



Practices and Regulation of Recruitment to Domestic Work

There is a growing interest among policymakers and practitioners in improving recruitment practices and regulations to reduce vulnerability to human trafficking and forced labour among girls and women migrants in the domestic work sector. This document maps common recruitment practices and regulations observed along recruitment pathways to domestic work in India, Bangladesh, Nepal, Jordan and Lebanon. Examples from other regions are also highlighted. Given the complexity of cross-jurisdictional and multi-tier recruitment practices and regulations, this brief presents common practices and regulations, pointing to where and how they can improve. The mapping and analysis are based on research and lessons learned from the ILO's Work in Freedom programme recruitment pilots within South Asia and from South Asia to the Middle East. There are two sections to this brief, the first describing common recruitment practices and regulations and the second giving examples of better recruitment practices and corresponding regulations.



Common practices and regulations of recruitment pathways to domestic work¹

COMMON RECRUITMENT PRACTICES	COMMON RECRUITMENT REGULATIONS
<i>Informal or direct mediation</i>	<i>Restricting workers' movements</i>
<p>1. Recruitment through personal connections to live-out domestic work</p> <p>Example: Local self-employment, often involving experienced workers who can negotiate better working terms with employers</p> <p>Vulnerability: In contexts where sponsorship is practised, workers who are unable to retrieve their personal documentation from previous employers may become undocumented and vulnerable to arrest, long periods of detention, and deportation. Further, in contexts where workers rely on diaspora networks to find employment, they can also fall prey to profiteers, who tap into these networks and disseminate false information² across the network.³</p>	<p>1. Migration bans and mobility restrictions</p> <p>Example: (a) Migration bans for women migrants in country of origin (e.g. ECR⁴ requirement in India), or countries of destination choosing not to issue permits to some nationalities (b) Migrant interception through anti-trafficking laws in countries of origin (c) Mobility restrictions such as those resulting from sponsorship systems</p> <p>Challenge: Migration bans are discriminatory by gender, age, family status, education, occupation and nationality. If both the compulsion to migrate and the demand for migrants are high, migrants find more risky, circuitous routes, often requiring additional informal intermediation. This makes bans ineffective.</p> <p>At-destination sponsorship systems (e.g. the Kafala system) strengthen power asymmetries of employers over workers and thus create structural vulnerability to forced labour. There is often retention of identity documents, which is an indicator of forced labour.</p>
<p>2. Recruitment through personal connections to live-in domestic work</p> <p>Example: Kinship connections or church networks (e.g. Jharkhand to Mumbai / National Capital Region)</p> <p>Vulnerability: Limited effectiveness of the legal framework in upholding the worker's rights</p>	<p><i>Prohibition of informal intermediaries</i></p> <p>2. Prohibition or criminalization of recruitment intermediaries in countries of origin</p> <p>Example: India's Emigration Act, 1983; placement agency regulation (Chhattisgarh); many anti-trafficking laws</p> <p>Challenge: If both labour supply and demand are high, employers and workers tend to rely on informal intermediation and recruitment fees may increase.</p>
<i>Multiple intermediation</i>	<i>Organisational accountability of intermediaries</i>
<p>3. Recruitment through a mix of private recruitment agencies and informal intermediaries</p> <p>Example: In 2016, a mix of local sub-agents and official agencies in both Nepal and Lebanon facilitated the migration of Nepalese women for domestic work in Lebanon.</p> <p>The vulnerability: The segmentation and multiplicity of economic actors and regulations diffuses the responsibility and accountability for ensuring safe migration and decent work outcomes for workers at the destination.</p> <p>The vulnerability is compounded by mobility restrictions enforced by countries of origin (such as age bans) and destination (such as Kafala).</p>	<p>3. Registration of labour recruiters and regulation of responsibilities</p> <p>Example: Common practice in both countries of origin (e.g. Bangladesh) and destination (e.g. Jordan)</p> <p>Challenge: It is difficult to identify all actors involved in a recruitment process across countries. Local intermediaries are usually excluded.</p>
	<i>Provisions for public management of recruitment</i>
	<p>4. Regulatory provisions for recruitment through public enterprises</p> <p>Example: India's 2016 list of authorized public labour recruiters, Kuwait's Public Sharing Company, 2016⁵</p> <p>Challenge: In practice, public offices prefer to avoid the liability of recruiting into risk sectors where working conditions are likely to be poor.</p>

COMMON RECRUITMENT PRACTICES	COMMON RECRUITMENT REGULATIONS
<i>Intermediation by formal private actors⁶</i>	<i>Formal private actors with safeguards for workers</i>
<p>4. Recruitment through private recruitment agencies or contractors to live-in domestic work</p> <p>Example: Bangladesh to Jordan</p> <p>Vulnerability: The practice of advancing incentive payments or wages (e.g. Sri Lanka⁷), or of migrants seeking loans; the possibility of bondage and poor working and living conditions; over-dependency on recruiters (e.g. labour hoarding) and employer; higher recruitment costs, which are passed on to workers in the form of withheld wages</p>	<p>5. Bilateral agreements or MOUs for private recruitment</p> <p>Example: Memoranda of Understanding (MOU) between countries of origin and destination</p> <p>Challenge: Most MOUs tend to favour labour recruiters and employers in countries of destination and foreign employment concerns in countries of origin, with limited guarantees for workers.</p>
<p>5. Recruitment through private web-portals</p> <p>Example: Babajob.com; Naukri.com in Mumbai</p> <p>Vulnerability: Job aggregators are job matching portals. While they increase the transparency of recruitment-related payments etc. (potentially supporting zero worker-paid recruitment costs), they do not take responsibility for decent work outcomes.</p>	<p>6. Ranking of private recruitment agencies</p> <p>Example: Jordan's system to rank labour recruiters</p> <p>Challenge: Criteria for ranking of labour recruiters tend to exclude workers' views and decent work outcomes. Given the segmentation and dilution of recruitment responsibilities across jurisdictions, ranking criteria tend to be partial.</p>
<i>Indirect practices affecting recruitment</i>	<i>Indirect policies affecting recruitment</i>
<ul style="list-style-type: none"> ▶ In areas of origin: Policies affecting availability or absence of sustainable local livelihoods options and human security ▶ In areas of destination: (a) Demand for care and housework in countries or states of destination (b) Recruitment of local workers at higher wages versus recruitment of distress migrants at lower wages ▶ Throughout migration cycle: (a) Effective practices of inclusion, affirmative action and non-discrimination versus structural and direct forms of discrimination against those who migrate prior to, during and after migration (b) Cartelization of labour recruitment networks 	<ul style="list-style-type: none"> ▶ In areas of origin: Labour supply policies securing sustainable livelihoods versus those prompting distress migration (e.g. divestment from basic services, expropriations or other land use policies causing displacement, etc.) ▶ In areas of destination: Public investments in professional care affecting demand for domestic workers; other public sponsorship of investment in better employment options for women ▶ Throughout migration cycle: (a) MOUs regulating migration existing in states/countries (b) The number, affordability and regulatory laxness of other available labour markets (c) Open border policies and regional free mobility regimes

Examples of better practices and regulation of recruitment to domestic work⁸

BETTER PRACTICES	BETTER REGULATIONS
<i>Avoiding institutionalisation of recruitment into poor working and living conditions</i>	
<p>1. Supporting multiple recruitment practices favouring empowerment of workers</p> <p>Example: Recruitment practices where workers are accurately informed about the realities of working and living conditions and given tools to negotiate better working conditions (See examples below.)</p> <p>Challenge: Dominant market players often seek to expand their practices and crowd out alternative recruitment options, especially public or informal ones.</p>	<p>1. Focusing on regulating for better working and living conditions, while allowing multiple practices of recruitment favouring empowerment of workers</p> <p>Example: In contexts where working conditions are poor, a regulatory environment of recruitment is needed that supports workers' positions, to enable them to demand better working and living conditions</p> <p>Challenge: Pressure on regulators to promote the interests of recruitment cartels can result in regulatory "straitjackets" that force recruitment into poor working conditions for the sake of profitability.⁸</p>

*Building social capital of workers through recruitment practices***2. Recruitment through negotiation between worker collectives and employers**

Example: SEWA⁹ in Bihar, JGKU¹⁰ in Jharkhand, Solidarity Centres' Protect initiative in Sri Lanka¹¹, Si Se Puede! in New York¹²

Challenge: Unequal power relations between domestic workers and employers undermine efforts of domestic workers to negotiate as a collective. In some countries restrictions apply on freedom of association and collective bargaining.

2. Enabling freedom of association and collective bargaining to negotiate recruitment into decent working conditions

Example: Legal measures allowing migrant and non-migrant care workers to associate and bargain collectively; legal provisions enabling migrant domestic workers to be members of cooperatives

Challenge: Prevalence of discriminatory attitudes towards domestic workers

3. Recruitment imparting migrant workers with accurate information on working conditions and capacities to negotiate

Example: Pre-migration or post-arrival training by migrant worker collectives or trade unions

Challenge: This may undermine the business practices of some private recruitment and employment agencies (PREAs)¹³ who may seek to oppose this.

3. Removing mobility restrictions over workers and making regulation accountable to them

Example: Removal of: (1) migration bans, (2) migrant interception in anti-trafficking policies, (3) labour hoarding and sponsorship practices

Challenge: There is a tendency for policies to be influenced by patriarchal views claiming that mobility restrictions protect workers. It requires public commitment to remove sponsorship powers from employers.

*Building public accountability in recruitment practices***4. Recruitment regulated by tripartite institutions**

Example: Recruitment through sector-wide mechanisms agreed upon by tripartite parties (e.g. recruitment of Mathadi workers, Maharashtra); Bahrain's Labour Market Regulatory Authority

Challenge: Requires strong social dialogue among tripartite constituents and other stakeholders

4. Regulation through institutionalization of tripartite or public recruitment mechanisms

Example: Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969; Regulated voucher systems in Belgium and France for part-time domestic work.

Challenge: Requires strong commitment of government and other constituents

*Building public accountability in recruitment practices***5. Practices whereby worker-employer relationships are negotiated under public scrutiny throughout the migration cycle**

Example: Monitored interviews, contract negotiation and follow-up; monitoring of recruitment by trade unions (e.g. SENTRO¹⁴, or trip advisor feedback through trade unions); black-listing of employers and sharing information with labour attaches (e.g. Philippines).

Challenge: Most labour recruiters tend to claim that they practice fair recruitment and have good employers on board. However, market incentives often encourage labour recruiters to compromise on standards and not fulfil conditions of decent work.

5. Legal provisions enabling public officials or trade unions from states and countries of origin to monitor worker-employer relationships

Example: Regulations allowing monitoring of pre-employment interviews and systems to prevent contract substitution through labour attaches and collaboration with trade unions and civil groups

Challenge: Requires strong capacity of embassies and commitment to migrant protections

6. Establishing transparent processes to negotiate and monitor bilateral agreements, standard contracts and referral wages

Example: Tripartite and migrant rights group consultations on bilateral agreements

Challenge: Strong political commitment necessary to check against undue influence of labour recruiters over recruitment processes

BETTER PRACTICES	BETTER REGULATIONS
<i>Building organisational accountability in recruitment practices</i>	
<p>6. Labour recruiters complying with fair recruitment standards and recruiting only for employers who guarantee decent working conditions</p> <p>Examples: Agencies adhering to and implementing a code of conduct ensuring fair recruitment, itemizing recruitment costs</p> <p>Challenge: All labour recruiters tend to claim that they recruit fairly and to good employers. However, market incentives encourage labour recruiters to lower their standards and pay lip service to commitments.</p>	<p>7. Regulation of labour recruiters and employers through joint and several liability provisions and other regulatory incentives</p> <p>Example: Joint and several liability provisions holding both employers and multiple recruiters accountable (e.g. Bangladesh's Overseas Employment and Migrant Act, 2013¹⁵); requirements to itemize recruitment costs; can be accompanied by regulatory incentives (e.g. public rewarding) based on inspections and consultation with domestic worker collectives, trade unions and embassy staff</p> <p>Challenge: Difficult to enforce because of the jurisdictional boundaries and weak capacity to implement labour inspection</p>
<p>7. Recruitment through skilling service providers</p> <p>Example: Life skill training in training programmes offered by skill service providers, preferably in association with returnee domestic workers, migrant rights organizations and trade unions</p> <p>Challenge: Skill service providers tend to focus on the skilling needs of employers. There may be scenarios where workers already possess the skills that are being taught. In such cases, skill certification is recommended.</p>	<p>8. Regulations requiring that skilling service providers provide life skill training and enable certification of existing skills</p> <p>Example: Making it a procedural requirement that certification of existing skills is an option prior to training, and that life skill training is included in public-funded programmes; making provisions for trade unions to implement programmes or to monitor them</p> <p>Challenge: Skilling service providers operate under market incentives to ensure placement of workers regardless of working conditions.</p>
<i>Better indirect regulation</i>	
<ul style="list-style-type: none"> ▶ Policies reducing distress migration in areas of origin ▶ Policies generating decent working opportunities in areas of destination, especially in the care economy 	

Endnotes

- 1 These common regulatory practices do not constitute good practices and are not listed as a way of recommending them. They illustrate what common practices are so that improvements can be suggested in the following table of better practices.
- 2 ILO. 2014. Country profile on migrant domestic workers in Paraguay (Geneva, unpublished).
- 3 Monitoring mechanisms focus on workers who are recruited via formal agencies, not those who are under individual contracts.
- 4 Exit Clearance Required (ECR) provision as per India's Emigrant Act 1983
- 5 The regulation on Kuwait's Public Sharing Company, 2016 is yet to be enforced.
- 6 Private Recruitment and Employment Agencies. See [ILO Convention 181](#).
- 7 For example, advance payments, which can amount to an average of USD 500 in Sri Lanka, give false hope to workers of higher wages at the destination. Employers, who think the worker has received a lot more than USD 500 in advance payments, expect her to reimburse the recruitment costs (up to USD 5000 in the GCC) prior to releasing her to another employer or even releasing her personal documents.
- 8 Institutionalized human trafficking is an important risk of recruitment practices and regulation, especially when working conditions are generally poor.
- 9 Self Employed Women's Association (SEWA)
- 10 Jharkhand Gharelu Kamgar Union
- 11 The Solidarity Centre initiative with Protect, a newly formed umbrella organization of unions, uses information technology as a tool for organizing and networking workers, particularly domestic workers.
- 12 Si se puede!, a women cleaners cooperative in New York City.
- 13 Private Recruitment and Employment Agencies as per ILO Convention 181
- 14 In 2013, SENTRO in the Philippines and the Progressive Labour Union of Domestic Workers in Hong Kong, China submitted a joint report "License to Exploit" to the Philippines Overseas Employment Administration based on their monitoring of recruitment activities. This enabled the revocation of faulty agencies. More recently, in October 2016, the Hong Kong Federation of Asian Domestic Workers Unions (FADWU) launched a report and a short film titled "Between a Rock and a Hard Place." The film documented the activities of employment agencies in Hong Kong, and its findings have informed a number of meetings between FADWU and the legislative council of Hong Kong. As a result, Hong Kong introduced a new code of practice to regulate employment agencies in January 2017.
- 15 According to the Act: "For the purpose of the employment contract, the recruitment agent shall be deemed to be a representative of the overseas employer, and as regards liabilities arising from the contract, the said recruitment agent and the employer shall be liable jointly and severally."

Resources

- ▶ Convention No. 189 on Domestic Workers, International Labour Organization, 2011
- ▶ General Principles and Operational Guidelines for Fair Recruitment, International Labour Organization, 2016
- ▶ Operational parameters to assess fair recruitment, International Labour Organization, 2016
- ▶ Convention No. 181 on Private Recruitment and Employment, International Labour Organization, 1997
- ▶ Convention No. 177 on Home Work, International Labour Organization, 1996
- ▶ Fair Recruitment Initiative, International Labour Organization, 2014
- ▶ Code of Conduct for recruitment agencies, World Employment (WEC formerly known as CIETT), 2011
- ▶ Recruitment Reform.org and Open Working Group on Labour Migration and Recruitment, Policy Briefs 1-5, Migrant Forum Asia (MFA)
- ▶ Dhaka Principles for Migration with Dignity, 2012 and Responsible Recruitment Gateway, 2016, Institute for Human Rights and Business Fair Hiring Toolkit, Verite, 2011
- ▶ International Recruitment Integrity System (IRIS), International Organization for Migration, 2013

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.

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