

Regulating recruitment: labour and criminal justice responses in preventing trafficking in persons and migrant exploitation

**Bangkok, Thailand
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BACKGROUND

In today's globalized economy workers are increasingly looking for job opportunities beyond their home country and the recruitment and employment of workers across global supply chains is a pressing concern. While some of the cross-border recruitment process is facilitated by social and informal networks, private employment agencies play an increasing role in matching labour demand and supply across borders. Globally, the Middle East remains one of the most competitive labour markets with around 70 per cent of migrant workers coming from Asia. Studies and available data suggest that private employment agencies continue to account for the vast majority of contract labour migration flows to that region. In addition, millions of workers are recruited in their own countries in search of decent work and internal migration flows have grown rapidly in certain Asian countries like India and China. Labour mobility within and across countries is often facilitated by informal recruiters, but private employment agencies play an increasing role by offering placement and other employment-related services to companies and employers.

While private employment agencies, when properly regulated, play a legitimate role in the efficient and equitable functioning of labour markets, concerns have been raised about the abuse of workers during the recruitment and placement process. Despite the existence of international standards related to recruitment, national laws and their enforcement often fall short of protecting the rights of workers during the recruitment process. Recent reports have highlighted the growing role of informal intermediaries private employment agencies operating outside the legal and regulatory framework that prey especially on low-skilled workers. Accompanying abuses involve one or more of the following: deception about the nature and conditions of work; retention of identity documents; deposits and illegal wage deductions; debt bondage linked to repayment of recruitment fees; threats if workers want to leave their employers, and in some instances physical violence. A combination of such abuses can amount to trafficking in persons and forced labour.

The widespread practice of charging workers, particularly migrant workers, fees for recruitment services may render them vulnerable to labour exploitation and trafficking in persons. In order to pay back these fees, the workers may incur significant debts. They may owe them to the recruitment agencies or other moneylenders, who may seek to control workers until the loan has been repaid. The debts can lead to an acceptance of difficult and unfair terms of employment amounting, in some cases, to severe exploitation and trafficking situations. Recruitment fees charged to the worker might be legally permitted in a country but, in practice, fees might also be charged illegally or exorbitantly, including by illegal and unregistered recruitment agencies.

Trafficking in persons is a major risk for business, and a serious violation of workers' fundamental rights. There is global consensus that such practices should not be tolerated. The UN Guiding Principles on Business and Human Rights make clear the duty of the State to protect against human rights abuses within its territory, and the responsibility of business to respect those rights. Other ILO and UN standards provide broader protection of workers' rights, including migrant workers. Furthermore, fees paid by migrant workers to recruiters reduce the positive impact of migration on development outcomes. Reducing the costs of labour migration is therefore one of the UN Secretary General's 8 Point Agenda items, as presented at the UN General Assembly High-Level Dialogue on International Migration and Development, held in October 2013.

This inter-regional workshop is jointly organized by the International Labour Organization (ILO) and the United Nations Office on Drugs and Crime (UNODC), and in collaboration with the Global Migration Group and the Inter-Agency Coordination Group against Trafficking in Persons.

With regard to ILO, this workshop is part of its global “Fair Recruitment Initiative”, which was announced in 2014 by the Director General in his report to the 103rd International Labour Conference stressing the “growing international concern about abusive and fraudulent recruitment practices affecting migrant workers in particular and issues of human trafficking and forced labour”. This multi-stakeholder initiative is designed and implemented in close collaboration with representative of workers’ and employers’ organizations, governments, the private sector and other key stakeholders. The overall strategy of the initiative is based on a four-pronged approach which aims to address regulatory and enforcement gaps, improve mechanisms of complaints and remedy, facilitate social dialogue on these issues and ultimately ensure compliance of private employment agencies and employers with national and international standards.

The ILO is uniquely placed to undertake work on fair recruitment. It has been key in the setting of international labour standards and has several fundamental instruments at its disposal. These include ILO’s Private Employment Agencies Convention, 1997 (No. 181) and Recommendation, 1997 (No. 188) which provide international standards for fair and decent labour recruitment practices. Equally important, a number of technical and sector-specific ILO Conventions regulate the recruitment of workers, most notably the Migration for Employment Convention (Revised) No. 97 (1949), the Migrant Workers (Supplementary Provisions) Convention No. 143 (1975), the Domestic Workers Convention, 2011 (No. 189) and the Work in Fishing Convention, 2007 (No. 188). The ILO’s Committee of Experts on the Application of Conventions and Recommendations has frequently highlighted the link between abusive labour recruitment, violations of ILO Convention No. 181 and forced labour and/or human trafficking. This link was reaffirmed at the 2014 International Labour Conference during which a Protocol was adopted to supplement the Forced Labour Convention, 1930 (No. 29). Article 2(d) of the Protocol calls for “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”.

In addition to this strong global expertise, in the past decade, the ILO Regional Office for Asia and the Pacific has promoted fair recruitment practices across the region. The regional strategy focuses inter alia among other on undertaking research, providing legal and policy advisory services to put in place or develop national legislation to regulate recruitment in compliance with ILO Convention No. 181 and ensuring that appropriate complaints mechanism are in place. In the Middle East, the ILO also works to address legal and enforcement gaps linked to the recruitment of workers to ensure safe migration.

With regard to UNODC, this workshop is organized in the framework of its current research regarding the role of recruitment fees and recruitment agencies in the crime of trafficking in persons. The main objective of this research is to examine, better understand and consequently address the problem of fraudulent and abusive recruitment practices of recruitment agencies in the context of trafficking in persons, with a focus on criminal justice measures. The discussions of the workshop would help identify appropriate and effective practices, as well as challenges and lessons learned, in this regard.

With more than ten years of experience as the guardian of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, UNODC has a longstanding and unique global experience in assisting Member States to implement these instruments. It does so by developing policy and delivering technical assistance in this regard, along the '4 Ps' approach (prevention, protection, prosecution and partnership).

The Trafficking in Persons Protocol explicitly mentions improper/illegal recruitment means such as coercion, fraud, deception and the abuse of a position of vulnerability in its definition of trafficking in persons. Recruitment agencies might be involved in the application of these means and one of the vehicles used might be recruitment fees. Additionally, the Transnational Organized Crime Convention, which requires States to establish the liability of legal persons, is of relevance to this issue. Those involved in trafficking in persons and related crimes may seek to hide behind the cover of legal persons, such as companies, including recruitment agencies.

OBJECTIVES

National legislation which regulates the recruitment industry, embedded in labour and administrative laws and/or criminal laws, is often inadequate, complicated and weakly enforced. This workshop will focus on discussing good practices and gaps in statutory regulation and enforcement mechanisms, both at the national and multilateral level. It will also help to better assess the link between excessive recruitment fees and unscrupulous agencies in the crime of trafficking in persons and provide recommendations on how to adequately address the issue.

This joint consultative meeting will seek:

1. To discuss national, bilateral and multilateral challenges in regulating, monitoring and enforcing regulations on private employment agencies;
2. To review innovative approaches to the regulation of recruitment and understand their preventive role in combatting human trafficking practices and migrant exploitation;
3. To discuss recent evidence on the nexus between national regulation models and its impact on business practices in the recruitment industry;
4. To identify appropriate and effective criminal and labour justice responses in combatting abusive practices of recruitment agencies in the context of trafficking in persons and related crimes against migrants.

The conclusions collected during this workshop will feed an outcome document taking stock of the successes and challenges presented through the different regulatory models and labour and criminal justice approaches towards abusive recruitment practices in the context of trafficking in persons. They will help develop recommendations and guide a way forward in the provision of advisory services and technical assistance by the ILO and UNODC.

PROPOSED PARTICIPANTS

The following list of participants is a combination of ILO and UNODC constituent's members and networks.

- Governments representatives from selected countries in the Middle East and Asia to present regulatory approaches and enforcement challenges, as well as relevant case law
- Employer's organizations: International Organization of Employers (IOE) and affiliates; International Confederation of Private Employment Agencies (Ciett)
- Trade Unions: International Trade Union Confederation (ITUC) and affiliates, UNI Global Union, Building and Wood Worker's International (BWI), International Union of Food workers (IUF), IndustriALL Global Union
- IOs, including the member organizations from the UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT) and the Global Migration Group (GMG), such as IOM, OHCHR, UNHCR, UN Women, World Bank, the UN ESCAP as well as the United Nations Inter-Agency Project on Human Trafficking and Interpol
- NGOs: Anti-Slavery International, Global Alliance Against Trafficking in Women, Migrant Forum Asia, Institute for Human Rights and Business (IHRB), Verité, Legal Support for Children and Women
- Donors: US State Department (J/TIP), US Department of Labor (USDOL), UK Department for International Development (DFID), Swiss Agency for Development and Cooperation (SDC), Irish Aid, Australian DFAT and Canadian DFATD, Soros Foundation.
- Academia: several academic experts in the field of labour recruitment.

METHODOLOGY

The workshop is designed to allow for an open exchange and brainstorming to develop a better awareness and understanding of issues at stake. Presentations will be short to allow for interactive participation and Q&A sessions. There will also be break-out sessions to allow for focused discussions that will be reported back to the plenary. A workshop report will be prepared outlining key points and outcomes; however, Chatham house rules will apply, and views expressed will not be attributable.

The workshop is funded by the US Department of State's Office to Monitor and Combat Trafficking in Persons:



AGENDA

Day 1 – November 18th	
<i>Location: Theatre Room</i>	
08:00 – 09:00	Registration
09:00 – 09:30	<p><i>Opening remarks</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> • Maurizio Bussi, Director, ILO Decent Work Teams for East and South-East Asia and the Pacific • Jeremy Douglas, Regional Representative, UNODC Regional Office for Southeast Asia and the Pacific <p><i>Introduction and objectives of the workshop</i></p> <p>Facilitated by:</p> <ul style="list-style-type: none"> • Beate Andrees, Head, ILO Special Action Programme to combat Forced Labour and • Silke Albert, Crime Prevention Expert, UNODC
09:30 – 10:30	<p><i>Q & A with academics on approaches to the regulation of recruitment and labour and criminal justice responses</i></p> <p>Panellists:</p> <ul style="list-style-type: none"> • Dr. Xiang Biao, Lecturer, University of Oxford • Bassina Farbenblum, Senior Lecturer, University of New South Wales • Dr. Ray Jureidini, Professor, Hamad Bin Khalifa University <p>Moderator: Dr. Katharine Jones, Director, Global Migrant Rights' Research</p> <p>Plenary discussion</p>
10:30 -11:00	Coffee break
11:00 – 12:15	<p><i>Innovative regulatory schemes and implementation challenges</i></p> <p><i>Joint-liability regimes and integration of transparency principles in anti-trafficking legislation</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> • Geraldine C. Mendez, Officer-In-Charge of the Prosecution Division, Anti-illegal Recruitment Branch, Philippine Overseas Employment Administration • Jay Short, Manitoba Manager of Special Investigations for Employment Standard • Anjana Modi, Deputy Economic Counselor, U.S. Embassy in Thailand <p>First comments from the floor: Ms. Soonhwa Yi, Senior Economist, World Bank Migration and Remittances team</p> <p>Moderator: Bassina Farbenblum, Senior Lecturer, University of Law of New South Wales</p> <p>Plenary discussion</p>

12:15 – 13:00	<p><i>Review of findings on regulation, monitoring and enforcement of recruitment agencies: Presentation of UNODC and ILO research objectives and country studies</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> • UNODC: Quinn Kepes, Consultant – Introduction to research on the role of recruitment agencies and recruitment fees in trafficking in persons • ILO: Dr. Katharine Jones, Consultant – Presentation of results from legal and economic assessments in selected Asian and Arab countries <p>Plenary discussion</p>
13:00 – 14:00	Lunch
14:00 – 15:30	<p><i>Social partner’s efforts to improve regulation on labour recruitment</i></p> <p><i>Panel 1: Trade unions engagement to end abusive and fraudulent recruitment practices</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> • Castro Abdallah, Director, Federation Nationale des Syndicats des Ouvriers et des Employés au Liban (FENASOL) • Allan Montano, President and International Secretary, Federation of Free Workers of the Philippines (FFW) • Usha Kiran Bhandari, Project Coordinator, General Federation of Nepalese Trade Unions (GEFONT) <p>Moderator: Nilim Baruah, ILO Senior Migration Specialist</p> <p>Plenary discussion</p> <p><i>Panel 2: Workers’ recruitment: transitions to formality</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> • Rami Asrawi, General Secretary of the Jordanian Association of Recruiting Agency • Dinesh Shrestha, Vice President, Federation of Nepalese Chambers of Commerce & Industry • Zulkifly Abdul Rahman, Council Member, Malaysian Employers' Federation (MEF) <p>First comments from the floor: Lara White, Senior Migration Specialist, IOM</p> <p>Moderator: Houtan Homayounpour, ILO Senior Programme and Operations Officer</p> <p>Plenary discussion</p>
15:30 – 16:00	Coffee Break

16:00 – 17:00	<p><i>Introducing working groups' scope and objectives</i></p> <p><i>Group 1: Prosecution of trafficking cases related to abusive recruitment practices</i></p> <ul style="list-style-type: none"> • Speaker: Silke Albert, Crime Prevention Expert, UNODC <p><i>Group 2: Regulation of the recruitment industry and how it impacts on recruitment business models</i></p> <ul style="list-style-type: none"> • Speaker: Steve Shepherd, CIETT Regional Representative for South East Asia <p><i>Group 3: Bilateral cooperation to regulate recruitment</i></p> <ul style="list-style-type: none"> • Speaker: Jeroen Beirnaert, Project Coordinator, International Trade Union Confederation (ITUC) <p>Moderated by Beate Andrees, ILO</p>
19:30 – 21:30	<p>Dinner at Double Tree by Hilton Hotel</p> <p><i>Meeting point:</i> Restaurant Mosaic by the pool</p>

<p>Day 2 –November 19th</p> <p><i>Location: Theatre Room</i></p>	
09:00 – 09:30	<p><i>Recap of day 1</i></p> <p>Facilitated by:</p> <ul style="list-style-type: none"> • Beate Andrees, Head, ILO Special Action Programme to combat Forced Labour and • Silke Albert, Crime Prevention Expert, UNODC
09:30 – 10:30	<p><i>Access to justice and effective remedies: good practices and challenges</i></p> <p>Speakers:</p> <ul style="list-style-type: none"> • Ms. Geeta Sekhon, Human trafficking expert, India • Ms. Alix Nasri, Technical Officer, ILO Special Action Programme to combat Forced Labour <p>Moderator: Silke Albert, Crime Prevention Expert, UNODC</p> <p>Plenary discussion</p>
10:30 – 11:00	<p>Coffee break</p>

11:00 – 12:30	<p>Working Group 1:</p> <p><i>Prosecution of trafficking cases related to abusive recruitment practices</i></p> <p>Speaker: Ms. Vichuta Ly, Legal Support for Children and Women</p> <p>Moderator: Silke Albert, Crime Prevention Expert, UNODC</p>	<p>Working Group 2:</p> <p><i>Regulation of the recruitment industry and how it impacts on recruitment business models</i></p> <p>Speaker: Mohammed Dito, Policy Consultant, Labour Market Regulatory Authority</p> <p>Moderator: Steve Shepherd, CIETT Regional Representative for South East Asia and Farooq Ahmed, Secretary-General, Bangladesh Employers' Federation</p>	<p>Working Group 3 :</p> <p><i>Bilateral cooperation to regulate recruitment</i></p> <p>Speaker: William Gois, Director, Migrant Forum Asia</p> <p>Moderator: Jeroen Beirnaert, Project Coordinator, International Trade Union Confederation</p>
12:30 - 13:30	Lunch		
13:30 – 15:00	<p>Working Group 1 cont':</p> <p><i>Prosecution of trafficking cases related to abusive recruitment practices</i></p>	<p>Working Group 2 cont':</p> <p><i>Regulation of the recruitment industry and how it impacts on recruitment business models</i></p>	<p>Working Group 3 cont':</p> <p><i>Bilateral cooperation to regulate recruitment</i></p>
<i>Coffee will be served during the session</i>			
15:00 – 16:00	<p>Working groups' identified good practices reported to plenary</p> <p>Facilitated by UNODC and ILO</p>		
16:00 – 16:30	<p>Shaping a way forward</p> <p>Facilitated by Beate Andrees, Head, ILO Special Action Programme to combat Forced Labour and Silke Albert, Crime Prevention Expert, UNODC</p> <p>Plenary discussion</p>		
16:30 – 16:45	<p>Closing session</p> <p>Speakers:</p> <ul style="list-style-type: none"> • ILO • UNODC 		