



International
Labour
Organization

Fair
Recruitment
Initiative

► Labour inspection and monitoring of recruitment of migrant workers

Technical brief



▶ Introduction

Labour migration may benefit employers and workers, and across the world recruitment agencies play an important role in matching migrant workers with available jobs. However, while the cost of recruitment of higher skilled migrant workers tends to be paid by employers, millions of lower skilled migrant workers continue to pay recruitment fees and related costs for job placement abroad in sectors such as agriculture, construction, garments and manufacturing, hospitality and transportation. Especially where these fees and costs to migrant workers are inflated, they may result in debt, and situations akin to forced labour. Recruitment-related deception, contract substitution, placement in undeclared work¹ and abuse of vulnerability during the recruitment process (especially of migrants in irregular situations) are other ways through which migrant workers may be exploited.

These recruitment-related abuses are widely documented² and contribute to a multi-billion dollar business³ where culprits appear to be able to operate with a high level of impunity and where few countries at best report comprehensive evidence of effective law enforcement against unscrupulous recruiters. Such **recruitment-related abuse affects the lives of millions, and is an impediment to achieving labour-related targets under the Sustainable Development Goals (SDGs)** - in particular SDG target 8.7 (elimination of all forms of forced labour and human trafficking) and SDG target 8.8 (protect labour rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants (...)) – **and compromises countries' obligations pertaining to the ILO Fundamental Principles and Rights at Work**⁴.

Regulation and monitoring of recruitment modalities - including operations of private recruitment agencies - are key to making progress towards decent work for all, including migrant workers. Although the social partners as well as non-governmental organizations can contribute to recruitment monitoring through self-regulation mechanisms, awareness raising and advocacy campaigns, it is **States who bear the primary responsibility** for regulating and monitoring recruitment modalities, including the operations of private recruitment agencies⁵.

Labour inspectorates' prime mandate is to monitor conditions of work. In addition, they and related administrative authorities can play a critical enforcement role towards fair recruitment, through monitoring of private recruitment and placement agencies, detection of abusive recruitment practices, processing of complaints and application of sanctions in both countries of origin and destination of migrant workers. This is recognized in recent international standards (see box 1).

1 Undeclared work: any paid activities that are lawful as regards their nature, but not declared to public authorities, preventing workers from accessing social protection and making them vulnerable to abuse. As defined by the Communication from the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Stepping up the fight against undeclared work COM/2007/0628.

2 A non-exhaustive list includes the following:

- The ILO reported that of the almost 25 million people in forced labour in 2017, almost a quarter are migrants. Forced labour generates 150 billion USD of illicit profits annually.
- The European Platform Tackling Undeclared Work has produced a range of studies and reports on labour exploitation of migrant workers
- The United States issues an annual report on human trafficking, which includes attention to recruitment-related abuse.
- Recruitment-related abuse of migrant workers in prominent corridors, such as Central – North America and Asia – Arab States, has also been documented widely (see amongst others Amnesty International, HRW, ILO, IOM).

3 An estimated USD 5 to 10 billion in illegally charged recruitment fees per year. See: ILO, 'Training toolkit on establishing fair recruitment processes; Module 1 – Why fair recruitment matters' (2018).

⁴All ILO member states have an obligation to prohibit, and address as a criminal offence, all forms of forced or compulsory labour – including debt bondage as a result of unfair recruitment - in line with the ILO Forced Labour Convention, 1930 (No. 29), and to advance prevention, protection and compensation measures, as required by the 2014 Forced Labour Protocol. This obligation stems from the 1998 ILO Declaration on the Fundamental Principles and Rights at Work and it applies to all ILO member States, even if they have not yet ratified the eight ILO fundamental Conventions; This also requires more regular reporting to the ILO supervisory machinery.

⁵ILO Private Employment Agencies Convention, 1997(No. 181) recognizes the role that private employment agencies may play in a well-functioning labour market, and recognizes the need for governments to regulate and monitor the activities of private recruitment agencies in an effort to prevent abusive practices and ensure the protection of migrant workers' rights.

Box 1: Role of the labour inspectorate pertaining to recruitment - in International Labour Standards and global policy instruments

- Relevant recent International Labour Standards that highlight the role of the labour inspectorate and related authorities in recruitment include the ILO Forced Labour Protocol P29 (2014), which spells out measures to prevent forced labour, including in Article 2 cii: '(strengthening) labour inspection services and other services responsible for the implementation of legislation (against forced labour)'. The accompanying ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) states further: 'member states should take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as regulating or licensing these services (Article 8e), while the ILO Private Employment Agencies Convention, 1997 (No. 181) requires from ratifying States that 'supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities' (Article 14(2)).
- The important role of labour inspectorates in recruitment is also highlighted in the non-binding ILO General Principles and Operational Guidelines for Fair Recruitment (GPOG) (i.e. guideline 5: 'Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take special measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons') and in the non-binding Global Compact for Safe, Orderly and Regular Migration (i.e. objective 6f on 'enhancing abilities of labour inspectors to better monitor recruiters, employers and service providers in all sectors').

► Scope of the technical paper

While the potential role of labour inspectorates (and related administrative authorities) towards fair recruitment is obvious in the above-mentioned international labour standards and global policy instruments, their mandate is less clear in practice, and depends to a large extent on the regulatory modalities that countries have chosen to address labour migration, forced labour/trafficking and recruitment, and the extent to which national labour laws cover the various sectors of the economy. Moreover, modalities also differ necessarily between recognized countries of origin and destination of migrant workers.

Where countries organize recruitment through Public Employment Services (PES), minimum recruitment standards may be guaranteed, in which case there would be a reduced need for recruitment monitoring by labour inspectorates. However, where countries rely on private recruitment actors (including recruitment agencies and manpower supply agencies), regulating and monitoring their activities requires a responsible administrative authority. This may involve the labour inspectorate, even in situations where the recruitment industry promotes self-regulation and/or where memoranda of understanding are in place between the countries of origin and destination of migrant workers (and which should include modalities for monitoring).

With a view towards contributing to achieving fair recruitment of migrant workers, this paper offers an overview of the main challenges pertaining to monitoring of recruitment of migrant workers by labour inspectorates (or related administrative authorities), along with suggested ways forward and pointers for possible action by the ILO. It draws from the outcome of an ILO organized webinar with labour inspectors (July 2021), a background paper

developed for the webinar, a review of literature, and a series of case studies covering the potential role of labour inspectorates (and/or related administrative authorities) in:

1. Licensing/registration and monitoring of private recruitment/employment agencies in countries of origin (i.e. the Philippines Overseas Employment Agency (POEA) in the Philippines (see Annex 1) and Department of Overseas Labour (DOLAB) in Viet Nam (see Annex 2))
2. Licensing/registration and monitoring of private recruitment/employment/placement in countries of destination (i.e. Gangmasters and Labour Abuse Authority (GLAA) in the United Kingdom (see Annex 3) and the Employment Standards Branch (ESB) in Manitoba Province, Canada (see Annex 4))
3. Inspecting workplaces of (migrant) workers in countries of destination, including attention to recruitment (i.e. Social inspectorates in Belgium and the Netherlands (see Annex 5)).

▶ Main challenges that impede effective action by labour inspectorates in monitoring the recruitment of migrant workers

What follows is a non-exhaustive list of the main challenges and these may vary from country to country depending upon the local situation.

Context related challenges

- ▶ Recruitment of lower-skilled migrant workers happens in an increasingly globalized labour market that is characterized by sub-contracting arrangements, where end users are not held liable (with few exceptions) for abuse further down the subcontracting chain, and where countries of origin and destination lack synchronized recruitment regulations and monitoring.
- ▶ Informal, non-registered recruiters/agents are known to be active across the world, in particular in rural areas. In an environment of scarcity of decent jobs, these informal agents may offer useful matching services and assist migrant workers to navigate regulations and contact registered recruiters in big cities⁶. However, these informal processes tend to not be regulated nor monitored and they obscure which actor is responsible for what⁷, thus creating risks for abuse.
- ▶ Lower skilled migrant workers are typically recruited for work in sectors that may not be covered by the labour law and that generally lack effective labour inspection, such as agriculture, domestic work, the informal economy and sectors of 'irregular' employment. Weak law enforcement in these sectors at destination contributes to making (migrant) workers vulnerable to exploitation, including recruitment related abuse⁸; and this vulnerability is exacerbated where migrant workers lack rights to freedom of association and collective bargaining.

⁶ Gordon, J., Global labour recruitment in a supply chain context, 2015 (ILO), (p. 8) and ILO Work in Freedom Programme, Lessons learnt on the recruitment of migrant workers, 2021.

⁷ See K. Jones, 'Recruitment monitoring & migrant welfare assistance; What works?', IOM (2015) p.6.

⁸ ILO, 'Promoting fair migration - General Survey concerning the migrant worker instruments' (2016), p152-153.

- ▶ A number of countries of destination of migrant workers offer visas that tie these workers to a particular employer, which makes these workers dependent upon their employer for continued legal status. This puts them at risk of abuse, such as through salary deductions by employers to recover recruitment costs, or the issuance of increasingly inferior employment contracts over time.
- ▶ While a number of countries have legislated that (migrant) workers should not pay recruitment fees or related costs (in line with the ILO Private Employment Agencies Convention, 1997 (No. 181) (article 7(1)) and the ILO General Principles and Operational Guidelines for Fair Recruitment), it is not necessarily clear in national legislation which costs are and are not included; Ambiguities with regards to payment of the costs for medical testing, training and Covid-19-related quarantine are cases in point. Such ambiguities enable recruiters to charge migrant workers for a range of services, and complicate effective law enforcement by labour inspectorates and others.

Challenges in the work of labour inspectorates

- The mandate of the labour inspectorate with regards to fair recruitment may not be spelled out in regulations. Some countries of destination do not even have provisions in the labour law to penalize recruitment-related irregularities.
- In current inspection work, most inspectorates focus on inspecting conditions of work⁹ (including occupational safety and health, wages and working hours) in accordance with labour legislation, usually without paying the necessary attention to the recruitment process¹⁰.
- In many countries of destination of migrant workers, efforts to protect migrant workers from recruitment-related abuse are hampered by labour inspectorates prioritizing the checking of the legal status of migrant workers, rather than inspecting conditions of work (including possible recruitment-related abuse).
- Around the world, labour inspectorates are hampered by scarce resources. This compromises their capacity for law enforcement. In cases where government agencies work in silos rather than in collaboration through a *'whole-of-government approach'*¹¹, the overall governance capacity is even more compromised and may increase a sense of impunity of offenders.
- Labour inspectorates may also be hampered in their effectiveness by making announced workplace visits only, and during regular working hours only, and to randomly selected workplaces rather than making visits based on intelligence. They may also face linguistic, cultural and gender related challenges that may hamper effective communication with migrant workers.
- Where labour inspectorates do include attention to recruitment in their inspection work, they do not necessarily have the know-how to spot irregularities, while the regulatory framework may lack specifics as to what constitutes recruitment-related violations against which labour inspectorates may monitor.

⁹ While inspectorates in a number of countries also include a focus on undeclared work.

¹⁰ While inspection of conditions of work is and should remain core in the work of labour inspectorates, there is little proof of inspection for recruitment-related violations, either at the stage of recruitment through recruitment agencies or later while migrant workers are at worksites. The Employment Policy - Supplementary Provisions - Recommendation, 1984 (No. 169), in paragraph 8, considers an important principle "to combat effectively illegal employment, that is employment which does not comply with the requirements of national laws, regulations and practice".

¹¹ As recommended in the guiding principles of the Global Compact for Safe, Orderly and Regular Migration (2018).

- While complaints lodged by migrant workers appear to be effective tools in prosecuting unscrupulous recruiters¹², many migrant workers¹³ continue to face difficulties in accessing complaint mechanisms, thus depriving labour inspectors of important leads to recruitment-related irregularities. In these situations it is all the more important that intelligence from a range of pertinent other sources enable targeting of the work of the labour inspectorate.
- Licensing requirements for private recruitment agencies and labour supply companies may be minimal (or absent) and may not include requirements against migrant worker exploitation, and licensing procedures may lack thoroughness (e.g. very few include interviews with agency staff applying for a license (notable exceptions are the Philippines (see Annex 1) and Manitoba Province in Canada (see Annex 4)). Such minimal (or absent) licensing requirements and procedures preclude the possibility of creating a minimum protection baseline for migrant workers against which labour inspectors may monitor the performance of recruitment agencies.
- Regulations pertaining to private recruitment and placement agencies do not necessarily require these agencies to keep copies of employment contracts. This significantly hampers the effectiveness of possible inspection visits to these agencies at both origin and destination.
- Sanctions regimes may not serve as sufficient deterrence against abusive recruitment practices as fine levels may be low - thus not reflecting that unfair recruitment may result in debt, which may put migrant workers at risk of situations of forced labour - and the risk of detection/apprehension may be minimal. Given the knowledge that billions of USD are made from illegal recruitment fees, it is crucial that authorities demonstrate proof of effectiveness in addressing this injustice through their enforcement work.
- Law enforcement against unscrupulous recruiters is compromised in cases where recruitment agencies reappear under a different name after licenses have been revoked. The appearance of phoenix agencies (also called 'letterbox' companies or 'fly-by-night' firms) complicates effective targeting in the work of the labour inspectorate.
- While a range of countries work with standard employment contracts for migrant workers, these contracts are not necessarily coordinated amongst countries of origin and destination. Rights that are spelled out in contracts at origin may thus have little if any bearing on an employer and labour court at destination if these rights are not included in the validated contract at destination, thus compromising the effectiveness of the work of the labour inspectorate.
- Where standard employment contracts are in place, they are not always filled out in detail. This makes migrant workers vulnerable to abuse from the recruitment stage onwards. A detailed employment contract review of randomly selected workers is however not necessarily included in the mandate of labour inspectorates.
- While a range of countries of origin and destination have concluded bilateral agreements (or memoranda of understanding) to regulate the recruitment and placement of migrant workers, very few, if any, offer a clear monitoring framework¹⁴. Furthermore, while the model agreement annexed to the ILO Migration for

¹² See: K. Jones, Recruitment monitoring & migrant welfare assistance; What works?, IOM (2015), p.85.

¹³ See for instance: ILO, Access to justice for migrant workers in South-East Asia, 2017.

¹⁴ See: ILO, Bilateral agreements and memoranda of understanding on migration of low skilled workers: A review (2015).

Employment Recommendation (Revised), 1949 (No. 86) does offer guidance regarding 'supervision of living and working conditions'¹⁵ at destination, it offers few specifics on monitoring of private recruitment and placement agencies.

- Feeble, unconvincing reporting on enforcement by labour inspectorates (and others) pertaining to recruitment - both internally and in reporting to the ILO supervisory machinery - prevents countries from demonstrating their governance and law enforcement capacity, and their capacity to deliver under the agreed SDG targets.

▶ Ways forward

In suggesting ways forward to address the listed challenges, the paper draws amongst others from five case studies of labour inspectorates (or related authorities) in various labour migration settings, covering licensing, registration and monitoring of private recruitment/placement agencies in either countries of origin (see Annex 1 and 2) or destination (see Annex 3 and 4), along with workplace inspection at destination (see Annex 5).

Recommendations pertaining to the context within which labour inspectorates operate

- ▶ Governments need to be reminded of their labour-related commitments under International Labour Standards and under the Sustainable Development Goals, in particular their obligations to ensure adherence to the ILO Fundamental Principles and Rights at Work, including freedom of (migrant) workers from recruitment-related debt bondage. Governments need to be encouraged to demonstrate the political will to address recruitment-related abuse pertaining to migrant workers, amongst others, by investing in effective legislation that covers all economic sectors and that includes provisions pertaining to recruitment-related irregularities and effective law enforcement. Such legislation and enforcement needs to include attention to labour supply companies in places where they are active, and be based on broad consultations including with migrant workers.
- ▶ Due diligence standards and transparency should be enhanced in sub-contracting arrangements pertaining to (migrant) workers, while core actors should be held liable for recruitment-related abuse of migrant workers further down the chain (see Annex 3 (UK) and 4 (Manitoba Province, Canada) and also European Union Directive 67 (2014)). Inspectors should be trained to review these subcontracting arrangements and be given sufficient time to perform this important task as part of their inspections (See Annex 4).
- ▶ To reduce the chance of abuse of migrant workers by employers, any migrant worker should be able to resign with due notice without immediately losing legal status in the country of destination and be able to transfer to a new employer. Contract termination clauses should spell out this possibility and should be checked when inspectors monitor activities of recruitment agencies, and when they inspect workplaces.

¹⁵ See Article 15 of the Annex ('Model agreement') to ILO Migration for Employment Recommendation (Revised), 1949 (No. 86).

- ▶ Proactive legislation may be a way to address recruitment-related irregularities. The UK and Manitoba province in Canada (see Annex 3 and 4) have simply made it illegal by law to recruit through non-licensed recruiters, putting the onus on employers to do due diligence for recruitment through licensed recruiters.
- ▶ With the ILO General Principles and Operational Guidelines for Fair Recruitment as a basis (including the definition of recruitment fees and related costs), governments in countries of origin and destination should work together towards a situation where employers not only pay recruitment fees and related costs for high-skilled migrant workers, but also for lower-skilled migrant workers, and where employers apply due diligence to ensure fair recruitment principles are cascaded through the value chain and include subcontracted workers.
- ▶ Countries that have put in place biometric registration systems for migrant workers may apply the same technique to recruiters. If biometric data of all recruiters were stored at the licensing/registration stage, it could help to tackle the problem of phoenix agencies by preventing them from continuing under a different name after recruitment licenses have been revoked for malpractice in recruitment.
- ▶ Efforts should be made to standardize employment contracts of migrant workers across countries of origin and destination, using article 22 of the model bilateral agreement in the Annex to ILO Recommendation No. 86 as a basis, while including clauses pertaining to fair recruitment. These standard employment contracts should be annexed to BLAs or MOUs concluded by countries of origin and destination, and serve as a basis for inspections.
- ▶ Transparency is enhanced further if countries of origin and destination also agree on standard contracts between the employer or placement agency at destination, and the recruitment agency at source. Such contracts would offer a framework within which employment contracts of migrant workers can be monitored. Viet Nam offers an example of such meta contracts between labour suppliers and employers at destination (see Annex 2) while inspiration can also be drawn from ILO Recommendation No. 86. Contracts involving three parties (i.e. employer, recruiter and worker) are also possible.
- ▶ Future bilateral labour migration agreements between countries of origin and destination should include effective monitoring modalities. These should spell out the role of the labour inspectorate at source and destination pertaining to monitoring of recruitment and placement agencies, and sharing of information among inspectorates.

Recommendations pertaining to labour inspectorates and related authorities

- ▶ Across the world, there is an obvious need to invest in labour inspectorates. These inspectorates need clear and forceful mandates, and the authority to impose effective sanctions, and they need to be stocked with sufficient operational resources, including adequately trained staff. Inspectorates also need to have the capacity to deal with linguistic, cultural and gender related challenges for effective communication with migrant workers.
- ▶ Labour inspectorates in destination countries should be authorized to conduct inspections in any workplace in any sector of the economy and at any point of the day . In addition, labour inspectorates or related authorities

should be mandated to inspect the operations of private recruitment agencies (at source and destination), placement agencies, temporary work agencies and labour supply companies (at destination).

- ▶ In line with Article 12 of the ILO Labour Inspection Convention, 1947 (No. 81), and to enhance effectiveness of inspections, labour inspectorates should prioritize unannounced workplace and agency visits.
- ▶ Labour inspectorates need to be equipped to include attention to recruitment in their work. The case studies from the Philippines and Viet Nam (see Annex 1 and 2) offer examples of regulations that spell out a list of recruitment-related violations that can be monitored, and that employers and recruiters can be held liable against. In addition, countries like Belgium and the Netherlands (see Annex 5) have created teams of specially trained labour inspectors (in addition to the regular inspectorate) to spot severe cases of labour exploitation such as of persons trafficked into work. These teams work with recruitment-related indicators of abuse such as deception/contract substitution, recruitment-related debt, abuse of vulnerability at the recruitment stage, prolonged retention of personal documents after the work permit has been issued, and threats and intimidation.
- ▶ Where inspection resources are finite, it is all the more important that these are targeted to areas of work where labour abuse is common. The Netherlands and the United Kingdom (see Annexes 5 and 3 respectively) offer promising data-mining systems based on comprehensive intelligence by a range of agencies, which enable the targeting of inspections to places of severe labour abuse, while monthly meetings among a range of relevant agencies in Belgium (see Annex 5) also contribute to targeting inspections and using finite resources effectively. Ideally, such intelligence should include information from multi-lingual whistle-blower hotlines. In the context of targeting inspections, the EU refers to 'risk assessment' in a Directive of 2014 and recommends inspections to take into account 'size of projects, length of subcontracting chains, geographical distance, specifics of certain sectors, past record of infringements, and vulnerability of certain groups of workers'. In practice, inspections at destination should therefore enhance focus on sectors such as agriculture, construction, domestic work, hospitality and transportation, while at source inspections should include attention to recruitment actors in rural areas.
- ▶ As recruitment businesses are fluid and adjust to risks and opportunities, it is important furthermore that the targeting (for inspection) of recruitment agencies and workplaces is reviewed regularly, and adjusted where necessary. The European Platform for Undeclared Work is an example of attempts to remain updated on the latest developments with regards to recruitment-related irregularities.
- ▶ Especially where resources are scarce, labour inspectorates should collaborate with other relevant authorities for effective law enforcement, provided that the integrity and mandate of the labour inspectorate is maintained. Collaborative modalities in the UK and Belgium/the Netherlands (see Annex 3 and 5) – between the labour inspectorate and the police, immigration authorities, judiciary, hotlines, tax authorities, social services, trade unions, academia, etc. - demonstrate the benefits of working together among a range of agencies.
- ▶ As emphasized by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), it is the primary duty of labour inspectorates to protect the labour rights of workers, rather than to enforce immigration law. Inspectorates should stay on the labour side of a 'firewall', while immigration department officials deal with immigration irregularities. The practical implication is that inspectors should

interview migrant workers in private and should treat their stories and/or complaints confidentially, including those by migrant workers in an irregular situation.

- ▶ Collaboration with other agencies may also assist labour inspectorates in effectively conducting awareness raising among prospective migrant workers and compliance advocacy among recruiters and employers. Such preventive measures may contribute to reducing the incidence of recruitment-related abuse and thus reduce the pressure on those conducting inspections. The coordinated campaign by the European Union entitled 'Rights for all seasons' offers an example of such collaboration (see Annex 5).
- ▶ Cross-border collaboration may also contribute to enhanced effectiveness of labour inspectorates in ensuring fair recruitment. The joint initiatives by labour inspectorates of several European countries under the umbrella of the European Labour Authority are a case in point as they include attention to non-genuine posting of workers across borders and trafficking for labour exploitation. Both the UK and Manitoba province in Canada (see Annex 3 and 4) also spell out a series of licensing requirements that make recruiters liable for recruitment-related abuse, while authorities in Manitoba province and the Philippines (see Annex 1) interview staff of recruitment agencies as part of the licensing process. Such pro-active regulations and thorough licensing procedures contribute to pre-empting abuse, provided there is credible law enforcement to back it up.
- ▶ Other licensing requirements, such as substantial monetary deposits and showing proof of office space (See the Philippines and Viet Nam (Annex 1 and 2)) and a website (See Viet Nam (Annex 2)), may help to address the problem of phoenix agencies that re-appear under a different name, and may make it more straightforward to hold unscrupulous recruiters liable in case of recruitment-related abuse.
- ▶ The role of labour inspectorates in grievance mechanisms should be assessed with a view to enhancing the effectiveness of labour inspectorates in the context of any labour related grievances, including those related to working conditions and recruitment.
- ▶ Sanctions' regimes should be such that they serve as a deterrent against unlawful recruitment activity, in combination with increasing the detection/apprehension of unfair recruiters. Where sanctions are imposed, these should be reported publicly for enhanced transparency. In addition, governments may consider creating a ranking system for recruitment agencies based on their performance (see the Philippines (Annex 1)), where top performers benefit from preferential treatment such as longer licensing periods, tax incentives, return of part of a security deposit, participation in government missions for foreign market development, and participation in programmes to fill quotas under bilateral labour agreements.
- ▶ Transparency may be enhanced in recruitment by requiring all recruitment and placement agencies to keep copies of signed employment contracts for review during inspection visits, as is required in the UK and Manitoba Province of Canada (see Annex 3 and 4).
- ▶ It is important furthermore that labour inspectorates are trained in identifying discrepancies in employment contracts of migrant workers (which may indicate recruitment-related irregularities). Typical discrepancies to be spotted may include contracts not listing employer contact details (which hampers possible dispute settlement); contracts without a start date (which may result in non-payment of wages in cases where workers are not placed in work immediately); contracts without overtime specifications (which may result in workers

accepting to work overtime in order to make a minimum wage)). This type of focussed activity should also be included in the terms of reference of labour inspectorates.

- ▶ As part of standard operating procedures, labour inspectorates should report on the types of observed recruitment-related (and other) irregularities, as well as imposed sanctions. Such reporting will contribute to increasingly focused law enforcement over time, and offer the possibility to demonstrate proof of effective law enforcement. Aggregated numbers per type of violation should also be made available publicly every year, and be reported to the ILO supervisory mechanism, to relevant UN treaty bodies and UN Special Rapporteurs, and in voluntary national reports under the Sustainable Development Goals.

▶ Suggestions for possible action by ILO

Given the centrality of fair recruitment in global policy frameworks such as the Sustainable Development Goals (target 8.7 and 8.8) and the ILOs Decent Work and Fair Migration Agenda, and given that billions of USD are made annually from unfair recruitment paid by lower-skilled migrant workers, the ILO may wish to consider the following actions:

- Developing a legally binding ILO instrument on fair recruitment along the lines of the Forced Labour Protocol P029 and its related Recommendation No. 203. Such an instrument may rejuvenate, revitalize and enhance focus on the work of constituents to protect (migrant) workers from recruitment-related abuse, and complement, amongst others, ILO Convention No. 181 (and Recommendation No. 86) by offering specific measures on addressing unfair recruitment through labour inspectorates and related authorities. If such a Protocol were to become part of the FPRW (given the link between recruitment-related debt and forced labour), it may provoke accelerated action by member States. In preparation, the ILO Committee of Experts on the Application of Conventions and Recommendations could possibly conduct a General Survey on instruments concerning fair recruitment (including a potential role for labour inspectorates).
- Defining and establishing labour standards in relation to contract work¹⁶, given that labour outsourcing and subcontracting policies have tended to blur the responsibilities of employers, labour intermediaries and governments towards fair recruitment and decent work.
- Mainstreaming language related to fair recruitment (and recruitment-related irregularities) into ILOs body of work with labour inspectorates (e.g. through its policy advisory work and training materials, and in suggested standard operating procedures and suggested reporting forms).
- Investing in specifying and elaborating the possible role of labour inspection in monitoring of recruitment beyond what is stated in the ILO General Principles and Operational Guidelines for Fair Recruitment (while taking the primary role of labour inspectorates to monitor conditions of work as a given). This should include specifics for inspectorates in countries of origin and destination, and for the latter this should include attention to inspection of private recruitment agencies, placement agencies, and labour supply companies.

¹⁶ ILO Work in Freedom Programme, Lessons learned on the recruitment of migrant workers (2021).

- Developing an adapted set of indicators of unfair recruitment for use by labour inspectorates and related authorities, based on the ILO forced labour indicators¹⁷. These could include contract-related deception, the charging of excessive recruitment fees to workers; restrictions of freedom of movement; retention of personal identity documents beyond the time it takes to issue a work permit; and threats and intimidation.

¹⁷ See the ILO publication 'ILO indicators of forced labour' (2012) at: https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm

▶ ANNEXES: Case studies

Annex 1 – Case study of Philippines Overseas Employment Authority

Introduction

The Philippines is a major country of origin of migrant workers. More than 1 million Filipinos leave the country each year to work abroad.

Labour migration is governed through *Presidential Decree 442 (i.e. Labour Code of the Philippines) (1974)* and the *Migrant workers and overseas Filipinos Act, RA 8042 (1995)*. The Philippines has created a specialized authority to oversee the recruitment and placement of Filipino migrant workers abroad, namely the Overseas Employment Agency (POEA). Its work is guided by the *revised POEA rules and regulations governing the recruitment and employment of land-based overseas Filipino workers (2016)*¹⁸. The POEA works closely with amongst others the Philippines Overseas Labour Office (POLO).

Highlights

Licensing and monitoring

The POEA issues licenses to private recruitment agencies (PRAs) that adhere to ethical standards as prescribed in a *Code of Conduct for Ethical Recruitment*.

Prior to issuance of a licence, PRAs need to undergo a panel interview to ascertain their qualifications and need to show proof of available jobs abroad (verified by POLO and/or authenticated by a consulate).

Applicants also need to meet financial requirements for licensing: Pesos 5 million capital (approx. USD 100,000); a filing fee of Pesos 25,000 (approx. USD 500); a license fee of Pesos 100,000 (approx. USD 2000); an escrow deposit of Pesos 1 million (approx. USD 20,000) against possible legal claims by migrant workers; and a lease contract for an office space of at least 100 m².

Furthermore, a regular license can only be obtained upon deployment of at least 100 migrant workers under a provisional license, and on the condition of no pending labour cases against any of these migrant workers. A regular 4-year license may be renewed. However, in case of pending labour complaints by migrant workers, the PRA needs to deposit an additional Pesos 100,000 (approx. USD 2,000) per migrant worker.

Importantly, licensed PRAs in the Philippines assume joint and several liability with the foreign employer for all claims and liabilities which may arise from the employment contract with the migrant worker. This liability clause has gained strength through the reduction in the number of days within which labour arbiters in the Philippines have to hear and decide on a migrant worker-filed complaint (from 90 to 30 days).

¹⁸ The directive is complemented by similar directive of 2016 covering seafarers.

Qualified labour law compliance officers (LLCOs) monitor compliance of licensed recruitment agencies at least once every 2 years, and upon receiving a complaint by migrant workers. They do so using a prescribed checklist¹⁹.

In order to depart for work abroad, Filipino migrant workers require a written contract that is approved by the POEA, and which is in line with a minimum set of provisions that include:

- Complete name and address of the employer (important in case of a labour dispute)
- Position and job site
- Basic monthly salary + benefits and allowances
- Food and accommodation (or the monetary equivalent)
- Contract start date (crucial in order to obtain monthly payment even where there is no work activity) and duration
- Number of regular working hours and days off
- Overtime pay
- Leave entitlements (including sick leave and for holidays)
- Free emergency medical and dental care
- Contract termination provisions
- Dispute settlement conditions
- Repatriation in case of calamities paid by the employer

Regulations further stipulate that, after signing the POEA approved contract, migrant workers²⁰ may have to pay a placement fee of a maximum of one-month basic salary (in addition to costs for documentation (including for passport, birth certificate, medical certificate and social security)). The same regulation spells out that no other costs shall be charged to migrant workers, and that costs for recruitment and placement shall be borne by the employer (including for visa, work/residence permit, round trip airfare, and any other fees and costs for assessments).

The Migrant Workers and Overseas Filipinos Act (1995, amended in 2010) and related regulations spell out 'illegal recruitment' acts, including recruitment of migrant workers through non-licensees agencies, and **prohibit a range of recruitment related abuses**, including:

- Charging migrant workers recruitment related fees and costs beyond what is spelled out in the above-mentioned regulations
- Recruitment for non-existent jobs or work that is different than promised, or with a different employer than the registered one
- Employment contract substitution
- Withholding travel documents from migrant workers for control purposes
- Imposing compulsory loan arrangements upon migrant workers, and against exorbitant interest rates (i.e. above 8% per year)
- Obstructing inspections of PRAs

¹⁹ See department order 131-13.

²⁰ Other than migrant domestic workers who should not be charged a placement fee at all.

In an attempt to ensure transparency throughout the labour migration chain, the POLO (or Philippine consulate) also accredits employers and/or placement agencies abroad, based on checking amongst others their business licence and job orders.

These accredited employers abroad may advertise overseas job vacancies only through POEA-licensed recruitment agencies (or directly through government actors).

The 1995 Act prescribes a shared government information system on migration, including a master list of departing/returning Filipino migrant workers, information on blacklisted foreigners/undesirable aliens, and a tracking system of past and present gender disaggregated (labour abuse) cases involving female and male migrant workers.

In case of illegal recruitment and/or trafficking, the director of the Licensing and Regulation Office shall recommend the issuance of a closure order, and the PRA and all its employees shall be included in a list with derogatory records and shall be disqualified from participating in overseas employment programmes of the government.

The regulations also spell out grounds for the imposition of administrative sanctions against PRAs, including serious offences such as charging unauthorized fees from workers or recruitment into non-existent work or work that is different from promised (penalty: cancellation of license), less serious offences such as not issuing receipts for costs made by workers (penalty: suspension or cancellation of license), and light offences such as failure to deploy a migrant worker within 60 days without valid reason (penalty: reprimand or suspension of license).

Furthermore, foreign employers or placement agencies are also vetted for accreditation, and may be disqualified or delisted from the roster of accredited foreign employers/placement agencies in case of offences such as the collection of fees from migrant workers by employers, or unjust salary deductions.

The POEA maintains a register of licensed private recruitment agencies. This list is published periodically and contains licensed PRAs which have been suspended, cancelled, banned or delisted.

To incentivize that PRAs deliver quality service, the POEA also runs an award programme. Evaluation criteria include:

- Compliance with recruitment regulations and absence of recruitment abuse cases
- No placement fees charged from migrant workers
- Volume and quality of deployment of migrant workers, and accomplishments in generating new work opportunities

Top performers benefit from priority treatment such as extension of the license for longer time periods, tax incentives, return of part of the security deposit, participation in government-led overseas missions or quota under bilateral agreements, and inclusion in a publicly available list of recommended agencies.

Annex 2 – Case study of Department of Overseas Labour in Viet Nam

Introduction

Viet Nam is primarily a country of origin of migrant workers. In 2019 Viet Nam had an outflow of 152,530 migrant workers, including 54,700 women. The vast majority of these workers migrated to Japan (54.2 %) and Taiwan, China (35.7%). They were placed mainly for work in manufacturing, construction and domestic work.

Recruitment of migrant workers has been regulated under Law No. 72 on Vietnamese Guest Workers (Law 72/2006/QH11). On 1 January 2022 this law has been repealed and replaced by Law No. 69 on contract based overseas Vietnamese workers (Law 69/2020/QH14) – and it is from this newly adopted Law that the case study will draw.

The work of the labour inspectorate in Viet Nam is governed by Law No. 56 on labour inspection (Law 56/2010/QH12) and Decree 110/2017/ND-CP, and includes inspection of recruitment agencies. Ministerial Decision No. 1638/QD-LDTBXH spells out further that the Department of Overseas Labour (DOLAB) in the Vietnamese Ministry of Labour, War Invalids and Social Affairs (MOLISA) is tasked with *‘providing guidelines and monitoring the implementation of the governments’ and ministry’s regulations applied to Vietnamese working overseas under contract’*.

Highlights

Licensing requirements for recruitment agencies

Law 69 spells out a range of requirements pertaining to the operations of private recruitment agencies that place Vietnamese migrant workers abroad. As per Article 10 of the Law, licensing requirements for these agencies include:

- An initial capital of VND 5 billion (approximately USD 220,000);
- Placement of a security deposit set aside in a frozen account for the sole purpose of possible worker claims/compensation;
- The agency’s legal representative is a Vietnamese national with at least higher education and at least 5 years of experience in providing Vietnamese guest worker service or employment services; and who is not criminally prosecuted, and has no criminal records pertaining to labour abuse and exploitation of Vietnamese migrant workers;
- Adequate infrastructure (owned or stably rented) to provide necessary pre-departure orientation;
- A website.

Obligations of licensed recruitment agencies

As per Decree 112 (2021)²¹, licensed recruitment agencies have an obligation to:

- protect the rights and interests of Vietnamese migrant workers;
- report the worker to the relevant Vietnamese diplomatic mission abroad within 15 days after the workers’ departure for work abroad (Art 4a);

²¹ Decree 112/2021/ND-CP.

- monitor and supervise the performance of employment contracts between workers and employers, and promptly settle problems (...) upon workers request (Art 4c).

It should be noted here that important rights of Vietnamese migrant workers include the right to unilaterally terminate employment contracts - if they are abused or exploited by employers or face life-threatening risks or sexual harassment during their work abroad (Art 6, Law 69).

In addition, recruitment agencies must have signed labour supply agreements with employers abroad before being allowed to recruit Vietnamese migrant workers. These **labour supply agreements must meet minimum requirements** (see Art 19 of Law 69)²² against which employment contracts of migrant workers may be evaluated. These requirements include specifics with regards to:

- Duration of contracts;
- Nature of work;
- Work location;
- Working hours and rest time;
- Occupational safety and health
- Salary and other benefits plus overtime arrangements;
- Other working conditions;
- Accommodation and travel;
- Medical treatment;
- Insurances;
- Contract termination clauses;
- Service fee paid by foreign employment receivers (if any);
- Coverage of travel costs;
- Dispute settlement arrangements.

These labour supply contracts offer a way to ensure Vietnamese recruitment agencies perform **due diligence** with employers prior to placement of Vietnamese workers abroad.

Minimum conditions for a standard service contract between the Vietnamese recruitment agency and the migrant worker are spelled out in Circular 21 (2021)²³ in line with Art 6 of Law 69, which spells out rights and obligations of migrant workers, including:

- benefit from salary, social insurance, occupational accident insurance, other policies according to employment contracts;
- unilaterally terminate employment contracts if workers are abused, exploited by employers, facing life-threatening risks or sexual harassment during period of working abroad;
- complain, accuse and file lawsuits against violations to regulations and law in bringing Vietnamese workers abroad.

Prohibited recruitment acts for inspectors to monitor

Article 7 of Law 69 spells out prohibited recruitment acts that guide labour inspectors in their task of monitoring recruitment agencies, and these include:

²² A corresponding model labour supply contract is annexed to Circular 22/2013/TT-BLĐTBXH. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=97044.

²³ Circular 21/2021/TT-BLĐTBXH.

- Deceiving migrant workers in the recruitment process (Art 7.1);
- Exploiting migrant workers through illegal migration, human trafficking, labour abuse or other violations against regulations and law (Art 7.1);
- Abusing workers in affairs related to placement abroad of Vietnamese workers (Art 7.4);
- Operating recruitment services for Vietnamese migrant workers without a license (or by using the license of someone else) (Art 7.5 and Art 8);
- Recruitment of Vietnamese migrant workers in a manner against the law (Art 7.6);
- Exploiting the selection and preparation process of migrant workers by collecting fees against the law (Art 7.7);
- Charging workers with broker fees (Art 7.8);
- Charging workers with service fees against this Law²⁴ (Art 7.9);
- Recruitment of migrant workers into dangerous work with high risks to health (Art 7.12/13).

Sanctions regime

Labour inspectors may impose administrative penalties on recruitment agencies (as per Art 16 of Law 69 and Decree No. 28/2020/ND-CP²⁵) in case of any of the recruitment related violations spelled out above (under prohibited recruitment acts). Decree No. 12 (2022)²⁶ spells out a detailed series of violations and related sanctions and includes the imposition of fines of VND 45-60 million (approximately USD 2000 - 2650) for operating without a valid licence (Art 7) and fines of VND 50-75 million (approximately USD 2200 - 3300) for deception of migrant workers (Art 8). Other possible sanctions include the suspension of licenses, relief and mitigation measures (such as requiring the return of illegally collected fees to migrant workers), and revoking of licenses.

In addition, labour inspectors may report and file recruitment related violations for criminal investigation by the Public Security/police and the Judiciary²⁷.

Operations and performance indicators

More than 500 licensed recruitment agencies were active in Viet Nam in 2021²⁸ and they were mostly based in Hanoi and Ho Chi Minh City.

The operations of these recruitment agencies are monitored by the inspection division of the Department of Overseas Labour (DOLAB) of the Ministry of Labour, War invalids and Social Affairs (MOLISA) as per Decree 110/2017/ND-CP, and the MOLISA inspectorate.

During their work to inspect recruitment agencies, labour inspectors amongst others review service contracts between migrant workers and recruiters, actual recruitment of workers (and termination), management of workers under contract with labour supply agencies, financial management, and possible disputes and dispute resolution.

²⁴ Article 23 of Law 69 spells out that if part or all of the service fee is covered by employers or foreign receivers, then workers will only pay for any remaining amount required under Law. The amount paid by Vietnamese migrant workers must not exceed 1 month's worth of their salary per 12 working months, and up to a maximum of 3 months salary if the contract exceeds 36 months.

²⁵ <http://english.molisa.gov.vn/Pages/Document/Detail.aspx?Id=39440>.

²⁶ Decree 12/2022/NDD-CP.

²⁷ See Article 11 of Law 56 on coordination between agencies performing the inspection function and concerned agencies and organizations.

²⁸ In October 2021 there were 524 licensed recruitment agencies recruiting Vietnamese workers for employment overseas (See communication between ILO and DOLAB).

Performance records by MOLISA indicate that annually, about 10% of all licensed recruitment agencies is inspected. During the past 5 years (i.e. 2016-2020) a total of 264 recruitment agencies were inspected, and 83 agencies were fined (a total of VND 8 billion (approximately USD 350 000)). In addition, 15 agency licenses were revoked.

Common reported violations as reported by MOLISA include:

- Expired licenses;
- Lack of professional staff in recruitment agencies;
- Service contracts of workers with recruiters lack specific details and/or are inconsistent with the labour supply contract between the foreign employer and the recruitment agency;
- Abuse of recruitment fee regulations;
- Recruitment related advertisements lack required details.

Annex 3 – Case study of Gangmasters and Labour Abuse Authority, the United Kingdom

Introduction

The United Kingdom (UK) has been a country of destination for migrants from across the world over the last 30 years (while smaller numbers have migrated out). Since the turn of the century (and until Brexit), the UK has seen an increasingly substantial inflow of migrant workers from Eastern Europe, mainly for low skilled work.

While labour migration from EU countries has collapsed since Brexit and while work visa grants to non-EU citizens fell by 40% in 2020 (presumably due to Covid-19 related lockdowns), the number of work visa to seasonal workers increased by a remarkable 192% in the same period²⁹.

While migration modalities are undergoing significant changes following Brexit, the regulations pertaining to recruitment, placement and employment agencies in core sectors of the economy of the UK continue to be based on the Gangmasters (Licensing) Act. This Act was adopted in 2004 following the tragic death of Chinese migrant workers involved in collecting shellfish in Northwest England, and has direct relevance to migrant workers who are recruited into low skilled work.

Highlights

The Gangmasters (Licensing) Act (2004)

The Gangmasters Licensing Act created a compulsory licensing system for labour providers and employment agencies in specified sectors - namely agriculture, horticulture, shellfish gathering and any associated processing and packaging. It also created the Gangmasters and Labour Abuse Authority (GLAA). The GLAA is a Non-Departmental Public Body (NDPB), sponsored by the Home office. It is tasked with issuing licenses to labour providers in the specified sectors, ensuring compliance through inspections, and investigating possible violations under the Act. Since 2017, the GLAA has extended investigative powers across the wider labour market aimed at protecting (migrant) workers from exploitation. This provided specialist GLAA Officers with police powers, including the ability to conduct arrests, and the authority to investigate a range of other labour market offences including the forced labour offence in the UK's Modern Slavery Act 2015.

²⁹ Source: UK Migration Observatory at <https://migrationobservatory.ox.ac.uk/resources/briefings/work-visas-and-migrant-workers-in-the-uk/>

The Act spells out as criminal offences:

- For labour providers to operate without a valid licence (or possess a licence belonging to someone else)
- For employers in the specified sectors to knowingly use the services of an unlicensed labour provider
- To obstruct a GLAA officer in the course of their duties

The GLAA requires labour providers from countries of origin to also apply for a licence with the GLAA and comply with its terms and conditions. In this way, the GLAA can hold an agency responsible for what migrant workers were told in the country of origin, even without extra-territorial jurisdiction.

Licensing of labour providers

The **licensing standard** requires labour providers that apply for a licence to comply with a range of laws pertaining to employment, wages, social insurance, taxes, housing, and immigration. Applicants must adhere to standards³⁰ in 8 areas that include:

- act in a proper and fit manner (i.e. have understanding of the licensing standard; no prior criminal conviction for amongst others fraud, violence, forced labour, human trafficking, blackmail and harassment)
- comply with all relevant wage payment and tax requirements
- not subject a worker to maltreatment (including deception about the nature of work, pay or living conditions, abuse of vulnerability, use of threats, use of violence, use of force, restriction of movement, retention of identity papers, loaning money without repayment conditions in writing)
- cooperate with the employer to ensure the safety and health of workers
- not charge fees to workers for any work-finding services
- provide contractual terms spelled out in writing before supplying a worker, and a license holder must keep records of these, along with the names of labour users or sub-contractors
- any worker must be able to cancel or withdraw from the employment contract subject to proper notice
- only use a sub-contractor and/or other labour provider who holds a current GLAA license (and this includes possible foreign labour providers)

After an application for a licence is submitted, the GLAA will review all documentation against the standards, run checks with other UK enforcement agencies (and, if required, authorities in other countries), determine whether an inspection is required, and apply a score that will determine whether the licence is approved or declined. Any licences are issued for a twelve-month period.

At the end of 2021, there were around 1,000 licensed gangmasters, based in both the UK and overseas³¹, who supply temporary contracted workers in the sectors under the jurisdiction of the GLAA.

Inspection of labour providers

Inspection of licence holders is guided by an intelligence-led approach to ensure a focus on investigating the actors with the highest risk of victim exploitation (and is undertaken against the licensing standards). Intelligence is based on a range of sources and includes information from countries of origin.

In case of minor violations to the licensing standard, additional licensing conditions may be imposed. These additional conditions show the areas that need to be corrected within an agreed time. Failure to resolve these issues timely may result in the licence being revoked.

In case of gross violations to the licensing standards, a licence will be revoked. If the nature of the breaches of the standards represents serious risks to the health, welfare, and safety of workers, the revocation may be immediate.

³⁰ For further details, see: <https://www.gla.gov.uk/media/5963/licensing-standards-october-2018-final-reprint-jan-2020.pdf>

³¹ I.e. In December 2021, there were 1077 active licences including 90 of agencies based outside the UK.

This means the employer may not continue to trade. If it does so, it would be investigated and could be prosecuted. If the nature of the treatment of the workers constitutes forced labour, the case will be referred to the GLAA officers with the specialist police powers to investigate the alleged offence. This may result in prosecution.

Especially in case of suspected criminal offences, the GLAA cooperates with the police and the national crime agency (NCA)³². However, its wider powers³³, granted in 2016, enable it to lead criminal investigations into an increased number of offences in the labour market, including the forced labour offence.³⁴

Standard operating procedures for the work of GLAA staff are spelled out in a code of practice³⁵ and cover inspection visits to both labour providers (i.e. recruiters) and labour users (i.e. worksites).

In the reporting year 2019-2020³⁶ the GLAA participated in almost 400 investigations (of which 226 were led by the GLAA), which resulted in the identification of 15,186 potential victims of exploitation, and numerous arrests, enforcement orders and convictions, including of people involved in serious crime.

Prioritization

The GLAA has a pronounced aim to **protect workers from abuse and exploitation**. It employs a proportional approach that prioritizes dealing effectively with actors who exploit and mistreat workers³⁷ (while working with businesses who have minor non-compliances to ensure legitimate labour providers can meet the licensing standards).

Partnerships

The GLAA works both independently and in concert with a range of law enforcement partners including the police. Investigations by the GLAA are done mostly through multi-agency partnerships and include the police, the National Crime Agency (NCA) and local government authorities.

Prevention approach

In addition to licensing, inspection and enforcement, the GLAA also focuses on preventing exploitation by improving awareness of the rules, helping workers understand their rights and where they can report exploitative behaviour.

Preventive work is particularly important in sectors and industries where the GLAA currently does not have licensing powers. This is done through joint protocols with companies to protect the rights of (migrant) workers in sectors and industries such as construction³⁸, retail and clothing manufacture.

³² In case of England and Wales (not Scotland and Northern Ireland).

³³ See section 12 Immigration Act 2016 - <https://www.legislation.gov.uk/ukpga/2016/19/section/12/enacted>, and the detail of those powers - <https://www.legislation.gov.uk/uksi/2017/520/contents/made>

³⁴ See section 3(3) of the Immigration Act 2016 - <https://www.legislation.gov.uk/ukpga/2016/19/section/3/enacted>

³⁵ See: 'Code of practice on compliance, enforcement, labour market and modern slavery investigations' (2018) at: <https://www.gla.gov.uk/our-impact/how-we-inspect-and-prosecute>.

³⁶ From: Gangmasters and labour abuse authority; Annual report and accounts; 1 April 2019 – 31 March 2020 at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961100/GLAA_Annual_Report_and_Accounts_2019-20_Large_Print_Version_10.02.21_dated_7_January.pdf

³⁷ This priority focus is illustrated in the latest GLAA annual report (i.e. for 1 April 2019 – 31 March 2020), which states: 'Through our work, GLAA colleagues see first-hand the devastating impact forced and compulsory labour has on its victims; people living in squalid conditions, forced to work in unsafe environments, bound by debt bondage and very often facing threats and coercion that leave them fearful of their exploiters. It is this that drives our organisation to do whatever it takes to prevent workers from being exploited, identify and help those who sadly already are, and pursue those who have no scruples about using people as commodities'.

³⁸ In the construction sector alone, there are more than 200 construction companies who are signatories to the construction protocol to protect worker rights (as at January 2021).

The company disclosure requirement under the 2015 Modern Slavery Act has aided efforts to protect (migrant) workers against abuse. Businesses under this Act must report annually on the steps that have been taken during the financial year to ensure that slavery and human trafficking are not taking place in their own business or anywhere in their supply chains.

Annex 4 – Case study of Employment Services Branch, Manitoba Province of Canada

Introduction

Immigration into Canada amounts to around 300,000 migrants per year, which is one of the highest rates per population of any country in the world. In 2020, over eight million immigrants had permanent residence in Canada, or roughly 21.5 percent of the total population³⁹.

Canada runs a temporary foreign worker programme under which contract-based migrant workers can work in Canada for a specific period of time. In 2020 this scheme featured approximately 77,000 permit holders⁴⁰.

In recognition of the fact that temporary migrant workers face particular recruitment related abuse, the Canadian Province of Manitoba introduced the Manitoba's Worker Recruitment and Protection Act (WRAPA) in 2008. The Act spells out strict recruitment related requirements, and its implementation is monitored by the Employment Standards Branch (ESB). Other Canadian provinces introduced similar regulations in following years⁴¹ with even stricter requirements.

Highlights

Manitoba's Worker Recruitment and Protection Act (WRAPA) (2008)

The Worker Recruitment and Protection Act (WRAPA) of Manitoba province was triggered by cases of blatant abuse of migrant workers in a context where temporary migrant workers are restricted to work for a specific employer (while Canadian workers can resign from employment unilaterally). Observed abuses included payment of exorbitant recruitment fees, contract related deception, coercion and abuse of vulnerable migration status.

The WRAPA Act bans recruiters from charging any fees to migrant workers and prohibits employers from recovering recruitment related costs from migrant workers. The Act applies to all migrant workers in all types of work in Manitoba, and provides for both licensing of recruitment agencies and registration of employers, and is coupled with proactive enforcement measures. The Act also created a data collection system that allows the public to verify compliance with licensing requirements.

Licensing requirement for recruitment agencies of temporary migrant workers

Licensing requirements (at the ESB) for recruitment agencies involved in recruiting migrant workers include:

- Full disclosure of financial information
- Substantial business detail and character background

³⁹ See: <https://www.statista.com/topics/2917/immigration-in-canada/#dossierKeyfigures>.

⁴⁰ Id.

⁴¹ Including Nova Scotia (in 2011), Alberta (in 2012), Saskatchewan (in 2013) and New Brunswick (in 2014).

- Willingness to undergo an investigation by the ESB of the agency's history and business relationships
- Keeping detailed records on all recruitment agreements
- Provision of bond of CAD 10,000 to the director of ESB (to reimburse migrant workers in case of need)
- Must hold a professional license, through membership of a professional association that issues accreditation to practice in Canada (i.e. either the Law society of Manitoba or the Immigration Consultants of Canada Regulatory Council).

The requirement of a professional license introduces an important 2nd layer of oversight. Since the ESB communicates with the associations issuing professional licenses when it encounters a problem with one of their members, a violation of the Act also puts the recruiter's professional license at risk.

Together, these detailed requirements impose a level of transparency on the recruitment industry in Manitoba that may contribute to preventing migrant worker abuse.

Employer registration requirements

Employers who wish to hire migrant workers are also required to register with the ESB and may not use a recruiter who does not hold a license under the Act.

In order to register, employers must:

- provide details regarding their business, the entity in charge of recruiting the foreign worker, and the position that the foreign worker(s) will hold
- be in compliance with labour standards and have no outstanding labour violations
- provide detailed information about the worker, their contact information, and details about their job and duties
- be prepared to provide expense records and any contracts or agreements signed with foreign workers.
- declare whether or not s/he is using a recruitment agency to recruit migrant workers. NB: In case of direct recruitment, the employer is responsible for reimbursing the migrant worker for any recruitment related payments. In case of recruitment through a licensed agency, that agency is liable to reimburse the migrant worker for any recruitment related costs.

Employers who apply for employment of migrant workers may be investigated by the ESB for compliance with the labour law, at which time they are reminded of their liability in case of recruitment related abuse (such as payment of recruitment fees by migrant workers). In case the investigation reveals a problem, the ESB will deny the employer's registration application until it has come into compliance.

Targeted inspections

In addition to upfront investigations of recruitment agencies and employers prior to the placement of migrant workers, the ESB also carries out workplace inspections. It targets worksites in selected industries where migrant workers are known to work (i.e. agriculture, manufacturing and restaurants). Targeting is done based on risk factors, compliance history and possible tips (rather than relying on migrant worker complaints which may never come). Inspections are undertaken in close collaboration with provincial and federal government agencies including the Canadian border service and the police. Altogether, the ESB conducts about 400-450 proactive inspections annually (including a number of investigations of employers at the time of their registration for migrant worker placement).

Under the Manitoba Act, ESB inspectors are permitted to interview migrant workers upon arrival in Canada, and to obtain copies of all recruitment agreements and records of expenses occurred during recruitment. In order to check the accuracy of the information, the ESB re-interviews a number of the workers later on after they have settled down.

Sanctions

Significant penalties apply in case of abuse of migrant workers (i.e. up to CAD 50,000).

In addition, migrant workers who paid recruitment fees at any time during the recruitment process will be reimbursed from the bond that recruitment agencies pay upon licensing. Licenses of unscrupulous recruitment agencies may be revoked in case of abuse.

Replication and innovation

Following Manitoba's lead, other Canadian provinces have developed similar regulations, and several of these provinces have included additional provisions for employers to scrutinize recruitment agencies, including:

- enhanced reporting obligations that require recruiters to disclose all partners, affiliates or agents in or out of the province;
- provisions requiring recruiters to provide information on their residence in the province;
- details about any other business owned or operated by the recruiter, a list of all countries they intend to recruit from, the names of any agencies or individuals they intend to work with in foreign countries, and a list of all businesses associated with their recruitment activities;
- making employers liable for recruitment fees charged to workers if the employer recruited the worker with an unlicensed recruiter;
- creating specific offenses for employers who utilize unlicensed recruiters.

These requirements for enhanced transparency provide further entry points during inspections, and are presumed to enhance the level of protection of migrant workers against recruitment abuse.

Worth noting further is that Saskatchewan Province bans not only the charging of recruitment fees from migrant workers, but also a range of other acts such as:

- offering false or misleading information
- confiscating personal documents of migrant workers
- threatened or actual retaliation against the migrant and/or family members.

Cross-border arrangements

Manitoba Province has signed Memorandums of Understanding (MoUs) with a few prominent countries of origin of migrant workers, including the Philippines. This MoU requires recruiters in the Philippines that send migrant workers to Manitoba to adhere to the standards of the Manitoba Act (i.e. banning recruitment fees paid by migrant workers), and recruitment agencies in Manitoba can only enter into agreements with Filipino recruiters that are licensed by the Philippines government.

Annex 5 – Cases study of social inspection in Belgium and the Netherlands

Introduction

Both Belgium and the Netherlands are countries of destination of migrant workers. These workers come from countries within the European Union (EU), and third countries outside Europe. While these include higher skilled workers in sectors such as information technology, health care and education, a significant number of lower skilled migrant workers are active in construction, agriculture, domestic work and transportation; and, like in other EU countries, they include 'undeclared' workers⁴² and increasing numbers of temporary 'posted' workers.

Labour inspectorates in Belgium and the Netherlands are key actors against human trafficking and other labour abuse, including unfair recruitment of migrant workers.

Rights and responsibilities of migrant workers and their employers pertaining to recruitment are governed by the Foreign Nationals Employment Act in both Belgium (1999) and the Netherlands (1994), and are guided by EU Directives including Directive 2009/52/EC on sanctions and measures against employers of illegally staying third country nationals, and Directive 96/71/EC on posting of workers⁴³.

Highlights

Specially trained multi-disciplinary inspection teams

Labour authorities in both Belgium and the Netherlands have specially trained inspectors that are **skilled in spotting indicators** of human trafficking through workplace visits, and this includes attention to recruitment related irregularities such as contract deception and debt bondage⁴⁴.

These labour inspectors have the mandate to make **unannounced visits in any workplace in any sector and at any point of the day**, and they operate within a broader understanding that labour exploitation and trafficking are crimes that are not easily proved in the act.

These specially trained inspectors work with a range of other authorities in teams that are **multi-disciplinary** in nature, and may include the police and municipalities, and in Belgium also decentralized social and labour inspectors⁴⁵.

In both countries, all workers, including migrant workers, are interviewed in private during inspections, and complaints are treated confidentially (including those by irregular migrant workers).

When spotting potential victims of trafficking for labour exploitation, inspectors have the duty to involve relevant colleagues to inform potential victims of their rights.

Intelligence based targeting

The inspection teams **target** workplaces in **sectors** of the economy that are prone to abuse of migrant workers such as agriculture, construction, transportation, hospitality and cleaning. In Belgium, additional areas of focus include nail polish shops and exotic restaurants. In the Netherlands, additional areas of focus include fraudulent

⁴² See European Platform tackling undeclared work at: <https://ec.europa.eu/social/udw>

⁴³ See the amended EU directive on posted workers at: https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2018.173.01.0016.01.ENG

⁴⁴ See Teamwork manual at https://www.eerstekamer.nl/bijlage/20160211/bijlage_manual_for_experts_on_document3/f/vk1heepgfrmn.pdf

⁴⁵ Federal and local inspectors have different roles in Belgium.

employment agencies and distribution centres. Within these sectors, inspections are targeted in workplaces where abuse and/or violations of the labour laws are presumed.

The targeting of workplaces in these sectors is **intelligence-based** and results from data mining through a range of information sources, such as social services (e.g. tax authorities, social security services, economic migration service), complaint mechanisms, trade unions, NGOs and research/expert centers. Targeting also benefits from social dialogue.

In the Netherlands, The Foreign Nationals Employment Act (*Wav*) expressly prohibits employers and private individuals from employing foreigners who do not have free access to the Dutch labour market without a valid work permit. Employers in the Netherlands are obliged by law (Aliens Employment Act, Art 15a) to register foreign workers. This registry in combination with information by tax authorities and the UWV⁴⁶ offers ways to spot irregular activities and abuse. Belgium applies a similar modality⁴⁷.

In Belgium, the targeting of joint inspections is decided upon in monthly meetings with core actors, and within an overall annual action plan that covers around 10,000 joint inspections per year (and involving an estimated 400 especially trained inspectors).

Inspection capacity and targets

In order to conduct thorough inspections - including workplace visits with direct observations, in-depth interviews, gathering evidence, conducting follow up visits, consulting other actors, and reviewing documents – it is commonly considered crucial to have sufficient trained inspectors. It is recognized furthermore that spending time on reporting may have a significant impact on the outcome in court of reported labour abuse cases⁴⁸. While inspection resources are finite in both Belgium and the Netherlands, they are considerable compared to those available in many other countries; and while the inspectorate in Belgium faces increased capacity pressure⁴⁹, the Netherlands Labour Authority obtained a financial boost of Euro 50 million for staff expansion in 2017⁵⁰. Notwithstanding this, the EU/FRA recommended the Netherlands to increase the frequency of its targeted inspections⁵¹.

In Belgium, labour inspectors have overall targets for the number of inspections they have to conclude. Interestingly, they are exempted where serious abuse cases require them to investigate more comprehensively.

The Netherlands Labour Authority forecasts the preferred enforcement rate (of the labour law) in the years 2020 to 2023⁵², which contributes in a different way to maintaining focus in the work of the inspectorate.

Miscellaneous points of interest

In addition to imposing sanctions on unscrupulous employers, the labour inspectorates in both Belgium and the Netherlands may also issue warnings and/or require improvements by a set date. They may also employ preventive measures such as compliance advocacy with employers and targeted awareness-raising campaigns for migrant

⁴⁶ Short for Uitvoeringsinstituut Werknemersverzekeringen (UWV) which is the authority dealing with social protection insurances of employees.

⁴⁷ Through the federal Act 'Tewerkstelling buitenlandse werknemers' (30 April 1999) and regional decrees such as the Flemish Decree of 10 December 2010 on 'private arbeidsbemiddeling' (as authorization for foreigners to work in Belgium is regulated at regional level) – see: <https://werk.belgie.be/nl/themas/internationaal/buitenlandse-werknemers>.

⁴⁸ See: ILO, Access to protection and remedy for human trafficking victims for the purpose of labour exploitation; The role of labour inspectors in Belgium and the Netherlands (April 2021).

⁴⁹ MYRIA, Jaarlijks evaluatieverslag 2019; Mensenhandel en mensensmokkel (2019) p. 36 at: www.myria.be/files/Jaarverslag_2019_Mensenhandel_en_mensensmokkel.pdf

⁵⁰ Through a financial boost of Euro 50 million in 2017 to enlarge inspection capacity. See annual report 2020 at www.inspectieszw.nl/jaarverslag-2020/publicaties/jaarverslagen/2021/05/12/jaarverslag-2020.

⁵¹ See: EU/FRA, Protecting migrant workers from exploitation in the EU: boosting workplace inspections (2018), p 26.

⁵² [Jaarverslag 2020 | Jaarverslag | Inspectie SZW](#), p. 52

workers in relevant languages, and operated in a collaborative manner with other agencies as illustrated through the 'rights for all seasons' campaign focusing on the plight of seasonal workers in agriculture⁵³.

Since 2017, agencies for temporary foreign workers in Belgium are required to register in the national LIMOSA system to be able to provide their services. Strict rules apply for operating licenses, including: no social or fiscal debts, following all regulations, an obligation to communicate correctly, and a deposit of EUR 75,000. This may have led to the drop in the number of foreign temporary work agencies that are active in Belgium from 26,000 in 2017 to 4,000 in 2019.

⁵³ The 'rights for all seasons' campaign by the European Labour Authority focuses on seasonal workers. For more see: <https://www.ela.europa.eu/en/campaigns/rights-for-all-seasons#:~:text=Rights%20for%20All%20Seasons%20-%20Campaign%20on%20Seasonal,more%20vulnerable%20to%20precarious%20living%20and%20working%20conditions>. For a further illustration of how Belgium has run a campaign week under the theme: <https://werk.belgie.be/nl/nieuws/actieweek-van-controles-op-seizoenarbeiders-nog-veel-werk-aan-de-winkel>

▶ LIST OF (MAIN) RESOURCES

- Andrees, B., Nasri, A., Swiniarski, P., Regulating labour recruitment to prevent human trafficking and to foster fair migration; Models, challenges and opportunities, 2015 (ILO)
- European Union, *European Platform tackling undeclared work* at: <https://ec.europa.eu/social/main.jsp?catId=1322&langId=en>
- European Labour Authority, *Concerted and joint inspections* at: <https://www.ela.europa.eu/en/concerted-and-joint-inspections>
- Gordon, J., Global labour recruitment in a supply chain context, 2015 (ILO)
- ILO, Conducting labour inspections on construction: A guide for labour inspectors, 2017
- ILO, Guidelines on general principles of labour inspection, 2022.
- ILO, Labour inspection in Europe: Undeclared work, migration, trafficking, 2010
- ILO, Monitoring and enforcement of recruitment regulations, Training Modules 1-5, 2015
- Jones K., Recruitment monitoring & migrant welfare assistance; What works?, 2015, (IOM)



International Labour Organization
Route des Morillons 4
1211 Geneva 22
Switzerland

Labour Migration branch
Labour Administration, Labour Inspection
and Occupational Safety and Health branch

fairrecruitmentinitiative@ilo.org
ilo.org/fairrecruitment

Copyright © International Labour Organization - 2022