

The Five Corridors Project:

Exploring Regulatory and Enforcement Mechanisms
and their relationship with Fair Recruitment

Key recommendations

JULY 2021



ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Workers from Myanmar at a Mae Sot factory, 2020. © Jittapron Kaicome

Recommendations to destination states

1. 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, with all key international organizations and corporate interest groups signed up to its achievement - and the business-led Leadership Group for Responsible Recruitment publicly committing to the eradication of recruitment fees by 2026 - the reality is that, every year, many hundreds of thousands of migrant workers continue to pay the cost of their own recruitment and migration. Migrants pay, by taking out high-interest loans, or by mortgaging land or pawning family heirlooms. The repayment of loans absorbs large chunks of the salaries they earn in destination countries - up to a third of what low-skilled workers will earn in two or three years abroad in certain migration corridors - and this debt places them at heightened risk of exploitation and abuse.⁵⁶

The blame for this situation is often laid at the feet of origin state recruitment agencies and ineffective

enforcement by weak governments. As recommendation 4 sets out, origin state governments do indeed have a responsibility to more effectively regulate recruitment, and in many cases are deficient in discharging this responsibility. However, to suggest that the payment of recruitment fees by workers is exclusively, or even primarily, an origin state problem - on the basis that this is generally the location of the worker's payment - is to misrepresent the nature of the transaction as a whole.

Employers are the actors who initiate the recruitment of migrant workers, needing their labour to pursue their business goals. Rather than recruiting workers directly, most choose to use intermediaries to identify prospective workers who match their requirements and subsequently process their immigration and travel arrangements. It should be normal practice, therefore, to factor recruitment into business costs - and it should raise red flags to businesses when recruitment agencies

56. Manolo Abella, Philip Martin, KNOMAD, [Migration Costs of Low-skilled labor migrants: Key Findings from Pilot Surveys in Korea, Kuwait and Spain](#), (May 2014): 2

offer to provide these services at abnormally low costs, or even for free. In many cases, however, businesses are happy to save on these costs. They may in some cases require that recruiters commit to not charging them, before commissioning them to recruit on their behalf. Origin state recruiters may even be asked to pay “kickbacks” to employers or their representatives for the right to supply them with workers.

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. Firstly, in many cases - and in all the corridors in this study - there is an imbalance in the labour markets, whereby the number of jobseekers in origin states is of several orders greater than the number of jobs available in the destination states. This creates intense competition for jobs and generates an expectation that payment is necessary in order to secure a role, regardless of what the law may say. Businesses are aware of such pressures and while some responsible companies are now fully committed to the “employer pays principle” and have processes to try to implement this through their operations, many choose not to intervene, effectively leaving workers to pay “what the market will bear” for their jobs.

It is the role of governments to regulate and their responsibility to protect fundamental rights, in particular access to essential services such as job opportunities. However in relation to jobs for migrant workers, destination states generally make insufficient efforts to intervene in the recruitment market, to ensure that migrants can access these jobs without paying fees they can ill-afford and which render them vulnerable to abuse and exploitation. While all the destination states studied in this report have some form of legislation prohibiting worker payment of recruitment fees, most do not fully incorporate the ILO definition of recruitment fees and related costs, and allow (in some cases require) worker payment for certain costs that are essential in order to get a job. Meanwhile, few place substantial resources 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 neglect 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 very rare. As a result, businesses face limited regulatory pressures that would stop them from abusing their market position. There are positive corporate initiatives with regard to fair recruitment across the five corridors, where businesses commit to and take effective measures to implement zero-fee recruitment. However, because these tend to be isolated, they do little to alter the basic business model for recruiters in origin states.

The effect of this under-regulation in destination countries can be to create a demand for unethical recruitment in origin states. The messages businesses send - in some cases passively endorsed by their governments - is that they want recruitment agents who will charge migrant workers the cost of their recruitment and travel, and more. Initiatives to establish ethical, zero-fee recruitment models in origin states face intense, often existential challenges in securing work from businesses in destination countries.

In Kuwait the charging of recruitment fees to domestic workers is banned under a 2015 law, but fee payment by other migrant workers is not clearly prohibited, with the 2010 Private Sector Labour Law leaving unresolved the matter of who pays what.⁵⁷ Data collected in World Bank KNOMAD studies and shared by the ILO in 2017 found Bangladeshi workers paying on average USD 3,136 for their jobs in Kuwait - the equivalent of 9 months wages, compared to USD 1,248 for Indian and USD 319 for Sri Lankan workers.⁵⁸ A Nepali woman who paid 140,000 rupees (USD 1200) for her job working in a salon in Kuwait told us that she had negotiated down her fees from 250,000 rupees (USD 2100) and sold her gold jewellery to migrate.⁵⁹ There is little information available about any proactive steps by the Kuwait authorities to prevent the payment of recruitment fees by migrant workers, even though both the UN Special Rapporteur on trafficking in persons and US State Department have raised concern about the way in which recruitment fees in Kuwait give rise to coercion and forced labour.⁶⁰

57. ILO, “Kuwait: Regulatory framework governing migrant workers”, (November 2019): 1

58. Michelle Leighton, “ILO-WB partnership on measuring recruitment costs: progresses on SDG indicator 10.7.1”, ILO, (16-17 February 2017).

59. Remote interview, 4 August 2020.

60. Maria Grazia Giammarinaro, “Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, on her mission to Kuwait”, (2017): 5 and US Department of State, 2019 Trafficking in Persons Report: Kuwait, (2019).

Unlike the 2010 labour law, which covers most other migrant workers, the 2015 law on domestic workers is clear and thorough, prohibiting recruiters, employers and their intermediaries overseas from charging domestic worker fees to secure a job. However, a representative of a civil society organisation providing assistance to migrant workers in Kuwait did not believe the government enforced this: “I mean the [domestic worker] law is there, where it says the employer has to pay all fees. But I haven’t seen a campaign or any action from the government to prevent these fees. It is in the law, and that’s it.”⁶¹ Indeed the public-private Al-Durra domestic worker recruitment agency was charged with the task of reducing the fees that Kuwait employers incur, rather than focusing on fee payment by workers. An Al-Durra representative largely held origin states responsible for the problem of fee payment, telling us: “You have countries like Nepal and the Philippines that ... do not have any oversight of the operations of the recruitment agencies of their countries, who send us workers that we then discover to have paid. The real problem is over there.”⁶² One expert on labour rights in Kuwait told us: “I got the impression [Al Durra] were ... asking the countries of origin to do the work of keeping the supply chain clean, so that then they can just come in and get the workers without any liability themselves.”⁶³ The government has made some efforts to better scrutinise recruitment agencies and employers of domestic workers, but these have been very sporadic. In 2017, the year the UN Special Rapporteur of Trafficking visited, the government reported carrying out 17,560 inspections of domestic worker recruitment agencies and residences (a nearly ninefold increase on the figures reported the previous year), referring more than 440 cases for criminal investigations following trafficking screenings.⁶⁴ However, two years later in 2019, the government carried out just 80 inspections of domestic worker recruitment firms.⁶⁵

Qatar’s laws prohibit the payment of fees by any migrant workers to entities in Qatar. However, payments that

take place abroad are not explicitly prohibited, and multiple research reports have found that low-income migrant workers from a wide range of origin states continue to arrive in Qatar having paid recruitment fees in order to secure their jobs. For example, a 2018 Amnesty International report interviewed 34 Nepali workers who paid between USD 867 to USD 1,156 for their jobs in Qatar. At least eight of the workers had also taken out loans with high interest rates, often up to 36% per annum.⁶⁶ Data collected in World Bank KNOMAD studies and shared by the ILO in 2017 found Nepali workers paying on average USD 1,054 for their jobs in Qatar.⁶⁷ A Nepali woman preparing to travel to Qatar in early 2020 told us that despite going through the newly established Qatar Visa Center, she was still taking a loan to pay a recruitment agent: “I have to pay about NPR 50,000–60,000 (USD 422–507) to the recruitment agency once all my documentation is completed and I have the flight ticket in my hand.”⁶⁸ The Supreme Committee for Delivery and Legacy (SC), responsible for the staging of the 2022 World Cup, has since 2017 under its “universal reimbursement scheme” required its contractors to reimburse recruitment fees to workers even if they don’t have proof of payment. Eleven contractors have extended this scheme to workers not employed on the SC’s projects.⁶⁹ However the SC’s projects employ a very small proportion of migrant workers in Qatar, and there is no way for workers outside these companies to claim back the cost of recruitment fees paid in their home countries.

Until relatively recently, the government treated the issue of fee payment as a problem for origin states, telling an ILO tripartite committee in 2017 that “the practice of imposing on workers high fees for their recruitment from abroad ... starts mainly in the labour-sending countries.”⁷⁰ Perhaps as a result of this approach there has generally been limited scrutiny of the interactions of employers with recruiters. A 2016 report by Verité found that on average “\$300 - \$500 per worker is paid in illegal ‘kickback’ commissions by

61. Representative of Kuwait-based civil society organisation working with domestic workers, interview, 14 July 2020.

62. Senior representative of Al-Durra, remote interview, February 2020.

63. Labour migration expert, remote interview, July 2020.

64. US Department of State, “2018 Trafficking in Persons Report: Kuwait,” (2018). The previous year’s figures were 1,806 inspections, 39 referrals, none blacklisted, and 90 permanent closures, respectively.

65. US Department of State, “2020 Trafficking in Persons Report: Kuwait,” (2020).

66. Amnesty International, “Unpaid and abandoned: the abuse of Mercury MENA workers”, (26 September 2018).

67. Michelle Leighton, “ILO-WB partnership on measuring recruitment costs: progresses on SDG indicator 10.7.1”, ILO, (16-17 February 2017).

68. Interview with Nepali migrant worker preparing to migrate to Qatar, Kathmandu, 13 January 2020.

69. Supreme Committee for Delivery and Legacy, [Recruitment](#)

70. ILO, [Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 \(No. 29\), and the Labour Inspection Convention, 1947 \(No. 81\), made by delegates to the 103rd Session \(2014\) of the International Labour Conference under article 26 of the ILO Constitution](#), (31 October 2017): 27

Nepali manpower agents to Qatari recruitment agents acting on behalf of Qatari employers, or to employer representatives directly, in order to secure 'demand letters' or job orders for workers ... These illegal payments are ultimately passed onto workers in the form of recruitment fees".⁷¹ One former HR manager in Qatar told us that, "some of my clients (employers) do this... I would say it is mostly out of greed in the cases I have seen."⁷² Research by NYU Stern in 2017 noted that recruitment costs are rarely factored into the budgets for construction and engineering contracting bids, demonstrating the expectation that such costs will be borne by other actors further down the supply chain.⁷³

Recently, high profile initiatives in Qatar have sought to address employers' non-payment of recruitment fees with guidance and contractual requirements, including the SC, whose Worker Welfare Standards include a clearer definition of "recruitment and processing fees" than currently provided in Qatari Law, and also require all contractors to conduct due diligence on their recruitment agencies.⁷⁴ At a 2019 conference, a group of major clients, including the SC, Qatar Rail, Manateq and Qatar Museums pledged to include recruitment costs in public procurement bidding processes.⁷⁵ If implemented, this could be an important development as it acknowledges that the practices of destination side employers can drive greater transparency and responsible recruitment, breaking with the dominant narrative that recruitment charges and costs are essentially a problem of the origin country. It could also begin to help tackle practices among the many employers outside such high-profile projects, who consider worker payment of recruitment fees to be the norm, with a Qatari owner of multiple companies telling us that, "it all comes down to money. We all just want the cheapest access to workers."⁷⁶ In 2019 Qatar's Minister of Labour said the government recognised it needed to ban fees imposed in origin states, telling a 2019 conference that Qatar wanted to be "a role

model", though adding that "the application of this legal principle may not be easy".⁷⁷ This reform has yet to take place.

In Nepal, where agencies can, under the law, only charge workers up to a cap of NPR 10,000 (USD 83), recruitment agents argue that they are caught between this limit and what employers in the destination state markets in the Gulf - including Kuwait and Qatar - demand, with one telling us that "the international labour markets are really competitive, [agencies] have to make extra efforts to bring the demand letters to Nepal."⁷⁸ The Nepali government notes this risk and acknowledges that the costs of these "extra efforts" are inevitably passed onto the workers: "when recruitment agencies compete to acquire workers' demand quotas which are limited in number, there could be an upward pressure on recruitment costs and downward pressure on acceptable wages and amenities. The direct consequences of such unhealthy competition including visa trading are borne by the migrant workers."⁷⁹

Almost all of the workers we interviewed in Taiwan had paid significant sums of money to secure jobs in Taiwan, with the exception being electronics workers employed by firms following strict "employer pays" recruitment fee policies, motivated in part by the additional scrutiny they receive as a result of their place in international supply chains. Every year, the recruitment sector in Taiwan earns approximately USD 484 million in fully legal monthly service fees from its foreign workers. Under Taiwan's laws and policies, workers generally pay at least a substantial proportion of the costs of their recruitment and migration, alongside what their employers pay. While the payment of placement fees for jobs in Taiwan is illegal, recruitment agents are allowed to charge employers of foreign workers an annual service fee of up to NT\$2000 (USD 67) and a registration fee and placement fee, of either one month's salary (if they earn less than the national average)⁸⁰ or four

71. Freedom Fund and Verité, "An Exploratory Study on the Role of Corruption in International Labor Migration", (2016): 9.

72. Remote interview, July 2020.

73. NYU Stern, "Making Workers Pay: Recruitment of the Migrant Labor Force in the Gulf Construction Industry", (11 April 2017): 15-16

74. "Recruitment and Processing Fees Means any fees, costs or expenses charged by a Recruitment Agent or a Contractor in respect of a proposed Worker obtaining employment in the State of Qatar including any fees, costs or expenses related to medical tests, police clearances, recruitment advertisements, interviews, insurance, government taxes in the country of origin, pre-departure orientations, airline tickets and airport taxes and any fees, costs or expenses charged by the Recruitment Agent to recuperate any Placement Fees." *Supreme Committee for Delivery and Legacy: Worker Welfare Standards: 6*

75. ILO, "Public sector clients pledge action to foster fair recruitment", (21 May 2019).

76. Remote interview, July 2020.

77. Gulf Times, "Qatar ensures fair labour recruitment procedures: minister", (21 May 2019).

78. Interview with representative from Help Overseas Recruitment Agency, 10 June 2020.

79. MOLESS, *Labour Migration Report 2020*, (2020): 25.

80. For the employers of domestic workers, recruitment agents can charge employers a recruitment and placement fee up to a maximum of %5 of the worker's monthly salary, NT700\$ (US 23\$) for a "vocational psychology-testing fee" and "employment counseling fees" of no more than NT1000\$ (US 38\$) per hour. *Standards for Fee-Charging Items and Amounts of the Private Employment Services Institution*, articles 3 and 4.

months' salary (if they earn more than the national average). Despite the fact that they provide far more services to employers than to migrant workers, the total fees that Taiwanese recruitment agents can legally charge migrant workers over the duration of their contract are significantly higher than the fees they can charge their employers.⁸¹

Additionally a Taiwanese government minister told us that while the charging of placement fees (distinct from monthly service fees) to workers is illegal, Taiwan-based recruitment agents - operating on behalf of employers - continue to find ways to circumvent regulations, acknowledging that better enforcement is needed.⁸² The licensing system operated by the Taiwanese government ranks recruitment agencies on a scale of A to C according to their "quality management, disciplinary actions, customer service, and other services," but one recruitment agency told us that in order to get an A ranking, it suffices to provide the relevant documentation demanded by the authorities.⁸³ According to Verité, "across virtually every sector that recruits foreign workers in Taiwan, Taiwanese manpower agencies ... require origin country recruitment agents to pay a brokerage fee to fulfill job orders on behalf of clients."⁸⁴ A Taiwanese NGO told us some Taiwanese employers demand "kick-back" payments from recruitment agencies and that it was common practice for Taiwanese recruitment agencies to demand transfer fees from other recruitment agencies when workers transfer from one agency to another - "all of the expenses will inevitably be shouldered by migrant workers".⁸⁵ The Taiwanese state is also indirectly complicit in perpetuating the payment of recruitment fees in excess of legal maximums in the origin state: Taiwanese courts order deductions from Filipino workers' salaries, based on debt assumed in the Philippines and then sold to Taiwanese lending agencies.⁸⁶

The Taiwanese government is keen to be seen as protective of employers - particularly Taiwanese families employing people in their homes - and has publicly defended them against efforts to make them pay a greater share of workers' recruitment costs. In 2020, Indonesia introduced a regulation requiring employers of Indonesian caregivers, domestic workers and fishers to pay the costs related to their recruitment, including airline tickets, passport/visa fees and the costs incurred by "labor brokerages".⁸⁷ Taiwan rejected the requirement, with the state news agency reporting that the government was, "sticking to its stance that Taiwanese employers should not share the recruitment costs for Indonesian migrant workers".⁸⁸ The two sides subsequently entered into negotiations, and in April 2021, discussed a compromise under which migrant workers would be expected to share costs with employers, paying for health checks, passport processing, and costs related to criminal record documents.⁸⁹

In Thailand, where the law has since 2017 theoretically prohibited recruitment agents from charging workers service costs and fees, the reality is that many Thai employers, not workers, enjoy zero-cost recruitment. The prohibition only appears to have transferred these costs to Myanmar, where agencies collect THB 3600 (USD 110) charges from workers specifically for costs on the Thai side. According to a Myanmar workers association in Thailand, this is a direct result of the cap being placed in Thailand.⁹⁰ Furthermore, with Thai recruiting agencies losing income due to the restrictions in Thai law, according to the ILO, Thai agents are reportedly requiring Myanmar recruitment agencies to pay an additional "informal fee of THB 5,000 to 12,000 (USD 156-375) per worker" in order to win the business of the Thai employer.⁹¹ This was also confirmed to us by one recruitment agent in Myanmar, who said they paid THB

81. The law states that the services that recruitment agents can provide to employers are as follows: "arrange the recruitment of foreigners, immigration, employment renewal and recruitment licenses, work permits, employment permits, employment permit extensions, vacancy replacement, change of employers, conversion of work, change of employment permit matters, and notifying and reporting foreigner's left without permission and contract loss for three consecutive days." The services that they can provide to "employers or foreigners" are: "to take care of the foreigner's living arrangement in the territory of the Republic of China, arrange their entry and departure and health checkups, and report their health examination results to the competent health authorities, including consulting, counseling, and translation." [Regulations for Permissions and Supervisions of Private Employment Services Institutions](#), article 3.

82. Interview with Lo Ping-Chen, Minister Without Portfolio, 12 February 2020.

83. Interview with May-God Human Resources, Taipei City, 18 February 2020.

84. Verite, "Barriers to Ethical Recruitment: Action Needed in Taiwan," (29 October 2018).

85. Instant messaging conversation with Lennon Ying-Dah Wong, Director, Serve the People Association, 22 October 2020.

86. Taiwan Legal Aid Foundation, "Taiwan's Legal Aid for Migrant Workers and Immigrants," (2017), and telephone interview with Fang Chun, Taiwan Legal Aid Foundation, 10 July 2020.

87. Taipei Times, [Jakarta's one-sided labor demands are unacceptable: MOL](#), (3 November 2020).

88. CNA, [Taiwan will not pay Indonesian migrant workers' recruitment costs: MOL](#), (11 November 2020).

89. Taiwan News, [Indonesia reduces migrant workers' fees it wants Taiwanese employers to pay](#), (9 April 2021).

90. Name and organisation withheld, interview, 3 March 2020.

91. Representative, ILO Myanmar, interview, 11 March 2020.

8,000 - 10,000 (USD 250 - 313) per worker for factory jobs and 4,000 - 6,000 (USD 113 - 188) for construction jobs.⁹² Additionally, Myanmar agencies report having to pay other expenses (service fees, accommodation, transport, hospitality, dinners, entertainment, etc.) to Thai businesses and/or agents to win their business.⁹³ These costs are passed on to the migrant workers themselves. According to one union representative, “demand brokers” have come up in Thailand between the Thai and Myanmar recruitment agencies, procuring the demand letter in Thailand and selling it to a Myanmar agency.⁹⁴ Electronics Watch has reported that such practices became visible after 2016 when Thai recruitment agencies were not allowed to charge worker recruitment fees.⁹⁵ All six of the Myanmar recruiters we spoke to admitted to charging more than the country’s official cap-fee.

Enforcement by Thai authorities of the requirement that employers pay service costs is rare, and workers are required under the law to pay the costs of visas, work permits, medical insurance and checkups. In 2019, Thailand introduced new procedures to allow migrant workers in Thailand to renew their work permits for two years, saying that “the goal was to prevent these migrant workers from unfair recruitment fee and debt bondage”.⁹⁶ However, these new procedures simultaneously nearly quadrupled the costs of visas from THB 500 (USD 16) to THB 1,900 (USD 60) annually. The ILO raised concerns that, “it is clear that placing the burden on migrant workers to pay these costs and fees runs contrary to the ILO’s General principles and operational guidelines for fair recruitment”.⁹⁷

All of Canada’s provinces prohibit the charging of recruitment fees to workers and job seekers in their employment standards legislation and/or in legislation specific to the protection of migrant workers. A federal government report observes that, “in general, the

provinces prohibit either individuals or relevant entities involved in recruitment activities from charging either (1) any fees or (2) fees for strictly recruitment and/or employment-related services”.⁹⁸ Federal immigration law reinforces provincial legislation in this regard, building fair recruitment requirements into the hiring process for employers, and applies the prohibition to any third parties used by employers.⁹⁹ Despite this and other good practices, the illegal payment of recruitment fees continues to be documented among workers, and while firm data is difficult to obtain, it is clearly a substantial problem that requires a more decisive approach from federal and provincial authorities. The Migrant Rights Resource Centre told us that they often see cases where workers have been charged fees overseas before they come to Canada, including through on-line payments to recruiters, and had seen cases where individuals had been charged up to CAD 20,000 (USD 16,500).¹⁰⁰ The Migrant Workers Alliance for Change has said workers can often pay “an equivalent of two years’ salaries in fees in their home countries”.¹⁰¹ The draw of long-term visas offering permanent residence, whether truly on offer or not, is used by recruiters to inflate fees.¹⁰²

Ontario officials told us that in their experience, fees are often charged by recruiters abroad before the workers travel to Canada, and that fraudulent recruiters often leave minimal evidence, asking for payment in cash and not signing contracts with workers. This made recruitment cases harder to investigate, they said.¹⁰³ Some provinces have sought to address this through joint liability schemes and bond payments. In British Columbia, licensed labour recruiters are liable for the actions of all their overseas partners and associates and pay a CAD 20,000 (USD 16,500) financial security bond as part of their licensing application, which can be drawn upon to repay victims of abuse, measures which should incentivise Canadian recruiters to carry out due diligence on partner agencies in origin states.¹⁰⁴ Several

92. Name and organisation withheld, remote interview, 7 September 2020.

93. Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 21.

94. Name and organisation withheld, interview, 25 March 2020.

95. Electronics Watch, “Compliance Report Update - Cal-Comp Electronics, Thailand,” (October 2018): 6.

96. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” 59.

97. ILO, “Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand,” (2020): 4.

98. Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020): 28

99. Employment and Social Development Canada, “Labour Market Impact Assessment application - Low-wage positions”, (2021): 12.

100. Jesson Reyes and Mithi Esguerra, Migrant Resources Centre Canada (MRCC), interview, Toronto, 4 March 2020.

101. Migrant Worker’s Alliance for Change, “Ending migrant worker exploitation by recruiters”, (16 December 2013).

102. See for example Natalie Drollet: House of Commons, “Standing Committee on Citizenship and Immigration, number 56, 1st Session, 42nd Parliament: Evidence”, section (1545), (10 April 2017).

103. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, Toronto, 5 March 2020.

104. Government of British Columbia, “Temporary Foreign Worker Protection Unit: Guide for Clarifying Roles of Recruiters, and their Affiliates, Agents, and Partners”, (2019).

provinces - British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia, and New Brunswick - have also introduced requirements that employers must register in order to be authorized to hire migrant workers, committing in the process to use licensed recruitment agents and to not charge workers fees. This is an important measure that commits businesses to take the recruitment process seriously. In contrast, seven other provinces, including Ontario, the province which hosts the most migrant workers, require neither employers or even labour recruiters to register in order to operate, a policy which unions and recruitment agencies have said should be reversed.¹⁰⁵ Ontario officials told us that the previous licensing scheme that was abolished in 2001 had become a “rubber-stamping exercise”, and the focus of their efforts is on enforcement rather than licensing.¹⁰⁶ However, experts argue that this discrepancy between provinces allows unscrupulous labour recruiters to focus their activities - and charge higher fees - in provinces where regulations and monitoring are weakest.¹⁰⁷ An Ontario social worker at a legal assistance centre told us that, “many employers choose to ignore recruitment risks, and they work with Canada-based recruiters who extort workers.”¹⁰⁸ A 2019 investigation by the *Globe and Mail* detailed the cases of migrant workers from Mexico and Philippines whose recruiters put them to work as temporary labour in major fast-food and hotel chains, deducting most of their salaries from their paychecks in supposed fee repayments.¹⁰⁹ It is difficult to find precise data on inspection and enforcement activity with regard to employers whose employees have been subjected to abuse in the recruitment process, but available information suggests that it is relatively marginal in comparison to other concerns. Only three out of 217 companies found non-compliant by federal regulators between 2017 and 2020 were fined for breaking “applicable laws on employment or recruitment of migrant workers.”¹¹⁰

The role of Canada’s immigration consultants - both licensed and unlicensed - in illegal recruitment fee

charging is the subject of much scrutiny. Unlike recruiters, registered immigration consultants are permitted to accept fees from prospective migrant workers - to provide paid assistance with the completion and filing of any immigration application to the federal government, including work permits. This appears to be in conflict with ILO standards, which consider fees for services aimed at preparing, obtaining or legalizing workers’ visas, work and residence permits to be “related costs”, which should be borne by the employer if they are required to secure access to employment.¹¹¹ In most provinces, immigration consultants are permitted to carry out recruitment as well, including for the same worker, provided that they do not charge the worker for the recruitment services. This dual role opens up a grey area that has been exploited with relative ease by those seeking to charge workers recruitment fees, with a research paper by the federal government warning that, “if any prohibition against charging fees is strictly limited to costs related to recruitment services, recruiters may easily hide fees charged as ‘immigration-related’ to evade consequences.”¹¹² A registered immigration consultant told us that, “the trouble is that selling jobs is where the money is to be made.”¹¹³ The national regulator said in its 2020 annual report that it continued to “receive serious complaints” with regard to registered consultants “promising a job or accepting fees for jobs”: about 10 complaints per week were made against immigration consultants every week between 2011 and 2020, but only 39 consultants had their licence revoked or suspended during this period - a situation which was at least partly responsible for the government’s decision to establish a new regulator in 2021.¹¹⁴ The Five Corridors Project is recommending that Canada carry out and publish a review of whether the policy of allowing immigration consultants to charge foreign nationals applying for temporary work permits is fully consistent with the ILO definition of recruitment fees and related costs, adopted in 2019, with a view to prohibiting such payment in the case of workers applying to the TFWP and other programmes where work permits are linked to specific employers.

105. Association of Canadian Search, Employment & Staffing Services (ACSESS), “[Ministry of Labour, Training, and Skills Development Consultation Improving compliance with the Employment Standards Act, 2000 in the Temporary Help Sector. Submission of the Association of Canadian Search, Employment & Staffing Services \(ACSESS\)](#)”, 25 January 2021, and Ontario Federation of Labour and the Canadian Labour Congress, “[Submission to The Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario](#)”, (21 August 2009).

106. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, Toronto, 5 March 2020.

107. See Fay Faraday, Metcalf Foundation, “[Profiting from the Precarious: How recruitment practices exploit migrant workers](#)”, (2014): 69.

108. Shelley Gilbert, Legal Assistance of Windsor, remote interview, 2 February 2021.

109. Kathy Tomlison, “[False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada](#)”, *The Globe and Mail*, (5 April 2019).

110. Government of Canada, “[Employers who were found non-compliant](#)”

111. ILO, [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), B.12.vii, page 29.

112. Leanne Dixon-Perera, IRCC Policy Research, Research and Evaluation Branch, “[Regulatory approaches to international labour recruitment in Canada](#)”, (June 2020):32

113. Remote interview, 4 December 2020.

114. ICRRC, “[Annual Report 2020](#)”

Specific recommendations

Destination states need to stimulate demand for ethical recruitment by creating a world where their employers expect to be paying the full cost of migrant workers' recruitment and face consequences for not doing so. While this on its own will not cause origin state agents and their brokers to act ethically and stop charging workers fees, it would level the playing field for ethical actors, and mean that origin state regulatory agencies could enforce laws that were not swimming against the tide of market pressures. They should use a range of legislative, enforcement and financial measures to achieve this:

- 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.

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