

The Five Corridors Project:

Exploring Regulatory and Enforcement Mechanisms
and their relationship with Fair Recruitment

Key recommendations

JULY 2021



five corridors
project

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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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Visa applicants at a Migration Resource Center in Kathmandu, Nepal, 2015. © ILO

A. Background

Increasing the focus on governments

More people are migrating for work each year. According to an ILO study, at least 164 million people were working outside their own countries in 2017 - an 11% increase on the same study four years before and a figure equivalent to the entire population of Bangladesh, representing 4.7% of the global workforce.¹

This large-scale movement of people predominantly involves workers from lower income countries migrating to wealthier countries, and reflects the important role that migrants play in the labour markets of these countries. 87% of migrants work in higher income or upper middle income countries, and 87% are prime-age adults (between 24 and 65).² In 2019 Asian countries accounted for as much as 40% of global labour migrants, while the corridor from Latin America and the Caribbean

to Northern America was the second largest migration corridor in 2019, with 26.6 million international migrants recorded by UNDESA.³

As a result of economic, political and technological shifts during the last century, migration for work has increasingly become temporary or “circular”, with workers returning to their origin countries at the end of their contracts, sometimes re-migrating multiple times but not settling, under visa regimes which do not allow for long term residency. Both origin and destination governments have seen benefits in this approach, as noted by a 2016 UN study: “in countries of destination, it can alleviate labour needs and increase economic production. In countries of origin, it can provide unemployment relief and both financial and human capital (in terms of skills and resources brought back to the country), as well as counteract population loss due to emigration”.⁴ Depending on their circumstances and

1. [ILO Global Estimates on International Migrant Workers Results and Methodology](#), (2018): ix.
2. [ILO Global Estimates on International Migrant Workers Results and Methodology](#), (2018): x, xi.
3. [IOM World Migration Report 2020](#): 26, and UN DESA, [International Migration 2019: report](#): 8.
4. UN Economic Commission for Europe, [Defining and Measuring Circular Migration](#), (21 September 2016): 1

aspirations, migrants themselves may or may not share this positive assessment of the trend towards temporary and circular migration.

An industry has developed to service this movement of people across international borders, matching workers with employers across legal, bureaucratic, linguistic and geographical barriers. Private recruitment agencies increasingly play a role assisting workers to find jobs beyond their country or community of origin. In the Asia-Middle East corridor, some studies have estimated that as many as 80% of all migrants rely on agencies or other middlemen to find jobs abroad.⁵ At the top of the job ladder, employers pay headhunters to find executives and professionals and pay all of the costs associated with their recruitment, but those taking up low-wage jobs are routinely obliged to pay charges to secure their jobs abroad. In addition to fee-charging, NGOs and international human rights organizations have documented an array of abusive practices that occur systematically in the recruitment process. These include deception about the nature of work and the rate of pay, retention of passports, and illegal wage deductions.

Unfair recruitment practices may begin when workers have to pay exorbitant fees but they ripple through the life-cycle of a work contract, leaving workers acutely vulnerable to trafficking and forced labour. Ten of the ILO's eleven indicators of forced labour link directly or indirectly to unfair recruitment.⁶ Yet, while commitments to eradicate trafficking and modern slavery from supply chains abound, functioning models of ethical recruitment are few and far between.

The problems faced by low-wage workers in international recruitment processes have garnered increased attention in recent years, and there is subsequently greater recognition that employers, not workers, should bear the costs of recruitment. Companies are beginning to recognize their responsibility to conduct business in ways that stamp out fee-charging to workers in their supply chains, and brands are more outspoken about the issue. For example, 15 major international brands have joined the Leadership Group for Responsible Recruitment, publicly committing to the “Employer Pays Principle” and its

implementation throughout their supply chains, and targeting the eradication of recruitment fees by 2026.⁷

Businesses cannot solve these problems alone. Governments have a crucial role to play, but they have so far failed to rise to the challenge of regulating and monitoring the international recruitment industry. There are extensive regulatory frameworks in place, but most do not effectively reduce recruiters' exploitation of migrant workers. All countries regulate recruiter activities and fees, but few do so in ways that incentivise worker protection. Enforcement is highly uneven, and complaint and dispute-resolution procedures for workers rarely cater adequately for the specific circumstances of migrant workers. For destination country governments, effective regulation of the recruitment industry has been a low priority, and there is a tendency to blame origin countries for unfair recruitment practices. Origin countries that rely heavily on remittances may in turn be reluctant to interfere with a system that brings significant economic benefits, despite the harmful consequences of that system for many of its citizens.

Conceptually, this project grew out of a series of consultations with migration experts about regulatory and enforcement measures taken by states to combat abusive recruitment practices. There was broad agreement that efforts to end abusive recruitment practices have focused on corporate social responsibility, and that this needs to be balanced with an increased focus on improving state regulatory efforts. There was also agreement that while there is broad consensus on what a fair recruitment process looks like to a migrant, elaborated in the Dhaka Principles and other tools, to date there has been limited comparative research undertaken on the relationship between recruitment-related government policy interventions and outcomes for workers. This project sought to help address this gap by conducting detailed research in five corridors, and identifying where regulatory efforts are missing the mark and where they are more effective at protecting migrants.

This project seeks to build on several important studies that have been produced on the issue of recruitment

5. Estimate cited in ILO, *Merchants of Labour*, (2006): 161.

6. ILO, *Indicators of Forced Labour*, (October 2012)

7. IHRB, *The Leadership Group for Responsible Recruitment*

practices – for example, *Recruitment Monitoring and Migrant Welfare Assistance: what works?*, which was published by the IOM in 2015, and the ILO’s 2016 *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab states*.⁸ Our research is grounded in existing international standards developed by experts and international organizations concerned with labour and migration.

By providing key stakeholders - governments, UN migration bodies, civil society, trade unions, and

academics - with specific examples of what good looks (or what good could look like) this project aims to provide clear recommendations on the laws, policies and practices that are most effective in helping states implement the principles outlined in existing authoritative guidelines. Our assessment will, we hope, assist policymakers to dedicate resources effectively, help the ILO and IOM in their work with governments around the world, and provide civil society organisations with additional information as they engage governments on regulation and reform.

Selected features of the Five Corridors

| Feature | 1. Myanmar to Thailand | 2. Nepal to Kuwait | 3. Nepal to Qatar | 4. Philippines to Taiwan | 5. Mexico to Canada |
|---|--|---------------------------------------|---------------------------------------|---|---|
| Estimated total number of temporary origin state workers in destination state | At least 3 million in 2016 | Around 70,000 in 2021 | At least 400,000 in 2018 | Approximately 160,000 at end 2019 | 36,000 in 2019 |
| Proportion of men and women among migrant workers | Evenly split between men and women | Majority male | Large majority male | 60% female | 90% + male |
| Major sectors | Manufacturing, construction, domestic work, fishing, agriculture | Domestic work, construction, services | Construction, services, domestic work | Manufacturing, domestic work, fishing | Agriculture |
| Annual remittances | USD 4,700m 2017 estimate | USD 150m in 2017/18 | USD 870m in 2017/18 | USD 690 million in 2020 | At least USD 253 million in 2018 |
| Notable bilateral arrangements on migration | MOU and Agreement, 2016 | None | MOU, 2005. Additional Protocol, 2008 | Special Hiring Program for Taiwan, 2003 | Seasonal Agricultural Worker Program, 1975. Labour Mobility Mechanism, 2011 |

Population sources: (1) Myanmar Ministry of Labour, Immigration and Population, (2) Kathmandu Post, (3) Nepali Embassy in Qatar, (4) Taiwan National Immigration Agency, (5) Immigration, Refugees and Citizenship Canada.

Remittance sources: (1) International Growth Centre (IGC), (2, 3) Nepal Ministry of Labour, Employment and Social Security, (4) Bangko Sentral Ng Pilipinas, (5) Secretaría del Trabajo y Previsión Social.

Fair recruitment standards and initiatives

Recent years have seen an expansion of efforts to develop consensus on the regulatory steps required to ensure fair recruitment. These have been led by the International Labour Organization (ILO) and

the International Organization for Migration (IOM), complemented by the efforts of the Institute for Human Rights and Business (IHRB), which stewarded the development of the Dhaka Principles. In 2018, the Global Compact on Migration saw UN member states making a series of commitments on fair recruitment. The Five Corridors Project builds on these efforts, using them

8. IOM, *Recruitment Monitoring & Migrant Welfare Assistance: What Works?*, (2015) and ILO, *Ways Forward In Recruitment Of Low-skilled Migrant Workers In The Asia-arab States Corridor*, (2016)

as reference points for its evaluation and exploring the extent to which governments in the five migration corridors under study are implementing their provisions.

The Five Corridors Project indicators are anchored in the ILO General Principles and Operational Guidelines for Fair Recruitment, the prevailing non-binding standard to guide states in their regulation of recruitment processes. Of the 44 indicators we assess, 35 are directly linked to one or more principles or guidelines.⁹

The ILO Guiding Principles and Operational Guidelines on Fair Recruitment, and Definition of Recruitment Fees and Related Costs

Developed in 2016 at an expert “tripartite” meeting (meaning with participation from governments, worker organisations and employer organisations), the ILO Guiding Principles and Operational Guidelines on Fair Recruitment of Migrant Workers aim “to inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment.”¹⁰ They were arguably the first consolidated non-binding guidance for states on fair recruitment, bringing together principles and guidelines set out in existing conventions and instruments.

Intended to inform governments, enterprises and public employment services, the Principles and Guidelines establish key standards of governments and the private sector. Created as part of the ILO’s Fair Recruitment Initiative, which was launched to counter fraudulent and exploitative recruitment practice, they anchor fair recruitment firmly in the international human rights and labour rights framework. They call on governments to prohibit recruitment fees, to develop comprehensive fair recruitment legislation that applies to all recruiters and workers, to provide effective grievance mechanisms, to provide workers with information about migration and fair recruitment, and to ensure migrant workers can exercise freedom of association and join trade unions.

A subsequent ILO tripartite expert meeting in 2018 developed comprehensive guidelines to define recruitment fees and related costs. The ILO called the definition a “step forward... recognizing the principle that workers must not be required to pay for access to employment.”¹¹ Under the definition, the ILO breaks down “recruitment fees” and “related costs”, the latter a list of items that may need to be paid for “in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.”¹² Workers should not pay either recruitment fees or related costs, upfront or through salary deductions. The detailed definition filled a significant gap, and provided clarity for government, employers, recruiters and workers. For example, it established that medical, insurance, travel, administrative and orientation costs were costs related to recruitment, that should be borne by employers. The ILO now publishes the definition of recruitment fees and related costs together with the General Principles and Operational Guidelines for Fair Recruitment, as companion guidance tools. The Five Corridors Project uses the ILO definition of recruitment fees and related costs throughout its assessment.

The International Recruitment Integrity System (IRIS)

The IRIS standard and certification scheme has been developed by the IOM, with support from governments, and a range of multi-stakeholder and industry initiatives. IRIS is primarily aimed at improving fair recruitment practices in the private sector: “designed to serve as a practical tool and guidance for enabling labour recruiters and employers to integrate ethical recruitment principles into recruitment related management systems, procedures, codes of conduct, and social sustainability initiatives”.¹³ The IRIS standard includes two general and five operational principles, which include the prohibition of recruitment fees and related costs to migrant workers, respect for freedom of movement, transparency about terms and conditions of work, confidentiality and access to remedy. The IRIS certification scheme - introduced in some countries in

9. The relationship between the indicators and the ILO General Principles and Operational Guidelines for Fair Recruitment is laid out in the Methodology.

10. ILO, [ILO General Principles and Operational Guidelines for Fair Recruitment](#)

11. ILO, [The ILO Governing Body approves the publication and dissemination of the Definition of Recruitment Fees and Related Costs, to be read in conjunction with the General Principles & Operational Guidelines for Fair Recruitment](#), (28 March 2019)

12. ILO, [ILO General Principles and Operational Guidelines for Fair Recruitment](#)

13. IOM, [IRIS Standard](#)

2018 - provides assurance of agencies' compliance with the Standard.

The Five Corridors Project is primarily examining the role of states in regulating private sector actors, in particular recruiters and employers. One of the nine areas the project examines is the licensing systems used for recruitment agencies in the five corridors, and whether the government imposes requirements on agencies related to fair recruitment, or incentivises fair or ethical recruitment with specific measures. The Five Corridors Project, in this regard, evaluates the effectiveness of government measures to create an environment conducive to ethical recruitment, in line with the core goals of IRIS.

The Montreal Recommendations on Recruitment

In June 2019 100 regulators from more than 30 countries gathered in Montreal with the aim of improving “the inter-jurisdictional regulation of international labour recruitment”.¹⁴ Participants developed 55 recommendations “to enable more effective regulation of international recruitment and protection of migrant workers”. Published in June 2020 by the IOM, which hosted the Montreal conference with the Swiss, US, Canadian and Quebec governments, the recommendations are intended to provide “pioneering guidance” for states to protect migrant workers during recruitment, migration, and employment.

These recommendations were organised in nine categories: Protecting migrant workers; Recruitment fees; Registration and licensing; Administration, inspections and enforcement; Ratings, rewards and rankings; Access to grievance mechanisms and dispute resolution; Bilateral, regional and multilateral mechanisms; Migrant welfare and assistance; and Maintaining the momentum on regulation. The recommendations explicitly reference and in some places adopt similar language to the ILO General Principles and Operational Guidelines for Fair Recruitment and the IRIS standard, while in other areas they propose more specific policy measures, such as on recruitment fees - requiring employers to carry out

due diligence on their supply chains to ensure that no recruitment fees have been charged to workers and providing employers with guidance related to “charge rates”, indicating the likely range of fees that they might reasonably be charged by labour recruiters.

The Montreal recommendations were published after the development of the Five Corridors Project indicators. However, the indicators we assess map closely onto the Montreal recommendations, as set out in the report methodology. Where the Montreal recommendations propose specific policy interventions by states that are more detailed than the ILO Guiding Principles and Operational Guidelines, we feature and evaluate any examples of the implementation of such measures. Our intention is that the Five Corridors Project should complement efforts to maximize government uptake and implementation of the Montreal Recommendations.

The Dhaka Principles for Migration with Dignity and the Employer Pays Principle

The Dhaka Principles for Migration with Dignity (the “Dhaka Principles”) are a set of human rights based principles, aimed primarily at businesses, that seek to ensure respect for the rights of migrant workers from the moment of recruitment, during overseas employment, and through to further employment or safe return to home countries. The Dhaka Principles were developed by IHRB after wide consultation with business, government, trade unions and civil society. They were first shared publicly at a migration roundtable in Dhaka, Bangladesh, in 2011 and launched in 2012.¹⁵ There are 2 core principles and 10 principles through the life cycle of recruitment, migration and employment. Principle 1, which has become known as the Employer Pays Principle, sets out that no fees are to be charged to migrant workers. Other principles include clear and transparent contracts, the right to worker representation, decent working and living conditions, and freedom to change employment.

The Five Corridors Project used the Dhaka Principles for Migration with Dignity as a broad standard by which to evaluate migrant worker outcomes in the migration process.

14. IOM, [The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation](#)

15. IHRB, [About the Dhaka Principles](#)

The Global Compact for Migration

The Global Compact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly in December 2018, is, according to the IOM, the “first-ever UN global agreement on a common approach to international migration in all its dimensions”.¹⁶ A non-legally binding agreement, it followed the 2016 New York Declaration for Refugees and Migrants, and was developed alongside a parallel Global Compact on Refugees. The Compact was agreed between states against the backdrop of sharp increases in movements of people across borders in multiple regions of the world, in some cases in regulated migration processes, but many travelling without documents as a result of conflict and repression as recognised refugees, and following economic crisis and climate change in their origin countries. A key aim of the Compact was “to facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration”. In part the Compact aimed to achieve this by addressing the ‘push’ factors for migration: “mitigat[ing] the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their countries of origin, and so compel them to seek a future elsewhere”. States also committed to developing flexible “temporary, seasonal, circular and fasttrack programmes in areas of labour shortages”, a reflection of the desire by many governments to offer regulated but restricted migration opportunities to people with limited opportunities in their origin states, rather than them migrating irregularly, but without opening the door to long-term residency.

The Compact includes a section on fair recruitment, with states committing to “review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work”. The Compact expects states to “improve regulations on public and private recruitment agencies [and] prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers” and to take specific measures including on inspections, job mobility, document confiscation, and the particular risks to domestic workers. The Five Corridors Project aims to support

states in their endeavours to meet these Global Compact commitments, which correspond closely with the indicators we are evaluating.

Covid-19 and fair recruitment of migrant workers

The Five Corridors Project examines a series of specific measures around fair recruitment and is not intended to be an assessment of the response by governments to the Covid-19 pandemic. Additionally many of our interviews took place prior to the pandemic and in its early stages, when its effects were still not clear. That said, our evaluation does include some examples of impacts caused by the pandemic, where these relate to government policies on migration and recruitment. Where laws or policies have been more or less effective at protecting workers in the context of the pandemic, we note this in our analysis. This section briefly explores some of the themes that have emerged during our research in relation to Covid-19. Methodological constraints and challenges resulting from the pandemic are noted in the report methodology section.

The Covid-19 pandemic, which has coincided with the research period of this project, has had wide-ranging and profound impacts on migrant workers’ lives, including in all of the five migration corridors under study. It has both exacerbated and amplified many of the structures and systems that underpin unfair and exploitative recruitment and employment. Some governments have recognised that migrants face specific risks and vulnerabilities and have taken positive measures in this regard, for example extending temporary visas, providing migrants with free healthcare equivalent to nationals, and ensuring that undocumented migrants have access to healthcare and other essential services. However, in general migrants have been disproportionately affected by the pandemic.

Millions of migrant workers have lost their jobs, many have been left stranded and undocumented in destination countries, unable to return home or to remit money to support their families, with debts to recruitment agents unpaid and accruing interest. Migrant detention centres have been filled with workers

16. UN, [Global Compact for Safe, Orderly and Regular Migration](#)

awaiting deportation by destination states eager to reduce migrant populations. Those who have retained their jobs have faced severe health risks as a result of overcrowded, unsanitary accommodation and limits on their access to health. In many cases, migrants have been blamed and demonised for causing or spreading the virus and subjected to migrant-only lockdowns. Meanwhile, in origin countries, travel restrictions and economic contraction in destination countries have meant a reduction in opportunities for new migration, and the increasing competition for overseas jobs clearly increases the risk of exploitative recruitment practices.

Loss of work and wage theft

Destination state economies shrank significantly in 2020 as Covid-19 restrictions led to sharp falls in economic activities. The ILO estimates that the equivalent of 255 million jobs were lost as a result of the pandemic, with “youth, women and low-skilled workers seeing the sharpest drops in disposable income”.¹⁷ This had immediate and drastic consequences for migrant workers, particularly those in sectors deemed non-essential.

Tens of thousands of migrant workers lost their jobs in Thailand in the months following the pandemic’s outbreak.¹⁸ A 39 year old woman from Myanmar, who had left Thailand after her factory in Bangkok had closed, reflected on what Covid-19 meant for her:

*“I have always been working and sending remittances back home regularly. And I have to look after (my siblings) because I am the eldest. Since the Covid-19, I have no work. I wish this will be over soon. This is not only for me but for many other workers who came back from Thailand.”*¹⁹

Migrant Forum Asia has noted how migrant workers in Thailand’s garment sector, mostly from Myanmar, were severely affected by factory closures during Covid-19.

Before the pandemic, thousands of migrants on MOU visas were entering Thailand every week from Myanmar via the Myawaddy/Mae Sot crossing, but a slowdown in customer demand, combined with restrictions and border closures made this journey impossible, and factories shut down, resulting in migrant workers losing their social security benefits and other compensations in Thailand.²⁰ By June 2020, around 10% of all documented migrants in Thailand had left the country.²¹

The GCC region, home to 35 million migrant workers in 2019, suffered a deep economic shock in 2020, with real GDP contracting by 6% as a result of the pandemic and a simultaneous oil price crash, creating mass job losses across the region.²² The Business and Human Rights Resource Centre, which tracks reports of abuse against migrant workers in the region, said that the period between April and August 2020 saw an unprecedented spike in such cases, with workers citing Covid-19 as a key or exacerbating factor in 95% of cases. Non-payment of wages was the most frequently cited abuse, cited in 81% of cases.²³

In a 2021 report, Equidem noted a case of a Qatari company that terminated the contracts of 2000 migrant workers without any notice: “most did not get their salary and end of service settlement either”.²⁴ The Guardian newspaper reported in May 2020 on the large numbers of migrant workers in Qatar begging for food.²⁵ One Nepali woman employed by a cleaning company told us in August 2020 that she had to rely on the Nepali community for food.²⁶ The Equidem report recognises that in March 2020, the government made it mandatory for companies to continue to pay workers in quarantine or government-imposed isolation, and set up a loan scheme to help companies do so, but reported “widespread failure to comply” with this regulation.²⁷ Many workers found themselves in limbo, with no work or wages, limited chances of returning home, and a lack of clarity about the future. A Nepali construction worker in Kuwait told us in August 2020 that he had been out of work for 40 days and was staying in his room. He told us he was asking his company to pay salaries, but “the

17. ILO, *Annual Meetings of the World Bank and the IMF Development Committee: COVID-19 recovery must be human-centred*, (9 April 2021).

18. ILO, *COVID-19: Impact on migrant workers and country response in Thailand*, (3 July 2020): 6.

19. Remote interview, 25 August 2020.

20. Migrant Forum Asia, *Crying Out for Justice: Wage Theft Against Migrant Workers During COVID-19*, (7 April 2021): 38.

21. ILO, *COVID-19: Impact on migrant workers and country response in Thailand*, (3 July 2020): 3.

22. IMF, *Economic Prospects and Policy Challenges for the GCC Countries*, (10 December, 2020): 6.

23. Business & Human Rights Resource Centre, *COVID-19: Spike in allegations of labour abuse against migrant workers in the Gulf*

24. Equidem, *The Cost of Contagion*, (23 September 2020).

25. The Guardian, *Qatar’s migrant workers beg for food as Covid-19 infections rise*, (7 May 2020).

26. Remote interview, 11 August 2020

27. Equidem, *The Cost of Contagion*, (23 September 2020).

company has refused.”²⁸ A Nepali woman who had been working in a Kuwaiti beauty salon explained how the pandemic would likely leave her doubly indebted:

*“Migrants from other countries have already left but as for us, we do not have the money to buy the return ticket, we have come here with great difficulty and have taken loans. We have not received support from the government. If we were given a return ticket then we would definitely come back [to Kuwait]. We would again have to migrate and we don’t have so much money and would have to take out a loan again.”*²⁹

As the number of jobs contract in many economies and sectors, and travel restrictions make migration much more difficult, migrant workers have fewer job opportunities. The ILO has said that it is highly likely that the scarcity of jobs will lead to an increase in the recruitment fees that migrants are charged: “a grave concern is that the contraction of the global labour market will increase pressure on migrant workers to pay high recruitment fees and related costs as they are forced to ‘compete’ for scarce jobs abroad, particularly the low-wage jobs most often accessible to migrant workers.”³⁰ A March 2021 media investigation into the recruitment of Nepali migrant workers to Qatar suggested that “a lack of jobs and the effects of the pandemic mean mushrooming manpower agencies in Nepal and brokers are seeing this as an opportunity and luring Nepali youths with job offers in Qatar’s police force, charging them a hefty amount in the process.”³¹

The pandemic has also made it more difficult for workers to change employers. In Taiwan, the limitations that Covid-19 has placed on foreign recruitment had originally led many workers to transfer sectors from domestic work into the manufacturing sector. However, in response to pressure from the recruitment sector on behalf of employers, the Ministry of Labour has tightened the regulations on these cross-sector

transfers.³² One of the reasons raised by businesses in Qatar who objected to the new reform of the kafala system that allows workers to switch jobs more easily was the difficulty of hiring new workers in light of the pandemic.³³

Demonisation and stigma

Even before the pandemic, migrant workers were often blamed unfairly for many social ills in destination states. Such discriminatory narratives fed into fears about Covid-19, and migrants were sometimes used as a scapegoat by governments to distract attention from their own failings.

In Thailand, a Covid outbreak in December 2020 among migrant workers connected to a seafood market prompted a backlash against migrant workers among some Thai citizens on social media, encouraged by statements by political leaders. These included Prime Minister Prayuth Chan-ocha, who blamed the surge in cases on “illegal immigrants” who he said “brought much grief to the country”.³⁴ Workers from Myanmar were prevented from using buses, motorcycle taxis and offices, and NGOs raised concerns about the possibility of violent attacks.³⁵ In Kuwait, the pandemic fed into a highly xenophobic environment, dominated by narratives about the need to reshape the country’s demographic profile and replace migrant workers in the labour market with Kuwaiti nationals. High-profile Kuwaiti celebrities blamed migrant workers for spreading the virus and one called for them to be “thrown into the desert”.³⁶ The prime minister in June 2020 called for the proportion of migrant workers to be reduced from 70% of the population to 30%.³⁷

Unsurprisingly, workers are keenly aware of these discriminatory narratives. One migrant worker in Qatar told Equidem that, “there are a lot of trolls on the internet about Covid-19. I see some of them are directly attacking migrant workers saying “Covid-19 has

28. Remote interview, 3 August 2020

29. Remote interview, 2 August 2020

30. ILO, *A global comparative study on defining recruitment fees and related costs*, (2020): xi.

31. The Diplomat, *Qatar Police Recruit Nepali Citizens, Leaving Kathmandu Out of the Loop*, (12 March 2021).

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

33. Migrant-Rights.org, *A de facto NOC in Qatar?*, (10 January 2021).

34. Reuters, *Thai PM blames virus surge on illegal migration, hints at new curbs*, (22 December 2020) and DW, *Thailand: COVID outbreak among Myanmar workers sparks anti-migrant backlash*, (28 December 2020).

35. Al Jazeera, *Anti-Myanmar hate speech flares in Thailand over spread of COVID*, (24 December 2020).

36. ADHRB, *“Throw Migrant workers into the Desert”: How COVID-19 Exacerbates the Suffering of Kuwait’s Invisible Workers*, (25 May 2020).

37. Arab News, *Kuwait vows to cut migrant population to 30%*, (4 June 2020).

spread because of the migrant workers staying in GCC countries.”³⁸ Amnesty International reported that in the early stages of the pandemic, Qatari law enforcement rounded up and expelled dozens of migrant workers after telling them they were being taken to be tested for Covid-19, holding them in cramped, unhygienic, immigration detention centres.³⁹

In June 2021, it emerged that numerous high-profile electronics companies in Taiwan have responded to the pandemic by forbidding migrant workers from leaving their company-provided accommodation, except to go to work.⁴⁰ As an IOM study on Covid-19 and anti-migrant xenophobia points out, “the implementation of differential programmes aimed at restricting [migrants’] mobility in the interests of protecting nationals, results largely from xenophobic sentiments and systems, and reinforces public perceptions that migrant workers pose a risk, rather than being at risk.”⁴¹ Taiwanese labour rights group Serve the People Association conducted a survey that suggested that in the latest Covid outbreak to affect Taiwan in 2021, as many as 60% of migrant workers have been forbidden by their employers from leaving their accommodation in their free time. “Discrimination of migrant workers in Taiwan is systemic, but the pandemic has made it a lot worse,” the NGO said.⁴²

Essential workers

While sectors like retail and food and beverages have seen major job losses, sectors like domestic work, caregiving, and agriculture became more critical than before. In some contexts, this led to public celebrations of “key workers” and even a re-evaluation of the role of migrants in society. In Canada, the pandemic highlighted the role of migrant workers in providing food and essential services, prompting discussions about whether migrant workers should continue to

be treated as “temporary” members of society by the immigration system.⁴³ The ILO suggested that it was time for governments to reconsider the common practice of exempting agricultural workers from legal labour protections.⁴⁴ In some origin states, there was also increased appreciation for migrant workers: in Mexico, the President called migrant workers “heroes” as remittances hit an all time high of US\$40 billion in 2020.⁴⁵

However many “essential” migrant workers also faced health risks. Many struggled to obtain the personal protective equipment (PPE) required to protect themselves from contracting or transmitting the virus, and could find that greater demands were placed on them. Domestic workers, for example, were even more isolated in their employers’ homes than in normal circumstances and often expected to work extreme hours with few breaks. The ILO estimated in June 2020 that 55 million domestic workers globally had been significantly affected by Covid-19.⁴⁶ Out of 201 surveyed live-in caregivers in Canada, more than 1 in 3 had lost their jobs during the pandemic and were forced to move homes, while 48% of those that kept working reported longer hours of work. Of those who kept their jobs, 40% of respondents reported not being paid for any extra hours of work.⁴⁷ In Taiwan, the domestic workers union said in May 2020 that while there had not been high number of Covid-19 cases in the country, many domestic workers were nevertheless now more confined in their employers’ homes than before and were prohibited from taking days off, even as their bosses continued to go out to work as usual.⁴⁸ In the Gulf region, the International Domestic Workers Federation reported that “with the lockdown in place, shelter closures, and complicated accessibility of reporting mechanisms, psychological, physical, and sexual violence have increased.”⁴⁹

38. Equidem, *The Cost of Contagion*, (23 September 2020).

39. Amnesty International, *Migrant workers in Qatar illegally expelled during COVID-19 pandemic*, (15 April 2020).

40. Financial Times, *Tech groups in Taiwan accused of locking up migrant workers*, (23 June 2021).

41. IOM, *Quarantined! Xenophobia and migrant workers during the COVID-19 pandemic*, (August 2020): 4

42. Financial Times, *Tech groups in Taiwan accused of locking up migrant workers*, (23 June 2021). Serve the People noted that this practice was relatively common prior to the pandemic but that it had increased significantly since.

43. Open Democracy, *Can the COVID-19 crisis be an opportunity for Canada’s migrant farmworkers?*, (5 August 2020).

44. ILO, *Seasonal Migrant Workers’ Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19*, (May 2020): 6.

45. Reuters, *Mexicans defy pandemic blues with record remittance surge*, (1 February 2021).

46. ILO, *Impact of the COVID-19 crisis on loss of jobs and hours among domestic workers*, (June 2020).

47. Caregivers Action Centre, Vancouver Committee for Domestic Worker and Caregiver Rights, Caregiver Connection Education and Support Organization and Migrant Workers Alliance for Change, *Report: Behind Closed Doors - Exposing Migrant Care Worker Exploitation During COVID-19*, (28 October 2020).

48. SCMP, *In Taiwan’s ‘container houses’ for migrant workers, coronavirus not the only health risk*, (26 April 2020).

49. IDWF, *In the Middle East and Gulf Countries: “Corona is not the Virus, Kafala is!”*, (May 2020): 2.

Living conditions, inability to socially distance

Living conditions for migrant workers are often crowded and unsafe. Predictably, such accommodation has proved grossly inadequate for social distancing and self-isolation or quarantine, putting migrant workers at greater risk compared to the rest of the population. A paper for the British Medical Journal said of Kuwait:

“A large proportion of migrant workers in Kuwait live in cramped dormitories with poor housing conditions: small rooms with tens of men living together; unmaintained and shared toilets; poor or no ventilation; and high risk of bed bugs and other pests. Such environments with consistent close proximity among occupants have the potential to increase Covid-19 outbreaks among migrant workers.”⁵⁰

While some farms in Canada provided suitable spaces for workers to quarantine on arrival in the 2020 season, poor housing - a long-standing problem in the country's agricultural sector - was a major contributor to increased health risks for migrant workers. One Mexican worker believed this issue reflected a lack of respect for migrants among some employers:

“I have a video where colleagues who entered Canada after May 15 were self-isolating. They were put in a big cellar, and do you know what their bed was? A pallet and a mattress... Do you think that was enough to stop them getting infected? This is simply because they are Mexican.”⁵¹

Covid-19 reduced the Canadian government's scrutiny of employers. In March 2020, as the pandemic took

hold, government inspections of farms were halted entirely, and in April 2020 physical inspections were replaced by virtual inspections where, “the employer provides live video of the premises showing different locations as directed by the inspector, and it enables the inspector to view all living and working environments and to interview temporary workers on the spot for their input”.⁵² There are clearly serious questions about the likelihood of migrant workers speaking honestly about their conditions and concerns in such a situation. In June 2020, Mexico placed a hold on the migration of migrant workers to Canada, due to its concerns about the rate of infections and the deaths of three workers, in what an official said was a “a temporary pause in order to determine the circumstances surrounding the safety conditions on farms”.⁵³ A November 2020 Ontario strategy on preventing Covid-19 highlighted the need for federal, provincial and municipal government agencies to better collaborate in the 2021 season.⁵⁴ However, as the 2021 season began, there remained confusion over responsibility for migrant workers, with the Mayor of Leamington raising concerns that, “no one knows who's in charge”.⁵⁵

The pandemic should sharpen the focus of governments of both origin and destination states on the protection of migrant workers, on enhancing measures which enable durable and safe outcomes for migrant workers, and on tackling discriminatory practices which exacerbate vulnerability. As societies and economies continue to deal with Covid-19 in the coming years, businesses and governments will need to place a much greater focus on putting systems in place that can prevent or mitigate the disproportionate impact that such a public health crisis has on migrant workers.

50. Alahmad B, Kurdi H, Colonna K, et al, [COVID-19 stressors on migrant workers in Kuwait: cumulative risk considerations](#), BMJ Global Health, (2020): 5

51. Remote interview, 7 July 2020.

52. Senate, “[Debates of the Senate](#)”, 1st session, (16 June 2020).

53. Paula Newton, “[Mexico temporarily forbids workers to go to Canada due to coronavirus](#)”, CNN, (16 June 2020).

54. Government of Ontario, Ministry of Agriculture, Food and Rural Affairs, “[Prevention, Control and Outbreak Support Strategy for Covid-19 in Ontario's Farm Workers](#)”, (16 November 2020).

55. CBC, “[“No one knows who's in charge:” Poor quarantine coordination puts migrant worker health at risk](#)”, (26 January 2021).

B. Key Recommendations

Introduction

The Five Corridors Project has aimed to identify positive state practices in the field of recruitment, but it has also attempted to assess how effective states are more broadly at ensuring that the recruitment of their nationals for work abroad, or the recruitment of foreign nationals into their domestic labour markets, is done in such a way as to protect migrant workers' fundamental rights. This project assesses nine interdependent areas of government policy and 44 indicators, anchored in the ILO General Principles and Operational Guidelines on Fair Recruitment.

The interdependence of these areas is *prima facie* evident, but detailed field research on the areas and the indicators reveals the extent to which they cut across one another: strong laws on recruitment are only effective when enforced by a well-trained and resourced inspectorate; a bilateral labour agreement in which the origin state negotiates detailed provisions on ethical recruitment will be rendered ineffective if the destination state's laws violate fundamental labour rights; prohibitions on recruitment fees won't be effective if licensing laws and regulations can be circumvented by unethical agents. While our research revealed numerous instances of good practice in isolation, there are precious few examples of states taking a holistic and joined-up approach to fair recruitment. Consequently migrant workers in the corridors under study are, to varying extents, vulnerable to exploitation and abuse. The most obvious example of this is in relation to the weak enforcement of laws pertaining to worker protection in the recruitment process, but beyond this perennial regulatory shortcoming, there are other numerous striking examples of positive initiatives or policy drives being undercut by incoherence.

In the Philippines domestic workers and seafarers do not have to pay placement fees to secure employment overseas - a policy that on paper should significantly reduce their vulnerability to debt bondage. However,

the Philippines permits other medical, training and temporary accommodation fees to be loaded on to workers prior to departure and allows registered lending agencies to provide loans to workers. In the case of workers bound for Taiwan, these loans can legally be transferred to Taiwanese lending agents who can obtain court orders allowing them to deduct repayments from workers' salaries, often at usurious rates of interest, leading many workers to leave their employers and work irregularly. Taiwan's legal aid laws allow lawyers there to provide free legal assistance to undocumented migrant workers, and hundreds of workers have successfully challenged the interest rates on these loans - a clear instance of best practice. At the same time, context is critical: workers only require legal assistance in the first place because Taiwanese courts empower recruitment agents to recoup exorbitant recruitment fees charged in the Philippines. In this case, state failures in origin and destination state combine to leave workers acutely vulnerable, and for many workers, the effect of the positive government interventions is nullified.

In Nepal, the government has pursued "zero-cost recruitment" with some zeal in its relations with destination states, negotiating increasingly ambitious bilateral agreements, but the incentives it provides to recruitment agencies in its own jurisdiction undermine this policy drive. It continues to allow recruiters to charge a certain amount of fees to migrant workers, and makes relatively sporadic efforts to implement even this limit. The Gulf destination states meanwhile have conflicting approaches to addressing fraudulent and abusive recruitment. In 2019 Kuwait announced an initiative called Tamkeen which it said will ensure international fair recruitment standards. However, with the exception of domestic workers, the country's laws do not ban the payment of recruitment fees by workers. Qatar's major construction clients have promised to start requiring bidding companies to factor recruitment costs into their bids and the government has established Qatar Visa Centers in origin countries to try to increase control of the recruitment processes, but the country's laws still only explicitly ban fees paid by workers to entities based in Qatar, neglecting the critical issue of payments made in the origin state.

In Canada, provincial governments have jurisdiction over recruitment related labour issues and all of them prohibit the charging of recruitment fees to workers and job seekers. However, licensed immigration consultants, who provide paid assistance with the completion and filing of any immigration application to the federal government, including work permits, are authorized to charge migrant workers for advisory services, creating a grey zone which is exploited to charge workers recruitment fees. The national regulator receives 500 complaints about unethical practices by immigration consultants every year (a figure likely to be the tip of the iceberg), which can include charging migrant workers many thousands of dollars.

Thailand has officially stipulated that recruitment agencies should charge no fees or costs from workers, but there is no equivalent bar in Myanmar where authorities have set an upper-cap that workers may be charged by recruitment agencies, including for work permits and other costs in Thailand. Thus, instead of zero-cost migration for workers, under a much-vaunted MOU process designed to regularise migration from Myanmar into Thailand, the recruitment system it put

in place is effectively zero-cost recruitment for many Thai employers. Furthermore, neither the MOU nor the accompanying bilateral agreement addresses the issue of recruitment fees, despite their paramount importance and the clear link between fees and worker exploitation.

Positive government interventions are to be welcomed regardless of the wider context, and it would be wrong to criticise individual initiatives on the basis that they have not fixed other problems. However this research has uncovered a relative paucity of practices that effectively discourage or curb recruitment abuses, relative to an abundance of practices that enable abuses to flourish. This was not equally true in all of the corridors under study: but overall the ratio of effective to ineffective government performance tended to skew towards the latter.

Drawing on the individual corridor studies, we put forward seven key recommendations. In line with the interdependence of the nine policy areas, these findings in some cases refer to multiple aspects of government performance.



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



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."¹¹⁵

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".¹¹⁶ 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."¹¹⁷ 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.¹¹⁸ 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."¹¹⁹ 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."¹²⁰

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.”¹²¹ 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.”¹²² 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.¹²³ 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.¹²⁴ 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.¹²⁵

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.¹²⁶ 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.¹²⁷ In 2020, during Covid-19, the government announced it would stop accepting “absconding” reports, as it was receiving so many false reports from employers.¹²⁸ 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.¹²⁹ 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.¹³⁰

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).”¹³¹ 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”,¹³² 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”.¹³³ 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.¹³⁴ 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.¹³⁵ 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”.¹³⁶ 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.¹³⁷

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”.¹³⁸ 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.¹³⁹ 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.¹⁴⁰ 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.¹⁴¹ 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%.¹⁴² 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.¹⁴³ 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 2020.¹⁴⁴ 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."¹⁴⁵ 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."¹⁴⁶

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."¹⁴⁷

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".¹⁴⁸

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.¹⁴⁹ 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".¹⁵⁰ 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.¹⁵¹ 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".¹⁵² 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 L.F. '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 Mojtahedzadeh, Toronto Star, "Open work permits for exploited migrant workers a 'Band-Aid solution,' critics say", (17 July 2020).

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.



A meeting of a domestic worker union, Taipei. © Lennon Ying-Dah Wong / Flickr

Recommendations to destination states

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

Fair recruitment is undermined where migrant workers do not enjoy adequate legal protection in destination states. In many destination states, migrant workers, or workers in low-wage sectors of the labour market that disproportionately employ migrant workers, are excluded from elements of core labour laws. This may remove workers' rights to, for example, join trade unions, minimum wage protections, maximum working hours, days off, and overtime payment. Workers in the agriculture, domestic work, and fishing sectors are often excluded from legislative protections or subject to parallel regulatory regimes, and these are sectors where migrant workers are often heavily and disproportionately present. Ensuring that non-national populations in low-paid sectors of the economy have the same fundamental rights as nationals is an indispensable buffer against racialized social exclusion and attendant discriminatory attitudes that make

migrant workers even more vulnerable, and which have particularly come to the fore in the context of the Covid-19 pandemic.

In many destination countries, migrant workers, either by dint of their nationality or the sectors in which they work, are unable to form or join trade unions, a fundamental human and labour right. Agricultural workers are unable to unionise in several of Canada's provinces. A legal challenge to this policy in Ontario, where the 2002 Agriculture Employees Protection Act stresses "the unique characteristics of agriculture", was upheld by Canada's Supreme Court in 2011 but invoked public criticism from the International Labour Organization.¹⁵³ The UFCW union, which represents agricultural workers and brought the case against Ontario, told us that, "once they are in Canada, these workers are totally voiceless."¹⁵⁴ Because so many

153. ILO, "Interim Report - Report No 358, November 2010: Case No 2704 (Canada)"

154. Remote interview, with Santiago Escobar, UFCW, 21 February 2021.

workers from Mexico and Caribbean countries employed under the Seasonal Agricultural Worker Program (SAWP) are not able to unionise, unions are also excluded from the SAWP annual review process, meaning there is a lack of worker representation in discussions relating to their conditions and the contents of the standardised contract.

Qatari law bars any migrant workers from forming or joining trade unions. As part of its technical cooperation with the ILO, the labour ministry has however established joint worker-employer committees in 20 companies and has engaged closely with international trade unions.¹⁵⁵ These positive measures have however so far been limited to public bodies and major companies and stop short of full freedom of association. Smaller companies, where abuse is known to be widespread and protections are weaker, lack worker representation of any kind.¹⁵⁶ In Kuwait, unions are permitted but only Kuwaiti nationals can form them, and the Kuwait Trade Union Federation's activities are closely supervised by the government. Migrant workers can join, but only once they have resided in Kuwait for a minimum of five years, and there is no right provided for domestic workers to join unions.¹⁵⁷ There is some allowance for migrant worker and diaspora organisations to operate, but within strict limits. One expert told us that in reality, "freedom of association in Kuwait exists only on paper [...] especially so for migrant workers."¹⁵⁸

In Thailand, public sector, informal, temporary, and seasonal agriculture and sub-contracted workers (between them about 80% of the workforce) are not permitted to form or join unions.¹⁵⁹ Migrant workers have a right to join an existing union, but under the Labour Relations Act, not the right to establish or lead one. As most migrants work in the fishing, seafood processing and construction sectors, where there are few Thai workers, there are few such possibilities. Even where

Thai unions might exist in sectors where migrants work, there are significant language and cultural barriers. The cumulative effect of this is that migrant workers lack access to labour unions in Thailand. A 30-year-old factory worker told us: "I have never heard of labour organizations inside the factory. Maybe there's a worker union among Thai workers but I never heard of one with Burmese workers."¹⁶⁰ When there are problems in their workplace, migrant workers rely on unregistered organizations or civil society advocacy groups to highlight their interests. The ILO Committee has called on the Thai Government "to eliminate, without delay, the restrictions placed on the freedom of association rights of migrant workers".¹⁶¹

Taiwan offers a more positive example, having reformed its Labour Union Act in 2011 to allow foreign nationals to serve as supervisors or directors of unions. As a result, three labour unions in Taiwan have been established by and for migrant workers, representing fishers and domestic workers.¹⁶²

According to the ILO, only about 10% of domestic workers worldwide are covered by labour legislation to the same extent as other workers, while more than 25% are completely excluded. As a result, they "very often lack recognition as real workers, and constitute one of the most vulnerable categories of workers".¹⁶³ In Taiwan, foreign domestic workers are excluded from the protection of the Labour Standards Act. The Taiwanese International Workers Association told us that the workplace exploitation that they endure is in large part related to this exclusion, since there are no limitations on their working hours.¹⁶⁴ A representative of Migrant Workers Concern Desk told us that Taiwan's domestic workers are the most vulnerable category of workers due to the circumstances of their employment.¹⁶⁵ A government-commissioned report in 2012 found average working hours of 17 hours per day.¹⁶⁶ Migrant domestic workers we spoke to told us of chronic overwork and

155. ILO Governing Body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9

156. Additionally, the May 2021 arrest and detention of Malcolm Bidali, a Kenyan security guard and blogger on worker rights, raised new questions about the risks to migrant workers who express their opinions publicly, prompting the Uniglobal union to raise concerns. See: UniGlobal, *In Qatar, UNI demands the immediate and unconditional release of Kenyan security guard Malcolm Bidali*, (21 May 2021).

157. See ILO Committee Observation (CEACR) adopted in 2017, published 107th session (2018)

158. Remote interview with GCC labour expert, July 2020.

159. Human Rights Watch, "Statement on the U.S. Government Decision to Suspend Thailand's Trade Preferences Due to Worker Rights Issues," (10 December 2019).

160. Remote interview, 29 September 2020.

161. ILO Committee, "Case No 3164 (Thailand) - Complaint date: 07-OCT-15 - Follow-up," (October 2016): para 1052.

162. Andi Kao, "Keelung Migrant Fishermen Form Union, Second of its Kind in Taiwan," *The News Lens*, 22 February 2021.

163. ILO, *Snapshot: ILO in Action: Domestic Workers*, (undated)

164. Remote interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

165. Remote interview with Leoni Pascual Ngo, Migrant Workers Concern Desk, (27 June 2020).

166. The report is referenced in Davina Tham, *Taipei Times*, "No rest for domestic helpers", (25 December 2019).

of being denied any days off work.¹⁶⁷ The Taiwanese Ministry of Labour has said that the government's decision to exclude domestic workers from the Labour Standards Act is because "their duties, work hours and rest hours are clearly different from workers of business entities, making it hard to draw a clear line between what is work and what is not." In 2014, the Ministry of Labour said that it had finished drafting a "Domestic Workers Protection Act" that would give domestic workers one day off every week and would include provisions on the termination of work contract, wage standards, working hours and the filing of complaints.¹⁶⁸ The act has yet to pass through the Executive Yuan.

Both Kuwait and Qatar exclude domestic workers from their national laws. Facing criticism over this, in recent years they have passed specific legislation - Kuwait in 2015 and 2016, Qatar in 2017 - to provide legal protections for certain entitlements, and access to grievance mechanisms, for domestic workers. There remain substantial discrepancies between protections offered to domestic and other workers. For example in Kuwait, the maximum working day is 12 hours, compared to eight for other workers and, unlike the national labour law, lacks sick pay provisions.¹⁶⁹ In Qatar, domestic workers can work longer than the stipulated maximum 10 hours, "if there is an agreement".¹⁷⁰ They are also excluded from the Wage Protection System, designed to ensure regular salary payment.¹⁷¹ While in Kuwait the domestic worker law is actually stronger on recruitment than the 2010 Private Sector Labour Law, overall the fact that domestic workers remain subject to a parallel legal and enforcement regime reinforces the sense among employers that they are not truly "private sector workers". In this context it is not surprising that in both countries enforcement of the new laws has until now been weak, and domestic workers continue to face great difficulty in claiming their rights.¹⁷² A 30 year old Nepali woman told us she was working 16 hour days for a Kuwait family and was desperate to go back home

to look after her sick mother, but her employers were refusing to return her passport. She said that, "they took it away after I got to the house, the owner of the house has it. If I had it I would have left the country some time ago. My mother is sick but they keep on postponing dates for me to leave."¹⁷³

Thai labour law makes a distinction between rights of workers in the formal and informal sectors. Those working as domestic workers, seasonal agricultural workers, and fisher workers are not covered by the Labour Protection Act per se, but by industry-specific ministerial regulations on labour protection. Under these regulations, domestic workers are not entitled to the national minimum wage: an ILO 2016 study showed that more than 90% of domestic workers were paid less than minimum wage, while working an average of 13.5 hours per day.¹⁷⁴ Similarly, a 2014 Ministerial Regulation recognised only limited labour protection rights for seasonal agricultural workers, a sector characterised by informal working arrangements.¹⁷⁵

Agricultural workers are often excluded from labour laws. In Canada, where a number of provinces implement this policy, this has been termed "farm worker exceptionalism".¹⁷⁶ In Ontario, the province that hosts Canada's largest population of migrant workers, agricultural workers are not entitled to receive: daily and weekly limits on hours of work, daily rest periods, time off between shifts, weekly/bi-weekly rest periods, or overtime pay. With few exceptions, agricultural workers are also not entitled to eating periods, public holidays or public holiday pay.¹⁷⁷ Unions argue that this means that workers can be coerced into working exceptionally long hours in circumstances that are technically within the law, and told us they have assisted migrants who have worked for several months without a day-off. Raising concerns about the persistent exemption of agricultural workers from labour laws, the ILO has noted that this may explain why such jobs are often unpopular among

167. Two remote interviews, August 2020.

168. "The Ministry of Labor Endeavors to Protect the Rights of Domestic Workers through Pragmatic Approaches", *Taiwan Ministry of Labour news release* (1 August 2014).

169. Human Rights Watch, *Kuwait: New Law a Breakthrough for Domestic Workers*, (30 June 2015).

170. *Law No. 15 of 22 August 2017 which relates to domestic workers*, Section 12.

171. Migrant-Rights.org, *Qatar's Domestic Worker Law: A step in the right direction, but weakened by exclusions*, (25 August 2017).

172. See for example Amnesty International, *Domestic workers share harrowing accounts of abuse in Qatar*, (20 October 2020), and Human Rights Watch, *World Report 2021: Kuwait*.

173. Remote interview, 11 August 2020.

174. ILO and UN Women, "Worker, Helper, Auntie, Maid?" (2016): xviii

175. Ministerial Regulation concerning Labour Protection in Agricultural Work, 2014. United Nations Thematic Working Group on Migration in Thailand, "Thailand Migration Report 2019," (2019): 65.

176. See for example, Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. 'Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability'.

177. Government of Ontario, "Agriculture, growing, breeding, keeping and fishing"

citizens, and in the context of Covid-19, has highlighted the discrepancy between societies' acknowledgement of the importance of agricultural workers for the food chain, and the lack of labour protection for the workers in the sector: "recognizing these workers as essential implies the need to address their exemption from labour laws."¹⁷⁸

The impact of Taiwan's fishers being subject to a separate regulatory regime from other workers is significant. Like domestic workers - although for different reasons - they are not covered by the Labour Standards Act and therefore earn lower wages than those set out in Taiwanese Labour Law. The nature of their work in international waters, often thousands of miles from Taiwan, makes inspections and regulation difficult and this is compounded by the fact that they are regulated by Taiwan's Fisheries Agency. Greenpeace told us that unlike the Ministry of Labour, the Fisheries Agency is small and does not have either the skills or the resources to effectively regulate a sector that presents so many regulatory challenges.¹⁷⁹

Undocumented migrant workers face multiple forms of discrimination. In Taiwan, manufacturing and fisheries workers who become undocumented are excluded from the protection of Taiwan's Labor Standards Act. The Employment Service Act empowers the Ministry of Labour to annul the employment permit of foreign workers who have been "unjustifiably absent from his/her work and not in contact for three days."¹⁸⁰ In Thailand, all workers - regardless of their legal status - are officially covered by Thailand's Labour Protection Act (LPA) and the 2019 Labour Protection in Sea Fishery Work Act, but in practice, the country's irregular migrants (estimated to number more than one million) can find it difficult to receive support and remedy.¹⁸¹ While the government-run Migrant Worker Assistance Centres have a responsibility to support all migrant workers, including those with irregular status, they also work with the Department of Employment

to oversee the implementation of the Foreign Workers Ordinance, which explicitly provides for the imposition of penalties on irregular migrant workers.¹⁸² In Canada, undocumented workers are less likely to file complaints than other workers. A study of employment standards in Ontario found that, "workers with insecure immigration status who face substandard conditions of employment are rarely in a position to complain due to implicit or explicit threats that they will be penalized by the immigration system (e.g., with deportation)."¹⁸³ In both Kuwait and Qatar, undocumented workers - who face multiple serious human rights risks - have generally been perceived as a social and security challenge for the state. They face criminal charges, normally resulting in deportation, for "absconding", heavily reducing their protections from abuse.¹⁸⁴

Migrant workers are in many cases at greater risk of discriminatory hiring practices due to the transnational nature of the recruitment process. Women can for example be under-represented in some temporary migration programmes. In Canada, where (unlike many other destination countries) the government requires that gender-based analysis is part of program and policy development, women continue to make up less than 4% of participants in the Mexico-Canada Seasonal Agricultural Worker Program, a rate lower than in the agricultural sectors of either country.¹⁸⁵ This discrepancy is because employers tend to request male workers. Due to the relatively small number of women working in agriculture in Canada, the living facilities provided for them can be seriously inadequate. Additionally, because places for women on the programme are so limited, women may feel under particular pressure not to complain about poor working and living conditions, for fear of losing their jobs. One study found that women "often do not seek attention for illness, injuries or pregnancies and do not complain about working conditions or harassment by employers because of the risk of being sent back to Mexico if they are fired."¹⁸⁶

178. ILO, 'Seasonal Migrant Workers' Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19', May 2020: 6

179. Remote interview with Peiyu Chen and David Chiu, Greenpeace Taiwan, 22 September 2020.

180. *Employment Service Act*, article 72

181. Workers in agriculture and domestic work are not directly covered by the LPA, but by additional Ministerial Regulations.

182. ILO, "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," (2020): 13.

183. Leah F. Vosko, "Rights without Remedies": Enforcing Employment Standards in Ontario by Maximizing Voice among Workers in Precarious Jobs, *Osgoode Hall Law Journal* 50.4 (2013): 857.

184. See for example, Kuwait Times, Absconding, (23 November 2019) and Migrant-Rights.org, "The System is Down": Entrapment and the Arbitrary Power of Absconding Reports, (21 August 2016).

185. INEGI, "National Survey of Occupation and Employment (ENOE), population aged 15 years and older", (March 2021), Statistics Canada, "Labour force characteristics by industry, annual (x 1,000)", and UFCW Canada, *UFCW Canada reaches historic agreement with Mexico to eliminate gender discrimination under the SAWP*, (26 April 2016).

186. Kerry L. Preibisch and Evelyn Encalada Grez. "The Other Side of 'El Otro Lado': Mexican Migrant Women and Labor Flexibility in Canadian Agriculture" *Signs*, volume 35, no 2, (2010).

Specific recommendations

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

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

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

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



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”.¹⁸⁷ 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.¹⁸⁸ The Philippines' largest association of recruitment agents, the Philippines Association of Service Exporters, argues that charging fees is a commercial necessity for its members.¹⁸⁹ 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.¹⁹⁰ 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."¹⁹¹ 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."¹⁹² 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."¹⁹³

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."¹⁹⁴ 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.¹⁹⁵ 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.¹⁹⁶ 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”.¹⁹⁷ A 2019 report by the National Human Rights Committee report found that the pressure on DOFE staff was “excessive”.¹⁹⁸ NGOs told us that in addition to under-resourcing there are also skills gaps.¹⁹⁹ A former DOFE investigation officer told us he received no specialized training.²⁰⁰ 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.²⁰¹ 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.²⁰² 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.²⁰³ 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”.²⁰⁴ 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.²⁰⁵

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.²⁰⁶ 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.²⁰⁷ 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” govt 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.²⁰⁸ 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.”²⁰⁹

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.²¹⁰ 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.²¹¹ 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.²¹² 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.²¹³ 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.²¹⁴ 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.”²¹⁵ 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.²¹⁶ 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.²¹⁷ 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.”²¹⁸ 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.”²¹⁹ 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.²²⁰ It has achieved praise from the US State Department among others for this work.²²¹ 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.²²² 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.²²³ 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).²²⁴ 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.²²⁵ 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.

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.



Workers from Myanmar remove husks from coconuts in Koh Samui, 2015. © ZUMA Press / Alamy

Recommendations to both origin and destination states

5. Design grievance and remedy processes that take account of the power imbalance between employers and recruitment agents, on the one hand, and migrant workers on the other.

Poorly designed and implemented processes to deal with grievances against recruiters and employers present numerous practical problems for migrant workers, in many cases resulting in them settling for a fraction of what they are owed and what they could be reasonably due in damages. The power dynamic between employers / recruiters and migrant workers is strongly stacked in favour of the former and most grievance processes do little to acknowledge and account for this fact. In destination states, migrants are particularly hampered by their temporary status and tied visas, which may prevent them from working during the grievance process, and can place a time limit on how long they can pursue their cases. Even if special immigration measures are in theory or in practice available to assist migrant workers bringing cases against employers, the precarity of their status may deter them from lodging complaints in the first place. Governments on both sides of the migration corridor should design grievance and remedy processes that take

account of and adapt to the realities of migrant workers' situations.

The solution many governments have arrived at in order to provide quick and simple grievance mechanism for migrant and other workers is to provide non-judicial mediation or dispute settlement fora. The intention is that such mechanisms mean workers can avoid having to take recruiters or employers through lengthy, complex, and potentially costly court processes. A fundamental principle of such mechanisms is generally that the mediator does not adjudicate but rather assists the parties to come to an agreement on how to proceed with the dispute. Cases where a settlement cannot be found usually proceed to court.

In practice, such systems are often not adequately staffed by skilled mediators and translation is not always available. Secondly, and arguably more significantly, the inherent power dynamic between

recruiters/employers and migrants can be so strongly skewed against the migrant that the concept of a fairly negotiated settlement is often unrealistic. In the case of employers, their control over migrants' immigration status is particularly difficult for migrants to confront - tied visas, as noted under Recommendation 2, are a key obstacle to the provision of an effective remedy for migrant workers. Domestic workers, isolated in their employers' homes, find it almost impossible to make complaints without leaving their employers and risking becoming undocumented. Thirdly, if a migrant does not want to accept what (if anything) is offered in the mediation process, the employer or recruiters knows their alternative option is to proceed through a lengthy and difficult court case, significantly reducing the worker's leverage. For migrants in a destination country, this means waiting, potentially without income or documentation, for an uncertain outcome. In an origin state, this may mean repeated cross-country trips to the capital, where courts are often located. Many recruiters and employers will bet on workers not wanting to go through these gruelling processes and either offer workers desultory sums, or don't engage in the mediation at all.

Mechanisms that do not recognise and make adaptation to these specific risks for migrants are unlikely to provide workers with an effective remedy. In contexts where workers lack bargaining power and have no realistic alternative, they may all too often feel their only choice is to accept a compromise settlement that surrenders much of their entitlements under the law. This in turn perpetuates poor practices by employers and recruiters. It is true that there are good practical reasons for states to provide quick, simple mechanisms for workers to raise grievances and claim back unpaid wages, illegally charged recruitment fees or other entitlements. Lengthy court processes are likely to be unattractive to migrant workers. However, migrant workers should not be expected to trade off basic rights (to be paid what they are actually owed) for the sake of convenience. States should design mechanisms that deliver remedy simply and quickly, where cases are straightforward. In destination states, grievance mechanisms must provide a simple means for workers can secure their immigration status and potentially find new work for the duration of

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

In Myanmar, the labour ministry (MOLIP) has since 2013 had two complaint centres in Nay Pyi Taw and Yangon with 24/7 hotlines operated by the Department of Labour's Migration Division.²²⁶ Complaints can also be made free of charge by workers to the many Labour Exchange Offices (LEOs) in Myanmar, or to their agent, MOEAF or the Labour Attache in Thailand. Where these cannot be resolved locally, they are forwarded to MOLIP. In most instances, MOEAF - the federation of recruitment agencies, also the quasi-regulator - will attempt to "settle" the dispute, whether it is between worker and employer or worker and agency. Where negotiations do not lead to a resolution, a "formal investigation team" is established including a senior official of the state or provincial Department of Labor office along with LEO/ MOEAF officials. According to a World Bank study, such teams are rarely formed.²²⁷ Senior office-bearers of MOEAF own and run recruitment agencies, presenting obvious conflicting interests when attempting to "resolve" a situation with employers in Thailand. On one hand they are responsible for protecting the rights of the worker they sent, but on the other hand, they also do not want to antagonise the employer. As one union representative explained, "the problem is that they are worried that if they try and take some action, they will not get the demand in future. If they file a case and it gets big, the employers would be angry towards them and would not give them any more demand."²²⁸ One civil society representative told us that, "the only thing [workers] get [from the complaints process] is the refund of recruitment fees they paid. They do not get any other form of compensation for their time or the wages they lost."²²⁹ The MOEAF chairman told us that the refund of excess recruitment fees was usually the desired outcome.²³⁰

Statistics on cases taken to Myanmar courts are not available, but a civil society representative did not think

226. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 103.

227. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 129.

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

229. Name and organisation withheld, interview, 20 February 2020.

230. Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020.

there were many cases filed in courts, even though trade unions and organisations had started using it more in recent years. A trade union representative told us that in 2019 their union helped to take 51 cases to court in regard to brokers. They noted that cases in court are complicated, in part because of jurisdiction issues. With payments often made in Yangon, cases must be filed there: “a worker from Chin state must come to north dagon [a Yangon neighbourhood] to file a complaint. Who would be able to come? It is impossible to attend hearings from Kalay to Yangon [nearly 1000 kilometres]”.²³¹

Thailand has a complex and fragmented setup for complaints. Complaints with respect to recruitment under the Foreign Workers Ordinance can be taken up by regular migrants with the Department of Employment (DOE).²³² The Labour Protection Act 1998 provides all workers in Thailand the right to register complaints with the Department of Labour Protection and Welfare (DLPW) on a range of issues including related to working hours, payment of wages and harassment.²³³ Additional access to civil claims and criminal complaints is also available to documented migrant workers.²³⁴ With global attention on the fisheries sector, the Thai authorities have introduced significant measures to improve access to grievance redressal for workers in this sector. These have included Migrant Workers Assistance Centers (MWAC) which can receive grievances; a fisheries worker centre for victims of forced labour and abuse established by DLPW with the Labour Rights Promotion Network Foundation (LPN); and online chat-groups, a website, a mobile app and a phone hotline to provide support and receive complaints.²³⁵ The Anti-Trafficking Act specifically includes a provision to allow trafficked persons to remain in Thailand temporarily for the purpose of accessing remedies.

In practice, according to the ILO, migrant workers have much more difficulty accessing grievance mechanisms than Thai workers, due to lack of awareness of their rights, language barriers, discrimination, wariness of accessing government services, and fear of employer

retaliation.²³⁶ An ILO study in 2017 shows that while migrant workers from Myanmar were the most likely of all migrants to seek assistance with respect to migration issues (58%) or labour concerns (39%), they typically sought the assistance of family and friends and did not rely on the formal Thai mechanisms.²³⁷ However, according to a DLPW official, between 2017 and 15 September 2020, they received approximately 10,000 complaints from migrant workers filed online or in person with labour inspectors, while a further 300,000 calls were received on their hotline. The majority of the workers complaining were from Myanmar. Nonetheless, only 80 official written complaints were taken forward from these 300,000 calls.²³⁸

The small number of workers who complain to DLPW about labour abuse prefer to avoid court, mostly due to costly and lengthy legal proceedings. This is often because the workers’ permission to stay in Thailand is tied to their employment and the long process effectively denies them remedy, as migrants must return home regardless of whether a resolution was reached. The DLPW prioritises mediation of such disputes over the provision of adequate remedy. A Chiang Mai based staff person with a Thai NGO focused on the legal rights of migrant workers told us that even if workers want to take matters to court, mediation is encouraged by the authorities and out-of-court settlements are common, often to the detriment of workers.²³⁹ A DLPW official accepted that workers often accepted low compensation amounts to withdraw the complaint because of the difficulties they face without income.²⁴⁰ Retaliation against workers and those supporting them is frequent, with migrant workers facing threats of being fired and informally ‘blacklisted’ amongst local employers. Such reprisals are more serious in cases involving large companies that reach the courts, and workers risk counter-cases for defamation, which discourages complaints.

Nepal’s Foreign Employment Act (FEA) provides a framework for migrant workers seeking redress for recruitment-related abuses both at home and abroad. However, a nexus of financial, geographical and personal obstacles discourage many victims from

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

232. Winrock International, “Labor Abuse Complaint Mechanisms in Thailand,” (March 2020), 10.

233. The Labour Protection Act, 1998

234. Liberty Global Asia 2018 “Turning Possibilities into Realities,” (2018), 32.

235. ILO Committee, “Comments adopted in 2020 - Thailand,” (2021).

236. ILO, “Access to justice for migrant workers in South-East Asia,” (2017): 17.

237. ILO and IOM, “Risks and rewards: Outcomes of labour migration in South-East Asia,” (2017): 38, 58.

238. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.

239. Sugaranta Sookpaitha, HRDF, interview, 9 March 2020.

240. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.

filing complaints, or lead to them either abandoning complaints or accepting mediation processes that yield relatively small sums in compensation. This is particularly the case for female workers who have migrated informally for domestic work. Within Nepal, the FEA mandates a range of government bodies to investigate complaints against recruiters, affording them powers to oversee mediations, require payment of compensation, issue fines, withdraw licences, and even sentence perpetrators to prison terms. Many migrant workers are not aware of these rights, and for those who are and who pursue claims, the process is lengthy, complicated and expensive – often involving travel to Kathmandu. Government data suggests that the number of complaints made by migrant workers is very low compared to the number of migrant workers returning each year and does not reflect the scale of abuse. For example, in the fiscal year 2018/2019, there were 855 complaints submitted against individuals and 1263 against recruitment agencies. Set against the figure of 756,000 recently returned migrant workers in Nepal of working age, this constitutes a remarkably low rate of complaints.²⁴¹ An Amnesty 2017 report cited the case of a worker who was claiming US\$1124 from his recruiter, but accepted US\$290 in a so-called “mediation” process after being intimidated by the recruiter, who told him he would otherwise “receive nothing”.²⁴² The government recognised in a 2020 report that “sufficient human and financial resources” need to be invested in all institutions handling grievances for migrant workers, to ensure a timely response and follow-up.²⁴³ Authorities have little capacity to conduct investigations, and even if victims win compensation at the Foreign Employment Tribunal (FET) level, they must spend more time and money obtaining an enforcement decision from district courts. All the while, complainants have little to no protection against threats or intimidation from recruitment agencies, and no access to state-funded legal aid, forcing them to rely on help from civil society. As a result, most accept low settlements through mediation.

Lack of information is a further reason why workers are unable to access remedy. The Foreign Employment Act provides for the use of Nepal’s Migrant Welfare

Fund, which was established to compensate workers and provide assistance to migrant returnees or to their families.²⁴⁴ This is something few workers avail of, in part because few are aware of their right to access it. Fewer than 1% of workers and their families interviewed by the National Human Rights Commission in 2019 were aware of its existence, even though all migrants are legally required to make a contribution before departure, and the funds can be in theory used for compensation to workers who sustain major injuries or illnesses abroad, or to provide financial assistance to the families of deceased migrants.²⁴⁵ The Nepali authorities have been widely criticised for not using the Fund to provide assistance to workers abroad, including those stranded in destination countries during the Covid-19 pandemic.²⁴⁶

Kuwait’s domestic workers and private sector laws provide for free access to a grievance mechanism, which envisages that most labour disputes will be settled within one month through a process of mediation, with any unsettled disputes then referred to the courts. In reality, however, the resolution of disputes can be slow and costly, and the system is weighted firmly against complainants. There are significant language barriers, since all documents need to be submitted in Arabic, and very few pro bono interpreters are available in the Public Authority of Manpower’s labour relations or domestic work departments and in the courts.²⁴⁷ Filing a complaint can be expensive, since there is very limited access to free legal aid, and little knowledge among workers of the basic free assistance available. The process can be very slow, since grievances that are not resolved at the mediation stage may take up between one and three years to be addressed by the courts. The fear of retaliation is a major factor in discouraging workers from complaining in the first place, given Kuwait’s sponsorship system. One civil society group that supports migrant workers in Kuwait has noted that, “many (workers) are afraid because they are worried that the employer will kick them out of the accommodation or that they will not receive their pending salaries or end of service payment.”²⁴⁸

241. MOLESS, “Nepal Labour Migration Report 2020”, (2020): 57, 37.

242. Amnesty International, “Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepal Migrant Workers”, (2017): 26.

243. MOLESS, “Nepal Labour Migration Report 2020”, (2020): XVIII.

244. Foreign Employment Act, 2007, Section 33(1,b). Both migrant workers and recruitment agencies are required to make financial deposits into the fund during the visa processing stage, which can then be used to provide workers with assistance and compensation.

245. MOLESS, “Nepal Labour Migration Report 2020”, (2020): XVIII.

246. The Kathmandu Post, “Supreme Court orders government to use welfare fund to repatriate Nepali workers stranded abroad”, (17 June 2020).

247. Interview with ILO official, 12 December 2019, remote interview with Migrant-Rights.Org representative, 13 October 2020, remote interview with representative of Social Work Society, 27 October 2020

248. Migrant-Rights.org, *Job loss and wage theft: The grim reality of Kuwait’s F&B sector*, (19 April 2021)

In this context, the Kuwaiti authorities have in recent years taken a number of steps to improve accessibility to the grievance mechanism. In 2014, they established a shelter for women domestic workers who are at risk and wish to be either repatriated to their countries of origin or change employers, and, with the support of civil society, they set up legal services there to assist them in filing complaints against their employers.²⁴⁹ In January 2018, they launched the Mobile Labor Disputes Office to enable workers in remote areas to file complaints against employers without having to take time off work to visit PAM's offices or cover transportation costs. The mobile unit includes a team of investigators, inspectors, translators, lawyers, and volunteers. PAM also set up a hotline for women migrants and launched online services that allow workers and employers to submit complaints and track them electronically. The system is supposed to automatically alert workers if an employer files an absconding charge against them, notify the relevant embassy, and ensure that users are able to challenge any settlement incurred.²⁵⁰ With the sharp rise of employment-related complaints about non-payment of wages following the outbreak of Covid-19 in March 2020, PAM also set up a WhatsApp number to enable its emergency team to receive both complaints and inspection requests.²⁵¹ An NGO told us that the mobile phone application was unable to cope with the large number of complaints it received.²⁵²

Despite these initiatives, the US State department said in 2020 that, "the government was more effective in resolving unpaid salary disputes involving private sector laborers than those involving domestic workers."²⁵³ A 2019 report by Migrant-Rights.org found that women domestic workers only attempted to file official complaints if they received support from their embassies, recruitment agencies or community groups. They may be unaware of grievance processes or lack trust in the Kuwaiti justice system, and additionally they have restricted mobility and often can only leave their employers' homes once a week, and may not have private access to a phone.²⁵⁴ While the number of

complaints filed to the Domestic Workers Department appears to have increased since the 2017 Domestic Workers Law was adopted, the majority of cases are settled through mediation. According to PAM's data, between April and November 2019, the Domestic Workers Department received 2,087 complaints, of which only 256 were referred to courts, and "1,232 were settled amicably."²⁵⁵ Such amicable settlements are usually in the form of financial compensation.

Qatar came under criticism from the UN Special Rapporteur on migrants in 2014 for the inadequacies of its labour complaints and labour courts system, where extensive delays to rulings, court fees, and the need to obtain separate enforcement decisions, all colluded to prevent migrant workers' access to redress.²⁵⁶ It has since engaged in substantial reforms, establishing the Labour Dispute Resolution Committees in 2018, an attempt at blending the speed and convenience of mediation processes with the judicial authority of full courts. The Committees are in their third year of operation - they do not levy court fees, provide free translation during hearings, hold some sessions outside of most migrants' working hours, and were designed to issue decisions that have executory force within a period of six weeks. In 2018, the Workers' Support and Insurance Fund (WSIF) was established to assist migrants financially while they pursue labour disputes, including providing relief for workers who have won their cases at the Committees but who have failed to secure any payment from their employers. In such cases, the WSIF is meant to pay the money owed to workers directly and then seek reimbursement from the employer. The Fund became operational in 2020 and as of August that year, it had apparently disbursed 14 million riyals (USD 3.85 million) to 5,500 workers.²⁵⁷

The Labour Dispute Resolution committees and the WSIF have resolved some of the problems associated with the previous mediation process. Nevertheless, delays have continued to be a serious problem. The court cannot accept group cases, meaning that cases

249. UN Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21", A/HRC/WG.6/35/KWT/1, (November 2019): 23.

250. US Department of State, "2020 Trafficking in Persons report: Kuwait", (2020).

251. Arab Times, "For labor complaints – complain over WhatsApp 55629845", (9 May 2020).

252. Representative of Migrant-Rights.org, remote interview, 13 October 2020.

253. US Department of State, "Kuwait 2019 Human Rights Report", (2020): 39.

254. Migrant-Rights.org, "Lived experience of migrant women: Qatar, Bahrain, and Kuwait", (2019): 34.

255. UN Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21", A/HRC/WG.6/35/KWT/1, (November 2019): 16.

256. UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Qatar, (23 April 2014): 12.

257. ILO governing body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 4.

involving large numbers of workers almost identically subjected to wage theft by the same employers are split up, forcing migrant workers to each bear the burden of taking their own cases and slowing the process significantly. The ILO office said in its 2020 update that it would work with ADLSA (the labour ministry) on multi-worker complaints.²⁵⁸ Amnesty International's research into the effectiveness of the Committees, published in 2019, noted that they appear to have reduced the time in some cases, but that typically judgements still took three months and in some cases as long as eight months.²⁵⁹ In 2020 Human Rights Watch also documented cases taking as long as eight months to resolve, "which can be incredibly costly for migrant workers".²⁶⁰ These delays force workers to make difficult decisions about whether to continue pursuing remedy or to return home unpaid and with greater debts. In its 2020 update, the ILO noted various plans to "ensure a more efficient processing of complaints" as well as working with the Qatari authorities to ensure "rapid enforcement of agreements / adjudications through the Workers' Support Fund".²⁶¹ A 2019 ILO review of the Wage Protection System (WPS), which holds electronic evidence of the non-payment of wages, recommended a greater use of WPS data in disputes resolution at the Committees as a way to expedite the process stating that, "the information provided in the WPS should be more than sufficient to put the burden of proof squarely on the employer to provide evidence or testimony to the contrary", and that "workers should not be required to travel and be physically present to advance their case through a lengthy adjudication process".²⁶²

Retaliation is a particular concern for domestic workers, who typically live in the homes of their employers. Amnesty International has noted that there is a lack of shelters for domestic workers in Qatar. In 2019 the authorities opened a government-run shelter for victims of human trafficking, including domestic workers, but it had yet to become fully operational at the time of writing. Eligibility criteria were not clear and there was no walk-in centre.²⁶³ Separately, the labour ministry

(ADLSA) in 2021 launched an online platform to enable workers to submit complaints against employers, including as "whistleblowers", meaning that employers are not notified that the complaint has been made.²⁶⁴ Migrant-Rights.org said that, "the ability to file a complaint without revealing personal information will go a long way in reporting more violations as a lot of workers fear retribution if they file a formal complaint", though noted that the requirement for complainants to provide a valid Qatari mobile number may dissuade some migrant workers.²⁶⁵

The Philippines places a heavy emphasis on the importance of conciliation and mediation and all civil cases are first processed in line with its Single Entry Approach (SEnA), which is a 30-day mandatory conciliation-mediation that "seeks to provide a speedy, impartial, inexpensive, and accessible settlement services for unresolved grievances and complaints arising from employer-employee relations."²⁶⁶ The SEnA reflects stated Philippines Overseas Employment Administration policy "to strengthen conciliation and mediation as primary modes of dispute resolution." In cases of "illegal recruitment", which is to say alleged criminal offences that carry heavy prison sentences akin to human trafficking offences, the POEA provides free legal assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling during preliminary investigations and hearings.

At a regional level, the quasi-judicial National Labor Relations Commission (NLRC) deals with civil cases. The process for filing a complaint with the NLRC is compulsory arbitration, followed by the submission of position papers, where the parties lay out their arguments. The NLRC then has 90 days to hear and decide the claim and financial damages must be paid within 30 days of the judgment.²⁶⁷ Workers who win their cases have their lawyers' fees deducted from their settlement, but workers who lose cases are liable for costs, and workers also have to pay some indirect costs,

258. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9.

259. Amnesty International, "All Work, No Pay. The struggle of Qatar's migrant workers for justice", (2019): 6.

260. Human Rights Watch, "How can we work without wages? Salary abuses facing migrant workers ahead of Qatar's FIFA World Cup 2022", (August 2020).

261. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 8-9.

262. ILO Project Office for the State of Qatar, "Assessment of the wage protection system in Qatar", (June 2019): 27.

263. Amnesty International, "Why do you want to rest? Ongoing abuse of domestic workers in Qatar", (October 2020): 29.

264. [Unified Platform for Complaints and Whistleblowers](#)

265. Migrant-Rights.org, [Qatar launches whistleblower platform](#), (17 June 2021)

266. National Conciliation and Mediation Board, [Single ENtry Approach \(SENA\)](#)

267. [National Labor Relations Commission](#)

such as transport and food and photocopying costs. Workers' rights groups told us that the main deterrent to workers taking cases is not cost, but rather the length of time that cases take to resolve.²⁶⁸

Civil society representatives told us that only a very small portion of Filipino migrant workers avail of the complaints and grievance mechanisms available to them. Ellene Sana of CMA told us that a variety of factors combined to dissuade workers from pursuing remedy, including their desire not to antagonise their recruitment agent, and the realisation that they may need a lawyer. Many workers don't take claims in the first place, and those who do often drop or settle cases as the length or the complexity of the process becomes apparent.²⁶⁹ According to data provided by the National Labour Relations Commission, for the period from 2015 to 2017, 73% of claims filed with the NLRC were resolved through settlements rather than decisions based on the merits of the case.²⁷⁰ The Centre for Migrant Advocacy has found that "NLRC money claims are disposed through settlements and not through decisions on the merits of the cases... Often, [migrant workers] are forced to settle for lesser amounts of money."²⁷¹ In Taiwan, Filipino workers are similarly often unable for practical reasons to wait for the formal complaint process to run its course, and as a consequence accept relatively paltry sums in settlement agreements. In response to this problem, which afflicts workers from the Philippines in many destination states, the ILO is piloting a project to allow Filipino workers to give video testimony in civil cases initiated in Hong Kong.²⁷²

Since 2009, Taiwan has provided migrant workers with access to a 24-hour consultation and protection hotline. The 1955 Hotline, as it is known, provides free advice services to foreign workers in their own languages and also allows them to make formal complaints against abusive employers or recruitment agents. Taiwan's Vice-Minister of Labour told us that he regarded the

1955 Hotline as one of the Taiwanese authorities' positive achievements in the realm of migrant worker protection.²⁷³ A Philippines Labour Attache in Khaosung told us that the hotline was, in addition to strong laws and a robust inspection system, an area where Taiwan performed well in migrant worker protection.²⁷⁴ One NGO also said that the introduction of the 1955 Hotline had led to improvements, saying that it had for the first time opened up a direct line between migrant workers and the Taiwanese authorities, whereas prior to its introduction workers relied on their recruitment agents when they wanted to make complaints.²⁷⁵ Between the start of 2015 and the end of June 2020, the hotline received a total of 133,111 complaints (more than 500 per week) about a range of issues, including problems with salaries and contracts.²⁷⁶

When the 1955 hotline receives complaints, they designate the case to the municipal Labour Bureau and they take the employee's passport number in order to locate their employer's address.²⁷⁷ When the Labour Bureau receives complaints they notify the employer and the recruitment agent and ask them to negotiate with the employee. Calls to the hotline can also result in cases being reported to criminal investigating authorities - 42 possible trafficking cases were reported to investigators between 2015 and 2020 as a result of calls made to the hotline. Workers can submit complaints directly to the authorities, but the Ministry of Labour data indicates that most tend to use the hotline - only 505 complaints were lodged directly with the Ministry of Labour in the same time period.²⁷⁸ The Ministry of Labour told us that in 2020, calls to the hotline resulted in the recovery of wage arrears amounting to NT\$ 116,075 (USD 4,146) and 2,985 migrant workers transferring employers.²⁷⁹ However, several NGOs that told us that knowledge and use of the 1955 Hotline varies across sectors, with manufacturing and domestic workers using it far more often than those in the fishing sector.²⁸⁰

268. Remote interview with Ellene Sana, Center for Migrant Advocacy, 30 June 2020.

269. Remote interview with Ellene Sana, Center for Migrant Advocacy, 23 October 2020.

270. Centre for Migrant Advocacy, "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", (2018): 2-3.

271. Centre for Migrant Advocacy, "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", (2018): 16.

272. Remote interview with Hussain Macarambon, International Labour Organisation, 13 July 2020.

273. Interview with San Quei Lin, Vice-Minister of Labor, Taipei, 18 February 2020.

274. Interview with Rustico Dela Fuente, Labor Attache, Philippines Overseas Labor Office, Kaohsiung, 19 February 2020.

275. Interview with Rerum Novarum, Taipei, 20 February 2020.

276. Data provided to FairSquare by the Ministry of Labor of Taiwan, 26 August 2020.

277. Interview with Lennon Ying-Dah Wong, Serve the People Association, 20 February 2020.

278. Data provided to FairSquare by the Ministry of Labor of Taiwan, 26 August 2020.

279. Letter from Ministry of Labor of Taiwan to FairSquare, 17 May 2021.

280. Interview with New Thing, February 11, 2020. Interview with Rerum Novarum, Taipei, 20 February 2020. Interview with Lennon Ying-Dah Wong, Serve the People Association, 20 February 2020.

We spoke to numerous Filipino migrant workers in Taiwan who told us of their experience with the Hotline. Most described a system that can be effective in extricating migrant workers from jobs where they are abused, overworked or underpaid. A 37-year old fisherman told us that Taiwanese police had rescued him from a highly abusive employer after he called the 1955 Hotline to report very serious criminal abuses on board a vessel.²⁸¹ Most of the cases we documented related to less abusive situations, but it is clear that the 1955 Hotline can be effective if workers are able and confident to call it, and know how to make a complaint when they do. Several workers told us that their complaints, in cases relating to pay, working hours and contract violations, resulted in the authorities investigating and providing a remedy of sorts, typically in the form of back-pay or allowing the worker to transfer jobs. However, the specific role that recruitment agents play, acting as intermediaries between employers and their foreign workers, means that they can obstruct migrant workers' efforts to seek remedy or change employers in the case of abusive working conditions or contractual violations. One 28-year old Filipina who had worked in Taiwan's electronics sector told us that Taiwanese recruitment agents discouraged her from calling the 1955 Hotline to complain about her employer's efforts to force her resignation, warning her that if she did so recruitment agents would be notified of her complaint and she would be identified as a troublemaker, making it difficult for her to find alternative employment.²⁸²

In cases where workers want to bring civil or criminal complaints against their employers, recruitment agents, or lending agencies, Taiwan provides free legal aid. In 2015, amendments were made to the law that enabled free legal assistance to be provided to workers who are undocumented. The Taiwanese government funds the Taiwan Legal Aid Foundation (TLAF) and they provide legal assistance to between 2,000 and 3,000 foreign workers every year. The TLAF told us that the most common issue that arose with cases involving migrant workers were related to judges or prosecutors not availing of interpreters that are made available for cases involving migrant workers. This, they told us, can lead to cases where workers with only basic Mandarin are

unable to either understand proceedings or participate in them effectively.²⁸³

Mechanisms for Mexican migrant workers to hold exploitative recruiters accountable are not fully developed. Under the law, labour recruiters are liable for repatriation costs if a worker is deceived regarding their working conditions overseas, but the law and the regulations make no provision for other forms of remedy or compensation for migrant workers. Legally, migrant workers have access to two mechanisms to file grievances related to labour recruiters. The first is by requesting an inspection of the labour recruiter through Mexico's Ministry of Labour and Social Welfare (STPS). The General Directorate of Federal Labour Inspections (DGIFT) under the STPS is responsible for enforcing provisions related to breaches by labour recruiters.²⁸⁴ The second is by filing a complaint with the Public Ministry (Ministerio Público) if the migrant worker or job seeker has been a victim of fraud.²⁸⁵ There is no cost to making complaints through either channel.

Reports from worker organizations also confirm that both labour inspections and criminal investigations of licensed and unlicensed labour recruiters are rare. A 2019 report by CDM cites the case of a recruitment agency Chambamex, which defrauded more than 3,000 Mexican workers in 19 states out of more than 20 million pesos (approximately US\$1 million) between 2012 and 2013 with the promise of jobs in the United States and Canada. The report notes that "despite the scale of the fraud, Mexican authorities systematically failed to investigate complaints against Chambamex. Only one attorney general's office in one of the affected states processed and investigated the complaints."²⁸⁶ CDM told us that in a relatively small number of cases, they have been able to help workers to recover fees charged to workers and job seekers through various legal channels, including through complaints to the STPS or a Public Ministry, and voluntary compensation by recruiters. They also told us that when identifying information is available (in particular, an address), the STPS has conducted inspections with the aim of closing down fraudulent actors. However in many cases, workers only have a WhatsApp number for recruiters.²⁸⁷

281. Remote interview, 21 August 2020.

282. Remote interview, 23 August 2020.

283. Remote interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, 10 July 2020.

284. *Secretaría del Trabajo y Previsión Social - Dirección General de Inspección Federal del Trabajo*

285. Centro de los Derechos del Migrante, "Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment", (April 2019): 32.

286. Centro de los Derechos del Migrante, "Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment", (2019): 20.

287. Rachel Micah-Jones, Centro de los Derechos del Migrante, remote interview, 19 April 2021.

A 2015 Solidarity Center report documented a formal complaint made against fraudulent recruiters in 2014 by civil society groups ProDESC and the Sinaloa Workers' Coalition.²⁸⁸ Updates provided to us by ProDESC in January 2021 detail protracted legal processes around the case, which was still ongoing when Mexican courts closed in 2020 due to Covid-19.²⁸⁹ As well as the limited prospects of success, the fear of being blacklisted by recruiters is a factor that discourages migrant workers from making complaints. Workers involved in the ProDESC / Sinaloa Workers' Coalition case were blacklisted by employers and recruiters for their activism, and others "have become afraid to step forward." The Solidarity Centre notes that the group was careful to choose its first case in a distant state: "such a target raises far fewer concerns of retaliation than taking on a local recruiter with relationships in the community, which the workers fear would lead directly to blacklisting."²⁹⁰ ProDESC told us that, "most of the time the recruiters are part of the communities. That is why it's so complicated."²⁹¹

In Canada, there are a range of mechanisms for workers to file grievances, all of which are free. The responsible agency depends on the type of violation by the employer, immigration consultant, and/or labour recruiter. At a federal level, if the employer is non-compliant in relation to the requirements that led to the hiring of the migrant worker, workers or others can submit "tips" or complaints to ESDC, who can initiate inspections of employers in response.²⁹² All provinces also have authorities to inspect employers and labour recruiters in relation to breaches of employment standards, workplace safety, and labour recruitment on receipt of complaints by workers. Officials of the largest province, Ontario, told us that while it has powers to carry out proactive inspections as well, the province conducts the large majority of its inspections in response to worker complaints. Complaints against registered immigration consultants are received by a national regulator, while unlicensed consultants are investigated by the Canada Border Services Agency (CBSA). Migrant

workers can also bring cases against employers under provincial human rights codes if they can demonstrate discrimination in, for example, their access to housing or employment. Workers who have support from civil society organisations or unions have had some success in bringing severe cases to court to win more significant compensation payments. In 2015, after a 7 year case, two Mexican migrant workers won CAD 200,000 (USD 166,000) at the Ontario Human Rights Tribunal after being subjected to repeated sexual harassment and abuse by their employer at a fish processing factory.²⁹³

This range of options creates a complexity that can be a barrier for workers. As one study puts it, "when a temporary foreign worker has a concern or a grievance, the particulars of the issue dictate the path to resolution, whether it is the courts, a provincial administrative body (such as an employment standards officer or workers' compensation board), a federal administrative body (such as CIC) or a public or private social service. All this makes it hard even for a legal expert to navigate through the appropriate channels."²⁹⁴ An Ontario social worker told us that, "for an exploited migrant worker, they know something bad has happened. Where that fits along our legal remedy system, even I am not always sure."²⁹⁵ A union representative noted that the process of gathering supporting information and filing a federal complaint are complex, and generally require that migrant workers receive assistance from civil society organizations to undertake the process.²⁹⁶

Complaints mechanisms vary but it is generally the case that inspections are triggered when workers make complaints federally or provincially. Such inspections can lead to "corrective actions", including employers being required to provide compensation to migrant workers, generally in relation to non-payment or underpayment of wages. Delays can be a problem: in 2017/18, the average length of federal administrative inspections was 270 days for seasonal agricultural worker program (SAWP) cases and 213 days for other cases.²⁹⁷ This presents a significant obstacle for migrant workers seeking remedy, particularly

288. Jennifer Gordon, "Roles for Workers and Unions in Regulating Labor Recruitment in Mexico", Fordham Law School, (22 January 2015): 10.

289. Written updates from ProDESC, on file with FairSquare

290. Jennifer Gordon, "Roles for Workers and Unions in Regulating Labor Recruitment in Mexico", Fordham Law School, (22 January 2015): 10.

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

292. Immigration and Refugee Protection Regulations (SOR/2002-227), section 209.5, 2002.

293. CanLII Connects, "Vulnerable Migrant Workers Assaulted and Taken Advantage Of By Employer: O.P.T. v. Presteve Foods Ltd.", (27 December 2015).

294. Delphine Nakache and Paula J. Kinoshita, IRPP Study, "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?", (5 May 2010): 8.

295. Shelley Gilbert, remote interview, 2 February 2021.

296. Santiago Escobar, United Food and Commercial Workers (UFCW) union, remote interview, 18 February 2021.

297. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018). Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

where seasonal workers may be back in their country of origin by the time that an inspection is completed. Such issues are exacerbated by Canada's Privacy Act and ESDC inspection practices, which means that authorities do not update migrant workers or advocates on whether action is taking place, unless and until there is a final, public determination of non-compliance. A Mexican consular official told us that this can discourage workers from filing complaints, since they feel their complaints are not followed up on.²⁹⁸ Delays may be reported at provincial level - a 2016 Ontario provincial review found that, "budgetary considerations do not permit the hiring of enough [Employment Standards Officers] to complete the investigation of all complaints in a timely fashion while also maintaining a significant proactive presence. The result is that there is a backlog of uninvestigated and unresolved complaints".²⁹⁹

Another concern is the risk of retaliation, in particular repatriation, may have in dissuading migrant workers from lodging claims. A lawyer representing migrant workers at a small claims court in Ontario told us, "you're not going to [submit a claim] if you rely on your employer. The problem is most extreme with closed work permits.... You could have the best tribunals in the world but who is going to use them?"³⁰⁰ In an attempt to respond to these concerns, the government introduced the Open Permit scheme for vulnerable workers in 2019, "to provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer".³⁰¹ A government official told us that immigration officials will make a decision on whether abuse is likely to be happening based solely on information provided by the migrant workers, and they will only initiate an inspection of the employer after they have issued an open work permit to the migrant worker. Between June 2019 when this initiative was introduced, and December 2020, 800 open work permits for workers in situations of abuse were issued by IRCC.³⁰²

Specific recommendations

In far too many cases, migrant workers raising grievances have to give up and drop cases because of

the long delays, or settle in unfair mediation processes for a fraction of what they are owed and what they could be reasonably due in damages. Many may not ever make claims in the first place because of the fear of being blacklisted by recruiters, or being repatriated or reported by employers. Mechanisms that do not recognise and are not suited to the specific risks for migrants are likely to fail to provide workers with an effective remedy. Origin and destination states should take a series of steps to address this:

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

298. Government of Canada, "Report abuse or misuse of temporary foreign workers: What to tell us"; Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020.

299. Ministry of Labour, Training and Skills Development, "Changing Workplaces Review Special Advisors' Interim Report", chapter 5.5, (27 July 2016).

300. Remote interview with Louis Century, 20 January 2021.

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

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



Mexican migrant workers picking strawberries, Quebec, July 2020. © © Pierre Desrosiers / Getty Images

Recommendations to both origin and destination states

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

The direct involvement of governments as recruiters of migrant workers - rather than as regulators of recruitment processes - has decreased, particularly since the 1970s when OECD destination states experienced mass unemployment and reduced their requirement for migrant labour. When these states experienced labour shortages in the 1990s and 2000s, they implemented global visa systems for temporary migration in specific sectors of their economies, rather than agreeing specific recruitment programmes with particular countries.³⁰³ As a result “full” government-to-government (sometimes referred to as G2G) recruitment is much less common than private sector recruitment. Most bilateral cooperation between states is based on MOU frameworks under which the private sector in each country carries out recruitment. Most of the agreements and MOUs agreed by the states in the five corridors under study fit into this category.

There are two examples in these corridors (Philippines to Taiwan, and Mexico to Canada) where governments - or private sector agencies effectively representing governments - intervene in the migration process to take the place of the private sector, though in the case of the Philippines to Taiwan, it should be noted that the number of workers recruited by government schemes is very small. Neither of these cases illustrate perfectly fair recruitment processes, and, as advocates of increased G2G recruitment have noted, the replacement of the private sector by government agencies may not address structural factors within temporary migration schemes that continue to make exploitation and abuse more likely, such as a lack of job mobility and poorly designed grievance processes. As Migrant Forum Asia warns, “G2G agreements are not a panacea for the human and labour rights abuses migrant workers experience in recruitment and throughout the course of their employment.”³⁰⁴ For

303. Migrant Forum Asia, [Government-to-Government Recruitment Benefits & Drawbacks](#), (undated): 1

304. Migrant Forum Asia, [Government-to-Government Recruitment Benefits & Drawbacks](#), (undated): 5

example, Nepal's government charges migrant workers considerably more in recruitment fees - USD 816 or 97,000 Nepali rupees - to join the South Korea G2G programme than its laws allow private sector recruiters to charge for jobs in the Gulf and Malaysia (10,000 Nepali rupees or USD 83). An ILO official told us that this contradiction "acts as a very big disincentive for the private sector to adopt ethical recruitment."³⁰⁵

Other criticisms of G2G programmes include their tendency to be characterised by lengthy processes and their inability to recruit at scale. Recruitment agencies often lobby against them, arguing that they threaten their viability as businesses. In 2021, Nepali recruitment agencies reacted badly when the Labour Minister announced plans to negotiate a (so far unrealised) government-to-government recruitment programme with Qatar to provide security guards ahead of the 2022 men's World Cup. One agency told media:

*"Either the government should say that foreign employment-related business is no longer open for the private sector and take over the sector. Or it should clearly order us to shut down our offices and return the money we deposited as guarantee. We will invest it elsewhere."*³⁰⁶

The controversy had echoes of the Bangladesh-Malaysia palm oil sector G2G scheme, which an ILO study found offered a "drastic reduction of migration costs by about 8 to 10 times, from USD 3,000-4,000 charged by private recruiters to about USD 400 through the G-to-G mechanism."³⁰⁷ A World Bank study similarly concluded that migrants taking part in the scheme paid on average BDT 45,000 (USD 530) compared to the average costs of Bangladeshi migrants of BDT 390,000 (USD 4,600).³⁰⁸ However, under intense pressure from private recruiters who objected to the competition, the programme only managed to recruit 10,000 workers between 2012 and 2015, and was eventually scrapped. A representative of the Bangladeshi recruitment industry claimed that "it's now proved that the government is not efficient in handling the business", in contrast to the Malaysian Employment Federation, which said that "we preferred

the G2G initiative and thought it would be the future mode of recruitment".³⁰⁹

Despite the considerable challenges associated with G2G recruitment, we nonetheless suggest governments should give more serious consideration to the viability of carrying out more recruitment activities themselves. In high risk sectors, interventions by the state to replace recruiters for elements of the process may offer improved outcomes for workers in some contexts, particularly with regard to fraudulent and abusive recruitment practices.

For example, when compared to the loosely regulated private recruitment routes to North America, the Mexico-Canada Seasonal Agricultural Worker Program (SAWP) is strictly controlled by the Mexican authorities and allows workers a relatively "safe" migration journey to Canada. Under the SAWP, Canadian employers apply, typically via recognised employer organisations, to the federal government to hire agricultural workers. When applications are approved by the Canadian government, the Mexican government - through the SNE (National Employment Service) - recruits the workers and coordinates logistics in order for migrant workers to travel to Canada. Mexican consulates in Canada assist in the monitoring and implementation of the programme, and in resolving worker grievances. In 2019, the government of Mexico recruited 26,407 migrant workers under the SAWP, a figure that has been rising steadily each year.³¹⁰ The programme dates back to 1974 (Canada has had similar SAWP schemes in place with Caribbean countries since 1966). While the Mexican government continues to pursue the negotiation of new G2G agreements on labour migration, the SAWP schemes are somewhat unique in Canada, which no longer enters into new bilateral agreements on the entry of migrant workers.³¹¹

Measures in the SAWP reduce the instances of fee charging and other exploitation on the Mexican side of the migration journey. Workers told us about the difference between using private recruiters and migrating through the STPS: "I've heard about people

305. Remote interview, 21 October 2020.

306. The Kathmandu Post, "Recruiting agencies irked by 'government intention' to send workers to Qatar on its own", (11 March 2021)

307. ILO, *Technical Paper on Labour Migration in Malaysia*, (2018): 10.

308. World Bank, *Migration and Remittances: The Impacts of a Government Intermediated International Migration Program*, (2019): 12

309. The Daily Star, *Govt initiative made to fail?*, (9 August 2015).

310. Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.

311. Interview with Canadian officials. Immigration, Refugees and Citizenship Canada, Ottawa, 6 January 2020.

paying and I actually know people who recruit workers in exchange for large quantities for money, but I have never paid for anything,” a 39 year old woman from Oaxaca state, about to begin her seventh season in British Columbia’s SAWP, told us.³¹² Illegal charging of fees to workers in the SAWP appears to be restricted to cases of officials demanding bribes from workers. Cases such as these are not unusual, but nor are they endemic. Places on the SAWP are sought after, with a waiting list of 13,500 pre-screened job seekers.³¹³ Some Mexican experts and civil society groups support the government’s aspirations to do more recruitment itself through bilateral partnerships with other governments, rather than through the private sector. Some expressed concerns that swingeing spending cuts announced by the President in 2020, including to the SNE, might affect the administration of the SAWP.

In part because of its efficient administration and the fact that workers generally do not pay for jobs, the SAWP has been hailed as a “model” for labour migration. However, there are a number of aspects of the SAWP that call this into question. Firstly, while workers should not, and generally do not, pay recruitment fees, they are required every year to pay for some travel and administrative costs related to recruitment.³¹⁴ These charges appear to be out of step with ILO standards on the prohibition of recruitment fees and related costs. Since workers have to go through these processes every year, this can result in workers contributing many thousands of dollars to the programme over the course of their time on the SAWP.

However, the most serious concerns about the SAWP have been raised in the employment phase in Canada. A social worker in Ontario said that while abuse and fraud in the SAWP recruitment process was not common, “when workers get here, there is a whole range of forms of exploitation.”³¹⁵ Complaints raised by workers include being asked to carry out different forms of work than they were hired for, as well as

underpayment, illegitimate pay deductions, excessive and sometimes extreme working hours, and crowded, unhygienic accommodation. In 2017/2018, Employment and Social Development Canada (ESDC) carried out 402 inspections in primary agriculture (at least 336 of which were of SAWP employers), and found 127 employers (32%) needed to correct non-compliances.³¹⁶ The most common violations identified by Ontario officials in the agricultural sector between 2011/12 and 2014/15 related to unpaid wages and termination pay, while other common violations included no public holiday pay and illegal deductions from wages.³¹⁷ Under the employment law of several major provinces, agricultural workers are not entitled to key worker protections such as limits on hours of work, daily rest periods or time off between shifts, and are prevented from joining trade unions. Workers under the SAWP are also unable to switch jobs without the approval of their employer. Meanwhile, workers complain that Mexican consulates have a tendency to prioritise good relations with employers over their rights. One woman told us that, “they just tell you to take care and behave well, and that you came to Canada to work and not to create problems.”³¹⁸

Taiwan and the Philippines have for two decades had in place a Special Hiring program for Taiwan, which the Philippines government says is designed “to protect the welfare and rights of the Filipino workers in Taiwan.”³¹⁹ The program was rarely used until 2015, when the governments introduced the Taiwan International Direct E-Recruitment System (T-IDES), to entice more Taiwan companies to use the special hiring program by making it more efficient and less expensive. Under the system the POEA facilitates the recruitment process in-house, and the Overseas Workers Welfare Administration (OWWA) conducts pre-departure orientation for selected candidates.³²⁰ A Taiwan-based electronics firm, which has used the SHPT to recruit 320 Filipino workers (314 women, 6 men) for its manufacturing plant, said that they fly once a year to Manila to interview workers, where previously they used an agent in the Philippines.³²¹

312. Interview, Mexico City, March 2020.

313. Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.

314. These include visa costs (see VFS Global, “[Service and service charge schedule](#)”) and for most provinces, a share of airfare (see Government of Canada, “[Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021](#)”, VII Travel and reception arrangements, 15 January 2021.)

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

316. Employment and Social Development Canada (ESDC), “Facts and Figures TFWP”, (26 April 2018): 11. Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

317. Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. ‘[Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability](#)’. International Journal of Comparative Labour Law and Industrial Relations 35, no. 2 (2019): 243.

318. Remote interview, 16 July 2020.

319. See website of [Manila Economic and Cultural Office](#).

320. Official Gazette of the Philippines Government, “[QFW e-recruitment program speeds up hiring process in Taiwan](#)”, (28 September 2015).

321. Interview with NXP semiconductors, Kaohsiung, 19 February 2020.

Workers at this company we interviewed separately from management confirmed that they applied directly to the POEA and that no Philippines based recruitment agents were involved at any stage in their recruitment. Workers pay no placement fees, but they typically bear the cost of travel to Manila and their medical and documentation costs, as well as their air-fares to Taiwan. Filipino workers going through the system are also still obliged to pay service fees to Taiwanese based recruiters, legal under Taiwanese laws. This highlights the limitations of a scheme where the government only replaces the private sector in one half of the corridor, though it does so in the country where workers generally bear the bulk of recruitment fees. The SHPT's other significant limitation is its small size. According to data provided to us by the Taiwanese Ministry of Labour, a total of 1889 Filipino workers - less than 1% of the total number of Filipino workers recruited into Taiwan - have been hired through the SHPT since the start of 2015.³²²

Separately, Taiwan maintains a Direct Hiring Service Scheme to enable Taiwanese employers to hire Thai, Vietnamese, Filipino, or Indonesian workers directly without using the services of a Taiwanese recruitment agent. Taiwanese government officials said that government policy was to provide Taiwanese employers with as many recruitment options as possible, including the option to hire directly without the use of a recruitment agent.³²³ According to the Taiwanese government's direct hiring website, more than 150,000 employers have used the direct hiring system.³²⁴ However data that the Ministry of Labour provided to us shows that the number of workers recruited via the direct hire system has declined rapidly since 2016, when 25,578 foreign workers were recruited directly, to 4,565 in 2019, accounting for just 2.6% of foreign workers in Taiwan.³²⁵ A senior Filipino labour official in Taiwan said that direct hiring systems, although not the preferred choice of employers in Taiwan, had been strategically effective in that it demonstrated to recruitment agencies that their dominance of the sector could not be taken for granted.³²⁶

The reality is that both states continue to delegate significant power and authority to facilitate recruitment to their private sectors. Whereas Taiwan pays slightly more than lip service to its direct hiring process, the Philippines' explicitly recognises "the significant contribution of recruitment and manning agencies" as "partners of the state in the protection of Filipino migrant workers and the promotion of their welfare" in the preamble to its key piece of legislation on the regulation and protection of its overseas workers.

A migration expert from the Department of Labor said that the Philippines government's preference is to continue to rely on the private sector to organise its outward migration, but declined to speculate on the reasons for this. The data demonstrates the dominance of the private sector. In August 2020, for example, the jobs available on the POEA website were limited to 500 nursing jobs in Germany, and 1700 midwifery and nursing jobs in Saudi Arabia.³²⁷ Government-run models such as the Special Hiring Program for Taiwan are the exception to the norm.

Neither the SHPT or the SAWP delivers fair recruitment in and of themselves. The one-sided nature of the SHPT, which only seeks to tackle the issue of recruitment fees on the origin country side of the corridor, and the failure to seriously scale up the programme, heavily limits its effectiveness and impact. The SAWP, a long-running programme that is vital for Canadian agriculture and sought after by Mexican workers, delivers clear benefits in terms of reducing exploitative fee charging in the migration process, but is then undermined by the structures into which it deploys workers. In particular the lack of worker protections and voice in the agricultural sector in some of Canada's largest provinces, and the inability of workers to transfer employers, contribute to a highly controlled - and in some cases coercive - environment that severely undermines workers' options when employers do not respect their rights.

322. Ministry of Labour data provided to FairSquare, 26 August 2020.

323. Comment attributed to Ministry of Labour representative at FairSquare recruitment roundtable, Taipei, 18 February 2020.

324. See [Direct Hiring Service Centre](#).

325. Data provided to FairSquare by the Ministry of Labor, 26 August 2020. According to the data, the total number of workers hired by private employment institutions was 169,464.

326. Interview with Rustico Dela Fuente, Labor Attache, Philippines Overseas Labor Office, Kaohsiung, (19 February 2020).

327. [POEA Vacancies](#) (3 August 2020).

Specific recommendations

G2G does not offer a panacea, and the logistical and political challenges to getting such schemes off the ground should not be underestimated. G2G programmes do not in and of themselves solve problems of tied visas or flawed grievance processes. Nevertheless, there is enough evidence of their potential benefit in reducing fraud and abuse to warrant governments giving proper consideration to where their involvement in the recruitment process - including to replace the private sector - may be necessary, viable and beneficial.

- 6.1.** Where mechanisms for government recruitment are already in place, carry out independent impact

assessments that examine their effectiveness in ensuring fair and ethical recruitment and compare their performance in that regard to private sector models of recruitment. Where there is evidence of a benefit for worker outcomes, consider scaling up such government processes to make them more attractive for workers and employers.

- 6.2.** Carry out rights-based assessments to determine whether by establishing new government-to-government labour migration programmes, with state institutions carrying out recruitment, fraud and abuse could be reduced. Integrate the findings of such assessments into bilateral migration discussions, and discussions with employer associations.



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.³²⁸ 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.³²⁹

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.³³⁰ 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.³³¹ 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.³³² 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.³³³

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.³³⁴ 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.³³⁵ 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.³³⁶

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.³³⁷ 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.³³⁸ 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".³³⁹ 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.³⁴⁰ 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.³⁴¹ 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.³⁴²

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.³⁴³ 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.³⁴⁴ 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."³⁴⁵

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."³⁴⁶ 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".³⁴⁷ 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.³⁴⁸ 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."³⁴⁹ 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.³⁵⁰

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.

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

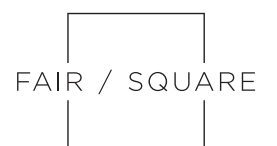
factor in undermining the potential bilateral agreements have for impact. In respect of bilateral agreements, governments should:

- 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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