



Anti-Trafficking Laws, Policies And Practices

Donors, governments, international organizations, unions, employers and other civil actors often seek solutions to prevent human trafficking. This is a list of the ten most common misperceptions among policymakers, along with related facts and recommended laws, policies and practices, drawing on the experience of the Work in Freedom Programme.

MYTH 1 | Legal work precludes the possibility of forced labour or other abusive working and living conditions.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|--|---|---|
| <ul style="list-style-type: none"> ▶ Abusive working conditions can occur under legal circumstances (e.g. ID confiscation combined with restricted mobility, poverty wages, and excessive work time). Abusive working conditions can also be due to poor enforcement, where the employer's exercise of power over workers is unchecked. This happens where labour governance is weak (e.g. underfunded labour inspection). The actual incidence of forced labour and other types of abuses is therefore hard to accurately account. | <ul style="list-style-type: none"> ▶ Laws and policies exonerating employers from being accountable for ensuring decent work by informalizing them, legalizing abusive practices, weakening labour law enforcement or relying only on corporate social responsibility ▶ Any practice encouraging workers to migrate without informing them about decent work deficits (e.g. practices of safe migration and fair recruitment to sectors that have notorious decent work deficits) ▶ Numerical estimates of forced labour or human trafficking that claim to be exhaustive, or use of such estimates while assuming they are exhaustive | <ul style="list-style-type: none"> ▶ Strong labour governance making sure that employers are held accountable for ensuring decent work across supply chains (e.g. collective bargaining agreement and unified contract for migrant garment workers in Jordan) (See ILO recommendation 198) ▶ Policies ensuring that labour recruiters provide clear and accurate information to prospective workers on working and living conditions, thus allowing their free, prior informed consent (See ILO Convention 181) ▶ Socio-economic analysis of geographical vulnerability to forced labour |

MYTH 2 | Banning risky occupations, or banning migration to such occupations will prevent abuses.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|--|---|--|
| <ul style="list-style-type: none"> ▶ If supply and demand in an occupation are strong and sustained, migrants still find ways of migrating; banning is not only ineffective, it also increases the vulnerability of those the ban purports to protect. ▶ International labour standards apply to all types of work under any occupation. | <ul style="list-style-type: none"> ▶ Age, gender and other occupational bans within policies, bilateral agreements, and memoranda of understanding ▶ Criminalization of workers and measures further increasing their vulnerability in the name of protection | <ul style="list-style-type: none"> ▶ Policies and practices tailored to reduce the specific vulnerabilities of an occupational sector (e.g. Mathadi boards for head loaders in Maharashtra) ▶ Policies that fully address discrimination factors within occupations ▶ Labour rights for all workers |

MYTH 3 | Anti-trafficking laws, policies, administrative practices, and institutions are a comprehensive way of preventing human trafficking.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|---|---|--|
| <ul style="list-style-type: none"> ▶ While some anti-trafficking (AT) laws and policies can be useful, they tend to focus on prosecution of recruiters, protection of victims, and information dissemination for migrants. They rarely account for the power dynamics behind labour abuses, and as a result tend to avoid the economic and labour laws, policies and practices that generate vulnerability to forced labour. | <ul style="list-style-type: none"> ▶ AT laws, policies, administrative practices and institutions that gloss over or deliberately ignore fundamental principles and rights at work, governance of labour law, and other economic and social policies that affect working conditions ▶ For an account of AT policies that harm migrant workers, see 'Collateral Damage' (Global Alliance Against Traffic in Women, 2007) | <ul style="list-style-type: none"> ▶ Incremental steps to enforce labour legislation addressing all identified decent work deficits ▶ Economic policies that create decent work and reduce inequalities (e.g. fiscal policies enabling enforcement of international labour and social protection standards, trade policies upholding labour rights of migrants) (See ILO Convention 122) |

MYTH 4

Preventive responses to human trafficking require better policing and border controls in countries of origin.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|---|---|--|
| <ul style="list-style-type: none"> ▶ Beyond authorized cross-checks of outgoing migrants' IDs, there is very little that police and border officials can do in areas of origin to prevent human trafficking and especially forced labour in destination areas. Giving police and border officials in areas of origin legitimacy to prevent human trafficking in areas of destination also opens space for subjective discretion enabling discriminatory judgements that further marginalize those who migrate, especially affecting those who are already subject to prevalent patterns of social, economic and political discrimination (e.g. Dalits, indigenous groups, minorities, etc.). | <ul style="list-style-type: none"> ▶ Assigning special authority to police, migration or border officials in countries of origin in order to prevent human trafficking (e.g. preventive arresting authority in relation to human trafficking or preventing refugees from seeking refuge abroad in the name of anti-trafficking) ▶ Additional measures to track and control departure of migrants infringing on freedom of movement provisions guaranteed by constitutional and basic human rights ▶ Technical assistance and training on prevention of human trafficking for police, migration and border officials in areas of origin – outside the scope of prosecution or protection of victims | <ul style="list-style-type: none"> ▶ Preventive measures to address human trafficking – particularly important for labour institutions in areas of destination because they, in cooperation with constituents, have the principal responsibility of ensuring decent work and fair recruitment (See ILO Convention 143 and ILO Recommendation 151) ▶ Cooperation between governments of destination and governments of origin improves legal protections for migrants and enables effective prosecution of faulty recruitment processes leading to decent work deficits |

MYTH 5

Safe migration programmes prevent the violation of women's rights.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|---|---|--|
| <ul style="list-style-type: none"> ▶ While safe migration programmes can be helpful, in patriarchal contexts the concepts of safety and protection tend to exclude women's agency. Protection measures for women tend to be designed without the leadership and participation of migrating women and their representatives. This inevitably leads to policies and practices that disempower them from the exercise of their rights (e.g. restrictions on mobility) rather than empowering them. ▶ From a governance perspective, the notion of safe migration allows local governments to evade responsibility for ensuring local job opportunities and basic services that would undermine distress migration. | <ul style="list-style-type: none"> ▶ Safe migration policies that disempower women from exercising their rights in any way ▶ Migration prevention policies promoted in the name of protection or anti-trafficking (e.g. village-level anti-trafficking committees) ▶ Committees meant to protect migrants yet excluding meaningful participation of migrant women workers (e.g. inter-ministerial bodies that do not include migrant workers) ▶ Systematic rescue and rehabilitation policies that gloss over the violation of migrant workers ▶ Policies and administrative practices specifically banning female migration | <ul style="list-style-type: none"> ▶ Rather than crafting and implementing safe migration programmes, it is recommendable to implement policies and programmes that support mobility by choice. This ensures women's agency and frames the responsibility of local government to ensure local options. (See ILO Convention 111.) All laws, policies and practices to support migrating women should meaningfully involve them in decision-making (e.g. the International Domestic Workers Federation's initiatives to support migrant domestic workers). (See ILO Recommendation 100) |

MYTH 6 | Pre-departure information and training for women are the best that can be done to prevent them from being trafficked; otherwise they take bad decisions.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|--|--|---|
| <ul style="list-style-type: none"> ▶ While pre-departure information and training can be helpful, they can't serve as a substitute for poor governance of employment, education and social protection. Distress factors causing migration culminate during pre-departure periods. While women may not always fully know what to expect, they have practical reasons why they migrate (e.g. lack of livelihood options, violence and discrimination). In a context of distress migration, delaying departure for training can compound vulnerability factors. Moreover, once a migrant has taken a decision to migrate, information about risks is less likely to be absorbed. | <ul style="list-style-type: none"> ▶ Policies shaping decisions for migrating women without their full and meaningful involvement ▶ Educating migrants about general rights without practical advice on how to assert them and negotiate ▶ Lengthy pre-departure programmes that become a burden for migrants in terms of time and cost ▶ Assuming that a migrant's awareness is enough to prevent human trafficking | <ul style="list-style-type: none"> ▶ Reversing policies generating distress migration (e.g. supporting peace building instead of militarization; investing in social protection instead of defunding it) ▶ Collective organizing (See ILO Convention 189 for domestic workers) ▶ Pre-decision information programmes on migration in area where displacement is frequent (e.g. WIF in India, Nepal and Bangladesh) (See ILO Convention 97) |

MYTH 7 | Informal labour recruiters are generally unscrupulous and are the main perpetrators of human trafficking.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|---|---|--|
| <ul style="list-style-type: none"> ▶ When accountability for employment and decent work cannot be established, often due to high labour informality, both workers and employers require some degree of informal mediation of recruitment. Employers rely on informal mediation in order to avoid scrutiny, and workers need mediation to assess job options and navigate constraining environments. Denying that possibility to migrant workers can also increase their vulnerability. | <ul style="list-style-type: none"> ▶ Banning and criminalizing informal recruitment in contexts where employers are generally unaccountable (e.g. anti-trafficking policies criminalizing informal recruiters), without first addressing decent work deficits ▶ Banning recruitment fees for workers in contexts of high informality of labour without first formalizing employment, addressing decent work deficits, and making recruitment processes migrant-friendly so that informal intermediation is not required | <ul style="list-style-type: none"> ▶ Formalizing employment relationships and holding employers accountable for ensuring decent work (See ILO Recommendation 198 and ILO Recommendation 204) ▶ Ensuring that labour recruiter accountability is premised on employers' commitment to ensure decent work and then building accountability among all actors in the recruitment chain |

MYTH 8 | Formality inevitably forces labour recruiters to be held accountable for ensuring fair recruitment to decent work.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|---|---|--|
| <ul style="list-style-type: none"> ▶ While registration of labour recruiters is a good practice to ensure better accountability of recruitment, decent work is primarily related to employer responsibilities and recruitment to decent work cannot be fully guaranteed by labour recruiters on their own. In environments where employer abuses are common, recruitment tends to be segmented among multiple actors so that responsibility for recruitment to decent work is hard to pin point. | <ul style="list-style-type: none"> ▶ Recruitment policies that fail to account for the employer's accountability in ensuring decent work ▶ Recruitment policies that fail to recognize the role of informality of labour and related recruitment processes ▶ Training formal recruiters on principles of fair recruitment with the expectation of improvement when recruitment happens through informal channels | <ul style="list-style-type: none"> ▶ Identifying accountability of different stakeholders along the recruitment chain, starting with employers, all the way to sub-agents (see above) (See ILO Recommendation 198, ILO Convention 181 and ILO General Principles and Operational Guidelines on Fair Recruitment; see Operational Parameters to Assess Fair Recruitment Practices) |

MYTH 9

Child labour is the exclusive responsibility of employers and families of children.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|--|--|---|
| <ul style="list-style-type: none"> ▶ Holding employers accountable for child labour is important, however policymakers also share important responsibilities. Environments of child labour often exist where social and economic policies fail to generate sufficient jobs and livelihood opportunities. Economic policies privileging large market players can generate stiff competition, leading small, informal businesses to revert to traditional forms of unpaid work based on age, caste, class and/or gender servility in order to survive. Denying child labour without offering alternative livelihood and employment is not a sustainable solution. | <ul style="list-style-type: none"> ▶ Child labour policies, practices and programmes that gloss over the economic policies that generate conditions for child labour to prosper ▶ Numerical estimates of child labour that claim to be exhaustive, or using them while assuming they are exhaustive | <ul style="list-style-type: none"> ▶ Sound economic governance ensuring decent work and livelihood options (See ILO Recommendation 122) ▶ Economic policies privileging micro, small and medium enterprises' capacity to promote decent work (See ILO Recommendation 122) ▶ Laws, policies and programmes promoting mobility by choice through social protection, local employment and migration to decent work (See ILO Recommendation 202) |
| <ul style="list-style-type: none"> ▶ In some instances, even when employers have the means to ensure decent work, they unwittingly hire under age workers who are so desperate for jobs that they conceal their age. | <ul style="list-style-type: none"> ▶ Policies sanctioning employers, families or workers for child labour without taking into account the policies or practices that lead migrants to conceal their ages ▶ Following identification of child labour, separating the child worker from the employer without ensuring alternative educational and livelihood options | <ul style="list-style-type: none"> ▶ Providing alternative educational and livelihood options for identified child workers (e.g. cooperation of Better Work Jordan with WIF in Nepal to provide educational opportunities to identified cases) (See ILO Convention 182) |

MYTH 10

Any initiative or effort to fight forced labour should be welcomed.

| FACTS | POOR LAWS, POLICIES, PRACTICES | RECOMMENDED LAWS, POLICIES, PRACTICES |
|---|--|---|
| <ul style="list-style-type: none"> ▶ Forced labour should be a universal concern; however, as seen in the previous myths and facts, many efforts to do something about it are based on false assumptions and are piecemeal and insufficient. Such efforts also often tend to be taken for granted, so that they preclude more comprehensive measures. Institutions that undertake piecemeal efforts to address forced labour eventually also lose credibility. | <ul style="list-style-type: none"> ▶ Measures to combat forced labour that address its symptoms rather than its causes; tackling human trafficking without addressing equal human rights for livelihood, labour and mobility ▶ Piecemeal approaches to addressing forced labour or human trafficking that are not part of a comprehensive drive to reduce vulnerabilities and tackle employer and worker relationships ▶ The use of modest and piecemeal measures to justify further inaction | <ul style="list-style-type: none"> ▶ There are no easy and simple fixes for human trafficking, forced labour or modern slavery. Incremental laws, policies and practices need to be put in place to comprehensively promote decent work. Livelihood, labour and mobility rights should be factored into laws, policies and practices to address forced labour – this necessarily means disrupting power dynamics relating to labour, income and assets (See ILO Protocol 29 Article 2 point (f)) |

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 the Gulf countries. It is funded by UK aid from the Department for 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 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

