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MONITORING AND ENFORCEMENT OF RECRUITMENT REGULATIONS



International Labour Organization



International Training Centre

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Training Toolkit on Establishing Fair Recruitment Processes – Module 4: Monitoring and enforcement of recruitment regulations

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GENERAL OBJECTIVES



By the end of this module, participants will be able to:

- Understand governments' responsibilities in regards to the monitoring and enforcement of recruitment regulations
- Have an introductory knowledge of the use of monitoring as an enforcement mechanism and its contribution to ensuring the fair recruitment of workers
- Recognize the key challenges associated with complaints mechanisms and access to justice for workers, including migrant workers
- Explore the most commonly used legislative mechanisms for prosecuting recruitment abuses
- Appreciate the particular role of trade unions and non-governmental organizations in promoting and monitoring fair recruitment



- Become familiar with pilot initiatives of workers' organizations to protect and empower workers during the recruitment and placement process
- Become acquainted with self-regulation mechanisms adopted by private recruitment agencies

INTRODUCTION

The adoption in 1997 of the ILO Private Employment Agencies Convention (No. 181) reflected the acknowledgement of the growing role played by private recruitment agencies in matching workers with available jobs, and their potential to promote labour market efficiency. However, the Convention also recognizes the need for governments to regulate and monitor the activities of private employment agencies in an effort to prevent abusive practices and ensure the protection of migrant workers' rights.

Although states bear the primary responsibility for monitoring recruitment regulations, the social partners (i.e. trade unions and employers' organizations) as well as non-governmental organizations can contribute to recruitment monitoring through self-regulation mechanisms, awareness-raising and advocacy campaigns.

This module discusses the monitoring and enforcement of recruitment regulations by governments as well as by a number of other key actors, and is composed of the following topics:

- **TOPIC 1** presents the rationale behind monitoring and regulation of private recruitment agencies.
- **TOPIC 2** introduces the roles of governments in enforcing recruitment regulations.
- **TOPIC 3** explores alternatives to statutory regulation, i.e. self-regulation mechanisms such as associations and codes of practice for private employment agencies.
- Finally, **TOPIC 4** presents the roles, responsibilities, and initiatives of trade unions and non-governmental institutions in the promotion of recruitment monitoring.



TOPIC 1: RECRUITMENT-RELATED HUMAN RIGHTS ABUSES: WHY IS THERE A NEED TO MONITOR RECRUITMENT?

Before discussing the monitoring and enforcement of recruitment regulations, it is necessary to first establish why recruitment needs to be monitored. Abuses endured by workers (both migrants and nationals) during and as a result of the recruitment process and business practices engaged in by private recruitment agencies and their sub-agents are heavily documented in reports by human rights organizations, the media, governments and academics. In order to effectively monitor the activities and practices of private recruitment agencies, it is important to clearly distinguish them from abuses committed by other actors involved in the migratory process (i.e. employers, medical personnel, travel agencies, and so on).

The table below sets out the main activities of unscrupulous recruiters and their negative implications on the human rights of workers:

Human rights impacts arising out of unfair recruitment practices

RECRUITMENT BUSINESS PRACTICE	ADVERSE HUMAN RIGHTS IMPACT
High recruitment fees charged to worker	May lead to debt bondage as worker takes out high loan to fund cost of recruitment, sells assets, or has costs deducted from salary in the destination state, meaning that the migrant is not able to leave the employment (forced labour according to ILO definitions).
Deceit about terms and conditions of employment contract (contract deception or substitution)	May lead to being trapped in forced labour without the ability to escape; if workers had known the reality, they would never have accepted the job or willingly migrated.
Processing fake documents	Private recruitment agencies (PRAs) are reported to do this in order to process documents quicker, because the individual is being trafficked, or because the migrant is a woman aged under 30 and from a country with a recruitment ban on women. Fake documents leave migrants in an irregular status in the destination state and consequently unprotected.

RECRUITMENT BUSINESS PRACTICE	ADVERSE HUMAN RIGHTS IMPACT
PRA does not check who or what will be employing the migrant, nor in what conditions this will take place	In recruiting, PRAs may deliver the migrant into a physically, sexually or emotionally abusive employment situation. Worst case scenario might be forced labour and/or trafficking, or a dangerous work environment.
PRA confiscates passport/other identity documents	Without identity documents the worker will not be able to obtain other jobs or access essential services and may be afraid to ask for help in the destination countries.
PRA engages in 'visa trading'	Workers may not have a 'real' job and be left in an irregular status with no protection in the destination state.
PRA engages in emotional and physical violence, including sexual/threats	Reported to occur at all stages of the recruitment process. Violence and threats. Employers (especially of domestic workers) are often reported to call PRAs to complain about workers they have placed with them and to seek their assistance in 'disciplining' migrants. This may take the form of physical/emotional violence.
PRA deliberately recruits migrants from countries which lack embassies in the destination state	Where PRAs in destination states deliberately recruit migrants from countries which lack diplomatic representation in that particular destination, this is a deliberate attempt to recruit migrants who are not able to seek protection from the overseas missions of their home country.



DECEPTION



RETENTION OF PASSPORTS



ILLEGAL WAGE DEDUCTIONS

DEBT & REPAYMENT
OF
RECRUITMENT FEES

THREATS



EXPULSION

In extreme cases, private recruitment agencies, labour intermediaries and sub-agents may be involved in the most serious abuses of trafficking and/or forced labour. More commonly, however, recruiters are associated with exploitative practices such as “false promises” about the salary that migrants can expect on arrival to the destination country, high recruitment fees which lead to situations of debt bondage (with fees amounting in some cases equalling ten months’ wages), and retention of passports or work permits to restrict movement. Another common form of private recruitment agency exploitation is employment contract substitution, which arises when migrants are promised a particular contract throughout the pre-departure phase and are confronted with an entirely different job (and lower salary) in the destination country.

The gender dimension of abusive recruitment practices should not be overlooked. Women migrants, and particularly domestic workers, face a greater risk of being exploited. By virtue of the fact that they often carry out their duties in isolation, within the confines of the private sphere and outside of labour market regulation and labour inspection, female domestic workers endure greater risks and sometimes higher levels of exploitation (i.e. threats to their liberty, sexual and gender-based violence) and lower levels of access to justice.



TOPIC 2: THE ROLE OF GOVERNMENT INSTITUTIONS IN ENFORCING RECRUITMENT REGULATIONS

A. MONITORING THE ACTIVITIES OF PRIVATE RECRUITMENT AGENCIES

Even before introducing new legislation governing the operation of private employment agencies, governments are required to develop a monitoring and enforcing mechanism that ensures that all market actors meet the requirements. Licensing fees should be a part of this mechanism. Monitoring and law enforcement can be carried out by the licensing authority or by regular labour inspection units and the police in the case of criminal activities. In order to operate effectively, law enforcement officials must have clear benchmarks and standards against which the performance of private employment agencies and other types of agencies can be evaluated. The conditions and criteria stipulated in the license can be used for this purpose, along with codes of conduct and relevant labour and immigration laws.

Techniques for monitoring recruitment practices

Two alternative ways of monitoring agencies' activities are a desk audit of provided information or field audits.

The most common method for the evaluation of the license conditions is a **DESK AUDIT**. This may be carried out during the application procedure. However, in many countries agencies are obliged to provide the competent authority with additional information upon request. If the monitoring authority suspects an agency of being involved in fraudulent recruitment practices, the request for additional information is justified. While this additional information provided by the agency may be sufficient, inspection of their premises may also be necessary in some cases. The agreement for a labour inspector to inspect agency premises is included in the application procedure in some legislation.

Besides the inspections that form part of pre-licensing procedures, many countries opt for **REGULAR AND/OR SPOT INSPECTIONS**. These are usually unannounced as they are often the result of a complaint or report on violations of the regulations. Regular inspections, however, require sufficient financial and human resources. Given that in many countries, financial and personnel capacities for



regular or periodic inspections are lacking, they should at least provide a mechanism for on-the-spot inspections to investigate reported abuses or misconduct of an agency.

Some countries have installed auditing procedures which mean the applicant has to appear personally for the licensing procedure. Requiring an appearance in person for an interview with the licensing authority, committee or officer provides a way of scrutinizing in detail the applicant's qualifications and business strategies for operating a private employment agency in advance. A number of countries have established registration numbers for all agencies' activities as an additional form of monitoring. If a public register of all licensed private employment agencies exists, this requirement becomes useful as a crosscheck of their respectability as it can be verified whether the agency is actually licensed.

Another way of directly monitoring the recruitment and placement activities of private employment agencies is to require agencies to supply the authorities with copies of the employment contracts entered into. Only if contracts meet the pre-defined set of minimum standards can the authorities give clearance for the job to commence. This requirement can be a useful tool, especially in relation to recruitment for employment abroad. As monitoring the working conditions of migrant workers is, by definition, difficult to achieve in the destination country, this ensures that as many details as possible are fixed in writing in the pre-departure phase. This requirement can, for example, avoid the placement of women migrant workers in abusive conditions.

B. ASSESSMENT OF PENALTIES FOR NON-COMPLIANCE WITH RECRUITMENT REGULATIONS

Legal basis for non-compliance penalties

In cases of non-compliance with recruitment regulations, governments are required to impose sanctions. The ILO Private Employment Agencies Convention, 1997 (No. 181) is the key legal document providing standards for the regulation of private employment agencies to ensure fair practices and help prevent human trafficking and other forms of exploitation. The imposition of sanctions is prescribed by Article 10 of the Convention, where States are called to adopt "laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses".

If on the contrary, legislative provisions on the operation of private employment agencies are not properly enforced and no sanctioning mechanism exists, the regulations in place will not deter or affect private employment agencies engaged in malpractice. Therefore, a sanctioning system is necessary in order to act adequately in cases of non-compliance. This means that sanctions can be imposed either by the enforcing authority itself, through administrative tribunals, or through a court of law.

Administrative sanctions

Sanctions for non-compliance with private employment agency legislation and regulations usually depend on the type of infringement and whether the perpetrator is a first-time or repeat offender. Measures can range from minor administrative to severe penal sanctions. In cases where the private employment agency has been found guilty of minor misconduct, the enforcing authority could give appropriate advice to the private employment agency on how to rectify their procedures or practices.

At the other extreme, administrative sanctions include the possibility of withdrawing a license in cases of severe or repeated misconduct. Sanctions that permanently prohibit the business of private employment agencies engaged in fraudulent recruitment and placement activities can serve as a deterrent and protect those private employment agencies that conduct their business correctly. In less severe cases of non-compliance, the private employment agency can be reprimanded and given the chance to improve its behaviour. Legislation should, however, also provide the possibility of withdrawing or revoking licenses for a specific period of time (suspension).



Penal sanctions

Since recruitment malpractice can have severe consequences for jobseekers, penal sanctions for non-compliant private employment agencies may also be imposed. Whether these penal sanctions take the form of fines or imprisonment will depend on the gravity of the infringement in question. The decision to impose penal sanctions should take into account any compensation paid by the private employment agency to the jobseeker. If the jobseeker was the victim of exploitation through the recruitment and placement of a private employment agency, the agency should be obliged to pay financial restitution to the jobseeker.

Incentives to promote compliance by private employment agencies

In addition to imposing administrative and penal sanctions on non-compliant private employment agencies, some countries have introduced incentives for compliant private employment agencies. The Philippines, for instance, rewards exemplary private employment agencies by having them accompany government officials on missions to destination countries. The return of whole or part of the security deposit after a specific period of time can also serve as an incentive for ethical recruitment.

C. ADMINISTRATION OF A COMPLAINTS PROCEDURE FOR WORKERS

In cases where workers have been victims of abuse or malpractice by a private employment agency, it is necessary to set up adequate complaints procedures to identify and examine allegations of violations. This is in accordance with Article 10 of Convention No. 181, which further calls for involving “as appropriate the most representative employers’ and workers’ organizations” in the complaint machinery. Furthermore, jobseekers that have been victims of abuses have the possibility of seeking remedies through filing complaints.

In some countries, complaints by jobseekers that have been abused or exploited have to be lodged with the competent labour courts. Adjudication in court procedures, however, can be costly, lengthy and excessively legalistic. Another avenue for dealing with complaints is through a specific administrative grievance procedure. These procedures allow complaints and allegations of malpractice or abuse to be processed in an accelerated manner.

If the monitoring authority finds sufficient evidence of malpractice and if persuasion does not lead to a change of behaviour, administrative and/or penal sanctions should be imposed. They can include forfeit of the deposit and performance bonds posted, fines, revocation or withdrawal of a license, imprisonment, and seizing of assets.

COMPLAINT PROCEDURES

Tier 1 Private Employment Agencies

In the event of abusive employment conditions abroad, the migrant should first contact the PEA that hire him or her. The PEA should then attempt to settle the dispute between employee and employer amicably and by voluntary agreement.

Tier 2 Responsible State Authority

If tier 1 fails, then the appropriate institutions should provide impartial and effective third-party assistance through conciliation, arbitration and mediation. Institutions should get in touch with their counterparts in the country of employment. Should the complaint be proven, the responsible authority should revoke or suspend the licences or satisfy claims for refunding.

Tier 3 Adjudication

Though prolonged and costly, this is the best way to deal with serious abuses of human rights in the recruitment process, including human trafficking. Complaints involving acts that are criminal in nature and require the imposition of penalties such as fines and imprisonment come within the jurisdiction of the courts.

The authorized state institution should be empowered to monitor the operations of recruitment agencies, by:

- obtaining reports from recruitment agencies on job placement, employment status of those deployed, and other information needed by state agencies;
- organizing periodic visits or inspections by state agents or their representatives;

- introducing information campaigns identifying recruitment agencies or foreign employers blacklisted for violations of the law or for having perpetrated illegal acts or abuses; and
- establishing efficient and competent mechanisms for the review of migrant workers' employment contracts prior to signature and during their employment when the contract is enforced.

D. INFORMATION REPORTING TO RESPONSIBLE AUTHORITIES

The information provided by private employment agencies should be presented periodically to the responsible monitoring authorities. These reports on the general evolution and development of private recruitment and placement activities can give an overview of shortcomings in trends and practice.

There are several countries which use information from government registration and licensing to publish the names of private agencies conforming to the law and those which do not. This process is a way of distinguishing between stronger and weaker private employment agencies. The Philippine Labour Code, for example, has provided guidelines, rules and regulations with respect to private sector participation in the recruitment and placement of workers locally and overseas, and has maintained a roster of overseas Filipino workers serving penalties for violation of the Code of Conduct for Overseas Employment. This list is published periodically and contains licensed employment agencies which have been suspended, cancelled, banned or delisted.

Access to justice for migrant domestic workers in South East Asia

Barriers to accessing formal assistance are one of the key reasons why migrant workers are vulnerable to labour rights violations during recruitment and employment. Due to the challenges they face in seeking help through official channels, migrant workers often turn to informal support networks, even in cases of severe exploitation. A regional analysis of data from 1,000 complaint cases involving more than 7,000 women and men migrants in Cambodia, the Lao People's Democratic Republic, Malaysia, Myanmar, Thailand and Vietnam was carried out by the ILO TRIANGLE in ASEAN programme.

Subject of complaints

Overall, the most common subject of migrant worker complaints was delayed deployment/jobs not provided as promised (35 per cent), which is a recruitment related abuse predominantly faced in countries of origin. Recruiting for non-existing jobs is a common fraudulent practice by recruitment agencies, despite violating state laws and regulations. Some 21 per cent of complaint cases were related to wages below the legal minimum.

Resolution of complaints

Regarding mechanisms for the resolution of complaints, administrative hearings were the most common method used to resolve migrant grievances regionally (59 per cent). This was especially the case in Cambodia, where administrative mechanisms accounted for 82 per cent of all cases closed. The second most common resolution method was informal mediation. All cases in Cambodia were resolved without court hearings, which can be interpreted as a positive result in providing responsive channels for settlement. In Thailand, a large proportion of cases were dropped without any form of remedy being obtained (28 per cent). There were three main reasons why cases were closed prematurely:

1. complainants discontinuing cases due to fears of retaliation;
2. inability to follow-up because complainants had moved on;
3. refusal by the authorities to pursue cases further due to insufficient evidence or inability to meet legal and procedural requirements (particularly due to the irregular legal status of migrants).

Remedies received by complainants

Regionally, the most frequent remedy obtained by migrant workers was the return or provision of identification documents (35 per cent), which included cases in countries of origin where recruitment agencies failed to deliver passports and visas, as well as in destination countries, where employers unlawfully withheld passports and work permits to restrict mobility. Financial compensation and reimbursement made up 30 per cent of the remedies. However, the majority of “compensation” paid to migrant workers was money owed to them for unpaid wages rather than compensation for harmed suffered. The awarding of additional money for punitive damages was found to be extremely rare.

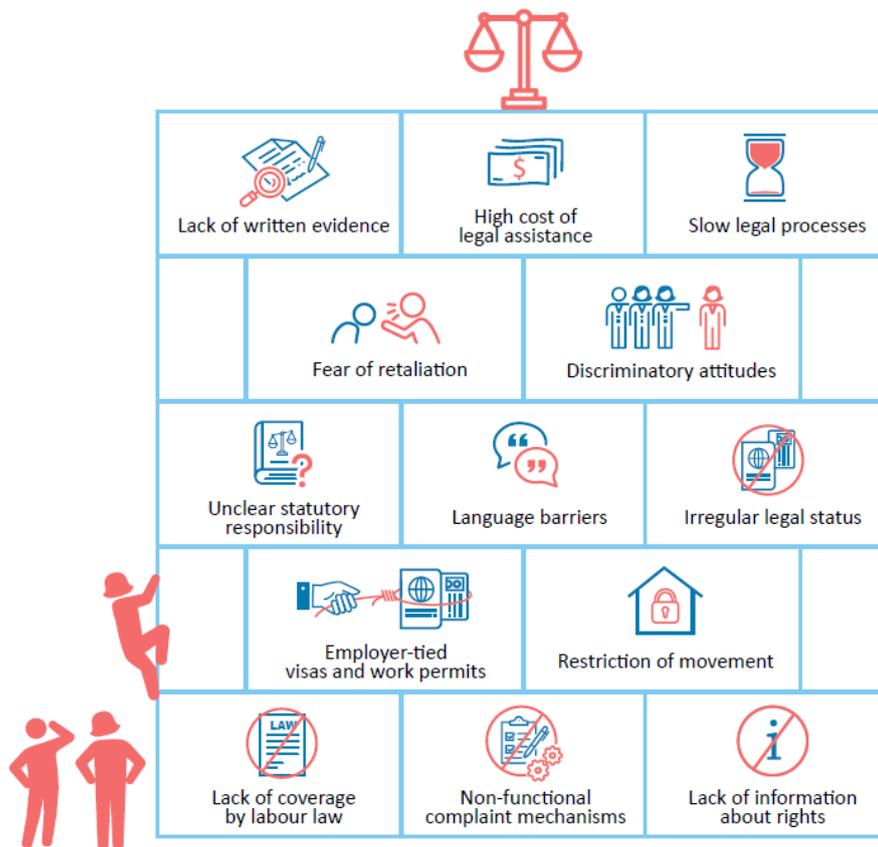
Sanctions applied to offenders

Notably, in 82 per cent of complaint cases, no sanctions were applied to offenders. Where sanctions were applied, the most common was an administrative penalty (5 per cent), which was typically a suspension or revocation of a license to operate recruitment agencies.

Conclusion

In spite of improvements in increasing access to justice for migrant workers in South East Asia, they continue to face major obstacles to lodging and resolving complaints in countries of origin. Only the most serious violations are rectified, whereas everyday abuses continue to go unchallenged. The situation in destination countries is similar, though compounded by language barriers and employer-tied visas and work permits. As a result, most migrant workers do not risk making a complaint unless their livelihoods or basic dignity as human beings are clearly threatened. It is well understood by migrants that lodging a grievance is likely to mean the end of their employment and thus long-term improvements to wages and working conditions are deemed out of reach. Expanded efforts are needed to improve the accessibility and effectiveness of complaints mechanisms to ensure that migrant workers are provided with just remedies.

Key challenges in the area of complaints mechanisms



E. LEGISLATIVE MECHANISMS FOR PROSECUTING UNFAIR RECRUITERS

In cases of severe abuses and exploitation of workers and jobseekers, unfair recruitment practices may amount to human trafficking and bring perpetrators within the scope of states' **ANTI-TRAFFICKING LAWS**. Securing trafficking convictions remains an ongoing challenge for practitioners in most States of the world. This is most difficult in trafficking cases involving private recruitment agencies. As the involvement of recruitment agencies often takes place in the "pre-employment" phase, it may be challenging to prove that they were part of the chain of trafficking or that they knew that the victims were going to be exploited. Moreover, trafficking is especially difficult to prove in cases in which victims are afraid to testify due to threats or fear of deportation or being tried for crimes committed as a result of being trafficked.

Recruitment agencies involved in human trafficking have also been tried under **CRIMINAL ENTERPRISE STATUTES**, including laws on gang offenses or participating in an organized criminal group. In certain cases, workers are voluntarily smuggled across international borders and are made to pay off their smuggling fees through work under substandard conditions, resulting in debt bondage or trafficking in persons. For this reason, recruitment agencies and recruiters may in fact act as smugglers and be tried under laws on migrant smuggling.

Not all abusive practices of recruiters and recruitment agencies should be considered trafficking in persons or forced labour. While some practices may create vulnerabilities that contribute to workers subsequently becoming trafficking victims, those practices as such may not amount to trafficking in persons, and using anti-trafficking laws may not be adequate. Yet, it is important to tackle such practices to prevent trafficking in persons and to reduce people's vulnerability to falling prey to abusive recruiters and traffickers.

In some cases, private recruiters may be tried under **LABOUR LAWS AND REGULATIONS OR ADMINISTRATIVE LAW**. While these charges carry lower sentences, prosecutors can achieve significant sanctions by charging abusive recruiters for multiple crimes and/or on multiple counts. Often, recruiters are tried under **LAWS RELATED TO FRAUD**, including visa, health care, and mail fraud, as well as under **TAX EVASION LAWS**.

The **TRANSNATIONAL CHARACTER OF ABUSIVE RECRUITMENT PRACTICES** also pose challenges to effectively tackling the problem. For example, the question of jurisdiction is often raised, since money is usually paid to a local agent in the country of origin, but the abuse (whether it is a change in the conditions of work, confiscation of identification documents, or non-payment of wages) generally occurs in the destination country. There may be multiple victims – as well as suspects – across various regions, countries, and jurisdictions, making gathering evidence and arresting suspects difficult.

In summary, abusive recruitment practices may be prosecuted using the following laws:

- Anti-trafficking laws
- Criminal laws
- Administrative laws
- Laws related to fraud (including tax evasion laws)

TOPIC 3: ALTERNATIVES TO STATUTORY REGULATION: PRIVATE EMPLOYMENT AGENCIES' SELF-REGULATION MECHANISMS

While effective registration and licensing is key to the implementation of the principles of Convention No. 181, it is important to note the positive role played by professional codes of practice and other voluntary industry standards through **SELF-REGULATION**. A number of practices exist in promoting industry self-regulation and where, in developed countries, private employment agencies have organized themselves into national industry associations utilizing industry codes of practice as a criterion for membership.

A. ASSOCIATIONS OF PRIVATE EMPLOYMENT AGENCIES

Across different countries, private employment agencies have organized themselves to gain visibility and legitimacy in national and global labour markets. Private business associations have been key in creating a positive image of private employment agencies and raising standards in the industry. They also help to ensure that private employment agencies are consulted when new legislation affecting their business is being drafted.

Private employment agency associations can also facilitate the exchange of information between their members and government authorities. Without a solid understanding of the market and the constraints of private employment agencies, legal regulations may poorly reflect the reality and thus be met with resistance. At the same time, private employment agency associations can also collect information on high-risk agencies through regular screenings of their members, as well as new membership applications. Standards in the industry are also raised through the training seminars that private employment agency associations organize. Since recruitment is not a certified profession, business associations are crucial in disseminating know-how and good business practice.

Associations can unite in one specific country or of one specific type. The rules governing the members of an association are specified in the bylaws. They usually contain conditions of eligibility, membership fees, and regulations on the expulsion of members. National associations can form an international federation that would represent their interests on a broader basis.



A primary example of an international confederation of national associations is CIETT, the International Confederation of Private Employment Agencies. CIETT's main objective is to seek greater recognition of the contribution made by agency work to overall employment creation, integration in the labour market and economic growth. Its members are national associations of temporary work agencies and large multinationals like Manpower and Adecco. It has played a leading role in establishing worldwide standards for its private employment agency members in the recruitment industry.

B. CODES OF PRACTICE FOR PRIVATE EMPLOYMENT AGENCIES

Although necessary for curbing abusive recruitment practices, policing by States is not sufficient on its own, given the forces of demand and supply at play. Industry associations have been formed and have the potential to develop and enforce **VOLUNTARY CODES OF CONDUCT**.

Codes of practice can be put in place by individual companies or by an association. They are not legally binding, but should be based on international standards and national law. These standards address issues of business ethics and promote quality in service delivery. This is important in order to ensure the credibility of the code of practice and to facilitate a reputable management of the company or association. Their value has a moral character: a code of practice is a promise and a commitment to clients and the general public.

Past experience has shown that the development of codes of conduct is more effective when the following practices are adhered to. Firstly, while the specific standards to be included in the code are an internal affair of a company or private association, they should nonetheless be discussed with trade unions, government, and civil society organizations. Moreover, independent monitoring mechanisms that stipulate clear criteria and sanctions for non-compliance should be included. Thirdly, the code must be communicated to the public. Finally, a code should be clearly distinct from the by-laws of a federation or private business association, though the combination of these two documents could be used to increase the threshold of membership.

In 1997, a meeting of international experts organized by the ILO elaborated recommendations to encourage self-regulation of private employment agencies engaged in recruitment for employment abroad. It was recommended that codes of practice for overseas recruitment agencies cover the following items:

- Minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers;
- The full and unambiguous disclosure of all charges and terms of business to clients;

- The principle that private agents must obtain, in as much detail as possible, all information pertaining to the job (i.e. specific functions and duties, wages, salaries, and other benefits, working conditions, travel and accommodation arrangements) from the employer before advertising positions;
- The principle that private agents should not knowingly recruit workers for jobs where they would face undue risks and hazards or where they may be subjected to abuse or discrimination of any kind;
- The principle that migrant workers are informed, in their mother tongue or a language they are familiar with, of the terms and conditions of employment;
- Refraining from bidding down wages of migrant workers;
- Maintaining a register of all migrants recruited or placed through them, to be made available for inspection by the competent authorities.

A growing number of codes of conduct have been developed by private employment agencies or their associations. The best known is that developed by the CIETT, which establishes general rules to be adopted by national business associations. The CIETT supports the principle of self-regulation by private employment agencies through cooperation with the relevant institutions.

In addition to voluntary codes of conduct, some private employment agencies have favoured more competitive systems of self-regulation, such as rating or labelling. Major multinational companies promoted the labelling system. The result was the introduction of the ISO 9000 label of quality management by the International Organization for Standardization. Throughout the ISO 9000 family, emphasis is placed on the satisfaction of clients. For example, in 2002, Kelly Services was certified to ISO 9002 quality standards, and like many private employment agencies, now includes the ISO 9000 labels in their advertising and marketing campaigns as a guarantee of fair practice.

TOPIC 4: THE ROLE OF TRADE UNIONS AND NON-GOVERNMENTAL ORGANIZATIONS IN RECRUITMENT MONITORING

A. TRADE UNION INITIATIVES TO PROMOTE RECRUITMENT MONITORING

Being the primary advocates of workers' rights and interests, workers' organizations also play a crucial role as monitors, capacity-builders and policy-influencers. They constitute key actors in multi stakeholder activities to combat unethical recruitment and its links to trafficking and forced labour. Among their membership, they can train workers to recognize and deal with recruitment abuses, or shed light on living and working conditions in destination countries during the pre-departure phase. Workers' organizations can play an important monitoring and oversight role. In collaboration with the labour administration system, they can observe whether basic recruitment principles are respected and check that complaint and dispute resolution mechanisms function adequately.

For example, the British Trade Union Congress (TUC) played an integral role in **IMPROVING LEGISLATION** in the United Kingdom to combat forced labour. In partnership with another union, the TUC ran a campaign to protect migrant domestic workers, which resulted in the elimination of regulations that tied migrant domestic workers to their employers. TUC also joined with the National Farmers' Union and UNITE to help pass the Gangmasters (Licensing) Act in 2004, and further influenced legislation in 2009 when it supported amendments to the Coroners and Justice Bill that made forced labour and servitude criminal offences.

Trade unions have also engaged in **PUBLIC AND WORKER AWARENESS CAMPAIGNS**. For example, the International Union of Food and Agricultural Workers published a tool on migrant worker vulnerability. The Italian General Confederation of Labour ran a media campaign about slave like conditions in the Italian agricultural sector, which included outreach to migrant workers to inform them of their rights. The Trade Union Congress of the Philippines (TUCP) set out to educate potential forced labour and trafficking victims by showing videos on public transportation and establishing information desks in airports and bus and train stations.



The International Trade Union Confederation's Migrant Recruitment Monitor

As the world's largest trade union federation, the ITUC has been reinforcing their engagement in tackling deceptive and coercive recruitment practices targeting migrant workers through the global web-based project of the Migrant Recruitment Monitor (MRM) website. The MRM website, currently under development, will increase knowledge of safe recruitment options and facilitate the sharing of migrant workers' recruitment experiences. This will enable the ITUC and its affiliates to create a global platform that provides accurate information on recruitment to both prospective workers and migrant workers already living and working in countries of destination.

The MRM will be a global homepage with country-specific legal advice and subdomains in the national languages of the respective countries. Furthermore, it will allow workers to evaluate and rate the recruitment agencies they come into contact with. This will serve as an important informational resource for migrant workers and prospective migrants, while increasing pressure on agencies in relation to their compliance on human rights regarding coercive and deceptive recruitment procedures.

The project of the MRM website integrates large-scale outreach to migrant workers, organizing, and advocacy, both online and offline. Implementation of the project involves member organizations and requires national plans to inform migrant workers of their rights.

B. NON-GOVERNMENTAL ORGANIZATIONS' EFFORTS TO INCREASE MONITORING AND ENFORCEMENT

Certain non-governmental organizations' mandates also encompass activities related to the enforcement of fair recruitment.

The Institute for Human Rights and Business, in cooperation with Anti-Slavery International, leads the Staff Wanted Initiative to raise awareness within the UK hospitality industry of the steps needed to combat the exploitation of vulnerable workers, trafficking and forced labour. The Initiative works with business partners and other stakeholders to **IMPROVE RECRUITMENT AND EMPLOYMENT CONDITIONS, IDENTIFY PRACTICES THAT ENABLE EXPLOITATION, and ADVOCATE FOR IMPROVED PRACTICES AND RISK MITIGATION.**

A number of organizations have also published **ETHICAL RECRUITMENT AND HIRING FRAMEWORKS** or **CODES OF CONDUCT**. For example, in 2012, Verité launched the Ethical Framework for Cross-Border Labor Recruitment with the Manpower Group, setting out a mechanism for changing the way the recruitment industry responds to forced labour and human trafficking. The Framework establishes Standards of Ethical Practice, identifies benchmarks to help measure compliance with the standards, and outlines the basic requirements of independent systems of verification and certification so that recruiters themselves, as well as employers and other stakeholders, can confidently know whether recruitment practices are observing and upholding ethical standards.

KEY LEARNING POINTS



- Private recruitment agencies, labour intermediaries and sub-agents may be involved in the most serious abuses of trafficking and/or forced labour. More commonly, however, recruiters are associated with **EXPLOITATIVE PRACTICES** such as “false promises” about the salary that migrants can expect on arrival to the destination country, high recruitment fees which lead to situations of debt bondage, and retention of passports or work permits to restrict movement.
- Even before introducing new legislation governing the operation of private employment agencies, **GOVERNMENTS ARE REQUIRED TO DEVELOP A MONITORING AND ENFORCING MECHANISM** that ensures that all market actors meet the requirements. Licensing fees should be a part of this mechanism. Monitoring and law enforcement can be carried out by the licensing authority or by regular labour inspection units and the police in case of criminal activity.
- Two **ALTERNATIVE WAYS OF MONITORING** agencies’ activities are a desk audit of provided information or field audits. The most common method for the evaluation of the license conditions is a **DESK AUDIT**. This may be carried out during the application procedure. Besides the pre-licensing procedure inspections, many countries opt for **REGULAR AND/OR SPOT INSPECTIONS**. These are usually unannounced as they are often the result of a complaint or report on violations of the regulations.
- In cases of **NON-COMPLIANCE** with recruitment regulations, governments are required to impose **SANCTIONS**. The ILO Private Employment Agencies Convention, 1997 (No. 181) is the key legal document providing standards for the regulation of private employment agencies to ensure fair practices and help prevent human trafficking and other forms of exploitation. Measures can range from minor administrative to severe penal sanctions. Some countries have introduced **INCENTIVES** for compliant private employment agencies.
- In cases where workers have been victims of abuse or malpractice by a private employment agency, it is necessary to set up **ADEQUATE COMPLAINTS PROCEDURES** to identify and examine allegations of violations. The **INFORMATION** provided by private employment agencies should be presented periodically to the responsible monitoring authorities.
- Securing trafficking convictions remains an ongoing challenge for practitioners in most states of the world. Not all abusive practices of recruiters and recruitment agencies amount to trafficking in persons or forced labour. Recruiters can be tried on **LABOUR LAWS AND REGULATIONS, CRIMINAL ENTERPRISE STATUTES, ADMINISTRATIVE LAW, ANTI-TRAFFICKING LAWS, AND/OR LAWS RELATED TO FRAUD (INCLUDING TAX EVASION LAWS)**.

- It is important to note the positive role played by professional codes of practice and other voluntary industry standards through **SELF-REGULATION**. Private employment agencies have organized themselves to gain visibility and legitimacy in national and global labour markets. They also help to ensure that private employment agencies are consulted when new legislation affecting their business is being drafted. **CODES OF PRACTICE** are not legally binding, but should be based on international standards and national law. These standards address issues of business ethics and promote quality in service delivery.
- **WORKERS' ORGANIZATIONS** can play an important **MONITORING AND OVERSIGHT ROLE**. In collaboration with the labour administration system, they can observe whether basic recruitment principles are respected and check that complaint and dispute resolution mechanisms function adequately. Trade unions have also engaged in **PUBLIC AND WORKER AWARENESS CAMPAIGNS**.
- Certain non-governmental organizations encompass activities related to the enforcement of fair recruitment, proposing multi-stakeholder initiatives seeking to **IMPROVE RECRUITMENT AND EMPLOYMENT CONDITIONS, IDENTIFY PRACTICES THAT ENABLE EXPLOITATION, and ADVOCATE FOR IMPROVED PRACTICES AND RISK MITIGATION**. A number of organizations have also published **ETHICAL RECRUITMENT AND HIRING FRAMEWORKS** or **CODES OF CONDUCT**.

TEST YOUR KNOWLEDGE



What have you learned? Take the quiz below to test your knowledge.

- 1) Recruiters are often associated with one or more of the following exploitative practices:
 - a. False promises about salaries
 - b. High recruitment fees (which can lead to situations of debt bondage)
 - c. Retention of passports (or work permits)
 - d. Contract substitution

- 2) Sanctions for non-compliance through legislation and regulations concerning private employment agencies usually depend on the type of infringement and whether the perpetrator is a first-time or repeat offender. Measures can range from minor administrative to severe penal sanctions.
 - a. True
 - b. False

- 3) Even before introducing new legislation governing the operation of private employment agencies, governments are required to develop a monitoring and enforcing mechanism that ensures that all market actors meet the requirements.
 - a. True
 - b. False

- 4) Two alternative ways of monitoring agencies' activities are a desk audit of provided information or field audits. The most common method for the evaluation of the license conditions is a _____.
 - a. field audit
 - b. desk audit

- 5) Which of the following are key challenges in the area of complaints mechanisms?
 - a. Lack of written evidence
 - b. Fear of retaliation
 - c. Language barriers
 - d. Irregular legal status
 - e. All of the above

- 6) All abusive practices committed by private recruitment agencies amount to trafficking in persons and/or forced labour.
- True
 - False
- 7) Abusive recruitment practices may be prosecuted using the following laws:
- Anti-trafficking laws
 - Criminal laws
 - Family and personal status laws
 - Laws related to fraud (including tax laws)
- 8) Private employment agencies can contribute to the monitoring and regulation of recruitment practices through self-regulation mechanisms such as:
- Public and worker awareness campaigns
 - Codes of practice and training of workers
 - Codes of practice and associations
 - Associations and training of workers
- 9) A code of practice for private employment agencies is:
- legally binding, based on international standards and national law.
 - a promise and a commitment towards clients and the public at large.
- 10) Trade unions can contribute to the monitoring and regulation of recruitment practices through:
- Training of workers
 - Incentives for compliant private employment agencies
 - Imposing penal sanctions
 - Public and worker awareness campaigns
- 11) Which of the following statements is FALSE:
- Governments play a major role in recruitment monitoring and regulation
 - Trade unions and NGOs play an important role in monitoring and regulating recruitment practices
 - Governments only, play a major role in recruitment monitoring and regulating

Correct answers:

1) a, b, c, d; 2) a; 3). a; 4) b; 5) e; 6) b; 7) a, b, d; 8) c; 9) b; 10) a, d; 11) c.



TRAINING ACTIVITIES

TRAINING ACTIVITY 1

TABLE DISCUSSION OBJECTIVES:



- Highlight the shared responsibilities in the monitoring of recruitment processes;
- Identify the strengths and limitations of the various recruitment monitoring strategies;
- Recognize the complementary roles of governments and stakeholders in monitoring recruitment process.

INSTRUCTIONS FOR THE TRAINER



- Participants will be divided into 5 groups; each group will represent a different actor in **the recruitment monitoring process**: Government, Worker's Organization, NGO, Private Employment Agency and Enterprise.
- After a 10 min general consultation and preparation with peers representing the same actor, participants will join a discussion table (five people) that will be composed of representatives of the other actors.
- Each group table will have a set of question cards. Participants will draw one question card to begin the discussions (30 min):
 - Card 1: "Is there a need to monitor and regulate private recruitment agencies?"
 - Card 2: "How can a fair recruitment process be promoted and assured?"
 - Card 3: "How can stakeholders in the discussion table contribute to monitoring recruitment processes?"
 - Card 4: "How can alternative monitoring mechanisms improve/support the statutory regulation mechanisms established by governments?"
- Once the discussions are over, groups will present their conclusions in plenary (10 min).

TIPS



- Encourage the active participation of all members of the groups
- Be sure that during the 10-minute consultation period (prior to the discussion session) participants have a clear understanding of their respective roles and responsibilities.
- Participants may be asked to play the role of facilitators in order to lead the discussions at the table and ensure the participation of all the members.
- Encourage participants to draw from their professional backgrounds and experiences in order to enrich the discussions.
- Provide each table with a set of 4 question cards.

MATERIALS



- 1 set of question cards per table
- Sheets of paper
- Writing materials
- Set of post-its

TIME

- 10-15 min preparation time before table discussions (general discussion on monitoring of fair recruitment process)
- 30 min simultaneously of table conversation
- 5 min for groups to present in plenary
- 5 minutes for Q&A

TRAINING ACTIVITY 2**BRAINSTORMING****OBJECTIVES:**

- Recognize the key challenges that migrant workers face in submitting complaints related to recruitment abuses;
- Propose solutions to tackle current challenges and highlight the key stakeholders implicated in implementing these strategies.

INSTRUCTIONS FOR THE TRAINER

- In the plenary session, initiate a discussion on the specific challenges that migrant workers may face in lodging complaints related to recruitment abuses. Allow participants to express their views and debate among one another, while moderating the discussion.
- Highlight and recap the key elements that arose from the discussions, addressing gaps where necessary by presenting participants with the figure in Annex 1, entitled “Key challenges in the area of complaints mechanisms”.
- Organize participants into groups of four or five persons.
- Provide each table with a copy of the figure in Annex 1 (“Key challenges in the area of complaints mechanisms” Figure) and deliver the following instructions:
 - Each table should select, from the figure in Annex 1, the three most serious challenges related to migrant workers’ access to justice and complaints mechanisms (according to their own realities/context).
 - Participants should then reflect on strategies (i.e. laws, policies and practices) that have the potential to reduce the barriers that migrant workers face in obtaining access to justice and complaints mechanisms.
 - Participants should identify the key stakeholders implicated in implementing these strategies (i.e. governments, workers’ organizations, employers’ associations, recruitment agencies, and/or non-governmental organizations, among others). (20-25 min)
- Following the table discussions, participants will justify their selection of the three key challenges in plenary and present the solutions they have identified to remedy those challenges (including potential stakeholders that might be implicated in their implementation). (10 min)

TIPS



- Ensure each group is composed of approximately four or five members with background and gender diversity.
- In between brainstorming exercises, wrap up ideas and conclusions from all the groups, highlighting their common ideas and contrasting their complementary answers.
- Highlight gender-based abuses and challenges faced by women migrant workers.
- Print the table in A1 or A2 format.
- For a more focused group discussion, ensure participants select three priority challenges to be addressed.

MATERIALS



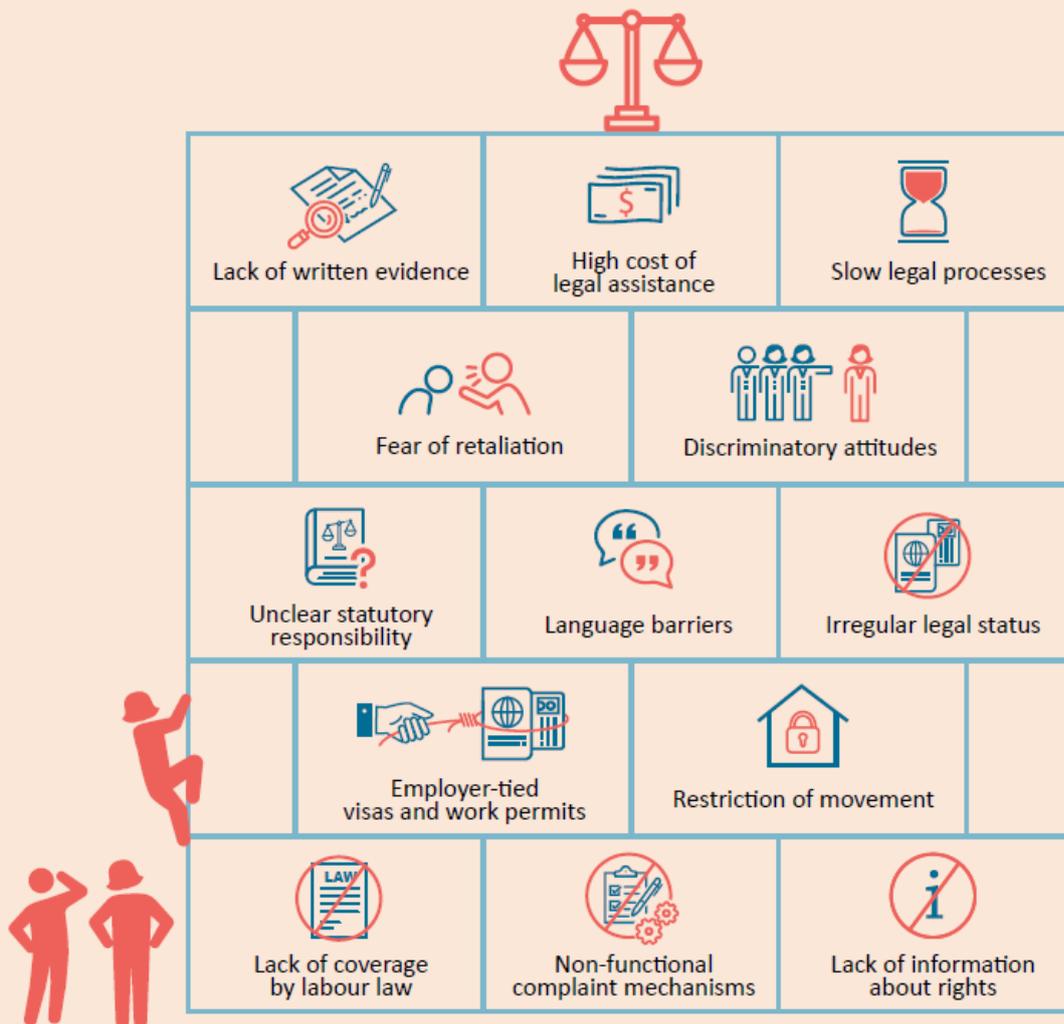
- Sheets of paper
- Writing materials
- Set of post-its
- Printed copy of “Key challenges in the area of complaints mechanisms” in A1 or A2 format

TIME



- 10 min to discuss key challenges in access to justice for migrant workers who have been victims of recruitment abuses
- 20-25 min to brainstorm in groups on solutions to three priority challenges related to access to complaints mechanisms for migrant workers
- 10 minutes for restitution and presentation of results in plenary
- 5-10 min Q&A

ANNEX: KEY CHALLENGES IN THE AREA OF COMPLAINTS MECHANISMS



RESOURCES

Guide to Private Employment Agencies http://www.ilo.org/global/topics/forced-labour/publications/WCMS_083275/lang--en/index.htm

Recruitment Monitoring & Migrant Welfare Assistance: What Works?
<http://apmigration.ilo.org/resources/recruitment-monitoring-and-migrant-welfare-assistance-what-works>

The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf

Access to Justice for Migrant Workers in South-East Asia
https://www.ilo.org/asia/publications/WCMS_565877/lang--en/index.htm

Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination <https://www.osce.org/eea/19242>

Regulating Recruitment to Prevent Human Trafficking and Foster Fair Migration – Models, Challenges, and Opportunities
https://www.ilo.org/global/publications/working-papers/WCMS_377813/lang--en/index.htm

Fair Recruitment for Migrant Workers a Shared Responsibility <https://www.fes-asia.org/news/fair-recruitment-for-migrant-workers-is-a-shared-responsibility/>

- 1 Why fair recruitment matters
- 2 The legal and normative framework for fair recruitment
- 3 Public employment services and private employment agencies in a changing recruitment landscape
- 4 Monitoring and enforcement of recruitment regulations
- 5 Business and private sector engagement for promoting fair recruitment

Training Toolkit on Establishing Fair Recruitment Processes