

# Terms of reference

Consultancy to develop literature review, policy briefs and field research on labour-related brokerage and intermediation of low-income migrant women and men's work in South Asia and Arab States.

ILO Work in Freedom Programme, September 2020

Consultancy applicable to individuals only

## 1. Background

Brokerage of employment of migrants in South Asia or Arab State region does not follow linear or easily comparable recruitment processes. Brokerage depends on the types of jobs that are offered in each sector, labour demand and supply for such jobs, employer practices, the type of workers who take on such jobs including their origin, sex, language, education of workers, 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 jobs are in factories, workshops, public spaces, or home-work environments, whether the jobs involve a degree of specialization (e.g. elderly care, cooking, machine operators, tailors, etc.), contracting and outsourcing practices, social and cultural differences, etc. In fact, often, several concurrent types of recruitment practices co-exist depending also on how labour brokerage is regulated.

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. 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 poor and socially excluded communities within them. They are adversely 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. They open up pathways to

distant labour markets and urban areas, which 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 cities that are otherwise hostile to migrants. There is also evidence that they may help migrants switch jobs in the city and assist them with bargaining for better working conditions. 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 be usually mediated by someone who is close to the worker and can talk to the employer or contractor – usually a former or experienced worker. If working and living conditions are poor, several types of brokerage 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 workers. Formal recruiters will performed tasks that are licit such as linking with a formal employer, arranging travel and visas, while informal recruiters will perform tasks that are illicit such as facilitating the circumvention of migration bans or facilitating change of employers in a context where workers are tied to a single sponsor (e.g. Kafala system).

These aspects of brokerage and recruitment are not well understood at the policy level. A majority of policy measures are either designed to eliminate informal brokers entirely or position the State as the only legitimate broker, or both. Policy responses have also been contradictory depending on the influence of other correlated policies. Four broad overlapping correlated policy trends that affect recruitment and labour intermediation can be identified:

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.* There has been a tendency to victimise women and girls especially if they are migrating with the help of brokers who are often criminalised and seen as traffickers. This policy trend, which is not limited to women, 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, licensing 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 for non-binding principles, guidelines and other measures on fair and ethical recruitment.* These include ILO's General Principles and Operational Guidelines for Fair Recruitment (2016) and the Definition on Recruitment Fees and Related Costs (2019), IOM's International Recruitment and Integrity System (IRIS) (2013), and several others.

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 may be 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. 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.

Brokerage and intermediation is seen in both internal and international migrants. Patriarchal and class ideologies underlie the responses of governments, recruitment agencies and civil society groups towards female migrants. Governance regimes for migration vary as a result of variable positioning of government authorities, intermediaries and the history of migration. Less permissive environments for women's mobility will tend to prompt their informal migration. More permissive environments for migration will mean that it will become more formal but still subject to varying patriarchal controls and influenced by class and gender stigma over the regulation of mobility. The high demand for care in urban centres or in countries where populations are aging or where female labour force participation is increasing means that brokerage for labour will be significantly different between men and women, making generalizations inappropriate. It should also be noted that while there is a long history of labour intermediaries mediating male, couple (e.g. jori) or cohort employment involving mostly men in South Asia, labour intermediation in women's work is more recent (Sen, 2020).

## 2. Objective

At a regional level, the Work in Freedom programme is expected to engage in regional fora dedicated to improving recruitment practices and fair migration. At the national level, governments in both origin and destination countries have requested the ILO to assist in the development of policies or regulations on fair labour recruitment. To respond to both regional and national needs, three types of documents need to be prepared under this consultancy:

1. **Literature review.** The consultancy is expected to review existing global and localized literature and datasets that may inform on the scale and scope of labour brokerage and intermediation of low-income workers, especially women. It will cover published academic literature and grey literature, international agency reports (ILO, IOM, etc.). WIF will share available studies at its disposal, however the consultant is expected to review other existing literature as well. Sources should give more attention to South and West Asia, but can include significant studies undertaken in other regions. S/he will shed light on the social and economic context described above, analyze the shifting spaces for labour brokerage in relation to work and employment trends and the changing roles of labour intermediaries in areas of women's employment, and examine the outcomes for the women and their families who use their services. The consultancy also includes a review of the main policy responses.
2. **Regional Policy Brief.** A policy brief to inform global, multilateral and corporate policy efforts aimed at improving recruitment practices to decent work. Highlight limitations and risks of current policy emphasis on (a) flexible non-binding guidance on labour matters related to recruitment, and (b) criminal justice approaches seeking to criminalize informal intermediaries or shift the blame to the lack of knowledge of workers. Provide recommendations that place decent work at the center of efforts to improve recruitment outcomes for employers and workers. This paper is meant to inform international organizations and government officials concerned with migrant rights, fair and ethical recruitment and human trafficking and forced labour in South and West Asia. It will be presented at 1-2 regional conferences. Length: maximum 10 pages.
3. **National Policy Brief.** A policy brief meant to inform national stakeholders seeking to improve recruitment practices to decent work through legal and policy reforms. Highlight how efforts to improve recruitment outcomes should: (a) not be delinked from regulatory provisions aiming for decent work and (b) not be segmented into separate sub-streams of policies (e.g. anti-trafficking domain separated from labour domain; ethical recruitment separated from decent work, labour flexibility separated from recruitment, etc). The policy brief will be presented in one national conference. It should not be longer than 10 pages.

### 3. Indicative list of study questions

Indicative and non-exhaustive list of questions to review depending on availability of primary and secondary research:

1. **Relationship between scale and quality of work and labour intermediation:** Work in Freedom findings from programme interventions provide preliminary indications that the scale of availability of precarious jobs correlates with increased labour intermediation<sup>1</sup>. Review existing data sets (e.g. labour force surveys, census, household surveys, migrant stocks, migrant flows) that may shed light on parameters of employment, sectorial working and living conditions and labour intermediation and identify existing data enabling to verify whether poor working and living conditions at a significant scale correlate or not with more brokerage needs and labour intermediation? Document qualitative research indicating conversely whether decent work availability at scale correlates with less brokerage needs and less labour intermediation. In the absence of data and literature, highlight research gaps.
2. **Brokerage needs of migrant women workers:** Document evidence of brokerage needs of migrant women workers at different ends of their migration cycles. These should include formal and informal needs and extent to which needs are met through informal networks or not. Review women's preferences regarding recruitment options, their views about intermediaries, recruitment fees, etc.
3. **Typologies of labour intermediaries:** Qualitative studies indicate that there are different types of labour intermediaries involved when working and living conditions are poor (Picherit, 2009). Brokerage needs of both employers and workers differ. There are both formal and informal brokerage needs for which different types of labour intermediaries are used. Document research indicating whom workers in low income jobs rely on most to broker their needs regarding non-payment of wages, overcome or exit an abusive work relation, overcome poor living arrangements and dealing with travel to address family emergencies, or finally send money to family members when banking options are not reliable (informal labour intermediary vs. formal one (e.g. registered recruitment agent)? Whom do employers rely most to identify the worker, arrange travel and get the worker to start working?
4. **Law and policy questions:**
  - Do policies supporting labour flexibility affect accountability of employer towards decent work outcomes?
  - How do anti-trafficking and anti-slavery policies affect recruitment practices of employers and recruiters? How do they affect migrant women? Short review of how gendered migration and occupational bans affect women.

---

<sup>1</sup> ILO [Lessons Learned from the Work in Freedom Programme](#), February 2019, Lesson No. 13, page 31)

- Review law and policy domains underpinning decent work deficits and their relationship to brokerage needs of workers. Share examples of literature.
- Share literature providing reflections on effectiveness of banning or licensing of labour intermediaries work.

## 4. Deliverables

#	Deliverable	Theme	Indicative days needed	
			Consultant	Research Assistant
1.	<b>Literature review</b>	<u>Global/regional</u> : labour brokerage and intermediation of women and men's low-income labour	10	20
5.	Policy brief	<u>Global regional</u> : Links between quality and scale of women's employment with labour intermediation/ facilitation outcomes	5	5
6.	Presentation		0.5	0
7.	Policy brief	<u>Country specific</u> : Policy recommendations on labour recruitment to decent work	5	5
8.	Newspaper articles	<u>Country specific</u> : Measures to improve regulation on recruitment	n/a	n/a
Total:			20.5	30

This is a deskwork consultancy and does not include any travel budget.

## 5. Team and qualifications

The consultancy requires the services of a senior academic who may be assisted by a research assistant. The senior academic should have the following experience.

- Extensive global and regional research experience on migration and labour intermediation attested by monographs and edited volumes published by publishing houses with high academic standards, and peer-reviewed articles in prominent academic journals.
- Previous research experience on modern slavery, trafficking and/or forced labour.
- Publications highlighting in-depth gendered analysis of human labour mobility, including dynamics of paid and unpaid work in different low-income occupations.
- Experience developing policy papers, background papers and reports (including flagship reports) for international organizations.
- PhD in social sciences and allied subjects.
- Minimum 10 years extensive quantitative and qualitative research and related field experience.

The research academic may suggest the profile of a possible research assistant.

Expressions of interest should be submitted by October 26, 2020 to [Bosc@ilo.org](mailto:Bosc@ilo.org) and [majzoub@ilo.org](mailto:majzoub@ilo.org)

Financial proposals (rate per day) to be separately sent for each individual (Consultant) and (Research assistant) and in USD currency.

For any questions, please contact Igor Bosc at [bosc@ilo.org](mailto:bosc@ilo.org).

