

LABOUR RECRUITMENT TO THE UAE

Gaps between policy and practice in Sri Lanka, Nepal,
Bangladesh, and the Philippines

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EXECUTIVE SUMMARY

The United Arab Emirates is one of the primary destinations for both high and low-skilled migrant workers from South and Southeast Asia. While there are multiple channels utilized by migrants to access this attractive job market – social networks, travel agencies, government-to-government agreements, etc. – private recruitment agencies on both the sending and receiving sides have come to drive substantial flows of workers. These private companies have, over the past 30 years, formed well-organized and profitable networks that provide an array of services to migrant workers and overseas employers, and have taken over many of the functions of migrant labour recruitment that once were held by sending states.

The recruitment agencies in sending countries are subject to varying degrees of regulation and oversight by their respective governments in efforts to protect rights and welfare of migrant workers throughout the migration process. Likewise, the UAE has recently announced new measures for the regulation of private employment agencies operating in the UAE. Despite these efforts, serious gaps exist between the procedures as proscribed by national laws/policies and the actual experience of migrants as they navigate the recruitment process. These gaps leave workers vulnerable to mistreatment, abuse, and exploitation on the part of unscrupulous recruitment agencies and their sub-agents.

Numerous gaps between policy and practice have been identified across a variety of national contexts; the most salient of these is the *point of collusion* between recruitment agencies in the sending and receiving states. The relationship between these recruiters is the point at which the price for foreign labour is set, and access to the labour market is bought and sold. It is this relationship that requires the most scrutiny on the part of both sending and receiving states, and which receives the least attention in regulatory frameworks and oversight mechanisms. In order to achieve the aim of attaining higher standards for the rights and welfare of migrant workers, this point of collusion must be understood and properly addressed.

ACRONYMS

ALFEA	Association of Licensed Foreign Employment Agencies (Sri Lanka)
BAIRA	Bangladesh Association of International Recruiting Agencies
BMET	Bureau of Manpower, Employment, and Training (Bangladesh)
BOESL	Bangladesh Overseas Employment Services Ltd.
CMA	Centre for Migrant Advocacy (Philippines)
DFA	Department of Foreign Affairs (Philippines)
DFE	Department of Foreign Employment (Nepal)
DOLE	Department of Labour and Employment (Philippines)
FEA	Foreign Employment Act (Nepal)
FSP	Foreign Service Post (Philippines)
FWRC	Filipino Workers Resource Centre
GCC	Gulf Cooperation Council
GFMD	Global Forum on Migration & Development
GoB	Government of Bangladesh
ILO	International Labour Organization
IOM	International Organization for Migration
MFA	Migrant Forum in Asia
MoEWOE	Ministry of Expatriates' Welfare & Overseas Employment
NLRC	National Labour Relations Commission (Philippines)
NRCO	National Reintegration Centre for OFWs
OEP	Overseas Employment Policy (Bangladesh)
OFW	Overseas Filipino Worker
OUMWA	Office of the Undersecretary for Migrant Workers Affairs (Philippines)
OWWA	Overseas Workers Welfare Administration (Philippines)
PDO	Pre-Departure Orientation
PEO	Pre-Employment Orientation
POEA	Philippine Overseas Employment Administration
POLO	Philippine Overseas Labor Offices
RMMRU	Refugee and Migratory Movements Research Unit (Bangladesh)
SLBFE	Sri Lankan Bureau of Foreign Employment

TESDA	Technical Education and Skills Development Agency
TLRC	Technology Livelihood Resource Centre
UAE	United Arab Emirates
WARBE	Welfare Association of Repatriated Bangladeshi Employees
WHO	World Health Organization

Introduction

Labour migration to the United Arab Emirates (UAE) from South- and Southeast Asia is unquestionably significant, and has been over the past 30 years. Currently, foreign nationals make up 85% of the UAE workforce¹. Migrant workers gain access to employment in the UAE through a variety of channels, both regulated and unregulated. Social networks play a key role, as prospective migrants learn about the migration experiences of their family members, friends, and neighbours and decide to migrate themselves. Some travel agencies in origin and destination countries assist with the procurement of necessary travel documents through both legitimate and illegitimate means. Direct hiring or rehiring of migrants by employers is also common, as is recruitment through government-to-government agreements.

This study focuses on the many workers who migrate to Gulf Cooperation Council (GCC)² countries through processes facilitated by private recruitment agencies in the country of origin, in cooperation with similar agencies in the country of destination. Together, recruiters on each side identify job opportunities, screen candidates, and match migrant workers with foreign employers. It is this institutionalized migration flow that both sending and receiving governments should take most responsibility for regulating, as it is very often collusion among recruiting agencies that put migrants at risk throughout the migration process. Government-imposed mechanisms to oversee recruiters have long been insufficient, and as a result, corrupt and abusive practices have been allowed to persist, arguably becoming entrenched in the recruitment process.

As sending states become increasingly aware of the need to protect their nationals working abroad, policies have been drafted, laws passed, and regulatory bodies established with a view to mitigating the ‘bad recruitment practices’ that put migrants at risk. Likewise, the UAE has recently announced new measures for the regulation of private employment agencies operating in the UAE. The new provisions stipulate that licensees furnish bank guarantees (ranging from \$82,000US to \$270,000US+ depending on the services offered), executives and representatives must be Emirati citizens, and that no agency should collect any fees from recruited workers,

¹ CIA World Factbook (2010), United Arab Emirates <<https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>>

² The countries of the GCC are: United Arab Emirates, The Kingdom of Bahrain, The Kingdom of Saudi Arabia, The Sultanate of Oman, Qatar, and Kuwait <<http://www.gcc-sg.org/eng/index.php?action=GCC>>

directly or indirectly. Efforts on the part of sending and receiving states are commendable, however as this study demonstrates, serious gaps exist between the procedures as proscribed by national laws/policies and the actual experience of migrants as they navigate the recruitment process.

While many intersecting factors – *inter alia* poverty, unemployment, misinformation, corruption, insufficient regulation – contribute to the problems faced by migrants, the most salient feature of the recruitment process is the nature of the relationship between recruiters in the sending and receiving countries. This *point of collusion*, whereby powerful private recruitment companies in labour receiving countries set the price for the sale of job placements to recruiters in sending countries, must be the starting point for discussions on how to implement meaningful solutions to mitigate risks to migrant workers while protecting and upholding their rights.

This study provides in-depth descriptions of the recruitment process in Sri Lanka, Nepal, Bangladesh, and the Philippines, identifying the gaps between national laws and the actual process of recruitment. It explicates the point of collusion between recruiters in sending and receiving countries, highlighting the ways in which the power of recruiters has come to overshadow the efforts of sending state governments to both regulate the industry and protect the rights and welfare of migrant workers. It is mainly this point of collusion that puts migrants at risk at every stage of the migration process (pre-departure, in-service, and return).

Methodology

Migrant Forum in Asia (MFA) has compiled this study through collaboration with its member organizations in four countries of origin: Sri Lanka, Nepal, Bangladesh, and the Philippines. Semi-structured qualitative interviews were conducted with a range of key informants from NGOs, recruitment agencies, returnee migrants, and officials from national government agencies dealing with migrant labour on the sending side. Data has also been gathered from reports and analyses published by MFA member organizations and secondary sources.

Data collection and analysis has been restricted to countries of origin. A reciprocal study undertaken within the UAE, focusing on recruitment agencies, employers, migrant workers,

government and migrant support organizations, would contribute to the elaboration of a holistic overview of the current situation of migrant labour recruitment. An understanding of the full spectrum of policy gaps on both the sending and receiving sides can aid regional cooperation and the development of coherent and meaningful policies.

Country Cases: Gaps Between Policy & Practice

SRI LANKA³

Migration Context

Over the past 30 years, Sri Lanka has become a significant supplier of labour to the GCC. In 2009, 247,119 Sri Lankans migrated for work, with 39,653 (16.05%) headed to the UAE. The majority of these workers were categorized as ‘unskilled’ and ‘housemaids.’⁴ Key informants interviewed for this study consistently emphasized issues related to female migrants working as domestic workers or ‘housemaids’, who in 2009 made up almost 52% of all migrants from Sri Lanka.⁵ In the case of migration to the UAE, in 2009 female workers made up almost 70% of the migrant flow.⁶

About 75% of Sri Lankan migrants use licensed recruiters, and the number of recruitment agencies in Sri Lanka has increased steadily over the past few years in response to the demand for migrant labour (from 626 licensed agencies in 2008 to 746 in 2009).⁷ Until October 2009, all licensed recruiters were required to become members of the Association of Licensed Foreign Employment Agencies (ALFEA). This association was established to assist the Sri Lankan Bureau of Foreign Employment (SLBFE) to ensure the transparency and ethical conduct of all members based on the ALFEA Code of Conduct.⁸

In 2009, a new National Labour Migration Policy was approved that has yet to be enacted into law due to changes in the Sri Lankan government administration. There is considerable optimism on the part of government, trade unions, NGOs, and recruitment agencies surrounding the policy and the benefits it is likely to bring upon implementation.

³ Interviews with National Union for Migrant Workers, Sri Lankan Bureau of Foreign Employment, American Solidarity Centre, Association of Licensed Foreign Employment Agencies, Women in Media Collective, Migrant Services Centre, Sri Lanka

⁴ SLBFE Statistical Report, 2009

⁵ SLBFE Statistical Report, 2009

⁶ SLBFE Statistical Report, 2009

⁷ SLBFE Statistical Report, 2009

⁸ Transparency International Sri Lanka, 2009

The following priorities are highlighted⁹:

- To promote opportunities for men and women “...to engage in migration for decent and productive employment in conditions of freedom, equity, security, and human dignity.” Special emphasis is placed on skills development, as this is seen as one of the primary means of protecting migrant workers from abuse.
- Good governance is recognized as vital to regulating labour migration processes for the protection of human rights and equitable social and economic outcomes. This is to be achieved through the regulation of recruitment agencies and the creation of legislation in line with obligations of the International Convention on the Protection of All Migrant Workers and Members of their Families.
- Protection and empowerment of migrant workers and their families at all stages of the migration process (pre-departure, in-service, and return/reintegration).
- Linking of development and migration by recognizing the contribution of labour migration to employment, economic growth, and development, while simultaneously working to create decent work opportunities within Sri Lanka in order to provide viable alternatives to migration.

Official Recruitment Process

Prospective migrants can access employment opportunities through three primary channels: licensed recruitment agencies, unlicensed recruiters, or direct recruitment by employers. The process, as officially proscribed, is as follows:

1. The UAE recruitment agency files a request for workers with the Sri Lankan Embassy, where the authenticity of the request is verified. Job orders are logged in the Sri Lankan Bureau of Foreign Employment (SLBFE) database.

⁹ Ministry of Foreign Employment Promotion and Welfare, Sri Lanka; National Policy.

2. The UAE recruitment agency communicates job orders to Sri Lankan recruitment agents, who confirm the job order with the SLBFE. If there are any discrepancies between the job order as filed in the SLBFE database and the job order presented by the Sri Lankan agency, the initiation of recruitment will not be authorized. If there are no discrepancies, the Sri Lankan agencies are permitted to begin recruitment.
3. Recruitment begins through SLBFE-approved advertisements in newspapers, and the deployment of sub-agents to areas beyond the geographical reach of the main offices of the agencies, i.e. to areas outside of Colombo and Kurunegala, typically rural villages and small towns.
4. Upon expressing their interest in a particular position, prospective migrants pay agency fees (often in addition to fees paid to sub-agents prior to contact with licensed agencies), and are more-or-less interviewed by recruitment agents¹⁰, and qualifications are sent to the UAE recruiter for approval.
5. Once accepted by the UAE recruitment agency, the prospective migrant is assisted with the procurement of any documentation that may be required (passports, visas, medical clearance, proof of identity/age¹¹, etc.).
6. Pre-Departure Orientations, facilitated by the SLBFE, are required for all prospective migrants. These training sessions range from 12 to 30 days, depending on the country of destination.
7. The migrant worker signs a contract stipulating the terms of employment.

¹⁰ An official with the SLBFE indicated that interviews are more thoroughly conducted for those seeking work abroad in skilled professions than for those who seek employment in low/non-skilled jobs (i.e. 'housemaids' or garment factory workers).

¹¹ Migrants from Sri Lanka must be at least 18 years of age in order to be granted clearance to migrate for work. In a personal communication, Sri Lanka's Minister of Foreign Employment Promotion and Welfare indicated that he would like to see this age raised to 21 in order to protect workers from abuses, as at this age they are likely to be more experienced and able to cope with the stresses of living and working in a foreign country.

8. Final clearance is sought from the SLBFE by the Sri Lankan agency and the prospective migrant worker. If all documents are in order, the SLBFE will issue the individual a registration number and log the approval in the SLBFE database. A passport stamp is issued to clear the worker for travel; upon departure, airport officials check for this stamp.

9. Migrant workers are deployed overseas.

Gaps in the Recruitment Process & Efforts to Mitigate Problems

Each stage of the recruitment process is prone to abuse, corruption, and malpractice, particularly on the part of recruitment agencies and subagents. Despite efforts to curb these violations, a number of abuses persist in the recruitment process.

Sub-Agents and Unlicensed Recruitment Agencies

In all key informant interviews, the regulation of sub-agents was identified as the most salient gap, and the issue that is most difficult to remedy.

Most recruitment agencies are located in major urban centres, namely Colombo and Kurunegala. These cities are beyond the reach of many prospective migrants, necessitating the use of sub-agents. Sub-agents are typically residents of villages in rural areas and are often known to the locals. They are tasked with directly recruiting prospective migrants for jobs abroad. This is often done through the dissemination of misinformation, or the creation of a “rosy picture” of what life will be like in the country of destination, and the economic benefits this will bring to the migrant and his/her family.

Sub-agents usually have no formal affiliation with the recruitment agencies they serve, and often serve more than one at a time. They are paid commissions for each prospective migrant they bring to the agency. In addition to their commissions, sub-agents often charge migrants fees beyond those charged by the recruitment agencies. Sub-agents illegally charge prospective migrants for a range of services, e.g. transportation from the village to the city to meet with the

recruitment agency, or forged/modified documents. Moreover, because many sub-agents work for multiple recruitment agencies, it is difficult for the migrant or his/her family to know which agency will be facilitating the migration process.

Under law, recruitment agencies must be licensed, however, unlicensed agencies continue to operate. These agencies compete with licensed agencies, and are sometimes owned by individuals who also run licensed agencies¹². The Sri Lankan government established ALFEA to enforce ethical conduct among recruitment agencies. However, with the removal of the requirement for all licensed agencies to belong to the professional association, ALFEA has seen its membership decline from ~650 members to ~350.¹³ According to the President and Secretary of the organization, this has significantly undermined ALFEA's ability to oversee the industry and discipline its members for unethical conduct.

Significant breaches of ethical conduct arise when sub-agents and unlicensed agencies have the ability to operate without accountability. Cases of trafficking have been reported, whereby sub-agents pay the parents or family members of migrants (most often female migrants) to bring the migrant to the recruitment agency. The falsification of identity documents is extremely common, particularly in relation to the age of the migrant (the legal age for migration is currently 18)¹⁴. Contract substitution also occurs, whereby a migrant signs a contract stipulating his/her job description, wage, and place of employment, and finds out upon arrival that the agreed terms will not be honoured.

Identifying and sanctioning sub-agents is exceedingly difficult, given their lack of formal ties to recruitment agencies. The sub-agents operate independently, or in networks, and often are accessible only by mobile phone, making them very difficult to contact. That said, it has been conceded by the SLBFE that the recruitment agencies would be unable to operate without the use of sub-agents. The SLBFE and ALFEA have proposed a system of registration, whereby each recruitment agency would be allowed to formally employ 3 registered sub-agents per district.

¹² Interview, Faizer McKeen, ALFEA

¹³ Numbers provided during key informant interview with ALFEA were not exact

¹⁴ The high-profile case of Rizana Nafeek has brought the issue of underage migration to the forefront of media attention in Sri Lanka; she was only 15 when she migrated as a domestic worker.

These sub-agents would be called ‘Business Promotion Officers’¹⁵, and would enjoy the benefits of formal employment with a single agency. Harsh sanctions would be put into place for those sub-agents operating without the proper registration. The development of this system is still in its early stages.

Blacklist of Recruitment Agencies

A blacklist of recruitment agencies that have lost their licenses due to illegal practices is kept by ALFEA and the SLBFE. These lists are accessible in print through requests to the SLBFE and ALFEA, and online for registered users of the ALFEA website. This is not easily accessible to migrants or their families, as many are unfamiliar with the mechanisms in place to guard against illegal recruitment practices. Additionally, when a licensed agency has its license revoked, the sanction is tied to the company rather than the individual running the company. As such, it is relatively easy for the individual to register a new agency under a different company name.

Fees

The SLBFE has mandated the following registration fees, based on the contracted earnings for each migrant worker¹⁶:

Annual Salary	SLBFE Fee
Rs. 10,000 (USD 100)	Rs. 5,700 (USD 57)
Rs. 10,000 – 20,000 (USD 100-200)	Rs. 8,000 (USD 88)
Rs. 20,000+ (USD 200+)	Rs. 11,530 (USD 153)
Up to Rs. 13,000 (USD 130) for domestic workers	RS. 5,700 (USD 57)

In addition, migrants must pay up to Rs. 7,500 (USD 75) for a passport, Rs. 3,000 (USD 30) for the required medical examination, plus airfare and any applicable travel taxes depending on the country of destination. These more-or-less fixed costs do not include processing fees charged by recruitment agencies or sub-agents.¹⁷ Key informants indicated that some migrants have paid multiple lakhs to their sub-agents for their services.

¹⁵ Interview, L.K. Ruhunage, SLBFE

¹⁶ IOM, 2010 Draft Document

¹⁷ IOM, 2010 Draft Document

In order to furnish the costs of securing foreign employment many migrants resort to pawning their valuables, selling or mortgaging their properties, securing loans from friends and family, etc. The need to recuperate these costs can increase the migrant's vulnerability when he/she is overseas.

Contracts

Sri Lankan law requires that the foreign agency or employer, the Sri Lankan recruitment agency, and the employee sign a contract. The contract should stipulate all terms and conditions of employment, and must be signed prior to departure and authenticated at the foreign mission. However, despite having secured a contract, migrant workers (particularly domestic workers who are not protected by labour laws in Sri Lanka or the UAE) often find that their employers do not uphold the contractual agreement. Common complaints include the non-payment or irregular payment of agreed wages, excessive working hours, harassment, and sexual and physical abuse.

In addition, cases of contract modification or substitution, or contracting for non-existent jobs occur. Occasionally, contracts are signed between the employment agency and the foreign employer, with terms decided without the consent of the employee. This kind of collusion between agencies, or between employers and agencies, is very difficult to police.

Information Provided to Migrants

All migrant workers are required to complete a pre-departure orientation (PDO) – 12 days for Middle Eastern countries, 30 days for Singapore and Hong Kong.¹⁸ PDOs are mainly geared towards job training (e.g. the use of electrical household appliances, the proper way to set a table or clean a bathroom, food preparation, childcare, elder care, etc.). The sessions also include some basic language training and discussions on health issues (particularly information on HIV/AIDS).

Rights-based training is not provided. Migrants are neither informed of their legal rights while they are abroad, nor are they given any information on human rights. While some information is given on the potential for abuse and contact information in the case that they are in duress, it was

¹⁸ All Sri Lanka Janasetha Sahana Foundation (n.d.)

agreed by all parties interviewed that this is insufficient. Additionally, the PDOs occur once the process of migration is well underway, and migrants have already invested considerably (financially and personally) in moving overseas. At this point, if the migrant were to access information that made him/her want to reconsider his/her decision to migrate, it would be very difficult (and likely quite expensive) to halt the process. It has been suggested that awareness-raising on the pros and cons of migration needs to be a focus of the SLBFE, as well as a general strengthening of the current PDO curriculum.

Complaints Mechanisms

Migrants who encounter problems during the recruitment process can file a formal complaint with the SLBFE. The Bureau's Investigation and Enforcement Division is staffed by policy officers who investigate reported illegal activities of recruitment agencies. Complaints can also be filed with ALFEA, which can also investigate ethical breaches among its members and revoke their membership by a 4/5 vote. However, individual compensation for grievances is difficult to attain; the SLBFE requires more staff that are better trained in order to have the capacity to deal with issues in a timely fashion.

Migrants can also file complaints with Sri Lankan embassies and diplomatic missions in the case of mistreatment by their employer, problems with wages/contracts, etc. while they are abroad. Each diplomatic mission has a labour attaché, and safe houses have been established for those who require emergency shelter/assistance. However, again the question of capacity arises, as most key informants indicated that these mechanisms are not always helpful as employees lack training and many offices require more resources to properly assist migrants in duress.

Conflict-Affected Areas

Key informants reported a proliferation of unlicensed agencies and unscrupulous sub-agents along the edges of the conflict-affected areas of Sri Lanka. Since the resolution of hostilities, these areas have become high-migration zones as people come to see migration as a viable way of securing their livelihoods. Licensed recruitment agencies are not as common in this region, and the SLBFE has moved slowly to set up offices there. As such, unlicensed agencies and sub-agents have been able to flourish. Additionally, while in many parts of the country there has

been much awareness-raising by both the SLBFE and civil society organizations on safe migration, people from the conflict-affected areas have had much less exposure and may be more vulnerable to exploitation as a result.

Re-migration / Reintegration

It is often the case that migrants who return to Sri Lanka upon the completion of their contracts attempt migration again. Key informants explained that this is largely attributable to the inability of the migrant to meet his/her financial goals the first time he/she migrates. Some NGOs have proposed that PDOs should include reintegration planning assistance (for both social and financial aspects of return), and that this be linked with education on sustainable investments in order to maximize the use of remittances by migrants and their families.

Gender Issues & Social Costs

Because so many migrant workers from Sri Lanka are women, much emphasis has been placed on the plight of 'housemaids' who are characterized as young, unskilled, innocent, vulnerable, uneducated, and poor. The high profile case of Rizana Nafeek, the Sri Lankan woman who migrated to Saudi Arabia as a domestic worker when she was only 15-years old, has raised many questions in Sri Lanka about the wisdom of sending young women abroad for work. The accidental death of an infant under Rizana's care resulted in a death sentence, which has recently been commuted by the King of Saudi Arabia, though her long-term sentence has not yet been decided.

This case can be added to the compendium of cases of physical and sexual abuse, victimization, restrictions on mobility, and general mistreatment reported by many Sri Lankan women who migrate as domestic workers. It is also held by the SLBFE that the social costs of migration, i.e. the costs to the family members left behind, are significant enough to warrant the active discouragement of female migration.

The new policy on labour migration proposes raising the legal age for migration from 18 to 21, and the promotion of 'skilled' over 'unskilled' labour. These proposals are based on the assumption that abuses are less likely to occur among older migrants (with more life experience),

who are better educated, and who are male. In 2009, of the 119,276 men who migrated for work, 47% were categorized as 'skilled', whereas of the 127,843 women who migrated, only 4% fell into this category.

This policy provision does not address the problems associated with the process of recruitment that contribute to the vulnerability of these domestic workers, nor does it address the fact that the demand for Sri Lankan domestic workers remains high in the GCC. It also fails to account for the successful cases in which women have been able to engage in gainful employment, meet their financial goals, and provide much needed resources for their families. While alternatives to, and pros and cons of labour migration should be presented to all prospective migrants, the ultimate decision of whether or not to migrate should remain their own. Policy provisions should be in place to ensure that all migrants can migrate safely.

Point of Collusion

As stated in an IOM report on recruitment practices, '...with the entry of private players into the labour matching sector, a whole new system of commercial incentives develop, which promote unethical behaviour in the pursuit of short turn profit'¹⁹.

In interviews with key informants from ALFEA, it was made clear that a significant priority for recruitment is the market share of jobs in Saudi Arabia, despite the fact that the majority of complaints filed by migrants come from those sent to that country (48%). ALFEA recently signed a Memorandum of Understanding with the Saudi Arabian National Recruitment Committee (SANARCOM) to set recruitment charges at a maximum of Rs. 5,500 for domestic workers, and to secure a commitment that only ALFEA member agencies would recruit workers for the Saudi market. This agreement was ultimately deemed null and void by Sri Lanka's Attorney General on the grounds that ALFEA does not have the legal identity to enter into international agreements. Furthermore, as reported in the Lanka Gazette, '...the SLBFE is not at all interested in the commissions given to the agencies by the Saudi sponsors as recruitment fees and the bureau revenue does not depend ... on these sources.'²⁰

¹⁹ IOM, 2010 Draft Document

²⁰ Lanka Gazette, 5 October 2010 <<http://lankagazette.com/topstories/govt-dispels-false-media-report>>

However, in the interests of migrant workers, the SLBFE should be interested in the amounts paid by Sri Lankan agencies to foreign recruitment agencies, as this is the very point at which the price of employment opportunities are set, and where jobs are bought and sold. This relationship, in turn, defines the migration flows – where certain migrants are most in demand is determined by how profitable it is to send them there. The same holds regardless of where migrants are being sent.

Recommendations

1. The implementation of the National Policy on Labour Migration should be expedited in order to operationalize mechanisms to regulate sub-agents with the aim of better protecting migrant workers in the pre-migration stage.
2. The presence of SLBFE offices should be increased in conflict-affected areas in order to provide information and services to prospective migrants and to properly monitor the activities of unlicensed recruitment agencies.
3. Pre-Departure Orientations should be developed to include information on labour rights and human rights, as well as assistance with reintegration planning.
4. More resources and training should be provided for diplomatic missions abroad and for SLBFE offices in Sri Lanka in order to deal with complaints in a timely and effective fashion.
5. Blacklisting should be tied to the business owner rather than to the company so as to prevent the re-licensing of business known to have contravened the law.
6. Governments on both sides must better understand the ‘point of collusion’ between Sri Lankan and foreign recruitment agencies, and action should be taken to intervene and regulate these interactions.

Introduction

Many Nepalese are compelled to find employment abroad as a result of lack of jobs and entrepreneurship opportunities at home. While a potential migrant worker may hear about the risks of migration (being deceived or facing salary problems, etc.), the prospect of being able to go from hardly earning anything at home, to earning at least something is enough to leave their families and migrate for work. The compulsion is equally applicable to men and women.

There are two typical channels people go through to reach the destination country. They go through a recruitment agency or through individuals who are able to provide them with a visa. There are 924 licensed recruitment agencies in total, and 216 that have had their licenses cancelled. Officially, agents are required to register. Upon registration, they are also required to put down a deposit. Many recruitment agencies have their head offices in Kathmandu and operate branch offices at the district level outside of Kathmandu Valley.

Advertisement

A prospective migrant worker hears about a job through individuals within his/her village or through newspaper advertisements. Under the Foreign Employment Act of 2007 (FEA), recruitment agencies are restricted to advertising in national newspapers; however advertising in local newspapers and through radio is widespread. The Department of Foreign Employment (DFE) seeks to ensure that advertisements are informative, rather than promotional. If the advertisement does not meet the ethical standards set out in FEA 2007, the recruitment agency can be fined 100,000 NRp. In practice, many of the jobs described in the newspapers offer higher salaries than what the migrant worker will end up receiving. The placement fee applicable to the job is also published. The maximum placement fee under FEA 2007 is 70,000 NRp for GCC countries and 80,000 NRp for Malaysia. In practice, the fee charged to the migrant worker, irrespective of the publicized amount, is much higher. A migrant worker can theoretically check to see if an advertisement is authentic by phoning the DFE in Kathmandu. However, they often

²¹ Interviews with WOREC, PNCC, YOAC, Pourakhi-Nepal, Ministry of Foreign Affairs

do not know the number to call or that this service is available. The DFE is looking to implement an online system where prospective migrants can verify the authenticity of advertisements.

Sub-agents

A migrant worker who hears about a job through a sub-agent is likely to be handed over to other agents along the way before finally processing his/her documents to go abroad. They typically encounter a sub-agent at the village level who refers him/her to another agent at the district level. From the district level, prospective migrants are taken to Kathmandu to the recruitment agency.

Most recruitment agency offices are located within Kathmandu Valley. Sub-agents do not have a formal employment relationship with any agency. Most often, the sub-agents operate in networks through which they refer recruits until they reach the actual recruitment agency. Each agent will receive a commission per migrant recruited. At the village level, the sub-agent receives an average commission of 5,000 NRp. At the district level, commissions can reach 10-12,000 NRp.

The law requires a deposit of 2 Lakh to be licensed as an official sub-agent. The law also prohibits any agent from working for more than one agency. Of the estimated thousands of sub-agents operating in Nepal, there are fewer than 10 registered with the DFE. Those prospective migrants who forego the use of a recruitment agency are passed on from an agent in Kathmandu to Delhi or other transit destinations. It is difficult to attach legal liability to an agent, as there is no receipt provided by the sub-agent to the migrant for fees charged.

Potential migrant workers rely on the sub-agent to expedite the process of going abroad. While under the FEA recruitment agents in district offices cannot receive payment, the migrant worker is asked to pay in order to ensure the processing of documents. No receipts are given. Often the prospective migrant worker knows the sub-agent. They can be brothers, sisters, cousins, or friends. If there are issues later on, the migrant worker is often not inclined to lodge a formal complaint.

Upon finding prospective workers, the recruitment agency is required to submit a photocopy of the advertisement, a medical report of the potential migrant, an interview report, and insurance forms. The final approval letter is then issued.

In reality, the migrant worker who hails from a rural village entrusts the agent to process all required documents, including passports and visas. Even when the visa is obtained for free by the recruitment agency, they often charge the migrant worker for the visa. As the supply of people wanting to go abroad outnumbers those who are processed every day, the sub-agents and the recruitment agencies are able to charge more than the legal maximum. Typically, women are charged nothing upfront; their placement fees are deducted from their salaries. The placement fee charged to the migrant worker depends on his/her financial status. In the case of migrant workers who have worked abroad in the past, they have a higher capacity to bargain, which allows them to negotiate for lower fees. Many prospective migrants are forced to take out a loan from the bank with an interest rate of 5%.

The prospective worker is bound to the agent, as the agent often keeps the passport of the migrant worker until the date of departure. As the migrant worker does not receive a receipt from the agent, it is difficult to lodge a formal complaint if a problem arises. Agreements are kept orally.

Information given by Sub-Agents

The prospective worker is typically told that he/she will get a job quickly and the process will be taken care of by the agent. If the prospective worker cannot pay immediately, he/she is told that payment can be processed from his/her first paycheck while they are abroad. They are not given a receipt for the processing of fees and are often not told how much will be deducted from their salaries. Workers, who are often desperate to go abroad, are prone to blindly trusting the agent. The agent often exaggerates the salary, benefits, and the quality of working conditions at the country of destination. The agent may offer to confirm such claims by referring to the successes of other workers who are abroad. Often, the migrant worker has family members and friends who have worked abroad, and who glorify their work experiences in order to be seen as successes. There is a build-up in the communities about how successful one may become by

working abroad; as such, if the migrant worker returns to low-paid work or unemployment after having worked abroad, then he/she is deemed to have engaged in a failed migration.

The migrant worker who is going abroad for the first time is not told which route he/she is taking or what the procedures are at the airport in detail. They are given baseball caps or other clothes to be identified as a migrant worker by receiving recruitment agencies once they reach the country of destination.

Processing of Documents

The documents of women migrant workers are likely to be processed free of charge. If the migrant worker is able to pay more, the agent is likely to ask for more. Even if a migrant worker is given a receipt for his/her legal documents, he/she may be charged more than what is stated on the receipt. The documents that are given to the government for the final approval letter follow the legal regulations but there is an understanding among both prospective migrants and their recruiters that this is 'for show.' The migrant worker is compelled to hasten the process and board the plane as soon as possible. The amount of money paid depends on the migrant worker, their status, and the country of destination, ranging from 1 Lakh to 6 Lakh for certain destinations. For those migrating legally, interviews occur. There is no monitoring protocol for how the interview should occur and what it should achieve.

All passports must be issued in Kathmandu. Prior to the Machine Readable Passport Crisis²² at the beginning of 2010, passports could be issued from outside of Kathmandu. Now, those who require passports must travel to Kathmandu. The sub-agent processes the necessary documents including passports for the migrant worker, and fraudulent passports are easy to access. Girls as young as 13 and 14 are easily able to acquire passports by having their photographs applied to valid passports; this practice is commonly referred to as 'picture change'. The migrant worker receives the documents, ticket, contact letter, and passport outside of the airport on the day of departure.

²² As of April 1, 2010, the International Civil Aviation Organization (ICAO) requirements stipulate that all passports must be machine-readable. Travelers without such documents would be barred from international air travel. The Nepalese Government was unable to agree upon the awarding of the contract among the various tenders put forward, causing considerable panic over the possibility that Nepalis would not have access to proper travel documentation Lotay.com, 20 March 2010. <<http://lotay.com/nepal-faces-passport-crisis-as-india-bid-triggers-row>>.

Pre-Departure Orientations

The DFE requires a two-day Pre-Departure Orientation (PDO) session for all outgoing migrants. There is supposed to be 12-hours in total spent on training. A training certificate is issued upon completion of the PDO. The curriculum has three parts: pre-departure; transit and destination; and re-integration. It covers topics such as passports, HIV-AIDS, and basic language used in the destination country. There are more than 54 training centers within Kathmandu Valley. The prospective worker is likely to view the PDO as a hurdle before they depart, as they have already traveled to the city. Another two days for orientations means additional costs.

It is relatively easy to purchase PDO certificates without going through the actual training process. In places where the training is carried out over two days, trainers lack tangible knowledge of the country of destination, and have often never been abroad themselves. There is no one who ensures that they carry out the training properly, and as proscribed by law. Often, a prospective migrant worker is able to purchase a certificate for ~50 NRp. Many migrant workers are oblivious of the fact that PDOS exist to aid them. Women may take PDOs for free; they first pay 700 NRp, but can later receive a reimbursement, however they often do not know of this provision.

Medical Exams

The fee for a standard medical examination is 2500 NRp. The standards for the medical check must follow those of the World Health Organization (WHO). Institutions that belong to the certified association are able to carry out medical exams and provide medical certificates required by the DFE. However, it is relatively easy to obtain a fake certificate with the hologram required by the DFE at a lower cost than the exam itself. There are posters in front of medical centers that say: “Medical Certificate in two minutes,” indicating that this is a location where medical certificates are sold.

A large number of migrants go abroad after being issued a medical certificate only to fail the medical exam in the receiving country; they then are sent back to Nepal. The health institution that conducted the test is then required to provide compensation. Migrant workers often pay for

medical tests and obtain medical certificates from unrecognized medical centers, and are hence unable to claim for compensation. Even if it is the case they are eligible for compensation, this can only be claimed in Kathmandu, which makes it difficult for those living outside of the city to be compensated. Licensed medical centers are committed to carrying out the exam as prescribed by regulation. It is the case that many migrant workers opt to use those medical clinics that are not part of the association because they would rather obtain their clearance as quickly as possible.

Contracts

The prospective employee usually receives his/her contract in English and Arabic. There are often discrepancies between these documents with respect to salary, benefits, or working hours, with the Arabic copy being far less favourable to the migrant worker. In the receiving GCC country's court of law, only the terms of the Arabic document will be honoured.

For the migrant worker, the contract is a formality. They are usually unaware of the legal significance of the contract due to lack of knowledge and information. To some, it is merely a formality or a hurdle in the process of actually starting to work. The contract that is given to the migrant worker (sometimes only minutes before boarding the plane) is often different from the one submitted to the DFE. The migrant worker has no choice but to accept the new papers provided by the agent in order to go abroad, as the agent holds his/her visa and passport as well. Hours before departure, the migrant worker is unlikely to back out as they have made investments (financial and personal) to reach that stage.

Liability of Recruitment Agencies

A documented worker with a contract is able to access the courts in the country of destination, but this is not the case for domestic workers. If a migrant worker contacts the embassy to help resolve a dispute between him/her and the employer, there is no clear protocol on next steps. NGOs or community groups formed between Nepalese migrants in the destination country are often in a better position to address the problems. A recruitment agency can be held liable in Nepal, but it usually does not reach that stage. Problems are first addressed by the DFE by contacting the recruitment agency. There is a temporary suspension placed on the recruitment

agency's activities, but the monitoring mechanism is not clearly defined. People would generally rather deal with an individual agent because they will be able to seek them out directly if there are problems.

Monitoring the Agencies

There is corruption throughout the entire recruitment system. The DFE is supposed to monitor the activities of recruitment agencies, but key informants have indicated that their efforts are insufficient. This is attributed to collusion between agencies and government.

A blacklist is kept by the DFE, but most of the time the government does not resort to blacklisting; rather, licenses are suspended and activities of the agency are put on hold until disputes can be resolved. At any rate, the effectiveness of blacklisting can be called into question, as agency owners can open another agency if theirs is blacklisted by partnering with another individual or using another person's name. In addition, there is a blacklist of recruitment agencies operating abroad. These lists are not publicized regularly.

There is no monitoring of how the migrant worker fares in the country of destination. Problems are dealt with at Embassy offices, however there is not enough staff to deal with the issues that arise.

Embassy / Government Officials

Every five years, the personnel at Nepalese embassies change. While there is not enough staff to deal with the volume of problems reported, it was noted by key informants that embassies have gradually improved in terms of their capacity to assist migrants in duress. Most labour attachés are male therefore women migrants might feel uncomfortable discussing issues such as sexual abuse/assault.

Diplomats and labour attachés do not have protocols in place to coordinate with the destination country's diplomats. Civil society and Nepali organizations have been active in supporting migrant workers in duress, while the embassy has found it difficult to offer adequate support.

According to key informants, the Ministry of Home should also be involved in the process. Due to the bureaucratic nature of government offices, if a complaint is launched it can be passed through various departments before being dealt with appropriately. The political climate within Nepal is also relevant to note – there is little co-operation between the Ministries of Home, Labour, and Foreign Affairs.

Complaints Mechanisms

There is no active monitoring process of the recruitment agencies, nor are there inspections of licensed training and medical centres. These agencies can be punished criminally under the law, but without monitoring it is unlikely that prosecutions will occur. District courts do not deal with labour issues; a foreign employment tribunal was established in 2009 to hear claims. When complaints are made to the Ministry of Labour, an investigator is deployed, however there is only one investigator to cover all 75 districts of the country.

Sub-agents are difficult to monitor and sanction because of the informal nature of their relationship with recruitment agencies; no documents are exchanged and no direct evidence of cheating or malpractice is likely to be available.

Compensation for Injury

There are good examples of workers receiving compensation in the destination country when they have all the required legal documents. The government provides up to 100,000 Rupees in the case of physical injuries arising from employment, which comes out of the welfare fund of the Promotion Board. Workers suffering from psychological distress do not receive compensation.

Some recruitment agencies provide compensation for injury and for when salaries are withheld. However, if the recruitment agency decides not to pay, the migrant is unlikely to lodge a complaint, as this becomes a protracted process. He/she must remain in Kathmandu in order to see the claim through, and this can be quite costly. Complaints cannot be filed at the local level.

Re-Migration

Many migrants who return from working go back abroad. This speaks more to the fact that there is very little being done at home to facilitate sustainable investment than to the fact that their experience as a temporary labourer being great. In fact a migrant worker has gone from Point A to B—from making no money to some. They want to continue to make money. At this point, there is an advantage to becoming a 2nd time migrant worker. They are more aware and are able to bargain with the recruitment agencies with their experience. The Promotion Board has recently announced a strategic plan with the money in the pool collected from migrant workers. There are programs that relate to awareness, underprivileged women, and children.

Point of Collusion

Some of the recruitment agencies in Nepal have representatives in the UAE. These representatives are not necessarily Nepalese – they can be Indian, Bangladeshi, or even UAE citizens that act as representatives of the Nepali Recruitment agencies. These representatives connect with the recruitment agencies in the receiving state to access job opportunities, and then send for workers in Nepal. In many cases, the Nepali agencies have to pay the UAE recruiters for access to the available jobs – each job costs ~\$500US. The Nepali government has not expressed any concern at all about the relationship between Nepali and GCC Recruiters. Key informants indicated that there has been no action taken to try to dissuade these kinds of recruitment agency transactions.

Policies & Instruments

When migration of short-term workers from Bangladesh to the GCC began in the mid-1970s, it was the Government of Bangladesh (GoB) that was actively engaged in facilitating the process. With the passage of time, as the demand for labour continued, the government handed over the recruitment responsibility to private recruiting agencies. It was in this context that the Emigration Ordinance of 1982 was framed.

The Ordinance was designed to set the rules governing the labour migration sector. The Ordinance elaborates the licensing and monitoring mechanisms of recruiting agencies. It also explicitly describes the punishment of individuals and private recruiting agencies involved in fraudulent practices. Gradually in 2002 rules were framed on the basis of the 1982 ordinance. Besides the Ordinance and rules, a policy has also been framed in 2006 entitled ‘Overseas Employment Policy’. The policy on female migration has also changed over the years.

The Emigration Ordinance, 1982

The Ordinance only allowed persons with valid travel documents to emigrate. A letter of appointment or a work permit from a foreign employer or an employment or emigration visa from a foreign government is considered to be a valid document (Sec 7/3/a). A person who is selected by a foreign employer through an organization or a recruiting agent recognized by the government under an agreement between two governments will also be allowed to emigrate (Sec 7/3/b). The Ordinance also empowers the government not to allow emigration of persons of a particular occupation, profession, vocation or qualification in the public interest (Sec 8/1).

Under the Ordinance, the government is authorized to grant licenses to individuals and companies who wish to be engaged in recruitment for overseas employment (Sec 10). The Ordinance empowers the government to cancel and suspend licenses and forfeit the security deposit if it is satisfied that the licensee’s conduct has been improper or is in violation of the law or prescribed Code of Conduct. However, such actions could only be taken after the licensee was

²³ Information compiled by MFA based on the work and inputs of Dr. Chowdhury Abrar, RMMRU, Bangladesh

given an opportunity to explain his/her position (Sec.14/1). Illegal emigrations are punishable for a term of up to one-year imprisonment with a fine not exceeding taka five thousand. It also contains provisions for penalizing unlawful recruitment efforts (Sec 20). Under the Ordinance, the recruiting agencies are prohibited from charging higher fees than the prescribed amount for their services (Sec 23). The Ordinance has provisions for penalizing individuals who, in breach of contract with foreign employers, abandon their employment (Sec.24).

In South Asia, Bangladesh is the first to promulgate an Ordinance to conduct labour migration under due legal and administrative system. The 1982 Ordinance and the subsequent Orders, Directives, and Circulars and the three rules framed under it reflect the GoB's concern about the procedural aspects of emigration. However, it does not highlight the right aspects of the workers. It is important to note that migration has become extremely complicated since the 1982 Ordinance was promulgated. But the government, instead of reviewing the shortcomings of the Ordinance in current context, enacted laws based on the old Ordinance. In the 1980s employers used to pay commissions to recruiting agents and pay higher wages to the workers. In contrast, currently the employer substitutes contracts and sometimes creates situations where migrants are made to leave work. Under Section 24 of the Ordinance a migrant worker is liable to imprisonment if he/she returns home without completing the term of his/her employment. In this situation the migrant worker will be liable to long-term imprisonment. This is in violation of all norms and rights to refusal to continue to work.

According to the Ordinance, if any recruiting agency commits fraud, the government can cancel the license of the recruiting agency. Over the last decade practical experience suggests that the license fee for the recruiting agents set by the government is so low that in case of cancellation of the existing license, the agency receives a new license to continue its business under a new name. A simple calculation serves as an example of this issue: The recruiting agencies have to deposit Tk. 1,200,000 as security for issuance of a license. If each potential migrant is charged Tk. 250,000 by the agency, then the latter, after cheating 6 clients, can easily forego the license fee. It is unfortunate that even a minor punitive measure like the cancellation of a license, cannot not be enforced seriously. By using loopholes in enforcement of the Ordinance, the recruiting agencies have successfully thwarted the cancellation of licenses on grounds of procedural flaws.

One may suggest that a vested interest has developed that has created a situation for procedural flaws to occur.

The present law does not contain any clause about punitive actions against the government functionaries who compromise their positions and authority. In view of the fact that such compromises are a very common occurrence, the Government of the Philippines while enacting the 'Migrant Workers and Overseas Filipino Act of 1995', made provisions for strong measures against government functionaries. Moreover, under the Act, fraudulent practices against migrant workers are treated as economic sabotage against the state and redressed accordingly.

Policy on Female Migration

In the early 1970s the GoB did not have any concrete policy either to encourage or discourage female migration. On individual or agency initiative, Bangladeshi women began to take jobs in the Middle-eastern countries. In early 1981, through a Presidential Order, certain categories of female workers were barred from migrating overseas for employment. The Order stated that professional and skilled women could migrate as principal workers but semi-skilled and low skilled women could not go overseas without a male guardian. It is not known what prompted the government to take such a decision. However, it has been claimed that in 1980 the then Bangladeshi association of migrant workers of Kuwait placed a Memorandum to a visiting Minister of the Bangladesh Government. In the Memorandum, among other things, the Association strongly demanded that the government put a bar on migration of women for employment. It was further claimed that on the basis of their demand the Minister convinced the cabinet to impose this ban on the migration of unskilled and semi-skilled women. The measure was justified on the grounds that it protected the dignity of women.

In 1988 the government slightly modified its position. It withdrew the ban and imposed a restriction on the migration of unskilled and semi-skilled women. This implied that in principle, the government still holds the position that these categories of women should not be allowed to migrate on their own. However, it will consider specific cases and let them migrate under special permission. This restriction prevailed until 1997.

In November 1997, following an inter-ministerial meeting of representatives of the ministries of Foreign Affairs, Finance, Labour and Cabinet Division, the GoB re-imposed a complete ban on migration of women except those who were highly qualified professionals such as doctors, engineers and teachers. This policy was the most regressive, since for the first time it put a ban even on professions such as nurses, typists, secretarial assistants and skilled workers such as garment or factory workers along with the un-skilled, semi-skilled domestic aides or cleaners. This policy shift was again rationalized as a protective measure. However, this decision led to a major campaign by different civil society organizations. The Association of International Recruiting Agencies (BAIRA), the trade body of the recruiting agent, was also very active in the movement to rescind the order. BAIRA lamented that while Indonesia and other Muslim countries were developing strategies to take advantage of such a decision, the GoB had taken an opposite stance.

Civil society groups that opposed the ban viewed it as unconstitutional and discriminatory against women and believed that it would contribute to illegal trafficking of women. They sent a joint petition to the Prime Minister demanding immediate withdrawals of the government order. In December 1997, through a Circular, the ban was lifted from migration of all other categories of women workers, except domestic workers. However, a further revision allowed a few categories of women to work as domestic aids if the employer belonged to any of the following three groups: (a) Bangladesh embassy staff; (b) financially solvent Bangladeshi such as doctors and engineers, and (c) foreign passport holders of Bangladeshi descent. Permission for such positions would only be granted by the Ministry of Labour and Employment following verification by the Bangladesh missions of the countries concerned.

In 2003, the new Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE) brought in changes to female labour migration policy. This allowed unskilled or semi-skilled women to migrate under special permission at 35 years of age. The security deposit required of the recruiting agents who wish to send women has been increased to Taka 5,000,000. In addition, the government encouraged the private sector to develop training centres for providing specialised professional skills, communication skills and awareness training to female migrants. Aspirant women migrants are trained in the use of domestic appliances, taught basic English and

Arabic languages, and given awareness about their legal entitlements in respect to wages, accommodation and medical services. In 2006 the Ministry through a notification further relaxed female migration. The age limit in case of domestic and garment workers has been further reduced from 35 to 25 years. The age limit will not be applied to those who would migrate as cleaners. Restrictions on unmarried women have also been withdrawn. It may be concluded that the seventh parliamentary government has brought about significant changes in migration policy regarding unskilled and semi skilled workers. However, men and women do not yet enjoy equal access to participate in the international labour markets even under this updated policy.

Bangladesh Overseas Employment Policy

There has been a persistent demand from civil society for the development of a comprehensive national policy on migration. In response to sustained advocacy from different sections of the civil society, the MoEWOE initiated a process of developing an Overseas Employment Policy in 2002, initial drafts of which were prepared by the Ministry. At a later stage, a technical assistance committee was formed comprising of members of different ministries of government, BOESL, BAIRA, IOM, RMMRU and WARBE. The technical assistance committee prepared and advanced the draft²⁴. The draft later went through many consultations. The policy was adopted on 5 November 2006.

The preamble of the policy sets the reason behind formulation of the Overseas Employment Policy (OEP). The scope of the policy includes both male and female; short term labour migrants and long-term Diaspora population. The policy ensures the right of the Bangladeshi workers to freely choose quality employment.

The first of its kind in South Asia, the policy was designed to organize overseas employment sector and to ensure welfare of Bangladeshi migrant workers abroad. Among other things, the OEP emphasizes protection of the rights of migrant workers. It also acknowledges the importance of pre-departure orientations (PDOs) and the need to create awareness among migrant workers. In order to ensure the protection at the destination countries the OEP stresses

²⁴ Through consultation with all concerned persons on behalf of the technical assistance committee, Dr. Tasneem Siddiqui of RMMRU prepared the advanced draft.

signing of Memorandums of Understanding with labour receiving states, providing legal assistance and ensuring welfare of migrants through Bangladesh missions abroad. The OEP underscores the need for ensuring transparency and accountability of the recruiting agencies. It recognizes the need to explore new markets for Bangladeshi labour. Increasing the flow and better use of remittances as investments is another major issue covered by the OEP. The social and economic reintegration of migrants upon their return home is also highlighted.

It is important to note that the policy that was finally adopted had a more limited in scope compared to the draft of the technical assistance committee. The approved policy dropped the component that indicated the government's commitment to international instruments e.g., 1990 Convention on Rights of All Migrants Workers and Members of their Families, UN instruments on human rights and ILO Conventions pertaining to migrant rights due to objection of the recruiting agencies. The draft also had a section on responsibility of different ministries ensuring better governance of migration. Except the EW&OE Ministry all others ministries were apprehensive of such written commitment and thus that section was also dropped.

Despite the above shortcomings, the framing of the Overseas Employment Policy is very much appreciated as it gives both male and female migrants the right to choose overseas employment. It acknowledges dignity and security of the workers. It also ensures social protection of families of the migrants. Most importantly it commits to considering misconduct against migrants as acts against the national interest.

On paper the OEP is an impressive document; it touches upon most of the major issues in the labour migration sector. However, putting the policy into practice remains a major challenge. Though the policy aims at reducing the migration costs, over the last four years, very little has been achieved in this regard. Today, the cost of migration in Bangladesh remains the highest among the South Asian labour sending countries. Likewise, the policy's aim to facilitate migration from various districts of the country remains elusive, as in reality migration continues to take place only from a handful number of districts with social networks playing a critical role. A major limitation of the OEP is that it has not provided any time frame to bring about the proposed changes.

Formal Migration Processing Institutions

Labour recruitment from Bangladesh involves various ministries and agencies of the government, private recruiting agents, their local and international intermediaries, potential migrants and their families. The Ministry of Expatriates' Welfare and Overseas Employment, Ministry of Home Affairs, the Ministry of Foreign Affairs, Ministry of Finance and the Ministry of Civil Aviation and Tourism are the five important ministries that deal with international labour migration. The Bureau and Manpower Employment and Training, private recruiting agencies, and medical centres also play important roles in the recruitment of migrant labour.

Government Ministries

Until 2001, the Ministry of Labour and Employment was in charge of international labour migration. The seventh parliamentary government, in responding to the demand of the expatriate Bangladeshis and migrant workers, created a new ministry in December 2001. The power of implementing the rules framed in 2002 under the Emigration Ordinance 1982 and accordingly, promoting, monitoring and regulating the migration sector were vested with the new ministry. The activities of the ministry concentrated in two broad areas: to identify employment opportunities overseas and the to solve problems of expatriates and ensure their welfare (Ministry Annual Report 2002). The secretary of the ministry also chairs the Wage Earners' Welfare Fund Management Board.

The role of foreign missions is also extremely important in respect to migration. The functions that Bangladesh missions abroad currently perform regarding labour migration are: (a) exploring the potential labour market; (b) attestation of documents pertaining to recruitment; (c) providing consular service to Bangladeshi workers; and (d) ensuring welfare of migrant workers.

Once the migrant enters the airport, the Ministry of Civil Aviation is in charge of processing their departure. They organize security checking, check-in and collection of boarding passes, immigration clearance, and card verification.

The Ministry of Home Affairs is involved in two stages of migration processing: passport issuance, and emigration clearance at the airport during departure and return. A potential migrant can collect his/her passport application from the local bank and submit it to the regional passport office. The Home Ministry, upon verification of the permanent address of the applicant, issues a passport. This ministry is also the ultimate authority to check all papers and allow or disallow the individuals to leave the country.

The Bureau of Manpower, Employment and Training (BMET) is the executing agency of Ministry of Expatriates' Welfare and Overseas Employment in respect to processing labour migration. BMET was created in 1976 by the government to ensure maximum benefit for labour export. Since the promulgation of the Emigration Ordinance of 1982, it has been working as the implementing agency of the Ordinance. Currently BMET is involved in all kinds of functions – control and regulation of recruiting agents, collection and analysis of labour market information, registration of job seekers for foreign employment, emigration clearance for job seekers, development and implementation of training programmes in light of specific labour needs both in national and international labour markets, materialisation of apprentice and in-plant programmes in the existing industries, organising pre-departure briefing sessions, and resolving legal disputes. It also manages the programmes undertaken with Wage Earners' Welfare Fund.

Private Recruiting Agencies

Recruitment and placement are important stages in the overall labour migration process. In the 1970s the government performed functions of recruitment. Since 1981, as part of private sector development, the private recruiting agents took over the task. The private agencies work under a license from the government. On their own initiative they collect information on demands and orders for foreign employment. After receiving permission from the BMET, the agencies are supposed to recruit workers as per specifications of the foreign employers from a database of job seekers of BMET and then process their cases for deployment. Each recruited person has to be issued a clearance certificate from the immigration department of BMET. Over time, the recruiting agencies became organised under the Bangladesh Association of International Recruiting Agencies (BAIRA). The association was formed in December 1984 with

representatives of twenty-three recruiting agencies. In 2009, the association had a membership of around 800 agencies.

Bangladesh Overseas Employment Services Limited

In 1984, the government also set up Bangladesh Overseas Employment Services Limited (BOESL) as a limited company to take up direct recruitment role. From its inception to December 2006, BOESL recruited 11,180 workers. This constitutes 0.31 percent of the total number of those who went overseas through official channels. In 2006 only 0.11% people used BOESL in processing migration. A thorough evaluation of this institution needs to be done to assess its strengths and weaknesses.

Diagnostic Centres

In order to process migration migrant workers also have to go through health check-up. The health check includes tests on body fitness, Pathology, Hepatitis B, Hepatitis A, VDRL, HIV/AIDS, TB, Malaria, Leprosy, etc. In addition, female migrant workers must submit to a pregnancy test. The receiving countries have pre-selected diagnostic centres to conduct these tests. GAMCA is the association of these diagnostic centres. Currently it has 22 members.

Informal Migration Processing Institutions

Procurement of Work Permits

As mentioned above, processing of migration has become an extremely complex operation. For the private recruiting agencies or BOESL the first task is to procure work visas. Employers or the recruiting agencies of receiving countries used to pay commissions to their Bangladeshi counterparts for procuring labour. Over the years, this practice has been halted and Bangladeshi recruiting agencies are no longer paid any commission. This is due to the entry of many other countries in the market that would send workers without commission. Also, there is unhealthy competition among the Bangladeshi recruiting agencies. Besides some of the major labour receiving countries, including Saudi Arabia, have introduced a levy on the employers in order to reduce the number of overseas workers. As there is great demand for overseas employment in

Bangladesh the employers have successfully passed the levy onto the Bangladeshi recruiting agents. The latter in their turn conveniently shifted that onto the migrants.

The buying and selling of visas has become a lucrative business. This practice is widespread in the Gulf states.²⁵ A nexus of interest has developed among high level state functionaries of receiving countries, their recruiting agents, a group of expatriate Bangladeshis and a section of Bangladeshi recruiting agents. It has become extremely difficult to secure visas through what were previously taken to be regular channels. Now this nexus is involved in visa transactions through irregular practices. The visas are then sold at auction. It has become extremely difficult to take action against this group of people who are often highly placed socially and politically. Recruiting agencies now process only 30 percent of work permits.

Visa Procurement through Social Networks

Almost 65 to 70 percent of recruitment is now conducted through individual initiatives and social networks. Usually persons already deployed in the host countries arrange visas for their family members, friends and relatives through their own contacts; sometimes, family members who are left behind sell visas to the interested parties. The costs of migration are less, and there are fewer illicit practices when work visas are procured through individual migrants working abroad (Siddiqui 2002). Those who receive job contracts this way still have to process their paperwork for BMET clearance through a licensed recruiting agency.

System of Sub-agents (Dalals)

Recruiting agencies that purchase visas keep their margin and sell them to individual migrants. Almost all recruiting agencies are based in the capital city, Dhaka. It is not financially viable for them to have offices all over the country. In this situation they recruit through a host of agents and sub-agents. It is estimated that there are more than 10,000 dalals in different high migration villages and districts of Bangladesh. These informal agents perform most of the important functions, i.e., provide information on migration opportunities, recruit workers, and conduct

²⁵ Philip Martin (2009) *Reducing the Cost Burden of Migrant Workers: A Market Based Approach*, Mimeo pp.20; Nasra M. Shah (2008) *Recent Labour Immigration Policies in the Oil Rich Gulf: How Effective are they Likely to be?*, Working Paper No.3, ILO, January, p. 9; and 'Recruitment Practices for Overseas Employment in South Asia', RMMRU-DRC Regional Workshop Proceedings, July 8-9, 2008.

financial transactions. The sole operation of recruitment at the grassroots is conducted verbally; payments are made without receipt.

The dalal system has not been institutionalized; they are not formally registered with the recruiting agents they serve and do not possess any formal identification documents. This has created a situation where both recruiting agents and/or their sub-agents can commit fraud and evade responsibility. In this process a good number of those who wish to migrate are cheated and lose many of their assets while attempting to migrate.

The 1982 Ordinance empowered the government to cancel and suspend licenses and forfeit security deposits if it is satisfied that the licensee's conduct is improper or is in violation of the law and the prescribed code of conduct. In the absence of documented complaints, it is not possible for the government to take action. In 2001, the then interim government prepared a strategy document. It prescribed recruitment of migrants through establishment of a database, or by registering the dalals with the recruiting agents. The next government in 2002 introduced the system of recruitment using a database. Technically, the recruiting agencies are supposed to recruit from this database alone, but in practice, agencies recruit on their own.

Gaps in the Recruitment Process

Labour recruitment is a major industry, not only in Bangladesh, but across South- and Southeast Asia, however the professionalization of the sector has not kept pace with the industry's growth over the past 30 years. Errant employers are not dealt with, migrant workers cannot access adequate redress mechanisms, and exploitation is able to occur unchecked. Two of the most problematic areas in which gaps in the recruitment process exist are in relation to the operation of sub-agents, and in the relationship between recruitment agencies in Bangladesh and those operating on the receiving state side.

Issues Related to Sub-Agents

1. There is a need for sub-agents, as recruitment agencies are often located in the cities, away from the rural areas where most recruitment occurs. Sub-agents are very much integrated into the process of recruitment, so much so that some agencies will not deal with prospective migrants without these intermediaries.
2. Many prospective migrants are poorly educated, lack literacy skills, and are applying for low-skilled jobs. These people tend to trust the local recruitment agent (who is often known to them) over agents from the cities. They are more likely to accept a position and initiate the process of overseas employment with the assistance of someone they know. As such, the sub-agents tend to be accountable to the people of the rural areas they service.

Often, there are multiple tiers of intermediaries, and multiple sub-agents handle prospective migrants before connecting with the actual recruitment agency.

At present, the entire recruitment system is in a state of flux as the state attempts to find ways to regulate the activities of the recruitment agencies and the sub-agents. BAIRA, the institution set up to serve as the ethics body for the industry, and to which all licensees must belong, has thus far failed to address the systemic problems associated with sub-agents.

A few options are available:

1. Impose the mandatory registration of sub-agents through BMET. This option, however, is impractical, given the lack of available resources within the department.
2. Impose the mandatory registration of sub-agents through BAIRA. This option would give the recruitment agencies the authority to regulate their own sub-agents. Agencies would be required to declare their sub-agents and issue them identification cards in order to operate on their behalf. This would render the sub-agents accountable to the agencies they work for, and would mitigate complaints of sub-agents that the agencies have cheated them out of commissions for services rendered. It should be made mandatory for

recruiting agencies to deposit a list of the employed sub-agents to respective local government offices (such as District Commissioners' Offices and Upazilla Offices) with a copy to BMET to facilitate access of aspirant migrants to the sub-agents on the one hand, and for the local government authorities to keep control over their activities, on the other.

3. In addition to the registration of sub-agents, the GoB could provide incentives for recruitment agencies to open branches in the rural areas they serve in order to close the distance between their operations and the people they seek to recruit.

Issues Related to Agencies Operating Abroad

Despite laws in the GCC countries prohibiting the sale of job opportunities to foreign recruiters, this practice is widespread. According to the President of the Sri Lankan Association of Licensed Foreign Employment Agencies, 90% of the visas they secured for migrants were through payments to recruiters based in the GCC.²⁶ Senior leaders of the recruitment industry of Bangladesh acknowledge that over the years, vested interest groups have developed among the recruitment circles in the countries of employment. This has led to situations under which work permits are no longer freely available as was in the case in the past, and the employers or the recruiters charge a 'premium' per permit that they issue on the recruiting agencies of sending countries.

A leading recruiter of Bangladesh, preferring anonymity for obvious reasons, states that the current rate for a work permit for an unskilled worker in the UAE is about US\$2,000. He further observes that unhealthy competition among the recruiting agencies of Bangladesh has shored up the cost of work permit and has thus led to exponential rise in the cost of migration in the country.²⁷

²⁶ 'Recruitment Practices for Overseas Employment in South Asia', RMMRU-DRC Regional Workshop Proceedings, July 8-9, 2008.

²⁷ A senior leader of Bangladeshi recruitment industry regrettably states that this unhealthy competition stems from the greed and lack of unity among the recruiters in Bangladesh. He informs that the Nepali recruiting agencies have taken a united stand against this illegal practice of 'visa premium' charge of the recruiters of the receiving countries. They have all agreed that none would pay more than US\$500 as facilitation fees, a position they zealously uphold. Personal interview with Mr. Reazul Islam, Senior Vice President, Bangladesh Association of International Recruiting Agencies, Dhaka, 2 December 2010.

In addition to these issues, there is no monitoring of this relationship, and the costs of job opportunities can increase to amounts that are as high as recruiters are willing to pay. It is at this point of collusion where the price for job opportunities is set, and these costs get passed down to the prospective migrants, regardless of the legally imposed limits on recruitment fees. The practices of recruiters on the receiving side need to be addressed.

Because of restrictions on outward remittances, these illegal levies cannot be paid through official channels, and as such foreign recruiters are vulnerable to being cheated by recruiters in the GCC. With no official record of these transactions, and because these transactions are illegal, there is no recourse for recruiters who lose money in these interactions. There is no means by which the market can be accessed fairly and with protection.

PHILIPPINES²⁸

Migration Context

The Philippines is the top migrant-sending country in the world²⁹. By end of December 2009, it was estimated that there were 8.579 million Filipinos³⁰, around 10% of the total population, living and working worldwide. Since 2006, more than a million overseas Filipino workers (OFWs)³¹ have left for work abroad each year. Deployment for 2009 totaled 1,422,586, 15% higher than the previous year, with daily deployment averaging 3,897. At the end of 2009, the stock of overseas Filipinos included almost 4 million temporary or contract overseas workers and more than half a million undocumented or irregular workers.

Philippine labor migration was initially dominated by male construction workers migrating to Saudi Arabia and other countries in West Asia, notably the GCC and Arab States. By the late 1980s to the early 1990s, OFWs, mostly women this time, also went to the Gulf as well as to East and Southeast Asia and other countries where there was notable economic growth. To date, OFWs are working and living in some 214 countries and territories around the globe. About 50% of the annual deployment is to the Middle East with Saudi Arabia consistently topping the list. In 2008, despite the global economic downturn, there was a remarkable increase in migration flows into the UAE – from 120,657 in 2007 to 193,810 in 2008. In 2009, deployment of OFWs to the UAE reached 196,815.³²

OFWs have been called the new heroes of the Philippines for the billions of dollars that they remit to the country every year (see Table 1), which grew at an average rate of 16% in the last five years. The country's remittances approximate some 10-13% of the country's GNP. They

²⁸ Information compiled by MFA based on the work and inputs of Ellene Sana, CMA, Philippines

²⁹ RP now world's top labor exporter, Christian V. Esguerra. September 5, 2007.

http://globalnation.inquirer.net/news/breakingnews/view/20070905-86922/RP_now_world%92s_top_labor_exporter

³⁰ <http://cfo.gov.ph/pdf/statistics/Stock%202009.pdf>

³¹ Overseas Filipino Workers (OFWs) “refer(s) to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker.” (Sec. 2. Section 3, paragraph (a) of Republic Act No. 8042, as amended by Republic Act 10022, 8 March 2010.

³² Source: www.poea.gov.ph

have outpaced the Philippines' traditional exports by some 15%³³, making OFWs the country's top export 'product'. In 2009, annual remittances computed from formal channels were a staggering US\$17.35B.³⁴ BSP estimates that remittances for 2010 can reach US\$19B to US\$20B.³⁵ These billions of dollars enable 60% (Ercof. 2005) of the Philippine population to have food on the table, send their children to school, and keep a roof over their heads. Overall, it is remittances that have kept the country's economy afloat for years on end. It must be noted however that the OFWs and their families pay a high price for these remittances. They have to endure enormous sacrifices, discrimination and exploitation at various stages of the migration cycle for prolonged periods of labor migration.

Table 1. Remittance of Overseas Filipinos by Top Ten Country-Source: 2003-2009
(In Thousand US Dollars)

	2003	2004	2005	2006	2007	2008 p/	2009 p/
TOTAL 1/	7,578,458	8,550,371	10,689,005	12,761,308	14,449,928	16,426,854	17,348,052
1. United States	4,299,850	4,904,302	6,424,848	6,526,429	7,564,887	7,825,607	7,232,661
2. Canada	27,072	67,338	117,061	590,627	595,079	1,308,692	1,900,963
3. Saudi Arabia	826,358	877,209	949,372	1,117,916	1,141,319	1,387,120	1,470,571
4. U.K.	271,034	280,805	300,725	561,670	684,007	776,354	859,612
5. Japan	346,057	308,128	356,659	453,398	401,612	575,181	773,561
6. Singapore	137,166	182,567	240,149	285,126	386,409	523,951	649,943
7. U.A.E.	160,822	183,442	257,429	427,246	529,963	621,232	644,822
8. Italy	309,807	449,289	430,071	574,662	635,944	678,539	521,297
9. Germany	95,526	108,124	142,530	162,020	207,935	304,644	433,488
10. Norway	13,935	18,627	19,814	128,279	159,150	185,619	352,957

p/ = preliminary

1/ = Breakdown may not add up to totals due to rounding

During the second Global Forum on Migration and Development (GFMD) held in Manila in October 2008, 160 member-countries of the United Nations listened to various experiences on migration. During this forum, the Philippines was lauded for its labor-export program and coached officials of other countries on how to handle overseas contract workers. But even as the Philippines appeared as a model of best practice in handling labor migration, reports of abuse, unfair labor practices, and human rights violations persist.

Formal Migration Processing & Support Institutions

³³ <http://globalbalita.com/2010/06/29/alarm-bells-on-remittances/>

³⁴ <http://www.bles.dole.gov.ph/HTML%20FILES/keylabor.html>

³⁵ <http://www.thenewstoday.info/2010/06/30/bsp.cites.need.to.optimize.every.ofw.dollar.html>

The following are some of the key institutions tasked with overseeing Filipino Labour Migration, as per RA 8042 as amended by RA 9422 and RA 10022:

Department of Foreign Affairs (DFA) / Foreign Service Posts (FSPs)

The DFA is mandated to formulate and implement protective policies and programs for OFWs and provide consular and legal assistance to OFWs in distress. It is put in place to advocate in international and regional fora for the rights and welfare of migrants, and to establish working relations with receiving countries. It is also to participate in the crafting of international and regional conventions, declarations (Omnibus Rules of RA 10022). In addition, the DFA, “...through its home office or foreign posts (embassies, consulates, missions), shall take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos.”

Department of Labor and Employment (DOLE)

DOLE shall ensure “that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centers or hospitals”

Philippine Overseas Labor Office (POLO) (DOLE overseas operating arm)

POLO is in place to “...ensure the promotion and protection of the welfare and interests of OFWs and assist them in all problems arising out of employer-employee relationships; coordinate the DOLE’s employment promotion mandate; verify employment contracts and other employment-related documents; monitor and report to the DOLE Secretary on situations and policy developments in the receiving country that may affect OFWs in particular and Philippine labor policies; supervise and coordinate the operations of the MWOOFRC (FWRC) (Omnibus Rules of RA 10022).

Filipino Workers Resource Center (FWRC)

The FWRC shall provide counseling and legal services, welfare assistance including procurement of medical and hospitalization services, information, advisory programs to promote

social integration (PAOS, settlement and community networking services, social interaction activities), register irregular/undocumented workers, implement DOLE and OWWA programs, human resource development (training and skills upgrading), gender-sensitive programs and activities to assist particular needs of OFWs, orient returning workers and other migrants, monitor daily situation, circumstances and activities affecting OFWs and other OFs, ensure labor and social welfare laws in receiving country are fairly applied to OFWs and other OFs and conciliate disputes arising from employer-employee relationship (Omnibus Rules of RA 10022).

Philippine Overseas Employment Administration (POEA)

“Shall regulate private sector participation in the recruitment and overseas placement of workers...formulate and implement...a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements...(regulate) and (manage) overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for OFWs and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers...shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights (including travel advisory)...(implement), in partnership with other law enforcement agencies, an intensified program against illegal recruitment...shall deploy only to countries where the Philippines has concluded bilateral labor agreements or arrangements...; shall recruit and place workers primarily on government-to-government arrangements and establish and administer their Foreign Employers Guarantee Fund for their monetary claims arising from breach of contractual obligations; shall exercise original and exclusive jurisdiction to hear and decide all pre-employment/recruitment violation administrative cases and disciplinary action cases and other special cases, involving employers, principals, contracting partners and OFWs processed by it” (RA 10022 and its Omnibus Rules).

Overseas Workers Welfare Administration (OWWA)

“The Welfare officer or in his absence, the coordinating officer shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual

obligations by agencies or entities and/or their principals (including representation and calling conferences or conciliation meetings to settle OFW complaints or problems)...formulate and implement welfare programs for OFWs and their families while they are abroad or upon their return...ensure the awareness by the OFWs and their families of these programs and other related government programs...pay repatriation-related expenses, such as fines or penalties, subject to guidelines prescribed (by its Board of Trustees) (RA 10022)...shall undertake the repatriation of workers in cases of war, epidemic, disasters and other similar events without prejudice to reimbursement by the responsible principal or agency, unless the latter cannot be identified; administer, control and supervise the emergency repatriation fund; shall have 24/7 Information and Assistance Center for continuous networking and coordination with FWRCs (RA 8042, Omnibus Rules of RA 10022).

National Reintegration Center for OFWs (NRCO)

NRCO shall provide the mechanism of reintegration of returning OFWs, serve as a promotion house for their local employment and tap their skills and potentials for national development, serve as One-Stop Center to address the needs of returnees and their families.

Technical Education and Skills Development Agency (TESDA)

Tasked by RA 7796 or the “Technical Education and Skills Development Act of 1994” to “manage and supervise technical education and skills development in the Philippines” towards the “development of the Filipino workforce with world-class competence and positive work values”. (TESDA 2010)

Technology Livelihood Resource Center (TLRC)

TLRC shall prioritize returning domestic workers and entertainers for training and livelihood development (RA 10022).

Migrant Labour Recruitment & Gaps in the Process

Numerous reports reveal that the paramount reason for leaving the country to work abroad is economic, specifically to provide for the increasing needs of growing families. In a series of six focus group discussions with 54 land-based migrant workers in Cavite, migrants reported that

financial and economic difficulties and escape from domestic and marital problems topped the motivations of OFWs to leave the country and their families. Since many of those who decide to migrate report feeling “*kapit sa patalim*” (forced to the wall), it becomes more likely that they will subscribe to anything that enables them to go, even if they are skeptical of the quality of the information they have received and regardless of the mechanisms that are in place for their protection.

Information for Prospective Migrants

Prospective migrants come to know about opportunities in a variety of ways, but most often information is passed through family, friends, and community members who have already had migration experiences. Through these personal channels, it is easy for misinformation to be spread. Migration success stories told within communities can be exaggerated by returnee migrants for a variety of reasons, and those individuals who are intent on promoting migration among their friends and family members may be motivated by profit rather than the desire to see the prospective migrant succeed. Indeed, prospective migrants are more likely to be convinced that an opportunity is better than it is when approached by someone who is known to them.

Widespread advertizing in newspapers and on television/radio by recruitment agencies and training institutes also provides information about labour migration opportunities. While the POEA has put into place strict rules for the advertising of jobs, many ads violate these rules; this is very difficult to effectively police.

Sub-Agents

Recruitment mainly happens in the countryside by sub-agents deployed by recruitment agencies. Licensed agencies employing sub-agents are required to register them formally with the POEA, however many sub-agents operate independently and are hired under the table by both licensed and unlicensed agencies. Some sub-agents operating illegally will make arrangements with licensed agencies to use agency logos on fake identification cards. Unregistered sub-agents have no formal affiliation with the recruitment agency/agencies they represent. They therefore lack accountability, and it is difficult for them to be tracked and/or sanctioned for unscrupulous or illegal activities.

Prospective migrants generally know the sub-agents who approach them (e.g. relatives, friends, neighbours, local officials, etc.), or, in the case that the sub-agent is a stranger, someone the prospective migrant knows usually refers the recruiter. As such, it is unlikely that the prospective migrant will suspect that the recruiter will deceive or cheat them. In addition, the prospective migrant is unlikely to know the law and his/her rights, making it easier for him/her to be convinced by the promises of the sub-agent. Because of the prospect of a job offer, prospective migrants are often willing to pay tens of thousands of pesos in fees to the sub-agent and recruitment agency. In some cases, migrants apply for loans from lenders at unfair rates.

Pre-Departure Programs

Mandatory pre-departure programs in the Philippines include pre-employment and pre-departure orientations (PEOs and PDOs) in addition other optional programs that include skills training, language instruction, retooling/upgrading, competency assessment/certification, certificate validation, job order/contract verification, and legal assistance. It is notable that the PDO is mandatory only for those who are ready to be deployed abroad, while the PEO has limited reach, especially at the barangay (neighbourhood) level in the countryside.

PEOs include information on illegal recruitment and trafficking in persons, while PDOS are specialized depending on the country of destination and the type of work the migrant will engage in upon arrival. POEA Deputy Administrator Atty. Hans Leo Cacdac explained that from an orientation and information relay approach, PDOs have evolved into an integrated public education program rooted to the overseas employment program's regulation framework, covering not only those going abroad (PDOs), but also those who are considering overseas employment (PEOS) as well as integrating the Pre-Licensing Orientation Seminar and the newly-developed Continuing Agency Education Program for licensed recruitment agencies. The POEA has also developed country-specific brochures and information (CMA, 2007). 397,595 ready-to-leave OFWs received PDOs from OWWA accredited PDO providers in 2008 while 220 trainers from accredited PDO providers for sea-based manning agencies were re-oriented on the new PDO curriculum (OWWA, 2008).

Director Marvie Ador of OWWA said that, ideally, PDOS should take a few days, and that it is better to take the PEOs even before deciding to work abroad. PDOs cannot completely educate an OFW particularly because the PDOs are taken when the OFW's mind may be on the family he/she is leaving behind. She also said that some providers take shortcuts while others charge P100/participant. The OWWA would be better suited to offer the PDOs, but with 5,000 to as many as 10,000 taking PDOS each day, this would entail half of its personnel conducting PDOs full time; as such, PDOs are conducted by accredited providers, including NGOs (Ador, 2010).

Medical Examinations

Medical examinations are required for some destinations, including the GCC. The cost of medical exams must be borne by the migrant. In some cases, the prospective migrant is told to travel to the city to await the processing of his/her application. The wait can be so long that the recruit may have to repeat his/her medical exam and x-ray test, which is only valid for a few months; this can cost up to 2,500 pesos. For Middle Eastern destinations, medical tests must be conducted at GCC-accredited offices of which there are only 17; these medical clinics also practice a decking system³⁶.

Fees

Although some recruitment agencies in the Philippines have a 'no fee' policy, agencies typically charge migrants for their services. The Philippine Government has set a maximum fee of one month's salary; for recruitment to the UAE, fees range from 13,500 to 40,000 pesos.³⁷ It is noted that these fees are generally much lower than the fees paid by migrants from other countries in the region, however recruitment agencies often charge more than the maximum and issue fraudulent receipts. Many workers agree to salary deduction schemes to avoid high-interest loans in the Philippines. Through these arrangements, money is withheld from their pay until the recruiter's fees are paid. Again, these deductions often exceed the maximum recruitment fee. Other migrants pawn their valuables, sell their property, etc. to finance their migrations. Unauthorized fees expose migrant workers to undue risk and exploitation.

³⁶Medical decking system is already included as a prohibited act under RA10022.

³⁷ MPI Report, 2010

Apart from placement fees, the following documentation costs are also chargeable to OFWs:

- a) Passport
- b) NBI³⁸/Police/Barangay Clearance
- c) Authentication
- d) Birth Certificate
- e) Medicare/ Philhealth
- f) Trade test, if necessary
- g) Inoculation, when required by host country
- h) Medical Examination Fees
- i) Pag-Ibig Contribution

Contracts

Contract substitution is a common complaint among Filipino migrant workers. Through this practice, migrants are asked to sign more than one contract prior to departure (sometimes in a language they do not understand), or they are asked to sign a new contract upon arrival in their country of destination. These ‘second’ contracts often stipulate terms that are less favourable than those to which the migrant originally agreed – lower wages, longer working hours, etc.

Part of the problem is that many migrants do not understand that the contracts signed are meant to be binding legal documents and are not just ‘for show’ to the authorities.³⁹ Recruiters often engage in the practice of contract substitution because they know that it will be relatively easy to convince the migrant to accept less favourable terms, and they are also able to serve their foreign counterparts – the recruitment agencies in the destination countries – by offering competitively priced labour. “Some agencies might not even inform migrants that they will receive a lower salary than stated in the contract because they are banking on the high probability that migrants, fearing deportation, will not complain.”⁴⁰

Support for Migrants Abroad

³⁸ National Bureau of Investigation

³⁹ MPI Report, 2010

⁴⁰ MPI Report, 2010

FWRCs are where distressed OFWs can go when they require assistance. Although financed by OWWA, these offices serve both documented and undocumented OFWs, but only women are allowed to stay temporarily, in due consideration of their greater vulnerability to human rights violations⁴¹. These offices are supposed to be open 24/7 including Saturdays, Sundays and holidays, staffed by government personnel, service attachés or officers representing other government agencies abroad and, if available, individual volunteers and bona fide NGOs from host countries. The newly passed RA 10022 also provides for a Shari'a or human rights lawyer, a psychologist and a social worker for Centers in high-risk countries. The government is also mandated to hire public relations officers or case officers conversant, orally and in writing, with the local language, laws, customs and practices. The Labor Attaché is in charge of coordinating Center operations and providing updates to the Chief of Mission (Sec. 12, RA 10022).

Assistance to OFWs onsite, especially to those in distress, includes legal assistance, documentation of undocumented/irregular OFWs, shelter and repatriation (OUMWA, OWWA, post and FWRC). Conciliation services are handled onsite at the embassies and consulates (and at the Conciliation Office of the POEA; Administrative cases not settled during conciliation are elevated to POEA's Adjudication Office. The National Labor Relations Commission (NLRC) arbitrates money claims.

Insensitive, incompetent Foreign Service Post (FSP) personnel are the main problems encountered by migrants in distress; these issues are related to training. The issue of FSP personnel not rendering or rendering insufficient or insensitive assistance and the lack of knowledge of processes in the host country can compromise the resolution of some cases. Often, OFWs are unwilling to file cases of abuse by recruiters and/or employers because they do not trust the justice system, they fear their abusers, or they lack familiarity with redress mechanisms. Aggrieved OFWs have neither the time nor the resources for long-drawn out cases.

Labour attachés are not equipped to verify all employers prior to departure, nor to monitor the worker's situation after deployment due to a lack of human and financial resources. There is also a shortage of resources for legal assistance and to fund shelters for distressed workers.

⁴¹ Fos, 2010

Monitoring of Recruitment Agencies

Recruitment agencies in the Philippines are overseen by the POEA, and are subject to a compendium of strict rules and regulations aimed at protecting migrant workers from unscrupulous activities and abuses. All agencies are required to be licensed, and any sub-agents employed by the agencies must be formally registered with the POEA. The POEA aims to make it difficult to enter the industry, and easy for licenses to be cancelled⁴² to ensure that the private sector follows the rules.

The POEA organizes regular inspections of recruitment agency operations. Agencies in good standing are subject to inspection once every 4-years, and newly licensed agencies are inspected one year after receiving their permit. Agencies are subject to spot inspections if complaints have been lodged against them. With 6 full-time inspectors on staff, there is one inspector for every 317 agencies.⁴³

Mechanisms for Redress

Under Philippine law, the employer and the recruitment agency can be held jointly and severally liable for claims arising from the employer/employee relationship. The law stipulates that in the case of termination of employment without just, valid or authorized cause, the worker shall be entitled to a full reimbursement of his/her placement fee with interest (12% per annum), in addition to any remaining salary for unexpired portion of the employment contract, or three months for every year of the unexpired term, whichever is less.⁴⁴

As per provision of RA10022/ RA8042, the migrant worker can file charges of illegal recruitment and exaction of exorbitant fees against the recruiter. If the same recruiter has defrauded several people, the penalties are stiffer. However, in many instances, cases are unsuccessful because either the recruiter has disappeared and the migrant does not know how to proceed, or the recruiter was able to settle the matter with the migrant directly. Because the prospective migrant has invested so much in the process (time, money, personal investment), it is more likely that he/she will accept an offer of conciliation from the recruiter.

⁴² Interview, Ellene Sana, Centre for Migrant Advocacy, Philippines

⁴³ MPI Report, 2010

⁴⁴ NLRC primer, 2010

Despite the fact that the prohibited acts are strict and enumerated by the Philippine Government, it is often the case that migrants are unwilling to report mistreatment or malpractices of recruitment agencies. This is largely due to the fact that the recruitment agencies in the Philippines form a sophisticated network; information is shared among the agencies. The recruiters keep a blacklist of workers who have been deemed, for various reasons, unemployable. This is well known among migrants, and to avoid damaging their chances of going abroad with a different agency, it is unlikely that they will complain or seek redress.

Lack of scope of current instruments

One of the most significant gaps between policy and practice is that current provisions and institutions, while comparatively robust, fail to apply to a large number of migrant workers – those who do not migrate through recruitment agencies or through government-to-government agreements. In the case of the Philippines, this group of migrants makes up a significant number of those migrating for work annually. POEA statistics reveal that ‘rehires’, or workers that renew contracts or return to their former employers without interventions by recruitment agencies, consistently outnumber the annual number of ‘new hires’ (Table 2). This indicates that OFWs not only stay for prolonged periods abroad, but also that private agencies are not involved in the migration process of the majority of workers. Tables 3 and 4 show that, increasingly, new hires are workers in the low to middle-skilled job categories, with domestic work topping the list; these workers are most likely to use recruitment agencies and sub-agents to facilitate their migrations.

Table 2 – OFW Deployment, 1999-2009

Year	Total	Landbased	New Hires, (%)	Rehires, (%)	Seabased
1999	837,020	640,331	237,714 (37.12)	402,627 (62.87)	196,689
2000	841,628	643,304	253,418 (39.39)	389,886 (60.61)	198,324
2001	866,590	661,639	271,085 (40.97)	390,554 (59.03)	204,951
2002	891,908	682,315	289,288 (42.40)	393,027 (57.60)	209,593
2003	867,969	651,938	279,565 (42.88)	372,373 (57.12)	216,031
2004	933,588	704,586	284,912 (40.44)	419,674 (59.56)	229,002
2005	988,615	740,632	289,981 (39.15)	450,651 (60.85)	247,983
2006	1,062,567	788,070	317,680 (40.31)	470,390 (59.67)	274,497

2007	1,077,632	811,070	313,260 (38.62)	497,810 (61.38)	266,553
2008	1,236,013	974,399	376,973 (38.69)	597,426 (61.31)	261,614
2009	1,422,586	1,092,162	349,715 (32.02)	742,447 (67.98)	330,424

Source: POEA annual statistics, 2003, 2004, 2005, 2006, 2007, 2008, 2009 (www.poea.gov.ph)

Table 3 – Deployed OFWs – New Hires. Top Ten Occupational Group by Sex, 2006-2009

	2006		2007		2008		2009	
	M	F	M	F	M	F	M	F
Household & related Workers	1,590	89,861	2,959	44,919	2,240	47,842	1,888	69,669
Production & Related Workers			15,277	10,640				
Service Workers			5,026	5,294			908	4,219
Overseas Performing Artists	709	6,722						
Factory & related Workers	30,544	12,690						
Construction Workers	40,178	2,862						
Plumbers & Pipefitters			9,168	19	9,643	21	7,702	20
Laborers/ helpers General			6,145	1,172	8,175	1,536	7,105	994
Wiremen Electrical			6,942	38	8,812	81	9,709	43
Welders & Flame-Cutters					6,746	31	5,870	40
Charworkers, Cleaners & Related Workers			927	5,373	1,851	9,769	2,140	7,916
Caregivers & caretakers	842	13,570	1,070	13,329	595	9,514	507	8,721
Medical Related Workers	2,650	15,081						
Nurses professionals			1,137	8,041	1,556	9,939	1,599	11,866
Building Caretakers & Related Workers	2,103	10,191			1,139	5,471		
Hotel & Restaurant related Workers	6,210	9,483						
Waiters, Bartenders & Related Workers			3,677	5,599	5,183	8,728	4,978	6,999
Engineers & Related Workers	10,754	415						

	2006		2007		2008		2009	
Dressmakers, Tailors & Related Workers	375	7,456						
Total New hires	123,688	184,545	160,047	146,337	174,928	163,338	156,545	175,298

Source: www.poea.gov.ph

Table 4 – Number of Deployed Landbased Overseas Filipino Workers by Major Occupational Category, New Hires.⁴⁵ 2003-2009

Major Occupational Group	2003	2004	2005	2006	2007	2008	2009
Total	241,511	281,762	284,285	308,122	306,383	338,266	331,752
Professional, Medical, technical & related Workers	78,956	94,147	63,941	41,258	43,225	49,649	47,886
Administrative & Managerial Workers	387	565	490	817	1,139	1,516	1,290
Clerical Workers	3,965	5,323	5,538	7,912	13,662	18,101	15,403
Sales Workers	2,490	3,950	4,261	5,517	7,942	11,525	8,348
Service Workers	84,021	113,423	133,907	144,321	107,135	123,332	138,222
Agricultural Workers	413	632	350	8807	952	1,354	1,349
Production Workers	61,352	63,719	74,802	103,584	121,715	132,295	117,609
Others	9,927	3	996	3,906	10,613	494	1,645

These trends have important consequences that policy-makers should consider in the refining and development of policies aimed at protecting the rights and welfare of OFWs. The fact that such large numbers of OFWs are migrating as rehires, without the use of recruitment agency services, eliminates the possibility of these workers making use of the joint and several liability provision mentioned above. For low- and middle-skilled workers who make up the majority of new hires and who most often use recruitment agencies, the consequences are double-edged. On one hand, they are afforded additional legal protections and have access to multiple redress mechanisms; on the other, they make up the group of workers that are most vulnerable to the unscrupulous practices of recruiters and employers.

Point of Collusion

⁴⁵ Combined total number of deployed OFWs – new hires with occupational disaggregation covers at least 95% of the total deployed land-based new hires.

As is the case in the other countries in this study, recruiters in the Philippines maintain business relationships with recruiters in the countries of destinations that are often detrimental to the rights and welfare of migrant workers. Recruiters play a dual role – they provide a service to both foreign employers by answering their demand for workers, and they provide a service to Filipino workers by answering their demand for employment, given the few opportunities domestically. Both the employer and the employee entrust every step of the process to the recruitment agencies, putting them in a powerful position. Costs incurred by agencies are invariably passed on to the migrants, and the relationship between the recruitment agencies provides a convenient means by which recruiters on both sides can shift/evade responsibility for malpractices by pointing to problems of jurisdiction.

Summation and General Recommendations

The data presented on these four sending states demonstrates that, in spite of country-specific contextual factors, particularly with respect to government responses to recruitment agency malpractices, the recruitment process is fairly uniform across the region. Gaps between policy and practice are strikingly similar, as are the consequences of these gaps for those migrating for work.

Emerging from this analysis are two key concerns: the need to better regulate the networks of sub-agents that are operating in each of these sending countries, and the need to oversee the operations of recruitment agencies on the receiving side. Sending state governments have employed various methods in their attempts to protect their citizens and to provide support for migrants in distress, despite limited resources and the vast (and growing) number of people in need of such services. However, these programs and policies treat the symptoms, rather than the roots of the problem.

Migrant labour recruitment is a major industry, fuelled by profit. Those who hold the supply have the power to set the price for job placements – i.e. the recruitment agencies in the receiving states. The price for these positions is unregulated, and allowed to increase depending on how much sending state agencies are willing/able to pay. Due to the intense competition among recruiters with each country, and recruiters in different countries, there are enough agencies to keep the receiving state recruiters profitable. Costs get passed on to the migrant workers, and the consequences of this burden manifest in exploitation, fraud, abuse, and all manner of illicit and illegal practices. Sub-agents also benefit from a lack of regulation, as they are able to operate with impunity, again at the expense of migrant workers.

In order to halt these practices, the relationship between recruitment agencies in the sending and receiving countries needs to be scrutinized and called into question. Laws prohibiting the sale of visas and the charging of fees to sending state recruiters must be strongly enforced, and the practices of recruiters on both sides need to be monitored. Sub-agents need to be registered and regulated in order to discourage the malpractices that are rampant in the industry.

While other problems persist, in large part due to a lack of government resources and issues of legal jurisdiction, monitoring and enforcement of policies, etc., it is likely that many of these problems would be less acute were the above problems adequately addressed. Cooperation between sending and receiving states is necessary in order to properly tackle these pressing issues that have been allowed to persist for far too long.

Recommendations for Sending & Receiving State Governments

1. Sending states must identify and implement realistic strategies to register sub-agents operating on behalf of recruitment agencies, and regulate their activities. Where resources permit, this can be a government function, however it is likely that a more cost-effective strategy would entail registration through industry professional associations.
2. Sending states must enforce laws prohibiting the operation of unlicensed recruitment agencies. In rural areas that are under-serviced by licensed recruitment agency offices, economic incentives should be provided to encourage city-based agencies to open provincial branches in order to discourage the operation of unlicensed recruiters due to a lack of healthy competition.
3. Sending states must provide thorough and gender-sensitive training to frontline staff at embassies and foreign missions, as well as at domestic foreign employment offices in order to provide appropriate support for migrant workers in distress, and who have been subject to the malpractice of unscrupulous agencies and/or sub-agents.
4. A similar study should be undertaken on the receiving state side, with insights collected from all parties concerned – recruitment agencies, employers, migrant workers, government, and migrant support organizations – to contribute to the elaboration of a holistic overview of the current situation of migrant labour recruitment.

5. Sending and receiving states must both acknowledge and investigate the point of collusion between domestic recruitment agencies and their foreign counterparts. Sending and receiving state governments should cooperate to institutionalize these relationships so that cross-border transactions do not occur without regulation. Laws prohibiting the sale and purchase of visas for migrant workers should be properly enforced on both the sending and receiving sides.

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