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The Migrant Recruitment Industry

**Profitability and unethical
business practices in
Nepal, Paraguay and Kenya**



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This publication documents the process of foreign recruitment in case-study migration corridors across different regions. The result of the research brings to the fore the abuse of migrant workers by recruiters and seeks to contribute to broadening the choices workers have to find decent work at home and abroad.

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1. Introducing the recruitment baseline studies

In 2015 there were an estimated 244 million migrants worldwide, an increase of 41 per cent since the turn of the millennium.¹ Over the past two decades, “recruiters” who organize labour migration across international borders have dramatically increased in visibility and importance. In addition to charging a fee for recruitment (matching employees from one country with an employer in another), recruiters charge fees for managing the bureaucracy associated with immigration and often emigration; for organising transportation to the destination country; for reserving accommodation *en route* and on arrival; for issuing employment contracts; for providing (access to) insurance; for delivering training; and for arranging the medical screening which is often required by destination country governments. Rather than the employer, it is usually migrants themselves who pay for the costs of their own recruitment and migration, and usually dearly.

Not only do migrants pay dearly in monetary terms; recruiters are a well-documented source of exploitation of migrant workers. Their business practices are known to exacerbate the risk of abuse, forced labour and human trafficking.² Among the most widely cited abuses perpetrated by recruiters are: deception about the nature and conditions of work, confiscation of passports, illegal wage deductions, debt bondage linked to extortionate recruitment fees, threats if workers want to leave their employers and physical violence.

The activities of labour recruiters are a long-standing concern of the ILO. In 1997, the ILO Private Employment Agencies Convention, 1997 (No. 181) was adopted with its accompanying Recommendation (No. 188). This Convention has since been ratified by 28 governments.³ As it had little to say about *international* recruitment, it was followed in June 2014 with the adoption of a new Protocol to the ILO Forced Labour Convention, 1930 (No. 29). This states that measures to be taken for the prevention of forced or compulsory labour shall include: “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”.⁴ In 2016, the ILO adopted the General principles and operational guidelines for fair recruitment with the aim of informing the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment.⁵

The research contained within this three-study volume was commissioned by the ILO Special Action Programme to Combat Forced Labour (SAP-FL) as part of the Fair Recruitment Initiative. The Initiative was launched in 2014 in collaboration with the ILO’s MIGRANT branch, and is funded by the US Department of Labor. Addressing abuse of migrants by recruiters is an integral part of ILO’s Fair Migration Agenda, which seeks to broaden choices for workers to find decent work at home and abroad, with the full respect of their human and labour rights. Through the Initiative, the ILO has supported a programme of baseline research aimed at better

¹ See <http://www.un.org/sustainabledevelopment/blog/2016/01/244-million-international-migrants-living-abroad-worldwide-new-un-statistics-reveal/> [Accessed: January 2017].

² ILO: *The Cost of Coercion*, Global Report under the Follow-up of the Declaration on Fundamental Principles and Rights at Work (Geneva, 2009).

³ Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326.

⁴ Available at: <http://www.ilo.org/ilc/ILCSessions/103/on-the-agenda/forced-labour/lang--en/index.htm>.

⁵ Available at: http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm.



Box 1: Definition of labour recruiter

The term “labour recruiter” as expressed in the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), can refer to both private and public entities that offer labour recruitment services. Private entities can take many forms: formal (e.g. registered under commercial or other law) or informal (not registered, such as informal sub-agents), profit-seeking (e.g. fee-charging agencies) or non-profit (e.g. trade union hiring halls). Private employment agencies fall within the definition of labour recruiter. In particular, they are defined by the ILO Private Employment Agencies Convention (181), as “a natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) matches offers of and applications for employment, without the private employment agency becoming a party to the employment relationships that may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) that assigns their tasks and supervises the execution of these tasks; (c) other services relating to job-seeking, determined by the competent authority after consulting the most representative employers and workers” organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.” (Art. 1.1)

understanding what works – and what does not – in promoting fair recruitment practices in different global contexts.⁶ For the purposes of the baseline studies, the following definition of “recruiter” was utilized.

Context of the research

This volume collates three case-studies:

- Recruitment from Nepal into Malaysia and into countries in the Middle East
- Migration and recruitment from Paraguay into Brazil
- Recruitment from Kenya into countries in the Middle East.

Research for the studies was conducted during 2014 and 2015. The case-study countries of Nepal, Paraguay and Kenya were selected because migration has grown significantly from each in recent years, and for the opportunities they presented for comparative research in

terms of how recruitment and migration has developed differently (or not) in each context. Although increasingly common in all parts of the globe, it is in Asia where recruiters are the most integral to labour migration.⁷ Most international migrants within Asia use – and pay for – the services of a recruiter. However, recruitment and migration from Kenya to the Middle East and from Brazil to Paraguay has been remarkably under-studied.

Nepal: Today, an estimated 2 million Nepalis work overseas which is an exponential increase in emigration since the late 1990s.⁸ Almost 1,700 labour migrants travel through Kathmandu airport each day. Consequently, Nepal is one of the highest remittance receiving countries in the world. Around 55 per cent of

⁶ For information about the Initiative see <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>. This research was funded under the GAP 11 project (Global Action Programme to Combat Child Labour).

⁷ T. Gammeltoft-Hansen and N. N. Sorensen (eds.): *The Migration Industry and the Commercialisation of International Migration* (London, Routledge, 2012); and C. Kuptsch (eds.): *Merchants of Labour* (Geneva, ILO, International Institute for Labour Studies, 2006).

⁸ See G. Gurung: *Recruitment Monitoring Assessment*, Nepal (Nepal, IOM, 2014); National Planning Commission and IOM: *Policy Review: Analysis of Policies on Foreign Labour Migration and their Implementation* (Nepal, IOM, 2011); and J. Shrestha, and E. Taylor-Nicholson: *No Easy Exit: Migration bans affecting women from Nepal* (Geneva, ILO, 2015) Available at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_428686/lang--en/index.htm [Accessed: January 2017].

Nepali households receive remitted monies from family members; official remittances amount to US Dollars (USD) 5 billion per year representing at least a quarter of Nepal's GDP.⁹ At the time the research was conducted, almost 800 recruitment firms were licensed by the Government of Nepal. An additional estimated 50,000 “brokers” (see Glossary for an explanation of terms) engage in recruitment activities, but are mostly not licensed, and are therefore in effect operating “illegally”. In recent years, the Government has invested significant efforts in making migration safer for its nationals. This includes an attempt to move towards a “zero-cost to migrants” policy. At the time the research was conducted, the (legal) recruitment of women for overseas employment was very restricted by the government (see Nepal chapter); the focus of this study was therefore the recruitment of men for overseas employment.

Kenya: An estimated 3 million Kenyan nationals are currently working abroad, a significant increase in recent years.¹⁰ Although the majority migrate to countries in Africa (e.g. Botswana, Ghana, Namibia, Tanzania), a growing number migrate to the Middle East for temporary employment in low-paid jobs in domestic work, security, logistics and retail. High (youth) unemployment and poverty at home in Kenya combined with an escalating demand of employers for Kenyan workers have resulted in a specific increase of migration to the Middle East region (estimated to be 130,000 by 2013).¹¹ Remittances to Kenya rose to USD 1.47 billion in 2014–2015, accounting for approximately 3 per cent of GDP (Gross Domestic Product).¹² Currently 1,000 firms are licensed to recruit

Kenyan for employment in other countries, an increase from 1998 when just five firms were licensed. The “real” number of firms and individuals recruiting internationally, but without a license, is undoubtedly far higher.

At the time the research was conducted, the Government of Kenya was at a critical juncture in regulating international recruitment, as well as fashioning a position on emigration of its nationals for low-paid temporary employment. On the one hand, the Government views labour migration as a potential way to ease unemployment figures and increase remittances. On the other, the Government risks bad publicity from the many examples of forced labour, human rights abuses and human trafficking which have emerged. As a temporary solution, in November 2014 the Government imposed a “ban” on the activities of the recruitment industry, and established the “Foreign Employment Taskforce” to review the situation and propose solutions. The ban on the recruitment of “professionals” (designated to be secretarial, accounting, hotel management amongst others) was lifted in March 2016. However, at the time of writing, the ban on recruitment into domestic work remains while the Government negotiates agreements with destination country governments to improve the rights of its nationals. Despite this, exploitative practices still continue in the recruitment industry. Interviewees for this study estimated that up to three-quarters of the entire overseas recruitment industry in Kenya is accounted for by domestic work recruitment to the Middle East. This study explored both male and female recruitment into a range of sectors for temporary employment in the Middle East.

Paraguay: Hundreds of thousands of Paraguayans currently work as domestics, tailors, seamstresses, sales clerks and builders, crossing the border into neighbouring Brazil every day for work, as well as less regularly to the more distant states and cities of São Paulo, Santa Catarina and Rio de Janeiro. Anecdotally,

⁹ See H. and Y. Basnett: *Foreign Employment and Inclusive Growth in Nepal: What can be done to improve impacts for the people and the country* (London, Overseas Development Institute, 2013).

¹⁰ See <http://www.businessdailyafrica.com/Kenya-to-export-100-000-workers-to-the-Emirates/-/539546/2596746/-/f79e4b/-/index.html> [Accessed: January 2017].

¹¹ Interview with Kenya Ministry of Labour officers, April 2015.

¹² See <https://www.centralbank.go.ke/index.php/diaspora-remittances> [Accessed: January 2017].

Brazil has become the second most popular Latin American destination for foreign employment for Paraguayans, after Argentina. Brazil has become a more attractive destination for Paraguayans since 2000 because of Argentina's economic crisis, the resulting inflation and subsequent reduction in the value of wages from 2007 onwards.¹³ Consequently, Paraguayans have become the second most numerous migrant nationality group in Brazil (after Bolivians).¹⁴ However, whereas in both Kenya and Nepal, the recruitment industry is the main way by which people “legally” migrate to countries in the Middle East, in contrast, for Paraguayans migrating to Brazil, it is friends and family members (“social networks”) who mostly perform this role. The focus of this study was to ascertain whether there was any involvement of informal, but “paid-for” recruitment within these social networks, and to understand why this context had developed differently from those in Nepal and Kenya. As Paraguayans (women and men) work mainly in the apparel industry, in construction and in domestic work, these provided the sectoral focus of the studies.

About the research

The studies had three overarching objectives:

- To understand why the recruitment industry predominates as a means of organizing migration in some national contexts and not in others;
- To analyse how recruitment firms and brokers profit from organizing labour migration;
- To better understand how and why recruitment firms engage in specific unethical/ abusive business practices.

While much research has already been conducted on the impacts of recruitment practices on migrants, these studies are understandably usually based on testimony from migrant workers rather than from recruiters. In contrast, the studies conducted in Kenya and Nepal hinged primarily on interviews with recruiters, supplemented by research with migrants and “key informants” (e.g. officials and civil society representatives). The research was underpinned by a belief that a robust understanding of why recruiters behave like they do can only be arrived at by studying them, their motivations, rationales, as well as what influences their behaviour.

The research programme was conducted by a combination of national consultants (for Kenya, Brazil and Paraguay) and a lead consultant hired by the ILO to manage the research programme (and who also conducted the research in Nepal).¹⁵ Summaries of the final national reports are included in this volume.

As the intent was to explore the reasons for certain business practices rather than to quantify the phenomenon, a qualitative methodological approach was adopted. A total of 48 recruiters in Kenya and Nepal were interviewed. A total of 65 migrants in all four countries (20 in Kenya and 20 in Nepal; 45 in both Paraguay and Brazil) were asked about their migration and recruitment experiences. A total of 77 key informants (government officials, representatives from workers’ organizations and civil society) were interviewed. Data generated were correct at the time of writing; however, it is worth noting that legal frameworks governing recruitment, immigration and emigration are subject to frequent amendments. For instance, following the conclusion of the research in Nepal, the Government made two significant changes regarding the recruitment of women for

¹³ EPH, 2014 / Permanent Household Survey of Paraguay, 2014 (Unavailable online).

¹⁴ Estimates from the NGO Repórter Brasil indicate that more than 300,000 migrants from Bolivia and Paraguay live in the São Paulo area.

¹⁵ Dr. Katharine Jones acted as lead consultant and researcher for the Nepal study, assisted by Dr Abdur Rafique. Wangui Irimu conducted the Kenya study, Stephanie Morin and Patrick Dobreé conducted the Brazil and Paraguay studies respectively, under the guidance of Katharine Jones.

domestic work, and the introduction of a “zero-cost to migrants” policy (see Nepal chapter). However, it is important to note that these amendments do not invalidate the studies, as in many regards, exploitative practices continue despite these changes. More importantly, the purpose of the studies was to analyse how recruiters behave in response to regulation, including *changes* in regulation. In other words, rather than to simply describe their business practices at a snapshot moment in time, the research aimed at explaining how and why they do what they do.

In Kenya (research conducted in 2015), a total of 51 interviews were conducted, which included 18 with owners or directors of recruitment firms, and 14 with male migrants who had returned from working in countries in the Middle East. In Nepal (research conducted in 2014), in total, 42 interviews were conducted. This included seven interviews with key informants, 14 interviews with the owners or directors of recruitment firms, 16 brokers, as well as six returned male migrant workers. Research in Brazil and Paraguay was conducted as a “corridor study” with interviews conducted by a consultant in each country (research conducted in 2015). In Brazil, 27 interviews with Paraguayan migrant workers in the state of São Paulo were conducted. Nine of the interviewees ran small businesses that employed other Paraguayan nationals; this group were interviewed also for their experience as employers. In Paraguay, a total of 18 interviews with nine men and nine

women who had worked in Brazil within two years prior to the research and who had returned to Paraguay. Twenty government and criminal justice officials and 14 civil society leaders in São Paulo city and Brasília were interviewed in Brazil. In Paraguay, 17 key informants from the public, private, trade union and social sectors were interviewed. In addition, the consultant visited six apparel workshops in São Paulo city and Guarulhos to document first-hand the labour conditions of Paraguayan migrants. Qualitative findings were supplemented by official statistics where these could be obtained.

Summary of findings

This section briefly summarizes findings from the three studies. After briefly comparing legal frameworks in the three countries, the section addresses the three overarching research objectives set out above.

Legal frameworks

How recruitment industries are regulated impact on whether recruitment firms can legally operate, which sectors they can recruit into, and the types of workers they can recruit (for instance, whether they can only recruit men and not women). Regulation also governs whether recruitment fees can legally be charged to workers and if so how much. Although, the legislation and policy in Nepal is more detailed and complex than in Kenya, there are a great

Table 1: Numbers of interviews conducted by country and by category

	Recruiters (firm owners and brokers)	Migrants (outgoing, returned, or currently employed)	Stakeholders (govt. officials, trade union and civil society)	Total
Nepal	30	6	7	42
Kenya	18	14	19	51
Brazil	0	27	34	41
Paraguay	0	18	17	35
Total	48	65	77	169

number of similarities between them. For instance, directors of recruitment firms must apply for and hold specific recruitment licenses to operate. They must also lodge a security deposit (known as an escrow or bond) which acts as evidence of the owner’s financial capacity to operate a business at the time of application. In addition, the governments in both Nepal and Kenya stipulate the countries to which recruiters can send Nepali or Kenyan workers, with both in the past having imposed restrictions on recruitment of women into domestic work in the Middle East. The Government of Nepal applies sanctions for recruiting to countries which are designated as “closed” or not yet included in the “open” list.

Significantly, as regards impacts on rights violations, both governments allow recruitment firms to charge fees to migrants. At the time the research was conducted, recruiters in Nepal could charge fees to migrants of between Nepalese Rupees (NPR) 80,000 (USD 1,167)¹⁶ for recruitment to Malaysia and NPR 70,000 (USD 1,021) for recruitment to the Gulf countries (including Qatar, Saudi Arabia, UAE). In Kenya, (licensed) recruiters can charge up to the equivalent of one month’s salary (which the recruit would be earning in the destination country). As monthly salaries for Kenyans working in the Middle East are usually between USD 200 and USD 400, this proportionate fee is considerably less than what Nepali recruiters can charge (as per data at the time the research was conducted). Both governments have made efforts to require *employers* in the destination countries to pay the full costs of recruitment; however, neither has been successful yet in either reducing or stamping out fees altogether.

Both governments have also embarked on developing bilateral labour agreements with key destination countries, which are generally viewed as a measure of good practice in improving

the rights of migrant workers. Successive governments of Nepal have signed five bilateral agreements, including with the Republic of Korea, Japan, Qatar, UAE and Bahrain, while others (with Malaysia, Kuwait, Lebanon and Saudi Arabia) are under discussion (at the time of writing). Agreements cover issues such as minimum pay, insurance and other welfare questions. Increasingly, in support of its “zero-cost to migrants” policy, the Government of Nepal has also sought to include stipulations in these agreements that *employers* pay the following costs: recruitment and migration, including visa, travel, as well as return travel upon completion of the employment contract period. Kenya’s first such agreement was signed with Qatar in 2011, while at the time of writing, discussions were continuing between Kenya and the governments of Saudi Arabia and UAE.

The studies highlight the fact that the governments of Kenya and Nepal face three key similar challenges in regulating recruitment. These include:

- a) **Widespread non-compliance of licensed recruiters with legal and policy frameworks, with few penalties applied by the authorities.** In Kenya, at the time of writing, no recruitment firms had ever been prosecuted for non-compliance. In Nepal, few of the legal sanctions available to the authorities have tended to be applied to licensed recruitment firms although small amounts of financial compensation to be made to migrant workers are sometimes required.¹⁷ In both countries, a lack of capacity and funding for enforcement activities, and the political will to implement enforcement hamper effective regulation of the industries. At the same time, it is difficult for migrants who have endured violations of their rights to know who or what has been responsible due to the multitude of different

¹⁶ Throughout this study conversions into US dollars are to be considered approximate and the figures in local currency were correct at the time the research was conducted.

¹⁷ Nepal DoFE Annual Report, cited in Dr. G. Gurung: *Recruitment Monitoring Assessment*, (IOM, Nepal, 2014) – for IOM.

actors involved in the recruitment process. Migrants often do not know their rights have been violated until they are already abroad. At that stage it is very difficult to complain to the authorities without returning home; migrants can also be reluctant to complain due to fear of recruiters or because they do not want to risk their job – and consequently the remittances they can earn.

b) The scale of illegal recruitment, including the existence of brokers, is endemic and where many rights violations occur.

Illegal recruitment involving brokers is a systemic part of the recruitment industry in both countries. Finding the brokers and prosecuting them would be challenging in the extreme. In Nepal, the authorities mount occasional raids of illegal recruiters but these tend to address numerically only a tiny fragment of the problem. Similarly, in Kenya, interviewees reported that few, if any, arrests are ever made of illegal recruiters. This means that illegal recruiters can largely act with impunity, and licensed recruitment firms can freely use them without fear of penalty.

c) Recruitment fees charged to workers are legally allowed in both countries.

The charging of recruitment fees to migrants is a significant risk factor for debt bondage. Although both governments restrict the amounts which can be charged, in practice monitoring and enforcing such restrictions is impossible. Recruiters in Nepal interviewed for this study admitted falsifying the receipts which they submit to the Nepalese authorities to hide the amounts that they actually charge to their recruits. In Kenya, recruiters are not even required to submit receipts, so unless a complaint is lodged, the authorities are not able to monitor what amounts have been charged by recruitment firms.

On the other hand, cross-border recruitment between Brazil and Paraguay is largely unregulated – but not illegal – as Brazilian legislation does not explicitly refer to the *recruitment of migrants in foreign countries* for employment in Brazil. Nevertheless, the Brazil Criminal Code penalizes the activity of luring workers from one location to another *within* Brazil, whether through fraud, by charging them a fee, or by failing to ensure a worker's return to the recruiting site.¹⁸ In Paraguay, cross-border recruiters are similarly largely unregulated although a new law on Domestic Work introduces the requirement for the Ministry of Labour, Employment and Social Security to regulate the operation of national and cross-border “private employment agencies” (not yet implemented at the time of writing).

Recruitment practices/ activities

As the legal frameworks are similar in Kenya and Nepal, so too are the business practices and recruitment processes in which both legal and illegal recruiters engage (see Box 2). In Nepal, recruiters are legally required to follow a set recruitment process, with the steps clearly laid out in the legislation. Regulation in Kenya does not specify this to the same degree, although a legal onus is placed on firms to follow up on the welfare of their recruits once they are overseas. This requirement is however neither monitored nor enforced.

¹⁸ Criminal Code, December 29, 1998, Art. 207: “the penalty will be increased by one-sixth to one- third if the victim is under eighteen years old, elderly, pregnant, indigenous or physically or mentally disabled.”



Box 2: Main activities of recruitment firms in Kenya and Nepal

- **Finding recruit:** Recruiters in Kenya and Nepal use brokers to find new recruits in return for a small fee.
- **Selecting and screening candidates:** Recruiters in Nepal and Kenya usually manage this on behalf of employers; rarely are job interviews conducted with basic job screening, but conducted by means of a “bio-data” form on which basic demographic data of the recruit is recorded. Recruits with prior migration experience are usually prioritized.
- **Preparing recruits for emigration:** This includes helping recruits apply for passports, arranging for medical tests which certify general health and fitness, and may include arranging pre-departure training although this is not required for men or women in Kenya.
- **Liaising with the (home) authorities to process emigration clearance:** In both Kenya and Nepal, recruitment firms liaise with the authorities to obtain the correct paperwork that migrants need to leave the country for employment. To migrate legally, “emigration clearance” is required. In Kenya, if a woman is being recruited, recruiters need also to organize a “no-objection to travel” certificate from a male guardian before the woman can migrate legally.
- **Liaising with their clients in the destination countries to obtain entry visas and work permits:** In both countries, this is a critical part of their role.
- **Facilitating signing of the employment contract:** In many cases, recruiters in Kenya and Nepal (dependent on the job and the employer) arrange for their recruits to sign employment contracts. If this happens (and it often does not), the contract is often only presented to the recruit upon or close to the day of departure. In Nepal, recruitment firms are also supposed to sign a “recruitment agreement” with their recruits which sets out the terms and conditions of their relationship.
- **Organizing travel:** Recruiters in Kenya and Nepal organize flights or other types of travel to the destination country.
- **Providing advice:** Recruiters may provide advice on the employment, culture or language in the destination country but this is not required.
- **Providing loans:** None of the recruiters interviewed for this study in either country admitted to providing loans to their recruits. Nevertheless, key informants in both countries reported this to be common. Recruiters in Kenya interviewed for this study did however acknowledge “purchasing” travel equipment, such as suitcases, on a loan basis.

The Paraguay – Brazil study found that friends and family members who assist in organizing migration perform the roles carried out by the recruiters in Kenya and Nepal, but for free. Of the 45 Paraguayans interviewed for this study, 37 had migrated to Brazil with the assistance of a family member or a friend who already lived there. The others migrated alone. Friends and family provided information about

employment, living and working conditions, and how to apply for permits; they also helped with finding jobs. They did this both before the migrant had departed his/ her home in Paraguay as well as once in Brazil. None of the interviewees had paid a fee to a friend or family member for assistance; instead this was referred to as a “gift”. Assistance was often given reciprocally.

Recruitment in Nepal and Kenya but social networks in Paraguay

Although some Nepali and Kenyan migrants do arrange their own migration, for the most part, recruiters – whether licensed or unlicensed/illegal – are chiefly implicated in facilitating labour migration from both countries. Yet, no respondent interviewed for the Paraguay – Brazil study had heard of a case in which a private employment/ recruitment firm (either in Brazil or in Paraguay) had been involved in facilitating the migration of Paraguayans into employment in Brazil. Although employment agencies do exist in both countries (especially in Brazil), these tend to operate only locally.

The study did find two minor exceptions. Firstly, although none of the study interviewees had used one, a few “domestic work” recruiters are reputed to exist in Foz do Iguacu,¹⁹ which is located along the border with Brazil. These recruiters advertise for Paraguayan women to be placed into private households for domestic work just across the border in Brazil. Secondly, interviewees also referred to a hybrid “recruitment intermediary” known as a *saloceiro*. These are Paraguayans who are working in Brazil and who are paid a small fee by their employer to find them additional employees from amongst the Paraguayan community in Brazil, or from among their friends and family at home. On behalf of the employer, *saloceiros* scout for new employees and refer them onto the employer for a fee. They do not generally organize any immigration paperwork, transportation or accommodation for the migrant, nor do they receive a fee from the migrant. This is an important distinction between these “recruiters” and the “brokers” in Kenya and Nepal. Paraguayan bus-drivers who regularly drive migrants across the border between the two countries may also from

time to time receive commissions from large employers in Brazil by passing their names and job opportunities to their customers on the buses.

The difference between the situation in Paraguay and that found in Nepal and Kenya can be explained primarily by the comparative lack of immigration controls which regulate entry to and employment in Brazil, compared with countries in the Middle East and in Malaysia. Paraguayans interviewed for this study emphasized that paying a recruiter (even if one were available) is unnecessary to go and work in Brazil. This is because Paraguayans wanting to work in Brazil can easily identify relatives or acquaintances who can provide them with introductions to potential employers, and who have prior migratory experience to Brazil. They can also simply cross the border into Brazil with just their identity card. The Mercosur Agreement – a trading agreement – which is in operation between countries in the region (Brazil, Paraguay, Uruguay, Argentina, Venezuela²⁰) allows for ease of travel across borders.²¹ Paraguayans do not need to apply for a work permit in advance of travel and can live legally in Brazil for three months before doing so. In practice, many Paraguayans (as do other migrant nationalities) continue to live and work in Brazil without a work permit or residence visa, and do so largely without attracting attention from the authorities. Bus tickets to São Paulo are relatively cheap: between Brazilian Real (BRL) 150 and BRL250 (USD 47 to USD 79). Interviewees also argued that migrating through interpersonal contacts is usually safer as the person who arranges for jobs in Brazil usually knows the employer and can guarantee the terms and conditions of employment. For employers in Brazil, generally there is no need to pay for the services of a recruitment firm. The

¹⁹ Diario Vanguardia, viernes 7 de marzo de 2015, “Con nueva calzada, el Puente celebra hoy 50 años”. Available at: <http://www.vanguardia.com.py/v1/index.php/edicion-impresa/economia/item/28940-con-nueva-calzada-el-puente-celebra-hoy-50-a%C3%B1os> [Accessed: May 2015].

²⁰ Venezuela was a member of Mercosur at the time of writing, having become a member on July 30th 2012; but was suspended on 1 December 2016.

²¹ See <http://www.cfr.org/trade/mercosur-south-americas-fractious-trade-bloc/p12762> [Accessed: January 2017].

study found that for the most part employers in Brazil who commonly hire Paraguayan migrants do not need to engage in active recruitment strategies; the strength of the Paraguayan social networks means that migrants continually turn up at their doors asking for work. Alternatively, employers in the apparel industry in the São Paulo region simply post job adverts in the windows of local shops to find new employees.

In contrast, for Nepali and Kenyan workers wishing to migrate to the Middle East or to Malaysia without valid entry visas and work permits this process is significantly more challenging if not even dangerous. The risk of being caught working without the correct papers is also much higher, with such individuals facing detention, deportation and fines. To migrate legally for a job in these countries requires the processing of several official documents both at home as well as in the destination country. Achieving this alone without the services of a recruitment firm is well beyond what most migrants can cope with. Indeed, recruiters are often viewed as the only way to find an overseas job, especially for those who may lack formal education or access to the internet to gather information about how to migrate. Similarly, for employers in the destination countries, it is easier to manage often complex bureaucracy through a specialist firm. In a labour migration system in which migrants themselves pay for the cost of their own recruitment, it is also significantly cheaper for employers to recruit through a recruitment firm. If employers organized their own recruitment, then they would have to pay for finding candidates, screening and selecting them, and potentially transporting them to the destination country. Where recruitment firms are involved, these costs are passed to the migrant.

Generation of income and profitability

The ways in which recruitment firms in Nepal and Kenya generate income, and sustain profitability are very similar. Labour recruiters in

Kenya and Nepal generate income from three sources:

- recruitment (service) fees charged to their recruits;
- commissions paid by overseas clients (employers and “placement agencies”) per recruit placed; and
- related businesses such as travel agencies, pre-departure training centres (for women migrant domestic workers) and medical centres, which are also owned or managed by recruiters.

In Nepal, directors of recruitment firms admitted charging recruitment fees to (male) migrants ranging from NPR 20,000 to NPR 40,000 (USD 280 to USD 560) depending on destination and expected salary. For those who are not able to raise the money in advance, recruitment directors acknowledged “offering the option” of having the recruitment fee deducted from one or two months’ salary at the start of the contract. In Kenya, returned migrant interviewees reported paying fees of approximately USD 1,000. In both countries, brokers also charge recruitment fees to workers on top of what the firm charges.

Recruitment firms also charge a commission to their clients (employer or placement agency in the destination country) for each recruit sent. Commissions vary substantially depending on the destination country, type of job and what they can negotiate. The higher the demand for migrant workers from employers and the fewer businesses with which they are in competition, the better commissions they can negotiate. For instance, one interviewee in Nepal explained that he gets Kuwaiti Dinars (KWD) 500 (USD 1,751) per worker recruited for a job in Kuwait (cleaning, and factories) and Saudi Riyals (SAR) 8,000 (USD 2,132) per worker for a job in Saudi Arabia (cleaning, domestic work and factories). These figures include the cost of flights, although interviews with returned migrants in Nepal indicate that in most cases,

migrants themselves pay the cost of the flight on top of their recruitment fee. Kenyan recruiters reported being paid commissions of between USD 300 (for male recruits) and USD 2,000 (for female domestic worker recruits) by the overseas placement agencies, with the latter including the cost of the flight. Recruiters in both Kenya and Nepal receive higher commissions for recruiting women migrant domestic workers. This is because employers are more likely to pay somewhat close to the full costs of recruitment of these women; whereas to generate “male” job orders recruiters must often pay bribes to companies in destination countries in order to win contracts.

Recruitment firms in Kenya and Nepal generate income *per person* they send for overseas employment. This means that recruiters have an incentive to find and place as many people as possible; international recruitment for low-paid employment (i.e. “non-professional” sectors) is a business which is dependent on the *volume of people who migrate*. Drawing on the studies conducted, the factors which influence the profitability of recruitment firms in both Kenya and Nepal include:

- i) **Access to candidates:** Given the levels of endemic poverty in Kenya and Nepal, there is a high demand for overseas employment, meaning that recruitment firms (and their brokers) do not have to work too hard to find new recruits. As for the most part, the jobs in which recruitment firms place migrants in the Middle East/ Malaysia (e.g. construction, domestic work, manufacturing, services) do not require prior experience, skills or qualifications, the pool of potential labour across both countries is significant. However, any restrictions which the governments in Nepal and Kenya place on who can be recruited for overseas employment – e.g. women – can have quite a significant impact on firms’ profits.
- ii) **Access to overseas markets:** Because the profits of recruitment firms depend on the volume of recruits, recruiters also require access to employment opportunities (“overseas markets”) for their recruits, so that they can be paid by both the client and the recruit. Access to overseas markets is dependent on how successful a business is in generating contracts with new and existing clients. Successful directors expend significant amounts of energy in ensuring they continue to generate new clients. Directors of recruitment firms in both Kenya and Nepal reported travelling freely and frequently on visits to destination countries. Because of the financial importance of having access to diverse overseas markets, the recruitment industry associations in both countries lobby their governments to “open” destination markets. When a government “closes” destination markets (as was done by the Nepalese Government with the recruitment of domestic workers to Israel, and by the Government in Kenya with the recruitment of domestic workers to UAE, followed by the whole of the Middle East), recruiters lose money on existing and new contracts.
- iii) **Keeping operating costs low:** To ensure profitability, recruitment firms try to keep their operating costs as low as possible. The main way in which recruitment firms do this is to pass on any costs of recruitment (e.g. preparation of documents, medical testing, pre-departure orientation training, visa applications, bribes, and travel) to recruits, which they charge through recruitment fees. Recruitment firms also keep their costs low through “subcontracting” the job of finding new recruits to brokers for a small fee. Subcontracting to brokers who operate on a freelance basis, with commissions only payable on the referral of new recruits for specific job orders enables firms to operate cheaply and with flexibility.

iv) **Speed at which recruitment can be conducted:** To clients, recruitment firms promote their ability to find and place migrants in employment easily and quickly. This influences how many recruits they can place as well as the level of fees and commissions they generate. How quickly recruiters can organize recruitment depends on the time it takes to find, screen and prepare candidates, as well as to process emigration paperwork in Kenya and Nepal, and immigration paperwork in the destination country. Recruiters in Nepal complained about the impact of losing out to “competitor” recruiters from other origin countries such as Sri Lanka, Pakistan and Bangladesh whose authorities can process their emigration paperwork faster and which can therefore win more contracts from employers.

Why recruiters engage in unethical or exploitative behaviour

Much prior work has been conducted on what constitutes “ethical” recruitment, largely based on the Private Employment Agencies Convention, 1997 (No.181), the Domestic Workers Convention, 2011 (No. 189), the Forced Labour Protocol, 2014 and the Declaration on Fundamental Principles and Rights at Work, 1998.²² For instance, ethical recruitment constitutes not charging fees to workers, conducting due diligence checks on employment regulations, on employers and on placement agencies in the destination country.²³ Unethical behaviour is common throughout both countries’ industries; exploitative behaviour is the norm rather than the exception. In other words, exploitation and rights’ violations go beyond a few “bad apples” to something far more systemic. In part, this is

due to the regulation in place in both countries which allows recruitment fees to be charged to migrant workers. In part, it is also due to the general lack of enforcement activity by the Kenyan and Nepalese authorities. However, this is not the only reason that explains why unethical and exploitative behaviour exists. It also exists in part because recruiters’ profitability is generated from the *volume* of workers placed; the more workers they place, the more money they make. With volume driving the business, recruiters lack an incentive to invest in ethical recruitment practices which would make the rights of migrant workers central to their business.

International recruitment from Kenya and Nepal to the Middle East and to Malaysia is also fundamentally based on a system in which migrants themselves pay for their own recruitment, through recruitment fees paid up-front or through salary deductions made after arrival. While migrants from Kenya and Nepal – who are usually from poverty-stricken households – are required to pay fees of up to USD 2,000 and beyond, exploitation including debt bondage is highly likely to result. Would-be migrants do not have access to this level of money and therefore usually incur debt before migrating. This is often done with the promise of much higher salaries than they receive in practice. With average salaries of USD 300 per month, a USD 2,000 debt will – without accounting for any living costs (e.g. accommodation, work equipment, food, medical treatment) while living abroad – take seven months to pay off before the migrant will earn any money to remit home.

In contrast, while Paraguayans working in Brazil commonly endure poor labour conditions, poor accommodation conditions and are occasionally found in forced labour situations, they generally face significantly less risks and less rights’ violations than Nepali and Kenyan workers in the Middle East and in Malaysia. As indicated by the report, the majority of the Paraguayan

²² See <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>.

²³ E.g. see Employment & Recruitment Agencies Sector Guide: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/employment_and_recruitment_agencies.pdf.

migrants enter Brazil without the need of recruiters, and they do not consequently have to pay recruitment fees. Paraguayans migrating to Brazil paid no more than a maximum of USD 200 for a bus ticket to Brazil. Even if individuals must take out a loan to pay for the bus (from a family member, a friend or even an employer as an advance against their salary) this amount can easily be earned back within the first month of employment. The other major difference for Paraguayans is that unlike Nepali and Kenyan workers in the Middle East and Malaysia, when conditions are poor in one job they can leave to find another. This commonly happens, with Paraguayans relying on networks of other Paraguayans within Brazil to find better jobs after arrival. In contrast, Nepali and Kenyan workers are unable to leave jobs with poor working conditions both because of the recruitment debt they have incurred, as well as the immigration regulations which prevent them from leaving contracts without permission. It is important to say however that while they may not be subjected to the same types of fraudulent and abusive recruitment practices as Nepali and Kenya workers, it does not mean they do not face other types of violations or risks. The Brazilian government may not routinely inspect the sectors they work in, and many remain in Brazil without regularizing their status, they may be unaware of how/fearful to make complaints.

In business terms, for recruitment firms there is little financial incentive to introduce (costly) improved recruitment practices which would place the rights of the migrant worker at the centre. The international recruitment industries in Kenya and Nepal flourish from non-compliance with the law which raises the cost

of doing business for those who do comply with the law. Those who do invest in better practices must charge higher prices to employers to cover these costs. Their ability to compete in the sector is contingent on employers being willing to pay the additional costs involved. And as yet there is no evidence that this market exists, especially in the Middle East and Malaysia. Until employers in destination countries are willing to start paying the full cost of recruitment, recruitment firms will continue to charge fees to migrants. They will also cut costs where they can to maximize profits. Recruitment firms in Nepal and Kenya are ultimately part of a much bigger exploitative labour migration system in which employers in the destination countries (and the governments of these countries) hold all the leverage. Until the conditions of migrant workers and the regulation of recruitment firms in the destination countries are tackled, there will only be a limited market for ethical recruitment.

Moreover, until there is a market for ethical recruitment where employers are willing to pay, improving recruitment behaviour in Kenya and Nepal will remain extremely challenging, and unethical and exploitative business practice will continue to pay. This volume of studies goes beyond the impacts which migrants must endure from recruiters (and which is well-documented elsewhere) to explain why recruiters in Kenya and Nepal do what they do in the way that they do. The second study in the volume highlights the significant differences for those migrating from Paraguay to Brazil without the need or desire for involvement of a recruiter.

2. Recruitment from Nepal to the Middle East and Malaysia

Key findings

About the industry: Almost 800 recruitment firms are licensed in Nepal. A further (estimated) 50,000 brokers, a clear majority of which are unlicensed, are also involved in the recruitment industry. This means that potentially less than 2 per cent of the active recruitment industry in Nepal is licensed to recruit, and is therefore operating illegally. At the time the research was conducted, firms which participated in the study recruited between 300 and 1,000 workers per year, reported to be broadly representative of the wider industry.

Legal framework: Nepal has a complex and detailed recruitment regulation framework; covering licensing requirements, the amount of recruitment fees which can be charged to Nepali workers, the destination countries to which Nepali workers can be sent and the required recruitment processes. There are two important differences with the legal frameworks of other countries: i) Nepal requires that brokers be legally registered through licensed recruitment firms, with each firm able to register up to ten brokers for a fee; ii) in 2015, the Government of Nepal introduced a “zero-cost to migrants” policy, although this is yet to have a significant impact.

Generating income: Licensed recruitment firms generate income from three sources: i) recruitment fees charged to workers, ii) commissions charged to placement agencies in the destination country, and iii) migration-related business such as travel agencies, medical centres and training centres. Recruiters interviewed for the study reported charging recruitment fees to Nepali workers of between

USD 300 and USD 600, with the higher fees charged for jobs regarded as favourable, e.g. “indoor jobs”. Fees did not include the cost of travel, any required training, medical testing, passports, or emigration clearance documents. Reported commissions charged by firms to overseas clients (employers or placement agencies in destination countries) ranged from USD 1,751 to USD 2,300 per recruit. However, several interviewees reported having to pay bribes to their clients (employers and placement firms in destination countries) to win contracts (job orders). Bribes to Malaysian clients could cost as much as USD 1,000.

Profitability: Licensed firms’ profitability rests on five key factors: i) securing access to sufficient recruits; ii) securing access to and diversifying overseas markets; iii) maintaining low operating costs and flexibility; iv) speedy recruitment to meet employer demand; v) the ability to engage in unethical business practices.

Introduction

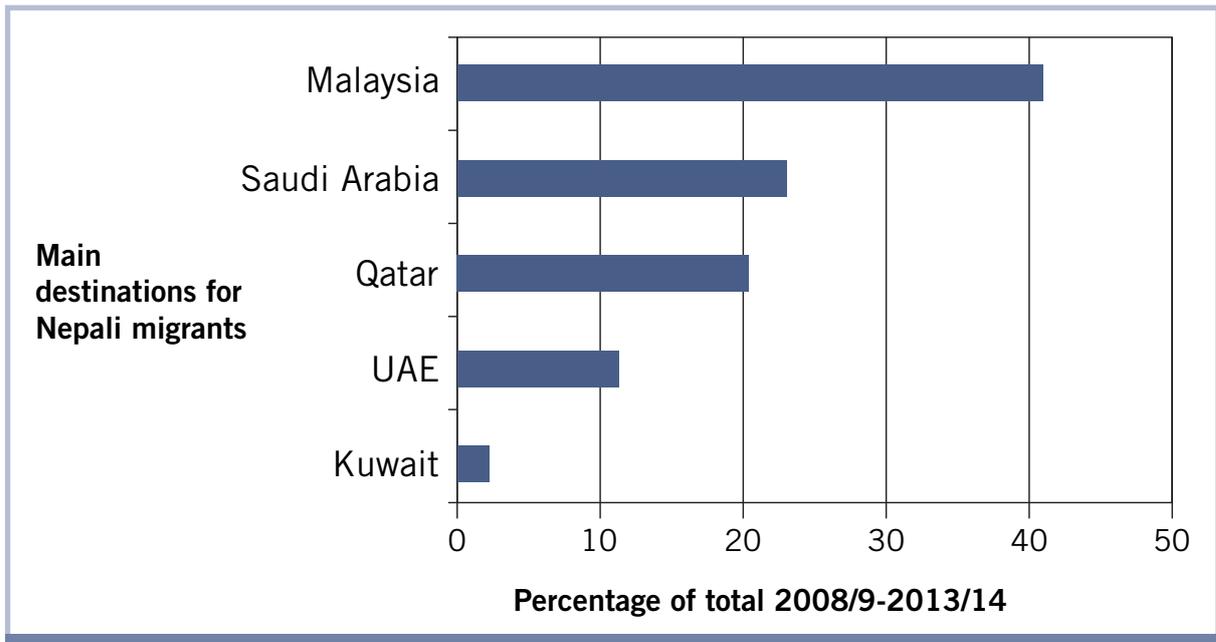
An estimated 2 million Nepalis currently work overseas, a significant increase in emigration since the late 1990s.²⁴ Almost 1,700 labour migrants pass through Kathmandu airport every day. Nepali male migrants predominantly work on two-year temporary employment contracts in Kuwait, Malaysia, Qatar, Saudi Arabia and the

²⁴ See G. Gurung: *Recruitment Monitoring Assessment*, Nepal (Nepal, IOM, 2014); National Planning Commission and IOM: *Policy Review: Analysis of Policies on Foreign Labour Migration and their Implementation* (Nepal, IOM, 2011); and J. Shrestha and E. Taylor-Nicholson: *No Easy Exit: Migration bans affecting women from Nepal* (Geneva, ILO, 2015). Available at: http://www.ilo.org/global/topics/forced-labour/publications/WCMS_428686/lang--en/index.htm [Accessed: January 2017].

United Arab Emirates (UAE) in construction, cleaning and manufacturing jobs. The numbers of men migrating to countries in the Middle East and to Malaysia especially increased between 2008 and 2013 (see Figure 1). Today, around 55 per cent of Nepali households receive

remittances from family members, with official remittances reaching over USD 5 billion per year, equating to at least 25 per cent of Nepal's GDP.²⁵ Nepal is one of the highest remittance receiving countries in the world.

Figure 1: Top five destinations for Nepali male labour migrants 2008/9 – 2013/14²⁶



This report explores the role of the international recruitment industry in Nepal, with a focus on how and why the (licensed) industry functions as it does, including how it generates profit. The study was commissioned by the ILO Special Action Programme to Combat Forced Labour, and contributes to a baseline study conducted under the auspices of the Fair Recruitment Initiative, launched by the ILO in April 2014 (see section 1. above). Almost 800 firms are licensed to recruit internationally alongside an additional estimated 50,000 brokers who tend to live in the rural areas of Nepal as well as in regional towns and cities. As brokers are largely unlicensed, they are in effect “illegal recruiters”. The focus of this study is the

licensed component of the industry, including how they work with the unlicensed brokers.

While recruitment is an important industry in Nepal, it is also important to note that not all labour migrants from Nepal emigrate with the help of a recruitment firm or a broker; many people travel independently. For those who do migrate with a recruiter, exploitation is a known, well-documented and significant risk. Cases of recruiters charging high recruitment fees to migrants leading to situations of debt bondage, making illegitimate deductions from salaries, deceiving migrants about the terms

²⁵ See H. and Y. Basnett: *Foreign Employment and Inclusive Growth in Nepal: What can be done to improve impacts for the people and the country* (London, Overseas Development Institute, 2013).

²⁶ Data from Government of Nepal: *Labour Migration for Employment 2013-2014* (Nepal, MoLE, 2014). Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-kathmandu/documents/publication/wcms_312137.pdf [Accessed: January 2017]. NB. These figures do not include those who found their own employment.

and contracts of employment including the salary that will be earned, as well as violence, intimidation and even human trafficking can be considered endemic in Nepal.²⁷

About the research

The research was conducted by the lead consultant for the research programme with the help of a research assistant.²⁸ At the time the data were collated (2014), recruitment of women for overseas employment was subject to strict restrictions imposed by the government, therefore *male recruitment formed the focus of this study*. A total of 42 qualitative semi-structured interviews were conducted, including 14 interviews with the owners or directors of recruitment firms and 16 brokers (three-quarters of whom were unlicensed), seven interviews with key informants (including

government officials, trade union and civil society representatives, human rights defenders and other experts) and six returned Nepali male migrant workers. All information and figures were correct at the time of writing.

Legal Framework

Together the Ministry of Labour and Employment (MoLE), the Department of Foreign Employment (DoFE) and Foreign Employment Promotion Board (FEPB) are mandated to regulate the international recruitment industry. The Foreign Employment Act of 2007 and subsequent Foreign Employment Policy (2012) form the basis of the legal framework, which is complex and detailed. First and foremost, directors / owners of recruitment firms are required to:

- Apply for and hold specific recruitment licenses to operate legally and to prove that they are citizens of Nepal. The latter is aimed at preventing the establishment of “dummy” recruitment firms controlled by foreign employers and recruiters, and whose purpose is to avoid compliance with the legal framework. Before being granted a license, directors must also submit to a “criminal records check” to confirm they have not been previously convicted of an

²⁷ See Amnesty International: *False Promises: Exploitation and forced labour of Nepalese migrant worker* (London, Amnesty International, 2011). Available at: <https://www.amnesty.org/en/documents/ASA31/007/2011/en/> [Accessed: January 2017]; and World Bank: *The Qatar – Nepal Remittance Corridor: Enhancing the impact and integrity of remittance flows by reducing inefficiencies in the migration process* (2011). Available at: <http://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-7050-6> [Accessed: January 2017]. Also the Guardian UK’s coverage at: <http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves> [Accessed: January 2017].

²⁸ With thanks to the assistance of Dr. Abdur Rafique.

Box 3: About the recruitment firms which participated in the research

All 14 firms are Nepalese-owned, and primarily located in Nepal; only two operated overseas branch offices. The firms are small- and medium-sized enterprises (SMEs), employing less than 10 employees and at that time were all members of NAFEA. Firms (and the brokers who were interviewed for the study) mainly recruited male migrants for jobs in Kuwait, Qatar, UAE, Lebanon, Oman, Malaysia, and Saudi Arabia. This is broadly representative of the entire international recruitment industry in Nepal. Participants recruited few women (or at least admitted to recruiting few women), unsurprising due to the legal restrictions on female emigration, although several had recruited small numbers of women for “caregiver” and “babysitter” roles in Cyprus, Turkey and Romania. Recruiters placed men in jobs in hospitals, in cleaning, construction, mining, hospitality, the oil industry, in manufacturing and in retail in the Middle East and in Malaysia. Jobs were relatively low-paid with reported salaries varying by destination country and job between USD 260 and USD 470 per month.



offence, especially in relation to recruitment and / or trafficking for forced labour;

- Be granted official permission to open branch offices beyond the main head office;
- Lodge a security deposit (known as an escrow / bond) of NPR 3 million (USD 31,000) all in cash, or a mixture of NPR 700,000 (USD 7,247) in cash and a bank guarantee for the remaining NPR 2.3 million (USD 23,810). Security deposits act as evidence of the owner's financial capacity to operate a business at the time of application; they also provide a fund which can be used either to repatriate recruits if necessary, or as compensation in cases where the recruit is proven to have been exploited.

Licensed firms are legally allowed to use brokers to recruit candidates, but these must be officially registered through them. Up to ten brokers can be registered through each licensed firm, with each requiring a deposit of NPR 20,000 (USD 198) – in addition to the main deposit.

The Government also decides into which countries licensed firms can recruit Nepali workers. Currently, over 100 countries are on the “open” list. However, the Government can “close” a country to recruitment if there are reports of exploitation. If a recruiter is found to have recruited a Nepali worker for a job in a “closed” (or not yet designated “open”) country, the authorities can impose a fine of NPR 300,000 to NPR 500,000 (USD 3,094 to USD 5,156) and / or a prison sentence of between three and seven years. Until November 2015, firms were restricted from recruiting women to countries in the Middle East for “low-skilled” work; this especially referred to domestic work positions in private households. However, after the recruitment industry, the ILO and civil society organizations campaigned against this restriction, in 2015 the Government issued a new directive allowing women aged 24 years of age and older to be recruited for domestic work.

With the aim of safeguarding migrants, each individual recruitment is legally required to be granted official permission before a Nepali worker can be sent overseas. This process has several steps. Nepal's embassies and consulates are charged with confirming that job opportunities are legitimate and comply with Nepal's legal framework. Applications (from employers or placement agencies in the destination country) must be submitted to the nearest embassy or consulate of Nepal which must “attest” them before the recruitment can proceed. An application must then be submitted to the DoFE in Nepal which includes the following details: the name and address of the employer; the type of foreign employment; the number of workers; salary; benefits; leave to be obtained by the worker; day and time when workers are to do the work; the originals of the “demand letter” which sets out the terms and conditions of the employment; how many workers are required (from the foreign employer); the attestation from the relevant embassy or consulate that the job and employer is legitimate and complies with Nepalese legislation; a copy of the employment contract to be signed between the recruits and hiring company, and a copy of the recruitment contract to be signed between the recruitment firm and recruits. Firms are legally required to interview candidates, with the date of the interview and name of interviewee provided to the DoFE in advance. Recruitment firms are also legally required to advertise job opportunities in the media with the purpose of transparency. Once candidates are selected, the list of names is to be forwarded to the DoFE. Only once all these steps have been complied with will the DoFE issue a final approval letter (“emigration clearance”) that is required for Nepali migrants to be able to leave Nepal legally.

Regulations also stipulate how much money licensed recruiters can charge to Nepali workers, with fees varying depending on the destination country to which the recruit is being sent. At the time the research was conducted, recruiters could charge recruitment

fees of between NPR 90,000 (USD 1,167) for Malaysia and NPR 70,000 (USD 1,021) for Gulf countries (including Qatar, Saudi Arabia, UAE). In 2015, the DoFE sent a request to embassies in Malaysia and in the Gulf to cease granting attestations of applications submitted by employers who were not willing to commit to paying workers' recruitment and travel costs, including a visa.²⁹ This new policy aimed to move towards a “zero-cost to migrants” policy, with the intent that if employers paid the full cost of recruitment, migrants would not need to pay. At the time of writing, Nepali (licensed) recruiters could be fined more than USD 1,000 for over-charging recruits.

Firms are also legally obliged to ensure that migrants leave Nepal with signed employment contracts, that they have received a medical certificate certifying good health, and have purchased life insurance of up to an amount of NPR 500,000 (USD 5,000). Firms are also required to collect fees of NPR 1,000 (US D10) from migrants to be forwarded to the Government for placement into a Migrant Welfare Fund. The Fund is used to pay for repatriations where required, welfare activities and to contribute to the activities of Nepal's consulates and embassies. If a recruiter is found to have sent a Nepali worker overseas without following the above process he/she is liable for a fine of between NPR 300,000 and NPR 500,000 (USD 3,112 to USD 5,187).

²⁹ See <http://www.nepalitimes.com/blogs/thebrief/2015/06/28/zero-cost-migration/> [Accessed: January 2017].

Despite the level of detail and complexity of the regulations, this study found that due in part to a lack of capacity as well as other challenges, the recruitment regulation is barely implemented in Nepal, with sanctions rarely imposed on errant licensed recruiters or unregistered brokers.³⁰

In an effort to improve the safety of Nepali people working abroad, the Government has signed five bilateral agreements with destination country governments (Republic of Korea, Japan, Qatar, UAE, Bahrain). At the time of writing, others (with Malaysia, Kuwait, Lebanon, Saudi Arabia) were under discussion. Agreements cover issues such as minimum pay, insurance and other welfare issues for Nepali migrants. Increasingly, in support of its “zero-cost to migrants” policy, the Government has also sought to include stipulations in these agreements that employers in destination countries must pay the costs of recruitment and migration, including of visa, travel, as well as return travel to Nepal upon completion of the employment contract period. The intent is that the burden of the cost of recruitment, including of migration, is passed to employers from workers. However, as yet there is no evidence that these destination country governments have taken action to enforce these agreements.

³⁰ A recent study found that the lack of enforcement activities is a major reason for legal frameworks governing international recruitment in South and South East Asia region not having a significant impact on exploitation of migrants. See K.Jones: *Recruitment Monitoring and Migrant Welfare Assistance: What Works?* (Dhaka, IOM, 2015).

Box 4: Nepal - Qatar Bilateral Labour Agreement, Article 6

The employer shall bear all travel expenses of the workers from the Kingdom of Nepal to the place of work in the State of Qatar upon entering the service for the first time as well as the expenses of the return passage. The employer shall also bear the round-trip travel costs of the second party on leave periods as provided for in the employment contract. These expenses shall not cover costs of acquiring a passport or payment against any guarantees.



Recruiters in Nepal are also supposed to comply with legislation and policies in place in the destination countries to which they recruit, although the authorities there are unable to enforce such compliance. For instance, the Government of Malaysia requires foreign recruiters to work only through placement agencies licensed to operate in Malaysia; recruitment firms in Nepal are not legally allowed to work directly with employers. This is not the case in other countries such as Qatar where recruiters can work directly with employers. Malaysia's Government also stipulates that Nepali workers can only be employed in certain jobs, including in manufacturing, on plantations, in agriculture, construction, and in the services sector.

Recruitment practices

For recruitment firms in Nepal, there are two main phases of the international recruitment process: finding candidates and "preparing" them for overseas employment. Each is briefly set out below.

Finding candidates

Recruiters reported that they aim to ensure that they have a steady supply of Nepali workers ready to be placed abroad, and will continually and actively seek overseas opportunities to place them. However, they are only able to begin the full recruitment process once they receive a "job order" from a client (which could be either an employer or a placement agency in the destination country). The job order, also referred to as the "demand letter" includes details of the terms and conditions of employment, how many workers are required and the skill requirements. It should also have been attested by the relevant nearest embassy or consulate of Nepal. As was said by the director of a recruitment firm in Kathmandu:

"First we collect the demand letter from employers. The demand letter is attested by the embassy in the destination country. Then it is sent by courier to manpower agency [recruitment firm] in Nepal. Then the firm goes to Labour Department for approval so that it can advertise the job in the newspaper. Once the approval is received from the Labour Department they advertise the job in the newspaper and TV."

Recruitment firms pay brokers to find candidates (recruits) for the overseas job opportunities, as is legally allowed in Nepal. This is in part because the firms are based in Kathmandu whereas most recruits live in rural areas outside the capital city and in other regions of Nepal. While firms are required by law to advertise job opportunities in the media throughout Nepal, adverts rarely generate sufficient interest. This is unsurprising as those who are likely to be interested in overseas job opportunities are often illiterate or have poor levels of education. One interviewee estimated the proportion of recruits who contacted him through adverts to be as low as 5 per cent, while the other 95 per cent of his candidates came to him through direct referrals from brokers. Therefore, instead of alerting potential candidates to job opportunities, media adverts are placed to alert brokers to the prospect of work, with these specifying the destination country, the number of workers required, as well as the approximate salary offered. Once alerted by the advert, brokers then seek out potential candidates whom they refer to the firm. Firms also send out regular SMS updates to the brokers, with whom they are in contact, alerting them when they have job opportunities they are looking to fill. This was related by the director of a recruitment firm in Kathmandu:

"To find worker we advertise the requirement in daily newspaper. This is mandatory. We also email the demand to our branch office. There are about 15 brokers who work for

us. They learn about the requirement from advertisement. Once they learn they contact to the branch office. Some contact directly to us in Kathmandu over telephone. The workers mostly come through these agents.”

Brokers interviewed for this study argued that because they are well-known in their own regions, potential recruits prefer to approach them rather than Kathmandu-based firms, even if they were to know where to find them. In part this is related to the “trust” that rural people in Nepal have in the local brokers who are highly visible, even if this trust is often misplaced. Village Development Committees (VDCs), which are the lower administrative part of the Ministry of Federal Affairs and Local Development (similar to municipalities or local government), circulate the contact details and sometimes testimonials for local brokers.

The directors of recruitment firms interviewed for the study reported working with between four and 50 brokers, with most choosing to work with less than ten. Each firm usually worked with brokers located in several regions of Nepal to maximize access to the largest number of potential candidates. Despite the legal requirements to register brokers and to pay deposits for each, few recruitment firms do so, working mainly with unlicensed brokers. Regardless, firm directors interviewed for the study related that finding brokers to work for them is easy because brokers repeatedly contact them “offering recruits”. As a respondent who was the director of a recruitment firm based in Kathmandu put it: “We don’t find brokers, rather brokers find firms.”

Brokers often work simultaneously for multiple firms. For instance, one (unregistered) Nepali broker explained that he works for two recruitment firms, both based in Kathmandu. Some brokers act as “lead brokers” working with several subsidiary brokers. The further along the network, the less likely brokers are to be legally registered with recruitment firms. Brokers interviewed for this study reported

working primarily in this way, with one admitting working with up to 25 other brokers across Nepal. Because of this, recruitment firms in Kathmandu may not know who is recruiting for candidates on their behalf nor what the candidate has been told about the overseas employment opportunity, let alone what fees s/he may have paid (see below). Meanwhile, the Nepali recruit knows little about who or what is processing his paperwork or profiting from his recruitment, let alone who is responsible if things go wrong.

Preparing new recruits for emigration

Recruits are required to apply for several official documents before the authorities will grant an “emigration clearance” for them to leave Nepal for overseas employment. As this process is complex, brokers do most of this preparatory work for migrants, especially for those who are migrating for the first time. Locally, the Secretary of the VDC must “recommend” all citizens for the certificate of citizenship; in effect, conferring authority for the granting of a birth certificate to be issued by the district administration office. Individuals seeking to migrate are then required to produce this certificate *in person* at the Ministry of Foreign Affairs (in Kathmandu) to apply for a passport (which needs to be machine-readable) which is issued by the Department of Passports (also in Kathmandu). Migrants leaving Nepal must also obtain a certificate guaranteeing their health from one of 200 certified medical centres, where tests are conducted for general fitness, pathology, hepatitis A & B, VDRL, HIV/AIDS, TB, malaria and leprosy, and for pregnancy if the migrant is female. A signed employment contract from the overseas employer is also necessary. Depending on the job and employer, migrants may also be required to attend a training course before departing, although this is not a legal requirement for men (although it is for women migrant domestic workers).

Brokers refer candidates to the recruitment firms based in Kathmandu by completing “bio-data” forms that specify the candidate’s demographic data, skills and previous migratory experience, which need to be submitted together with the candidate’s passport. Destination country visa regulations often specify the acceptable age range of incoming labour migrants. For instance, Nepali men migrating to Saudi Arabia must be aged between 21 and 40, and to Malaysia between the ages of 18 and 35. If found to fit the job criteria, the candidate may then be required to travel to Kathmandu for a job interview, but only if the overseas employer requires this. Often, no job interviews are conducted and recruits have little or no contact with the recruitment firm in Kathmandu. Where they are carried out, interviews can be set up to “screen out” those recruits who are not deemed likely to remain in the post for the length of the employment contract (usually two years) or who are otherwise “not suitable” for the employment. This may include those who seem likely to be “troublemakers” according to one recruiter interviewed for this study. At all skill levels, recruits with prior overseas employment experience are usually prioritized, and can often command a higher salary. The director of a recruitment firm in Kathmandu reported that:

“The wages of the workers differ between countries and trades. For example, in Saudi Arabia the wages are SAR 1,800 (USD 480) for drivers, SAR 1,200 to SAR 1,400 (USD 320 to USD 373) for carpenters, SAR 1,000 to SAR 1,500 (USD 267 to USD 400) for salesman. In Malaysia, the amount of salary is gross Malaysian ringgit (MYR) 900 (USD 277). This is for eight hours a day and six days a week. But the opportunity of doing overtime is guaranteed in Malaysia.”

Firms collate the documents which are required by DoFE for emigration clearance. Once this approval is obtained, the firm purchases a plane ticket, and organizes for the employment contract to be signed, either in their offices or

through the broker. Employment contracts are often only signed the day before departure, or even at Kathmandu airport. This gives migrants little time to review and to understand their employment terms and conditions, let alone to negotiate these. The passport and entry visa for the destination country are usually handed to the migrant at the same time. The rationale of handing over the documents at such a late point is, according to one key informant interviewed for the study, to prevent migrants from changing their minds about leaving or from taking up another job with a different recruitment firm. While final preparations are being made, firms also collate and send the relevant documents to their clients (employers or placement agencies) in the destination country for arrangements to be made there. The firms will be in close and regular email contact with their clients during the recruitment process to coordinate immigration and emigration requirements.

Once the migrant embarks the plane in Kathmandu and lands in the destination country, he (usually) has no further contact with the Nepali recruiter. Recruitment firm directors reported having processes in place for migrants to air grievances should something go wrong in the destination country. In practice, none had any examples to share where their recruits had in fact contacted them. Prior research has found that migrants very often leave their home countries with no contact information for their recruiter, often deliberately so on the part of the latter.³¹

³¹ Amnesty International: op.cit. See Footnote ²⁶.

Box 5: Immigration requirements in Malaysia, Qatar and Saudi Arabia

Malaysia, Qatar and Saudi Arabia all require migrants to have an entry visa and work permit issued prior to arrival. In all cases, these are issued by the respective authorities (usually Ministry of Labour) upon receipt of an application from the employer (or destination country agency). Individual applications must be linked to a specific employer and specific job. Ordinarily, the rules of the work permit do not allow the migrant to transfer job or employer whilst in the country. In the Middle East, this is known as the Kafala sponsorship system. In Qatar and Saudi Arabia, the permission of the sponsoring employer is also required before a migrant can leave the country after arrival. Both countries also issue “block visas” to companies which specify the number of entries to be issued for employees of a specified nationality and gender for a defined job title. Once a Nepali candidate is matched to a block visa, after arrival he must apply for an individual work permit.



Generating profit

This section first outlines how recruitment firms in Nepal generate their profits, followed by an explanation of how brokers generate theirs and a discussion of the factors which influence profitability in the sector.

Recruitment firms

Recruitment firms in Nepal generate their income from three main sources:

- recruitment (service) fees charged to their recruits for placement;
- commissions paid by overseas clients (employers and placement agencies in the destination countries); and
- associated businesses such as travel agencies, pre-departure training centres (for women migrant domestic workers) and medical centres.

For each of the three main sources, recruitment firms generate income per person recruited and placed in overseas employment. International recruitment in Nepal is a business which is dependent on the *volume of people who migrate*. Arguably this creates a financial incentive for recruitment firms to mobilize as

many people into migrating as possible. This means that regardless of the source of the income, recruitment firms are reliant on:

- a) maintaining a steady turnover of new recruits; and
- b) generating sufficient overseas contracts with clients so that they can place their recruits in employment.

Firms involved in this research recruited approximately 300 individuals per year. At the time the research was conducted, a small number had large contracts with placement agencies in Malaysia recruiting up to 1,000 Nepali workers per year. For instance, one Kathmandu-based respondent said that just one placement agency in Malaysia (one of several clients there for this firm) recruits 100 to 300 workers each year from him. Another estimated that over the past six years, he had recruited 7,000 workers (just over 1,000 per year), including approximately 1,500 women, mostly for jobs in Dubai and Saudi Arabia. A third respondent estimated that at a very “high point” of his business – around five or six years earlier – he had placed 5,000 workers per year.

Recruitment firm directors admitted charging recruitment fees to migrants ranging from NPR 20,000 to NPR 40,000 (USD 280 to USD 560) depending on destination and expected salary. The higher the expected salary and the better terms and conditions of the job (for instance, an “indoor” job which does not require any working outside, is considered especially fortunate in the Gulf countries where temperatures can reach over 40 degrees Celsius in the summer), the higher the fee they charge to recruits. Recruiters require, in most cases, the fee to be paid before they release the visa and employment contract that will allow the individual to embark on the plane.

Prior research has highlighted how migrants raise the money to pay recruitment service fees – which are usually much higher than those admitted to the research participants – through selling what they can, borrowing from family members as well as from moneylenders at often extortionate loan rates.³² Few Nepali migrants can access mainstream forms of credit from banks at low interest rates. For those who are not able to raise the money in advance, recruitment directors acknowledged “offering the option” of having the recruitment fee deducted from one or two months’ salary at the start of the contract. This is a high risk factor for situations of debt bondage. As the director of a recruitment firm in Kathmandu explains:

“If the candidate cannot pay then the due amount is deducted from his salary and paid to the agency in the destination [country] who then forwards it to me.”

Recruitment firms also often charge a commission from their overseas business partner (employer or placement agency) for each recruit sent. Commissions vary substantially depending on destination country, type of job and what the client (employer or placement agency) has

negotiated. In whose favour negotiations fall tends to depend on the level of demand for Nepali workers at that time and the number of Nepalese recruitment firms competing over the contract. One interviewee explained that he gets KWD 500 (USD 1,751) per worker recruited for Kuwait (cleaning, and factories) and SAR 8,000 (USD 2,132) per worker for Saudi Arabia (cleaning, domestic work and factories). These commissions are intended to cover the cost of air tickets to the destination countries as well as the fee to the recruitment firm. Interviewees also indicated that in some cases, placement agencies /employers may simply make deductions from the salary of the new employee and use this money to forward to the Nepali recruiter. Commissions are not usually paid to the recruiters in Nepal until the Nepali employee arrives at the place of work and some time has passed. As an unregistered male broker in Itahari attests:

“Employers pay to recruiter from the total budget for the workers. So, the workers either don’t get salary as it was promised or get only start to get it after a couple of months. The salary for the beginning months is sent to the recruiters as their fee.”

However, interviewees reported also paying bribes to clients (placement agencies and employers). This occurs when there are several recruitment firms in Nepal competing for the same job order and recruiters must “bid” to “win” the contract. In effect, this is a bribe paid to companies, and those that pay the most are granted the contract. Firms in Nepal reported recovering the amounts paid out in this way through charging additional recruitment fees to recruits. The director of a recruitment firm relates that:

“For jobs in hotels, catering services, factories (indoor jobs) in the GCC (Qatar, UAE, Saudi Arabia) we have to negotiate. Companies know workers want these jobs and are willing to pay to get them. The companies don’t want

³² The Qatar – Nepal Remittance Corridor: op.cit. See Footnote 4.

to pay for tickets, so we charge workers about NPR 70,000 (USD 648). We also have to pay companies a commission of about USD 100/worker.” (Recruitment firm director Kathmandu)

Several interviewees reported having to pay bribes to placement agencies in Malaysia of between MYR 500 and MYR 3,000 (USD 157 to USD 1,000), with the amount dependent on the sector and type of job. These bribes are reportedly higher for those jobs which are deemed to be more favourable.

Several interviewees also owned or had financial interests in other related migration businesses, such as travel agencies, training centres and medical centres. At the time the research was conducted, one interviewee ran a residential training centre for migrant workers (which he described as a “3-star hotel”) in Kathmandu, investing NPR 800,000 (USD 8,000) in setting up the business. The establishment of the centre was directly linked to a specific overseas contract for the recruitment of several hundred workers but this is not always the case. In another example, a recruitment firm which participated in the research only recruits male workers but also operates a training institute for female domestic workers who are placed in employment by other firms. In addition to charging fees for training, recruitment firms operating these associated businesses tend to charge recruits for accommodation in Kathmandu whilst they are undertaking the training. Accommodation fees were often collected from the commissions charged to the local hotels hosting the trainees.

The costs of operating an office in Kathmandu and branch offices, together with marketing and the direct costs they incur in recruiting new candidates must be deducted from income generated from the three sources. Annual operating costs (e.g. rent, electricity, water) may amount to between USD 3,000 and USD 20,000 per year depending on the office space.

Direct costs that are disbursed by firms include commissions of up to USD 100 paid to brokers for each recruit referred, with amounts varying depending on the level of demand, how quickly the broker can respond to a job order, the “quality” of the recruit, and what the broker has negotiated. Recruitment firms in Nepal also often pay commissions to Nepali workers based in destination countries to introduce them to new clients and to generate new job orders for them. These workers become “representatives” and operate as “salespeople” for the firms as attested by the director of a recruitment firm in Kathmandu:

“They not only work in the company but also keep their eyes open to explore the opportunity of getting demand of workers in companies there. Representatives are also able to comment on whether a company is good, whether payment is secure and regular, whether they give any overtime fee etc.”

In addition to the bribes paid to clients to generate job orders, several interviewees also reported having to pay bribes to Nepali officials to speed up the emigration process. One recruitment firm director said that: “When we need to shorten processing time, the only thing that will make the process move faster is to pay people “commissions”. However, one interviewee asserted that this had improved recently due to increased oversight of officials.

Brokers

Brokers receive income from two main sources:

- Recruitment fees charged to migrants; and
- Commissions from recruitment firms based in Kathmandu.

Brokers interviewed for this study were not all engaged in recruitment full-time, with several also receiving pay from other jobs, not just recruitment. Estimates of the numbers of migrants that brokers had sent overseas varied

dramatically. One estimated he sent between ten and 15 recruits overseas *per month*, while another had sent only 100 migrants abroad over the past ten years, averaging ten per year. A third admitted to sending 400 recruits over the past six years. As brokers are paid per recruit referred to the firms in Kathmandu, they are reliant for their income on both maintaining a steady turnover of new recruits, and generating sufficient contacts with recruitment firms. As is the case with the recruitment firms, the success of brokers' business is dependent on the volume of people they persuade to migrate.

Previous research has found that Nepali brokers charge between NPR 5,000 and NPR 10,000 (USD 70 to USD 140) to each recruit. Amounts charged tend to depend on how much money the recruit can access whilst in Nepal, and how high his salary is likely to be in the destination country. In other words, brokers charge as much to migrants as they think they can. Brokers

charge their fees on top of the recruitment fees charged by the firms, and added to that are the fees that migrants must pay for medical certificates and other documents.

A key informant claimed that while monthly earnings vary, a reasonably well-established broker can earn between NPR 30,000 and NPR 50,000 (USD 420 to USD 700), with the more established brokers who work from a legally registered branch office tending to earn between NPR 100,000 and NPR 150,000 (USD 1,400 to USD 2,100) or even more. In addition, for each recruit introduced to the recruitment firm, brokers may receive up to USD 100 in commission fees. Brokers in Nepal also generate income from sending Nepali migrants directly to employers, or arranging irregular migration (when migrants leave Nepal without the documents required under Nepalese law, and / or enter and work in the destination country without the required documents).



Box 6: A profitable business: A stylized example of recruitment firms' profits

- A recruitment firm which recruits 300 workers each year for jobs in Malaysia, charging them USD 516 each in fees, will generate USD 154,800 in income.
- If the firm also receives commissions from overseas clients of approximately USD 200 per recruit for 50 per cent of the time (i.e. for 150 of their recruits), the firm will earn an additional USD 30,000.
- If the recruitment for each worker costs the firm USD 150 (including commission paid to the broker), annual costs of recruitment will amount to USD 45,000.
- Based on an annual office operating cost of USD 20,000 per annum, and with recruits paying for their own flights, passport, medical certificates etc., this firm would generate approximately a pre-tax profit of USD 119,800 for the recruitment of these 300 workers.

How recruiters maintain profitability

Profits – and consequently how successful a recruitment business is – depend on how successful the firm is in generating new contracts for Nepali workers, the number of new recruits placed, as well as how much their operational costs amount to by destination country and by sector. This research has identified five factors that influence how profitable recruitment firms in Nepal are:

- i) **How successful firms are in finding new candidates to maintain the volume of recruits sent overseas:** Given the levels of endemic poverty in Nepal, there is pre-existing high demand for overseas employment, meaning that recruitment firms (and their brokers) do not have to work too hard to find new recruits. As for the most part, the jobs in which Nepali recruiters place male migrants (e.g. construction, manufacturing, services) do not require prior experience, skills or qualifications, the pool of potential labour across Nepal is significant. Therefore, any restrictions which the Government places on who can be recruited will impact on firms' profits. With no restrictions placed on the recruitment of men, firms and their representative body, NAFEA, lobbied the Government to allow the recruitment of women for domestic work to increase their business. Restrictions imposed by destination country governments on the ages at which migrants can be recruited can also have a potential impact on business.
- ii) **How successful firms are in generating “job orders” from clients:** Because the profits of Nepalese recruitment firms depend on

the volume of recruits, recruiters also need access to overseas employment opportunities (“overseas markets”) for their candidates. Access to overseas markets is dependent on how successful a Nepalese business is in generating contracts with new and existing clients. This is a significant factor in how successful a (licensed) recruitment firm is deemed to be in Nepal. Recruiters find clients through personal contacts generated from having previously worked in that country (several recruitment firm directors interviewed for this study had themselves been labour migrants in the past), contacts generated through overseas representatives and through online and telephone marketing. Firms try to diversify their destination country “markets” and their client base to secure sustainability of their firms. At the time this research was conducted, interviewees worked with several clients in destination countries at the same time. For instance, one Nepali recruiter recounted that she regularly recruited for between seven and eight clients in Saudi Arabia and between 12 and 15 clients in Qatar. Another reported recruiting regularly for 30 clients across the whole Gulf region. Successful directors expend significant amounts of energy in ensuring they continue to generate new clients. Recruitment firm directors reported travelling freely and frequently on visits to destination countries. Because of the financial importance of having access to diverse overseas markets, the recruitment industry – through its association, NAFEA – lobbies the Government to “open” destination markets. When the Government “closes” destination markets (as had occurred with the recruitment of domestic workers to Israel in recent years), recruiters lose money.



Box 7: Migrant worker to recruiter

One director interviewed for this study had previously worked as a skilled construction worker in Bahrain where he had learnt to speak English fluently. On his return to Nepal he had opened a business recruiting scaffolders, drivers, cleaners and carpenters for jobs in Bahrain using the contacts he had made during his time working overseas.

- iii) **Keeping operating costs low:** To ensure profitability, recruitment firms try to keep their operating costs as low as possible. They mainly do so by passing on any costs of recruitment (e.g. preparation of documents, medical testing, pre-departure orientation training, visa applications, bribes, and travel) to recruits and charge them through recruitment fees. Recruitment firms also keep their costs low through “subcontracting” the job of finding new recruits to brokers for a small fee. Subcontracting to brokers who operate on a freelance basis and paying them commissions only on the referral of new recruits for specific job orders, enables recruitment firms to operate cheaply and flexibly. Opening branch offices throughout Nepal to attract recruits or hiring permanent staff to do the job of finding new recruits would be significantly more expensive for firms and would impact on profits. The use of the internet and paying small commissions to “overseas representatives” to generate new clients, rather than opening overseas branch offices, also keeps costs down.
- iv) **The speed at which recruitment can be conducted:** To clients, recruitment firms promote their ability to find and place migrants in employment easily and quickly. This influences how many recruits they can place as well as the fees and commissions they generate. How quickly recruiters can organize recruitment depends on the time it takes to find, screen and prepare candidates, as well as to process emigration paperwork in Nepal and immigration paperwork in the destination country. How quickly they can organize the recruitment is not always within the control of the recruitment firms, however. For instance, firms have little influence over the speed at which the bureaucracy in either the destination country or the destination country can be finalized, which in some cases might take several months. Directors complained about lengthy and bureaucratic procedures which impacted negatively on their business, and which vary from country to country. This, they argued, meant that they lose out to “competitor” recruiters from other countries such as Sri Lanka, Pakistan and Bangladesh whose authorities can process their paperwork faster. Recruiters from these countries can win more business by filling client vacancies more quickly. Firms therefore try to speed up the process by ensuring that they have a ready pool of recruits to place in overseas employment as soon as a job opportunity becomes available, or by paying bribes to the authorities to speed up the paperwork.
- v) **Operating unethically and often illegally:** The exploitation and abuse within Nepal’s international recruitment industry (by illegal recruiters as well as licensed firms) has been well-documented elsewhere.³³ It includes: the charging of high recruitment fees which can lead to debt bondage situations from which Nepali workers are unable to escape; making illegitimate deductions from salaries; deceiving recruits about the terms

³³ Amnesty International: op.cit. See Footnote 26.

and contracts of employment including the salary they will receive; as well as violence, intimidation and even human trafficking. Yet, exploitation and abuse is not just a factor associated with a few “bad apples” or “criminals” but is endemic within the industry. Recruiters interviewed for this study acknowledged that these practices were widespread in their industry, and even admitted to some within their own firm. For instance, interviewees for this study openly admitted falsifying receipts for the fees charged to workers in order not to alert the authorities to the actual fees that they charge to recruits; neither do they want to alert the authorities to the fact that they use unlicensed brokers. These (illegal) brokers are highly visible in Nepal, and similarly, feared little from being caught, apart from occasional actions on the part of the authorities.³⁴ While the lack of enforcement activity on the part of Nepal’s authorities is widespread (due to lack of capacity, funding as well as political will), exploitation and abuse of Nepali workers is endemic due to the business model associated with international recruitment into countries in the Gulf and into Malaysia.

practices. Huge risks arise for Nepali workers from the lack of transparency in the recruitment process. Sub-contracting networks of brokers and recruitment firms leave most migrants unaware as to who or what has been involved in their recruitment. Moreover, as each of the brokers and firms involved in recruiting one individual (including the medical centres, hotels, pre-departure training centres, travel agencies), take their “cut” from that person, the costs to the individual rise significantly as do the risks of exploitation. Their ability to compete in the sector is contingent on employers being willing to pay the additional costs involved; and as yet there is no evidence that this market – especially in the Middle East and Malaysia – exists. Until employers in destination countries are willing to start paying the full cost of recruitment, recruitment firms will continue to charge fees to migrants. They will also cut costs where they can to maximize profits. While the Government has made efforts to introduce a “zero-cost migration” policy, until employers start paying for recruitment, Nepali workers will be vulnerable to the abuses which come with high recruitment fees.

Conclusion

The international recruitment industry in Nepal flourishes from non-compliance with the law, making the costs higher and the business more challenging for those who do comply with the law. Those who invest in better practices find themselves having to offer higher prices to overseas clients. International recruitment in Nepal is a high-volume, low margin and exploitative business; there are few financial incentives for firms to invest in ethical business

³⁴ While this research was being conducted the Nepalese Government had initiated Operation Pogo targeting illegal recruiters; it claimed to have caught 200 such individuals. See <http://www.theguardian.com/global-development/2014/may/01/nepal-clampdown-migrant-worker-exploitation-operation-de-pogo> [Accessed: January 2017].

3. Migration from Paraguay to Brazil: The role of social networks versus recruiters

Key Findings

- 1. About the migration:** Over 4 million Paraguayans entered Brazil between 2006 and 2015. Within Brazil, the border regions (Paraná and Mato Grosso do Sul) and the industrial greater São Paulo metropolitan area are the primary destinations for Paraguayans. In the state of São Paulo, Paraguayan nationals are employed in the textile industry, as well as in construction, restaurants and domestic work. In rural areas, Paraguayans work in cattle, manioc and eucalyptus plantations; they also work as builders at remote construction sites. Paraguayans in Brazil mainly originate from rural areas, particularly from the state of Caaguazú where poverty and insecurity in informal employment at home are key drivers of migration. A substantial proportion of the Paraguayan population in Brazil does not hold valid residence or work permits as required by Brazilian law (i.e. they are undocumented). In part, this is because interviewees acknowledged that it is possible to simply walk – or drive – across the border from Paraguay into Brazil without showing an identity card or a work permit.
- 2. Role of social networks:** Of the 45 Paraguayans interviewed for this study, 37 had migrated to Brazil with the assistance of a family member or a friend who already lived there. The others migrated alone. Friends and family provide information about employment, about living and working conditions, on how to apply for permits; they also help with finding jobs. None of the Paraguayans interviewed had paid a fee to a friend or family member who had

been instrumental in helping them find employment; instead the assistance was referred to as a “gift”. Friends and families do however sometimes help by loaning money to new migrants to pay for bus travel to Brazil (USD 100). Almost half of those interviewed lived with relatives or friends on arrival in Brazil. These social networks continue to be important even after arrival, with friends and family providing further information and help for any subsequent employment and/or accommodation.

- 3. Role of recruiters:** No interviewee had heard of a case in which a recruitment firm (either in Brazil or in Paraguay) had been involved in facilitating the migration of Paraguayans from Paraguay into employment in Brazil. Employment agencies do exist in both countries (especially in Brazil), but are not involved in recruiting Paraguayans to Brazil. However, although we did not find any Paraguayans who had used one, a small number of recruiters are listed in Ciudad del Este (Paraguay border) and they provide domestic workers to households in Foz do Iguaçu.³⁵ (Brazil border). Interviewees also referred to a hybrid “recruitment intermediary” known as a *saloceiro*. These are Paraguayan “brokers” who are paid a small fee by their employer (in Brazil) to find additional workers from amongst the Paraguayan community in Brazil, or from their home communities. *Saloceiros’* activities are like those of the recruitment

³⁵ Diario Vanguardia, viernes 7 de marzo de 2015, “Con nueva calzada, el Puente celebra hoy 50 años”. Available at: <http://www.vanguardia.com.py/v1/index.php/edicion-impresa/economia/item/28940-con-nueva-calzada-el-puente-celebra-hoy-50-a%C3%B1os> [Accessed: May 2015].

“brokers” (see Glossary) in existence throughout the Middle East and South and South East Asia albeit with one important exception: they only receive fees from the employer. Paraguayan bus-drivers who drive across the border may also from time to time receive commissions from large employers in Brazil by passing their names and job opportunities to their customers on the buses.

4. **Why social networks rather than recruiters:**

Paraguayans interviewed for this study argued that the cheapest way for migrants to secure employment is to have jobs arranged through personal contacts. They emphasized that paying a recruiter is unnecessary because: i) bus tickets to São Paulo are relatively cheap (between Brazilian Real (BRL) 150 and BRL 250 (USD 47 to USD 79) and travel is easily arranged by themselves; ii) they can usually identify relatives or acquaintances who can provide them with introductions to potential employers; iii) the Mercosur Residence Agreement means that they can easily cross the border into Brazil and find employment without applying for a work permit in advance; iv) migrating through interpersonal contacts is usually safer according to interviewees, since the person who arranges for jobs in Brazil usually knows the employer and can guarantee the terms and conditions of employment. For employers, the advantage is that there is no need to pay for the services of a recruitment firm, since plenty of migrants turn up at their doors asking for work.

5. **Exploitation:** In some cases, family and friends help organize a “loan” from the potential employer (with whom they are arranging the job for their kin or friend) to cover the cost of transportation to Brazil. This amount is then usually deducted from the first salary payment(s). Four of the 27 Paraguayans interviewed in Brazil had travelled to Brazil at the expense of their

future employer. This is one potential route of exploitation, as in some cases employers have been reported to the authorities for continuing to make deductions from salaries after the loan has been paid. However, reported cases of Paraguayans in bonded labour are few. It is likely that the ability of Paraguayans to move freely across the border as well as to leave exploitative jobs and find new ones contributes to the relative lack of bonded labour situations. However, being undocumented also means that poor working and living conditions are endemic among the community. Such conditions (e.g. low remuneration, lack of unionization, lack of official documents provided by the employer, lack of food and adequate living space) were referred to frequently.

Introduction

In recent decades, individuals and firms that organize labour migration for a fee (“labour recruiters”), including private employment agencies, brokers and travel agents, have multiplied.³⁶ Organizing migration through a recruiter has become the norm throughout much of Asia. In contrast, in other parts of the world, the norm is that friends and families (“social networks”) help organize migrations, including by assisting individuals to connect to employers and find accommodation in the destination country.

This study documents how Paraguayan migrants find jobs in Brazil, a neighbouring country, which is an example of where social networks rather than recruiters are involved in organizing migration. According to data released by the Paraguayan press, 22,500 cars and 3,000 pedestrians cross daily from Paraguay to Brazil on the “Puente de la Amistad” [Friendship Bridge] that connects

³⁶ ILO: *The Cost of coercion*, Global Report under the Follow-up of the Declaration on Fundamental Principles and Rights at Work (Geneva 2009).

Ciudad del Este and Foz do Iguaçu.³⁷ Hundreds of thousands of Paraguayans currently work as domestic workers, tailors, seamstresses, sales clerks and builders in cities along the border with Brazil, sometimes crossing the border every day for work, as well as in the more distant states of São Paulo, Santa Catarina and Rio de Janeiro. Anecdotally, Brazil has become the second most popular Latin American destination for foreign employment for Paraguayans, after Argentina. In large part this has been due to Argentina's economic crisis in 2000, and inflationary process and consequent reduction in value of wages from 2007 onwards which has seen Brazil become a more attractive destination.³⁸ Accordingly, Paraguayans have become the second biggest migrant nationality group in Brazil after Bolivians.³⁹

Although research on other migrant nationalities (e.g. Bolivians) has been undertaken in Brazil, usually with a focus on forced labour conditions, we could find no research that had previously been conducted on the migration of Paraguayans to Brazil. The ILO Special Action Programme to Combat Forced Labour (SAP-FL) commissioned this research under the auspices of the Fair Recruitment Initiative (see section 1. above). This paper summarizes the findings from two national reports produced in 2015, one based on research conducted in Paraguay, and one based on research conducted in Brazil. It proceeds with a brief overview of the scale and nature of Paraguayan migration to Brazil, followed by a brief review of the legal framework governing migration and recruitment of Paraguayans to Brazil and an analysis of how Paraguayans are "recruited" to / and or find jobs and accommodation in Brazil. It concludes with a discussion of the key

components of exploitation of Paraguayans in Brazil.

Context of the research: Paraguayan migration to Brazil

In contrast to the immigration controls which govern entry to Middle Eastern countries, the 1991 Asuncion Integration Treaty between the countries of Brazil, Paraguay, Argentina and Uruguay, which established a common market (known as the "Mercosur") ensures freedom of movement between signatories. The neighbouring countries are part of the bloc known as Mercosur⁴⁰ which aims to facilitate the free movement of goods, services and people, and which also includes Venezuela, Argentina and Uruguay and, as associate members, Chile, Bolivia, Colombia, Ecuador and Peru. Although the precise scale of Paraguayan migration to Brazil for employment purposes is unknown, according to federal police authorities, in total over 4 million Paraguayans entered Brazil between 2006 and 2015, including 1,283,686 in 2011 alone.⁴¹ Even if one is to allow for multiple border crossings by the same individuals, the number of Paraguayans who *entered* Brazil is significantly higher than the total number of residence permits granted to Paraguayans during this period. For instance, the Federal Police Foreigner's Registration Department (DICRE) records that Paraguayan nationals were granted 23,430 temporary and permanent residence permits between 1994 and March 2015.⁴² This suggests that a substantial proportion of the Paraguayan population in Brazil is undocumented.

³⁷ Diario Vanguardia, viernes 7 de marzo de 2015, "Con nueva calzada, el Puente celebra hoy 50 años". Available at: <http://www.vanguardia.com.py/v1/index.php/edicion-impresa/economia/item/28940-con-nueva-calzada-el-puente-celebra-hoy-50-a%C3%B1os> [Accessed: May 2015].

³⁸ EPH, 2014 / Permanent Household Survey, 2014.

³⁹ Estimates from the NGO Repórter Brasil show that more than 300,000 migrants from Bolivia and Paraguay live in the São Paulo area.

⁴⁰ MERCOSUR includes with full membership status: Argentina, Brazil, Paraguay and Uruguay, and as of July 30th 2012, Venezuela. However, Venezuela was suspended on 1 December 2016. Bolivia, Ecuador, Chile, Colombia, Peru are associate members.

⁴¹ Interview with, Federal Police Foreigner's Registration Department (DICRE), Brasília, March 12, 2015. It is important to note that the total number of border crossings includes anyone who entered or left Brazil with a Paraguayan identity card (not necessarily at the Paraguay-Brazil border).

⁴² Idem.

Within Brazil, the border regions and the industrial greater São Paulo metropolitan area are the primary destinations for Paraguayans. The data obtained by the Brazilian federal police indicate that Paraguayan nationals tend to settle in the border states of Paraná and Mato Grosso do Sul or São Paulo state in the Southeast.⁴³ Paraguayan migrants typically seek work in labour-intensive industries in Brazil. In São Paulo state, for example, Paraguayan nationals are employed in the textile industry as tailors and seamstresses, prototype or seam specialists, cloth cutters, ironing professionals, stylists or store clerks. Many Paraguayans work in small unregistered garment workshops – as do other migrant nationalities. Paraguayan women are more likely to work as domestic servants and nannies, while other businesses in São Paulo that attract a significant number of Paraguayan nationals include construction and restaurants. In rural areas, evidence suggests that Paraguayans work in cattle, manioc and eucalyptus plantations, and are also employed as builders at remote construction sites. Many men and women from the border towns and cities in Paraguay also enter Brazil on a daily, weekly or even monthly basis to find employment, taking advantage of their geographical proximity.

Most Paraguayans in Brazil originate from rural areas in Paraguay, particularly from the state of Caaguazú. The latest official data from the 2014 Paraguayan Household Survey indicate that almost 60 per cent of the population that migrated over the past five years has come from rural areas.⁴⁴ Low family incomes and a lack of professional opportunities in Paraguay are the main drivers of emigration, according to those interviewed for this study. Although Paraguay has experienced a decline in *overall* poverty in recent years, poverty continues to affect a significant percentage of the population living in rural areas, with almost one-third of

people documented as “poor” and one-fifth as “extremely poor”.⁴⁵ In this context, emigration for employment is common.

About the research

For this qualitative study, conducted between January and April 2015, consultants interviewed a total of 45 Paraguayans, some of whom were currently working in Brazil, others who had recently returned home to Paraguay. Consultants also interviewed a total of 51 key informants. The research was conducted by the lead consultant for the research programme with the help of a research assistant who conducted the contemporaneous fieldwork, coordinating research methods, interview schedules and analysis of findings.⁴⁶ Data generated for this report were correct at the time of writing.

The following research questions were asked:

- a) What role do labour recruiters – private employment agencies, brokers, travel agents and others – play in organizing migration from Paraguay to Brazil?
- b) What role(s) do social networks (friends and families) play in organizing migration from Paraguay to Brazil?
- c) What legal and policy framework governs the migration and employment of Paraguayan nationals in Brazil?
- d) What contribution does the predominant mode of organizing migration (through friends and families) make to the (employment) rights’ violations faced by Paraguayan nationals in Brazil?

⁴³ Idem.

⁴⁴ EPH 2014/ Paraguayan Permanent Household Survey, 2014.

⁴⁵ See Department of Statistics, Surveys and Censuses (EPH 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006, 2005 and 2004).

⁴⁶ Katharine Jones managed the research, with Patrick Dobreé and Stephanie Morin conducting fieldwork in Paraguay and Brazil respectively.

After initial scoping identified the apparel industry, construction and domestic work as the primary sectors / occupations in which Paraguayans are primarily employed in Brazil, participants employed in these particular sectors or who had been employed in these sectors were selected to be interviewed. The researcher conducted 27 semi-structured interviews with Paraguayan migrant workers employed in these sectors in São Paulo state, including seven who had migrated to Brazil during the preceding five years. This included 17 men and ten women aged between 20 and 57 years. Nine of the interviewees ran small businesses that employed other Paraguayan nationals. Simultaneously, in Paraguay, the researcher conducted 18 semi-structured interviews with nine men and nine women who had worked in Brazil within the previous two years and had returned to Paraguay. Twenty government and criminal justice officials and 14 civil society leaders in São Paulo city and Brasília were interviewed in Brazil. In Paraguay, 17 key informants from the public, private, trade union and social sectors were interviewed. In addition, six apparel workshops in São Paulo city and Guarulhos were visited to document first-hand the labour conditions of Paraguayan migrants. Qualitative findings were supplemented by official statistics where these could be obtained.

Of the sample of 45 Paraguayans interviewed for this study, all had been motivated to migrate by the need to earn an income which they believed they could not do at home. Many had migrated more than once, some previously to Paraguay, others to Argentina or Spain. Some had also previously migrated internally within Paraguay. For those who lived in the border region, and who crossed into Brazil daily (“frontier workers”), this was part of a local norm.

Legal and policy framework

Under the Mercosur Residence Agreement, signed in 2002 by President Fernando Henrique Cardoso and implemented by President Luis Ignacio da Silva (Lula) in 2009, Paraguayan nationals may legally enter Brazil with only a Paraguayan identity card or passport. Within their first month in Brazil, Paraguayans (and other Mercosur nationals) must apply for a temporary National Foreigner’s Registration (RNE) from the Brazilian federal police authorities which is valid for two years. At the end of this period, Paraguayans who wish to remain in Brazil must apply for a permanent RNE.⁴⁷ To be able to work legally, foreigners, including Paraguayans, must apply for a work permit which requires the submission of a valid employment contract to the General Immigration Coordination of the Labour and Employment Ministry, along with other documents attesting to their identity, citizenship and good character. Remaining in Brazil without adhering to these legal requirements may lead to the imposition of a fine or even deportation.⁴⁸ Nevertheless, in 2009, President Lula passed Regularization Law No. 11.961 which allows undocumented foreign nationals who had been in Brazil illegally since before February 2009 to apply for temporary residence, with the possibility of gaining permanent residence after two years.⁴⁹

Cross-border recruitment activities are largely unregulated in both Brazil and Paraguay. The following sections outline the relevant sections in national legislation.

⁴⁷ Foreigner’s Statute, December 9, 1981, Art. 16.

⁴⁸ Ibid. Art. 57.

⁴⁹ Final report of the Ministry of Justice’s expert task force on migrants’ rights in Brazil, July 31, 2014. Available at: <http://reporterbrasil.org.br/documentos/anteprojeto.pdf> [Accessed: April 2015]. In July 2013, President Dilma Rousseff’s Justice Minister convened a task force of migration experts that released a detailed draft migration law the following year to replace the Foreigner’s Statute. At the time of writing the draft law was under analysis at the Ministries of Human Rights, Labour and Employment and Foreign Relations.

Legal and policy framework in Brazil

Brazilian legislation does not explicitly refer to the recruitment of migrants in foreign countries for employment in Brazil; nor does it refer to the activities of private recruitment agencies which operate internationally or within Brazil's borders. Decree 76.403, passed by President Ernesto Geisel in 1975, is the only piece of legislation that mentions private employment services. This states that "employment offices, whether public or private, are part of the National Employment System (known as "SINE")."⁵⁰

Yet, professional activities which are not expressly prohibited by law are permitted in Brazil, and, moreover Article 5 of the Constitution protects the free exercise of any profession. This means that private recruitment and employment agencies may legally provide services to Brazilians and foreign nationals seeking jobs within and beyond Brazil's borders without *legal penalty*. In short, while unregulated, recruitment and employment agencies are not explicitly illegal under Brazilian law. Consequently, the leading multinational recruitment firms such as Adecco are present in the Brazilian national labour market and operate freely. The World Employment Confederation (formerly CIETT), the global industry federation,

recently conducted a "fact-finding" mission within the country with the aim of lobbying the Brazil Government to introduce legislation which regulates the industry, and which would thus "legalize" it.⁵¹

However, Brazilian law does contain some provisions regarding fraudulent or abusive recruitment activities. Article 207 of the Criminal Code penalizes the activity of "luring" workers from one location to another in Brazil, whether through fraud, by charging them a fee, or by failing to ensure a worker's return to the recruiting site.⁵² This article targets the informal labour recruiters (*gatos*) who have been in operation for a long time in rural areas of Brazil and who recruit poor Brazilians to work in conditions that are all too often analogous to slave labour, but does not refer to cross-border recruitment activities. Moreover, both the Foreigner's Statute and the Labour Code prohibit transporting and hiring undocumented migrants.⁵³ This is most likely intended to manage undocumented migration rather than protect migrants from fraudulent or abusive cross-border recruitment.

⁵⁰ Decree 76.403, October 8, 1975, Art. 1.

⁵¹ http://www.ciett.org/fileadmin/templates/ciett/docs/columns___articles/april_2015.pdf [Accessed: May 2015].

⁵² Criminal Code, December 29, 1998, Art. 207 "The penalty will be increased by one-sixth to one-third if the victim is under eighteen years old, elderly, pregnant, indigenous or physically or mentally disabled."

⁵³ Foreigner's Statute, August 19, 1980, Art. 125.

Box 8: Abusive behaviour of a recruiter

Federal Public Ministry v. Gilberto Andrade

(Judgment No. 2000.37.00.002913-2)

The Maranhão state criminal court convicted Andrade under the Criminal Code for violating Art. 149 (slave labour), Art. 211 (hiding bodies) and Art. 207 (fraudulent recruitment) in April 2008. Andrade had become notorious for allegedly branding a worker with an iron as punishment for complaining about food and non-payment of wages. The court found Andrade guilty of recruiting workers through false promises of paid work, subjecting them to degrading living and labour conditions and restricting their freedom of movement.



Little regulatory attention has been paid to cross-border recruiters facilitating the migration of workers into Brazil, but in contrast, the Brazilian authorities have raised concerns about the activities of intermediaries who recruit Brazilian nationals for jobs outside Brazil. Article 206 of Brazil's Criminal Code imposes a penalty of up to three years in prison and a fine for recruiting workers in Brazil, through fraud, for jobs in foreign countries.⁵⁴ However, this does not apply to recruiting workers in another country for jobs in Brazil, and thus is not relevant to Paraguayans migrating to Brazil. In addition, in 2008 and 2009, following reports of Brazilian nationals who had been recruited and exploited in overseas jobs, Labour and Employment Ministry officials drafted a decree which created a National Registry of Private Recruitment Agencies (RNAPE) within the Labour and Employment Ministry; which as yet remains unimplemented. The Registry had the mandate to authorize agents to "recruit", "introduce" and/or "place" Brazilian nationals in employment abroad. Only those recruiters who could demonstrate that their job candidates "fully understood" the nature, compensation and costs associated with their future positions, among other criteria, would be able to register with RNAPE. Any private recruitment or employment agency that failed to register with RNAPE yet continued to provide the aforementioned services would be referred to the Federal Prosecutors' Office for investigation. This draft decree was analysed by legal experts at the Labour and Employment Ministry and by the Office of the Presidency's Chief of Staff until 2013 but was ultimately not approved. According to one official interviewed for this study, rather than assessing the content per se, this was due to questions that were raised concerning the legitimacy of regulating business activities by decree rather than through regular legislation.

Legal and policy framework in Paraguay

In Paraguay, private employment agencies are briefly referred to in the national legislation. The Labour Code (Article 25) defines an agency as "a representative of the employer" which contracts services from others to perform work for the benefit of the latter, using its premises, equipment, materials or other elements. Private employment agencies are required to declare their status and the name of the employer on whose behalf they act to conclude employment contracts. This Article does not refer to cross-border labour recruiters. However, there is a parallel set of rules scattered in different laws that regulate or punish, as appropriate, the action of persons or agencies functioning as intermediaries between employers and migrant workers abroad.

The Migration Law No. 978/96, for example, "prohibits the recruitment of Paraguayan migrants" and "the operation of private agencies of emigration" (Article 123). No private organizations are permitted to "negotiate" or "make unauthorized propaganda" relating to migration. However, this provision is aimed at suppressing smuggling rather than tackling the recruitment of Paraguayans for foreign employment. Moreover, according to a legal representative interviewed for this study, neither the legal text nor its regulatory decree⁵⁵ provide sufficient elements of a judicial decision in order to interpret the rule, so it cannot be known for sure what kind of "negotiations" or "propaganda" are referred to.

The same law also regulates the operation of international transport companies requiring them to register with the General Direction of Migration, allow inspections of their units, as well as submit lists of crew members, passengers and other documents (Articles 96 and 99). This law is explicitly aimed at the prevention of smuggling rather than labour recruitment.

⁵⁴ Criminal Code, July 15, 1993, Art. 206.

⁵⁵ Decree No. 18.295 of December 28, 1997 which regulates the Migration Law No. 978/96.

However, these provisions are potentially important because, as discussed below, there is the issue of bus drivers operating very loosely and informally as recruiters between Paraguay and Brazil.

Finally, Paraguay recently adopted a new Law on Domestic Work (at the time of writing not yet promulgated by the Executive) which specifies that the Ministry of Labour, Employment and Social Security should regulate the operation of private recruitment / employment agencies that hire or place domestic workers inside and outside the country. By specifying the duties of these agencies and sanctions incurred in case of abuse or fraud, the Law aims to protect against unfair or deceptive practices. Thus far at the time of writing, there is no indication as to when this legislation will be implemented.

Laws on trafficking and slavery in Brazil and Paraguay

Although Brazil and Paraguay lack comprehensive regulatory frameworks on cross-border recruitment, some exploitative recruitment practices that affect migrants can be punished by national laws on forced labour and human trafficking and relevant criminal justice responses. Brazil's Criminal Code imposes a penalty of up to eight years in prison for slave labour (Article 149). A new Trafficking in Persons law (Lei 13.344) amends the Criminal Code, increases penalties and adds protections for victims regardless of her or his immigration status.⁵⁶ Policymakers at Brazil's Justice and Labour Ministries interviewed for this study agreed that the Special Mobile Inspection Group (GEFM) plays a fundamental role in protecting Brazilians and foreign nationals from labour exploitation and abusive recruitment practices. Created in 1995, the GEFM organizes teams of labour inspectors, prosecutors and police officers who carry out blitz inspections to investigate complaints of

slave labour *in situ*. During the operations, officials collect evidence of criminal conduct, grant labour permits to unregistered workers and shut down workplaces where necessary.

Government officials at Brazil's Justice, Labour and Foreign Relations Ministries were equally emphatic that the Labour and Employment Ministry's "Dirty List", intended for employers rather than intermediaries, has been another crucial tool to prevent and punish employers who subject Brazilian and foreign nationals to conditions analogous to slavery. Established by Labour and Employment Ministerial Order No. 540/2004, the list consists of a register of names of employers (persons and legal entities) caught exploiting workers in conditions equivalent to slavery and is made public on the Labour and Employment Ministry's website. According to the NGO Repórter Brasil, five of the eight employers caught by labour auditors while subjecting Paraguayan nationals to slave labour from 2010 to 2014 are currently on the Dirty List.⁵⁷ Publication of the list was suspended in 2014, with its use re-established in 2016 but with amended criteria for being added to or removed from it.⁵⁸

One of the reasons why the Dirty List has been so effective is that companies (employers) on the list may be barred from receiving public funds, as well as from concluding or having access to international contracts.⁵⁹ Indeed, although Ministerial Order 540/2004 and its substitute, Ministerial Order 2/2011, do not mention penalties for employers that are listed, various financial institutions, such as the Bank of Brazil, have decided to refuse credit and other banking benefits to employers included in the register.⁶⁰

⁵⁶ Criminal Code, December 11, 2003, Art. 149.

⁵⁷ Repórter Brasil Dirty List. Available at: <http://reporterbrasil.org.br/lista-suja> [Accessed: April 2015].

⁵⁸ See <http://reporterbrasil.org.br/2016/05/no-ultimo-dia-governo-lanca-portaria-que-recria-lista-suja-da-escravidao-2/>.

⁵⁹ Ministerial Order 540/ 2004, October 15, 2004; Ministerial Order 2/2011, May 12, 2011.

⁶⁰ Bank of Brazil Resolution 3876, June 22, 2010.

On the Paraguayan side of the border, the Integral Law Against Trafficking in Persons (Law No. 4788/12), is relevant to cross-border recruitment. This law defines as a trafficker a person who captures, transports, transfers, or receives a person for the purpose of subjecting her/him to serfdom, servile marriage, forced labour or services, slavery or practice equivalent to slavery. A clear example that matches this profile could be the case of a broker who recruits migrant workers for an employer and who retains their identity card to prevent them from changing jobs. The Paraguayan Criminal Code (Law 1160/97 and Law No. 3440/08 (as amended)) establishes penalties for cases of trafficking for labour exploitation (Article 129c).

In summary, Paraguayans can enter Brazil freely to work while carrying no more than an identity card. Interviewees acknowledged that in practice it is possible to simply walk – or drive – across the bridge into the other country as thousands do each day without even showing an identity card. At the same time, the role of cross-border recruiters – apart from those who would fall into the legal category of “traffickers” – is largely unregulated in both Brazil and Paraguay.

Organizing migration between Brazil and Paraguay

The role of friends and families

Of the 45 Paraguayan – former and current – migrants interviewed for the study, 37 had migrated to Brazil with the assistance of a family member or friend who was already a resident there. Brothers, sisters, friends, uncles, cousins, and neighbours were mentioned in this context. Generally, friends and family perform several roles: from providing general information, to finding a job and loaning money, to covering the costs of migration, usually before migrants leave home. For many Paraguayan migrants in

São Paulo state, friends and relatives are the main source of information regarding labour and living conditions in Brazil, as well as the ways in which residence and labour documents are obtained. Some interviewees received job placements directly through friends’ and family connections prior to leaving home. In addition, Paraguayans in São Paulo often provide housing to friends and family members. Sixteen of the Paraguayans interviewed in Brazil had lived with relatives or friends during their first week in Brazil. This assistance is especially important for those migrating for the first time who usually arrive from rural parts of Paraguay speaking only the Guarani language. Other interviewees had arrived in Brazil without a job but had received advice from friends or family members before leaving home. After arrival, friends and family usually help new arrivals find employment.

Interviewees suggested that interpersonal contacts are also essential for them to identify subsequent jobs in Brazil. In other words, if migrants wish to move on to another employment in cases where a job ends, or if the conditions are not good, or if they wish to earn more money, it is important that social networks are not just formed through existing friends and families, but are regularly extended by the migrants. This enables them to update their information and gain access to better jobs. Paraguayans in São Paulo tend to work together, live in the same neighbourhoods, and socialize at the same venues, such as cultural events organized by the Catholic Church’s Migrant Pastoral Center or attend Sunday soccer tournaments. In addition to seeking employment in São Paulo through interpersonal contacts, migrants noted that, to a lesser extent, Paraguayans also offer their services as seamstresses or sales clerks by placing advertisements directly in the windows of stores in the Bom Retiro neighbourhood in São Paulo city.

Communication relating to jobs also travels across the border. Migrants working in Brazil usually travel to Paraguay at least once a year

for religious pilgrimages and family visits. During such trips to Paraguay, one interviewee based in São Paulo recounted that: “everyone networks to find a better job in Brazil or to identify potential employees”. Migrants also highlighted the importance of the internet and other electronic means of communication to stay in touch with contacts in Brazil and Paraguay in order to find new and / or better jobs.

In addition to assistance in finding a job and accommodation in Brazil, friends and families sometimes help by loaning money to new migrants to cover the cost of the bus trip to Brazil (USD 100). They may also organize a “loan” from the employer with whom they are arranging the job for their kin or friend to cover the cost of transportation. This amount is then usually deducted from the first salary payment(s). Four of the 27 Paraguayans interviewed in Brazil had travelled to Brazil at the expense of their future employer.

None of those interviewed reported that they had paid a fee or any kind of compensation to a friend or family member who had helped them find a job in Brazil. Instead, altruism was mentioned as a reason for the assistance. According to the logic of a “gift”, the person who offers help when someone needs it can receive a favour in return later. If someone lends money to a migrant worker to cover travel costs, for example, they know that they or their family are due a similar gift in the future. In other words, migrant social networks can often be reinforced by feelings of reciprocity.

In recent years, and with increased frequency (according to interviewees), some Paraguayan migrants have set up their own apparel workshops in Brazil. These new employers utilize their networks of friends and family to find employees. This kind of recruitment works in a similar way to the other; however, in these cases, the line between altruism and self-interest becomes less clear. Migrants turned employers often visit their home communities

in Paraguay to identify new employees or communicate directly with family friends who give them information as to who is available to migrate. For example, a Paraguayan employer who had initially arrived in Brazil as a migrant worker but who runs a garment workshop in the Bom Retiro neighbourhood in São Paulo city recounted that over the years she “brought three cousins and several friends from Paraguay to work for her as tailors and seamstresses”. This individual had bought their bus tickets and recovered these costs from their first salaries. In the words of a construction contractor who claimed to have “fetched many Paraguayans to work for him” since he migrated to São Paulo in 1998, “it was fairly easy to identify friends or distant relatives interested in working in Brazil temporarily to make more money”.

“Recruitment intermediaries” and “sacoleiros”

Although by far the main way in which interviewees found their jobs was through friends and family, in some cases anecdotes were reported about Paraguayans who receive a small fee from employers to find new recruits from among their social networks. They said this was done on a loose, informal and irregular basis. For instance, one Paraguayan interviewee in Brazil related an anecdote about a Paraguayan acquaintance who worked for a construction company in Rio de Janeiro and who arranged for more than 400 Paraguayan nationals to migrate to Rio to work as builders. He received payment for this in the form of a commission from his employer. In this case, this was a one-off occasion; and only interviewees who worked in the apparel or construction industry reported this type of hybrid recruitment intermediary. Female interviewees who worked as domestic workers did not refer to this system, but rather had found their jobs through friends and families. It is likely therefore that employers are willing to pay a small fee to an existing employee when they need to recruit a large number of workers for a job.

According to the interviewees, for most intermediaries, this activity represents an occasional or even one-time role which they undertake in between their full-time employment as construction workers or tailors. In this category also are included the bus-drivers who regularly transport Paraguayans back and forth across the border. For instance, two Paraguayan interviewees (interviewed in Brazil) suggested that some bus drivers who travel constantly between São Paulo city and Ciudad del Este (on the border of Paraguay/Brazil from where migrants begin their journey) informally help migrants find jobs. The two interviewees suggested that these bus drivers are “tipped” by employers in São Paulo who suggest that they propose their names to travellers. No money is sought from migrants for this information.

For a far smaller number of “intermediaries”, the role has become full-time. One of the Paraguayan interviewees, for instance, who migrated to Brazil around 2010 to work as an assistant in a sewing workshop regularly travels back and forth finding new recruits in Paraguay and accompanies them first to Ciudad del Este, by a private bus which he rents for approximately USD 330, and then onto Foz do Iguaçu and finally to São Paulo by urban bus. After beginning on a small scale operating through friends of friends, the interviewee distributed printed cards with his details and placed small classified advertisements in the local media. As his reputation spread, willing new recruits gathered in the main departure points of Caaguazú and Repatriation (close to Ciudad del Este) to be transported to Brazil. The cost of his bus service to Brazil, according to two Paraguayans who have used it more than once, is approximately USD 90. He also receives a commission from employers for each worker he “recruits” which amounts to an income similar to that which he received as a tailor. According to interviewees, this

type of intermediary is known as a *sacoleiro*.⁶¹ Further evidence of this type of informal recruitment is to be found in the labour inspection reports of employers on the cattle ranches and plantations.⁶²

The role of labour recruiters

Neither Brazil nor Paraguay collates official statistics regarding the activities of private employment agencies, whether for national or cross-border job placements. Despite this, private telephone directories in Brazil list hundreds of companies that offer employment services (the directory Telelistas, for instance, listed 2,026 “private employment agencies” and 4,272 “temporary work agencies” in April 2015). Nevertheless, it is clear from this study, that while agencies may be increasingly active inside Brazil’s borders, these firms are not involved in facilitating migration from Paraguay to Brazil into the apparel or construction industries. In fact, none of the key informants interviewed in either country had heard of the involvement of private recruitment or employment agencies organizing placements of Paraguayans in either of these two industries. The sole example given by an interviewee during the course of this research was that of a Paraguayan migrant who had used the services of an employment agency while already living in São Paulo. This migrant had paid BRL 50 (USD 16) to a Brazilian agency to post his résumé (CV) on the company’s website for three months; this is something many Brazilians would do and which is not specific to the actions of migrants.

⁶¹ *Sacoleiro* is a word in Portuguese that means persons who buy goods cheaply in one place for resale afterwards at a higher price elsewhere. These people usually operate in the border areas and transport contraband goods. *Sacola* means bag.

⁶² E.g. Labour and Employment Ministry Audit Report, Mato Grosso do Sul Office, Roberto Castro Cunha, February 2013; Labour and Employment Ministry Audit Report, Mato Grosso do Sul Superintendency, Renato Junqueira Meirelles, February 2013. Labour and Employment Ministry Audit Report, Mato Grosso do Sul Superintendency, Eliza Maria Dantas Bortolusso Rodrigues & CIA Ltda, January 2013.

The situation regarding domestic work is slightly different. The researchers did not interview any Paraguayan domestic workers working in Brazil who had used the services of a recruiter. However, a small number of private recruitment/employment agencies operate out of Ciudad del Este to provide domestic workers to households in Foz do Iguacu (a few kilometres across the border from Paraguay).⁶³ According to one media source, one firm charges BRL 90 (USD 30) to Brazilian employers to recruit a Paraguayan domestic worker. It was not clear if a fee was charged to the workers.

Exploitation of Paraguayan migrants in Brazil

Trafficking and forced labour

Anecdotally, migrants have been reported to be especially vulnerable to trafficking in the cities of the “tri-border” region of Argentina, Paraguay and Brazil, including Ciudad del Este (Paraguay) and Foz do Iguacu (Brazil). The official data regarding Paraguayan nationals trafficked to and from Brazil, which would confirm this, are extremely limited. According to one Paraguayan official, “the majority of Paraguayan men who enter the state are lured to rural areas to perform manual labour”.⁶⁴ Paraguayan women and children, on the other hand, tend to be “lured at the border region to work as domestic labourers in Paraná state”⁶⁵. According to Paraguayan migrants and community leaders in São Paulo, however, cases of debt bondage, physical violence and

document retention involving Paraguayans in their state are comparatively rare compared with other migrant nationality populations.

None of the interviewees knew of any Paraguayan nationals who had been tricked into migrating to Brazil or who were unable to leave their jobs, because of their employer or because of their recruitment intermediary. A migrant who coordinates social and religious activities for Paraguayans on behalf of the Catholic Church in São Paulo, argued that “Paraguayan nationals in the state rarely find themselves “slaves” to their employers. Their hours may be long and the work, grueling, but folks come and go as they please.” This individual’s confidence in migrants’ freedom, echoed by many other Paraguayan interviewees in São Paulo, stemmed in part from the greater access Paraguayans in this region have to information, alternative livelihoods and transportation routes than Paraguayans working in rural areas. This greatly contrasts with the situation for example, in the Middle East, where migrant workers are subject to employment sponsorship conditions which curtail their freedom to move in and out of the country and to change employers.⁶⁶

Criminal justice and labour officials, however, stressed that Paraguayan migrants are not immune to coercive employers in São Paulo. The (Brazilian) GEFM released approximately 11,307 people from conditions analogous to slavery between January 2010 and December 2014.⁶⁷ Of these, 438 were foreign nationals, including 105 Paraguayans. According to labour

⁶³ G1 Bom dia Brasil, 22 febrero de 2014, “PR: Ministério Público investiga trabalho escravo de domésticas”. Accessible at: <http://g1.globo.com/bom-dia-brasil/noticia/2012/02/pr-ministerio-publico-investiga-trabalho-escravo-de-domesticas.html>.

⁶⁴ Ministry of Justice: *Diagnosis of Human Trafficking at the Border*, “ENAFRON” report, 2013, p. 183-4. Available at: <http://portal.mj.gov.br/services/DocumentManagement/FileDownload.EZTSvc.asp?DocumentID=%7B2BED6931-2DA4-48AB-BC99-02914F4918EF%7D&ServiceInstUID=%7B166ABD3B-D529-491E-B238-57F4FB577D50%7D> [Accessed: March 2015].

⁶⁵ Ibid. p.153, 164, 192.

⁶⁶ See ILO: *Tricked or trapped: Human trafficking in the Middle East* (Geneva, 2013). Available at: http://www.ilo.org/beirut/publications/WCMS_211214/lang--en/index.htm [Accessed: January 2017].

⁶⁷ Labour and Employment Ministry Table of Labour Inspections (2003 – 2014). Available at: <http://portal.mte.gov.br/data/files/FF8080814B74A055014B7F4C673246E1/2014%20Resultados%20da%20Fiscaliza%C3%A7%C3%A3o%20-%202003%20-%202014%20Acumulado%2012-Dez.pdf> [Accessed: March 2015]. Labour and Employment Ministry Table of Operations of Mobile Inspections to Eradicate Slave Labour (1995-2013). Available at: <http://portal.mte.gov.br/data/files/8A7C816A45B26698014625BF23BA0208/Quadro%20resumo%20opera%C3%A7%C3%B5es%20T.E.%201995%20-%202013.%20Internet.pdf> [Accessed: March 2015].

inspection reports, the Paraguayan workers were rescued in the states of Mato Grosso do Sul (52), Santa Catarina (40) and São Paulo state (15). At least 11 migrants were 18 years old or younger. Labour inspectors concluded that all 105 Paraguayan nationals were subjected to degrading labour conditions and twelve were also held in debt servitude. Their employers were found to have violated Article 149 of Brazil's Criminal Code and several provisions of the Labour Code requiring them to ensure minimum standards of hygiene, cleanliness and safety of the workplace. They also violated obligations to register employees in a book, file or functioning electronic system; and provide adequate beds and bathrooms for workers, among others. Illegal restrictions to Paraguayan workers' freedom may be more common in rural areas than in São Paulo city due to illegally imposed debts and their geographical isolation. According to a study published by the Ministry of Justice in 2013 (ENAFRON), some Paraguayan migrants who work at charcoal plants in Mato Grosso do Sul state are held in coercive employment relationships, including debt servitude.⁶⁸ In March 2013, labour inspectors released 34 Paraguayan nationals who lacked Brazilian identification, residence and employment documents at a plantation in Mato Grosso do Sul, including seven minors.⁶⁹ The migrants worked eleven-hour days and were forced to purchase protective gear from their employer. Some workers told inspectors that they "could not return to Paraguay because they owed money to their employer". The official inspection report found that the Paraguayan recruits were subjected to conditions analogous to slavery.

Moreover, a labour inspector shared evidence that his office had collected during a blitz

inspection of a garment workshop in São Paulo in November 2011 during which 12 Paraguayan tailors and seamstresses were rescued.⁷⁰ According to the labour inspection report, the firm's accounting books indicated that the owner bought commodities for his employees and advanced them money to cover these costs, setting the charges against wages due (known as the "truck system"). The workers alleged that the owner demanded that they seek permission to leave the workshop and threatened to harm their families in Paraguay if they resigned. In other words, the system of advancing money (for transportation to Brazil or for goods) could also be used by unscrupulous employers to hold workers in debt bondage, much as recruitment fees do in other parts of the world. In this particular case, labour inspectors concluded that the owner had subjected the workers to debt servitude under Article 149 of the Criminal Code, in addition to committing other serious labour and human rights violations.

Lack of legal status in Brazil

Most of the Paraguayans interviewed for this study were or had been living undocumented in Brazil. Those who had migrated only once were most likely to fall into this category. However, those who had migrated more than once and / or remained in Brazil for a long time were more likely to have regularized their status by applying for a work permit. In general, people migrating for the first time do not carry any documentation other than their identity card which is sufficient to live legally as a "tourist" from a Mercosur country in Brazil for three months. None of the interviewees reported that they had been advised by either employers or their friends as to what documents to bring and how to go about legalizing their immigration and employment status in Brazil. This may be associated with the belief that the migration is only temporary with the purpose of making sufficient money to

⁶⁸ See Footnote ⁵⁶, *idem.* p. 148, Available at: <http://portal.mj.gov.br/services/DocumentManagement/FileDownload.EZTSvc.asp?DocumentID=%7B2BED6931-2DA4-48AB-BC99-02914F4918EF%7D&ServiceInstUID=%7B166ABD3B-D529-491E-B238-57F4FB577D50%7D> [Accessed: March 2015].

⁶⁹ Labour and Employment Ministry Audit Report, Mato Grosso do Sul Office, Cleber Geremias, March 2013. On file with the author.

⁷⁰ Labour and Employment Ministry Audit Report, São Paulo Superintendency, Lafee Apparel Ltda. December 19, 2011.

save or send home. Regularizing one's status in Brazil is a costly process as it requires fees to be paid on both sides of the border to public authorities and represents lost workdays which are required for processing the documentation. Moreover, workers' documents must be processed by them in Paraguay or by friends or family members who are appointed to represent them legally which can also present an obstacle. In Paraguay, the Directorate of Attention to Paraguayan Communities Abroad (DAPCA), the organ of the Ministry of Foreign Affairs responsible for providing assistance to migrants, reported receiving no inquiries about the regularization of workers' status abroad, indicating a lack of interest of Paraguayans in regulating their status in Brazil. This may possibly be due to a lack of knowledge about how to do this, including who to approach, or a lack of resources and time to pursue regularisation.

Remuneration and general labour conditions

Although bonded labour may not be the norm, inadequate compensation is very common. The Paraguayan interviewees who were interviewed in Brazil suggested that most Paraguayan nationals in the state of São Paulo earn between BRL 500 and BRL 1,000 per month (USD 159 to USD 318), irrespective of Brazil's BRL 788 minimum wage (USD 254).⁷¹ Several of the returned migrants interviewed in Paraguay who had worked in the apparel industry reported earning between BRL 900 and BRL 1,200 (USD 297 to USD 396). However, when a worker is just starting out or does not have a work permit, it is likely that the pay is much lower than this. According to one interviewee, a worker with no experience or documentation

can earn BRL 200 or BRL 300 (USD 66 or USD 99) per month, including food and lodging. Six out of 27 Paraguayans interviewed in Brazil earned less than a minimum wage when they first arrived. For instance, a Paraguayan who migrated to São Paulo city in 2010 at the age of 18, stated that during his first two months working as an assistant tailor he made BRL 180 and BRL 250 (USD 56 and USD 78), respectively. Food and lodging was included. This interviewee was promoted at the beginning of his third month in employment and was thereafter paid a fixed monthly salary of BRL 800 (USD 249). Although the minimum wage in Paraguay is the second highest in the region after Argentina (and higher than Brazil) at USD 361, Brazil is still an attractive destination in which to earn money. This is in part because, as noted above 20 per cent of the population in Paraguay are unemployed. It is also because up to 40 per cent of the working population receive less than the legal minimum wage.⁷² Domestic workers are only entitled to up to 60 per cent of the legal minimum. Arguably most importantly however is that as the cost of living in Paraguay is much higher than in Brazil, the real value of the minimum wage is significantly less than it appears on paper. To put this another way, Paraguayans can purchase significantly less with their money in Paraguay than in Brazil. According to ECLAC calculations, the *real* minimum wage in Paraguay is well below the regional average and has not meaningfully changed in the last decade. Making a comparison with Brazil, the real minimum wage in Paraguay was estimated at USD 101 in 2013 while in the neighboring country was estimated at USD 202. Therefore, assuming a worker could earn the minimum wage in either Paraguay or Brazil, Paraguayans could possibly earn twice as much in Brazil.⁷³

⁷¹ "Presidential decree raises minimum wage to BRL788", Chamber of Deputies News, December 30, 2014. Available at: <http://www2.camara.leg.br/camaranoticias/noticias/TRABALHO-E-PREVIDENCIA/479979-DECRETO-PRESIDENCIAL-AUMENTA-SALARIO-MINIMO-PARA-BRL-788.html> [Accessed: April 2015].

⁷² EPH 2013.

⁷³ ECLAC: Economic Commission for Latin America and the Caribbean - Economic Development Division. - <http://www.cepal.org/es/areas-de-trabajo/desarrollo-economico>.

People who managed to obtain better pay were mainly those who worked longer hours or who had formalized their situation and managed to obtain more work experience. In the apparel industry, according to interviewees, workers with work permits usually receive their pay every month while undocumented workers (those who lack legal status in the form of a work permit) are more likely to be “paid by production”. According to a migrant interviewee who went on to become the owner of a sewing workshop, the method used to calculate the remuneration of a worker is to divide the (sale) value of the garment that is produced into three parts. The first part is for the workers involved in the production process which is divided among all the people who contributed with their work to produce that particular garment. The second part is allocated to cover operating costs, including, in this case, lodging and food for the workers. Finally, the third part of the sale value of the garment is the profit which goes to the owner of the sewing workshop. Remuneration sometimes includes (free) lodging and food.

This research found that illegal salary deductions and non-payment of wages present serious problems. For instance, a young Paraguayan woman who was interviewed related that when she worked as a cloth cutter in a Korean garment workshop in São Paulo, her employers routinely discounted her BRL 800 monthly salary (USD 249) for food and lodging, and only paid her between BRL 250 and BRL 350 (USD 78 to USD 109). Also, a Paraguayan domestic worker interviewee employed in a private household in Foz do Iguaçu had to leave her employment as her employer refused to pay her monthly salary of BRL 300 (USD 99). This kind of situation is not exceptional. The Brazilian press has registered the cases of many Paraguayan women who live in the border area and cross to Brazil to work in the domestic service sector in exchange for a lower remuneration than that required by law and without any social

coverage.⁷⁴ According to media sources, some Brazilian families prefer Paraguayan workers because they are more likely to accept low wages than their national peers. There have also been similar cases in São Paulo, although in these cases the employers apparently feel more pressure to formalize the status of such workers.⁷⁵

Wages were reported by interviewees to be higher in the construction industry. One interviewee indicated that the first time he worked in Brazil the wage was BRL 55 (USD 18) per day and the next time he worked there the compensation amounted to BRL 80 and BRL 90 daily (USD 26 and USD 29). This person had had the opportunity to work overtime and earn more money.

In the apparel industry in São Paulo, if individuals do not have friends or family to stay with, it is usually possible to sleep at the workshop. Food is often provided, cooked by other Paraguayans employed there as cooks and cleaners. Construction workers usually sleep in the house they are building. According to interviewees sleeping in or close to the workplace is popular among Paraguayans. This is especially the case for those on a first visit to Brazil, and who, often originating from small rural places, lack the requisite language skills for finding their own accommodation (Guarani is usually the first language of Paraguayan migrants in Brazil). However, such accommodation is often poor and even dangerous. Other degrading labour conditions reported include the absence of ventilation and lighting, insufficient bathrooms in the accommodation and unsafe electrical installations.

⁷⁴ G1 Parana, 14 de septiembre de 2011, “Paraguaias cruzam a fronteira para trabalhar ilegalmente no Brasil”. Available at: <http://g1.globo.com/pr/parana/noticia/2011/09/paraguaias-cruzam-fronteira-para-trabalhar-ilegalmente-no-brasil.html> [Accessed: April 2015].

⁷⁵ Agencia Estadão, 27 de mayo de 2011, “Famílias paulistanas contratam babás paraguayas”. Available at: <http://www.estadao.com.br/noticias/geral,familias-paulistanas-contratam-babas-paraguayas,697927> [Accessed: April 2015].

According to labour inspection reports, Paraguayan migrants who were rescued by labour inspectors from 2010 to 2014, as well as many of the interviewees for this study, worked approximately 11 hours per day from Monday to Friday, as well as five hours on Saturdays.

Two further interviewees reported that they developed health problems as a result of their work. One lost part of the vision in his left eye after working as a tailor for six years; another suffered from severe back pains after being forced to cut cloth while standing up for weeks.



Box 9: Case study

P.C., a graphic designer, migrated to São Paulo from Asunción in January 2013 at the age of 25. His cousin, who lived and worked as a tailor in the Bom Retiro neighbourhood, had encouraged him to spend some time in Brazil to save money to study design. On a whim, P.C. bought a bus ticket to São Paulo and moved in with his cousin. Within weeks, P.C.'s cousin helped him find his first job as a tailor at a small garment workshop owned by a Korean family. He earned BRL 600 (USD 186) per month, depending on how many pieces of clothing he was able to produce on Monday through Saturday, 12 hours per day. The workshop was dark, the chairs were very uncomfortable and there were no fire extinguishers, despite mountains of cloth strewn about the floors of the workshop and the workshop's makeshift kitchen. None of the tailors and seamstresses had Brazilian identification, residence or employment documents and the workshop was not registered. After working there for a year, P.C.'s Korean employers went bankrupt and suddenly fired all of the workers. P.C. then began calling all of his Paraguayan friends and acquaintances and eventually found a job as an assistant at a clothing store owned by Koreans in the Bom Retiro neighbourhood, earning a fixed BRL 900 (USD 280) per month. P.C. now has a temporary residence permit, employment contract and is cautiously optimistic about being able to set money aside for artistic training.

For the most part, the Paraguayan migrants who were interviewed knew very little about the jobs that awaited them in São Paulo other than that they would “work very hard”. None had received employment contracts before migrating and only four Paraguayans knew what their salaries

would be before moving to Brazil. In other words, not much information appeared to be forthcoming although interviewees attribute the provision of information as being one of the main roles of their friends and families who help them migrate.

Conclusion

Social networks comprising friends and family members are a far more important way by which Paraguayans migrating to Brazil find jobs, and organize their travel and accommodation than through the services of recruitment intermediaries of any kind. Migrants interviewed for this study argued that the manner in which jobs are arranged through personal contacts is the cheapest way for migrants to secure employment. Interviewees also emphasized that paying a recruiter (if they existed) would be unnecessary because bus tickets to São Paulo are relatively cheap and travelling between the two countries is easy. Paraguayans hoping to migrate can usually identify relatives or acquaintances to introduce them to potential employers. Moreover, Paraguayans can simply cross the border into Brazil by showing only their identity card, and sometimes not even that. Paraguayans are allowed to legally remain in Brazil for three months before applying for a permit, but as checks are rarely made, in practice it is possible to work far longer without one. It is also easy to find a job without a permit. In other words, the reason why private recruiters/

employment agencies are not involved in cross-border recruitment in this instance is simply because their (chargeable) services are in most cases not required. While in a few cases where *sacolerios* do organize recruitment on behalf of employers, they are paid a commission by the employer and not by the migrant.

Generally, Paraguayans are free to change employers, to move within Brazil, and to return home if they wish, and are free of the recruitment debts which are common in Asia. As a result, Paraguayans are far less likely to be held in conditions of forced labour in Brazil than other migrant nationalities that are subject to immigration controls (e.g. Bolivians). However, as is the case for many other nationalities living and working in Brazil, Paraguayans also regularly endure poor labour conditions in the apparel industry of São Paulo, the construction industry and in domestic work. These poor conditions commonly include long hours, poor pay or even withheld pay, inadequate food and accommodation, but those responsible for these abuses are the employers rather than recruiters.

4. Kenya's international recruitment industry: Summary of research findings

Key Findings

- 1. About the industry:** The major growth in Kenya's recruitment industry has occurred since the late 1990s, with numbers of (licensed) recruitment firms rising from just five in 1998 to over 700 in 2013, and to 1,000 by 2015. As few apply for a license, the "real" number of individuals and firms involved in this sector is likely to be far higher; however quantifying the irregular sector was outside the scope of this study. Countries in the Middle East are the primary destination for recruits, although a smaller number are also recruited to jobs in Uganda. Licensed firms are mainly small and medium-sized enterprises (SMEs), employing between two and nine members of staff, managed by a director / founder, usually a Kenyan citizen. A much smaller number of *non-Kenyan* recruitment firms operate (legally) in Mombasa and Nairobi specifically to recruit Kenyans for jobs in the Middle East. Interviewees estimated that up to three-quarters of the business of international recruitment from Kenya is accounted for by the recruitment of Kenyan women for domestic work placements in the Middle East, with many recruitment firms specialized in this activity. For the firms that participated in this study, women (domestic worker) recruits account for between 60 and 95 per cent of their business.
- 2. What they do:** Kenya's international recruitment industry operates in a very similar way to those in countries such as Bangladesh, the Philippines and Nepal. Firms manage the "end-to-end recruitment process", including selection and screening, transportation to the destination country and the arrangement

of required documentation (e.g. passport, a medical certificate to certify that the individual does not have any communicable diseases and is not pregnant (in the case of women), an entry visa to the destination country and a work permit). However, for employers hiring domestic workers from Kenya, the process of recruiting is significantly quicker than (legally) recruiting a woman migrant domestic worker from other countries such as Bangladesh. Whereas following the legal process in Bangladesh can result in recruitment taking up to three months, in Kenya the end-to-end process can be completed within two to four weeks. This is mostly because Kenya (at the time of writing) does not require women to undergo pre-departure skills and orientation training for domestic work positions while both Bangladesh and Nepal do have this requirement.

- 3. How they generate income:** Kenyan recruiters generate their income from: i) fees charged to recruits, and ii) commissions charged to the clients in the destination countries (employers or placement agencies). Interviewees returned to Kenya from working overseas reported paying fees of approximately USD 1,000. Kenyan recruiters reported being paid commissions of between USD 300 (for male recruits) and USD 2,000 (for female domestic worker recruits) by the placement agencies in the destination countries. Commissions paid for female recruits include the cost of a flight from Kenya to the destination country. As in Nepal, a few recruiters also generate income from operating "side" businesses such as travel agencies. A third of the recruiters who participated in the research (six interviewees) reported placing up to 1,000 workers per year, mainly in the Middle East,

while others recruited 200 workers per year or less. More than half of the interviewees reported an annual turnover of between Kenyan Shillings (KES) 2 million and KES 5 million (USD 19,500 to USD 48,908).

4. **How they ensure profitability:** Similar to Nepal, as firms generate income per person recruited and placed overseas, this creates an incentive for recruiters to recruit and place as many migrants as possible. Due to a “recruitment ban” to the Middle East imposed by the Kenyan Government in November 2014, recruiters reported that their profitability had dropped significantly. By hiring freelance brokers to recruit new candidates from rural areas, and by working with placement agencies in destination countries that find and manage the client employers, Kenyan firms keep their operating costs low. The use of brokers is more common for recruiting into (overseas) household jobs, especially into domestic work, than it is for “professional” hires. Firms reported regularly using between three and 20 brokers, paying between USD 50 and USD 100 per recruit (if the candidate does not have a passport), and up to USD 200 per recruit (with a passport). Only one of the firms which participated in this research had a branch office outside Kenya (in Tanzania, Madagascar, Ghana, and Sudan, rather than in the Middle East).
5. **Human rights:** Human rights violations perpetrated by recruiters – both licensed and unlicensed – are reportedly common, with the Kenya Government facing significant challenges in regulating the industry. As in other countries, abuses include high recruitment fees leading to debt bondage, violence, deception about the terms and conditions of the job and sometimes threats and violence. These are in addition to the violations perpetrated by employers in the destination countries.

Introduction

Today, an estimated 3 million Kenyan nationals are working abroad.⁷⁶ Although the majority migrate to countries in Africa (e.g. Botswana, Ghana, Namibia, Tanzania), a growing number migrate to the Middle East for temporary employment in low-paid jobs such as domestic work, security, logistics and retail. High (youth) unemployment and poverty in Kenya combined with an escalating demand of Middle East employers for Kenyan workers partially account for this increase.⁷⁷ The activities of the international recruitment industry which has increasingly been sending Kenyans to the Middle East accounts for the remainder.

Historically, Kenya’s recruitment industry emerged out of the informal networks of “employment intermediaries”, who recruited workers from rural areas into jobs in urban centres and into tea plantations during the 1940s. By the 1970s, recruitment offices were thriving in Kenya’s main towns and cities. By the late 1990s and early 2000s, some recruitment businesses had embarked on sending Kenyans to the Middle East, building on informal networks that already existed and that had been initiated by mosques in Kenya, as well as by Kenyans who had returned from working in the region. Today, the international recruitment industry comprises a wide spectrum of legal (licensed) as well as illegal (unlicensed) businesses and individuals in Kenya, and their clients in destination countries which include Afghanistan, Iraq, Kuwait, Saudi Arabia and UAE. At the legal (licensed) end of this spectrum, the number of recruitment firms operating in Kenya rose from just five in 1998 to over 700 in 2013, and to 1,000 by 2015.⁷⁸ Including all the unlicensed recruiters which are active in Kenya would inflate this figure significantly.

⁷⁶ See <http://www.businessdailyafrica.com/Kenya-to-export-100-000-workers-to-the-Emirates/-/539546/2596746/-/f79e4b/-/index.html> [Accessed: January 2017].

⁷⁷ By 2013 the number of Kenyan nationals working in the Middle East was estimated to be over 120,000. Interview with Ministry of Labour officers, April 2015.

⁷⁸ Interview with Ministry of Labour officers, April 2015.

In recent years, news of exploitation of Kenyans employed in the Middle East by their (Kenyan) recruiters (as well as by their employers), has proliferated. Female migrants, especially domestic workers, have frequently been reported as being the subjects of abuse. Embassy officials based in Kenya have also been implicated. For instance, in 2012, an undercover media investigation even uncovered a “human trafficking cartel” operated by foreign embassy staff in Nairobi, actively recruiting Kenyan nationals into forced labour in Kuwait, Saudi Arabia and UAE.⁷⁹ In response to concerns, in November 2014, the Kenyan Government imposed a temporary ban on recruitment to the Middle East and established a Foreign Employment Taskforce to investigate.⁸⁰

This report summarizes the findings from a scoping study of the Kenyan (licensed) recruitment industry, focusing specifically on the (substantial) sub-sector engaged in recruitment to the Middle East. Data generated from the research were correct at the time of writing although as recruitment and overseas employment is a fast-moving environment, changes are likely to have occurred subsequently (such research always offers a “snapshot”). The report was commissioned by the ILO Special Action Programme to Combat Forced Labour to inform the work of the Fair Recruitment Initiative (see section 1. above), funded by the U.S. Department of Labor. The report was also intended to provide an evidence-base for the Kenyan Government to assist with its deliberations on how best to regulate emigration and Kenya’s international recruitment industry. This summary briefly profiles the industry, explains the key drivers of the Kenyan recruitment business and reviews the legal and policy framework governing the

industry (prior to the ban).⁸¹ The final section of the paper discusses the challenges and potential solutions for the Kenyan Government in regulating recruitment.

About the research

Findings are based on the analysis of almost 50 interviews conducted between April and July 2015 with representatives of recruitment firms, the Kenyan Government, workers’ representatives and civil society, as well as returned female and male migrant workers.⁸² The owners/ directors of 18 recruitment firms specialized in Middle East recruitment participated in this research. A few of these also recruited Kenyans for jobs in Botswana, Ghana, Madagascar, Sudan and Tanzania. Given the size and diversity of the industry in Kenya, as well as the lack of a national sampling frame together with time and logistical constraints, this is not a statistically representative sample. Rather, interviewees were invited to participate because they had experience of recruiting to the Middle East with the purpose of exploring the ways of working in the international recruitment industry in Kenya. All participating firms were Kenyan-owned businesses, usually started by the same directors who are still managing them. Some directors launched their businesses when they themselves returned from working overseas; a small number had started recruiting locally before moving into international recruitment. Regardless of their personal histories, recruitment business owners began engaging in international recruitment because they had identified it as a lucrative business opportunity.

⁷⁹ See <http://www.reuters.com/article/us-rights-domesticworkers-kenya-idUSKBN00C02K20150527> [Accessed: January 2017]; and <http://www.nation.co.ke/News/How+embassy+staff+collude+with+cartels+to+con+Kenyans+/-/1056/1373646/-/go15qcz/-/index.html> [Accessed: January 2017].

⁸⁰ See <http://www.equaltimes.org/kenyan-government-moves-to-combat?lang=en> [Accessed: January 2017]. The Kenyan Government had earlier imposed a recruitment ban on Kenyan women leaving for domestic work in UAE.

⁸¹ A smaller part of the research brief included exploration of the national and regional industries, which place Kenyans in employment within Kenya and other countries in Africa. Given the limited scope, time and budget constraints of this project it was not possible to include these findings here.

⁸² In addition to the interviews, a desk review of relevant literature was also conducted. Dr. Katharine Jones has summarized the findings from Mrs. Kimbatha’s unpublished research report to the ILO, contributing additional analysis.

Three of the 18 interviewees also operated “side” businesses in travel, tourism and human resource consultancy, primarily to facilitate smooth (and cheaper) recruitment processes. Recruiters participating in this research

recruited both men and women for a variety of different overseas jobs, with household / domestic work (service industry) and driving (logistics industry) mentioned most frequently by interviewees.

Table 2: Occupations for which the firms recruit

Jobs	No. of agencies
Private household (domestic workers , personal drivers, social care)	14
Drivers (truck drivers, forklift drivers)	14
Technicians, mechanics	8
Retail (stock controllers, sales, merchandisers, shop attendants)	8
Hospitality (waiters, administration, cooks)	7
Security guards, watchmen	4
Nurses / teachers	3
Engineering, construction (roads and building)	3
Accountants / financial managers	2
Airline staff	1
Facility / real estate / commercial building management	1

Interviewees reported predominantly recruiting women for domestic work, both internationally and locally in Kenya. For the firms which participated in this study recruitment of women for domestic work positions at the time of writing accounted for between 60 and 95 per cent of their business. Interviewees estimated that up to three-quarters of the entire international (licensed) recruitment industry is accounted for by domestic work placements, with some firms engaging only in such placements. In other words, at the time of writing, domestic work accounted for the bulk of the international recruitment industry in Kenya. According to interviewees women are to a far lesser extent also recruited for jobs in the Middle East as drivers, security guards, waitresses, secretaries and administration assistants, nurses, cabin crew and accountants.

Legal Framework

The following section briefly summarizes how the Kenyan Government regulates international recruitment. As referred to above, the Government imposed a ban on recruitment in November 2014. While the ban was lifted for the recruitment of “professional” staff in March 2016, (in theory) at the time of writing it remains for the recruitment of domestic workers to the Middle East. Regulations cover who or what entity can become a legitimate recruiter, how much prospective businesses must pay to the Ministry of Labour, how much recruiters can charge to migrants and the arrangement of employment contracts. Kenya’s regulations are aimed at protecting those intending to migrate and are broadly similar to those of other countries from which large numbers of labour migrants originate.⁸³

⁸³ E.g. For an overview, see K. Jones: *Recruitment Monitoring: What works* (Dhaka, IOM, 2015). Available at: https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf.

To operate legally in Kenya, recruitment firms must apply and pay an annual USD 300 to the Ministry of Labour (National Employment Bureau) for a license to operate.⁸⁴ The license applies to firms which recruit workers for local jobs in Kenya, as well as to firms which recruit Kenyans for jobs outside Kenya. In addition, recruiters have to also seek a commercial license to operate from their local country government which is required of all private sector businesses. Further specific stipulations include that the director of a recruitment firm:

- Must be a Kenyan citizen or in possession of a valid work permit;
- Must have attained a secondary level certificate as well as hold a diploma in human resource management; and
- Must have a certificate of “good conduct” from the Kenyan police.⁸⁵

A fee for license accreditation must be paid for annually: USD 2,650 for international recruiters and USD 1,325 for those only making placements within Kenya. Since 2014, firms are also required to pay an initial security bond to the Ministry of Labour of USD 3,800. Non-Kenyan owners must pay triple this amount, USD 10,600. The purpose of the security bond is both to ensure that recruitment firms have sufficient capitalization to operate, as well as to cover the costs of any problems which Kenyan workers might incur overseas and for which government repatriation might be required. In total, a Kenyan-owned recruitment firm making international placements must pay USD 6,780 annually to operate legally.⁸⁶

From 2014, the Kenyan Government required the costs of migration – for example, visa fees, airfare and medical examinations – to be paid by recruitment firms and / or the employer in the destination country. However, Kenya-based recruitment firms are allowed to charge

their recruits the equivalent of one month’s salary which s/he is expected to earn in the destination country. Based on average salaries of Kenyans in the Middle East, this can range from USD 120 (for domestic workers) up to USD 500 (for skilled, armed, security guards). Recruiters are also allowed to charge a “service fee” from the placement agency / employer in the recruitment country which contracted them to supply Kenyan workers.⁸⁷

Recruitment firms are required to prepare and ensure that their recruits sign an employment contract with the employer in the destination country before leaving Kenya. With the aim of protecting those intending to migrate, this follows a model contract elaborated by the Ministry of Labour and which has been “attested” as genuine by one of their officials based in the nearest embassy or consulate to the employer. A legal onus is also placed on agencies to follow up on the welfare of their recruits once they are overseas.⁸⁸

To assess compliance, recruitment licensees are inspected annually by the Kenyan Ministry of Labour (National Employment Bureau), the county government, as well as by the Kenya Revenue Authority. Directors and /or recruitment firm staff can be imprisoned for up to three months and fined up to USD 489 for non-compliance with legal requirements.⁸⁹ For activities which fall into the “egregious” category, the 2010 Counter Trafficking Act renders guilty recruiters liable to imprisonment for a term of not less than 20 years or to a fine of not less than KES 20 million (USD 192,678) or to both and upon a subsequent conviction, to imprisonment for life.⁹⁰

⁸⁴ Labour Institutions (General) Regulations, 2014.

⁸⁵ Idem.

⁸⁶ Idem.

⁸⁷ Idem.

⁸⁸ Employment Act (2007) Sect. 83-86, and Labour Institutions (General) Regulations, 2014.

⁸⁹ Labour Institutions Act 2007.

⁹⁰ See http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf [Accessed: January 2017].

Table 3: Legal framework governing recruitment in Kenya⁹¹

Labour Institutions Act (2007)	<p>a. Sections 55-60 specify the regulations governing private employment agents in Kenya. These include:</p> <ul style="list-style-type: none"> i. Registration and accreditation by MOL. ii. Duties of the person operating an employment/ recruitment firm to maintain records and not to charge a job seeker other than what is provided by law. iii. Power of employment officers to carry out inspections of agencies. iv. Offences - any person who does not comply with this law commits an offence and is liable to a fine not exceeding KES 50,000 [USD 480] or imprisonment of up to three months or both.
Employment Act (2007)	<p>b. Sections 83-86 of the Employment Act sets out how foreign contracts of service will be dealt with stating that: -</p> <ul style="list-style-type: none"> i. All contracts will be attested by a labour officer in Ministry headquarters. ii. The contracts must meet the requirements of ensuring that there is no fraud, coercion or undue influence. iii. Security bond may be required of employers/firms, currently at KES 500,000 [USD 4,816]. iv. Inducing Kenyan to proceed abroad without a formal contract is an offence.
Counter Trafficking in Persons Act (2010)	<p>Trafficking in persons is a criminal offence. The Act in section 5 (c) states that any person who manages, runs or finances a recruitment firm for purposes of trafficking in persons commits an offence and is liable to imprisonment for a term of not less than twenty years or to a fine of not less than twenty million shillings [USD 192,678] or to both and upon subsequent conviction, to imprisonment for life.</p>
Labour Institutions (General) Regulations, 2014	<ul style="list-style-type: none"> • A person to be accredited as a Director of a recruitment firm must be a Kenyan citizen, or have a valid work permit. Must have attained a secondary level certificate, have a diploma in human resource management. • Must pay USD 300 per year for a licence, have certificates of good conduct from the police, and provide a bond of USD 3,500 (Kenyan-owned) or USD 10,600 (non-Kenyan owned), and be a member of an agency association. • Certificate of accreditation is renewable at USD 2,650 (foreign placements) and USD 1, 325 (for local placements). • Migration costs should be met by agents and employers, including visa fees, airfare and medical examination. • Firms are allowed to charge a service fee from their overseas Principal (i.e. placement agency or employer in the destination country) to cover the costs of recruitment. If the Principal is not paying, then firms are allowed to charge equivalent of one month salary to the worker. • Must enter into a prescribed model contract, with firms responsible for ensuring workers and employers sign. • All firms are required to follow up on the welfare of their recruits. • Firms also required to be Members of National Chambers of Commerce and the Kenya – Arab Joint Chamber of Commerce.

In recognition of the challenges of regulating an industry which operates internationally, the Kenyan Government has also embarked on negotiating bilateral labour agreements with key destination country governments. These have the aim of securing “market access” for Kenyan workers to jobs as well as protective measures for the workers.

The first was signed with Qatar in 2011 (and currently in force), while at the time of writing, discussions continue between Kenya, Saudi Arabia and UAE for further Memoranda of Understanding.⁹²

⁹¹ Valid prior to ban imposed in November 2014.

⁹² Officials from the Ministry of Labour attended a study tour to Saudi Arabia in December 2014 to discuss the possibility of an agreement that would yield 100,000 jobs.

Box 10: Qatar – Kenya Bilateral Labour Agreement

- Recruitment agreements should state the required qualifications, the probable duration of contract, detailed conditions of employment, the wages, end of service gratuity, probationary period and facilities regarding transportation and accommodation as well as all basic information that may enable the workers to decide on signing the employment contract.
- Signed contracts must be ratified by the Qatar Ministry of Labour and the Ministry of Labour in Kenya (or the Consulate in Doha).
- Employers should pay for all costs associated with travel to Qatar, return expense at the end of the contract and two-way travel expenses during the leave periods. The employer is not required to pay for passport expenses or for return travel where the employee is dismissed or resigns before the end of the contract period.
- A Joint Committee should be established in order to implement the Agreement and to take necessary measures.



The legal framework which regulates international recruitment in Kenya operates within Kenya's international and regional commitments. Kenya is a signatory to the ILO's Private Employment Agencies Convention, 1997 (No. 181) that specifies the international standards for the recruitment and employment industry.⁹³ It is also a signatory to the UN Protocol to Suppress and Punish Trafficking of Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organised Crime.⁹⁴ Kenya is *not* a signatory to the Domestic Worker Convention, 2011 (No. 189) which aims to protect the rights of (mainly women) workers who are placed in domestic employment, and which includes specific clauses on recruitment.⁹⁵

⁹³ See http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312326 [Accessed: January 2017].

⁹⁴ See <http://www.osce.org/odihr/19223?download=true> [Accessed: January 2017].

⁹⁵ See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 [Accessed: January 2017].

Recruitment business practices

The recruitment businesses which participated in this research, at the time of writing, all operated one main (head) office in Nairobi or Mombasa, employing between two and nine members of staff. For two-thirds of the participating recruiters (ten firms) this was their sole office. A third (five firms) operated one additional branch office, and a fifth (three firms) operated several branch offices in Nairobi, Kakamega, Eldoret, Mumias, Thika and Machakos, Mombasa, Kisii and Voi. In other words, recruitment firms do not have extensive geographical coverage across Kenya into the towns, cities, and rural areas from which workers are often recruited. Consequently, recruiters advertise overseas jobs on radio stations (Radio Salama in Mombasa and Nyota in Kakamega), in “road shows”, and through social media (including Facebook) to try and mobilize new recruits in areas where they do not have offices.

Brokers and partners in the destination countries

Recruitment firms are also dependent on networks of “brokers”, individuals who are

paid in cash to find new recruits and take them to the recruitment offices (see Glossary). In Kenya as in other countries, brokers provide a cheap way of organizing the recruitment of women and men who might live nowhere near to the office, without the need for firms to establish networks of branch offices across the country. Brokers in Kenya are not licensed and in effect are illegal, although their use is not explicitly forbidden in Kenyan law. According to interviewees, brokers are more commonly used by the firms which recruit for household jobs, especially domestic workers. These firms reported hiring between three and 20 brokers regularly, with some maintaining long-term – but loose – relationships. Anyone can be a broker. This research found evidence of preachers, politicians and community leaders seeking jobs for their constituents, friends or neighbours. These people visit villages to talk to parents and village elders to try to find new recruits. Returned migrants are also engaged by recruitment firms to recommend their friends for jobs.

Interviewees reported paying brokers per new recruit depending on whether or not the recruit being introduced already has her/his identity documents (e.g. birth certificate or national identity cards). If recruits do not have their documents, the broker is paid USD 50 to USD 100 per recruit; with a passport already organized, brokers are paid up to USD 200 per individual.

On the other hand, recruitment firms that specialize in recruiting skilled or semi-skilled workers are less likely to use brokers. Rather, these rely on advertising to generate new recruits or will simply contact individuals who have pre-registered with them to seek overseas employment. Interviewees from these firms argued that using brokers presents a risk for their reputation, given the widespread perception that brokers are responsible for most of the exploitation within the industry.

Only one of the firms that participated in this research operated branch offices outside Kenya, and only in Tanzania, Madagascar, Ghana, and Sudan. None operated offices in the Middle East, relying instead on partners (placement agency clients) in destination countries to find the employers with whom Kenyan workers can be placed. Placement agencies in the destination countries also manage the visa process in the destination country.

Kenyan recruitment firms identify placement agencies with which they can work through personal recommendations, internet searches and advertising through social media, especially LinkedIn. Embassies – Kenya representatives in the Middle East as well as those from the Middle East – also play an important role in brokering recruiter business relationships.

According to interviewees, agreements between the Kenyan recruitment firm and the destination country placement agency determine the number of people to be recruited, their specific experience and qualifications (if any), the commissions which are paid to the Kenyan recruiter, and how the commissions will be remitted – for instance, via Western Union. Kenyan recruiters reported being paid commissions of between USD 300 (for male recruits) and USD 2,000 (for female domestic worker recruits) by the placement agencies, which then recover this money from their client employers in the form of their recruitment fee. The commission paid for female recruits includes the cost of a flight from Kenya to the destination country.

Agreements also often include a “trial basis clause” – specifying under which circumstances the agreement can be terminated – as well as a mechanism for conflict resolution between the partners. Other recent research has found that such clauses agreed between recruitment businesses often result from regulations in place

in countries in the Middle East.⁹⁶ For instance, such regulations stipulate that recruiters based in these destination countries have to refund employers if a worker is found to have a communicable disease, upon arrival “refuses to work” or “runs away” (from the employer) within the first three months.⁹⁷ In other words, Middle Eastern recruiters “transfer” this regulatory requirement to their Kenyan counterparts. If a Kenyan partner consistently does not “send” the agreed number of recruits, sends recruits who do not pass their (legally required) medical tests on arrival, or who “run away” within three months, the agreement between business partners will usually be terminated.

An end-to-end recruitment process

Recruits who are from rural areas in Kenya usually travel to Nairobi or Mombasa to meet with recruitment firms (at their own cost). Women are usually accompanied either by a relative, or a broker, or both. Once identified as potential recruits, male candidates applying for skilled, technical jobs may be interviewed by employers by Skype. When an employer is recruiting for a large number of new employees, s/he may come to Kenya to interview candidates in person. However, according to interviewees, women identified as candidates for domestic work placements are only ever selected on the basis of informal conversations with staff in recruitment firms. Interviewees reported that the staff tries to gauge the attitude and demeanour of the worker, especially to ascertain if recruits are likely to remain in the job for the length of the two-year contract. The latter is especially important for recruiters to avoid the penalties associated with the “trial basis clause” outlined above.

⁹⁶ K. Jones: *For a Fee: The business of recruiting Bangladeshi women for domestic work in Jordan and Lebanon* (Geneva, ILO, 2015). Available at: http://www.ilo.org/global/publications/working-papers/WCMS_377806/lang--en/index.htm [Accessed: January 2016].

⁹⁷ Idem.

Once a candidate is “selected”, recruitment firms organize transportation to the destination country and the processing of documentation that is required by the Kenyan authorities as well as by the destination country authorities. This includes arranging a passport, in cases where the recruit does not arrive in Nairobi or Mombasa with one, a medical certificate to certify that the individual does not have any communicable diseases and is not pregnant (in the case of women), an entry visa to the destination country and a work permit. International recruitment firms tend to be clustered in the capital and other major cities to be close to the government offices and overseas consulates which is helpful for the speedy processing of the required visas, passports, and emigration paperwork.

Almost all returned migrant workers interviewed for this study signed a contract of employment, which was facilitated by the recruitment firm prior to departure as required by Kenyan law. Male workers reported receiving and signing their contracts prior to their transportation tickets being purchased by the recruiter. On the other hand, women reported receiving these only at the airport. This is often a mechanism by which recruiters prevent women from changing their minds or choosing a different job prior to departure. On arrival, interviewees reported that women (domestic workers) were met by their employers; whereas men were often met by company drivers.

In the case of skilled/ semi-skilled (usually male) workers, interviewees reported that on average the end-to-end recruitment process takes three months. On the other hand, recruiters reported that recruiting domestic workers is significantly faster, usually taking between two and four weeks. The latter is a quicker process partly because the “supply” of women willing to go overseas is greater and the recruitment search process does not require searching for specific skills or conducting job interviews. The only relevant criteria for the recruitment of these women are being female, not pregnant and without communicable diseases, according

to interviewees. This process is also quicker because the employer is not directly involved in the selection process, and because the recruitment firm also organizes transportation.

The process of recruiting domestic workers from Kenya to the Middle East is also a far quicker one than from other countries such as Bangladesh where women must undergo a six-week residential pre-departure training course. None of the returned (Kenyan) domestic workers had attended such a course, although two interviewees had received some verbal explanation from the recruitment firm as to the household equipment to be expected in the new employer's household. Others had been given advice by recruiters to avoid sexual relationships with household members and not to steal. Similarly, men who were interviewed knew little about the job or the destination country in advance of departure, and often only what was contained within the job advert. According to recruiters interviewed for this study, they are required to provide pre-departure training for women migrant domestic workers – whether formal or informal – by Kenyan law. Nevertheless, as they do not receive reimbursement from the government for providing it (and women cannot afford to pay) they tend not to comply. Interviewees also noted that although the government-supported Youth Employment Scheme provides pre-departure training, it only reaches a very limited number of recruits.

Income and profits

Prior to the ban imposed in November 2014 recruitment from Kenya to the Middle East was a highly profitable business, according to interviewees. Prior to this point, recruitment firms lacked neither a supply of workers ready to work in the Middle East, nor demand from clients seeking Kenyan workers. Those firms that recruited female domestic workers argued that they did so because of the high demand and because of the low costs involved in recruiting for this type of work. In other words, by managing international recruitment while using

just one office supplemented by loose networks of brokers and foreign business partners, they were able to generate high fees whilst operating low business overheads. All recruiter interviewees reported that the current ban on their operations to the Middle East had however impacted negatively on their profitability as well as their credibility. It had obliged them to lay off staff and break client contracts, and in some cases refund the cost of visas, which they had already processed.⁹⁸ Nevertheless, even since the ban, it is clear that recruitment firms – both licensed and unlicensed – have continued to operate a thriving business to the Middle East, especially for domestic workers.⁹⁹

A third of the recruitment firms which participated in the research (six interviewees) reported placing up to 1,000 workers per year, mainly in the Middle East, while others recruited 200 workers per year or less. The smallest firm included in this study recruited only between 65 and 150 workers per year. More than half of the interviewees reported an annual profit of between KES 2 million and KES 5 million (USD 19,500 to USD 48,908). To place these numbers in context, the World Bank identifies Kenya as a lower-middle income country, with average annual incomes of between USD 1,046 and USD 4,125, although a substantial proportion of the population lives on less than USD 1 per day.¹⁰⁰ Recruiters often downplay both the numbers of individuals they have recruited and their profits to researchers, and sometimes do not want to risk attracting attention from regulatory authorities, including tax inspectors; it is therefore likely that these figures are an underestimate.

⁹⁸ Interviewees reported that the current ban was not communicated to the industry directly by the Ministry but that they found out via the media, which meant that they were unable to make plans.

⁹⁹ E.g. see <http://www.reuters.com/article/us-rights-domesticworkers-kenya-idUSKBN00C02K20150527> [Accessed: January 2017].

¹⁰⁰ See <http://www.worldbank.org/en/news/press-release/2015/07/01/new-world-bank-update-shows-bangladesh-kenya-myanmar-and-tajikistan-as-middle-income-while-south-sudan-falls-back-to-low-income> [Accessed: January 2017].

Table 4: Annual turnover range of interviewed recruitment firms

Annual turnover range (Kenyan Shilling (KES) and USD)	No. of interviewed recruitment firms
< KES 2,000,000 (<USD 19,500)	3
KES 2,000,000 – 5,000,000 (USD 19,500 to 48,908)	11
KES 5,000,000 – 10,000,000 (USD 48,908 to 100,000)	1
>KES 10,000,000 (>USD 100,000)	3

Kenyan recruiters reported being paid commissions of between USD 300 (for male recruits) and USD 2,000 (for female domestic worker recruits) by the placement agencies in the destination countries. Commissions paid for female recruits include the cost of a flight from Kenya to the destination country. A few also generate income from operating “side” businesses such as travel agencies.

Firms also charge fees to their Kenyan recruits for expenses related to recruitment, passports, medical certificates, transport within Kenya to Nairobi/ Mombasa to the recruitment firm office, and in some cases, their flights. In addition, brokers may also charge fees to recruits. Interviewees reported paying fees of approximately USD 1,000.

Fees are either charged up-front before the recruit leaves Kenya – most commonly in the case of semi-and skilled migrants; or are recovered from Kenyans from their salaries once they are overseas in employment. All migrants who had worked internationally and who were interviewed for this study had paid a recruitment fee. None had received a loan from the Youth Employment Scheme Abroad (YESA), which has been established by the Kenyan Government for the purpose.¹⁰¹ Former domestic workers said that they had not been required to pay anything up-front, but had had this amount deducted from their salary. Interviewees also reported that recruiters

additionally often generate interest payments from their recruits to whom they have lent money for the purchase of necessary travel items (for instance, luggage).

Exploitation and recruitment in Kenya

International recruitment from Kenya to the Middle East is a low-wage, high volume business model. As recruiters generate income from fees and commissions, quite simply the more people recruited, the higher their profits. At the bottom end of the market where there is a high demand from poverty-stricken Kenyans for overseas jobs as well as a high demand for low-wage migrant workers in the Middle East, there is an incentive for recruiters to stimulate as much migration as possible. This creates the right conditions for exploitation.

There is substantial documented literature about the violations endured by both female and male Kenyans working in the Gulf countries.¹⁰² The main direct and indirect violations reported by interviewees (returned migrants, civil society representatives and recruiters) for the purpose of this study are detailed below. These are specific to the actions of Kenyan recruiters (both licensed and unlicensed) rather than

¹⁰¹ Through the Youth Employment Scheme Abroad (YESA), the Kenyan Government, via the Kenya Commercial Bank, provides loans to young people to fund the cost of migration (including tickets and recruitment agency fees). Loans are not made to women travelling for domestic work however.

¹⁰² Returned Kenyans interviewed for this study also endured: deportations from the destination country following termination of contract, alteration of terms and conditions of employment, non-payment and / or delay in payment of salaries, sexual harassment (of women), denial of medical care if unwell, verbal and physical abuse, denial of food, poor accommodation, confiscation of travel documents, imprisonment. Racism in the Gulf countries directed towards African nationals was also reported by interviewees to be widespread.

employers or other actors in the recruitment process:

- **High recruitment fees / salary deductions and withholding of salaries for up to three months.** All the returned domestic workers who were interviewed had had their salaries deducted and / or withheld by recruiters. Recruiters confirmed that this was to prevent domestic workers from “running away” from their employers. The ILO identifies this as debt bondage – a form of forced labour.¹⁰³
- Returned domestic workers interviewed for this study reported that they discovered, on arrival in the destination country that **the job description (delivered verbally by the Kenyan recruiter) had changed**, including who the employer was to be, house size, salary level or level /grade of jobs which was usually lower than what had been promised by the Kenyan recruiter. For instance, one returned domestic worker reported receiving USD 180 per month rather than USD 220 as she had been promised. This kind of deception is also an indicator of forced labour as identified by the ILO.¹⁰⁴
- Interviewees reported some **collusion between Kenyan recruitment firms and medical institutes** in taking a fee from the recruit and not providing a viable medical certificate. As a result, the individual can be refused entry to the destination country, or after arriving at her/his employer’s, not be able to work and thus be left without a job in the destination country, potentially subject to detention / deportation and not be able to recoup recruitment fees paid up-front.
- Interviewees noted that some **recruits are provided with student or visitor visas** by

recruiters rather than work permits because they are cheaper, easier to obtain and / or do not require employer sponsorship, the processing of which can take time.

However, these visas do not provide recruits with any labour rights, and can leave them subject to detention / deportation, without a job, and not able to recoup recruitment fees. This is especially likely to be the case for those migrants who leave Kenya with an illegal recruiter.

Interviewed migrants said they had no way of telling whether the recruiter they went to in Mombasa or Nairobi was legal or illegal, but had to rely on the broker’s word. Only one migrant interviewee had been able to check this in advance.

- Interviewees noted many cases of Kenyan domestic workers **travelling without a valid employment contract.** Returned domestic workers who were interviewed reported being required to sign a contract at the airport upon departure. One noted that she had felt pressured into signing, but that it was too late for her to refuse or change her mind.
- Recruitment firms tend to **purchase the cheapest flights**, which tend to have substantial connection times and returnees reported being left without food and water for long periods of time in airports while waiting to connect to other flights.
- Although some recruiter interviewees reported that they ensured that recruits leave Kenya with their contact details and instructions on how to call them in case of problems, many do not. **Returned migrants claimed they had not had any contact with their Kenyan recruiters once in destination countries.** This leaves Kenyan nationals largely unprotected in the destination country, especially if there is no diplomatic representation or consular service available. Returned migrants who were interviewed alleged that Kenyan consulate staff even when they are present *in situ*, do not pick up phone calls.

¹⁰³ ILO Indicators of Forced Labour. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf [Accessed: January 2017].

¹⁰⁴ Idem.

- In the last two years, the Kenyan NGOs SOLWODI, TRACE Kenya, CDTC and HAART together have worked with 394 trafficking survivors, only 17 of whom were men. **Women are usually trafficked into private households as domestics, and men into agriculture, construction and factories as loaders and cleaners.**

Destination countries for these trafficked persons included Saudi Arabia, Lebanon, Dubai, Qatar, Libya and Sudan.

Interviewees from licensed recruitment firms complained that the exploitation tends to be perpetrated by unlicensed firms (brokers) – i.e. not themselves – and it is this that tarnishes the industry as a whole. This is a common argument posed by recruiters internationally. However, given the comprehensive enmeshing of the formal (legal operators) and informal (illegal) sub-sectors, through the system of brokers, the situation is not necessarily that clear-cut. Although most of the exploitation of migrants may be perpetrated by brokers who are unlicensed, it is the licensed firms which are at least partly responsible for the brokers' existence and therefore also complicit in their exploitative activities.

The Kenyan Government faces several challenges in regulating the recruitment industry. Not least, the Government is tackling the terrorist activities of Al-Shabaab inside Kenya's borders,¹⁰⁵ as well as engaging in the conflict in Somalia,¹⁰⁶ and managing the closure of the Dadaab refugee camp (the world's largest) through forced repatriation of Somalis resident in the camp.¹⁰⁷ On the whole the challenges below are not specific to Kenya,

but are common from a global perspective where the recruitment industry is involved in facilitating large numbers of migrant workers into jobs in countries where proper labour protections are lacking, and where there are significant disparities between rich and poor. On the whole, the challenges are systemic:

- **Non-compliance of licensed recruiters with Kenyan law.** According to interviewees, no prosecutions of recruiters for non-compliance have ever taken place. Interviewees noted a lack of capacity within the National Employment Bureau to effectively enforce the law. A complex political environment means that other matters, for example, fighting terrorism, or addressing the refugee issue, are likely to take precedence in the distribution of resources.
- **The scale of illegal recruitment, including existence of brokers.** As brokers are a systemic part of the recruitment industry – the existing industry would not function without them – this challenge requires a systemic solution. In other words, tackling this issue will require more than occasional police arrests of illegal recruiters. Interviewees also reported that brokers from destination countries commonly travel to Kenya to recruit. As these individuals change their Kenyan telephone numbers on a regular basis to avoid being traced, this prevents Kenyans who have been exploited by them or the authorities from pursuing a case against them.
- Kenyan law, as it stands, allows **recruiters to charge recruitment fees**, which are a major factor in the abuse of migrant workers during the recruitment process. Allowing fees to be charged allows recruiters to hide “illegitimate” and / or “excessive” fees.
- **International recruitment is transnational, but the Kenyan authorities** have no influence over the activities of the destination country placement agencies or

¹⁰⁵ <http://www.aljazeera.com/news/2016/10/al-shabab-blamed-attack-northeast-kenya-161006052130719.html> [Accessed: January 2017].

¹⁰⁶ <https://www.theguardian.com/world/2017/jan/27/al-shabaab-claims-to-have-killed-dozens-of-kenyan-troops-in-somalia> [Accessed: January 2017].

¹⁰⁷ See <http://www.aljazeera.com/news/2016/11/kenya-delays-dadaab-refugee-camp-closure-months-161116130647820.html> [Accessed: November 2016].

employers, which also play a substantial role in recruitment abuses either directly or indirectly. Recruiter interviewees reported that a lack of Kenyan Labour Attachés in the Middle East makes it harder to protect recruits.

- **Graft and corruption** on the part of Kenyan officials which prevent effective monitoring.
- **Lack of social dialogue structures** which serves to prevent the Kenyan authorities from having oversight into all the areas of the labour market in which recruiters operate. According to interviewees, neither the leading trade union confederation in Kenya, COTU (Central Organization of Trade Unions) nor the Federation of Kenya Employers (FKE), which includes ten recruitment firm members, know much about international recruitment.
- **Lack of effective self-regulation by the recruitment industry.** Although recruitment

agencies are required, according to Kenyan law, to be members of a recruitment association as well as of the Kenya Chambers of Commerce and the Kenya-Arab Joint Chamber of Commerce, this is not currently enforced, meaning that the industry is not legally or otherwise required to take action against its own “bad apples”. Over two-thirds of licensees are not a member of the former. The two main recruitment industry associations, KAPEA and APRAK, have detailed Codes of Conduct; the former has developed a partnership with the International Organization for Migration (IOM). Yet, the extent to which exploitation is a feature of certain segments of the recruitment industry in Kenya suggests that there remains a substantial amount of work for the associations to do.



Box 11: KAPEA and APRAK Codes of Conduct

The key provisions of the KAPEA Code of Conduct include:

Members undertake not to knowingly, carelessly or recklessly engage in illegal wrongful or unethical recruitment of jobseekers.

No member recruiter should advertise information about jobs, which is deceptive or a deliberate misrepresentation.

Recruits should be supplied with all required information, and to endeavour to follow up once recruits leave Kenya.

The key provisions of the APRAK Code of Conduct include:

Members should refrain from bidding down the wages and other fees or payment to migrant workers, and must comply with the minimum wage limits stipulated by the Kenyan Ministry of Labour.

Members should provide recruits with receipts for any payments made to them.

Members should take measures to ensure that child labour or forced labour is not supplied for foreign employment and / or engage in activities that are equivalent to human trafficking and human smuggling. Members should refrain from recruiting workers for jobs involving unnecessary / unacceptable risks in which the worker may be subject to dangerous or hazardous work environments.

If any intermediaries are utilized, the member recruiter is liable for their acts, including ensuring that they comply with the legal framework.

Intermediaries are not allowed to collect fees on members' behalf.

Members should only use legal and safe means to send workers overseas for employment and shall not make use of other reasons such as holiday travel, visiting relatives, business trips etc. for the purpose of sending workers for employment.

Members should ensure that the prospective workers are aware of their rights, responsibilities, obligations, job positions, and “dos” and “don’ts” in the country of prospective employment and upon return in their home country.

Conclusion

As of 2015 – at the time of writing –, the Kenyan Government is at a critical juncture in regulating emigration for low- paid overseas employment as well the recruitment industry that is responsible for facilitating this. On the one hand, the Kenyan Government sees labour migration as a potential way to ease the unemployment figures (rather than as a fully-fledged labour export policy). On the other, the Government risks bad publicity due to forced labour, human rights abuses and cases of trafficking resulting from migration. As a result, although labour migration is regarded as a priority as indicated in the “Kenya Vision 2030” and in the Diaspora Policy, the Government has not yet mainstreamed migration policy within its vision for development. Most notably, in November 2014 the Kenyan Government, in effect, imposed a ban on the recruitment industry, which applied equally to international and national actors. This has been subsequently lifted for the recruitment of “professional” workers, but in theory at least, remains in place for the recruitment of domestic workers to the Middle East at the time of writing. The Foreign Employment Taskforce which was subsequently established has conducted learning missions to the USA, Europe, the Middle East, the Philippines and India, but has yet to report.

At the bottom end of the market where there is high demand from poverty-stricken Kenyans for overseas jobs as well as high demand for low-wage migrant workers in the Middle East, there is an incentive for recruiters to stimulate as much migration as possible. As recruitment firms generate profitability from fees and commissions, the more people recruited, the higher their profits. This creates the right conditions for exploitation. In turn, the challenges which face the Kenyan Government in regulating the industry or indeed for the industry associations to regulate themselves are enormous. Some potential solutions to these challenges are regulatory; for instance, outlawing the charging of recruitment fees to migrants. Others are costly, such as investing in capacity-building for inspections of the industry, and increasing the number of overseas Labour Attachés who can scrutinize the types of employment in which Kenyans will be placed. The case for investing in greater support for the regulation of the industry is clear. In the long-term, this will offer greater safety and protection of Kenya’s low-wage diaspora and increase remittances back into the economy. Safe migration leads to increased – and more effective – development.

Glossary

Broker

In the context of this study, brokers are individuals used and paid by recruitment firms to recruit candidates for overseas job opportunities. Brokers are often unlicensed and therefore, in such cases, illegal. Despite this, they have been often found to be a systematic part of the recruitment process in a number of countries and migration corridors.

Domestic Worker

According to the ILO Domestic Workers Convention of 2011 (No. 189), a domestic worker is “any person engaged in domestic work within an employment relationship.” “Domestic work” is “work performed in or for a household or households.” It may involve a range of tasks, including cooking, cleaning the house, washing and ironing the laundry, general housework, looking after children, the elderly or persons with disabilities, as well as maintaining the garden, guarding the house premises, and driving the family car.

Forced Labour

The ILO Forced Labour Convention (No. 29) of 1930 defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” The Protocol of 2014 to the Forced Labour Convention reaffirms this definition, and stresses the need for “specific action against trafficking in persons for the purposes of forced or compulsory labour.”

Labour recruiter

The term “labour recruiter” as expressed in the Forced Labour (Supplementary Measures)

Recommendation, No 203, can refer to both private and public entities that offer labour recruitment services. Private entities can take many forms: formal (e.g. registered under commercial or other law) or informal (not registered), profit-seeking (e.g. fee-charging agencies) or non-profit (e.g. trade union hiring halls).

Private Employment Agencies

Private employment agencies fall within the definition of labour recruiters. In particular, they are defined by ILO Convention No. 181 as “a natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships that may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) that assigns their tasks and supervises the execution of these tasks; (c) other services relating to job-seeking, determined by the competent authority after consulting the most representative employers and workers’ organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.” (Art. 1.1).

As per the definition of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a migrant worker is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national”.

Trafficking in Persons

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of

the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

Appendix I:

Key provisions of ILO standards

Key provisions of the ILO Private Employment Agencies Convention, 1997 (No. 181), Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and Private Employment Agencies Recommendation, 1997 (No. 188):

States are responsible for regulating recruitment in order to provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations, which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses. (C181 Art. 8)

States should ensure that employment / recruitment agencies do not knowingly recruit, place or employ workers for jobs involving

unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind (Recommendation 188).

States should ensure that employment / recruitment agencies inform migrant workers, as far as possible in their own language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment (Recommendation 188).

Measures to be taken by states to prevent forced or compulsory labour shall include: protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process. (Protocol of 2014 to the Forced Labour Convention, 1930).

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