

# The Five Corridors Project:

Exploring Regulatory and Enforcement Mechanisms  
and their relationship with Fair Recruitment

## *Key recommendations*

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## **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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Migrant workers from Nepal cleaning the windows of a Kuwaiti tower block, 2012. © Dominique Berbain / Gamma-Rapho via Getty Images

## Recommendations to destination states

### **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**

Laws and policies to protect the human rights of migrant workers in destination countries, including labour laws and inspection regimes, are often in tension with restrictive immigration policies which seek to reduce the number of migrant workers, ensure priority for nationals in the job market, or protect the interests of employers.

Tied visas, a key element in most contemporary temporary labour migration programmes, play a major role in driving such tensions. Restrictions on migrant workers' ability to move jobs in destination countries and their reliance on their employers for legal status have a significant undermining effect on fair recruitment. Recruiters are well aware of workers' limited options under tied visa schemes. The knowledge that changing jobs will be challenging if not impossible for workers enables exploitative recruiters to charge workers high fees and make false promises about their terms and conditions, knowing that workers will in all likelihood need to complete their contract in any

case. This in turn reduces incentives for employers to ensure that workers are recruited fairly, that they understand and consent to the nature and terms of their employment, and that they are provided with decent working conditions. For their part, tied to an employer for their legal status - and so acutely aware that if they lose their job, they lose their residency - there are obvious disincentives associated with workers lodging grievances with the authorities or playing an active role in worker organisations.

All destination countries in this study have special procedures for workers facing abuse to leave their employers, but these can be inaccessible, complex and require a high burden of proof. It was clear that some of these systems were more effective than others in allowing workers to file complaints and extricate themselves from abusive working conditions, but there was far less evidence of these mechanisms leading to employers being held accountable for worker mistreatment or of any attendant deterrent effect.

Overall, tied visa systems - particularly those where there is no straightforward way to switch employers, and/or where switching employers requires workers to make a formal complaint to the authorities - create an excessive power imbalance between employer and employee, reducing workers' agency to shape their own destiny. Tied visa policies often have strong domestic political support. They enable governments to show that they are in control of the labour market, that they are protecting the privileged access of citizens to jobs, and that they are defending the interests of the business community by providing them with a "stable" migrant workforce. In reality they can depress salaries to the point where nationals may be unwilling to enter sectors in which migrant workers are employed, and drive workers into irregular status. They also incentivize the hiring of foreign workers, who - unlike citizens - often cannot change employers. 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."<sup>115</sup>

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. As one Canadian industry association puts it, "as employers are investing in temporary foreign workers and their careers, providing workers with the ability to leave without just cause is unfair to the employer and counterproductive".<sup>116</sup> Some employers told us that if workers were able to switch jobs, many would do so quickly 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, the argument that workers need to be prevented from changing employers suggests that many of the jobs that are linked to 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.

The conditions migrant workers have to meet in Thailand in order to be able to change employers are so limited that according to an ILO technical expert, "in practice they [workers] cannot change jobs without their employer's permission."<sup>117</sup> Under the 2016 MOU agreement, migrant workers from Myanmar cannot change employers except where the original employer "could not protect the worker according to the existing laws" or where they closed down the business due to financial failure or natural disaster or other reason. As a result of an amendment in 2018, the Foreign Workers Ordinance (FWO) permits change of employment in limited circumstances: a migrant worker who quits their employment contract within two years is not permitted to work with another employer unless they can prove fault of the employer - a Ministry of Labour directive sets out five specific employer offences, including physical harm and dishonouring of the contract. In addition to at least one of the five specific conditions being met, the worker or the new employer must pay damages to the original employer to cover the costs of their recruitment, in proportion to the time or period that the worker has already worked.<sup>118</sup> The UN team in Thailand has noted that "it is unclear at this stage whether implementation of the new policy will tangibly result in greater independence for migrant workers to choose their employment."<sup>119</sup> One worker told us: "The MOU system is like you are tied up and beaten up. For me, I did not have a good working relationship with the employer and still could not change to another job."<sup>120</sup>

The lack of flexibility to change jobs increases migrant workers' vulnerability to abuse and reduces the likelihood of them seeking redress. It also leads to workers changing employment without permission and becoming undocumented, with the additional risks this carries. As the UN has noted, "without greater flexibility to change employment, it will remain difficult for migrants to retain regular legal status after

115. Philip Martin, [Lower Migration Costs to Raise Migration's Benefits](#), *New Diversities* Vol. 16, No. 2, 2014: 14.

116. Hotel Association of Canada, [RE: Hotel Association of Canada comments on Canada Gazette, Part I, published on June 22, 2019, Introducing occupation-specific work permits under the Temporary Foreign Worker Program](#), (19 July 2019): 3

117. Laura Villadiego, "Thailand's trying to protect migrants. So why are they all so worried?" *South China Morning Post*, (18 March 2018).

118. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 19.

119. United Nations Thematic Working Group on Migration in Thailand, "Thailand Migration Report 2019," (2019): 33.

120. Remote interview, 30 August 2020.

entering the country.”<sup>121</sup> The common practice of Thai recruitment agencies hiring MOU workers on the basis of an approved demand letter, but then employing them at a different site means that such workers are placed in violation of the rules from day one, breaching the terms of their visa. Migrant workers are often registered with one employer who then outsources the workers to other employers in the area.

Kuwait’s kafala sponsorship system ties migrant workers to a local “sponsor”, who, as their employer, controls their entry to the country and the renewal of their residence permits, and can arbitrarily terminate their employment at any time. This highly imbalanced employer-employee power dynamic creates a permissive environment that, as the ILO Committee of Experts has observed, exposes many workers to abuse and “undermines their ability to have recourse to means of redress.”<sup>122</sup> In almost all cases, workers cannot change jobs without the permission of their current employer. Even if the employer grants that permission, workers must have completed one year of continuous employment (three years in the public sector), or pay a fee of KWD 300 (US\$989), and obtain government approval.<sup>123</sup> Those in the farming, fishing, and agricultural sectors face additional restrictions. Under a 2016 reform, workers can only transfer jobs without the permission of their employer if three years have passed since their work permit was issued, and if they give 90 days’ notice to their current employer.<sup>124</sup> If they want to leave before the completion of that three years of service, they must file a complaint with PAM’s Labour Relations Department. Without the permission of their employers, domestic workers can only change employers after they have completed their contract, however long that is.<sup>125</sup>

This leaves many migrants without any legal means of escaping abusive working environments, and women migrant workers are particularly vulnerable to mistreatment when trying to change jobs. Abusive

employers are unlikely to release workers (by issuing a No Objection Certificate or NOC), and those who do agree to a transfer may charge a high, illegal, fee to facilitate it. There is a procedure to challenge employers who refuse to issue NOCs but according to civil society organisations, it is complex and the burden of proof and associated costs are high.<sup>126</sup> If migrant workers decide to act independently, employers can file “absconding” or “runaway worker” charges for leaving without their consent, putting them at risk of arrest, detention for up to six months with a fine of up to KWD600 (USD 1,980), and eventually deportation and a six year re-entry ban to Kuwait. The only means for a domestic worker to avoid the registration of the absconding charge is to attend a government shelter or to notify the Domestic Workers Department.<sup>127</sup> In 2020, during Covid-19, the government announced it would stop accepting “absconding” reports, as it was receiving so many false reports from employers.<sup>128</sup> The tied visa system in Kuwait has facilitated a black market in which current employers charge prospective employers to sign NOCs for domestic workers - as revealed by a 2019 BBC Arabic investigation into the online market trading of women domestic workers via mobile applications.<sup>129</sup> Following this report, the government updated the sponsorship transfer process for domestic workers, requiring both the current and new sponsor to be physically present in the Office of Residency Affairs, along with the domestic worker, to arrange a transfer of sponsorship. The worker’s written consent is also now a prerequisite for any change of employers.<sup>130</sup>

In Qatar, the lack of job mobility for migrant workers, which is the key feature of the kafala system, has been a major focus of international attention in the past decade. As a UN expert said after a 2019 visit, “immense power imbalances persist[ed] between employers and migrant workers, imbalances rooted in the kafala (sponsorship).”<sup>131</sup> The following year, the Qatari authorities adopted Law No. 19 of 2020 removing restrictions on migrants’ ability to change jobs before the end of their contracts, without having to first obtain

121. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 88.

122. ILO, “Report of the Committee of Experts on the Application of Conventions and Recommendations”, (2019): 410.

123. Kuwaiti Ministerial Order No. 227 of 2014 Amending Ministerial Order No. 200 of 2011 concerning the regulation of employment in the private sector, Article 2, 2014.

124. ILO, “Application of International Labour Standards”, (2019): 410.

125. Migrant-Rights.Org, “Lived experiences of Migrant Women: Qatar, Bahrain and Kuwait”, (2019): 16.

126. Migrant-Rights.Org, “Lived experiences of Migrant Women: Qatar, Bahrain and Kuwait”, (2019): 24.

127. Representative of Social Work Society, remote interview, 27 October 2020.

128. Migrant-Rights.org, Kuwait drops all “absconding” cases reported during Covid-19 crisis, (9 July 2020).

129. BBC, “Slave markets found on Instagram and other apps”, (31 October 2019).

130. Migrant-Rights.Org, “Kuwait and Saudi Arabia react to BBC’s investigation of online ‘maid trade’”, (11 December 2019).

131. UN Human Rights Council, “End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Prof. E. Tendayi Achiume, at the Conclusion of Her Mission to Qatar Doha, Qatar”, (1 December 2019).

a “No Objection Certificate (NOC)” from their employer. Law No. 18 of 2020, adopted on the same day, set out procedures for the termination of contracts, allowing migrant workers to leave their jobs on the condition that they provide one month notice in writing, if they have worked for the employer less than two years, and two months’ notice after the first two years of employment. If workers want to move jobs in the first six months of their contracts, their new employers must pay a proportion of their recruitment fees and air ticket to their old employers. The ILO Director-General said the changes would “give workers more freedom and protection, and employers more choice”,<sup>132</sup> while Amnesty International said that, “if implemented as promised, the removal of restrictions on workers changing jobs should make it easier for workers to escape abuse”.<sup>133</sup> Despite the removal of the NOC, employers are still able to file criminal “absconding” charges against migrants who are accused of leaving their positions without consent. Qatari media reported in late 2020 that this charge would be abolished “soon”, but no subsequent announcements have been made in this regard.<sup>134</sup> Workers will also continue to be dependent on their employers for the renewal and cancellation of their residence permits.

The reform was celebrated as a breakthrough and the government said that in the final quarter of 2020, 78,000 migrant workers switched jobs under the new law.<sup>135</sup> However, as the implementation of the law went into effect, there were signs that businesses were seeking to find ways of blocking workers from changing jobs, with reports that job transfers were conditional upon the current employer’s signing of the workers’ resignation letter. Migrant-Rights.org raised concerns about what it called “the de facto NOC”.<sup>136</sup> In February 2021, the appointed Shura Council put forward recommendations “in order to develop the business sector”, which would effectively undo the September 2020 reforms by requiring more workers to seek permission to exit the country and reintroducing restrictions on workers’ ability to change employers during the duration of their contracts.<sup>137</sup>

The Labour Minister had sought to assuage concerns about the law by telling the Council that “the number of workers who requested a transfer is few and that those whose requests were approved are smaller”.<sup>138</sup> It was unclear how the government planned to respond to these proposals, at the time of writing in June 2021.

The Taiwanese authorities told us that they adopt a “prohibition in principle, approval under exception” approach to job mobility.<sup>139</sup> The Employment Service Act provides professional foreign workers with the right to change employers, but the law states that lower income migrant workers in fisheries, manufacturing and domestic work “may not shift to a new employer or new work” except in specific circumstances, which include if employers fail to pay the wages or salaries outlined in the employment contract.<sup>140</sup> Foreign workers in Taiwan can and do change employers with the assistance of Taiwan’s hotline for migrant workers and the assistance of NGOs. NGO Serve the People told us that when NGOs get involved in cases, transfers are almost always granted and that in cases where serious abuses were apparent, the authorities were generally responsive.<sup>141</sup> According to data provided to us by the Ministry of Labour, between the start of 2015 and the end of June 2020, there were a total of 459,017 applications to change employers and 427,326 of these applications were successful, a rate of 93%.<sup>142</sup> The ability of foreign workers to change employers reduces the vulnerability of workers recruited into employment where their rights are violated. That said, experts told us that the Covid-19 pandemic and the limitations it has placed on foreign recruitment has led many workers to request transfers across sectors - particularly from domestic work into the manufacturing sector - but that in response to pressure from the recruitment sector, the Ministry of Labour had placed more restrictions on these cross-sector transfers.<sup>143</sup> Taiwan provides evidence that providing workers with accessible ways of moving jobs in cases of abuse empowers workers to be able to make complaints against employers, finding new jobs while they do so.

132. ILO, *Dismantling the kafala system and introducing a minimum wage mark new era for Qatar labour market*, (30 August 2020).

133. Amnesty International, “Qatar: New laws to protect migrant workers are a step in the right direction”, (30 August 2020).

134. The Peninsula, “System of reporting absconding workers to be abolished soon”, (20 October 2020).

135. Al Jazeera, “Labour law changes: Are Qatar’s migrant workers better off?”, (15 March 2021).

136. Migrant-Rights.Org, “A de facto NOC in Qatar?”, (10 January 2021).

137. The Peninsula, “Shura Council makes recommendations on change of employer and expat worker’s exit”, (22 February 2021).

138. Gulf Times, “Shura Council hears viewpoint on Labour Law amendments”, (4 January 2021).

139. Letter from the Taiwanese Ministry of Labour to FairSquare, 17 May 2021.

140. *Employment Service Act*, article 59.

141. Lennon Ying-Dah Wong, Serve the People Association, remote interview, 14 May 2021.

142. Letter from the Taiwanese Ministry of Labour to FairSquare, 26 August 2020.

143. Lennon Ying-Dah Wong, Serve the People Association, remote interview, 14 May 2021.

Nevertheless, the current approach to job mobility firmly maintains the tied visa system.

Under Canada's Temporary Foreign Worker Programme (TFWP), work permits in Canada are issued for a specific employer in a specific occupation. To move jobs, the new employer must first obtain approval to hire migrant workers, and the worker who wishes to move must apply for a new work permit. There are long waiting times associated with this process, during which time migrants are unable to work - a temporary work permit application inside Canada took 126 days to process in late 2020.<sup>144</sup> The employer-specific work permit has been the subject of significant focus, in particular because it ties the worker to the employer and deters the worker from lodging grievances with the authorities. Labour unions, academics, and civil society organizations have repeatedly raised the problem of rapid repatriations of migrant workers, and consequent loss of income. A representative of an immigration consultants organisation told us that, "the main threat to the worker is that the employer puts him out of the country."<sup>145</sup> The precarity created by such structures, sometimes termed "deportability", is particularly problematic given that the main mechanisms for enforcing rights and obtaining remedies in Canada are complaints-driven, meaning that according to the Migrant Workers Centre British Columbia, "if a migrant worker does not complain, he or she has no practical access to enforcing his or her rights."<sup>146</sup>

Seasonal agricultural workers migrating through the Seasonal Agricultural Worker Program (SAWP), are in a slightly different situation, in that they do not need a new work permit to change employers mid-season, but they must go through a specific transfer process. As no transfer can take place without the agreement of the employer, one Mexican agricultural worker told us the system "gives the employer the ability to impose everything he can over the worker, then the worker cannot even say 'you know what, I'm going to look for work elsewhere.'" The transfer system is exacerbated by the SAWP's employer 'naming' system, under which

employers can identify specific workers they want to hire in subsequent seasons, which discourages workers from making complaints. A 2016 report for the ILO comments that, "workers who want to be named by their employer to return next season are unlikely to complain."<sup>147</sup>

There has been increased public focus on job mobility for migrant workers in recent years, with proposals to create an occupation-specific or sector-specific work permit as a less restrictive alternative to the status quo. In 2016 a House of Commons committee review of the TFWP recommended that the federal government "take immediate steps to eliminate the requirement for an employer-specific work permit", but in 2017 a separate committee looking at trafficking took a different view, raising concerns that "sector-specific permits would then allow a competing employer to offer a higher wage and steal the employee with no compensation to the initial employer for the [recruitment] expenses they had incurred".<sup>148</sup>

A 2019 government consultation on the employer-specific work permit did not result in any reforms, with employers opposing proposals to create an occupation specific permit.<sup>149</sup> However, the government separately introduced the Open Work Permit for Vulnerable Workers that year, "to provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer".<sup>150</sup> In the first 18 months of the scheme's introduction, approximately 800 open work permits for workers in situations of abuse were issued, a rate of roughly 10 per week.<sup>151</sup> Union representatives and civil society organizations generally welcome the existence of such a mechanism, but continue to push for broader systemic change, with one expert on migrant workers in Canada calling the scheme a "bandaid on a system that is broken".<sup>152</sup> Those supporting workers in accessing the permit have also expressed concerns about the complexity of the application process, which creates barriers and likely reduces the number of applications, an issue the federal government has recognised.

144. Government of Canada, "Labour Market Impact Assessment application processing times" and "Check processing times". Checked 3 December 2020.

145. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.

146. Alexandra Rodgers, "Envisioning Justice for Migrant Workers: A Legal Needs Assessment", Migrants Workers Centre, (March 2018). See also Vosko LF. 'Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining among Participants in Canada's Seasonal Agricultural Workers Program'. ILR Review. 2018;71(4):882-907

147. Philip L. Martin; International Labour Office, "Migrant workers in commercial agriculture", 2016: 19

148. House of Commons, Committee Report No. 4 - HUMA (42-1). House of Commons, Committee Report No. 24 - JUST (42-1)

149. Canada Gazette Part I, Vol. 153, No. 25, 22 June 2019.

150. Government of Canada, "Open work permits for vulnerable workers"

151. Presentation by Glen Bornais, "Migrant Worker Project Metro Vancouver & Fraser Valley Regional Meeting", 30 November, 2020.

152. Sara Mojtehdzadeh, Toronto Star, "Open work permits for exploited migrant workers a 'Band-Aid solution,' critics say", (17 July 2020).

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## Specific recommendations

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.



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