

# 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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Prospective migrant workers study job adverts, Manila. © Cheryl Ravelo / Alamy

## Recommendations to origin states

### 4. Remove incentives that push recruiters towards unethical practices, by making all worker fee payment illegal and increasing enforcement efforts with private recruiters.

Recruitment agents in origin states traditionally take much of the blame for unethical recruitment of migrant workers. For migrant workers, it is agencies in cities, and sometimes brokers from their regions, that take their money, offer them loans at high interest rates, make false promises, take their passports, and even threaten and harass them. With governments at a distance, and employers easily able to deny knowledge of or involvement in any bad practice, it is recruitment agents in origin states who are most closely associated with unfair recruitment. 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. Our interviews with workers, those who support them, and even with some recruiters themselves, demonstrate that many recruiters exploit workers during the recruitment

process and display little interest in their welfare thereafter. Nevertheless it is overly simplistic to depict origin state recruiters as the root of all evil. One ILO official working in Nepal warned against an “automatic tendency to vilify the recruitment industry”.<sup>187</sup> To a significant degree, recruiters follow the signals sent by their employer clients and by regulators on both sides of the migration corridor. As discussed in Recommendation 1, part of the reason that ethical actors are few and far between is the depressed demand for such services in destination states. However, it is also the case that the policies and practices of origin states may create incentives for origin state recruitment agents to behave unethically.

Despite the ILO’s development of a comprehensive definition of prohibited recruitment fees in 2019 - setting out the various costs that must not be charged to

187. Remote interview, 21 October 2020.

workers - many origin states, including three of those in our study, continue to allow the payment of such fees by workers. Rather than banning fees, they place varying limits on the sums that recruiters can charge depending on the job and the country of destination - USD 85 in Nepal for workers going to the Gulf, a month's wages for most Filipino workers bound for Taiwan, and approximately USD 230 in Myanmar for workers going to Thailand. Only Mexico, of the origin states in question, fully bans fee payments by workers. Agencies resist efforts to reduce or eliminate worker fee payment - arguing that destination state clients are too often unwilling to pay for the cost of their services. Myanmar recruitment agents told us that the Thailand fees cap was too low, a view that was echoed by MOEAF, the national recruiter federation and quasi-regulator.<sup>188</sup> The Philippines' largest association of recruitment agents, the Philippines Association of Service Exporters, argues that charging fees is a commercial necessity for its members.<sup>189</sup> Nepali agencies went on strike in 2015 when the government reduced the amount they could charge workers - and told us that zero fee policies were unrealistic.<sup>190</sup> Recruiters often point to competition from agencies in other origin states, who may have lower or no cap on what they can charge workers. However some agencies also impose fees on workers even where they have been paid by clients, in order to increase the likelihood of workers remaining in their jobs in the destination country.

Regardless of the 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 and the only issue is how much. An IOM study notes that, "the expectation of paying something and the lack of policing has led to workers paying far more than what is allowed."<sup>191</sup> This undermines legitimate efforts in destination countries to create a market for zero-cost recruitment and prevents effective collaboration - one study notes of the Philippines that allowing worker fee payment "has contributed to an expectation on the part of the principal/employers that they can reduce their costs by passing them onto workers."<sup>192</sup> Allowing recruitment agents to legally charge fees also seriously

disadvantages agents who attempt to implement an employer-pays policy. An ILO official working on the Asia-Gulf corridor told us that inconsistency in policies on recruitment fees was a huge problem: "It should be zero across the board, and there should be no transition period. There should be consistency across borders."<sup>193</sup>

Placing a full prohibition on worker fee payment would not in and of itself stop workers paying, but it would eliminate the grey zone that fee caps create, allow governments and civil society to communicate more clearly to workers on their rights, and reduce the difficulty of enforcing the prohibition on fees - at present the fact some fees are allowed makes it more challenging to prove violations. It would also send a clear signal to destination states about who should pay the cost of recruitment fees, and should enable better collaboration with government and private sector partners in states that implement the employer pays principle.

Origin states, supported by some respected analysts, argue that they are caught in a bind on this issue: if they strictly implement a no worker fee payment policy, employers in destination countries may switch to origin states that offer cheaper workers. In this scenario, the state in question would lose out on job opportunities for its nationals and valuable remittances. One solution to this would be for origin states to act collectively, something the Nepali government has recognised, making the point that "with thousands of agencies spread across the [South Asian] region, competing for limited job demand in common destination countries, there can be a incentive to undercut competition which leads to unfavorable outcomes for migrant workers... a more concentrated approach among labour sending countries using platforms like the Colombo process is necessary."<sup>194</sup> However, origin states have yet to demonstrate the capacity or the will to negotiate effectively as blocs to secure better rights and entitlements for their nationals. Ultimately, if destination states do more to implement the kinds of measures highlighted in Recommendation 1, this would reduce the salience of this concern.

188. Name and organisation withheld, interview, 2 February 2020, and Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020.

189. Mi Zhou, "Fair Share? International recruitment in the Philippines," ILO Working Paper, (2017): 30.

190. The Kathmandu Post, "Free visa, ticket provision: Recruiting agencies start indefinite strike", (8 July 2015).

191. IOM, "Transnational Culture of Corruption in Migrant Labour Recruitment", (2017).

192. Mi Zhou, "Fair Share? International recruitment in the Philippines," ILO Working Paper, (2017): 45

193. ILO official working on the Asia-Gulf migration corridor, remote interview, September 2020.

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

Ethical operators also struggle to find a market because there are relatively few consequences for agencies who follow the “worker pays” model. Origin states’ efforts to enforce laws on recruitment abuse are often considerably 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. For example, labour ministries tend to cover licensed recruiting agencies and recruitment laws, while law enforcement bodies may have authority over illegal recruitment and allegations of fraud and abuse against unlicensed recruiters, including human trafficking.

In Nepal, the Department of Foreign Employment (DOFE)’s investigating officers are granted law enforcement powers in relation to recruitment-related offenses, with powers to arrest, conduct searches, and seize documents or other evidence.<sup>195</sup> In practice, DOFE’s investigation unit is small, with only four investigative case workers in 2020, compared to more than 900 licensed recruiters and tens of thousands of unregistered sub-agents.<sup>196</sup> As a 2017 ILO report put it, “the authorities mount occasional raids of illegal recruiters but these tend to address numerically only a tiny fragment of the problem”.<sup>197</sup> A 2019 report by the National Human Rights Committee report found that the pressure on DOFE staff was “excessive”.<sup>198</sup> NGOs told us that in addition to under-resourcing there are also skills gaps.<sup>199</sup> A former DOFE investigation officer told us he received no specialized training.<sup>200</sup> The department’s regulatory and investigative role has been severely undermined by corruption, with repeated arrests of senior officials for accepting money from recruitment agencies to remove them from government blacklists.<sup>201</sup> The police lack authority under the FEA to investigate or register recruitment-related offences, meaning that serious cases

that could be prosecuted under a 2007 human trafficking law have been persistently dealt with by DOFE as administrative violations, requiring workers to travel at their own expense to Kathmandu to make complaints.<sup>202</sup> A 2020 MOU between the Nepali police and DOFE was intended to partially address this issue, and allow the police to be able to pursue cases against unlicensed recruiters.<sup>203</sup> Partly as a result of these issues, relatively little progress has been made on the implementation of the Free Visa, Free Ticket (FVFT) policy mentioned above. A Kathmandu-based labour migration expert told us that the FVFT policy “was introduced on an ad-hoc basis”, and that migrants continue to pay more than the maximum charge of NPR 10,000 (USD 83): “The only difference now is they do not get a receipt for anything more than NPR 10,000”.<sup>204</sup> A 2017 Amnesty International report found that the policy was undermined by limited resources for monitoring and implementation as well as hostility from the private recruitment industry, and as a result had limited impact on charges incurred by migrant workers.<sup>205</sup>

In Myanmar, the 2014 MOLIP rules delegate the power to supervise agencies to MOEAF - a federation of recruitment agents, whose senior office-bearers continue to own or run recruitment agencies - including ensuring that workers are not being charged excessive service fees. This creates an obvious conflict of interest given that MOEAF is set up as an NGO for recruitment agents to come together as a federation and further their interests. A more direct conflict is also created as MOEAF officials also continue to own and/or run recruitment agencies at the same time.<sup>206</sup> Their impartiality to conduct such inspections is questionable, and, in any event, inspections are rarely carried out. An ILO report of 2016 recommended that the capacity to conduct inspections of recruitment agents should be strengthened and should include confidential interviews with migrant workers, financial audits, and on-site visits without a warrant or prior notification.<sup>207</sup> Complaints against recruitment agencies tend to be dealt with

195. [Foreign Employment Act, 2007](#), Section 61.

196. Rameshwar Nepal, Equidem Research & Consulting, interview, 3 January 2020.

197. ILO, “[The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya](#)” (2017): 7.

198. NHRC Nepal, “[Human Rights Newsletter Nepali, 2075 Chaitra Issue](#)”, (22 April 2019): 37-38.

199. Nilambar Badal, Policy and Campaign Coordinator at National Network for Safer Migration (NNSM), interview, 13 December 2019.

200. Former Investigation Officer, Department of Foreign Employment, interview, 29 December 2019.

201. myRepublica, “[Arrests show extent of corruption in Nepal’s “most corrupt” gov’t office](#)”, (17 December 2017).

202. US Department of State, “[2020 Trafficking in Persons Report: Nepal](#)”, (2020).

203. The Kathmandu Post, “[Foreign employment department swings into action against fraud cases](#)”, (25 November 2019).

204. Interview (name withheld), 3 January 2020.

205. Amnesty International, “[Turning people into profits](#)”, (6 June 2017): 39-51

206. All three current/former MOEAF officials interviewed were running a recruitment agency at the same time.

207. ILO Myanmar, “[Recruitment of Migrants In Countries Of Origin](#),” (July 2016); 42.

by MOLIP or MOEAF administrative processes and are rarely the subject of criminal prosecutions despite the fact that overcharging by licensed agents, which is widespread, is an offence punishable by up to three years imprisonment and a fine. Between 2014 and 2020, only 17 agencies had their licenses terminated, with 13 temporary suspensions in the same period, although the reasons for these licensing decisions are unclear.<sup>208</sup> This roughly equates to an average of five agencies every year facing administrative sanctions. Given the extent and nature of the abuses to which migrant workers are subjected in the recruitment process, this seems to be a demonstrably inadequate response. All six Myanmar recruiters we spoke to admitted to charging more than the official cap-fee for recruitment to Thailand under the 2016 MOU. Complaints against unlicensed brokers are more likely to be forwarded to the police and taken more seriously, though prosecutions appear to be quite rare. An ILO representative told us that, “[neither] the police nor the judiciary appreciate the seriousness of the issue.”<sup>209</sup>

Complaints requiring criminal investigation are forwarded by MOLIP to the Ministry of Home Affairs, where such matters are usually investigated by the Police’s Anti-Trafficking in Persons Division (ATIPD). The ATIPD is a well-resourced and specifically trained part of the Myanmar Police Force.<sup>210</sup> The regular police are hampered by insufficient training and resources for investigations, have little understanding of the recruitment process, and suffer from low credibility amongst the public, in part due to corruption.<sup>211</sup> Few workers would therefore attempt to file any complaints directly with the police.

Reflecting Mexico’s long history of emigration for work, Mexico explicitly bans the charging of recruitment fees to workers, in contrast to the other three origin states in this study. This prohibition is even set out in the national constitution.<sup>212</sup> However this clarity is not matched by an investment in enforcement efforts, and as a result exploitative recruitment practices including fee charging and deception, including fake jobs, thrive. A 2015 Solidarity Center report noted that

STPS “rarely if ever employed” their powers to inspect recruitment agencies on receipt of complaints.<sup>213</sup> A licensed Mexican recruitment agency told us they have never been inspected by STPS (the Mexican labour ministry) and did not know of other agencies which had been.<sup>214</sup> Civil society organisations are heavily critical of these weaknesses in Mexico’s inspection regime, which Centro de los Derechos del Migrante (CDM) says contributes to “a system characterized by near-total impunity”.<sup>215</sup> Mexican government officials acknowledged that inspections of labour recruiters are rare, and cited resource limitations, as well as the difficulty that fraudulent recruiters rarely provide an address or other written documentation to be able to prove violations.<sup>216</sup> While recruiting for jobs overseas without a licence is prohibited, punishable by fines ranging between 50 to 5000 times the minimum wage, the reality is that the vast majority of recruitment from Mexico to North America is carried out by unlicensed recruiters. In 2020 there were only nine registered agencies licensed to recruit Mexican workers for jobs overseas.<sup>217</sup> This small number, when compared to the hundreds of thousands of workers recruited every year by the private sector, reflects the reality of what CDM calls “a highly decentralized and unregulated system”.<sup>218</sup> The few enforcement actions that do take place are heavily dependent on workers to complain. ProDESC told us that, “while workers can make complaints, most of the time they are afraid. If they say something, they can’t return to the company again. All the incentives are against the worker.”<sup>219</sup> The failure to curb the activities of unlicensed recruiters is an important factor in explaining why so few recruiters opt to formally register. With few regulated options for recruitment, many workers migrate through family networks, or use informal recruiters who operate only through online platforms - Mexican recruiters on Facebook tried to sell us fake jobs in Canada - and have no physical offices or identifiable business entity that workers can use to hold them accountable.

In contrast to the three other origin states in this study, the Philippines has made progress on the enforcement of its laws on unlicensed agents, putting

208. Ministry of Labour, Immigration and Population, “[License Close List](#)” (12 May 2020). Some may have faced criminal sanctions.

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

210. ILO Myanmar, “[Building Labour Migration Policy Coherence in Myanmar](#),” (2017): 18-19.

211. Thura Aung & Win Win May, “Public Trust in the Myanmar Police Force: Exploring the Influencing Factors,” (Friedrich-Ebert-Stiftung: 2019), 7. IREX, “[Informal migration and the law in Myanmar How Myanmar’s Legal System is Failing Migrants](#),” (undated).

212. Government of Mexico, *Constitución Política de los Estados Unidos Mexicanos*, Article 123 19. X-Z, (5 February 1917).

213. Jennifer Gordon, Solidarity Center, “[Roles for Workers and Unions in Regulating Labor Recruitment in Mexico](#),” (January 2015): 9.

214. Interview, Mexico City, February 2020.

215. Centro de los Derechos del Migrante, “[Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment](#),” (April 2019): 32.

216. Interviews with two senior officials, Ministry of Labor and Social Welfare, Mexico City, 2 and 10 March 2020.

217. Contratados, “[Learn how the placement agencies of registered workers in Mexico should operate](#),” (1 December 2020).

218. Centro de los Derechos del Migrante, “[Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment](#),” (April 2019): 32

219. Paulina Montes de Oca and Eduardo Villareal, ProDESC, remote interview, 15 December 2020.

considerable resources behind its legal prohibition of illegal recruitment, a crime that carries the same penalties as human trafficking.<sup>220</sup> It has achieved praise from the US State Department among others for this work.<sup>221</sup> However, the authorities have not focused on other forms of illegal recruitment, and consequently fee charging in excess of legal limits remains largely unaddressed in these inspections. A former government official told us that there was a narrow focus on unlicensed agents and not enough focus on oversight of the country's large number of licensed agencies.<sup>222</sup> Registered recruitment agents in the Philippines, who told us that they were subjected to annual random inspections of their premises, characterised the inspections as thorough but limited in scope.<sup>223</sup> An ILO expert on labour administration and inspections familiar with the labor inspectorate told us that labour law compliance officers in the Philippines have a tendency to focus on recruitment agencies' compliance with Filipino labor law as it applies to their employees rather than the laws and regulations that relate to their clients (migrant workers).<sup>224</sup> An ethical recruiter told us that the fact that inspectors did not interview prospective migrant workers was a major shortcoming since such interviews would yield valuable information about illegal practices, including the charging of excessive fees.<sup>225</sup> Where charges related to recruitment fees are filed, they appear in general to be administrative rather than criminal, limiting the deterrent effect of the regulations.

While origin state ethical recruiters need a market in destination states, their own governments also need to adjust the incentives on offer, which at present tend to point in the wrong direction and encourage unethical behaviour. 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.
- 4.3.** 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.

220. [Republic Act 10022](#), section 7. Penalties for illegal recruitment are prison sentences of between 12 and 20 years and fines of between 1 and 2 million pesos (US 40,000 - 20,000\$). The Philippines law on trafficking is Republic Act No. 10364 section 10 of which outlines very similar penalties for individuals convicted of trafficking offences.

221. US State Department, "[Trafficking in Persons Report: 2020](#)", (June 2020): 408.

222. Remote interview with Jalilo Dela Torre, 14 January 2021.

223. Interview with JackieLou Cielo, Trioceanic Manning and Shipping, 31 January 2020. Remote interview with Marc Capistrano, Staffhouse International, 4 February 2020.

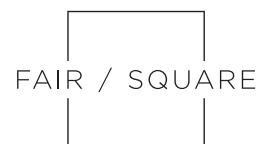
224. Remote interview with René Robert, International Labor Organisation, Labor Administration and Inspection Specialist, 24 July 2020.

225. Remote interview with Marc Capistrano, Staffhouse International, 4 February 2020.

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