



Practices and Regulation of Recruitment to Garment 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 garment and textile work sector. This document maps common recruitment practices and regulations observed along recruitment pathways to garment and textile 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 looks at 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.



Practices and regulation of recruitment to garment work

COMMON RECRUITMENT PRACTICES	COMMON RECRUITMENT REGULATIONS ¹
<p><i>Informal mediation</i></p> <p>1. Recruitment through personal informal connections</p> <p>Example: Local self-employment through personal connections, involving either: (a) experienced workers, who tend to occur at the higher rungs of the supply chain or organizational hierarchy (b) self-employed contract workers</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. Contract workers are often denied statutory entitlements otherwise given to regular workers, such as pension fund contributions, social security, special leave entitlements, etc.</p>	<p><i>Restricting workers' movements</i></p> <p>1. Mobility restrictions on migrant workers</p> <p>Example: (a) Migration bans for women migrants in country of origin (e.g. the Exit Clearance Required (ECR) provision 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 always discriminatory on the basis of gender, age, family status, education, occupation or nationality.</p> <p>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><i>Public intermediation</i></p> <p>2. Recruitment through a public institution</p> <p>Example: Bangladesh to Jordan / Oman through Bangladesh Overseas Employment Services Limited (BOESL)</p> <p>Vulnerability: Limited outreach capacity of public recruitment agencies and low literacy of migrant workers may prompt migrant garment workers to rely on unaccountable, informal sub-agents</p>	<p><i>Prohibition of intermediaries</i></p> <p>2. Prohibition or criminalization of labour intermediaries or recruiters in countries of origin</p> <p>Example: Anti-trafficking laws and other outlawing of recruitment intermediaries</p> <p>Challenge: If the compulsion to migrate is high, migrants opt for alternative informal intermediation. Likewise, if employer demand for labour is high and working conditions are poor, employers tend to rely on informal labour recruiters.</p>
<p><i>Recruitment through private intermediation</i></p> <p>3. Recruitment through private recruitment agencies or contractors at source</p> <p>Example: Contractors hiring in Ganjam district of Orissa to Tiripur in Tamil Nadu</p> <p>Vulnerability: Workers hired in this manner are more likely to accept poorer working conditions compared to those who negotiate at the destination. The likelihood of bondage is also higher.</p>	<p>3. Elimination of recruitment intermediaries at destination</p> <p>Example: Jordan eliminated intermediaries, requiring employers to hire workers directly in countries of origin.</p> <p>Challenge: Influence of recruitment agencies</p> <p><i>Accountability of private labour recruiters</i></p>
<p>4. Recruitment through contractor at destination</p> <p>Example: Local recruitment in the National Capital Region (NCR)</p> <p>Vulnerability: Potential unaccountability of contractor and poor working conditions</p>	<p>4. Regulation of labour recruiters</p> <p>Example: Registration of private recruitment and employment agencies (PREAs) is a common practice in both countries of origin and destination.</p> <p>Challenge: It is difficult to identify all actors involved in a recruitment process across borders and jurisdictional boundaries. Local recruitment intermediaries (<i>dallals</i>) are usually excluded.</p>
<p>5. Recruitment through skill service provider</p> <p>Example: Skill service providers under National Skill Development Corporation (India)</p> <p>Vulnerability: Difficulty in monitoring employers and possibility of poor working conditions</p>	<p>5. Regulation of contractors</p> <p>Example: India's Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</p> <p>Challenge: Insufficient labour inspection and law enforcement enabling the employers to exercise influence to avoid scrutiny under these laws</p>

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<p><i>Indirect practices affecting recruitment</i></p> <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 low-wage migrants (b) Recruitment of local workers at higher wages versus recruitment of distress migrants at lower wages (c) Tiering / allocation of workers to certain occupations, jobs, roles, tasks according to nationality ▶ 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 	<p><i>Other indirect policies affecting recruitment</i></p> <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 support to garment production affecting demand for garment workers; other public sponsorship of investment in better employment options for women ▶ Throughout migration cycle: (a) Other Memoranda of Understanding (MOUs) regulating migration 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 garment work

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. Recruitment markets are not open to new entrants, who are seen as possible disruptors to existing business models and can challenge poor practices.</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' position, enabling them to demand better working and living conditions.</p> <p>Challenge: Pressure on regulators to promote the interests of contractors or recruitment cartels can result in regulatory "straitjackets" that force recruitment into poor working conditions for the sake of profitability².</p>
<i>Building social capital of workers through recruitment</i>	
<p>2. Supporting garment workers in mapping out contract work practices and negotiating standard working conditions with employers during contracting</p> <p>Example: Tools for migrant garment workers to map contract work and negotiate better working conditions where sub-contracting is common</p> <p>Challenge: Laws sometimes don't allow for freedom of association and collective bargaining by migrant workers. Strong worker collectives are required to identify employers and bargain for good working conditions.</p>	<p>2. Enabling freedom of association and collective bargaining to negotiate improvements in recruitment practices</p> <p>Example: Legal measures allowing migrant garment workers to associate and bargain collectively; legal provisions enabling migrant workers to be members of cooperatives</p> <p>Challenge: Limited commitment of some constituents to freedom of association and collective bargaining</p>
<p>3. Recruitment imparting migrant workers with accurate information on working conditions and capacities to negotiate</p> <p>Example: Pre-migration or post-arrival training by migrant worker collectives, trade unions and employers; commitment of employers and labour recruiters not to abuse vulnerability of distress migrants</p> <p>Challenge: Employers and labour recruiters operate under market incentives that take advantage of workers' readiness to accept poor working conditions.</p>	<p>3. Removing mobility restrictions over workers and making regulation accountable to them</p> <p>Example: Removal of: (1) migration bans (2) migrant interception in anti-trafficking policies (3) labour hoarding and sponsorship practices</p> <p>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.</p>

BETTER PRACTICES

BETTER REGULATIONS

*Building public accountability in recruitment practices***4. Recruitment through public recruitment agencies reaching out to aspiring garment workers**

Example: Recruitment practices from Bangladesh to Jordan (e.g. BOESL).

Vulnerability: Limited outreach capacity of public recruitment agencies and low literacy of migrant workers may prompt migrant garment workers to rely on unaccountable informal intermediaries.

5. Practices whereby worker-employer relationships are negotiated under public scrutiny throughout the migration cycle

Example: Monitoring of recruitment by trade unions and migrant rights groups

Challenge: This requires strong capacity of embassies and migrant protection measures. Trade unions who can support this are often not present in destination countries and not represented at workplaces.

4. Elimination of labour recruiters in countries of destination or recruitment through government-to-government agreements

Example: Jordan's elimination of intermediation of labour recruiters in the garment sector within its national jurisdiction; leveraging buyers' influence to simplify recruitment processes

Challenge: Influence of private recruitment and employment agencies

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

Example: Regulations that allow monitored pre-employment interviews and systems so as to prevent contract substitution through labour attaches

Challenge: This requires strong capacity of embassies and migrant protection measures.

*Building organisational accountability in recruitment practices***6. PREAs only recruiting for employers who guarantee decent working conditions**

Examples: Agencies adhering to and implementing a code of conduct ensuring fair recruitment (e.g. FSI in recruitment corridor from Nepal to Jordan)

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.

6. Regulation of PREAs and employers through joint and several liability provisions and other regulatory incentives

Example: Joint and several liability provisions holding both employers and multiple recruiters accountable (e.g. Bangladesh's Overseas Employment and Migrant Act, 2013³); can be accompanied by regulatory incentives based on inspections and consultation with domestic worker collectives, trade unions and embassy staff

Challenge: Difficult to enforce because of the jurisdictional boundaries and weak capacity to implement labour inspection

7. Buyer compliance requirements and employer commitments to fair recruitment

Example: Buyers commit to source products only from suppliers that commit and implement fair recruitment principles. Likewise, employers enact fair recruitment business practices.

Challenge: Difficulty of enforcing compliance with codes of conduct; limited buying capacity of buyers with suppliers reduces their leverage; lack of ethical recruitment actors means limited potential for change even if the demand exists

7. Regulation to ensure supply chain accountability on fair recruitment practices

Example: Requirements under the UK's Modern Slavery Act, 2015 to ensure transparency of supply chains

Challenge: Employers are unable to ensure accountability of their supply chains beyond a second tier of contracting. There is no compulsion to report on any particular subject such as recruitment.

8. Recruitment through skilling service providers

Example: Life skill training in training programmes offered by skill service providers (e.g. Gram Tarang), preferably in association with returnee domestic workers, migrant rights organizations and trade unions.

Challenge: Skill service providers tend to focus on the skilling needs of employers.

8. Regulations requiring that skilling service providers provide life skill training and enable certification of existing skills

Example: Making it a procedural requirement that life skill training is included in public-funded programmes by skilling service providers for migrant garment workers

Challenge: Skilling service providers operate under market incentives to ensure placement of workers, regardless of working conditions.

- ▶ Policies reducing distress migration in areas of origin
- ▶ Policies generating decent working opportunities in areas of origin and destination

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 Institutionalized human trafficking is an important risk of recruitment practices and regulation, especially when working conditions are generally poor.
- 3 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

- ▶ 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 Confederation (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 of Responsible Recruitment, International Human Rights and Business, 2012
- ▶ 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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