



International
Labour
Organization



▶ Lessons Learned

Work in Freedom Programme

Lessons learned on the recruitment of migrant workers

September 2021

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Background

Women and girls on the move in South Asia

For millions of low-income households in South and West Asia, migration is perceived as a pathway towards something better. As the shift from rural and transition economies to a globalized economy is in full swing, the jobs and trades of yesterday are receding, but the jobs of today are yet to fulfil the promise of better livelihoods for all those who remain in poverty. The poor move in all directions in pursuit of jobs, and the patterns and periodicity of their movements are all but linear. Nonetheless, mobility for work is lived and experienced differently depending on whether one is, for example, a man or a woman, rich or poor, a migrant worker or not, and so on. For some, mobility is unrestricted, and yet for others it is tolerated but closely choreographed by highly gendered and socially hierarchized norms and rules. While many poor are able to improve their livelihoods in the same country or abroad in spite of such adversity, many concurrently face abuse in their jobs, including practices that amount to forced labour.

What is the Work in Freedom programme?

Work in Freedom (WIF) is a ten-year development ILO cooperation programme that started in 2013 and is funded by UK Aid. It adopts an integrated and targeted approach in developing practices and multisectoral policy measures that reduce women's vulnerability to trafficking in South Asian countries of origin (Bangladesh, India and Nepal) and in selected destination countries (India, Jordan, Lebanon and some Gulf countries). To address these challenges, the Work in Freedom programme has been implementing a series of interventions engaging migrants, trade unions, civil-society organizations, businesses and regulators in a collaborative effort to begin addressing multiple facets of forced labour in areas with high outflows and inflows of low-income women migrants, especially in sectors where the proportion of women workers is increasing, such as care work and manufacturing. Interventions and work of the programme include: (1) outreach to migrant women in areas where they come from; (2) worker empowerment interventions and employer advocacy; (3) improving practices related to recruitment and working and living conditions; (4) law and policy work; and (5) research on labour migration trajectories.

What are these lessons about?

This document describes the lessons learned so far from the programme. This edition was preceded by earlier editions of Lessons Learned in October 2017 and February 2019. Over time, the programme has expanded its work and documented new learnings. This new edition focuses particularly on recruitment of migrant workers. It lists and describes the nature of both conventional and non-conventional interventions and reviews some of the assumptions behind the rationale for these interventions.

Each lesson is presented with the title of a general finding, followed by the description of that finding, a section describing how the finding was identified, implications for future programming and suggestions

Format of lesson learned

- ▶ **Title of main finding**
Description of main finding
- ▶ **How the finding was identified?**
Description of how the finding was identified based on practice or research. Links to references
- ▶ **Practical lessons for programming**
Implications of the finding on specific areas of conventional programming

for better practices. Each general lesson is based on feedback from the programme's practitioners as documented in progress reports, monitoring and evaluations, or in separate research commissioned or related to the programme. Lessons aspire to regroup learnings from multiple countries covered by the programme and are not country specific.

Notes on interpreting the lessons

Throughout the implementation of the programme, the ILO and its partners have learned several lessons in different areas of its work. The most significant ones are explained herein. Each of these lessons is connected to a specific intervention that was designed as a part of an overall framework of interventions. None of these lessons should be read in isolation from the others.

Basic background about the recruitment of migrant workers

Definitions

- **Labour recruiter:** In the ILO's General Principles and Operational Guidelines for Fair Recruitment, 2016, the term "labour recruiter" refers to both public employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many

forms, whether for profit or non-profit, operating within or outside legal and regulatory frameworks.

- **Private Employment Agency (PrEA):** Article 1 of the ILO Private Employment Agencies Convention, 1997 (No. 181) defines “private employment agency” as any enterprise or person, independent of the public authorities, that provides one or more of the following labour-market services: (a) services for matching offers of and applications for employment; (b) services for employing workers with a view to making them available to a third party (“user enterprise”); (c) other services relating to job-seeking, such as the provision of information, that do not aim to match specific employment offers and applications.
- **Other terms:** This paper also refers to other terms such as “labour migration intermediary”. A labour intermediary may be a formal or informal labour recruiter; however, they can also be an individual providing any services related to labour migration to a migrant worker. For more details on terminology, please refer to *The Work in Freedom Handbook: A Critical Glossary of Terms Relating to Freedom and Unfreedom in the World of Work*.

Background on recruitment practices in the region

In the context of migration, Lindquist, Xiang and Yeoh (2012) refer to the term broker “to denote a party who

mediates between other parties, in this case the migrant and the employer or client” (Kern and Müller-Böcker 2015). Brokerages for the employment of migrants in South Asia or the Arab States region do not follow linear or easily comparable recruitment processes. Brokerage depends on the types of jobs that are offered in each sector, the labour demand and supply for such jobs, employer practices, the type of workers who take on such jobs, including their origin, sex, language, education, their history of work in the sector, their history of migration to take on such jobs, established social networks, etc. Recruitment practices also vary depending on wage levels, formality or informality of jobs, regularity of employment (part-time, full-time, piece rate, casual), whether migrant workers are being brought from far away or locally recruited, whether these jobs are in factories, workshops, public spaces, or home-work environments, whether the jobs involve a degree of specialization (e.g. elder care, cooking, machine operators, tailors, etc.), contracting and outsourcing practices, social and cultural differences, and so on. In fact, often, depending on how labour brokerage is regulated, several concurrent types of recruitment practices also coexist.

That said, there are some trends related to migrant recruitment that are common. Labour recruitment through labour intermediaries is prevalent in agriculture,

construction, manufacturing and service sectors, where employers also look for a workforce that can be employed without necessarily having formal contracts, and in conditions that do not necessarily fulfil decent work criteria (Deshingkar 2019). In some governance contexts where many laws exist to protect workers' rights and ensure some degree of decent work, certain employers can use brokers to source and manage workers so that they evade "principal" responsibility under the law. In other words, labour intermediaries also allow employers in various sectors, such as construction, garment production, the hospitality sector and domestic work, to find workers who will accept low pay and precarious conditions. Labour intermediaries can therefore play an important role in entrenching systems that perpetuate abusive treatment of migrant workers. Often, migrant workers sourced for such jobs come from disadvantaged areas—and from poor and socially excluded communities within them. They are incorporated into the labour market with little or no prospects for upward mobility at the workplace.

However, there is another side to this configuration. While labour intermediaries can play an important role in positioning workers in exploitative work, they are also instrumental in providing regular work and a way out of societies where class- and caste-based hierarchies and local economic stagnation have left people with

few choices (Deshingkar 2019). They open pathways to distant labour markets and urban areas that migrants would struggle to access on their own. They may also provide protection against harassment from employers or other actors and facilitate access to accommodation, albeit extremely precarious, in locations that are otherwise hostile to migrants. There is also evidence that they may help migrants switch jobs and assist them with bargaining for better working conditions (Picherit 2012; Blanchet, forthcoming). For example, once workers in low-paid jobs are confronted with their new circumstances, the precarity of their status prompts them to seek remedies to various needs that are not addressed by the employer or initial contractor.

Given the imbalance of power between the employers or initial contractors and the worker, demanding and renegotiating remedies has to usually be mediated by someone who is close to the worker and can talk to the employer/contractor, usually a former or experienced worker. If working and living conditions are poor, several types of brokerages emerge that cannot be undertaken by one single labour intermediary. In fact, several types of labour intermediaries will tend to emerge, some formal and some informal, some that are closer to the employer and others that are closer to the workers. Formal recruiters will perform tasks that are licit, such as linking with a formal employer and arranging travel

and visas, while informal recruiters will perform tasks that are illicit, such as facilitating the circumvention of migration bans or facilitating the change of employers in a context where workers are tied to a single sponsor.

Conventional practices related to the promotion of fair recruitment

The following three main types of practices are also common among most anti-trafficking and safe migration programmes in recent years. They were also initially supported or implemented by the WIF programme:

- 1. Promotion of fair recruitment policies:** Promotion of policies that seek to undermine unscrupulous labour recruiters and exploitative employers. These policies consist of the promotion of non-binding codes of conduct on the recruitment of migrants. They are meant to guide employers and recruitment agencies.
- 2. Training on fair and ethical recruitment for labour recruiters:** Capacity building for recruitment agencies and employers to ensure that they commit to and practice ethical standards of recruitment codified in non-binding codes of conduct.
- 3. Assessment and certification of ethical recruitment practices:** Assessing recruitment practices of migrants in specific companies and providing recommendations and/or certification. These practices are sometimes

complemented with rating recruitment agencies. The assumption is that the aggregation of each improved practice will lead to better overall recruitment outcomes.

Other common practices

In addition to the conventional intervention practices described above, the Work in Freedom programme has implemented some non-conventional intervention practices:

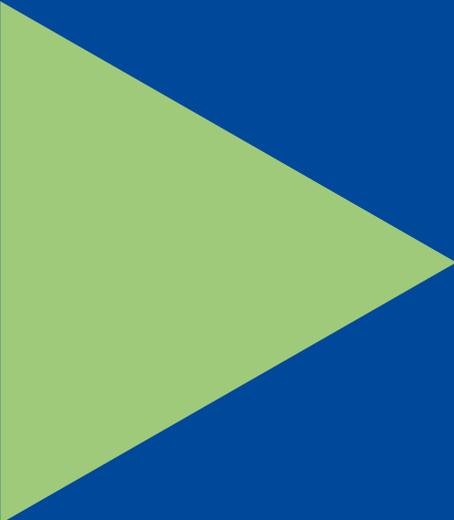
- 1. Policy advice on fair recruitment linked to decent-work outcomes:** This type of technical guidance usually focuses on reviewing draft legislation or policies meant to ensure both fair recruitment and decent-work outcomes.
- 2. Dialogue on improving recruitment practices with intermediaries and other parties:** The focus of this dialogue is to collect the variegated perspectives of formal and informal intermediaries and other parties, including workers, employers, border and labour officials, etc. These perspectives are meant to identify entry points towards better regulation and practices.
- 3. Pathway or sector-wide assessments of recruitment practices:** These assessments go beyond the scope of one company and encompass all recruitment occurring along one pathway or sector from end to

end. The Work in Freedom programme has developed guidelines to conduct such assessments.

4. Testing of better recruitment practices: These practices consist of piloting recruitment of migrant workers in a semi-controlled environment in which the employer agrees to ensure fair recruitment and decent work. These methods may or may not

involve intermediaries. They may include platform-facilitated recruitment, recruitment through public or private companies, as well as recruitment by worker collectives.

At the end of this compendium of lessons learned, several better practices and recommendations are listed.



**Lessons learned on how
the scale of supply and
demand for jobs
affects recruitment**



Scarcity of decent work options on a significant scale may lead to more labour intermediation and poor recruitment outcomes. This means that ad-hoc efforts to improve recruitment practices along specific corridors are far from sufficient as they fail to address both the demand for and the scarcity of decent work at a significant scale.

Improving the availability and quality of decent work at a significant scale alleviates market competition between workers to find jobs and market competition among employers to offer less to workers in both countries of origin and destination. Higher availability and quality of decent work therefore makes it easier to improve recruitment outcomes. The link between recruitment and decent work options is important and often overlooked by policymakers. The high availability of precarious work options and the scarcity of decent work options generates two types of pressures: worker demand for decent work triggering pro-worker labour intermediation for better jobs, and employer demand for flexible and affordable labour triggering pro-employer labour intermediation to address their perception of a “labour shortage”. The more decent work is scarce, the more likely it is that both informal and formal labour intermediation will proliferate. In fact, in most cases of recruitment to sectors where working conditions are precarious, the pathways to jobs can be segmented by multiple labour intermediaries. The relationship between

the scarcity of decent work and greater intermediation has become particularly clear during the COVID-19 crisis.

Context of how lesson was learned

The programme found that when working conditions were perceived as poor, employers were more likely to keep a distance and seek intermediaries to facilitate recruitment. Likewise, when workers knew that working conditions tended to be poor, they too sought intermediaries that could help them find the “better employers”. For example, some recruiters knew how to find employers who would be willing to enable informal labour mobility for workers, even if this was illegal. This practice was sometimes referred to as “free visas” even though these arrangements were anything but free. The term “free” referred to the possibility of accessing freer labour mobility in contrast to the strong dependence on one employer, which is characteristic of sponsorship systems. Yet another example of labour intermediaries offering services responding to the demand for decent work consisted in services facilitating an exit from abusive work relations and re-employment in less



abusive work relations or simply returning the worker to their original home. Helping someone exit an abusive work relationship or change jobs to earn a living may seem like a morally legitimate act, and yet doing so often requires violating sponsorship, labour or even anti-trafficking laws. Labour intermediaries involved in facilitating such services for workers were therefore always informal.

Implications of lesson for future programming

The notion that labour recruiters can be incrementally trained and sensitized to effectively adopt better

recruitment practices was found to be unrealistic unless decent work could be guaranteed on a significant scale to meet the demand for those decent jobs. Programmes focusing on fair or ethical recruitment should review such assumptions accordingly. Addressing working and living conditions through enforcement of international labour standards and comprehensive employment policies that are consistent with labour migration policies is the best way to improve recruitment outcomes. Most other efforts may help a few individuals but are piecemeal and unsustainable.



While recruitment fees can be exploitative, faulting the labour intermediary who charges the fees is not sufficient. Recruitment fees are not only linked to the demand and supply of workers, but also to the demand and supply of decent jobs. Addressing the scarce supply of decent jobs is more important.

While workers do not like exploitative fees, in practice, most migrant workers prefer to buy the support of a trusted agent on whom they can apply social pressure to find less abusive employers, facilitate negotiations, negotiate exiting difficult employment relationships, overcome the red tape of bureaucratic migration or work-permit requirements, facilitate release from detention following the employer's failure to renew work permits, or navigate other policies restricting their mobility. It's the absence of effective solutions to these recurrent and seemingly invisible challenges that pushes migrant workers to rely on informal payments for intermediaries to facilitate ad-hoc solutions. Banning the charging of recruitment fees is insufficient in itself. Policies seeking to reduce recruitment fees should also seek to reduce the need for unnecessary intermediation, taking into account the realities of women's labour migration.

Context of how lesson was learned

The programme cooperated with partners to interview workers about their preferences regarding informal agents in Bangladesh, India and Nepal. These interviews were recorded and are available in video-documentary format (Migrant Forum in Asia 2018a; 2018b; 2018c).

Implications of lesson for future programming

Policy guidance should ensure that measures are in place to ensure that procedures to seek foreign employment are realistic and do not involve additional time and costs for migrant women. Guidance should ensure that reliable mechanisms exist for migrant women workers to suggest improvements to labour relationships (e.g., simple grievance management systems), that there exist worker-friendly procedures that enable them to exit abusive employment relations, and that workers do not have to face detention or other mobility restrictions.



Assessing and testing better recruitment practices and policy measures tends to focus on the potential for success of individual cases and specific “boutique” practices, and yet they seldom change the wider market dynamics that frame the context in which those recruitment practices take place.

Many fair and ethical recruitment initiatives of international organizations or enterprises are based on specific recruitment processes organized in connection with a few individual employers and their representatives. While such practices may indeed be very promising, they usually do not cover the entire range of recruitment practices occurring within the sector along the selected migration pathway (Bosc 2021). At best, such practices show that there is room for improvement; they should in no way be promoted as a model for the entire sector without regulatory reforms that go far beyond the scope of those individual practices. It should also be noted that a good business doesn't mean other businesses will not exploit what they perceive as a niche opportunity resulting from the good business's focus on ethical recruitment – market incentives means that they will. For example, a business that seeks to improve recruitment practices by choosing ethical employers and preparing workers prior to their migration leaves out a niche market opportunity for other businesses to choose unethical employers and not inform workers about

what really awaits them in terms of working and living conditions once they reach their destination.

Context of how lesson was learned

The programme has consulted, designed and implemented new recruitment practices along specific migration pathways. It has also cooperated with other multi-stakeholder initiatives that were doing similar things. While such experimentation enabled the practitioners involved to understand more about recruitment challenges, none of these initiatives or the aggregation of such initiatives enabled a significant general improvement of recruitment outcomes for workers.

Implications of lesson for future programming

International organizations and enterprises seeking to implement fair recruitment practices should be cognizant of the singularity of those initiatives and the wider scale and context of other practices. It is particularly important to take into account the scale of availability of decent-work options as referenced under Lesson 1.



Flexible recruitment and contracting practices have allowed those at the top of garment supply chains to avoid significant financial losses and having to deal with the human impact of the pandemic at the lower rungs of the supply chain. Regulatory accountability frameworks of recruitment and labour should be entirely reviewed to respond to the interests of migrants and other workers.

The COVID-19 pandemic resulted in supply chain disruptions, making migrant and other workers more vulnerable than before. Some lost their jobs, while others were stranded and, in many instances, became undocumented, prompting the demand for more labour migration intermediation. Border closures and travel bans further exacerbated their vulnerability to poor recruitment practices and high recruitment fees and costs. Instead of responding to the situation and extending support to both employers and workers in their supply chains, many multinational buyers at the top of garment supply chains cancelled orders, renegotiated pricing and avoided financial losses, leaving the human consequences of predatory purchasing practices to the companies below them.

First-tier factories often reacted by not paying their workers' salaries, forcing workers to take leave, terminating their contracts and reducing their increasingly angry workforce, only to wait a few months

before hiring new cohorts of workers who were more desperate for jobs and often willing to pay higher recruitment fees at the cost of indebting themselves. Similarly, second- and third-tier factories shifted the role of managing workers further on to their formal and informal contractors. When recruitment restarted, many of the new costs were passed on to migrant workers (e.g., PCR testing expenses).

Context of how lesson was learned

During the pandemic, trade unions and workers' centres supported by the programme reported and documented rising numbers of migrant worker grievances related to supply chain disruptions. The other studies referred to in Table 1 below indicate similar trends.

தொழிலாளர்  ஆணையரகம்
தமிழ்நாடு தொழிலாளர் நல வாரியம்
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WORKERS UNION**



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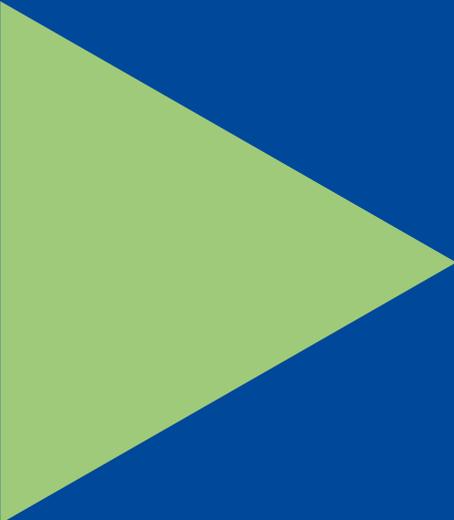
Yathaval Street, Kakilanchavadi,

Table 1. Examples of supply chain disruptions

| | |
|--|---|
| Survey of exporters by the Apparel Export Promotion Council of India (AEPC, Research Division 2020) | Penn State, Center for Global Workers' Rights survey in Bangladesh (Anner 2020) |
| 83% of the exporters reported that orders had been wholly or partially cancelled. | Over one million garment workers were fired or furloughed. |
| For cancelled orders, 72% said that their buyers had not taken responsibility for materials already purchased. | Half of Bangladesh's suppliers had the bulk of their in-process, or already completed, production cancelled. This is despite the fact that buyers had a contractual obligation to pay for these orders. |
| Almost 50% indicated that buyers were asking for discounts on goods already shipped. | 97.3% of the buyers refused to contribute to severance pay expenses of dismissed workers, also a legal entitlement in Bangladesh. |
| 72% said they were asked for more than a 20% discount. | 98.1% of the buyers refused to contribute to the cost of paying partial wages to furloughed workers, which is required by the law. |
| 27% had been asked for discounts of more than 40%. | 72.4% of furloughed workers were sent home without pay. 80.4% of dismissed workers were sent home without severance pay. This is despite the fact that many brands have "responsible exit" policies, in which they commit to support factories in mitigating potential adverse impacts to workers should they decide to exit. |
| Brands often invoked force majeure; however, the pandemic was not specified in agreements. | |

Implications of lesson for future programming

The pandemic has revealed significant gaps in recruitment and contracting policies. It's important to document those gaps and bring them to the attention of regulators and advocacy groups in order to redesign and strengthen accountability frameworks of recruitment and labour, enabling them to respond to the interests of migrant and other workers, rather than only those of the people at the top of the supply chain.



**Lessons learned on
the segmentation
of labour
recruitment services**



Labour outsourcing and subcontracting policies have tended to blur the responsibilities of employers, labour intermediaries and governments to ensure fair recruitment and decent work.

For workers, especially in the context of labour migration, recruitment is closely connected to their working and living conditions. They expect to be treated with dignity and hence, recruitment processes – regardless of how they are organized – are expected to lead to decent working and living conditions – a necessary condition for a fair recruitment outcome. Laws and policies related to labour outsourcing and subcontracting can blur the accountability towards ensuring fair recruitment outcomes for migrant workers. Indeed, such policies have increasingly enabled: (1) private employers to delink themselves from the direct responsibility of recruiting and contracting; (2) labour intermediaries to delink themselves from the working conditions that are offered to workers by employers or other intermediaries; and (3) the setting of working conditions – by default or design – in a bubble that is kept somewhat isolated from state regulation, depending on the local legal and market context. This has been further complicated by the sidelining of public employment offices in favour of private employment and recruitment agencies, even though the functions and motives of the former are different from the latter.

Context of how lesson was learned

As described further in the following lesson, it was observed that in some migration pathways, multiple intermediaries were involved in recruitment processes (Bosc 2016). After

interviewing labour intermediaries, the programme found that if working conditions were poor, intermediaries tended to have vested interests in omitting information that could make the worker change their mind. The more intermediaries were involved, the more likely it was that the omission of information, if not disinformation about working conditions, would occur, leading a worker to affirm that they were deceived, even if each intermediary was often able to claim plausible deniability. The presence of intermediaries was underpinned by a permissive regulatory and/or enforcement environment that was supportive of labour outsourcing and subcontracting.

Implications of lesson for future programming

The effects of labour outsourcing and subcontracting policies on policies and programmes that support fair recruitment outcomes and decent work must be analysed. The former may undermine the latter, and there is the risk that failing to analyse the effects of labour outsourcing and subcontracting on fair recruitment and decent work may lead to misleading characterizations about the merits of fixing specific recruitment processes.

Policy guidance should ensure that checks and balances exist so that employers and intermediaries at all levels are transparent about recruitment and working and living conditions. Better practices should ensure that workers in areas of origin have knowledge of the exact working and living conditions in addition to the migration terms.



PARSHAKHOL WATERSHED PROJECT



वाजना क्षेत्र है
- 1499 हे.
कुल गांव-4, (1) भटगांव
(2) पररा खोला
(3) रोगबहरी
(4) सराईपालखी

कुल परिवार 4000
कुल जनसंख्या 22886

| मुख्य उपखण्ड | |
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| कोरी विवरण | |
| वाटा डायवर्सन क्रमांक | |
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| डिवर्ज | |
| पाईप आउटलेट | |
| पायरोपेड | |
| बरी निर्माण | |
| गली प्रण | |
| फ्लू वी म | |
| रक वि | |
| गैरि | |
| इरी | |

Efforts to ensure that labour recruiters share responsibility for labour recruitment outcomes should not concurrently offload the principal employer's responsibility to provide for decent work.

The fluidity and segmentation of labour supply chains is such that none of the key stakeholders –for example, workers, labour recruiters, regulators and employers – can guarantee a fair migration outcome for any worker on their own. If working conditions are poor, each stakeholder in the recruitment process has a vested interest in not volunteering information that could make the migrant worker change their mind. The more intermediaries are involved in the recruitment process, the more likely it is that they will omit information, if not outright misinform, migrants about working conditions. This leads many workers to claim they were deceived during the recruitment process, and yet each individual link in the chain is often able to plausibly deny this charge. In a fair recruitment process, it is important that all labour intermediaries as well as the employer share responsibility for the overall recruitment outcome, which includes access to decent work. However, labour recruiters' responsibilities for overall recruitment outcomes should not come at the expense of the principal employer's responsibility of providing for decent work. This is all the more important given the weakness of labour inspections.

Context of how lesson was learned

The programme faced multiple cases in which labour intermediaries and employers denied having a responsibility for the overall recruitment outcome, while indicators of forced labour were manifest. Similarly, the programme came across cases in both care and garment work in which contractual relationships were outsourced to a contractor or a recruitment company, with employers claiming that their involvement with the workers was not sufficient enough to justify their responsibility to ensure decent working and living conditions.

Implications of lesson for future programming

Advocacy to hold recruiters accountable for recruitment outcomes should specify that accountability for recruitment does not justify offloading of principal employer responsibilities. Although difficult to implement, the legal concept of joint and several liability can serve as a model to ensure fair recruitment to decent work.



A holistic and nuanced approach to the regulation of the recruitment industry is important. Ad-hoc fair-recruitment initiatives are far from sufficient.

Registered recruitment agencies in countries of origin often claim that they are transparent about recruitment offers to workers, and that the employer in the country of destination offers different working conditions to the worker once they have arrived. Moreover, subagents that registered recruitment agencies contract to find interested workers often describe a different picture of working abroad to the aspiring worker. As referred under Lessons 3, 5 and 6 from the perspective of labour market dynamics and outsourcing, when working conditions are poor, each stakeholder in the recruitment process has a vested interest not to volunteer information that could make the migrant worker change their mind. The more intermediaries there are in the recruitment process, the more likely it is that the omission of information (often building on the workers' tacit assumptions), if not misinformation about working conditions, will occur, leading a worker experienced with the recruitment process to affirm that they were deceived. Yet, each stakeholder is often able to claim plausible deniability. Moreover, a good staffing business or recruitment practice doesn't mean other businesses will not exploit what they perceive as a niche opportunity resulting from the good business's focus on ethical recruitment only – market incentives means that they will.

Context of how lesson was learned

The programme undertook several studies and assessments of recruitment practices (Jones 2015; Bhattacharjee, unpublished) and interacted with multiple labour recruiters and employers in training events and consultations. It became clear that multiple stakeholders have different types of roles and perceptions of their roles in recruitment processes.

Interventions targeting only one type of labour recruiter – usually identifiable formal registered recruitment agencies – were superficial and insufficient in addressing the full nature of recruitment-related abuses across the recruitment pathway. Similarly, interventions that attribute responsibility to only one type of stakeholder (e.g. the informal subagent) veil the systemic nature of abusive misinformation. This is common in programmes with a focus on criminal justice, which tend to shift responsibility of abuse to the weakest intermediary, while the system that enables misinformation and deception remains unaddressed (e.g. prosecution initiatives in many anti-trafficking programmes).

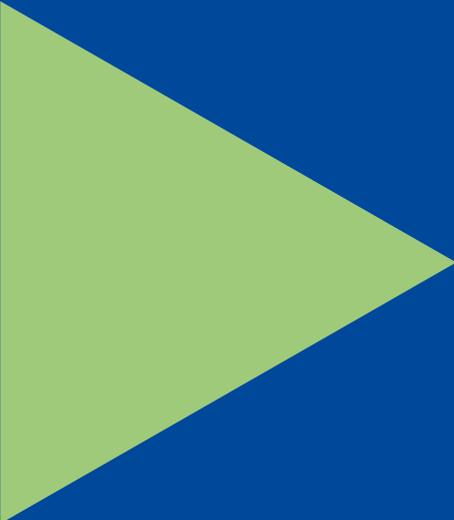


Implications of lesson for future programming

Recruitment regulation should take into account the various levels of intermediation and brokerage that migrant workers rely on in their attempts to access decent work throughout their migration cycle. Failure to consider migrant workers' aspirations for decent work, or to take into account the motivations of one or more of these other parties, can lead to ineffective regulation, possibly triggering additional and more expensive intermediation and poor recruitment outcomes.

Programmes that only target one type of labour recruiter in one location can generate incentives for omission of information, misinformation and deception to be further

outsourced and accountability even harder to pinpoint. Likewise, anti-trafficking prosecution and other criminal justice approaches in such contexts tend not to address the structural nature of abuse, yet they can generate a misleading perception of justice and improvement. Understanding and addressing the structural nature of recruitment and work challenges is important. Regulations should be comprehensive, starting from ensuring decent working and living conditions, to ensuring that checks and balances prompt accountability of employers and all intermediaries across migration pathways. They should also consider how labour markets might react to such regulations.



**Lessons learned
on the blanket
criminalization of
informal intermediaries**



Anti-trafficking laws and policies tend to indiscriminately criminalize informal labour intermediaries, who, in most migratory and legal contexts, play an important business role and without whom employers and formal recruitment agencies can hardly operate.

Public discourse on recruitment practices tends to conflate informal labour recruiters with human traffickers. In the context of South and West Asia, the physical and social distance between migrant workers and their employers is significant, and recruitment to low-income jobs can involve several parties, including formal and informal intermediaries. Formal intermediaries usually look after formal procedures, such as contracts, work permits, visas and other clearances, while informal intermediaries identify workers in locations where formal intermediaries are not present and deal with the informal tasks detailed in the previous lessons learned.

Context of how lesson was learned

The programme reviewed jurisprudence on cases of human trafficking and found that most involved informal labour intermediaries, some cases involved

formal labour intermediaries, and very few involved employers. The absence of employers in cases involving human trafficking was particularly conspicuous in countries of origin.

Implications of lesson for future programming

Rather than supporting legislation that systematically criminalizes informal labour intermediaries, it is important to foster dialogue to remove unnecessary motives of intermediation and promote accountability in labour intermediation and decent work at all levels.



The discourse on “unscrupulous middlemen” tends to invariably stigmatize informal labour intermediaries. Such discourse can indirectly prevent workers from relying on informal labour intermediaries or other fellow workers in accessing employment and seeking support to exit an abusive labour migration situation.

Labour intermediaries are invariably referred to as “unscrupulous middlemen”, especially when they operate informally. The profit motive of their work is referred to justify such claims. While there are indeed some abusive recruiters, not all recruiters are the same. Profit motives are inherent to all market players, not only to labour recruiters. Yet the discourse on “unscrupulous middlemen” tends to conflate all informal intermediation with human trafficking, making no distinction between an informal labour intermediary acting alone to assist a worker and an organized criminal network seeking to exploit them.

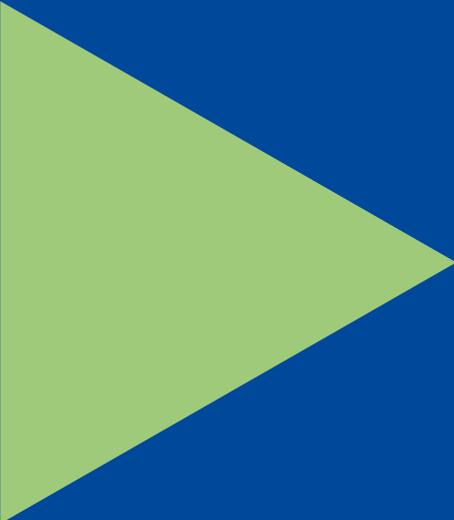
Context of how lesson was learned

Throughout its implementation, the programme found a significant number of cases of so-called “unscrupulous middlemen” who had been accused of or sentenced for having committed a human trafficking crime and were,

in fact, informal intermediaries or fellow workers who had supported them in finding informal employment, facilitating travel, providing shelter or helping the worker leave an abusive employer. In some cases, even the male partners of eloping couples were sentenced as human traffickers. Interestingly, abusive employers or recruitment agencies who enjoyed an official status were often able to avoid scrutiny and accountability by pointing fingers at their informal counterparts.

Implications of lesson for future programming

Persons who commonly refer to “unscrupulous middlemen” should be careful not to generalize such terms to all informal and formal labour intermediaries. Such discourse can harm workers who need such intermediation throughout their migration cycle.



**Lessons learned
on training programmes
related to
fair recruitment**



Training programmes on fair and ethical recruitment for private and public recruiters tend to assume that recruiters are in control and responsible for the recruitment outcomes of migrant workers they engage with. That is often not the case, especially in sectors known to involve precarious working and living conditions. Undergoing such training programmes can falsely legitimize recruiters who participate in them and can enable them to be advertised in a way that misleads workers wishing to migrate.

In sectors that commonly involve precarious working and living conditions, formal and identifiable labour recruiters only play a partial role in recruitment processes. Training them on fair recruitment principles usually assumes that they are the main recruitment players, when, in fact, most recruitment happens outside their purview. They often depend on a variety of other informal and formal intermediaries. Rather than training formal identifiable labour recruiters on codes of conduct which they can hardly implement, it is important to identify the most common roles and responsibilities of all the players involved in the

recruitment processes from end to end and assess the type of regulation or intervention that would be needed to hold all of them accountable in achieving a fair-recruitment outcome for the migrant worker. More often than not, training is not the most important solution to the lack of accountability over recruitment outcomes.

Given the multiplicity of actors involved, training programmes cannot guarantee that all actors in the recruitment chain will commit to fair recruitment standards, which in most cases are non-binding. Such training programmes can be misused by recruiters to claim legitimacy – from having participated in such training – to attract new clients.



Context of how lesson was learned

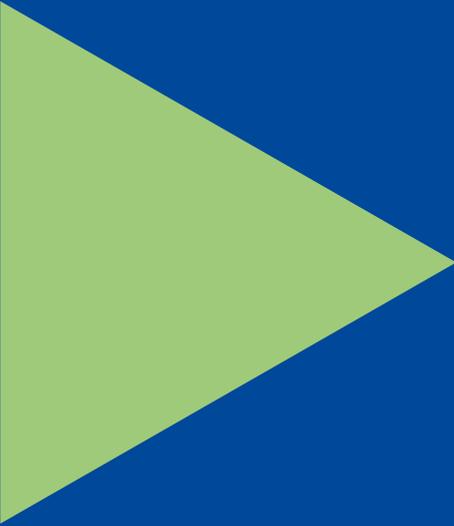
In recent years, the issuing of guidance around “fair recruitment” or “ethical recruitment” has become common among international organizations and migrant rights organizations, multinational corporations and large recruitment and employment agencies. For the ILO, the General Principles and Operational Guidelines for Fair Recruitment represent the most recent and comprehensive set of guidance (ILO 2021). They were the result of a tripartite consultation process leading to their adoption by the ILO governing body, and they build on the ILO’s Private Employment Agencies Convention, 1997 (No. 181) and other labour and human rights standards. There are also other initiatives, such as the International Organization for Migration’s (IOM) International Recruitment Integrity System (IRIS; ethical recruitment platform); the World Employment Confederation Code of Conduct for Recruiting Agencies; Verité’s Fair Hiring Toolkit; the International Human Rights; the Dhaka Principles for Migration with Dignity, and so on.

The programme implemented training programmes for identifiable labour recruiters in both countries of origin and destination. During interactions with labour recruiters, the programme team realized that in sectors where employers prefer anonymity, a low profile and limited accountability, formal recruitment players only

play a minor role. In fact, recruitment processes in those cases tend to involve multiple stakeholders responding to very different multi-jurisdictional incentives and market trends. Rather than offering training to formal identifiable recruitment agencies, the programme therefore decided to prioritize assessments of recruitment practices and regulation across recruitment pathways in order to be able to recommend better practices and better regulation.

Implications of lesson for future programming

It is important to map out all labour intermediation actors, including those who identify themselves as well as those who do not identify themselves but are involved in ad-hoc intermediation (e.g., friends, relatives, etc.). This cannot be done without the participation of migrant workers themselves. It is better to frame interactions with intermediaries as dialogue rather than as training. Any such dialogue on fair and ethical recruitment should take into account the full depth of intermediation, and especially the motives behind common informal intermediation practices. Dialogue should ensure that discussions about standards do not take place before identifying and highlighting all the migration and labour intermediation practices.



**Lessons learned
on the design of
fair recruitment
programmes and policies**



Whenever prevailing working conditions are notoriously poor, promoting fair recruitment can be counter-productive in some contexts and can even amount to institutionalizing human trafficking.

In sectors such as domestic and garment work, where working and living conditions tend to be poor, recruitment outcomes are messy. The promotion of fair recruitment runs the risk of institutionalizing recruitment into poor working conditions. It is very important that international organizations do not promote fair recruitment without first taking working conditions into account. Guidance on recruitment regulation should enable multiple practices of recruitment to take place as recommended by policy briefs on practices and regulations of recruitment to garment work and to domestic work (ILO 2017a; ILO 2017b).

Context of how lesson was learned

The programme had designed interventions to improve recruitment processes to domestic and garment work. However, interaction with migrant workers and multiple studies about working conditions in both these sectors pointed to systemic challenges, making the prospects of fair recruitment to these sectors, however well-intended, problematic. It became clear that programme interventions should first ensure that jobs to which

workers are recruited are decent, and only then support accountable recruitment practices that are likely to be emancipatory. This may include interventions that seek to reduce vulnerabilities in existing recruitment, and employment processes as well as interventions that seek to develop alternative recruitment processes to jobs that are likely to be more decent.

Implications of lesson for future programming

Anti-trafficking and safe migration programmes should be careful not to promote fair recruitment into working and living conditions that are notoriously poor. This tends to happen as a result of poor programme design in which migration and recruitment are identified as general focuses of interventions, without taking into account the specificity of working conditions into which migrant workers are hired. It is therefore important to specifically assess working conditions in targeted occupational sectors.



Migrant workers', especially women migrants', views are hardly sought in the design, implementation and monitoring of recruitment practices and policies, yet their experience and viewpoints are critical in improving recruitment practices.

Workers are hardly involved in the design and monitoring of recruitment processes and regulatory frameworks. Special measures are therefore necessary to ensure that recruitment practices are accountable not only to employers, labour recruiters and regulators, but also, and most importantly, to workers. In order to address this lack of worker representation, special measures are necessary that meaningfully involve migrant worker representatives in the design and monitoring of recruitment processes.

Context of how lesson was learned

The programme undertook several assessments of recruitment practices and interacted with multiple labour recruiters, employers and workers. It became clear that migrant workers themselves, especially

women, are rarely consulted in the design of recruitment policies. In fact, in some cases, bilateral memoranda of understanding on the recruitment of migrant workers between countries of destination and origin are deliberately confidential and inaccessible to workers.

Implications of lesson for future programming

Addressing poor recruitment practices requires regulatory incentives that meaningfully involve the migrant worker – who directly experiences those specific recruitment practices – in the design, implementation and monitoring of recruitment practices and regulations.



There is a political economy behind the non-binding, self-accountable and voluntary nature of ethical recruitment discourse. Improvements in recruitment practices require effective public regulation in addition to voluntary good practices of employers and recruiters.

Effective regulation was found lacking in all migrant recruitment pathways reviewed by the programme. There is no dearth of knowledge on what works to regulate recruitment to decent work. The Work in Freedom programme has also published policy briefs with specific recommendations (on practices and regulation of recruitment to garment work and to domestic work) in 2017. What was found missing was the political will and capacity to effectively regulate recruitment. Indeed, while measures to promote labour market flexibility through easier outsourcing and subcontracting have been implemented in countries reviewed by the programme, measures to promote fair recruitment have remained “non-binding” and “voluntary”.

In Lesson 5, we saw how outsourcing and subcontracting actually contributed to blurring accountability in achieving fair recruitment outcomes for workers. One may therefore ask why there is political willingness to undertake measures that end up blurring accountability for recruitment processes but not to enforce real accountability for recruitment outcomes towards the worker. The political will to effectively regulate recruitment to ensure fair and ethical recruitment to decent work has been lacking.

Context of how lesson was learned

The programme reviewed recruitment laws and recommended specific improvements in most countries

it reviewed. For example, in India, the programme was requested to support the drafting of a regulation on recruitment of migrant workers. Despite having drafted the regulation and having organized three regional consultations to gather feedback from workers, recruiters, employers and regulators around the country, the regulation was never passed. In contrast, the evolution of India’s Contract Labour Regulation and Abolition Act of 1970 is particularly telling. The law was meant to gradually phase out subcontracting by specifying conditions under which it would be temporarily allowed and then, gradually, abolish contract labour. However, over time, in the name of labour flexibility, it was truncated, with exceptions enabling the reverse intention: an expansion of outsourcing. It reached a point where the notion of “abolition” of contract labour was dropped from the new Occupational Safety, Health and Working Conditions Code, and the new regulatory framework enables the expansion of contract labour.

Implications of lesson for future programming

It is important for those involved in the design of regulatory measures on fair recruitment to be aware of the full spectrum of the political economy of recruitment and outsourcing and be willing to take gradual but bold steps towards more effective regulation.



Labour recruiters do not share the same interests as employers. Involving them in social dialogue on working and living conditions should focus on their specific roles in organizing recruitment with their clients. In the absence of employers, labour recruiters should not replace them.

Policymakers sometimes engage with associations of labour recruiters as if they represent the interests of employers or workers in their absence. This usually happens in sectors in which employers or workers are not organized into formal associations or unions. While the views of labour recruiters may indeed be important to improve recruitment processes, their motivations are different, and they should not be assumed to speak for employers or workers. Not all labour recruitment happens through labour recruiters, and involving them as employer representatives can lead to situations in which other safe and effective recruitment channels that do not require the presence of recruiters are closed. Alternatively, it can lead to situations in which they misrepresent workers' motivations in order to avoid scrutiny of their own roles. They can also misrepresent facts about working and living conditions that only employers are in a position to decide.

Context of how lesson was learned

The programme engaged in social dialogue involving labour recruiters in all countries under its purview. The purpose of such dialogue was to improve recruitment practices and working and living conditions of workers. In some sectors, such as domestic work, where employers are seldom organized, regulators regularly assumed that recruitment agency associations were legitimate representatives of employers.

Implications of lesson for future programming

Regulators should involve labour recruiter associations within the specific scope of their respective roles. They should seek employer and worker views through proper mechanisms of representation as per the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).



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Domestic Workers' Society
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Tughlakabad

HOUSEWORK
No one notices
when you do it, but
everyone notices
when you don't.

The assumptions behind policies and programmes seeking to improve recruitment practices should be carefully reviewed.

The programme found that conventional interventions tended to assume that all labour recruiters, often referred to as middlemen, are usually traffickers who dupe workers and employers, and hence recruiters have to be eliminated or tightly scrutinized, while workers and employers need to be educated to know how to manage them. Such assumptions are inaccurate and highly misleading.

Context of how lesson was learned

The programme identified four broad overlapping correlated policy trends that affect recruitment and labour intermediation:

- 1. Promoting labour flexibility and ease of doing business.** This policy trend has weakened regulation and management of labour recruitment by the state and increasingly enabled formal private employers to delink themselves from the direct responsibility of recruiting and contracting. Simultaneously, this has also enabled employers to delink themselves from the responsibility of ensuring decent work and allowed recruiters, contractors or gig-sector platforms to set the working conditions of workers in a kind of bubble that is kept isolated from state regulations.
 - 2. Anti-trafficking policy advocacy.** This policy trend is increasingly focused on criminalizing informal labour intermediaries for poor recruitment outcomes and prescribing formal migration channels for migrant workers or preventing migration altogether.
 - 3. Outbound employment protections within recruitment processes.** These policies usually consist of registering, licencing and monitoring formal private recruitment agencies and barring or regularizing informal intermediaries. Sometimes, it also includes state involvement in recruitment through public recruitment agencies.
 - 4. Advocacy and promotion of non-binding principles, guidelines and other measures on fair and ethical recruitment.** These include the ILO's General principles and operational guidelines for fair recruitment (2016) and definition of recruitment fees and related costs (2019).
- Overall, these trends have translated into a push, on the one hand, towards more formal, yet flexible, contracting and recruitment policies within a moral, non-binding framework of fair and ethical recruitment, and, on the other hand, a push towards the criminalization of informal intermediaries.



However, evidence from across labour migration pathways shows that: (1) growing labour intermediation is closely connected with scarcity of decent work options; (2) informal intermediation is often necessary for substandard employment; and (3) informal intermediaries also play an important role in connecting people in rural areas with distant labour markets and employers and, over time, routes into urban or industrial centres in the country or abroad for more permanent settlement and jobs with prospects for upward mobility. Informal intermediaries may also offer payment advances and recruit workers on the promise that debts will be repaid through work. Such debt migration arrangements in recruitment are thought to trap workers in a continuous cycle of borrowing and repaying, but there is emerging evidence that such borrowing may also provide migrants with a source of capital that they are unable to procure through the formal banking system. There are indications that these new sources of

borrowing may also help them to sever connections with traditional patrons in rural societies.

Implications of lesson for future programming

There is a clear risk that if these realities about brokerage needs, labour intermediation and working conditions are not understood or properly documented, the unaccountability of labour flexibility approaches over decent work and the push towards the criminalization of informal intermediaries will undermine pathways to work itself and affect mostly those who are seeking jobs.

The table below illustrates how conventional interventions can be improved if common assumptions are questioned.

Table 2. Summary of characteristics of conventional practices versus better emerging practices

| Characteristics of conventional practices | Characteristics of better practices |
|---|---|
| Assessments | |
| <ul style="list-style-type: none"> • Company-focused assessments or audits | <ul style="list-style-type: none"> • Pathway or sector-wide assessment preceding and determining company assessments |
| <ul style="list-style-type: none"> • Assessment of formal actors only | <ul style="list-style-type: none"> • Assessment involves both formal and informal actors |
| <ul style="list-style-type: none"> • Assessment focuses on recruitment processes only | <ul style="list-style-type: none"> • Assessment includes full analysis of link between decent work and recruitment |
| <ul style="list-style-type: none"> • Rating and certifying recruiters as ethical | <ul style="list-style-type: none"> • Governments and international organizations should not promote or endorse recruitment practices unless working and living conditions are generally decent |
| Programme practices | |
| <ul style="list-style-type: none"> • Training for employers and recruiters on codes of conduct | <ul style="list-style-type: none"> • Identifying checks and balances to promote accountability of all players in the recruitment chain |
| <ul style="list-style-type: none"> • Educating migrant workers on recruitment | <ul style="list-style-type: none"> • Collecting feedback from migrant workers and sharing sector-wide information |
| <ul style="list-style-type: none"> • Intercepting recruiters | <ul style="list-style-type: none"> • Dialogue with all types of recruiters |
| <ul style="list-style-type: none"> • Piloting fair recruitment with specific companies | <ul style="list-style-type: none"> • Involving migrant workers in the design and monitoring of recruitment |

| Regulation | |
|--|---|
| <ul style="list-style-type: none"> Deregulation of outsourcing and subcontracting | <ul style="list-style-type: none"> Holding all actors accountable for recruitment outcomes linked to decent work. Accountability of labour intermediation at all levels. |
| <ul style="list-style-type: none"> Banning/criminalizing informal recruiters | <ul style="list-style-type: none"> Registering and monitoring of informal and formal recruiters |
| <ul style="list-style-type: none"> Non-binding codes of conduct, self-accountability for employers and recruiters | <ul style="list-style-type: none"> Labour laws enabling fair recruitment to decent work followed by effective enforcement |
| <ul style="list-style-type: none"> Specific regulations on recruitment | <ul style="list-style-type: none"> Comprehensive social and economic policies that take into account recruitment to decent work |
| <ul style="list-style-type: none"> Complex procedures for migrant workers | <ul style="list-style-type: none"> Procedures to seek foreign employment are realistic and do not involve additional time and costs for migrant workers. Policies should remove unnecessary motives of informal intermediation. Simple worker- and effective grievance-management systems should exist, enabling workers to exit abusive employment relations and avoid mobility restrictions. |

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Work in Freedom

Work in Freedom is an integrated development cooperation programme aiming to reduce the vulnerability to forced labour for women migrating for garment and domestic work. The programme works along migration pathways in India, Nepal, Bangladesh, Jordan, Lebanon and Gulf countries. It is funded by UK Aid from the Department of International Development. However, the views expressed in this policy brief do not necessarily reflect the department's official policies.

For more information please contact:

Igor Bosc

Chief Technical Advisor, Work in Freedom
ILO Regional office for the Arab States (ROAS)
Aresco Centre, Justinien St, Kantari
Riad El Solh 1107-2150
P.O. Box 11-4088 Beirut, Lebanon
E: bosc@ilo.org
W: www.ilo.org/forcedlabour