

# 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 among those on the Corniche in Doha, Qatar @ Jessica Moxham

## Recommendations to both origin and destination states

### 7. Ensure that any bilateral agreements are binding and include practical fair recruitment requirements with transparent oversight mechanisms

International labour standards recommend that states conclude bilateral labour agreements “whenever necessary or desirable”, with a 1949 ILO Recommendation providing a template agreement.<sup>328</sup> More recently, the ILO Guiding Principles and Operational Guidelines have provided guidance on the standards that such agreements should meet to ensure fair recruitment: they should be grounded in international human and labour rights standards; they should take into account current recruitment practices in the migration corridor; social partners (worker organisations and the private sector) should be involved in their negotiation, oversight and implementation; they should include specific mechanisms on fair recruitment such as consular protection, collaboration on enforcement, and coordination on closing regulatory gaps; and they should be publicly accessible to migrant worker organizations.<sup>329</sup>

Many of the agreements in the five corridors - which are mostly MOUs rather than binding agreements - do not meet any of these standards. Consequently, they have relatively little impact on ensuring fair recruitment. Their primary purpose, for both origin and destination countries, is to facilitate labour migration, with fair recruitment concerns and worker protection an afterthought. Where MOUs do include substantive measures and mechanisms, they are generally negotiated by officials in private. Trade unions and civil society organizations are not generally involved in their negotiation, oversight or implementation. Finding copies of many MOUs can be a struggle even for specialist researchers, leaving the chances of workers themselves being aware of their contents almost nil. The effect of all of this is to nullify the potential positive impact of such agreements: even where fair recruitment measures are included, there is little practical way for workers to

328. ILO, [Convention C097 - Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#) and [Recommendation R086 - Migration for Employment Recommendation \(Revised\), 1949 \(No. 86\)](#)

329. ILO, [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#), Para 12

claim these, with implementation largely left to rest on overstretched origin state consular officials.

MOUs play an important role in the Myanmar-Thailand corridor, with Thailand a strong proponent of their use to underpin migration governance. The 2016 MOU and associated agreement between the two countries, together with a 2018 agreement on the hiring of fishing workers, provides the basis for regulated labour migration between the two countries, with the 2016 agreement setting out detailed bureaucratic procedures for the recruitment of workers from Myanmar to Thailand. For both MOUs, negotiations were not transparent - consultations were limited and there was little engagement with workers groups or unions in either country.<sup>330</sup> Private recruitment agencies - central to the MOU recruitment process - appear to have had more input in the process, along with employers in Thailand. National security concerns and associated factors shaped the negotiations rather than human or labour rights.<sup>331</sup> The text of the 2018 fishing agreement is not known, but the 2016 MOU and agreement between Myanmar and Thailand are light on human rights references, other than some to non-discrimination. There is no special provision or mechanism on enforcement, and none to consular protection. Given the Thai focus on irregular migration, the MOU goes into detail on admissions procedures, the prevention of irregular migration and employment, and the repatriation of migrant workers, with less focus on the protection of migrants. Coordination between the two states regularly takes place, but there is little to no oversight of such agreements in either country. The MOUs are in essence frameworks to enable better state regulation of migration, supported by private commercial interests. The Myanmar Government was apparently successful in securing stronger labour protections with respect to the fishing agreement in 2018, perhaps due to the global attention on the industry's human rights issues and the crippling shortage of fishing workers in Thailand.<sup>332</sup> Since the text of this agreement is not available, it is impossible to judge how effective it may have been nor how workers

might avail themselves of its provisions. According to a senior representative of a Thai recruitment agency, since the 2018 agreement, only Myanmar fishers previously employed in Thailand's fishing sector were issued visas under this scheme, and no new Myanmar fishers have been recruited using this channel.<sup>333</sup>

The MOUs that Nepal negotiated in the 2000s were highly standardised and relied largely on destination state legislation. In recent years it has pursued new MOUs on labour migration with some vigour, concluding new agreements with Malaysia, Jordan, Mauritius and UAE which go further than previous agreements on fair recruitment. In particular they include explicit language on the protection of workers' rights and a sharp focus on either eliminating recruitment fees or limiting them to those specified under Nepali law (the "Free Ticket Free Visa" policy). The Nepali government invested considerable time and political capital into negotiating these recent agreements, particularly the 2018 Malaysia MOU, which was inked against a backdrop of a ban on Nepali worker departures to Malaysia.<sup>334</sup> This agreement, which includes specific provisions on the obligations of employers to bear recruitment costs - including travel expenses, insurance, medical expenses, work permit/ labour card fees and service fees - is now seen as a model for Nepal's other agreements. The tighter restrictions it imposed on recruiters appears to have caused a backlash with the Nepali recruitment industry and may have been responsible for the removal of the responsible Labour Minister.<sup>335</sup> These more progressive agreements could have a meaningful impact for workers if enforced, but this impact is yet to be demonstrated, in part because the government does not share details of MOU implementation with stakeholders including unions and civil society. The joint committees established under each agreement are opaque and meet sporadically, making it unclear what they achieve and raising concerns about whether there are effective mechanisms to drive and monitor these agreements.<sup>336</sup>

Nepal does not have a bilateral agreement with Kuwait, and in general such agreements appear to play a minor role in Kuwait's regulation of migrant labour, with the

330. Mauro Testaverde et al, "Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia" (World Bank: 2017): 278.

331. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 22.

332. Daniel Murphy, Individual Expert on Fishing sector, remote interview, 9 April 2020.

333. Interview with Thai recruitment agency owner, 8 October 2020

334. The Nepali Times, "Bargaining Power", (16 November 2018)

335. The Nepali Times, "Reducing labour pain", (27 September 2017).

336. People's Forum, "Study on Nepal bilateral labour agreement", (2019)

exception of the bilateral agreement and standard contract negotiated with the Philippines between 2018 and 2020. The strong position adopted by the Philippines in the context of two murders of domestic workers in 2018 and 2019, combined with its leverage as a result of the high demand for Filipino workers, resulted in the Kuwaiti government agreeing to an MOU which goes beyond its legislation, requiring it to set up a 24/7 hotline and to disqualify employers with records of violating the rights of Filipino workers from recruiting again.<sup>337</sup> A government official told us that Kuwait was prioritising new MOUs with East Africa, seemingly with the desire to ensure it has a range of origin states it can rely on for the recruitment of domestic workers, in the wake of the Filipino ban on the recruitment of domestic workers to Kuwait.<sup>338</sup> There is no evidence that such new agreements would be underpinned by human rights norms.

It is still to be seen whether Nepal's efforts to conclude a new agreement with Qatar, to replace the largely insubstantial 2005 and 2008 agreements, will come to fruition. Qatar's decision to press ahead with the Qatar Visa Center in Nepal without agreeing a new bilateral framework to guide this collaboration suggests that Qatar does not place high value on MOUs, in particular where origin states may be keen to negotiate detailed bespoke arrangements that risk reaching into its jurisdiction. Qatar has more than 40 bilateral labour agreements that (judging by those which are publicly available) follow a standardised model. Mainly negotiated in the 2000s and early 2010s, these agreements primarily aimed at securing and broadening the country's sources of migrant labour, and ensuring its control over immigration. For example, the agreements allow Qatar to repatriate any number of Nepali migrant workers "if their presence in the State of Qatar becomes contrary to public interest or the national security of the State".<sup>339</sup> Provisions relating to recruitment in agreements that are available rely largely on Qatari legislation and attached model contracts for workers, which have not been made public. While

Qatar has in the past pointed to its bilateral agreements as evidence of its commitment to labour rights, it has reduced this public emphasis since embarking on its technical cooperation programme with the ILO, perhaps suggesting that it has come to consider that reform of its domestic legislation and institutions is more relevant to ensuring fair recruitment and employment for workers than relying on bilateral agreements.

The commitment of the Philippines government to bilateral labour agreements is evident in the number of agreements it has signed, the bureaucratic machinery that exists to facilitate their drafting and their implementation and in its drafting of model Memorandums of Agreement (MOA) and Understanding (MOU) in 2018. It has signed a total of 27 MOUs and 11 MOAs with 20 countries, and 3 Canadian provinces.<sup>340</sup> The model binding MOA (unlike the model MOU) introduced in 2018 includes numerous concrete requirements: it is the obligation of the destination state authorities to ensure workers either retain their passports or deposit them with the Philippines embassy; Filipino workers abroad should have the right to have and use mobile phones to communicate with their families, and confiscation of their phones should be prohibited; and destination states are also obliged to take steps to ensure adherence to labour contracts, in particular with regard to working hours, and to provide legal assistance to workers in the event of violations of labour contracts.<sup>341</sup> A Department of Labor office, and author of a study of Philippines bilateral labor agreements told us that negotiations over these agreements had resulted in positive outcomes for Filipino migrant workers. For example the Philippines persuaded the Jordanian government to provide workers with contracts in a language they could understand.<sup>342</sup>

But despite creditable aims, the Philippines' efforts to enshrine rights protection through bilateral agreements has been hampered by its lack of leverage over

337. [Agreement on employment of domestic workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait](#), (2018).

338. Interview with Kuwaiti official, December 2019

339. [Additional protocol to the Agreement on the Regulation of the employment of Nepalese Manpower signed on 21 March 2005 between the Governments of Nepal and the State of Qatar \(the Agreement\)](#), (20 January 2010)

340. [Bilateral Labor Agreements \(Landbased\)](#). The POEA separately notes five bilateral agreements for seafarers (Cyprus, Denmark, Japan, Liberia, Netherlands) at [Bilateral Labor Agreements \(Seabased\)](#) Email from Bernard Mangulabnan, (13 August 2020).

341. Philippines Department of Labor, Administrative Order No. 246, "[The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures](#)," (2018), Annex A: "Memorandum of Agreement on the Protection and Employment of Filipino Workers between the Government of the Republic of the Philippines and the Government of [ ]"

342. The text of the agreement does not make any reference to this requirement, but article 6 does state that contracts should be verified by the Philippines Overseas Labour Office. [Principles and Controls for Regulating Deployment and Employment of Filipino Domestic Workers Between Government of the Hashemite Kingdom of Jordan and the Republic of the Philippines](#), 2012.

destination states. The body of bilateral agreements signed by the Philippines are replete with references to ethical recruitment, but the vast majority of these agreements are MOUs without established implementation or monitoring mechanisms. It is instructive to compare the Philippines' agreements with New Zealand and Saudi Arabia: the 2008 Memorandum of Agreement on Labour Cooperation with New Zealand is binding, states that it is in "accordance with universal principles of international instruments on labour and employment," and references the ILO Declaration on Fundamental Principles and Rights at Work.<sup>343</sup> The 2012 "Agreement on Domestic Worker Recruitment" with Saudi Arabia is non-binding, and provides for standard employment contracts and commits both parties to ethical recruitment, but makes no reference to human rights or labor standards.<sup>344</sup> This comparison illustrates that the force and the content of these bilateral agreements are contingent on the destination state's commitment to and respect for labour rights. In practice, bilateral agreements are used by the Philippines either to facilitate labour migration by providing an agreement framework for private recruitment, or (as in the case of Kuwait) as a form of leverage whereby negotiation focuses on threats to annul agreements and halt deployment rather than two-way negotiations aimed at enhancing the terms of rights protection within agreements. In 2012, one Philippines migration expert concluded in a study on the Philippines' use of bilateral agreements that "the increasing focus on agreements intended to facilitate labour admission, with few provisions on labour conditions, indicates that the tension between increasing labour export and increasing protection present in the national legislation is also felt in the bilateral approach."<sup>345</sup>

Taiwan and the Philippines have signed three bilateral agreements, all of which pertain to the Special Hiring Program for Taiwan, the most recent in 2003. It provides for implementation of the Special Hiring Program for

Taiwan "through a process of regular and continuing consultations between appropriate authorities of both sides with the end view of coming out with a mutually acceptable system, procedures and mechanism."<sup>346</sup> In keeping with this, an official from Taiwan's Ministry of Labor in Taiwan told us that the content of the country's MOUs are deliberately "brief and abstract."<sup>347</sup> Taiwan's MOUs are aimed at regulating cooperation on migration, not as instruments for negotiating migrant workers' rights. The private recruitment of Mexican nationals for work in Canada is not regulated by bilateral labour agreement. However, Mexicans migrating under the G2G SAWP migrate under an agreement that contains some bilateral mechanisms which increase the prospect of fair recruitment - in particular, specifying explicitly that the Government of Mexico to provide recruitment services free of charge - a mechanism that improves outcomes for workers. The MOU provides for annual reviews by both Mexico and Canada "after consultation with employer groups in Canada", and these take place in practice.<sup>348</sup> However, neither migrant workers nor worker organizations currently participate in the meetings, and thus are not able to directly affect discussions on the annual employment contract. The absence of worker organisations is notable because in somewhat similar fashion to the Philippines, Mexico balances its negotiations on behalf of workers' interests with its concern to keep demand for Mexican workers high. A former Mexican government official told us that the effect of this dynamic is that Mexican government officials are "afraid that if they ask for any request or proposal, the Canadian employers will not want to work with Mexican workers any more, and will request workers from other countries, therefore they agree and accept any kind of conditions."<sup>349</sup> A 2016 internal Canadian government briefing ahead of a SAWP meeting noted that the Mexican government was "unlikely to raise" media reports of unfavourable conditions for workers employed on the programme.<sup>350</sup>

343. [Memorandum of Agreement on Labour Cooperation Between the Government of New Zealand and the Government of the Republic of the Philippines](#), (4 November, 2008).

344. [Agreement on Domestic Worker Recruitment Between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labor and Employment of the Republic of the Philippines](#), (19 May 2013).

345. Graziano Battistella, "Multi-level Policy Approach in the Governance of Labour Migration: Considerations From the Philippine Experience," *Asian Journal of Social Science*, Vol. 40, No. 4, Special Focus: Migrant Workers Between States: In Search of Exit and Integration Strategies in South East Asia (2012), p. 436.

346. [Memorandum of Understanding on Special Hiring Program for Taiwan between the Taipei Economic and Cultural Office in the Philippines and the Manila Economic and Cultural Office in Taipei](#), (2003).

347. Interview with Paul Yu-Kuo Su, Deputy Director, Cross-Border Workforce Management Division, Ministry of Labor, (17 January 2020).

348. Government of Canada and Government of Mexico, "Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)", 1 January 2001. Access to Information (ATI) request to ESDC A-2017-00599.

349. Interview with former official, Ministry of Labour and Social Welfare (STPS), Mexico City, 4 December 2019.

350. Global Affairs Canada (GAC), "Canada-Mexico Seasonal Agricultural Worker Program (SAWP)", April 2016. Access to Information (ATI) request to ESDC A-2017-00599, internal briefing note in preparation for annual meeting of Canada-Mexico Seasonal Agricultural Workers Program.

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## Specific recommendations

The more open, inclusive and practical a bilateral MOU or agreement is, the more likely it is to have meaningful impact for workers. Even MOUs that contain solid human rights principles (which are not in the majority of those we reviewed for this project) are unlikely to make a real difference if they have no implementing mechanisms. Binding MOUs that, for example, establish a role for origin state governments in monitoring and enforcement, or allow origin state embassies to insist on certain actions by destination state governments, can add value to the benefit of workers. Without such measures, it is difficult to see how such agreements add to the protections that migrant workers enjoy under destination state legislation. Additionally, the fact that few governments involve the organizations that support and represent workers in the negotiation and implementation of these agreements is an important

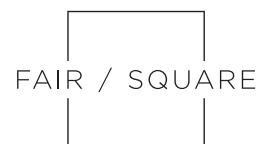
factor in undermining the potential bilateral agreements have for impact. In respect of bilateral agreements, governments should:

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

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