

The ILO, with the support of the Swiss Agency for Development and Cooperation, is implementing a new regional labour migration project to promote fair migration and address forced labour and trafficking for labour exploitation. The Regional Fair Migration Project in the Middle East (FAIRWAY) – focuses on the plight of the most vulnerable workers: those in domestic and construction work.

10 THINGS GOVERNMENTS CAN DO TO ENSURE FAIR RECRUITMENT

For further information visit the FAIRWAY project page (ilo.org/fairway) and the ILO's Regional Office for Arab States labour migration page (ilo.org/roasmigration).

The recommendations of this paper are based on the white paper "Ways forward in the recruitment of low skilled workers in Asia-Arab States corridor" (2016).

The responsibility for opinions expressed in this paper and this document rests solely with the author, and publication does not constitute an endorsement by the International Labour Office.

**FAIR
WAY**



MANDATE THAT WORKERS SHOULD NOT PAY FOR RECRUITMENT, AND ENSURE THAT THIS IS MADE TRANSPARENT IN CONTRACTS

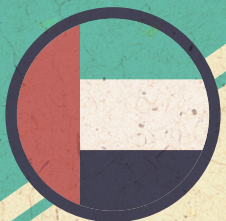
Based on the number of Asian migrants in Gulf countries, unauthorized cash transactions towards recruitment potentially amount to around **US\$10 billion** over the last decade

Unauthorised charges by recruitment agencies to low-skilled migrant workers from Asia are a multi-billion dollar industry. A recent study notes that Bangladeshi workers going to a Gulf country can pay **more than US\$1,229 per worker above the actual documented costs**. Meanwhile, recruitment fees and costs of high-skilled workers are rarely paid by the workers themselves, which avoids the situation of being charged exorbitant fees over-and-above actual costs.

This culture of low-skilled workers being subject to unauthorised charges for their recruitment must be changed. A key way to do this is for destination countries to mandate that workers do not pay for recruitment at all - directly, or indirectly (through salary deductions).

A change in this culture of payments can be achieved by:

- Working with governments in countries of origin to create transparency on real recruitment costs and fees (as opposed to unauthorized additional charges);
- Mandating that no visas will be issued to workers who are required to pay anything for their recruitment.
- Not issuing additional work visas to employers who allow payment of recruitment costs and fees by migrant workers.

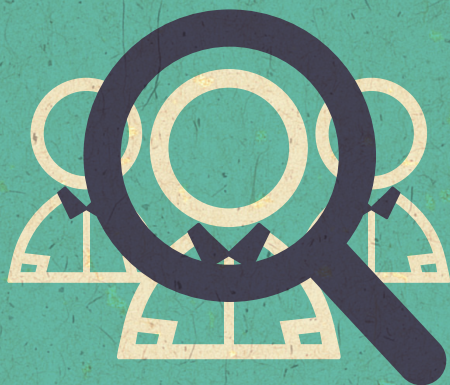


UAE

Promising practice: The UAE law prohibits accepting or demanding payment from workers “whether before or after recruitment” (Article 18 of UAE Labour Law No. 8, 1980). The Government’s promotional materials for arriving migrant workers state, for example, that the employer must pay all recruitment fees including those of the recruitment agency in the country of origin, travel and visa to the UAE, medical tests and residence permits.



REQUIRE A MANDATORY 'LABOUR RECRUITMENT COST ANALYSIS' FOR ALL GOVERNMENT TENDERS



Using a “lowest price technically acceptable” policy for government contracts can often disguise and even facilitate recruitment violations, as companies compete to get the lowest quote, often at the expense of migrant workers who pay recruitment fees and costs on behalf of their employers.

Project tenders – especially in construction, cleaning and other services - should include a separate, transparent '**Labour Recruitment Cost Analysis**' within the bidding proposal that details variable and fixed costs of recruitment, including labour costs of subcontractors.

It should be clear which recruitment agencies will be used, and whether they are licensed, audited and accredited as fair, ethical and compliant (including not charging fees or costs to workers). Any contractor or subcontractor should be identified in the Cost Analysis. Special scrutiny should be particularly taken for especially low bids.

Promising practices: Ensuring transparency in government contracts is the focus of the US presidential executive order “Strengthening Protections Against Trafficking in Persons in Federal Contracts” (2012) which prohibits human trafficking activities not just by federal prime contractors, but also by their employees, subcontractors, and subcontractor employees. It requires prime contractors providing large overseas contracts to develop and maintain detailed anti-trafficking compliance programs, and provide annual certification of their efforts.



An emerging technology which can support transparency in supply chains – including in construction - is “blockchain” technology. The application is increasingly being tested in labour recruitment and human resource management to provide transparency and secure traceability of certification and other data.



ONLY LICENSE FAIR AND ETHICAL RECRUITMENT AGENCIES AND ENSURE THAT ONLY THESE ARE USED IN GOVERNMENT CONTRACTS



BAHRAIN

Fair recruitment is “recruitment carried out within the law and with respect for human rights, without discrimination and protecting workers from abusive situations”. The two elements of ‘compliance’ and ‘respect of human rights’ are important, as a recruitment agency can be ‘compliant’ under national legislation but not be in line with international standards and hence not be ‘fair or ethical’.

Regional coordination between origin and destination country governments can **establish licensing and accreditation of fair and ethical recruitment agencies in origin countries as exclusive labour suppliers to Arab countries**. This should also apply to placement agencies and manpower outsourcing agencies in destination countries.

Multilateral cooperation is also needed to establish harmonized laws between origin and destination countries to ensure fair recruitment regulation and enforcement.

Promising practice: The Bahrain Labour Market Regulatory Authority registers and monitors recruitment agencies and can investigate fraudulent recruitment practices. They are required to attest to the validity and authenticity of documentation for work visas and to verify the existence of an employer and workplace so workers are not left stranded and undocumented. A blacklist is maintained on employers and recruitment agencies that have committed offenses or misled migrant workers, banning them from future hiring. An explanatory brochure is provided to all arriving migrant workers in their own language, and a SIM card which can be used to report grievances and violations. All information concerning their work permit is transferred to the SIM card.



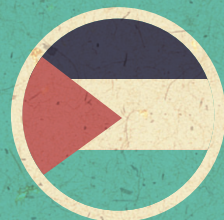
DEVELOP STANDARDIZED CONTRACTS TO ENSURE PAYMENT OF MINIMUM WAGES AND PREVENT CONTRACT SUBSTITUTION



Legal reform in Arab countries should devise or improve standard contracts for migrant workers in different sectors, including a standardized minimum wage across sectors. Compliance should therefore mean not only compliance with laws, but also with the provisions contained in the standard contract.

This is critical where there are contradictions in the laws between origin and destination countries.

Therefore, the contract (backed by effective civil or contract law) creates the standard to which the employer must comply and **the law should stipulate that in case of disputes, the language version that is understood by the migrant worker will prevail.**



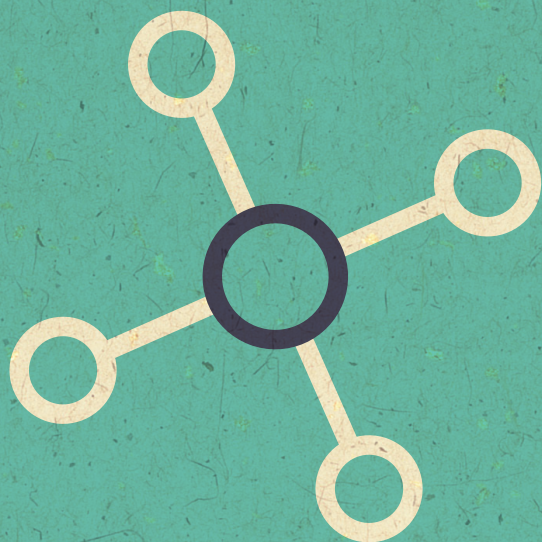
JORDAN

Promising practice: A unified, standardized contract for all migrant workers in Jordan's garment sector was developed in 2015 and agreed upon by two apparel employer associations and Jordan's garment union.

The contract is helping to end the practice of contract substitution. Also, the contract will give migrant workers a clearer understanding of their working conditions and offers a certain amount of salary irrespective of nationality.



PILOT E-RECRUITMENT THROUGH A CENTRAL LABOUR CLEARING HOUSE



A central clearing house could be established in the destination countries for recruitment, run by the government authorities, where possible in conjunction with employer and employee associations.

The central clearing house would be **responsible for registering**, and **monitoring** entering and exiting migrant workers, and for **storing documentation** regarding the workers' qualifications, experience, contracts, conditions – and costs – of their recruitment, possible job switches/labour market mobility and other data.

Doing so transparently would contribute to bringing down the overall costs of recruitment to the benefit of employers of migrant workers.

This data could be accessed by government, employers and workers. It would improve statistics on labour migration, and facilitate more targeted labour inspection. Workers who have completed their contracts, or been made redundant, could be redirected through the clearing house to other employers, without having to leave the country (thus reducing overall recruitment costs to employers).



Promising practices: EURES (the European Job Mobility Portal) - a European cooperation network which provides information as well as labour recruitment and placement services. It has a portal network of 1,000 EURES advisors who maintain daily contact with employees and employers across Europe. An e-portal for migrant domestic workers in the Kingdom of Saudi Arabia, and a similar e-recruitment mechanism for low skilled workers in India may also hold promise, pending an independent review of their capacity to protect migrant workers.



EXPLORE OPPORTUNITIES FOR GOVERNMENT-TO-GOVERNMENT RECRUITMENT TO REDUCE THE NEED FOR RECRUITMENT AGENCIES



Government-to-government recruitment – where governments in origin and destination manage recruitment of workers directly – is often associated with **far fewer fraudulent activities and much lower overall recruitment costs** when such agreements are in place.

By coordinating agreements with governments of origin countries and employing companies, much is to be gained by reducing the costs of intermediary brokerage and ensuring payment of fees and costs by employers, while enhancing the focus on skills, training and productivity in the migrant labour work force.



Promising practice: Korea's Employment Permit System (EPS) – a government-to-government recruitment program brings workers from 15 countries to work in Korea's small and medium-sized businesses. A major achievement is the reduction in the average recruitment costs per migrant worker from US\$3,509 under the previous trainee system in 2002 to US\$927 under the EPS system in 2011. However even these lower costs are currently still paid by migrant workers rather than their employers.



ESTABLISH JOINT AND SEVERAL LIABILITY SCHEMES & ENSURE LEAD CONTRACTORS ARE HELD LIABLE FOR RECRUITMENT ABUSES IN THEIR SUPPLY CHAINS

Lead companies have authority to monitor and cancel contracts if the work is not up to standard, particularly in migrant labour recruitment practices.

Subcontracting diffuses costs, risk and legal liability down the supply chain. However, lead companies do maintain control of the work that is outsourced, and are thus at risk of reputational damage in case of abuse of migrant workers.

Because the lead company profits from its subcontractors, they should be liable for the standards, abuses and fraudulent activities of those subcontractors, and have the power to correct them. This can be achieved through joint and several liability schemes.



Promising practices: In the Netherlands, there is a combined legal and voluntary system of joint liability. All contractors are liable for violations of their subcontractors, including recruitment practices where migrant workers at destination can seek compensation in the courts for joint liability claims. The certification and licensing of recruitment companies is voluntary but regular government audits do often result in suspensions and penalties.

In Canada, the Manitoba Worker Recruitment and Protection Act (WRAPA), a licensing system for agencies recruiting migrant workers, provides a proactive enforcement mechanism. WRAPA bans recruiters from charging any fees to foreign workers and prohibits employers from recovering recruitment fees from workers. Employers are liable for recruitment fees charged to workers if the employer recruited the worker with an unlicensed recruiter. The Act also includes specific offenses for employers who utilize unlicensed recruiters.



CLAMP DOWN ON VISA TRADING AND OUTSOURCING AND ENSURE THAT WORKERS WHO BECOME IRREGULAR IN THIS WAY ARE PROTECTED

Up to **15%** of the workforce in Gulf states may have entered on “free visas” - meaning hundreds of thousands of workers who become irregular through no fault of their own.



Under the kafala sponsorship system, workers must be sponsored by an individual employer (the sponsor) and may only work for that employer. Free visas are work visas where there is a sponsor, but no real employer on arrival, in practice enabling migrant workers to - for instance - manage a shop, work for themselves or a third party.

Although illegal in most countries, **visa trading continues to be practiced** where companies obtain visas, and sell them on for profit. Working for an employer other than the one registered on the visa is illegal, and renders the worker an irregular migrant.

Governments should introduce stricter licensing as well as monitoring and inspections of outsourcing agencies, but also ensure due diligence in ascertaining the reasons for irregular migrant workers' presence, minimize costly detention and deportation and maximize regularization of migrant workers who became irregular beyond their control with willing employers.

Promising practice: US Trafficking Victims Protection Re-authorization Act (2013) states that: 'Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation' (including irregularity through no fault of their own).



UNDERTAKE SPECIFIC MEASURES TO PROTECT MIGRANT DOMESTIC WORKERS



Migrant domestic workers are amongst the most vulnerable migrant workers in recruitment and work in the Arab States, yet they contribute substantially to a well functioning economy as recognized in agreed target 5.4 of the UN Sustainable Development Goals.

Their vulnerability stems from a number of factors including:

- Exclusion of domestic work from the protection of the labour law in most Arab States;
- Restrictions on freedom of movement by employers through widespread passport confiscation and withholding of salaries despite laws prohibiting this.

Domestic workers **should be brought under the protection of the labour law** and fair and ethical recruitment initiatives for domestic workers should be explored.



KUWAIT

Promising practice: Although domestic workers are explicitly excluded from protections under the Labour Law, in June 2015, a separate law regulating the domestic work sector was adopted by Kuwait's national assembly, providing some labour rights to this vulnerable group of workers – including a minimum wage. The lack of a credible mechanism to enforce this law remains a shortcoming however.



ESTABLISH CREDIBLE COMPLAINTS MECHANISMS FOR MIGRANT WORKERS TO REPORT ABUSE



Migrant workers have little access to effective complaints mechanisms in both origin and destination countries in the Asia-Arab States corridor.

While telephone hotlines and online complaints facilities have been established in several countries, there is little evidence that these are regularly accessed and provide prompt and gender-sensitive support. The extent to which such complaints have led to sustainable remedies is also, often, unknown.

Governments need to be more transparent with data on complaints issues to allow better analysis and suggestions for remedies, and to demonstrate the effectiveness of their law enforcement. The key to any credible complaints mechanism is its ability to operate in an independent and neutral manner, so migrant workers are empowered with the confidence that they can make a complaint without fear of retribution.



Promising practice – Recruitment violations reporting system by Migrant Forum Asia is an innovative example of reporting, which also features in the migrant worker recruitment monitoring website under construction for use in four pilot countries in Asia (i.e. Indonesia, Malaysia, Nepal, and the Philippines) under the ILO's FAIR initiative.