

# The Five Corridors Project:

Exploring Regulatory and Enforcement Mechanisms  
and their relationship with Fair Recruitment

## *Executive Summary*

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More people are migrating for work each year. According to an ILO study, at least 164 million people were working outside their own countries in 2017 - an 11% increase on the same study four years before and a figure equivalent to the entire population of Bangladesh, representing 4.7% of the global workforce. This large-scale movement of people predominantly involves workers from lower income countries migrating to wealthier countries and reflects the important role that migrants play in the labour markets of these countries.

Increasingly, as a result of economic, political and technological shifts during the last century, migration for work has increasingly become temporary or “circular”, with workers returning to their origin countries at the end of their contracts, sometimes re-migrating multiple times but not settling, under visa regimes which do not allow for long term residency. A private industry has developed to service this movement of people across international borders, matching workers with employers across legal, bureaucratic, linguistic and geographical barriers. At the top of the job ladder, employers pay headhunters to find professionals and pay all of the recruitment costs. But lower down, those taking up low-wage jobs routinely are forced to pay exorbitant charges to be recruited for their jobs. In addition to fee-charging, NGOs and international human rights organizations have documented an array of abusive practices that occur systematically in the recruitment process. These include deception about the nature of work and the rate of pay, retention of passports, deposits and illegal wage deductions, debt bondage linked to the repayment of recruitment fees, threats if workers want to leave their employers, and in some instances physical violence.

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## About the Five Corridors Project

The problems faced by low-wage workers in international recruitment processes have garnered increased attention in recent years. Some prominent companies, for example, are beginning to recognize their responsibility to conduct business in ways that stamp out fee-charging and related abuse in their supply chains, but their efforts in isolation will not be enough. Meanwhile governments, whose role is vital, have yet to rise to the challenge of regulating and monitoring the international recruitment industry. The Five Corridors Project is an attempt to assess how effective states are at ensuring that the recruitment of their nationals for work abroad, or the recruitment of foreign nationals into their domestic labour markets, is done in such a

way as to protect migrant workers’ fundamental rights. The project aims to provide clear recommendations on the laws, policies and practices that are most effective in helping states implement the principles outlined in existing authoritative guidelines. Our assessment will, we hope, assist policymakers to dedicate resources effectively, help the ILO and IOM in their work with governments around the world, and provide civil society organisations with additional information as they engage governments on regulation and reform.

The project has focused its research on five labour migration corridors: Myanmar to Thailand; Nepal to Kuwait; Nepal to Qatar; Philippines to Taiwan; and Mexico to Canada. In these corridors it has assessed nine interdependent areas of government policy, comprising 44 indicators. These are largely anchored in the ILO General Principles and Operational Guidelines on Fair Recruitment, but also include some areas of policy - such as job mobility for migrant workers and pathways to permanent residence and citizenship - which do not feature heavily in international standards.

To assess the effectiveness of laws, policies and practices, we sought information and perspectives from a wide range of individuals directly involved in, affected by or knowledgeable about the regulation of migration and recruitment in these corridors. This included: government representatives; migrant workers, either during or after their migration experiences; recruiters and employers; trade unions, civil society organizations and lawyers; and experts with specific expertise on fair recruitment in the corridors under study, including representatives of the ILO and IOM, academics, and technical specialists. We carried out more than 300 in-depth individual interviews for the project, as well as a series of workshop discussions. We also carried out detailed reviews of relevant laws and policies, as well as secondary research into migration processes, and wrote to all governments included in the study, some several times.



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## Key recommendations

Our research has revealed the extent to which areas of government policy cut across one another: strong laws on recruitment are only effective when enforced by a well-trained and resourced inspectorate; a bilateral labour agreement in which the origin state negotiates detailed provisions on ethical recruitment will be rendered ineffective if the destination state's laws violate fundamental labour rights; prohibitions on recruitment fees won't be effective if licensing laws and regulations can be circumvented by unethical agents. While our research found instances of good practice, examples of a holistic and joined-up approach to fair recruitment are few and far between. Positive government interventions are to be welcomed regardless of the wider context, and it would be wrong to criticise individual initiatives on the basis that they have not fixed other problems. However this research has uncovered a relative paucity of practices that effectively discourage or curb recruitment abuses, relative to an abundance of practices that enable abuses to flourish. Consequently migrant workers in the corridors under study are, to varying extents, vulnerable to exploitation and abuse.

Drawing on the individual corridor studies, we put forward seven key recommendations. These are presented in order of significance, starting with the most important measures. The first three recommendations are directed at destination states. Our assessment is that while much of the discourse around the recruitment of migrant workers has centred on the role of origin countries, and their inability to rein in exploitative recruiters, it is the destination states that have the most levers to ensure fair recruitment. Their laws and practices are the prime determinants of the worker's migration experience and can place workers into situations of precarity and risk.

The fourth recommendation applies only to origin states, while the final three recommendations apply to both origin and destination states.

### **1. Destination states should create the market conditions for ethical recruitment, by ensuring that employers pay the full cost of migrant workers' recruitment and imposing meaningful sanctions on those who do not.**

While the “employer pays principle” has gathered strong support at international level, the reality is that every year, hundreds of thousands of migrant workers continue to pay the cost of their own recruitment and migration.

Employers know, or should certainly know, that the true costs of recruitment in such cases are being passed onto the workers. The reason that many make such little effort to interrogate the real costs of recruitment or to attempt to pay it themselves is that they are under limited pressure to do so. The sometimes intense competition for jobs generates an expectation in origin states that payment is necessary in order to secure a role, regardless of the law. Meanwhile destination states generally make insufficient efforts to intervene in the recruitment market to ensure that migrants can access these jobs without paying fees. While some legislate against worker payment of recruitment fees, most do not fully incorporate the “employer pays principle”, with worker payment allowed or even required for certain fees. Meanwhile, few place substantial efforts into implementing laws on recruitment fees - with labour inspectorates tending to focus on important employment issues such as pay, benefits and health and safety, but neglecting recruitment practices. Recruitment can be seen by such institutions as a niche, or “difficult” technical issue, in part because of the number of actors involved, and the fact that some are located in different jurisdictions. Enforcement in destination states related to the payment of recruitment fees by workers is rare. As a result, businesses face limited regulatory pressures that would stop them from abusing their market position. The effect of this unregulated space in destination countries is effectively to create a demand for unethical recruitment in origin states.

Destination states need to stimulate demand for ethical recruitment, by raising the costs for employers of not bearing the true costs of recruitment. While this on its own would not cause origin state agents and their brokers to act ethically and stop charging workers fees, it would provide ethical actors with a market, and mean that origin state regulatory agencies could enforce laws that were not swimming against the tide of market pressures.

- 1.1. Prohibit the payment of recruitment fees and related costs, in line with the ILO definition, by migrant workers to any entity, including third parties who may be located outside the country.

- 1.2. Ensure that laws hold employers and recruiters based in the destination country legally liable for the actions of third parties, whether in the destination, origin or third country, in the recruitment process. Require employers to conduct due diligence on their recruitment supply chains to ensure that no recruitment fees have been charged to workers, and to refund any worker who has paid fees for their job.
- 1.3. Strengthen the capacity of the labour inspectorate to identify cases of recruitment-related abuse, including through a consistent and large-scale programme of random inspections of employers, including interviews with workers without employers present. Ensure that recruitment-related abuse is meaningfully integrated into inspection programmes, and not marginalised. Require that employers provide evidence during inspections that they have paid for the costs of workers' recruitment and related costs.
- 1.4. Establish and promote a process for all migrant workers to safely disclose to the authorities and seek reimbursement for any payment of recruitment fees, as well as to report contract substitution.
- 1.5. Require any individual providing recruitment services for migrant workers to obtain a licence. Institute an Ethical Recruitment Framework into the licensing system, such that prospective or existing agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party. Ensure that the licensing system, including the outcomes of compliance audits, is transparent and accessible to workers and employers.
- 1.6. Subject to enhanced regulatory scrutiny businesses or persons which generate revenue by the employment of migrant workers and subsequent subcontracting out of these workers to other businesses.
- 1.7. Improve coordination between government bodies that are mandated to regulate and inspect employers and recruitment agencies, and law enforcement bodies responsible for investigating fraud and abuse by unregulated actors, and forced labour and/or trafficking - with the aim of normalising the referral of employers and recruitment agencies whose actions constitute criminal offences for investigation and prosecution.
- 1.8. Proactively investigate, through law enforcement agencies, corrupt practices linked to recruitment, including the phenomenon of employers or

recruiters receiving “kickbacks” from origin state recruiters in return for job offers.

- 1.9. Incentivise ethical recruitment by requiring companies to budget transparently for recruitment costs, including in their contracting chains, in public procurement bidding processes.

## **2. Destination states should promote a fairer labour market for all workers, by introducing accessible measures to allow migrant workers to transfer employers in a timely manner without obtaining special permissions.**

Restrictions on migrant workers' ability to move jobs in destination countries have a significant undermining effect on fair recruitment. Recruiters and employers are well aware of workers' limited options when placed into an exploitative situation. The knowledge that changing jobs will be challenging if not impossible for workers enables recruiters to charge workers high fees and engage in deception about their terms and conditions. This in turn reduces incentives for employers to ensure that workers are recruited fairly, understanding and consenting to the nature and terms of their employment. All destination countries in this study have procedures for workers facing abuse to leave their employers, but these can be inaccessible, complex and require a high burden of proof. When these systems function effectively, that at least allows workers to make complaints in cases of serious abuse.

Tied visa schemes where there is no straightforward way to switch jobs create an excessive power imbalance between employer and employee, reducing workers' agency to shape their own destiny. Tied visa programmes often have domestic political support, allowing governments to argue that they are protecting the privileged access of citizens to jobs and that they are in control of immigration and the labour market. In reality their effect can be to depress salaries to the point where nationals may be unwilling to enter sectors in which migrant workers are employed, and to drive workers employed by abusive employers into irregular status. They also incentivise the hiring of foreign workers, who - unlike citizens - have restricted ability to leave their jobs: one study notes that for business, “there are many reasons to prefer foreigners, including the fact that they tend to be more ‘loyal’ to their employer because they generally lose the right to be in the country if they lose their jobs.” Citizens, in other words, do not necessarily benefit from tied visa policies: they may

indeed find that such schemes make it more difficult for them to find jobs.

Employers often oppose increased job mobility for migrant workers. Some argue that allowing migrant workers to switch employers more easily is incompatible with ensuring fair recruitment. If employers are expected to pay for all the costs associated with a worker's recruitment, the argument goes, then they should be guaranteed that worker's services for a certain period. Some employers told us that if workers were able to switch jobs, many would do so quickly after arriving, to get better wages and/or change sectors, causing disruption to their businesses. While there is little evidence that improved job mobility for migrants leads to mass resignations or labour market instability, this argument - that workers are likely to want to leave their jobs immediately if permitted - also suggests that many jobs migrant workers are hired into, under tied visas, have artificially low wages and poor associated conditions. Migrant workers recruited fairly into decent jobs, where employers respect their rights, are less likely to be inclined to switch jobs at the first opportunity.

Fair recruitment cannot be assured if workers are tied to their employers and dependent on them for their immigration status, a model which dominates temporary migration programmes in many countries. Governments should introduce appropriate measures to allow migrant workers to transfer employers legally, in a manner that is simple, accessible, timely and open to all workers, and delink their residency status from their employer. The opportunity to move employers should not be restricted only to workers who have lodged cases of abuse or exploitation. However effective they may be, such restricted schemes mean that workers are only able to switch jobs while simultaneously reporting their employers to the government, turning the act of changing jobs into an adversarial act. Governments should:

- 2.1. Remove legal restrictions on migrant workers changing employers before the ends of their contracts, including any requirement to seek permission from the current employer.
- 2.2. Provide simple, timely procedures for workers to change jobs within the country, and legal measures to ensure they are fully protected from retaliation including repatriation, while doing so.
- 2.3. Remove any criminal charges linked to working for employers not specified on visas or work permits.
- 2.4. Ensure that migration pathways do not tie migrant workers' residence status to a single employer.

### **3. Destination states should ensure that laws and practices do not discriminate against migrant workers, or between different categories of migrant workers, in their access to essential worker protections including the right to freedom of association.**

Fair recruitment is undermined where migrant workers do not enjoy adequate legal protection in destination states. In many destination states, migrant workers, or workers in low-wage sectors of the labour market that disproportionately employ migrant workers, are excluded from elements of core labour laws. This may remove their rights to for example, minimum wage protections, maximum working hours, days off, and overtime payment. Workers in the agriculture, domestic work, security, and fishing sectors are just some examples who are particularly likely to be excluded from legislative protections. These are all roles particularly likely to be filled by migrant workers. Additionally workers in these sectors - or all migrant workers - are unable to form or join trade unions, denying them a fundamental human right and the ability to organise and pursue their own interests. Migrant workers may also be more at risk of discriminatory hiring practices than other workers, as the recruitment process straddles international borders: women can for example be under-represented in some temporary migration programmes. Ensuring that non-national populations in low-paid sectors of the economy have the same fundamental rights as nationals is an indispensable buffer against racialized social exclusion and attendant discriminatory attitudes that make migrant workers even more vulnerable, and which have particularly come to the fore in the context of the Covid-19 pandemic.

Combined with tied visa schemes, blanket restrictions on migrant workers' access to fundamental labour protections - as well as discrimination between migrant workers on the grounds of gender or job - reduce the agency of migrant workers and make it far more difficult for governments to ensure fair recruitment practices. Destination governments should:

- 3.1. Ensure that all workers, regardless of nationality, migration status or economic sector, are covered by core labour laws.
- 3.2. Ensure that all workers, regardless of nationality, migration status or economic sector, are able to access effective grievance mechanisms.
- 3.3. Ensure that all workers, regardless of nationality, migration status or economic sector, are able to

form and join trade unions and enjoy their full right to freedom of association - and provide mechanisms to protect migrant workers from harassment or retaliation for activity related to unions or worker organisations.

- 3.4. Prohibit employers or recruiters from requesting migrant workers of a specific gender or nationality, and require employers to ensure that working and living conditions do not discriminate on the basis of gender.
- 3.5. Ensure that migration policies are underpinned by the principle of non-discrimination, and develop policies and action plans, and implement preventive measures, to foster greater harmony and tolerance between migrant workers and national populations, including in specific regard to programmes to increase the labour force participation of nationals.

#### **4. Origin states should remove incentives that push recruiters towards unethical practices, in particular making all worker fee payment illegal and increasing enforcement efforts with private recruiters.**

The recruitment industry in many origin states - including all four in this study - has attracted a reputation for fraud and abuse. This reputation is in many respects well-earned, but it is overly simplistic to depict origin state recruiters as the root of all evil. One expert interviewee warned against an “automatic tendency to vilify the recruitment industry”. To a significant degree, recruiters follow the signals sent by regulators. Policies and practices of origin states, including those held up as “protective” measures, in many cases create incentives to behave unethically.

The laws of many origin states, including three of the four in our study, continue to allow the payment of recruitment fees by workers. They place varying limits on the sums that recruiters can charge depending on the job and the country of destination. Regardless of what level they are placed at, the fact that it is legitimate for agents to collect some fees from workers creates a grey zone, whereby workers expect to pay fees. This seriously disadvantages agents who attempt to implement an employer-pays policy. Origin states, supported by credible analysts, argue that they are caught in a bind on this issue: if they strictly implement a no worker fee payment policy, destination countries are likely to switch to other origin states which offer cheaper workers

- reducing job offers and associated remittances. The solution is of course for origin states to act jointly, but they have yet to demonstrate the capacity or the will to negotiate effectively as a bloc for better rights for their nationals.

Alongside policies on fee charging, ethical operators struggle to find a market because there are relatively few consequences for agencies who follow the “worker pays” model. Origin states’ effort to enforce laws on recruitment abuse are often way out of step with the depth and scale of problems, providing limited deterrents to unethical practices. In addition, regulatory and enforcement bodies with overlapping jurisdictions often fail to coordinate effectively, creating a patchwork approach to implementation of laws, and leaving gaps that leave workers exposed to abuse and unable to hold recruiters accountable. Governments should:

- 4.1. Adopt the ILO definition of recruitment fees and related costs and - in coordination with key destination states and where feasible, with other origin states - mandate that no recruitment fees or related costs should be paid by workers, in line with the ‘employer pays’ principle. Ensure that prospective workers are made aware of this.
- 4.2. Require any individual providing recruitment services for migrant workers to obtain a licence. Institute an Ethical Recruitment Framework into the licensing of recruitment agencies, such that prospective or existing agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party. Ensure that the licensing system, including the outcomes of compliance audits, is transparent and accessible to workers and employers.
- 4.3. Ensure that labour inspectorates are instructed, resourced and trained to identify abuses, in particular fraudulent and abusive recruitment, by licensed recruitment agencies.
- 4.4. Ensure effective coordination between government bodies that are mandated to regulate recruitment agencies, and law enforcement bodies responsible for investigating fraud and abuse by unregulated actors, and criminal offences related to forced labour and/or trafficking - with the aim of normalising the referral of employers and recruitment agencies whose actions constitute criminal offences for investigation and prosecution.
- 4.5. Ensure sufficient resources are devoted to investigating and prosecuting corruption in the recruitment of migrant workers; hold accountable

any official accused of demanding or accepting illegal payments, including through referring them to law enforcement agencies, and make information publicly available, on at least an annual basis, on the number and nature of such cases identified.

- 4.6. Carry out and publish a review to consider the introduction of incentives for recruitment agencies who can demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- 4.7. Proactively investigate unlicensed recruitment agencies and intermediaries and hold accountable those who subject migrant workers to fraud and abuse.

## **5. Origin and destination states should design grievance and remedy processes that take account of the power imbalance between employers and recruitment agents, on the one hand, and migrant workers on the other.**

Poorly designed and implemented processes to deal with grievances against recruiters and employers present numerous practical problems for migrant workers, in many cases resulting in them settling for a fraction of what they are owed and what they could be reasonably due in damages. The power dynamic between recruiters/employers and migrants can be so strongly skewed against the migrant that the concept of a negotiated settlement may be unrealistic. In the case of employers, their control over migrants' immigration status is particularly difficult for migrants to confront. Domestic workers, isolated in their employers' homes, find it almost impossible to make complaints without leaving their employers and risking becoming undocumented. If a migrant does not want to accept what (if anything) is offered in the mediation process, the employer or recruiter knows the worker's alternative option is generally to proceed through a lengthy and difficult court case, significantly lessening their leverage. For migrants this can mean waiting, potentially without income or documentation, for an uncertain outcome.

Both origin and destination states must design grievance and remedy processes that take account of and are suited to the realities of migrant workers' situations. They should design mechanisms that deliver remedy simply and quickly, where cases are straightforward. In destination states, grievance mechanisms must provide simple means for workers to secure their immigration

status and potentially find new work for the duration of the process. Governments should also explore the use of technology, where feasible, to bridge geographical barriers that can make it impossible for workers who have return to their home countries to bring a case against employers, and open regional offices to accept and process complaints, rather than force workers to cross countries in order to lodge cases in capital cities.

- 5.1. Provide simple and clear grievance processes and consider the introduction of fast-track processing to reflect the particular vulnerability of migrant workers to delay and its impact on their ability to pursue remedy.
- 5.2. Where state-run mediation processes exist, appoint skilled, trained and impartial mediators. Ensure that no employer or recruitment agency associations are involved in the administration or funding of mediation processes.
- 5.3. Ensure migrant workers, including undocumented workers, have the right to adequately funded legal aid for labour cases against employers and recruiters, and are able to access legal aid services.
- 5.4. Ensure - in destination countries - that the status of undocumented migrant workers raising grievances is not shared with immigration authorities.
- 5.5. Develop mechanisms to facilitate the filing of anonymous complaints.
- 5.6. Provide sufficient walk-in shelter facilities for domestic workers / live-in caregivers to be able to leave employers in order to lodge grievances safely.
- 5.7. Explore the feasibility of video-technology and other cooperative mechanisms, in allowing returnee workers to access judicial and non-judicial grievance mechanisms in destination states.

## **6. Fully explore, including by carrying out rights-based assessments, the viability of carrying out more recruitment activities themselves, as a means of reducing fraud and abuse.**

The direct involvement of governments as recruiters of migrant workers (government-to-government or "G2G" recruitment), rather than as regulators of recruitment processes, has decreased. Most cooperation between states in this study is based on MOU frameworks under which the private sector in each country carries out recruitment. In some cases, the replacement by the state of private recruiters may offer improved outcomes, particularly with regard to fraudulent and abusive recruitment practices. Criticisms of G2G



programmes include their tendency to be characterised by lengthy processes and their inability to recruit at scale, and as advocates of increased G2G recruitment have noted, the replacement of the private sector by government agencies is not a panacea - it does not address structural factors within temporary migration schemes that continue to make exploitation and abuse more likely, such as lack of job mobility and exclusion from labour protections. With this caveat in mind, we nonetheless recommend governments should give proper consideration to where their involvement in the recruitment process - including to replace the private sector - may be necessary, viable and beneficial. Governments should:

- 6.1. Where mechanisms for government recruitment are already in place, carry out independent impact assessments that examine their effectiveness in ensuring fair and ethical recruitment and compare their performance in that regard to private sector models of recruitment. Where there is evidence of a benefit for worker outcomes, consider scaling up such government processes to make them more attractive for workers and employers.
- 6.2. Carry out rights-based assessments to determine whether by establishing new government-to-government labour migration programmes, with state institutions carrying out recruitment, fraud and abuse could be reduced. Integrate the findings of such assessments into bilateral migration discussions, and discussions with employer associations.

## **7. Bilateral agreements should be binding and include practical fair recruitment requirements with transparent oversight mechanisms**

The primary purpose of labour migration MOUs, for both origin and destination countries in this study, is to facilitate labour migration, with fair recruitment concerns and worker protection given varying degrees of attention within this framework. Where MOUs do

include substantive measures and mechanisms, they are generally negotiated by officials in private. Trade unions and civil society organizations are not involved in their negotiation, oversight or implementation. The effect of all of this is to nullify the potential positive impact of such agreements: even where fair recruitment measures are included, there is little practical way for workers to claim these, with implementation largely left to rest on overstretched origin state consular officials. This is particularly difficult given that labour migration MOUs are normally not legally binding.

The more open, inclusive and practical a bilateral MOU or agreement is, the more likely it is to have meaningful impact for workers. Even MOUs with solid human rights principles in them are unlikely to make a real difference if they have no implementing mechanisms. MOUs that for example establish a role for origin state governments in monitoring and enforcement, or allow origin state embassies to insist on certain actions by destination state governments, can add value to the benefit of workers. Without such measures, it is difficult to see how such MOUs add to the protections migrant workers enjoy under destination state legislation. Additionally, the fact that few governments involve the organizations that support and represent workers in the negotiation and implementation of these agreements is a significant factor in undermining the potential MOUs have for impact. In respect of bilateral agreements, governments should:

- 7.1. In bilateral negotiations over any agreements, press partner states to sign binding agreements that contain practical mechanisms to protect the human rights of migrant workers
- 7.2. Ensure all agreements are made public, are accessible and are posted on the website of the diplomatic mission in the counterpart state, in the language most commonly used by migrant workers
- 7.3. Establish and activate meaningful and regular review processes, that include the full and active participation of worker organisations, to evaluate the implementation of any bilateral agreements.

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