers over workers and thus create structural vulnerability to forced labour. There is retention of identity documents which is an indicator of forced labour.</p> |
| <p style="text-align: center;"><i>public intermediation</i></p> <p><b>2. Recruitment through a public institution</b></p> <p><b>Example:</b> Bangladesh to Jordan / Oman through BOESL<sup>3</sup>.</p> <p><b>Vulnerability:</b> Limited outreach capacity of public recruitment agency and low literacy of migrant workers may prompt migrant garment workers to rely on unaccountable informal sub agent.</p>   | <p style="text-align: center;"><i>prohibition of intermediaries</i></p> <p><b>2. Prohibition or criminalization of labour intermediaries or recruiters in countries of origin</b></p> <p><b>Example:</b> Anti-trafficking laws and other outlawing of recruitment intermediaries.</p> <p><b>Challenge:</b> If the compulsion to migrate is high, migrants opt for alternative informal intermediation. Likewise if employer's demand for labour is high and working conditions are poor, employers tend to rely on informal labour recruiters.</p>   |
| <p style="text-align: center;"><i>recruitment through private intermediation</i></p> <p><b>3. Recruitment through private recruitment agency or contractor at source</b></p> <p><b>Example:</b> Contractors hiring in Ganjam district of Orissa to Tirupur in Tamil Nadu</p> <p><b>Vulnerability:</b> Workers more likely to accept poorer working conditions compared to those who negotiate at destination. Likelihood of bondage is higher.</p> <p><b>4. Recruitment through contractor at destination</b></p> <p><b>Example:</b> Local recruitment in NCR<sup>5</sup></p> <p><b>Vulnerability:</b> Potential unaccountability of contractor and poor working conditions.</p>  | <p style="text-align: center;"><i>elimination of recruitment intermediaries at destination</i></p> <p><b>Example:</b> Jordan eliminated intermediaries requiring employers to hire workers directly in countries of origin.</p> <p><b>Challenge:</b> Influence of recruitment agencies.</p> <p style="text-align: center;"><i>accountability of private labour recruiters</i></p> <p><b>4. Regulation of labour recruiters</b></p> <p><b>Example:</b> Registration of PREAs<sup>4</sup> is a common practice in both countries of origin and destination.</p> <p><b>Challenge:</b> It is difficult to identify all actors involved in a recruitment process across cross border jurisdictional boundaries. Local recruitment intermediaries (dallals) are usually excluded.</p>  |

<sup>1</sup> These common regulatory practices do not constitute good practices and are not listed as a way of recommending them. They illustrate what common practices are so that improvements can be suggested in the following table of better practices.

<sup>2</sup> Exit Clearance Required (ECR) provision as per India's Emigrant Act 1983.

<sup>3</sup> Bangladesh Overseas Employment Services Limited (BOESL).

<sup>4</sup> Private Recruitment and Employment Agencies (PREAs) as per ILO Convention 181.

<sup>5</sup> National Capital Region of India (Delhi).

| COMMON RECRUITMENT PRACTICES  | COMMON RECRUITMENT REGULATION <sup>1</sup>  |
|---|---|
| <p><b>5. Recruitment through skill service provider</b></p> <p><b>Example:</b> Skill service providers under National Skill Development Corporation (India)</p> <p><b>Vulnerability:</b> Difficulty in monitoring employers and possibility of poor working conditions</p>  | <p><b>5. Regulation of contractors</b></p> <p><b>Example:</b> India's Contract Labour (Regulation and Abolition) Act, 1970 and The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</p> <p><b>Challenge:</b> Insufficient labour inspection and law enforcement. Employers may exercise influence to avoid scrutiny under these laws.</p>   |
| <p><b><i>indirect practices affecting recruitment</i></b></p> <ul style="list-style-type: none"> <li>• <b>In areas of origin:</b> Policies affecting availability or absence of sustainable local livelihoods options and human security</li> <li>• <b>In areas of destination:</b> (a) Demand for low wage migrants; (b) Recruitment of local workers at higher wages versus recruitment of distress migrants at lower wages. Tiering / allocation of workers to certain occupations, jobs, roles, tasks according to nationality.</li> <li>• <b>Throughout migration cycle:</b> (a) Effective practices of inclusion, affirmative action and non-discrimination versus structural and direct forms of discrimination against those who migrate prior, during and after migration; (b) Cartelization or not of labour recruitment networks.</li> </ul> | <p><b><i>other indirect policies affecting recruitment</i></b></p> <ul style="list-style-type: none"> <li>• <b>In areas of origin:</b> Labour supply policies securing sustainable livelihoods versus those prompting distress migration (e.g. divestment from basic services, expropriations or other land use policies causing displacement, etc.).</li> <li>• <b>In areas of destination:</b> Public support to garment production affecting demand for garment workers. Other public sponsorship of investment in better employment options for women.</li> <li>• <b>Throughout migration cycle:</b> (a) Whether other Memoranda of Understanding (MOUs) regulating migration exist States / Countries; (b) The number, affordability and regulatory laxness of other available labour markets; (c) Open border policies and regional free mobility regimes.</li> </ul> |

# EXAMPLES OF BETTER PRACTICES AND REGULATION OF RECRUITMENT TO GARMENT WORK

| BETTER PRACTICE   | BETTER REGULATION   |
|---|---|
| <i>avoiding institutionalisation of recruitment into poor working and living conditions</i>   |   |
| <p><b>1. Support multiple recruitment practices favouring empowerment of workers</b></p> <p><b>Example:</b> Recruitment practices where workers are accurately informed about the realities of working and living conditions and given tools to negotiate better working conditions. See examples below.</p> <p><b>Challenge:</b> Dominant market players often seek to expand their practices and crowd out alternative recruitment options especially public or informal ones. Recruitment markets are not open to new entrants who are seen as possible disruptors to existing business models and can challenge the poor practice.</p>  | <p><b>1. Focus on regulating for better working and living conditions, while allowing multiple practices of recruitment favouring empowerment of workers</b></p> <p><b>Example:</b> In contexts where working conditions are poor, a regulatory environment of recruitment is needed that supports workers' position to demand better working and living conditions.</p> <p><b>Challenge:</b> Pressure on regulators to promote the interests of contractors or recruitment cartels can result in regulatory "straitjackets" that force recruitment into poor working conditions for the sake of profitability<sup>6</sup>.</p>   |
| <i>building social capital of workers through recruitment</i>   |   |
| <p><b>2. Support garment workers in mapping out contract work practices and negotiating standard working conditions with employers during contracting</b></p> <p><b>Example:</b> Tools for migrant garment workers to map contract work and negotiate better working conditions where sub-contracting is common.</p> <p><b>Challenge:</b> Laws sometimes don't allow for freedom of association and collective bargaining by migrant workers. Strong worker collectives are required to identify employers and bargain for good working conditions.</p> <p><b>3. Recruitment imparting migrant worker with accurate information on working conditions and capacities to negotiate</b></p> <p><b>Example:</b> Pre-migration or post arrival training by migrant worker collectives, trade unions and employers. Commitment of employers and labour recruiters not to abuse vulnerability of distress migrants.</p> <p><b>Challenge:</b> Employers and labour recruiters operate under market incentives that take advantage of worker's readiness to accept poor working conditions.</p> | <p><b>2. Enable freedom of association and collective bargaining to negotiate improvements in recruitment practices</b></p> <p><b>Example:</b> Legal measures allowing migrant garment workers to associate and bargain collectively; legal provisions enabling migrant workers to be members of cooperatives.</p> <p><b>Challenge:</b> Limited commitment of some constituents to freedom of association and collective bargaining.</p> <p><b>3. Remove mobility restrictions over workers and making regulation accountable to them</b></p> <p><b>Example:</b> Removal of: (1) migration bans, (2) migrant interception in anti-trafficking policies, (3) labour hoarding and sponsorship practices.</p> <p><b>Challenge:</b> Tendency for policies to be influenced by patriarchal views claiming that mobility restrictions protect workers. Removing sponsorship practices requires public commitment to remove sponsorship powers from employers.</p> |
| <i>building public accountability in recruitment practices</i>  |   |
| <p><b>4. Recruitment through public recruitment agencies reaching out to aspiring garment workers</b></p> <p><b>Example:</b> Recruitment practices from Bangladesh to Jordan (e.g. Bangladesh Overseas Employment Services Limited (BOESL)).</p> <p><b>Vulnerability:</b> Limited outreach capacity of public recruitment agency and low literacy of migrant workers may prompt migrant garment workers to rely on unaccountable informal intermediaries.</p> <p><b>5. Practices whereby worker-employer relationship are negotiated under public scrutiny throughout the migration cycle</b></p> <p><b>Example:</b> Monitoring of recruitment by trade unions and migrant right groups.</p> <p><b>Challenge:</b> Requires strong capacity of embassies and migrant protection measures. Trade unions who can support this are often not present in destination countries or represented at workplaces.</p>   | <p><b>4. Elimination of labour recruiters in countries of destination or recruitment through government-to-government agreements</b></p> <p><b>Example:</b> Jordan eliminated intermediation of labour recruiters in the garment sector within its national jurisdiction. Leverage buyer's influence to simplify recruitment processes.</p> <p><b>Challenge:</b> Influence of private recruitment and employment agencies.</p> <p><b>5. Legal provisions enabling public officials or trade unions from countries/states of origin to monitor worker- employer relationships</b></p> <p><b>Example:</b> Regulations that allow monitored pre-employment interviews and systems so as to prevent contract substitution through labour attachés.</p> <p><b>Challenge:</b> Requires strong capacity of embassies and migrant protection measures.</p>  |

<sup>6</sup> Institutionalized human trafficking is an important risk of recruitment practices and regulation, especially when working conditions are generally poor.

| BETTER PRACTICE   | BETTER REGULATION  |
|---|--|
| <i>building organisational accountability in recruitment practices</i>  |  |
| <p>6. Private recruitment and employment agencies (PREAs) only recruiting for employers who guarantee decent working conditions</p>   | <p>6. Regulation of PREAs and employers through joint and several liability provisions and other regulatory incentives</p>   |
| <p><b>Examples:</b> Agencies adhering to and implementing a code of conduct ensuring fair recruitment (e.g. FSI in recruitment corridor from Nepal to Jordan).</p>  | <p><b>Example:</b> Joint and several liability provisions holding both employers and multiple recruiters accountable (e.g. Bangladesh's Overseas Employment and Migrant Act, 2013<sup>7</sup>). This can be accompanied by regulatory incentives based on inspections and consultation with domestic worker collectives, trade unions and embassy staff.</p> |
| <p><b>Challenge:</b> Most labour recruiters tend to claim that they practice fair recruitment and have good employers on board. However, market incentives often encourage labour recruiters to compromise on standards and not fulfil conditions of decent work.</p> | <p><b>Challenge:</b> Difficulty to enforce because of the jurisdictional boundaries and weak capacity to implement labour inspection.</p>  |
| <p>7. Buyer compliance requirements and employer commitments to fair recruitment</p>  | <p>7. Regulation to ensure supply chain accountability on fair recruitment practices</p>   |
| <p><b>Example:</b> Buyers commit to source products only from suppliers that commit and implement fair recruitment principles. Likewise employers enact fair recruitment business practices.</p>  | <p><b>Example:</b> Requirements under the UK's Modern Slavery Act, 2015 to ensure transparency of supply chains.</p>   |
| <p><b>Challenge:</b> Difficulty of enforcing compliance with codes of conduct. Limited buying capacity of buyers with suppliers reduces their leverage. Lack of ethical recruitment actors mean limited potential for change even if the demand is there.</p>         | <p><b>Challenge:</b> Employers are unable to ensure accountability of their supply chains beyond a second tier of contracting. There is no compulsion to report on any particular subject such as recruitment.</p>   |
| <p>8. Recruitment through skilling service providers</p>  | <p>8. Regulations requiring that skilling service providers provide life skill training and enable certification of existing skills</p>  |
| <p><b>Example:</b> Life skill training in training programmes offered by skill service providers (e.g. Gram Tarang), preferably in association with returnee domestic workers, migrant rights organizations or trade unions.</p>                                      | <p><b>Example:</b> Making it a procedural requirement that life skill training is included in public-funded programmes by skilling service providers for migrant garment workers.</p>  |
| <p><b>Challenge:</b> Skill service providers tend to focus on the skilling needs of employers.</p>  | <p><b>Challenge:</b> Skilling service providers operate under market incentives to ensure placement of workers, regardless of working conditions.</p>  |

#### *better indirect regulation*

- Policies reducing distress migration in areas of origin.
- Policies generating decent working opportunities in areas of origin and destination.

<sup>7</sup> According to the Act: "For the purpose of the employment contract, the recruitment agent shall be deemed to be a representative of the overseas employer, and as regards liabilities arising from the contract, the said recruitment agent and the employer shall be liable jointly and severally."

## NOTES



# RESOURCES

[General Principles and Operational Guidelines for Fair Recruitment](#), International Labour Organization, 2016

[Operational parameters to asses fair recruitment](#), International Labour Organization, 2016

[Convention No. 181 on Private Recruitment and Employment](#), International Labour Organization, 1997

[Convention No. 177 on Home Work](#), International Labour Organization, 1996

[Fair Recruitment Initiative](#), International Labour Organization, 2014

[Code of Conduct for recruitment agencies](#), World Employment (WEC formerly known as CIETT), 2011

[Recruitment Reform.org and Open Working Group on Labour Migration and Recruitment, Policy Briefs 1-5](#), Migrant Forum Asia (MFA)

[Dhaka Principles of Responsible Recruitment](#), International Human Rights and Business, 2012

[Fair Hiring Toolkit](#), Verite, 2011

[International Recruitment Integrity System \(IRIS\)](#), International Organization for Migration, 2013

## Work in Freedom

Work in Freedom is an integrated development cooperation programme aiming to reduce vulnerability to trafficking and forced labour of women migrating to garment and domestic work. The programme works along migration pathways in India, Nepal, Bangladesh, Jordan and Lebanon. Interventions focus on promoting mobility by choice, fair recruitment to decent jobs and safety and dignity for migrant workers. The ILO Work in Freedom programme is supported by UKaid from the Department for International Development. However, the views expressed in this brief do not necessarily reflect the department's official policies.

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