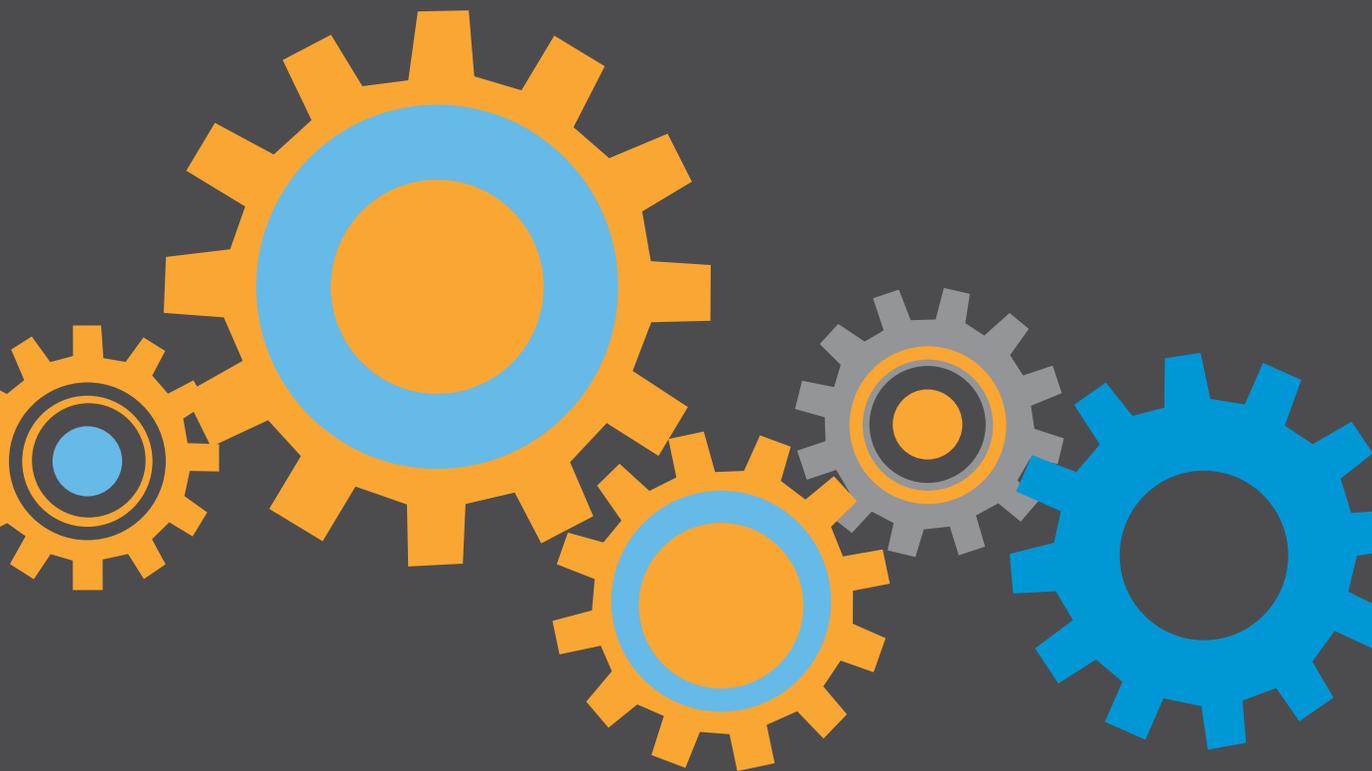


# RECRUITMENT MONITORING & MIGRANT WELFARE ASSISTANCE

*what works?*



International Organization for Migration (IOM)



*This project is financed by the European Union*

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants. The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

*Publisher:*

International Organization for Migration (IOM), Dhaka

House # 13A, Road # 136

Gulshan - I, Dhaka 1212, Bangladesh

Tel: +88-02-9889765, Fax: +8817701

E-mail: [mail@iom.org.bd](mailto:mail@iom.org.bd)

Internet: [www.iom.org.bd](http://www.iom.org.bd); [www.iom.int](http://www.iom.int)

This document has been produced with the financial assistance of the European Union as part of the project: Strengthening Labour Migration Management Capacities in Bangladesh, Indonesia, Nepal and the Philippines for replication in other Colombo Process Member States. The views expressed herein can in no way be taken to reflect the official opinion of the European Union.

*Prepared by:*

Dr. Katharine Jones

Director, Global Migrant Rights' Research

Email: [katharine.v.jones@gmail.com](mailto:katharine.v.jones@gmail.com); [katharine@globalmigrantrightsresearch.org](mailto:katharine@globalmigrantrightsresearch.org)

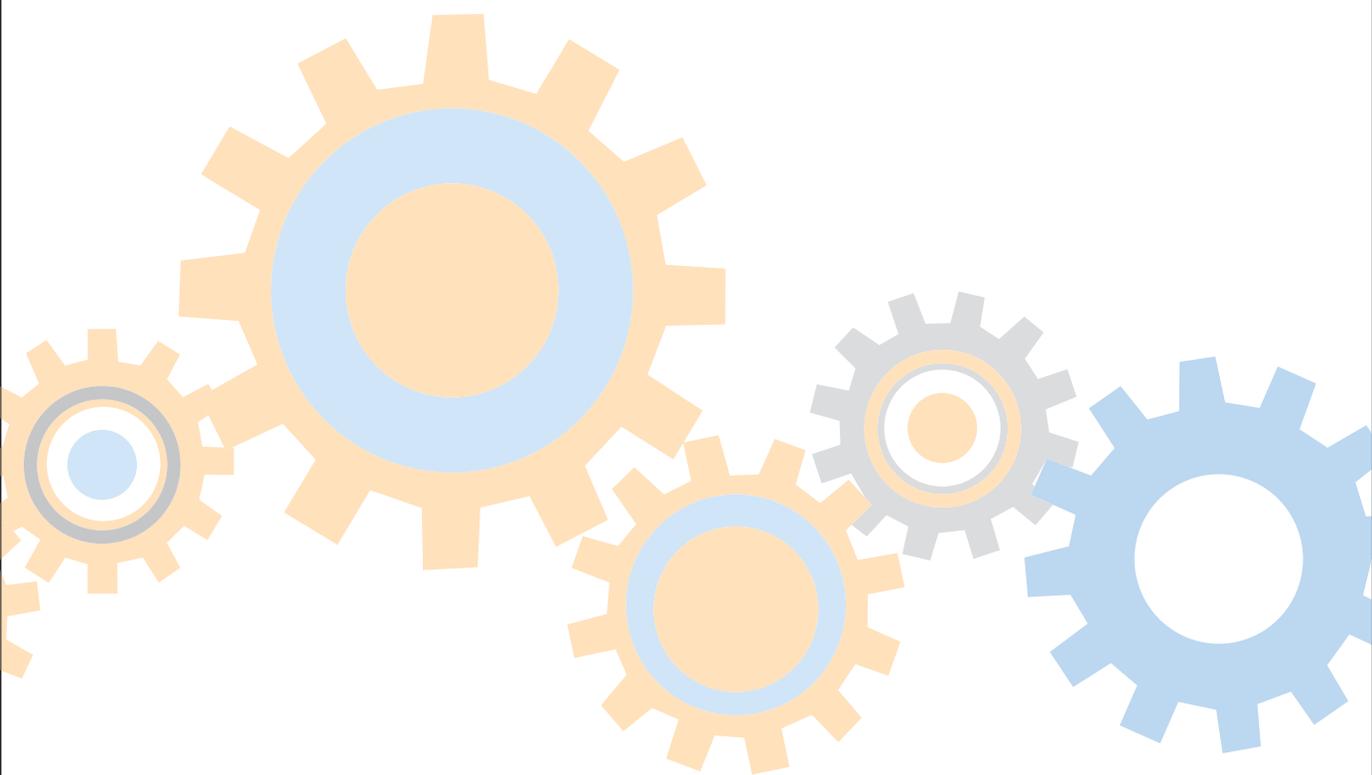
© 2015 International Organization for Migration (IOM)

---

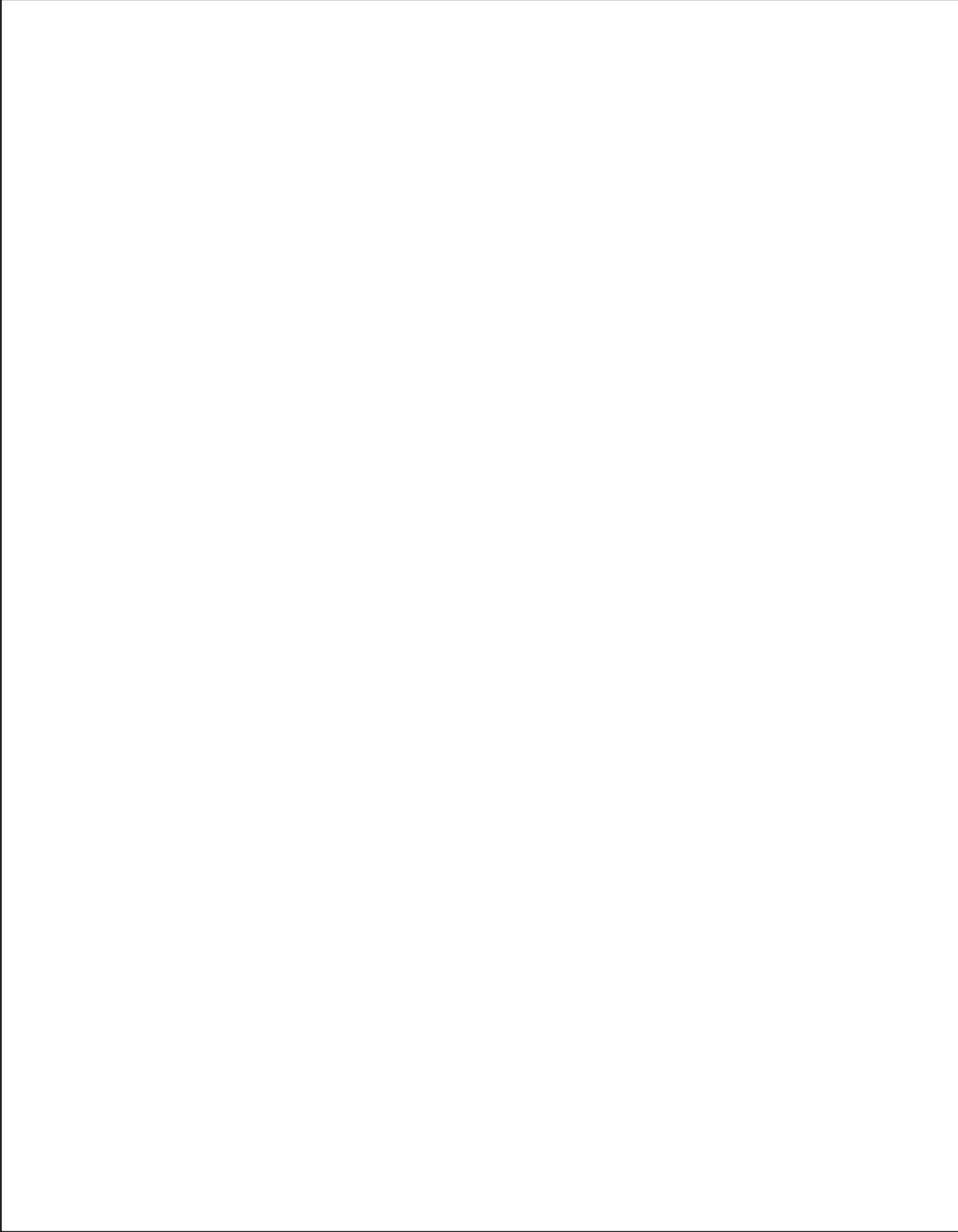
All rights reserved. No part of this study may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the International Organization for Migration (IOM).

# RECRUITMENT MONITORING & MIGRANT WELFARE ASSISTANCE

*what works?*



International Organization for Migration (IOM)



# Acknowledgements

---

This report has been prepared by Dr. Katharine Jones, with the assistance of Marie Apostol, Froilan Malit, William Ragamat, Daryll Delgado, Giovanna Fassetta, and the team at Fair Hiring Initiative.

The authors and researchers acknowledge the kind assistance of many staff at IOM, including Christina Burwell, Ricardo Casco, Sarat Dash, Rabab Fatima, Pravina Gurung, Yuko Hamada, Samiha Huda, Pär Liljert, Maximilian Pottler, Asma Khatun, Nurul Quoriah, Sanam Rahman, Federico Soda, Elisa Tsakiri, and Lara White.

The authors and researchers also acknowledge the precious time and expertise which interviewees from across CPMS and destination state governments, civil society organizations and trade unions, provided to us, without which the report would not have been possible.

Author's contact details: [Katharine.v.jones@gmail.com](mailto:Katharine.v.jones@gmail.com)

# Foreword

---

This report, commissioned by the International Organization for Migration (IOM), examines existing recruitment monitoring mechanisms and compiles good practices of the Colombo Process (CP) countries and key destination States. The report also reviews current provisions for migrant welfare assistance for CP nationals in origin, transit and destination countries. The report concludes with a proposal for a framework to measure the effectiveness of recruitment monitoring. As we approach the new targets for human development that will be set in the “post-2015 Sustainable Development Goals”, it is more important than ever to make ethical recruitment and migrant wellbeing important cornerstones of labour migration policies in the CP region and throughout the world. Three factual points support this imperative.

The first point is the magnitude of international labour migration. Some 45 million women and men from CP countries live and work overseas - an important share of total international migration flows from Asia and one that has surged to 40 per cent, migrating to countries in Asia, the Gulf Region, Europe and North America. This dramatic increase presents a formidable challenge for policymakers as they work for fair and just labour migration arrangements - arrangements that benefit labour migrants and their families while contributing to durable economic growth and development in countries of origin and destination.

Second, recruitment regulation is necessary to redress the structural inequalities that make international labour migrants vulnerable to exploitation. Regulating recruitment is particularly necessary in this context, one in which labour supply from CP countries exceeds demand. Intense competition among prospective labour migrants makes them vulnerable to exploitation by unscrupulous recruitment intermediaries who charge crippling fees in exchange for jobs, which often turn out to be far from what was promised. Regulation is required to ensure that recruitment agencies function in accordance with internationally accepted standards of ethical recruitment - standards under which their services benefit migrants, their communities and countries of origin, and the businesses, economies and communities of destination countries.

Third, we need to build on the current momentum for better labour migration governance. CP countries have made noteworthy progress in improving labour migration governance through institutional reforms, strengthening existing regulations, passing new legislation, and signing bilateral agreements and memoranda of understanding with key destination countries. Sri Lanka's chairmanship of the Colombo Process seeks to build on this progress in a number of ways; these include fostering ethical recruitment practices. IOM is committed to supporting the work of the Colombo Process and the Sri Lankan Chairmanship's vision.

To conclude, we would like to thank the European Union for funding this timely research through its Thematic Programme on Migration and Asylum (TPMA) under the auspices of the project, “Strengthening Labour Migration Capacities in Bangladesh, Indonesia, Nepal and the Philippines for Replication in other Colombo Process Member States”. We hope that CP governments will find this study helpful in their work to improve labour migration governance structures and enhance international cooperation, including with the recruitment industry, to ensure the protection and wellbeing of their overseas nationals.

**William Lacy Swing**

Director General

International Organization for Migration

**Ravinatha P. Aryasinha**

Ambassador

Permanent Mission of the Democratic Socialist Republic  
of Sri Lanka to the United Nations Office and other  
international organizations in Geneva



# Table of Contents

<b>Acronyms</b>	<b>x</b>
<b>Executive Summary</b>	<b>01</b>
• Background	01
• About the study	02
• Key findings on recruitment monitoring	03
• Recommendations to CPMS governments on recruitment monitoring	10
• Key findings access to welfare assistance	13
• Recommendations	14
<b>1 Introduction</b>	<b>17</b>
1.1 Objectives and scope	19
1.2 Methods and structure of report	22
<b>PART 1 RECRUITMENT MONITORING</b>	
<b>2 Context</b>	<b>27</b>
2.1 Labour migration from CPMS	27
2.2 Overview of recruitment activities	31
2.3 Recruitment and human rights abuses	32
<b>3 Supranational Recruitment Monitoring</b>	<b>37</b>
3.1 International human rights standards on recruitment	37
3.2 The role of international organisations and multilateral mechanisms	41
<b>4 National Recruitment Monitoring</b>	<b>47</b>
<b>A Prevention:</b>	
4.1 Overview of recruitment legal and policy frameworks	47
4.1.1 Key features of licensing	48
4.1.2 How CPMS decide which PRAs are granted licenses	52
4.1.3 Regulating fee-charging to workers	54
4.1.4 Additional emigration requirements	56
4.1.5 Bilateral (state to state) agreements	58
4.1.6 Government-led Codes of Conduct for the recruitment industry	61
<b>B Monitoring:</b>	
4.2.1 How CPMS monitor compliance	63
4.2.2 State judicial and non-judicial remedy	66

4.2.3	Establishing liability in enforcement and remedy	68
4.2.4	Punishable violations and sanctions for PRAs and illegal recruiters	69
4.3	Overall effectiveness of legal and policy frameworks	72
4.3.1	Effectiveness of license frameworks	74
4.3.2	Effectiveness of ongoing monitoring of PRA licenses	78
4.3.3	Effectiveness of efforts on recruitment fees	85
4.3.4	Effectiveness of enforcement action and access to remedy	89
<b>5</b>	<b>Non-State (Non-Governmental) Recruitment Monitoring</b>	<b>95</b>
5.1	Self-regulation in the recruitment industry	95
5.2	Supply chain corporate social responsibility programmes: the employers	100
5.3	The role of NGOs and trade unions in recruitment monitoring	103
<b>6</b>	<b>Recruitment Monitoring Conclusions and Recommendations</b>	<b>107</b>
6.1	Summary of findings	109
6.2	Recommendations to CPMS governments	115
<b>PART 2</b>	<b>WELFARE ASSISTANCE</b>	
1	The International Framework for Welfare Assistance for CPMS Migrants	125
2	Migrant Welfare Funds and Private Insurance Schemes	129
3	Access to Credit for Migration in the CPMS	135
4	Pre-departure Orientation and Training Programmes	139
4.1	Pre-departure orientation and information sessions	139
4.2	Pre-departure skills and training programmes	140
5	Access to Health Care	145
6	Assistance to Migrants for Repatriation	147
7	CPMS Migrants' Access to Legal Services	149
8	CPMS Migrants' Access to Emergency Shelter and Lodging	153
9	Assistance to Families of Migrants	155
10	Conclusion and Recommendations	157
<b>Annex-1</b>	<b>Overview of Kafala Provisions in Gulf Cooperation Council</b>	<b>163</b>
<b>Annex-2</b>	<b>Main provisions of anti-human trafficking legislation in CPMS and selected destination states</b>	<b>165</b>
<b>Annex-3</b>	<b>Current destinations that nepalese PRAs can recruit to</b>	<b>168</b>
<b>Annex-4</b>	<b>Bibliography</b>	<b>169</b>

## LIST OF TABLES

1	Countries included in the research	20
2	Terms used in the report	21
3	Net migration from CPMS, 2012	27
4	Net migration in CPMS destination states, 2012	30
5	Average fees paid by migrants in the electronic industry in Singapore and Malaysia by origin country	32
6	Main human rights impacts arising out of recruitment	35
7	Selected CPMS laws governing the recruitment industry	48
8	Numbers of (licensed) PRAs in CPMS, 2014	48
9	Numbers of (licensed) PRAs in selected destination states, 2014	49
10	License terms in selected CPMS and destination states	49

11	Selected CPMS rules on fee-charging (workers)	55
12	CPMS bilateral labour agreements	58
13	Sanctions by violations for selected CPMS	69
14	Sanctions by punishable violations in selected destination States	72
15	Effectiveness of licensing frameworks	78
16	Effectiveness of ongoing monitoring	80
17	CPMS Labour Attachés	81
18	Effectiveness of Labour Attachés and CPMS overseas mission	85
19	Effectiveness of action in reducing or removing fees to workers	89
20	Effectiveness of enforcement action	93
21	Selected CPMS recruitment industry associations	97
22	Ratification of 'migrant worker conventions'	126
23	Anti-human trafficking legislation in CPMS	165
24	Anti-trafficking legislation in selected destination states	166

## LIST OF FIGURES

i	Typology of recruitment monitoring	03
ii	State (government) regulation of international recruitment	03
1	Types of recruitment monitoring	21
2	Distribution of CPMS migrants by region of destination, 2009	29
3	Typical activities conducted by PRAs and sub-agents	31
4	The ILO Multilateral Framework on Migration, 2006	41
5	Summary of the key human rights standards relating to recruitment	44
6	State regulation of the international recruitment industry	47
7	Key variable features of licensing	52
8	How CPMS make decisions about which PRAs to grant licenses to	52
9	Process of application to the Korea EPS from Nepal	59
10	Gangmaster Licensing Authority Licensing Standards	62
11	Example of CPMS emigration clearance - India	64
12	Requirements for submission of employment documents for verification/authentication (new deployment - domestic workers)	65
13	Sri Lankan process for blacklisting non-compliant PRAs	65
14	Complaints mechanisms in selected CPMS	67
15	State (government) regulation of international recruitment industries	72
16	Philippines Award of Excellence	76
17	Philippines PRA Award System	77
18	Corporate respect for human rights: policies and processes	96
19	Dhaka Principles for Migration with Dignity	98
20	International Labour Recruitment Transparency Map (1)	105
21	International Labour Recruitment Transparency Map (2)	105
22	CPMS migrant welfare assistance	123
23	ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers, 2007: Obligations of 'Receiving States'	127
24	Typical services provided within migrant welfare funds	129
25	Sri Lankan pre-departure training modules for domestic workers	141
26	Pre-departure training in Indonesia	142

## ACRONYMS

ALFEA	Sri Lankan Association of Licensed Employment Agencies
ASEAN	The Association of Southeast Asian Nations
BMET	Bangladesh Bureau of Manpower and Training
BOESL	Bangladesh Overseas Employment and Services Ltd.
CIETT	International Confederation of Private Employment Agencies
CPMS	Colombo Process Member State(s)
CSO	Civil society organization
DoFE	Nepal Department of Foreign Employment
EICC	Electronic Industry Citizenship Coalition
EPP	Employment Practices Policy (TDIC, UAE)
EPS	Korea Employment Permit System
EU	European Union
EUROCIETT	European Confederation of Private Employment Agencies
FDI	Foreign direct investment
FEPB	Nepal Foreign Employment Board
FLA	Fair Labor Association
G2G	Government to Government recruitment
GCC	Cooperation Council for the Arab States of the Gulf
GFA	Global Framework Agreement
GFMD	Global Forum and Migration and Development
GLA	Gangmasters Licensing Authority
ICWG	Indian Community Welfare Fund
ILO	International Labour Organization
IOM	International Organization for Migration
IRIS	International recruitment integrity system
ITUC	International Trade Union Confederation
MGPSY	Mahatama Gandhi Pravasi Suraksha Yojana (India)
MOEWOE	Bangladesh Ministry of Expatriates Welfare and Overseas Employment
OFP	Overseas Pakistani Foundation

OHCHR	Office of the High Commissioner for Human Rights
PBBY	Pravasi Bharatiya Bima Yojana (India)
PNCC	Pravasi Nepali Coordination Committee
POEA	Philippines Overseas Employment Administration
PRA	Private Recruitment (and employment) Agency
QF	Qatar Foundation
SLBFE	Sri Lanka Bureau of Foreign Employment
SME	Small and medium sized enterprise
SORAL	Syndicate of the Owners of Recruitment Agencies in Lebanon
TDIC	The Tourism Investment and Development Company (TDIC)
UAE	United Arab Emirates
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
UNGPS	United Nations Guiding Principles on Business and Human Rights
UNODOC	United Nations Office on Drugs and Crime
US	United States
USD	United States Dollars (\$)
VAMAS	Viet Nam Association of Manpower Supply
WEWF	Bangladesh Wage Earners Fund
WTO	World Trade Organization





# Executive Summary

This report has been commissioned by IOM, under the auspices of the Colombo Process (CP) programme, “Strengthening labour migration management capacities in Bangladesh, Indonesia, Nepal and the Philippines for replication in other Colombo Process Member States” with funding from the European Union.

## Background

In 2010, an estimated 44.7 million women and men from South and South East Asia were living and working outside their own country, a 42 per cent increase over the previous five years.<sup>1</sup> Nationals from these regions constitute a significant proportion of the world’s temporary labour migrants.<sup>2</sup> Globally, of the top ten emigration countries worldwide, five are in South and South East Asia: Bangladesh, China, India, Pakistan and the Philippines.<sup>3</sup> “As the number of temporary labour migrants have increased over the past four decades, facilitating international migration has become a highly profitable business for the individuals and organisations involved.<sup>4</sup> Since the 1970s the number of private recruitment agencies (PRAs) and sub-agents that organise the migration process have burgeoned in Asia.” By the 2000s, the majority of CPMS migrants were paying for the services of a recruiter in order to migrate.<sup>5</sup>

Human rights defenders, civil society organizations (CSOs), journalists and academics have consistently exposed the abuses and exploitation which is associated with the recruitment process. High recruitment fees, which can lead to debt bondage - a form of forced labour, deceit about the terms and conditions of employment contracts, processing of fake employment and immigration documents which leave migrants unprotected in destination states, confiscation of identity documents as well as emotional and physical violence have all been well-documented as occurring during the recruitment process. Within Asia, these practices are endemic - the norm even, rather than isolated incidences. At the far end of the spectrum, exploitative recruitment practices can morph into the egregious crimes of trafficking and forced labour.<sup>6</sup>

---

<sup>1</sup> World Bank calculations based on United Nations Department of Economic and Social Affairs global migrant stock figures. Available at: <http://data.worldbank.org/indicator/SM.POP.NETM> [Accessed June 2014].

<sup>2</sup> An international labour migrant is defined as an individual who is, will be or has been, engaged in a remunerated activity in a state of which he or she is not a national. See below.

<sup>3</sup> Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G. Battistella, 2013. IOM.

<sup>4</sup> Introduction. The Migration Industry and the Commercialisation of International Migration. T. Gammeltoft-Hansen and N. N. Sorensen (eds) 2012. Routledge London.

<sup>5</sup> Merchants of Labour, 2006 C. Kuptsch (eds). International Institute for Labour Studies. International Labour Office. Geneva.

<sup>6</sup> ILO Indicators of Forced Labour. International Labour Office. Special Action Programme to Combat Forced Labour. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf) [Accessed June 2014].

Governments face numerous challenges in regulating and monitoring the international recruitment industry. Consequently, in recent years international organizations, including International Organization for Migration (IOM), International Labour Organization (ILO), UN Women, and United Nations Office on Drugs and Crime (UNODC), have supported governments in developing better legislation, issuing guidance, and implementing training. Recruitment monitoring is not the only challenge facing South and South-East Asian States with significant numbers of overseas migrants. How to provide or to ensure that their nationals receive access to 'welfare assistance', such as health care, legal help, information and training, and repatriation assistance during the migration process-pre-departure, en route, in the destination country and post-return, is of significant concern to governments.<sup>7</sup> These types of welfare assistance may be delivered by government institutions, embassies in the destination country, trade unions and civil society, and by lawyers. Much of this welfare assistance is necessary in order that low wage migrant workers can realize their human rights, and which is usually denied to Colombo Process Member States (CPMS) migrants in key destination states across the Middle East.<sup>8</sup>

In order to address these human rights issues, the Colombo Process - a Regional Consultative Process for 'migrant-origin' states in South and South-East Asia - was set up in 2003. Currently under the Chair of Sri Lanka, the CP's first thematic foci is the protection of and provision of services to migrant workers-in particular, protecting migrant workers from abusive practices in recruitment and employment, and providing appropriate services to them in terms of pre-departure information, orientation and welfare provisions.<sup>9</sup> Members include Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, and Viet Nam.

## About the Study

The objectives of this study are to:

- ❑ To review existing recruitment monitoring mechanisms and compile good practices of recruitment monitoring in CPMS and associated destination states;
- ❑ To review CPMS migrants' access to welfare assistance.

The countries included in this study are the CPMS plus the associated destination states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates (UAE), and Yemen<sup>10</sup> which are members, with the CPMS, in the Abu Dhabi Dialogue, which seeks to promote the welfare and protection of contractual workers. The study also includes Jordan, Lebanon and the EU.<sup>11</sup> The focus of this report is **international migration**.<sup>12</sup> Under the Project Terms of Reference, IOM specifically requested the following migrant welfare assistance practices to be included in the study: **access to health care, access to credit, access to legal services, assistance with repatriation, assistance to families in case of death, training, insurance schemes, emergency lodging or shelter and access to and provision of migrant welfare funds.**

<sup>7</sup> One of the key thematic foci of the Colombo Process (CP) as a Regional Consultative Dialogue is to provide appropriate services to migrants including pre-departure orientation, information and welfare provisions.  
[http://publications.iom.int/bookstore/free/ColomboProcessStudy\\_final.pdf](http://publications.iom.int/bookstore/free/ColomboProcessStudy_final.pdf)

<sup>8</sup> Martin Ruhs, 2013, *The Price of Rights, Regulating International Labor Migration*. Princeton University Press. Oxford.

<sup>9</sup> See <http://www.colomboprocess.org/>

<sup>10</sup> See <http://www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/rcps-by-region/abu-dhabi-dialogue.html> [Accessed June 2014].

<sup>11</sup> Rather than examining all 28 Member States of the European Union, monitoring at European Commission was explored and illustrated with interesting practice and / or particular challenges within EU Member States.

<sup>12</sup> Defined according to international human rights standards detailed within the report.

An international team of researchers conducted the multiple method fieldwork for this study between the months of January and May 2014.<sup>13</sup>

## Key findings on recruitment monitoring

This is the first time that a study of this scale on recruitment monitoring across Asia has been attempted, and that this level of detail and analysis has been included within the pages of one report. The study has been highly methodologically challenging, with the requirement to generate, review, and validate an enormous amount of constantly evolving data about recruitment regulation within a very short space of time. Moreover, internationally, there is no consensus on how the effectiveness of recruitment monitoring should be assessed. Data is included with the caveat that it is correct as far as we (research team and IOM) are aware at the time of writing. Analysis of data is arranged thematically, intended to provide overall reflections on what works in recruitment monitoring in general; assessment of 28 countries' legal and policy frameworks on recruitment was beyond the scope of this study.

1. The study has analysed 'recruitment monitoring' as occurring at three levels: **supranational, State (Government), and Non-State (Non-Governmental), which influence the behaviour and activities of international recruiters to varying degrees.** This typology is depicted in *Figure i*. *Figure ii* identifies the key components of national (State, Governmental) laws and policies.

*Figure i: Typology of recruitment monitoring*

- A. **Supranational monitoring:** Role played by international human rights law, standards and instruments, by international organizations, and within the auspices of multilateral frameworks such as the Abu Dhabi Dialogue.
- B. **State-led monitoring:** Government regulation (including legislation and associated rules and orders), government monitoring and enforcement of regulation (including redress). State-led monitoring also includes government-to-government agreements.
- C. **Non-State-led monitoring:** Role played by trade unions, NGOs, and businesses (recruitment agencies and employers) in 'soft' regulation, including private initiatives.

*Figure ii: State (government) regulation of international recruitment*

A. Prevention	B. Monitoring and Enforcement
<ul style="list-style-type: none"> <li><input type="checkbox"/> Licensing and associated rules on recruitment activities</li> <li><input type="checkbox"/> Rules on recruitment fees</li> <li><input type="checkbox"/> Immigration/emigration rules</li> <li><input type="checkbox"/> Bilateral agreements (G2G, recruitment processes, migrant worker protection)</li> <li><input type="checkbox"/> Codes of Conduct ('soft law')</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Requiring PRAs to report</li> <li><input type="checkbox"/> Inspections of licensees</li> <li><input type="checkbox"/> Action against illegal recruiters</li> <li><input type="checkbox"/> Immigration and emigration processes</li> <li><input type="checkbox"/> Complaints mechanisms</li> <li><input type="checkbox"/> Liability</li> <li><input type="checkbox"/> Sanctions regime</li> </ul>

<sup>13</sup> The full project team is listed in the acknowledgements at the beginning of this report. Multiple methods were used to collect data, including: Desk reviews of legal and official documents relating to recruitment monitoring and migrant welfare assistance; Desk reviews of academic and NGO ('grey') literature relating to recruitment and migrant welfare assistance; 65 semi-structured interviews with government officials, Labour Attachés, representatives of NGOs and trade unions; Five 'field visits' to Jordan, Kuwait, Nepal, UAE, Viet Nam; A consultation with CPMS Labour Attachés based in Kuwait.

2. Analysis of interviews indicated that CPMS officials and politicians do not generally reference international human rights standards on recruitment when devising relevant laws and policies (see Figure 5 for a summary of main standards). The inclusion of 'no fee-charging to workers' clauses in the Private Employment Agencies Convention, 1997 (No. 181) (C181) and Domestic Worker Convention, 2011 (No. 189) (C189) will, for the foreseeable future, likely be a barrier to their ratification by CPMS governments. Although recruitment fees are probably the most significant contributory factor to exploitation, there is as yet no consensus among CPMS government officials and politicians that fee charging will, or even should, be banned in CPMS countries.
3. CPMS and associated destination state legal and policy frameworks that regulate international recruitment industries are extremely detailed and extensive, the key features of which have been described and assessed in the report (see Figure 7 for a summary of key features). Yet, the research found that CPMS officials often lacked a clear overall vision of the objectives of recruitment monitoring and lacked knowledge of the criteria by which laws and policies should be judged as having been successful. This is especially important in relation to the (perceived or real) tension between: a) successful recruitment monitoring judged against a reduction in exploitation of migrants, and b) successful 'labour export' programmes assessed against how many migrants have been recruited. Policy makers also displayed, in interviews, little understanding of the 'theory of change' which lay behind how specific laws or policies were expected to achieve their objectives, or any unintended consequences that may have arisen. Unsurprisingly, views on the objectives of regulatory frameworks varied between the various governmental authorities and agencies responsible for implementing different aspects of relevant policy (e.g. between Ministries responsible for emigration and those responsible for licensing) The study found little evidence of ongoing data collection by CPMS governments which would enhance their ability to regularly review the effectiveness of their laws and policies on recruitment.
4. Overwhelmingly, study participants argued that despite the extensive regulatory frameworks in place in the CPMS countries, these are largely not effective in reducing recruiters' exploitation of migrant workers. The study found nine factors associated with this:
  - i. **A lack of robust screening by the authorities of applications from PRAs seeking a new license.** This means that the 'bad actors' also sometimes hold valid licenses, including those who have previously had a license revoked by the authorities ('phoenix agencies'). A lack of robust screening results from the fact that screening is usually only conducted through the submission of paperwork (with the exception of the Philippines and India), which PRA respondents to this study readily admitted could be faked. This contributes to an overall lack of external confidence in CPMS licensing frameworks.
  - ii. **Weak ongoing monitoring of PRA licensees by their home authorities** (i.e. the countries in which they are domiciled) to ensure that they comply with the extensive regulations in place. The research found few examples of CPMS governments or associated destination state governments requiring PRAs to formally report on their activities, or routinely inspecting licensees' premises or paperwork. Inspections were only reported to occur in response to complaints lodged by individuals. To various degrees, ongoing monitoring of compliance was reported by interviewees to be limited by a lack of: a) capacity within (CPMS) authorities, b) specialized units which have been charged with

monitoring recruiters, c) training and guidance provided for officials, d) coordination between relevant government bodies which might have oversight of recruitment activities (e.g. emigration authorities, licensing authorities, tax authorities), and e) decentralized monitoring activities. Low-level corruption of officials as well as high level entrenched interests in maintaining the status quo were also reported as contributors to weak monitoring.

- iii. **Despite extensive rules in place regarding what level of recruitment fees can be charged to migrants, there is almost no monitoring of what fees have been charged takes place.** Instead, as above, the system is reliant on individuals making a complaint about the fees he or she has been charged. However, according to interviewees, few individuals, even if they are aware of the law, are minded to do so either because they fear retaliation from the PRA, and/or because this will preclude him or her from working overseas.
- iv. **CPMS authorities largely conduct ongoing monitoring of PRAs through emigration clearance processes, by which individuals (through their PRAs) apply for permission from their home authorities to emigrate, and from the destination state authorities for permission to work.** Study respondents highlighted the multiple opportunities at which officials can monitor the activities of licensed PRAs during this process. These opportunities arise because officials are required to check that the PRA(s) which is managing the recruitment hold(s) a valid license, that there are no unresolved complaints or cases against the PRA(s), that the terms and conditions of the intended employment are compliant with relevant regulations, that there is a signed contract of employment, that identity documents are compliant, and that health insurance has been purchased if necessary. Interviewees reported that the emigration authorities in CPMS countries rarely however take action against fake documents received from PRAs.
- v. **Labour Attachés and other officials in overseas missions, where they are available, who are charged with 'attesting' documents as part of the emigration process provide an essential function in this regard and maintain a pivotal position in being able to have oversight of both ends of the recruitment process.** Overseas missions can refuse to process applications if the above conditions are not met, or they can even 'blacklist' PRAs from their own country as well as those based in the destination countries in which they are based. **They are however limited by often strenuous workloads which means they can do little more than 'firefight' day-to-day cases, which are often to do with their nationals' immediate needs such as repatriation and/or detention.** The study found that overseas missions often also **lack appropriate training and guidance necessary to be able to carry out effective recruitment monitoring.** According to interviewees, where overseas missions do uncover evidence of PRA exploitation through the attestation process, this information is not always shared effectively or systematically with the authorities at home. In other words, even though a particular PRA may be blacklisted or has their application refused by a particular Labour Attaché, often no further action is taken.
- vi. The study found that there is **almost no systematic bilateral sharing of information about exploitative PRAs between CPMS licensing authorities and those of associated destination states.** Where this does occur, it does so through the overseas mission and usually on an ad hoc basis because a particular Labour Attaché has succeeded in building a significant degree of 'wasta' in their

contact networks. Labour Attachés, consulted for this study, revealed that overwhelmingly they struggle with liaising with destination state authorities and that often they do not know who to contact with evidence of exploitation by PRAs, nor do they have any confidence that the information that they provide will be acted upon. Labour Attachés reported that destination state officials tended to argue that recruitment abuses were the responsibility of origin state governments, suggesting that recruitment monitoring may not be taken seriously in some destination states.

- vii. One of the major factors hampering recruitment monitoring is **the continued existence of unlicensed sub-agents (illegal recruiters) in CPMS countries**. Despite the attempts of CPMS governments to regulate them out of the labour migration process by, for example, requiring PRAs to advertise job opportunities (e.g. Nepal), or requiring PRAs to recruit from a national database of aspiring migrants (e.g. Bangladesh), none of these activities has yet been shown to be successful in reducing the number of sub-agents. **One reason for this lack of success is practical**. Although CPMS authorities do launch intermittent targeted action against illegal recruiters, it simply is not possible to find and prosecute all sub-agents at any one time. Sub-agents rarely operate out of an office so are able to quickly and easily disappear. **The second reason is because sub-agents' endemic existence is structural** rather than a few cases of criminal individuals. Sub-agents exist because PRAs in CPMS countries largely do not operate networks of branch offices in rural areas, with many only maintaining offices in the capital cities. The study found that PRAs do not open local or regional branch offices because utilising the services of sub-agents to find and recruit workers is substantially cheaper than the costs associated with opening and maintaining branch offices, because of regulatory restrictions, or because through paying for the services of sub-agents PRAs can avoid regulatory oversight over a significant degree of their activities. Sub-agents enable PRAs to largely avoid having contact with migrant workers, to avoid blame for high recruitment fees, and to prevent complaints being lodged against them.
- viii. CPMS governments have established extensive regimes which detail which recruitment violations result in which sanctions, with illegal recruitment potentially resulting in a prison sentence for offenders of between three and fifteen years across the CPMS countries. However, in practice the full range of available sanctions are rarely sought by prosecutors with few PRA violators ever reaching court. **Instead, violations are dealt with administratively**. The study found that even where CPMS authorities do identify non-compliance by PRAs the **two most common approaches to dealing with it are to facilitate informal mediation between migrant (victim) and the PRA resulting in (limited) financial restitution, followed by revocation of the PRA license**. Neither was reported by PRA respondents to act as effective deterrents to exploitative behaviour within the industry. PRA interviewees revealed that amounts paid in financial compensation are regarded as an ongoing business cost and which are recouped from future fees charged to migrants. Other interviewees reported that even where PRA licenses are revoked, it is common practice for individuals to apply for a new license under a different name ('phoenix agencies') in order to continue to operate.
- ix. Migrant workers who have been exploited by PRAs or illegal recruiters (sub-agents) **face huge barriers in obtaining restitution due to difficulties in accessing complaints mechanisms both at home and abroad**. Ensuring individual access to judicial and non-judicial remedy emerged as an

especially weak part of legal and policy frameworks in both CPMS countries and associated destination states. Not enabling migrants to make complaints about PRAs is harmful not just to individuals who lack access to justice, but also because data gleaned from these sources is an essential component to effective recruitment monitoring. In other words, migrant workers who have been exploited by PRAs and illegal recruiters are able to provide information to the authorities about who, where, when, and how exploitation is taking place, in theory making the authorities' monitoring task much easier.

5. The study also identified five specific gaps in CPMS national legal and policy frameworks. These include:
- i. The lack of rules aimed at regulating the business (commercial) relationships between PRAs, and between PRAs and sub-agents (illegal recruiters), is a major gap in CPMS legal and policy frameworks governing international recruitment. Business relationships in the recruitment industry are largely informal, with few commercial contracts signed between PRAs. Despite the growing amount of regulation requiring recruiters to use standardized employment contracts (e.g. for domestic workers), there has been almost no regulatory attention paid to the (lack of) contracts between businesses. This allows the opaque, and largely unaccountable, international recruitment industry to flourish without oversight, hampering the authorities and individual seeking restitution, from establishing liability for wrongs.
  - ii. Complaints made about PRAs and sanctions applied are rarely shared publicly, meaning that licensing frameworks are not transparent. Although some authorities attempt to maintain up-to-date and publicly available online databases of currently licensed PRAs, in practice, interviewees reported, updating rarely occurs. This precludes individuals being able to view information about the PRAs which may have recruited him or her; it also precludes associated destination state authorities and potential employers from being able to view this information and to use it in making business and/or enforcement decisions.
  - iii. Provisions for recruitment monitoring (of PRAs, of the required process, or of government to government liaison regarding recruitment) are rarely included within bilateral labour agreements concluded between CPMS governments and associated destination states. Instead, the focus of agreements has usually been on migrant worker protection in the destination country. Agreements rarely include steps for their own implementation and monitoring with little recourse if provisions are not followed.
  - iv. Although the main focus of national legal and policy frameworks is the international recruitment industry, there are actually a multitude of often related 'migration businesses' which work in partnership with recruiters, and which are often contributors to various degrees of migrant exploitation. These include pre-departure training centres, medical centres, insurance companies, travel agencies amongst others, some of which might be owned by PRAs. These businesses are often subject to different regulation, if indeed they are regulated, and are usually not overseen by the same authorities responsible for recruiters, despite the inter-relationship with recruitment exploitation. This hampers the ability of the authorities to effectively monitor international

recruitment and of individuals seeking remedy, to establish the appropriate legal liability of the different private sector actors involved.

- v. Regulatory frameworks are based on penalising those businesses which do not comply. Connected with the above point, the study found almost no examples of incentives (rewards) provided within national legal and policy frameworks for PRAs to either comply or to go beyond compliance to act ethically.
6. Trade unions and NGOs are essential contributors to monitoring of international recruitment industries through: a) advocating for individuals, often through facilitating litigation against perpetrators; b) exposing exploitation and campaigning for change; and c) helping recruiters to develop more ethical business practices. However, neither trade unions nor NGOs are engaged in effective partnerships in recruitment monitoring in either CPMS countries or associated destination states, limiting their usefulness in this regard. In associated destination states, trade unions are largely prevented from operating, contrary to internationally recognized human rights standards, and NGOs are restricted to a largely humanitarian role.
  7. The report indicated a **very few isolated examples of business self-regulation in relation to recruitment** - the global recruitment industry body, International Confederation of Private Employment Agencies (CIETT) which is working with international organizations to improve the international industry, and a handful of multinational corporations which have instituted positive policies on working with recruiters. However, these examples are as yet few and far between in international recruitment. For recruiters, there are two major barriers to acting ethically. The first is the lack of effective legal and policy frameworks which 'level the playing field' and which could allow businesses to act ethically (for example to not charge fees to migrants) without losing business to competitors which undercut them through exploiting migrants. As it stands, charging fees is largely legal across the CPMS. This means that recruiters will continue to do so. Secondly, PRAs that seek to behave ethically struggle to find employers that are willing to pay the full costs of recruitment. Without this payment from employers, PRAs have to recoup these costs (plus their service charge) from migrants in order to stay in business. Moreover, PRA respondents to this study who are based in CPMS (origin) countries recounted many examples in which they have had to pay commissions to big employers and to their PRA partners in the destination state in order to obtain a job contract. The cost of this 'bribe' is then passed on to future recruits in the form of recruitment fees. Unless destination state governments begin to regulate their labour markets effectively, this practice will continue.
  8. With the caveat that none of these practices have been systematically evaluated (beyond the scope of this study), the research identified a number of **examples of potentially positive practice** in regulating international recruitment, with the objective of reducing migrant worker exploitation by PRAs and illegal recruiters. Described within the report, these include:
    - i. **The role of international organizations** in working with national recruitment industry associations to develop **Codes of Conduct** which, to some degree, reflect international standards (e.g. in Viet Nam and in Lebanon).
    - ii. The role of international organizations in **disseminating information about good recruitment practice, better regulation, and about relevant human rights standards** such as the Private

- Employment Agency Convention, 1997 (No. 181), including activities conducted through the ILO Fair Recruitment Initiative, IOM IRIS project (International Recruitment Integrity Initiative), and dialogue through the Colombo Process and Abu Dhabi Regional Consultative Processes.
- iii. Requiring **'foreign' PRAs which recruit workers into a destination country to also be licensed** with the destination state authority (e.g. UK) with the aim of increasing bilateral oversight of international recruiters.
  - iv. Requiring **'foreign principals'** (PRAs or employers) to be accredited through the overseas mission (e.g. the Philippines) enabling checks to be conducted as to whether any complaints have previously been lodged against these businesses.
  - v. Specifying in the law which activities are **legitimate recruitment activities** (e.g. Viet nam) and specifying in the law **which recruitment activities are not legal** (e.g. the Philippines does not allow PRAs to have interests in travel agencies) so that there is clarity in regulating a highly complex, multi-faceted industry.
  - vi. Requiring PRA owners to have **prior business experience before opening a PRA** (e.g. the Philippines) as international recruitment is a hugely complex and risky business, even for ethical actors.
  - vii. **Requiring applicants for a PRA license to attend a panel interview** with a specialized committee before a license is granted (e.g. the Philippines and India) because paperwork submitted for scrutiny can be easily faked.
  - viii. **Requiring PRAs to maintain office premises** (e.g. Sri Lanka) and requiring PRAs to have a **certain level of financial capacity before being granted a license** (e.g. the Philippines) to try to prevent 'fly-by-night' operators from entering the market.
  - ix. **Banning PRAs from charging recruitment fees to migrants** (e.g. the Philippines in relation to domestic workers) with the aim of preventing debt bondage.
  - x. Supporting the **pivotal role of Labour Attachés** in monitoring recruitment, through providing resource, training and guidance (e.g. Sri Lanka) because these officials are the only personnel with oversight of both ends of the international recruitment process and significant (potential) power to prevent exploitation.
  - xi. **Bilateral agreements which specify procedures for recruitment monitoring** (e.g. the Philippines with Canadian provinces) to enhance bilateral, cross-governmental, recruitment monitoring.
  - xii. **Special investigation units and tribunals** charged with monitoring and enforcing recruitment legal and policy frameworks (e.g. Nepal), but adequately resourced so that expertise in tackling recruitment abuses is created and nurtured.
  - xiii. **Maintenance of a regularly updated hard copy list of PRA licensees** for migrants who do not have access to the internet (e.g. the Philippines) and public registers which include **'grading' according to sanctions applied or complaints made** (e.g. Vietnam) or according to **awards for good practice** (e.g. the Philippines) in order to increase transparency and accountability as well as disincentives/incentives to good practice.

- xiv. **'Intelligence-led' enforcement** based on information-sharing between all relevant regulatory bodies (e.g. the UK) so that all available resources are effectively maximized.
- xv. Destination state authorities appointing a **liaison on recruitment to the CPMS overseas mission** and developing protocols for working together (e.g. Bahrain and Jordan) to increase bilateral coordination and oversight of recruitment.
- xvi. **Joint and several liability requirements** which enable CPMS migrants to sue their home recruiter for financial restitution even where the wrong has been committed by the destination state business.

## Recommendations to CPMS governments on recruitment monitoring

The following are recommendations to CPMS governments for concrete actions they can take in order to better monitor recruitment industries. These are based on the evidence collated and presented in this report. Although there is much that destination state governments need to do, recommendations to them are not included here as the report was commissioned by IOM within the auspices of their role in coordinating the Colombo Process Regional Consultative Process.

1. CPMS governments may wish to consider developing **National Action Plans on Recruitment Monitoring**, using the examples of National Action Plans for the Promotion and Protection of Human Rights<sup>14</sup> and National Action Plans on Business and Human Rights as frameworks.<sup>15</sup> Plans could establish the overall vision and objectives of national level recruitment monitoring, including explicitly dealing with any perceived or real tensions between effective monitoring and managing successful labour export programmes for economic development. Plans should also include explicit steps on how to enforce regulatory frameworks and what actions are required at national and international level in order to implement the plans. These plans could be developed in a multi-stakeholder context, including NGOs and trade unions, as well as the private sector as partners in the process. NGOs and trade unions are largely not included in state processes of recruitment monitoring, despite the fact that these non-governmental organisations are often party to the best available evidence on recruitment abuses and what might work in addressing these. Relationships with recruiters, depending on the national context, can be too close or outright hostile, however, working in close partnership with business is necessary to understand the challenges that they face.
2. CPMS governments may wish to explore the possibility for establishing a **regional monitoring and enforcement body** ('InterRec') aimed at targeting exploitative and abusive recruiters, sharing knowledge about good enforcement practice, and developing better coordinated enforcement relationships with inspectorates and officials key destination states. This could be especially appropriate given the cross-border nature of international recruitment. (There are other international enforcement bodies, such as 'Interpol' upon which CPMS governments could draw.) Ideally, an organization such as this could operate as a physical entity, but in the early stage a 'virtual InterRec' would also be useful. Such a body could operate in particularly crucial recruitment corridors, and include seconded officials from both origin and destination states.

<sup>14</sup> See <http://www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx> [Accessed December 2014].

<sup>15</sup> See <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> [Accessed December 2014].

3. CPMS governments may wish to consider working together as a **bloc to abolish recruitment fees**. Abolishing recruitment fees is a momentous move and will not happen overnight; but it nevertheless could be set out as a long-term, aspirational goal, leading to the implementation of Private Employment Agencies Convention, 1997 (No. 181) (C181). As long as PRAs are allowed to charge recruitment fees to migrants, they will continue to do so. Yet, high recruitment fees have been repeatedly identified as the primary factor in causing or contributing to human rights abuses. The CPMS Secretariat may wish to consider facilitating an aspirational statement between CPMS governments on recruitment fees. CPMS governments may also wish to consider establishing a 'Working Group on Recruitment Fees' within the CPMS Process with the purpose of exploring the possibility for consensus on fee-charging among CPMS governments. The Working Group could be charged with mapping the transnational fee-charging in the different recruitment corridors, sharing information about good enforcement and regulatory practice, and establishing a roadmap for future action by CPMS governments.
4. CPMS governments may wish to consider introducing new regulation requiring **PRAs to draft and sign written commercial contracts covering all their business relationships**, including their international business relationships, and the fees and commissions that are charged between the businesses. For transparency and accountability the contracts should be available to government inspectors.
5. CPMS may wish to consider **establishing specialist investigation units on recruitment and decentralising their monitoring activities** enabling more and better oversight of PRA and sub-agent activities nationally. This would require building up regional and local offices of specially trained staff. Using intelligence from other enforcement bodies (e.g. tax authorities) has also been shown to be a useful way of highlighting which licensed PRAs are most risky in terms of non-compliance, or most likely to perpetrate or be engaged in grievous human rights abuses. Identifying the most risky licensed PRAs could enable authorities to target inspections (of premises and paperwork) on this group. In seeking intelligence about PRAs, migrant workers are an essential source of information.
6. CPMS governments may wish to consider **collecting evidence on the impact of positive examples of coordination** between destination state authorities and overseas missions, such as that reported between CPMS overseas missions and government officials in Bahrain and Jordan (see Section 4.3). Robust data will provide the evidence that can be used to share with other destination states about what works in recruitment monitoring, in order to build leverage and consensus within the Abu Dhabi Dialogue.
7. CPMS governments may wish to consider collecting more evidence as to what extent PRAs and employers in destination states contribute to recruitment abuses by, for example, not paying the full cost of recruitment or charging fees to CPMS PRAs that is then passed on to migrants. This could be used as robust evidence to challenge the view among destination state governments that recruitment abuses only occur in the CPMS and to build leverage and consensus as to how to tackle this.
8. CPMS governments may wish to consider reviewing the availability of access to judicial and non-judicial remedy for migrant workers seeking redress for exploitation perpetrated by recruiters. A regional compendium compiled of complaints mechanisms could be produced for sharing publicly between CPMS governments, with migrants and with advocates, including civil society. CPMS governments may wish to also consider establishing joint and several liability requirements in PRA legal and policy frameworks to enhance the opportunities for migrants to hold recruiters accountable.

9. CPMS governments may wish to consider seeking to include recruitment monitoring requirements in bilateral labour agreements concluded with destination state authorities. At a minimum, bilateral labour agreements between CPMS and destination states could include the requirement that employers and destination country PRAs should only contract with licensed PRAs, the names of which should be available to the authorities at both sides. This could be accompanied by clearly delineated sanctions for contracting with unlicensed PRAs, such as a Labour Attaché refusal to process paperwork for those employers and PRAs which have been to have not complied with agreed standards. Agreements could include a requirement for both implementing authorities to annually report progress.
10. In order to enhance the training available for officials responsible for scrutinising license applications, CPMS governments may wish to consider introducing 'Red Flag Guidance'. Guidance which sets out the key 'red flags' which licensing officials should look for as warning signs when reviewing documentation submitted by applicant PRAs. The identification of red flags could stimulate a 'second pair of eyes' looking at the license application or potentially trigger an inspection to further investigate. Red flag systems are commonly used by other types of inspectorates such as those that monitor financial institutions.<sup>16</sup> Given the similarities in licensing systems, Red Flag Guidance could be jointly developed and shared within the CPMS.
11. CPMS governments may wish to consider clearly setting out what business activities PRAs are allowed to engage in according to the terms and conditions of their license. PRAs may engage in a multitude of different activities as part of the international recruitment process for which they charge a fee to migrants. Some activities-for instance, training centres and travel-are known to often result in activities which are harmful to or expensive for migrants. Restricting or placing requirements on the other business activities (such as travel) that PRAs can legitimately engage in or profit from has been identified as an area of promising practice in recruitment monitoring.
12. CPMS may wish to consider producing 'human rights guidance' or 'performance standards' for PRAs covering behaviour at home as well as through their business relationships. These could take the form of enhanced Codes such as those developed in Viet Nam, Sri Lanka, or the UK. They should be based on recognized international human rights standards, and be developed in a multi-stakeholder context so that all the dilemmas and risks involved in international recruitment can be included. Specific attention should be given to areas which are problematic, such as conducting due diligence on potential business partners, or setting up grievance mechanisms for migrant workers.
13. CPMS governments may wish to consider grading licensed PRAs according to the number of complaints and or sanctions made against them and publishing this information. A public register of PRAs which includes a grade based on the number of complaints and or sanctions applied makes the licensing framework transparent to users, which includes migrants, employers and destination country PRAs, and CPMS Labour Attaché. Such a system will enhance the ability of employers and other PRAs to exercise leverage over recruitment business practice as well as to create incentives/disincentives to recruitment businesses regarding their business behaviour. Similarly, CPMS may wish to consider establishing a grading framework which incentives good practice, such as that in the Philippines discussed in Section 4.3.1.

<sup>14</sup> E.g. See Federal Trade Commission red flag guidance.

<http://www.mondaq.com/unitedstates/x/247972/Data+Protection+Privacy/New+FTC+Red+Flag+Rule+Guidance+To+Help+Fight+Identity+Theft>

14. Where resources allow, CPMS governments may wish to consider increasing Labour Attaché presence in key destination states accompanied with clear guidance on recruitment monitoring, such as Sri Lanka's Labour Attaché Manual highlighted in Section 4.3.2. With limited resources, increasing the numbers of Labour Attachés may be beyond reach for CPMS, it is however included as a recommendation in order to flag the importance of Labour Attachés' roles in effective recruitment monitoring. Labour Attachés are able to effectively scrutinize both the destination state end of the emigration/immigration process as well as that which takes place in the home country. Labour Attachés can screen out the 'bad actors' from the 'good actors' in the recruitment process. They are also ideally placed as a coordinating link between the monitoring and enforcement bodies in the destination state and the home authorities. Also identified in the body of the report, Labour Attachés would benefit from clear guidance and training on recruitment monitoring. In particular, a system of 'red flags' which Labour Attachés should be looking for when screening documents would be helpful in identifying which applications may require a 'second pair of eyes' or further investigation. Producing clear guidance would also ensure that the process is transparent to PRAs so that they are clear about the process.
15. CPMS governments may wish to consider establishing a **joint Working Group aimed at developing more effective action against illegal recruiters/sub-agents**. Sub-agents are prevalent across CPMS and as it stands, essential to the process of international recruitment; sub-agents are also a major cause of exploitation during the recruitment process. There is therefore an urgent need to tackle the phenomenon of sub-agents, but little understanding about what can work to overcome the substantial challenges in taking (consistent) enforcement actions against sub-agents. A CPMS Working Group, perhaps facilitated by IOM, could share practice and lessons learnt.

## Key findings on access to welfare assistance

1. Although 'welfare assistance' is usually described in terms of 'migrant worker protection', in fact **this type of assistance is essential in order for CPMS to realize their human rights**, for instance access to justice or access to health care. Ensuring access is extremely challenging for CPMS governments in negotiating with those destination states which routinely deny any rights to migrants. Many, most notably the Philippines although not only, CPMS have made **valiant efforts to include provisions within bilateral agreements which set out the requirement for standardized employment contracts, the right to health care, and who is responsible for repatriation in different scenarios**. However, **enforcing these provisions is extremely problematic**. In particular, individual migrant workers are singularly unable to enforce the provisions included within standardized employment contracts (should they be aware of these) without access to legal help in destination states, which they largely do not have.
2. CPMS governments, because of the challenges associated with influencing destination state governments, have made **strenuous efforts to support their migrants mainly through establishing migrant welfare funds and private insurance schemes, which provide support for healthcare, repatriation costs, legal help, amongst others**. With certain caveats, these have emerged from prior reviews as offering the most promising practice in terms of offering support. The caveats include:
  - ❑ Where migrants are mandatorily required to contribute to the funds (and private insurance), this increases the costs of migration;

- ❑ If PRAs are required to contribute on migrant workers' behalf, they will simply recoup these costs from migrants themselves, again increasing the costs to migrants;
  - ❑ Recent research from Nepal and Indonesia recounted in the report demonstrates that there are multiple challenges for migrants in accessing funds and insurance schemes, not least that they are not always aware of their existence or that they have paid into them. This may be especially the case where the money has been channelled through a PRA;
  - ❑ Where an increasing number of private sector actors are introduced into the migration process, there is a greater risk of fraud/exploitation and a greater need for increased vigilance on the part of the authorities.
3. **Credit schemes aimed at lending money to aspiring migrants in order to migrate, including to pay PRA recruitment fees, risk increasing migration costs while fuelling migrant debt.** Credit schemes are unlikely to do anything to reduce migration costs as intermediaries simply keep their fees in line with the maximum that can be borrowed.
  4. **There is an increasing emphasis on CPMS provision of pre-departure orientation and training programmes, although not always clarity on what these should constitute and what is effective.** Orientation programmes are usually targeted at increasing migrants' knowledge about the destination country, including their rights and have been reviewed within the literature as being relatively successful (in general) in these aims where the information is provided by NGOs and is destination-specific. Destination states have become increasingly enthusiastic about the skills-based training programmes, understandable as hiring already-trained workers reduces the costs for employers of hiring migrants from overseas. However, the risk of increasing the number of training programmes is that this increases the cost of migration to migrants. Inviting more private sector actors into the process also increases the risks of fraudulent behaviour as PRAs which are associated with training centres have been noted as engaging in profiteering or fraudulent behaviour.
  5. With trade unions either banned or facing limitations on their operation, NGOs in destination countries try to fill the gaps in migrant welfare, but are however largely limited to providing humanitarian assistance. However, NGOs, often struggling financially, are usually limited to providing humanitarian assistance in the form of emergency shelter, assistance with repatriation. In more limited circumstances, NGOs at home and overseas also provide access to legal assistance for migrants to seek redress for wrongs – either financial or criminal. Advocacy on the part of individual NGOs is substantially more limited, with the exception of Migrant Forum Asia (MFA), which is a regional network of NGOs, associations and trade unions of migrant workers, and individual advocates in Asia who are committed to protect and promote the rights and welfare of migrant workers.

## Recommendations

1. CPMS governments may wish to consider developing a set of **common strategic aims across the CPMS regarding migrant welfare**. Developing a set of common aims will enable greater consensus among the origin states and increased leverage vis. a vis. destination states. Migrant advocacy groups such as Migrant Forum Asia have specific knowledge and expertise which could be extremely useful to CPMS governments in developing these common strategic aims. In many cases there will be shared advocacy aims which can only serve to enhance the leverage of CPMS governments either in feeding in evidence or in assisting, especially as some MFA members are based in destination states.

2. Those CPMS governments which do not currently operate a **Migrant Welfare Fund** may wish to consider opening one. Overall, Migrant Welfare Funds, as long as they are operated well, have been shown to be the most effective in providing CPMS migrants with access to welfare assistance. There is however a need to take into account the caveats noted above in relation to not increasing migration costs to migrants, the need to regulate any private sector actors involved in administration of the funds, and publicity shared with migrants about the funds' existence. Attention should also be paid to the governance of these and review mechanisms established so that funds can be evaluated and any barriers to their operation (for the benefit of migrants) are identified and rectified at the earliest possible stage.
3. CPMS governments may wish to consider **reviewing arrangements for access to free or affordable legal help for migrants** in overseas missions. Legal help is essential to assist migrants in receiving access to justice. It would be extremely useful to appoint an 'on-staff' local lawyer supported by a number of paralegals to conduct casework on behalf of migrants. Not only will local lawyers have the expert knowledge and contacts with which to enforce migrants' rights, especially in terms of the standardized contracts, they would also reduce the reported excessive workloads of Labour Attachés. Moreover, they may assist with better holding PRAs to account and developing better coordination with destination state authorities responsible for recruitment.
4. CPMS government may wish to review how to **increase the available, free or affordable legal help for migrants at home**. This could include discussing projects with Lawyers without Borders and establishing Workers Rights' Centres which combine access to legal services with empowerment and which have been shown to be a model of good practice within the report, in partnership with NGOs/trade unions. Where CPMS have limited resources to establish such centres, the assistance of international donors should be sought. The advice of employees and advocates of long-term workers' rights centres should also be sought.
5. **Pre-departure programme designers and programme funders should ensure that they have clarity in their objectives, intended audiences and content**. For the most utility, content should also be tailored to individual destination countries. Content should include information about migrants' rights, including access to remedy at home as well as in the destination country. CPMS governments may wish to consider allowing workers' representatives, including CSOs and trade unions input into designing pre-departure programme content as well as in delivering it. The participation of migrant returnees in programmes has also been highlighted as a model of good practice. The 'one-stop shop' model developed exhibited by the Migrant Resource Centres may be useful in delivering all-round services to migrants.



# Chapter 1

## Introduction

In 2010, an estimated 44.7 million women and men from South and South-East Asia were living and working outside their own country, a 42 per cent increase over the previous five years.<sup>17</sup> Nationals from these regions constitute a significant proportion of the world's temporary labour migrants.<sup>18</sup> Globally, of the top ten emigration countries worldwide, five are located in South and South-East Asia: Bangladesh, China, India, Pakistan and the Philippines.<sup>19</sup> Almost 42 per cent of all migrants in Asia are female.<sup>20</sup> While 'traditional' destinations such as the United States (U.S.) and Europe remain important, currently the vast majority of migrants from these countries work either in West Asia (the 'Gulf' countries) or in East and South-East Asia.<sup>21</sup>

At the same time as the numbers of temporary labour migrants have increased over the past four decades, facilitating international migration has become a highly profitable business.<sup>22</sup> Since the 1970s, the numbers of private recruitment agencies (PRAs) and sub-agents that organize international migration for a fee have burgeoned in Asia. For instance, in Sri Lanka, the number of PRAs increased five-fold between 1985 and 2005 from approximately 200 to almost 1000.<sup>23</sup> PRA ranks have also swelled in countries that are primarily destinations for migrant workers. For example, in Lebanon in 1997 only 12 PRAs were registered with the authorities; by 2009 they numbered almost 600, amounting to a massive 5,000 per cent increase.<sup>24</sup> Although increasingly common in all parts of the globe, it is Asia where PRAs are the most integral to temporary labour migration.<sup>25</sup>

PRAs charge fees for a variety of tasks associated with migration facilitation, including finding job opportunities for migrants, mobilising and selecting candidates for overseas employment, processing immigration documentation, arranging transportation and accommodation, arranging or providing insurance

<sup>17</sup> World Bank calculations based on United Nations Department of Economic and Social Affairs global migrant stock figures. Available at: <http://data.worldbank.org/indicator/SM.POP.NETM> [Accessed June 2014]

<sup>18</sup> An international labour migrant is defined as an individual who is, will be or has been, engaged in a remunerated activity in a state of which he or she is not a national. See below.

<sup>19</sup> Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G. Battistella, 2013. IOM.

<sup>20</sup> Statistics available at: <http://www.oecd.org/els/mig/World-Migration-in-Figures.pdf> [Accessed June 2014]

<sup>21</sup> Labour Migration in Asia and the Role of Bilateral Migration Agreements: Market Access Facilitation by Informal Means. G. Battistella and B. Khadria, 2011. Part of Markets for Migration and Development (M4MD): Trade and Labour Mobility Linkages - Prospects for Development, Bern, 12-13 September 2011.

<sup>22</sup> Introduction. The Migration Industry and the Commercialisation of International Migration. T. Gammeltoft-Hansen and N. N. Sorensen (eds) 2012. Routledge London.

<sup>23</sup> Best Practices in Social Insurance for Migrant Workers: T. del Rosario, 2008. International Labour Organisation, Regional Office for the Pacific. ILO Asian Regional Programme on Governance of Labour Migration. Working Paper 2.

<sup>24</sup> Moukarbel, N. 2009 Sri Lankan Housemaids in Lebanon. A Case of 'Symbolic Violence' and 'Everyday Forms of Resistance'. IMISCOE Dissertations. Amsterdam University Press.

<sup>25</sup> Introduction. The Migration Industry and the Commercialisation of International Migration. T. Gammeltoft-Hansen and N. N. Sorensen (eds) 2012. Routledge London.

and access to credit, arranging or providing pre-departure training.<sup>26</sup> The vast majority of migrants from Colombo Process Member States (CPMS) use-and usually pay for-the services of a PRA and/or a sub-agent in order to migrate.<sup>27</sup>

Human rights defenders, civil society organization (CSOs), journalists and academics have consistently exposed the abuses and exploitation which is associated with the recruitment process. High recruitment fees, which can lead to debt bondage (a form of forced labour), deceit about the terms and conditions of employment contracts, processing of fake employment and immigration documents which leave migrants unprotected in destination states, confiscation of identity documents, as well as emotional and physical violence have all been well-documented as occurring during the recruitment process. Within Asia, these practices are endemic - the norm even, rather than isolated incidences. At the far end of the spectrum, exploitative recruitment practices can morph into the egregious crimes of trafficking and forced labour.<sup>28</sup>

In part, the level of exploitation reflects the numerous and extensive challenges that Colombo Process Member States (CPMS) and destination country governments alike face in regulating and monitoring the international recruitment industry. Consequently, in recent years international organizations, including IOM (International Organization for Migration), ILO (International Labour Organization), UN Women, and UNODC (United Nations Office on Drugs and Crime), have supported governments in developing better legislation, issuing guidance, and implementing training. On the global stage, international intergovernmental dialogues on migration, such as the UN High Level Dialogue on Migration and Development, and the Global Forum on Migration and Development (GFMD), have also begun to tackle the issue of recruitment monitoring.<sup>29</sup> Contributing to this international energy are the valiant efforts of civil society structures such as the People's Global Action on Migration, Development and Human Rights, which has amassed hundreds of grassroots groups and NGOs in an alliance to organize for migrants' rights, including advocating for better regulation of recruitment.<sup>30</sup>

Recruitment monitoring is not the only challenge facing South and South-East Asian states with significant numbers of overseas migrants. How to provide or to ensure that their nationals receive access to 'welfare assistance', such as health care, legal help, information and training, and repatriation assistance during the migration process-pre-departure, en route, in the destination country and post-return, is of significant concern to governments.<sup>31</sup> These types of welfare assistance may be delivered by government institutions, embassies in the destination country, trade unions and civil society, and by lawyers. Much of this welfare assistance is necessary in order that low wage migrant workers can realize their human rights, and which is usually denied to CPMS migrants in key destination states across the Middle East.<sup>32</sup>

<sup>26</sup> Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G. Battistella, 2013. IOM.

<sup>27</sup> Merchants of Labour, 2006 C. Kuptsch (eds). International Institute for Labour Studies. International Labour Office. Geneva.

<sup>28</sup> ILO Indicators of Forced Labour. International Labour Office. Special Action Programme to Combat Forced Labour. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf) [Accessed June 2014]

<sup>29</sup> Regulation of recruitment featured high on global civil society's "5 Year, 8 Point Plan" for collaboration with governments and on the UN Secretary General's Agenda for Action (8 points). Repeated reference was made by states, by civil society and by international organisations to reform of the international recruitment industry. E.g. See <http://gfmddcivilsociety.org/second-un-high-level-dialogue-results-in-convergence/> [Accessed June 2014]

<sup>30</sup> See <http://www.migrantwatch.org> [Accessed December 2014]

<sup>31</sup> One of the key thematic foci of the Colombo Process (CP) as a Regional Consultative Dialogue is to provide appropriate services to migrants including pre-departure orientation, information and welfare provisions. [http://publications.iom.int/bookstore/free/ColomboProcessStudy\\_final.pdf](http://publications.iom.int/bookstore/free/ColomboProcessStudy_final.pdf)

<sup>32</sup> Martin Ruhs, 2013, *The Price of Rights, Regulating International Labor Migration*. Princeton University Press. Oxford.

In order to address these human rights issues, the Colombo Process (CP) - a Regional Consultative Process for 'migrant-origin' states in South and South-East Asia - was established in 2003. Currently under the Chair of Sri Lanka, the Process has three thematic foci:<sup>33</sup>

- ❑ Protection of, and provision of, services to migrant workers - in particular, protecting migrant workers from abusive practices in recruitment and employment, and providing appropriate services to them in terms of pre-departure information, orientation and welfare provisions.
- ❑ Optimising the benefits of organized labour migration, including the development of new overseas employment markets, increasing remittance flows through formal channels and enhancing the development impacts of remittances.
- ❑ Capacity building, data collection and interstate cooperation, including institutional capacity building and information exchange to meet labour migration challenges; increasing cooperation with destination countries in terms of protection of migrant workers and access to labour markets; and enhancing cooperation among countries of origin.

Members of the Colombo Process include Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, and Viet Nam. Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE are also members with the CPMS in the 'Abu Dhabi Dialogue' (ADD), another Regional Consultative Process. This dialogue is intended to provide a space in which CPMS can consult and collaborate with key destination states to development in temporary labour mobility in Asia. ADD thematic foci include:

- ❑ Developing and sharing knowledge on labour market trends, skills profiles, workers and remittances policies and flows, and the relationship to development;
- ❑ Building capacity for more effective matching of labour supply and demand;
- ❑ Preventing illegal recruitment and promoting welfare and protection measures for contractual workers; and
- ❑ Developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual work that fosters the mutual interest of countries of origin and destination.

This report has been commissioned by IOM, coordinator of the CP under the auspices of the programme, "Strengthening labour migration management capacities in Bangladesh, Indonesia, Nepal and the Philippines for replication in other Colombo Process Member States". The report reviews: a) the state of play of recruitment monitoring in CPMS and their key destination states, and b) the provision of welfare assistance to CPMS migrants.<sup>34</sup>

## 1.1 Objectives and scope

The objectives of this study are to:

- ❑ To review existing recruitment monitoring mechanisms and compile good practices of recruitment monitoring in CPMS and key destination states,
- ❑ To review CPMS migrants' access to welfare assistance

<sup>33</sup>See <http://www.colomboprocess.org>

<sup>34</sup> See below for definitions of this.

The countries included in this study are the CPMS plus the destination countries Bahrain, Kuwait, Oman, Qatar, Saudi Arabia (KSA), United Arab Emirates (UAE) and Yemen<sup>35</sup> as well as other significant CPMS destination states to include Jordan, Lebanon and the EU<sup>36</sup> (see Table 1).

Table 1: Countries included in the research

Origin States	Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Viet Nam
Destination States	Bahrain, EU, Japan, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Singapore, Republic of Korea, Thailand, UAE, Yemen

PRAs are defined within this report according to Private Employment Agencies Convention, 1997 (No. 181) (C181). Namely as any 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 which may arise there from;
- (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") which 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.<sup>37</sup>

It is worth highlighting that, worldwide, the international recruitment industry is extremely heterogeneous. PRAs come in all 'shapes and sizes' ranging from huge multinational corporations to individual sub-agents. In CPMS, sub-agents are extremely important facets of the recruitment and migration process, usually being the first - and sometimes only - point of contact for migrants in the process leading up to employment. There is no commonly legal definition of 'sub-agent', although a working definition is included in Table 2 below. In order to facilitate migration, PRAs and sub-agents work with a multitude of interrelated businesses such as medical centres, training centres, travel agents, insurance companies and accommodation businesses. How these businesses are monitored is incredibly important and certainly related to the international business of recruitment, but is outside the scope of this report, other than where PRAs own or have controlling financial interests in the business.

The focus of this report is international migration, as defined according to international human rights standards (see table below).<sup>38</sup> Recruitment for internal migration within CPMS is important and is relatively under-studied, however, is again outside the scope of this report. This is because recruitment for internal migration invokes a different set of regulations, both of the migration as well as of the businesses implicated. Different businesses are also likely to be involved in internal recruitment processes.

<sup>35</sup> See <http://www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/rcps-by-region/abu-dhabi-dialogue.html> [Accessed June 2014]

<sup>36</sup> Rather than examining all 28 Member States of the European Union, monitoring at European Commission was explored and illustrated with interesting practice and / or particular challenges within EU Member States.

<sup>37</sup> See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326) [Accessed June 2014]

<sup>38</sup> E.g. see ILO Convention C97, Migration for Employment, 1949 [Accessed June 2014]

PRAs and sub-agents may be legal or illegal operators according to the regulatory framework in place. Moreover, the migrations that they facilitate may be regular or irregular depending on: a) the exit controls in place in CPMS, and b) the immigration controls in place in destination states. In other words, there is no simple dichotomy between ‘legal recruitment’ and ‘illegal recruitment’. Both are covered within the pages of this report.

Monitoring frameworks may have (‘hard’) legal status if enshrined in international law, for example through a treaty, or included within national legislation. There are also a number of ‘soft’ law arrangements, which aim to set standards of behaviour for recruitment businesses. These include Codes of Conduct and ‘private regulation’ (‘self-regulation’) initiatives of business, and trade union and NGO monitoring. Monitoring takes place at three levels: Supranational, state, and non-state, illustrated in Figure 1 below. This typology is reflected in the report structure.

Figure 1: Types of recruitment monitoring

- A. **Supranational monitoring:** Role played by international human rights law, standards and instruments, by international organisations, and within the auspices of multilateral frameworks such as the Abu Dhabi Dialogue.
- B. **State-led monitoring:** Government regulation (including legislation and associated rules and orders), government monitoring and enforcement of regulation (including redress). State-led monitoring also includes government-to-government agreements.
- C. **Non-state-led monitoring:** Role played by trade unions, NGOs, and businesses (recruitment agencies and employers) in ‘soft’ regulation, including private initiatives.

Under the Project Terms of Reference, IOM specifically requested the following migrant welfare assistance practices to be included in the study: access to health care, access to credit, access to legal services, assistance with repatriation, assistance to families in case of death, pre-departure training, insurance schemes, emergency lodging or shelter and access to and provision of migrant welfare funds. Table 2 below sets out some definitions of terms used within the report:

Table 2: Terms used in the report<sup>39</sup>

Term	Definition
International recruitment	Recruitment which is conducted across one or more national borders and that usually necessitates the negotiating of immigration controls.
Private recruitment agencies (PRA)	Service enterprises, which carry out, in exchange for financial compensation, recruitment of workers for employment. Recruitment may take place either within domestic labour markets or internationally; this report covers international recruitment. In this context, workers are usually employed directly by employers, although in some domestic labour markets (e.g. European Union Member States), PRAs may also act as employers.
Sub-agent	Individual agents- who, working in usually loose partnerships with PRAs-are the first point of contact for individuals seeking foreign employment. Sub-agents charge fees (officially and hidden) for their services, which distinguishes them from other individuals within ‘social networks’ that facilitate migration.
Migrant worker	An individual, who is, will be or has been, engaged in a remunerated activity in a state of which he or she is not a national.

<sup>39</sup>Terms are based on international human rights standards where these definitions are available.

### Regular/irregular migration

Movement that takes place within or outside the regulatory norms of the sending, transit and receiving countries. From the perspective of destination countries it is entry, stay or work in a country with/without the necessary authorisation or documents required under immigration regulations. From the perspective of the sending country, the regularity/irregularity is for example seen in cases in which a person crosses an international boundary with/without a valid passport or travel document or does/does not fulfil the administrative requirements for leaving the country.

## 1.2 Methods and structure of the report

An international and multi-lingual team of researchers living in the Philippines, United Arab Emirates, and the UK conducted the research fieldwork. The full project team is listed in the acknowledgements at the beginning of this report. The lead author is responsible for the analysis and report drafting; the remainder of the team for data collection. Multiple methods were used to collect data, including:

- ❑ Desk reviews of legal and official documents relating to recruitment monitoring and migrant welfare assistance
- ❑ Desk reviews of academic and NGO ('grey') literature relating to recruitment and migrant welfare assistance
- ❑ 65 semi-structured interviews with government officials, Labour Attachés, representatives of NGOs and trade unions conducted by Skype, by email, and by telephone.
- ❑ Five 'field visits' to Jordan, Kuwait, Nepal, United Arab Emirates, Viet Nam
- ❑ A consultation with CPMS Labour Attachés based in Kuwait.

The fieldwork was conducted during January to May 2014. The case-study countries were selected by IOM on the basis that there was something particularly interesting in relation to recruitment monitoring there, or that their legal and policy frameworks were comparatively speaking, under-studied.

This is the first time that a study of this scale on recruitment monitoring across Asia has been attempted, and that this level of detail and analysis has been included within the pages of one report. Recognized by both IOM and the research team, this project has been highly methodologically challenging, with the requirement to generate, review, and validate an enormous amount of data within a very short space of time. In particular, legislation and policies regarding recruitment monitoring are constantly evolving and not always clearly detailed in publicly available documents.

A further challenge faced by the research team were that although there are many prior reviews of welfare assistance (especially of pre-departure training programmes) upon which we could draw, what country level assessments there are of recruitment monitoring tend to be almost entirely descriptive in nature. In short, there were no formal evaluations - impact assessments - of recruitment monitoring frameworks, which the team could make use of to build conclusions about what works and what does not. Many reports set out what they claim to be 'good practice', but this is rarely backed by any empirical data that shows why or how this constitutes 'good practice'. Governments of the countries included in this study do not commonly conduct regulatory impact assessments, nor even collect the data by which they could carry these out. Moreover, internationally, there is no consensus on how the effectiveness of recruitment monitoring should be

assessed. In other words, there is no agreement on what ‘success’ looks like - the indicators that would tell us that an initiative aimed at regulating the recruitment industry has been successful. Would this be, for example, the level of compliance of the industry with national laws, adherence to international human rights standards, or reduction in recruitment abuse reported by migrant workers? Given this, the analysis contained within this report includes the caveat that our conclusions are preliminary and cautious.<sup>40</sup>

The report is organized in two parts. The first part focuses on recruitment monitoring; the second on welfare assistance. The recruitment monitoring sections first:

- a) Reviews the supranational frameworks in place for monitoring recruitment;
- b) Followed by state monitoring; and
- c) Non-state monitoring.

The challenges of each level of monitoring as well as any initiatives or regulations identified by research participants as especially promising are included within each of the sections. Different features are illustrated by specific country examples. The detail is included with the caveats that at the time of writing, details are correct as far as the study team and IOM are aware. Following this, analysis is arranged thematically rather than country by country. Empirical data collected through interviews conducted during fieldwork visits to the five above countries and through interviews conducted by Skype and by telephone, is used to illustrate thematic points. Following the section on non-state monitoring, the conclusion draws together our key findings and recommendations for the commissioners of this report - the CPMS governments.

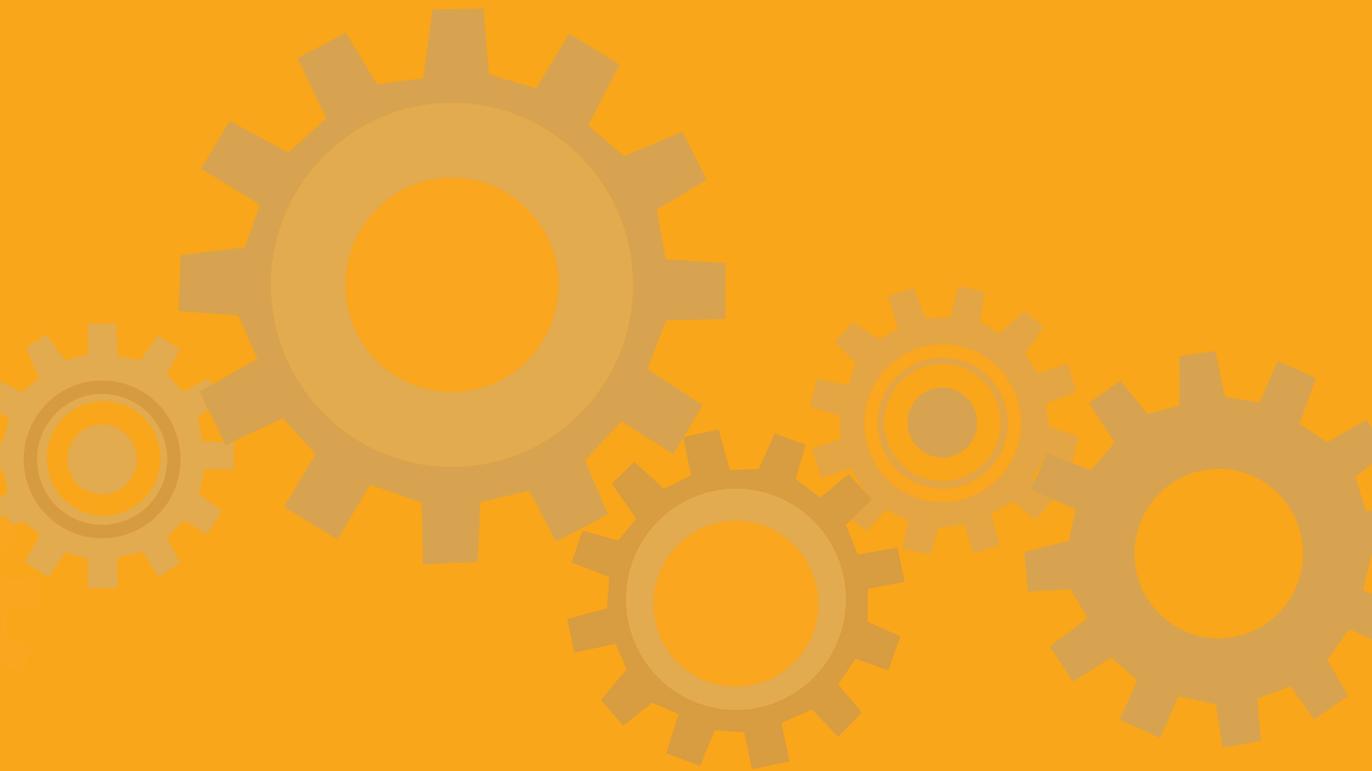
Part 2 of the report assesses CPMS migrants’ access to: migrant welfare funds, insurance, credit, health care, training, legal aid, repatriation, emergency lodging/shelter homes, and assistance to families in case of death. It also concludes with key findings and recommendations for CPMS governments.

---

<sup>40</sup> In addition to the data collated as part of this study, the lead author has been studying international recruitment regulation and business practices for seven years, and has drawn upon her knowledge and previous work in the analysis.



Part **1** **RECRUITMENT  
MONITORING**





# Chapter 2

## Context

This section briefly reviews labour migration from CPMS relevant to recruitment, the recruitment process including fees charged to workers, and human rights abuses and exploitation commonly associated with the international recruitment industry within Asia. This section has been included in the report because assessing and devising appropriate recruitment monitoring frameworks is dependent on properly understanding the specific causes and consequences of the abuses that arise out of the recruitment process, and properly identifying who or what is the problem that needs to be tackled.

### 2.1 Labour migration from CPMS

Significant proportions of CPMS populations live and work overseas. India, China, the Philippines and Bangladesh are among the top ten remittance-receiving countries worldwide.<sup>41</sup> Over nine per cent of the population of the Philippines and Sri Lanka live and work abroad, more than eight percent of the population of Afghanistan, over six per cent of Nepalese, almost five per cent of Bangladeshis, and approximately two and a half per cent of Pakistanis and Viet Nameese.<sup>42</sup> Despite the temporary decrease in global migration outflows due to the global economic crisis from 2007 onwards, the numbers of migrants from CPMS have continued to rise significantly. For instance, between 2005 and 2009, Pakistan more than doubled its annual labour outflow.<sup>43</sup> Table 3 sets out the net migration from CPMS in 2012.

Table 3: Net migration from CPMS 2012<sup>44</sup>

CPMS	Net (out-) migration 2012
Afghanistan	399,999
Bangladesh	2,040,559
China	1,500,000
India	2,294,049
Indonesia	700,000
Nepal	400,570
Pakistan	1,634,420
Philippines	700,000
Thailand	100,000
Viet Nam	200,002

<sup>41</sup>Since 2004, India has been the number one country in the world in total remittances (USD 55 billion in 2010), followed by China (USD 51 billion) and the Philippines (USD 21.3 billion), which also figure among the top 5 countries in levels of remittances.

<sup>42</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G Battistella, 2013. IOM.

<sup>43</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G Battistella, 2013. IOM.

<sup>44</sup>NB. Net migration is the net total of migrants during the period, that is, the total number of immigrants less the annual number of emigrants, including both citizens and noncitizens. Data are five-year estimates. Figures for destinations are for all incoming migrants, not just CPMS nationals. Source: World Bank. Available at: <http://data.worldbank.org/indicator/SM.POP.NETM> [Accessed June 2014].

It is important to note that the migration statistics cited above refer exclusively to migrants who travel through 'regular' routes; in other words migrants who have received legitimately authorized job offers and who travel with legitimately authorized emigration and immigration travel documents. The numbers of irregular migrants - those who do not go through authorised/official routes-are not counted in the official statistics. Given that we know that there is a variable, but high, amount of irregular migration from, to, and through Abu Dhabi Dialogue countries, the 'real' figures are likely therefore to be significantly higher than those that appear in the official statistics and which are reported here.<sup>45</sup>

Almost 42 per cent of all migrants in Asia are female.<sup>46</sup> The ratio of male/female out- migration varies between the CPMS. Female migration from Indonesia predominates in migration flows from that country, comprising 83 per cent of the total (regular) flow in 2009.<sup>47</sup> Over half the numbers of migrant workers leaving Sri Lanka and the Philippines are female.<sup>48</sup> On the other hand, migration from other nations is almost exclusively made up of male workers, such as those from Bangladesh, Nepal, and Pakistan.<sup>49</sup>

Migration is consequently, for CPMS governments, a substantial area of policy and a hugely significant factor in economic development. Remittances received by CPMS more than doubled from USD 84 billion in 2005 to USD 173 billion in 2010.<sup>50</sup> This is a highly significant factor in the need for CPMS governments to balance appropriate recruitment monitoring with labour export policies. Bangladesh, India, and the Philippines operate long-standing labour migration policies. Viet Nam is the most recent CPMS to adopt a labour-migration programme, overseeing the emigration of almost 400,000 Viet Nameese workers between 2005 and 2009.<sup>51</sup> Within the CPMS, only Thailand has reduced the number of outgoing migrants (by 42 per cent by 2009), rapidly transforming from primarily a country of origin to a destination for other temporary migrants from South East Asia.<sup>52</sup> It is worth noting that in addition to being a country of emigration, India is also a country of destination for Nepalese migrants in particular, who, since a bilateral treaty in 1950, have been able to travel freely into the country and take up employment.<sup>53</sup> Similarly, China has become an important destination for Viet Nameese and other South Asian economic migrants.

Connected with - and a major causal factor of - the huge increases in the numbers of migrants within Asia is that the region is in enormous economic flux. The CPMS include two of the largest, and rapidly growing, economies outside the OECD - India and China.<sup>54</sup> China is both the largest market for the fast-industrializing nations of East Asia and currently the world's largest exporter of goods and services.<sup>55</sup> This is driving inward migration as well as internal migration within China. Both India and China are members of the BRICS group of major emerging national economies. Other CPMS also have rapidly developing economies. For instance,

<sup>45</sup>See <http://www.oecd.org/migration/mig/oecd-migration-databases.htm> [Accessed June 2014]

<sup>46</sup>Statistics available at: <http://www.oecd.org/els/mig/World-Migration-in-Figures.pdf> [Accessed June 2014]

<sup>47</sup>An Assessment of Migrant Worker Recruitment Monitoring in Indonesia. John Lindsay. 2013. International Organisation for Migration (IOM) Jakarta.

<sup>48</sup>Annelies Cooper, "Disempowered 'Heroes,' Political Agency of Foreign Domestic Workers in East and Southeast Asia," e-International Relations, July 6, 2011.

<sup>49</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, and G Battistella, 2013. IOM.

<sup>50</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G Battistella, 2013. IOM.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

<sup>53</sup>The 1950 Indo-Nepal Treaty of Peace and Friendship.

<sup>54</sup>See <http://www.economist.com/node/15912964> [Accessed June 2014]

<sup>55</sup>See <http://www.economist.com/node/15912964> [Accessed June 2014]

in 2013, foreign direct investment (FDI) into Indonesia, Malaysia, the Philippines, Singapore and Thailand (the “ASEAN 5”) reached USD 128.4 billion for the first time.<sup>56</sup> This is also shaping migration flows. CPMS migrants are recruited for temporary jobs in East, South-East and West Asia, with the Gulf Cooperation Council (GCC) states featuring strongly as destinations.<sup>57</sup> In 2009, over 90 per cent of migrants from India,<sup>58</sup> Pakistan<sup>59</sup> and Sri Lanka were employed in jobs in the GCC, almost three quarters of those from Bangladesh<sup>60</sup> and over half of those from Nepal.<sup>61</sup> (See Figure 2)

Figure 2: Distribution of CPMS migrants by region of destination, 2009<sup>62</sup>



In turn, over the past three decades, the GCC (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates) have become heavily dependent on migrant labour (see Table 4 below), driven largely by the development of the oil industry, associated infrastructure, and the supporting service sector.<sup>63</sup> ‘Nationalization’ programmes implemented by the GCC to reduce dependency on labour migration, have included measures such as increasing the costs of residence permit fees, health fees and insurance fees, and creating job opportunities for nationals.<sup>64</sup> Saudi Arabia has taken a more direct approach in deporting massive numbers of migrant workers.<sup>65</sup>

<sup>56</sup>See <http://www.economist.com/node/15912964> [Accessed June 2014]<sup>57</sup>The Cooperation Council for the Arab States of the Gulf is a regional intergovernmental political and economic union consisting of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.  
<sup>58</sup>India Migration Report, 2009. B. Kahdria (ed). Cambridge University Press. In the case of India, this flow only covers workers who need the Exit Clearance Certificate (ECR), required of those who go to only 18 countries.  
<sup>59</sup>Cited in Pakistan’s National Emigration Policy, A Review. M.A. Jan. Policy Paper Series 35, December 2010. Sustainable Development Policy Institute (SPDI).  
<sup>60</sup>Unravelling the vicious cycle of recruitment: Labour migration from Bangladesh to the Gulf States. Afsar, R., 2009. International Labour Office. Geneva.  
<sup>61</sup>Nepal Migration Year Book, 2009. Nepal Institute of Development Studies (NIDS). Kathmandu, Nepal.  
<sup>62</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, and G Battistella, 2013. IOM.  
<sup>63</sup>E.g. see D. Held and K. Ulrichson (eds) 2011, The Transformation of the Gulf: politics, economics and the global order. Routledge. Abingdon, UK.  
<sup>64</sup>See A comparative assessment of labour market nationalisation policies in GCC, H. Steffen, 2012. In, H Steffen (ed.) National Employment, Migration and Education in the GCC. The Gulf Region: economic development and diversification 4, Gerlach Press, Berlin, Germany.  
<sup>65</sup>E.g. see <http://www.ibtimes.co.uk/saudi-arabia-deport-one-million-people-anti-immigration-crackdown-1471035> [Accessed December 2014]

Table 4: Net migration in CPMS destination states, 2012<sup>66</sup>

Selected CPMS destination states	Net (in-) migration 2012
Bahrain	22,081
Jordan	400,002
Lebanon	500,001
Kuwait	299,999
Malaysia	450,000
Oman	1,029,938
Saudi Arabia	300,000
Singapore	400,000
Korea (Republic of)	300,000
Qatar	499,998
United Arab Emirates	514,042

CPMS nationals mainly migrate for employment in construction, service work, manufacturing, agriculture, and domestic and care work. For instance, of Sri Lankan nationals travelling to the Middle East, in 2012, 46 per cent were employed as domestic workers and 22 per cent registered as unskilled workers.<sup>67</sup> In the same year, migrants from Indonesia were employed mostly in domestic work (overwhelmingly female), agriculture, construction, manufacturing and the service sector (mostly male employment).<sup>68</sup>

CPMS nationals are not allowed to freely travel to and work in key destination states (with the exception of the India/Nepal example referred to above), but must circumnavigate a vast bureaucratic assemblage of emigration and immigration laws prior to migrating. With the noted exception of Bahrain, the Middle East destination states operate the 'Kafala' system, which requires all migrants to be sponsored by an employer who is legally responsible for their visa and legal status while in the country. Qatar and Saudi Arabia also prevent migrants from leaving the country without their employer's permission.<sup>69</sup> On the other hand, in 2009, Bahrain repealed the Kafala sponsorship system. Under the new law, migrant workers are sponsored by the responsible government authority (the Labour Market Regulation Authority), and are also provided a 30-day grace period to remain legally in the country while they seek new employment.<sup>70</sup> The new rights do not however extend to domestic workers. (See Annex 1 for an overview of the key Kafala provisions in select GCC destinations.) In the European Union (EU), CPMS migrants (known in EU terms as 'third country nationals') must apply for a work permit in advance of entering, also sponsored by an employer in most cases.<sup>71</sup> Strict immigration controls are usually connected with a lack of access to social, political, and civil rights for migrants in destination countries. This means that provisions for basic welfare assistance are often denied as destination states avoid awarding equal civil, political and social and economic rights to incomers.<sup>72</sup>

<sup>66</sup>NB. Net migration is the net total of migrants during the period, that is, the total number of immigrants less the annual number of emigrants, including both citizens and noncitizens. Data are five-year estimates. Figures for destinations are for all incoming migrants, not just CPMS nationals. Source: World Bank Available at: <http://data.worldbank.org/indicator/SM.POP.NETM> [Accessed June 2014]

<sup>67</sup>Towards Effective Foreign Employment Recruitment Monitoring in Sri Lanka. International Organisation for Migration. 2010.

<sup>68</sup>Step Up: Improving Migrant Worker Recruitment in Indonesia. Findings from a research visit to Semarang, Indonesia May 2011. Business for Social Responsibility (BSR).

<sup>69</sup>Reform of the Kafala (Sponsorship) System. Policy Brief No. 2. Migrant Forum Asia.

<sup>70</sup>Reform of the Kafala (Sponsorship) System. Policy Brief No. 2. Migrant Forum Asia.

<sup>71</sup>The exceptions to this model of migration are the more traditional migratory patterns to European Union, the United States or Canada under family reunion immigration channels.

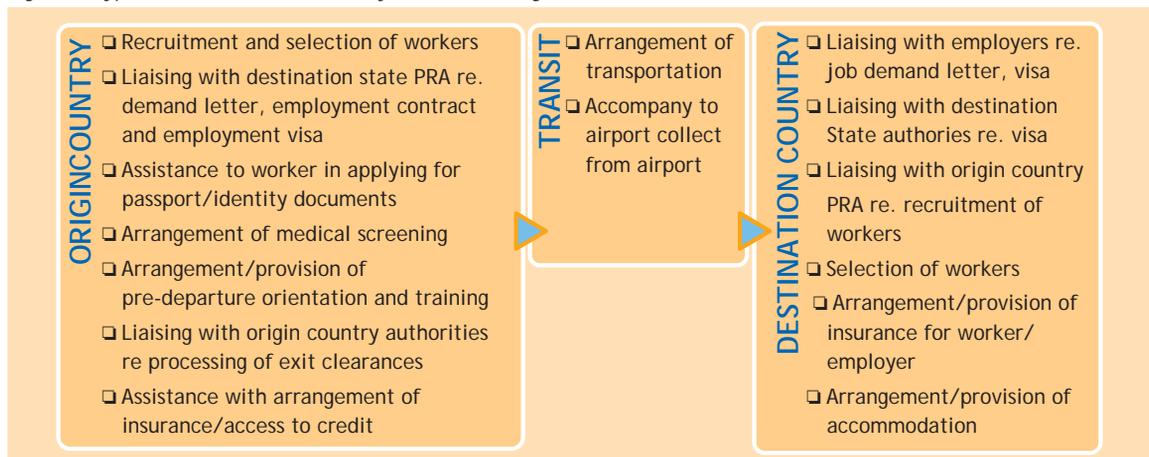
<sup>72</sup>E.g. see *The Price of Rights: Regulating International Labour Migration*. M. Ruhs 2013. Princeton University Press.

## 2.2 Overview of PRA recruitment activities

In order to assess recruitment monitoring, it is helpful to briefly review the types of business activities PRAs and sub-agents engage in and the human rights risks and abuses that may be associated with these practices. PRAs and sub-agents (in both origin and destination countries) conduct a variety of tasks in order to facilitate international recruitment. They find and select candidates for overseas employment, find job opportunities and match candidates to them, they process exit and immigration documents, they arrange transportation and accommodation, negotiate employment contracts, arrange or provide insurance and access to credit so that migrants can migrate, arrange or provide pre-departure orientation and other forms of training, and arrange access to medical screening.<sup>73</sup> These activities are depicted in Figure 3 below. (NB. The boxes are shown side-by-side as many of these activities occur simultaneously rather than sequentially.)

Sub-agents may also conduct PRA activities in the origin country. In addition to international recruitment, PRAs in destination states may also be involved in the ‘local hiring’ of migrant workers, where migrants are already in the country. In most cases, due to immigration controls (Kafala) that prevent migrants from freely moving employment, this is illegal.

Figure 3: Typical activities conducted by PRAs and subagents



Recruiters (PRAs and sub-agents) charge fees, to employers and to migrants. Excessively high fees can lead to situations of debt bondage, a form of forced labour. Recruiters charge fees for document processing, for visas and work permits, for medical tests which are required as part of the emigration/immigration processes, for pre-departure training, for international transportation, for transport from home to capital city or to departure airports, for commissions to officials, and for administrative charges amongst other items. A component of the fees charged are for the ‘actual costs’ associated with migration-other portions are for the ‘service charge’ which represents the profit generated by PRAs and sub-agents. Some fees are legal. Some are not depending on the legal framework in place (discussed in Section 4.1.3 Regulating fee-charging to workers).

As an illustrative example, Table 5 presents the average fees charged to CPMS migrants who are recruited for jobs in the electronics industry in Singapore.<sup>74</sup> Fees vary by:

<sup>73</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G Battistella, 2013. IOM.

<sup>74</sup>Figures provided by an interviewee from an auditing firm based on their interviews with migrant workers.

- ❑ The 'actual' costs of processing documents (visas and exit documents, including birth certificate and passport). These may vary according to demand.<sup>75</sup>
- ❑ The 'actual' cost of flights
- ❑ The type of occupation - the more highly skilled the job in which a migrant is being placed the less likely fees will be charged.<sup>76</sup>
- ❑ Gender of migrant, with women usually charged less than men.<sup>77</sup>
- ❑ Commissions to officials.
- ❑ The service charge 'mark-ups' charged by recruiters (PRAs and sub-agents).

Most commonly, migrants pay fees to origin country PRAs and sub-agents. However, several reports have also noted that migrants sometimes pay fees to destination country PRAs. For instance, a recent Human Rights Watch report revealed that nearly all one thousand construction workers based in Qatar interviewed by their researchers reported that they had paid recruitment fees of between 726 USD and 3651 USD, as well as paying for visas, work permits, and deposits to their sponsors or employers upon arrival in Qatar.<sup>78</sup>

Table 5: Avg. fees paid by migrants in the electronics industry in Singapore by origin country

Origin country	Avg. fee paid by worker to recruitment agency (USD)
China	4000 - 10000
India	2000 - 3000

CPMS migrants usually bear the cost of their own recruitment, but in some circumstances employers also pay fees to PRAs. Amounts charged by PRAs to employers vary according to destination, occupation, nationality and gender. For instance, a recent study has revealed that fees paid by employers to PRAs in Lebanon for the recruitment of domestic workers vary from 1500 USD to 2000 USD to recruit from Bangladesh or Sri Lanka, to 2,500 USD to recruit an employee from Kenya, and 4,500 USD to recruit an employee from the Philippines.<sup>79</sup> These costs may vary for the reasons outlined above. Recruiting from the Philippines also costs more because, in theory, PRAs are barred from charging women any fees, with employers responsible for all the costs. This is not the case in the other countries in which fees can be legally charged. (This point is discussed further throughout the report.)

In short, there are multiple costs, fees, commissions and bribes involved in the recruitment business; which are either charged illegally, legally, legitimately, illegitimately. And it is not always clear which business or individual has profited from the fees charged.

## 2.3 Recruitment and human rights abuses

In order to discuss recruitment monitoring it is necessary to first establish why recruitment needs to be monitored. Reports drafted by human rights organizations, media, governments, and academics extensively document the abuses and exploitation which migrant workers endure during and as a result of the recruitment process and business practices conducted by recruiters (PRAs and sub-agents). It is especially

<sup>75</sup>One PRA interviewee in Nepal highlighted that the cost of flights from Kathmandu to the GCC countries tended to significantly rise according to demand; travel agents reportedly hiked prices when demand for flights was high.

<sup>76</sup>E.g. ASPROE, the Association for Professionalism in Overseas Employment, in the Philippines is an association of PRAs which do not charge recruitment fees. See <http://asproe.strikingly.com/> [Accessed June 2014]

<sup>77</sup>Unravelling the vicious cycle of recruitment: Labour migration from Bangladesh to the Gulf States. Afsar, R., 2009. International Labour Office. Geneva.

<sup>78</sup>Building a Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022. 2012. Human Rights Watch. New York.

<sup>79</sup>ILO Work in Freedom Recruitment Baseline (Forthcoming 2014 - 2015).

important to separate these from the abuses which are perpetrated by other actors in the migration process, e.g. employers, medical centres, travel agencies, in order that recruitment monitoring can be effectively targeted.

At one end of the spectrum, PRAs and/or sub-agents may be involved in the most egregious abuses of trafficking and/or forced labour. These are defined according to international human rights law. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Conventions Against Transnational Organized Crime, 2000 (the 'Trafficking in Persons' Protocol) defines human trafficking 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 payments or benefits to achieve the consent of a person having control over another for the purpose of exploitation.<sup>80</sup>

The ILO Forced Labour Convention, 1930 (No. 29) (C29), defines 'forced or compulsory labour' as: "all work or service which is exacted from any person under the menace of any penalty and to which the said person has not offered him voluntarily".<sup>81</sup> 'Work and services' includes all types of work, employment or occupation, whether legal or not. 'Menace of any penalty' includes all forms of criminal sanctions and other forms of coercion, including threats, violence, retention of identity documents, confinement, non-payment or illegal deduction of wages, or debt bondage.<sup>82</sup>

The most recent U.S. State Department, Trafficking in Persons (TIP) Report has placed eight of the CPMS in Tier 2, defined as countries whose governments do not fully comply with the Trafficking Victims Protection Act (TVPA), 2000 minimum standards but which are making significant efforts to bring themselves into compliance with those standards.<sup>83</sup> Sri Lanka and Pakistan have been placed on the Tier 2 Watch List, defined as a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials).<sup>84</sup> Amidst many reports of forced labour in the sea-fishing industry, Thailand has been placed in Tier 3 for the 2014 report, defined as countries whose governments do not fully comply with the TVPA's minimum standards and are not making significant efforts to do so.

<sup>80</sup>Article 3(a). Protocol available at: <http://www.unodc.org/unodc/en/treaties/CTOC/> [Accessed June 2014]

<sup>81</sup>Article 2(1). Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029) [Accessed June 2014]

<sup>82</sup>See ILO Indicators of Forced Labour. 2012. International Labour Organisation. Geneva. Available at: [http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS\\_203832/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_203832/lang--en/index.htm) [Accessed June 2014] The ILO has produced a booklet, entitled, "ILO Indicators of Forced Labour", which are aimed at helping law enforcement officials, labour inspectors, trade union officers, NGOs and others to identify forced labour. Indicators are based on the ILO Forced Labour Convention, 1930 (No. 29). See [http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS\\_203832/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_203832/lang--en/index.htm).

<sup>83</sup>The TVPA minimum standards are: 1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

<sup>84</sup>US State Department, Trafficking in Persons Report, 2014. Available at: <http://www.state.gov/documents/organization/226844.pdf> [Accessed June 2014]

Turning to the destination states, Bahrain and Lebanon have been placed on the Tier 2 Watch List for the third consecutive year, with evidence of widespread forced labour and recruitment abuses, especially of trafficked female domestic workers, cited as evidence for this. Kuwait and Saudi Arabia have been placed in Tier 3, with the involvement of PRAs in trafficking for forced labour especially noted in the 2014 report.<sup>85</sup>

While these egregious abuses are reported to be committed by recruiters, human rights abuses with which recruiters are more commonly associated include, employment contract substitution, 'false promises' about the salary that migrants will receive, high recruitment fees which lead to situations of debt bondage (as migrants need to pay all her/his salary to repay the debt), and confiscation of identity documents.<sup>86</sup> Another common form of PRA exploitation is employment contract substitution, which is also endemic throughout Asia, with migrants promised one salary prior to leaving home, and presented with an entirely different employment contract in the destination country with a lower salary or even relating to an entirely different job. This quote from a NGO representative in Bahrain interviewed for this study illustrates this:

Contract substitution is the other big issue here. Recruitment agencies force workers to change contracts; they force workers to sign contracts in the Philippines and in Bahrain (i.e. salary change). These people only use these contracts in the Philippines to show compliance, but when they come here, they 'flip it' here in Bahrain. But you have no choice, but you have to continue your work because you've already sold your lands, or took large loans to come to Bahrain.<sup>87</sup>

Gender is an important factor in exploitation. Female migrants, usually domestic workers, endure greater risks, and sometimes higher levels of exploitation, due to the potentially greater risks that private households, usually outside labour market regulation and inspection, can pose to workers, the isolation of workers and the 'emotional' nature of the work.<sup>88</sup> Moreover, women who travel irregularly, for instance if there is a recruitment ban in place, are not entitled to the same protection that male workers going through official routes would receive. This quote from an interview with a Ugandan civil society representative based in Kuwait illustrates one of the typical complaints:

Some girls jumped from the third floor to get out of her recruiter's office. Because of this immediate case, we begged the hospital to take care of the lady. In total, it cost us KD 150 (500 USD) to perform leg surgery and painkiller. We got this done and we are thankful for it. But, you have to ask yourself, why did some of these girls jump? We found that these women are being locked and then sexually molested by their Pakistani and Nepali agents. These recruitment companies are run by Kuwaitis, and often do not have female staff members to even take care of these cases. These girls are locked in and I feel that recruitment becomes illegal trafficking over time. Now, I couldn't determine the difference by looking at these women's cases.<sup>89</sup>

Recent reports by journalists at the UK's Guardian newspaper about the conditions faced by Indian and Nepalese construction workers in Qatar also make it clear however that men can face equally abusive

<sup>85</sup>US State Department, Trafficking in Persons Report, 2014. Available at: <http://www.state.gov/documents/organization/226844.pdf> [Accessed June 2014]

<sup>86</sup>E.g. see Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.

<sup>87</sup>Interviewee, BN1, April 2014 <sup>h</sup>.

<sup>88</sup>Doing the Dirty Work? The Global Politics of Domestic Labour. 2000. Bridget Anderson. Zed Books. London.

<sup>89</sup>Interviewee KN, April 2014.

recruitment conditions.<sup>90</sup> Table 6 sets out the most common human rights abuses reported to be associated with international recruiters (PRAs and sub-agents). The abuses are listed against common recruitment business practices.

Table 6: Main human rights impacts arising out of recruitment

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	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.
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.

The following three sections of the report review:

- a) Supranational monitoring;
- b) State (government) monitoring; and
- c) Non-state (government) monitoring (self-regulation by business, role of trade unions and civil society).

<sup>90</sup>E.g. see <http://www.theguardian.com/world/2014/may/14/qatar-admits-deaths-in-migrant-workers> [Accessed June 2014]



## Chapter 3

# Supranational Recruitment Monitoring

There is no international infrastructure or single international organization which has a mandate to regulate or to monitor the international recruitment industry. There is a plethora of international organizations (IOM, ILO, UN Women UNODOC, OHCHR, UNCTAD and WTO), which, to greater or lesser extent, monitor migration and recruitment, within what one writer refers to as a “rich and fragmented tapestry of global migration governance”.<sup>91</sup> Recent years have also been witness to increasing international cooperation and debate among states specifically on the topic of recruitment regulation and monitoring, as migration has become an increasingly politicized and visible issue.<sup>92</sup> For instance, how to better regulate international recruitment was a key topic of debate during the 2013 UN High Level Dialogue on Migration and Development,<sup>93</sup> and also within the Global Forum on Migration and Development (GFMD).<sup>94</sup> This section outlines the key international human rights standards which relate to international (migrant) recruitment, briefly discusses the role of international organizations in advancing better regulation and monitoring of recruitment, and discusses the role of regional multilateral mechanisms.

### 3.1 International human rights standards on recruitment

This section briefly reviews the key international human rights standards applicable to international recruiters. With the exception of the UN Guiding Principles on Business and Human Rights (see below), these standards relate to actions to be conducted by states, i.e. national governments, which are required to regulate the activities of businesses within their territories. ILO’s Private Employment Agency Convention, 1997(No. 181)(C181) and Recommendation No. 188, 1997 set out standards for fair and decent recruitment practices. C181 requires Members to:

After consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, 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.<sup>95</sup>

<sup>90</sup>E.g. see <http://www.theguardian.com/world/2014/may/14/qatar-admits-deaths-in-migrant-workers> [Accessed June 2014]

<sup>91</sup>The global governance of migration and the role of trans-regionalism. Betts 2011 in R Kunz, S Lavenex and M Panizzon, *Multilayered Migration Governance: the promise of partnership*. Routledge, Oxford, 2011

<sup>92</sup>Ibid.

<sup>93</sup>See <http://www.un.org/en/ga/68/meetings/migration/> [Accessed June 2014]

<sup>94</sup>Initiated at the UN General Assembly’s High-Level Dialogue on Migration and Development in 2006, it meets annually. GFMD is a forum for States which is outside the UN system but coordinates through the UN Special Representative for Migration. See <http://www.gfmd.org/> [Accessed June 2014]

<sup>95</sup>Article 8 C181. Available at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312326:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312326:NO) [Accessed June 2014]

In short, states (national governments) are charged with appropriately regulating PRAs in accordance with national law and practice. C181 also recommends that where international recruitment is a significant issue of concern, that Members should consider the conclusion of bilateral labour agreements to prevent recruitment abuses and fraudulent activity.<sup>96</sup> Most concretely, C181 requires that states should regulate so that recruiters: “shall not charge directly, or indirectly, in whole or in part, any fees or costs to the workers”.<sup>97</sup> The accompanying Recommendation 188 tightens these provisions, requiring states to ensure that PRAs:

- ❑ 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;
- ❑ Do inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.<sup>98</sup>

At the time of writing, C181 has been ratified by 28 states globally, none of which are CPMS. While all have implemented regulatory frameworks to govern international recruiters, none (with the exception of the Philippines) have banned fee-charging to workers, which is a contradiction of this standard. Of the destination states included in this study, only Japan and eleven EU Member States have ratified C181 (Belgium, Bulgaria, Czech Republic, Hungary, Italy, Lithuania, Netherlands, Poland, Portugal, Slovakia and Spain).

In June 2014, the International Labour Conference adopted a Protocol to the ILO’s Forced Labour Convention, 1930 (No. 29), which includes that measures to be taken by governments 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.”<sup>99</sup> The Forced Labour Protocol of 2014 is intended to complement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the UN Convention against Transnational Organized Crime, adopted in 2000. However, the Thai government voted against the Protocol, while Bahrain, Brunei, Iran, Kuwait, Omar, Qatar, Saudi Arabia and Yemen were among those abstaining. The sector-specific Work in Fishing Convention, 2007 (No. 188) (C188) and the Domestic Workers Convention, 2011 (No. 189) (C188) and the Domestic Workers Convention, 2011 (No. 189) (C189), also include clauses on recruitment.<sup>100</sup> In alignment with C181, C189 makes governments of ratifying states responsible for regulating PRAs that recruit or place domestic workers, including ensuring that “adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices” concerning their activities.<sup>101</sup> Also in alignment with C181, both C188 and C189 require national governments to take measures to ensure that recruitment fees are not charged or deducted from migrants’ salaries. C189 has been ratified by 14 states, including, of this study’s participants, the Philippines, Germany and Italy. C188 has been ratified by five states, none of which are CPMS or important CPMS destinations.

<sup>96</sup>Article 8, C181 Available at

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312326:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312326:NO) [Accessed June 2014]

<sup>97</sup>(Article 7.1) The following sub-article allows the ‘competent authority’ to authorise exceptions after consultation with social partners (employers and workers’ organizations).

<sup>98</sup>Recommendations are not legally binding on states.

<sup>99</sup>Available at: <http://www.ilo.org/ilc/ILCSessions/103/on-the-agenda/forced-labour/lang--en/index.htm> [Accessed June 2014]

<sup>100</sup>Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C188](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188) and [http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100\\_instrument\\_id:2551460:no](http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:2551460:no)

<sup>101</sup>Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:2551460:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO) [Accessed June 2014]

The Migration for Employment Convention (Revised), 1949 (No. 97) (C97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (C143)<sup>102</sup> and their accompanying Recommendations No. 86 and 151, contain important standards protecting migrant workers who are recruited across or within national borders. (Of the CPMS, only the Philippines have ratified these two Conventions.) However, neither Convention includes anything relating to the role of private recruiters, although Recommendation 86 however does require that Members should require ‘intermediaries’ to hold a job order or some kind of written warrant to prove that he is acting on the employer’s behalf, and that this should include an outline of the nature and scope of the recruitment and terms and conditions of the employment offered, including the level of remuneration.<sup>103</sup> Similarly, the UN International Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990, (UNCPRMWF) ratified by four CPMS (Sri Lanka, Philippines, Indonesia and Bangladesh), does not include a clause on recruitment.<sup>104</sup>

The three ‘migration conventions’ relative silence on private recruiters is for two reasons. At the time of their adoption, the global recruitment industry was yet to emerge in a significant way. More importantly, C181, adopted by the International Labour Conference in 1997, overturned Convention Fee-Charging Employment Agencies, Revised, 1949 (No. 96) (C96).<sup>105</sup> C96 committed ratifying states to abolish fee-charging agencies within set time-periods with a view to states establishing public employment agencies. In other words, the three migration Conventions were adopted at a time when the international human rights framework targeted abolishing private agencies, rather than simply better regulating them. Undoubtedly this has left a gap in human rights standards relating to private recruitment which international organizations have been attempting to fill in recent years.

It is worth noting that there are, in addition, a number of related labour rights’ standards which are indirectly relevant to how states regulate recruiters. In particular, the ILO Declaration on Fundamental Principles and Rights at Work, which establishes four core principles of freedom of association and collective bargaining, elimination of forced or compulsory labour, effective abolition of child labour, elimination of discrimination in respect of employment and occupation, is of significance.<sup>106</sup> The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005 is also of relevance for states.<sup>107</sup>

Many of those countries in which the worst abuses are perpetrated have not ratified international human rights standards. It is notable for example, which countries voted against or abstained from the new Forced Labour Protocol (the Thai government voted against the Protocol, while Bahrain, Brunei Darussalam, Islamic Republic of Iran, Kuwait, Omar, Qatar, Saudi Arabia and Yemen were among those abstaining). Human rights conventions are often critiqued on the basis of low ratifications by States, which are often reluctant

<sup>102</sup>See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242) [Accessed June 2014]

<sup>103</sup>Available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312424](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312424) [Accessed December 2014]

<sup>104</sup>Article 66 restricts the right to undertake recruitment operations to public bodies or to “A body established by virtue of a bilateral or multilateral agreement” (Article 66.1c). Or that “Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations” (Article 66.2). Available at: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

<sup>105</sup>Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312241:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312241:NO) [Accessed December 2014]

<sup>106</sup>See <http://www.ilo.org/declaration/lang--en/index.htm> [Accessed December 2014]

<sup>107</sup>Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> [Accessed December 2014]

to sign up to agreements that have the status of ‘treaties’ in international law. In other words, agreements that they can be held legally accountable for. In addition, many governments are reported to be unaware of or do not reference relevant standards when drafting legislation or designing migration policy.<sup>108</sup>

International law, with few exceptions, does not impose duties directly on businesses to refrain from human rights abuses, nor does it currently possess the means that could enforce any such provisions.<sup>109</sup> Instead, international law generally imposes duties on governments to ensure that non-state actors, including businesses, within their jurisdiction, do not abuse recognized rights by means of policies, legislation, regulations and adjudication. Of huge significance to this project, to tackle this gap, in June 2011, after six years, nearly fifty international consultations on five continents, numerous side visits and pilot projects, and several thousand pages of research reports, the UN Human Rights Council unanimously endorsed a set of “Guiding Principles” on business and human rights (UNGPs).

The UNGPs created an independent duty placed on business enterprises - regardless of their size - to respect human rights, either with regard to their own activities or those of their business partners. This imposed, for the first time, a duty to respect human rights on private corporate actors, regardless of the legal framework within which they operate. The three-pillared protect, respect and remedy framework, reflected in the UNGPs, do not create new legal norms, but rather establishes a common platform of normative standards and authoritative policy guidance for states, businesses and civil society.<sup>110</sup>

1. The State (government) duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication;
2. An independent corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved;
3. The need for greater access by victims to effective remedy, both judicial and non-judicial.

Pillars 1 and 3 set out States’ (governments’) duties: While not responsible for the actions of private sector actors, States are responsible for appropriately regulating and monitoring the activities of businesses, and to provide access to redress for victims of corporate abuse. States may therefore breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private sector actors’ abuse. The UNGPs also provide operational guidance that states should provide effective guidance to business enterprises on how to respect human rights throughout their operations, while encouraging businesses to communicate how they address their human rights impacts (Pillar 2 is discussed further in relation to business self-regulation in Sections 5.1 and 5.2).

Increasingly, how to regulate and how to implement human rights standards in relation to international recruitment has been taken up by international organizations and by states within multilateral frameworks, which is discussed in the following section.

<sup>108</sup>E.g. M. Ruhs, 2013, *The Price of Rights: Regulating International Labor Migration*. Oxford. Princeton University Press.

<sup>109</sup>Only with CEDAW, adopted in 1979, did UN human rights treaties begin to address business directly, however the duty was still assigned to the state.

<sup>110</sup>J. Ruggie, *Just Business: Multinational Corporations and Human Rights*, Norton Global Ethics Series, New York, 2013, pxxii.

### 3.2 The role of international organizations and multilateral mechanisms

IOM, ILO and UN Women, amongst other international organizations, have engaged in a number of different 'on-the-ground' projects aimed at improving recruitment regulation and monitoring in Asia as well as developing a range of exciting new international initiatives aimed at implementing international standards on recruitment. Most directly, the ILO also produces relevant guidance aimed at supporting states in implementing human rights standards, most importantly the Multilateral Framework on Migration (2006) which contains specific recommendations for Member States on recruitment (see Figure 4).<sup>111</sup> The Framework is non-binding, but nevertheless is important for its specificity, and is widely cited by NGOs and human rights organizations, and is used in training delivered by ILO.

Figure 4: The ILO Multilateral Framework on Migration, 2006

The Framework recommends that states should:

- Provide that recruitment and placement services operate in accordance with a **standardized system of licensing or certification** established in consultation with employers' and workers' organizations;
- Provide that recruitment and placement services **respect migrant workers' fundamental principles and rights** and ensure that migrant workers receive understandable and enforceable employment contracts;
- Provide arrangements to ensure that recruitment and placement services do not recruit, place or employ workers in jobs which involve **unacceptable hazards or risks or abusive or discriminatory treatment of any kind**;
- Work to implement legislation and policies containing **effective enforcement mechanisms** and sanctions to deter unethical practices, including provisions for the prohibition of private employment agencies engaging in unethical practices and the suspension or withdrawal of their licences in case of violation;
- Consider establishing a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to **compensate migrant workers** for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations to them;
- Provide that **fees or other charges for recruitment and placement are not borne directly or indirectly by migrant workers**;
- Provide **incentives for recruitment and placement services** that meet recognized criteria for good performance.

In 2008, through the EC-funded Project on Promoting Regional Dialogue and Facilitating Legal Migration from Asia to Europe, IOM brought together an Asian Alliance of Association of Overseas Employment Service Providers in a two days meeting in Manila.<sup>112</sup> Participants included representatives from Bangladesh, China, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Viet Nam, who made broad commitments to ethical recruitment (not including any fees to workers). In April 2014, this time funded by the AAA-OESP Programme, IOM and ILO gathered representatives from governments and regional and local PRA

<sup>111</sup>The Framework emerged out of a 2004 Resolution at the 92nd session of the International Labour Conference on a fair deal for migrant workers within the global economy, which called for an ILO Plan of Action on Labour Migration. The Framework was devised by a tripartite meeting of experts, and the ILO Governing Body at its 295th session in March 2006, decided that it should be published and disseminated. [http://www.ilo.org/dyn/migpractice/docs/28/multilat\\_fw\\_k\\_en.pdf](http://www.ilo.org/dyn/migpractice/docs/28/multilat_fw_k_en.pdf) [Accessed June 2014]

<sup>112</sup><http://www.iom.int/cms/en/sites/iom/home/what-we-do/labour-migration/facilitating-legal-labour-migration-betw.html> [Accessed December 2014] See also report of the meeting. [at: http://www.colomboprocess.org/follow\\_sub5/IOM%20proceedings%20LOWER%20RESOLUTION.pdf](http://www.colomboprocess.org/follow_sub5/IOM%20proceedings%20LOWER%20RESOLUTION.pdf) [Accessed December 2014]

Associations to re-affirm the commitments to ethical recruitment that were first developed in 2008. The meeting discussed challenges and opportunities in meeting ethical recruitment requirements, as well as strategies and policies to enable ethical recruitment practices.

International organizations also operate through existing multilateral mechanisms. For instance, IOM coordinates the Secretariat for the Colombo Process (CP) which has always taken a strong interest in better regulating the recruitment industry. For example, the 2011 CP 'Dhaka Declaration' called for the development and streamlining of policies to "eliminate unethical practices concerning migrant workers including deduction/ non-payment [of salaries] in violation of contractual provisions, rationalize migration costs, promote transparency and openness in recruitment processes, strengthen monitoring and supervision of recruitment practices, and prevent 'slippage' of regular migrant workers into any form of irregularities."<sup>113</sup> Both the CPMS and Abu Dhabi Dialogue as Regional Consultative Processes provide platforms to build consensus around the key principles that should govern the operations of international PRAs. The most recent Abu Dhabi Dialogue meeting held in the United Arab Emirates in November 2014 discussed and welcomed IOM's proposal to conduct a study on the transnational recruitment industry in the Asia-GCC corridor to build an evidence base.<sup>114</sup> Despite the fact that around 75 percent of the foreign workers in the GCC region originate from South and South-East Asia, the degree of formal cooperation on migration between the two entities is however minimal, especially at the regional level.<sup>115</sup>

Beyond operating the Secretariat of CPMS and Abu Dhabi Dialogue, IOM also work directly with CPMS governments and officials to offer guidance and training on recruitment monitoring and regulation. In another notable addition, IOM is in the process of developing the International Recruitment Integrity System (IRIS), a consortium of international stakeholders committed to the fair recruitment and selection of migrant workers.<sup>116</sup> IRIS is an international voluntary "fair recruitment" framework that is aimed at benefiting all stakeholders in the labour migration process. Underpinning IRIS is the belief that by agreeing to abide by a common code of ethical conduct and best practices, stakeholders engaged in recruitment in countries of origin and destination will have assurances that their counterparts are committed to fair and ethical recruitment. PRAs can become IRIS members through an accreditation process. Employers can also become members by attesting that they use the services of only IRIS-accredited PRAs and by respecting IRIS standards when they perform their own recruitment. All members will be required to uphold its guiding principles and comply with the Code of Conduct ('Guiding Principles'), which will include a commitment to no-fees to work seekers.<sup>117</sup>

In order to inculcate transparency, IRIS's Internet portal will serve as a repository for reliable information for PRAs, employers, and workers, including links to various regulatory frameworks that govern recruitment, to promote better understanding of related issues. IRIS will maintain a complaints mechanism that will enable users and interested parties to lodge complaints. IRIS members will also have to submit to

<sup>113</sup>Available at: <https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/colombo/Colombo-Process-Dhaka-Declaration.pdf> [Accessed June 2014]

<sup>114</sup>See Kuwait Declaration, the Third Ministerial Consultation of the Abu Dhabi Dialogue, Kuwait 27 November 2014. Available at: [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms\\_323901.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms_323901.pdf) [December 2014]

<sup>115</sup>Assessment of International Migration in the Arab Region. Regional Conference on Population and Development in the Arab States, Development Challenges and Population Dynamics in a Changing Arab World. A Zohry, Cairo 2013. See <http://www.zohry.com/pubs/Zohry-International%20Migration%20Report-12-May-2013.pdf> [Accessed June 2014]

<sup>116</sup>See <http://iris.iom.int> [Accessed December 2014]

<sup>117</sup>Ibid.

'complaints-driven' and random compliance assessments to ensure that they are adhering to the IRIS code of conduct.<sup>118</sup>

The ILO has a mandate to work towards implementing the human rights Conventions, which it develops through its tripartite structure (workers' representatives, employers, and governments). In 2010, the ILO launched the Tripartite Action to Protect Migrants within and from the Greater Mekong Sub-region from Labour Exploitation (the TRIANGLE project), which aims to significantly reduce the exploitation of labour migrants through increased legal and safe migration and improved labour protection. Involving Malaysia, Thailand, Cambodia, Lao People's Democratic Republic PDR, and Viet Nam, the TRIANGLE project is working to strengthen migrant recruitment initiatives and labour protection policies through the delivery of training, development of tools and more effective coordination between stakeholders.<sup>119</sup> For instance, Fair Hiring Initiative and South East Asia Verité have recently conducted a series of training sessions for PRAs in India, the Philippines, and Viet Nam on ethical recruitment.<sup>120</sup>

Concurrently, the ILO Special Action Programme on Forced Labour (SAP-FL), in collaboration with partner organizations, has launched a global "Fair Recruitment Initiative" with the aim of addressing regulatory and enforcement gaps in the governance of the recruitment industry, to promote ethical business behaviour by working closely with the industry and other stakeholders, to promote social dialogue, and to strengthen the global knowledge base on what works in recruitment regulation. In its initial phase, the initiative is focusing on the recruitment of migrant women in South Asia and the Middle East (for garment and domestic work) to test pilot models and share results for replication in other regions.<sup>121</sup> A collaborative international meeting to take the Fair Recruitment Initiative further forward was recently held in partnership with UNODC in Bangkok, Thailand.<sup>122</sup>

Other initiatives are also of relevance. The Association of South-East Asian Nations (ASEAN), established in 1967 in Bangkok, and which includes four of the CPMS (Indonesia, Philippines, Thailand, and Viet Nam) as well as two key destination states (Malaysia and Singapore) has also taken an interest in better regulating the recruitment industry.<sup>123</sup> The 5th ASEAN Forum on Migrant Labour, held in late 2012 in Siem Reap, Cambodia, carried the theme: "Towards effective recruitment practices and regulations". Negotiated recommendations included:<sup>124</sup>

- ❑ Developing transparent, standardized and simplified recruitment costs;
- ❑ Increased inclusion of recruitment regulation and monitoring in bilateral agreements;
- ❑ Encouraging ratification of C181 and C189 and alignment of national laws therewith;
- ❑ The compilation of a regional compendium of existing good practices of measures among ASEAN Member States to reduce recruitment costs;

<sup>118</sup>See <http://iris.iom.int> [Accessed December 2014]

<sup>119</sup>See [http://www.ilo.org/asia/whatwedo/projects/WCMS\\_145664/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm). [Accessed June 2014]

<sup>120</sup>See <http://www.dtp.unsw.edu.au/ms-marie-apostol> [Accessed December 2014]

<sup>121</sup>See [http://www.ilo.org/global/topics/forced-labour/events/WCMS\\_240693/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/events/WCMS_240693/lang--en/index.htm) [Accessed June 2014]

<sup>122</sup>The Concept Note and agenda is available here:

[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms\\_320215.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_320215.pdf) [Accessed December 2014]

<sup>123</sup>Established with the purpose of furthering economic growth, promoting regional peace and stability, promoting mutual assistance and active collaboration, and to maintain close cooperation with existing international and regional organisations with similar aims and purposes. E.g. The 2007 Declaration on the Protection and Promotion of the Rights of Migrant Workers established an early concern with the regulation of recruitment mechanisms. See <http://www.asean.org/asean/about-asean> [Accessed June 2014]

<sup>124</sup>See [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms\\_193024.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_193024.pdf) [Accessed June 2014]

- ❑ To restrict recruitment to licensed PRAs; to effectively regulate and monitor PRAs with heavy penalties for infringements and positive ratings for ethical recruitment agencies;
- ❑ To develop, where applicable, an accreditation system of foreign employers of direct recruitment agencies;
- ❑ To promote meaningful involvement of and partnerships with tripartite partners, the private sector (such as transport companies, medical clinics, and commercial banks), civil society and communities at national and regional levels towards reducing recruitment costs and in monitoring recruitment agencies and practices.

As with the CPMS and Abu Dhabi Dialogue Processes, the ASEAN discussions have not yet however seen any formal agreements result from this process. Undoubtedly multilateral mechanisms, especially where facilitated by or with the input of international organizations, are extremely useful as forums for sharing good practices on recruitment monitoring and to attempt to build consensus on particular issues. However, it is important to note that they are significantly weakened by the limited leverage of migrant origin states over the actions of key destination states. In short, there is a fundamental and systemic power imbalance between destination and origin states as the former have the discretion whether to open or close their borders to nationals of CPMS.<sup>125</sup> A recent example of this issue, was exhibited by a 2011 announcement by Saudi Arabia's Labour Ministry that they would no longer issue work permits for domestic workers from the Philippines or Indonesia. This decision was reportedly taken with the intent of persuading those countries to abandon their attempts to improve migrant worker protection. The Philippines had demanded that Saudi Arabia implement a 400 USD monthly salary for domestic workers, which the two governments sign a bilateral agreement setting out migrant rights', and that Saudi employers provide information about the residence where domestic workers would be living. Indonesia had similarly demanded that KSA sign an agreement to protect domestic workers, and had also protested at the execution of an Indonesian domestic worker about which they were not informed.<sup>126</sup> Both the Philippines and Indonesia have subsequently signed agreements with KSA (2013, and 2014) respectively.

To briefly summarize this section, Figure 5 digests the key human rights standards relating to recruitment, which have been outlined above.

*Figure 5: Summary of the key human rights standards relating to recruitment*

- ❑ States should provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including providing for penalties for agencies which engage in fraudulent or abusive employment (C181, Protocol on Forced Labour, 2014);
- ❑ States should ensure that PRAs do not charge recruitment fees to workers (C181);
- ❑ States should ensure that PRAs do not make illegal deductions from workers' salaries (C188, C189)
- ❑ States should ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices" concerning their activities (C188, C189);
- ❑ States should ensure that PRAs 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 (R188);
- ❑ States should ensure that PRAs inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment (R188).

<sup>125</sup>See <https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/colombo/Colombo-Process-Dhaka-Declaration.pdf> [Accessed June 2014]

<sup>126</sup>See <http://www.sundaytimes.lk/110710/BusinessTimes/bt36.html> [Accessed December 2014]

According to international human rights law, the bedrock of responsibility for regulating business lies with national governments.<sup>127</sup> The following sections turn to review how CPMS and key CPMS destination states monitor recruitment, through the implementation of legislation, policies, rules and Ministerial decrees.

---

<sup>127</sup>Even though the UN Guiding Principles on Business and Human Rights sets out the corporate responsibility to respect human rights, the main responsibility lies with states.



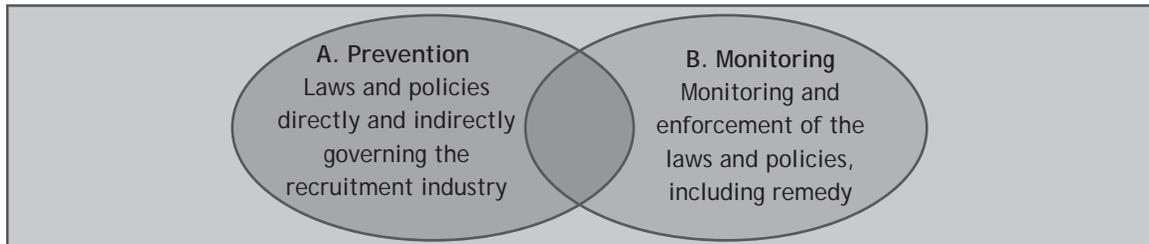
## Chapter 4

# National Recruitment Monitoring

## A Prevention

This section presents an overview of CPMS and key CPMS destination states' national legal and policy frameworks. This study has analyzed regulatory frameworks in relation to two main components which are set out in Figure 6.

Figure 6: State regulation of the international recruitment industry



In order to sensibly review the enormous amount of data collated for this project, this section begins with:

- a) a description of the key features of the above two components, followed by
- b) a thematic analysis of their effectiveness, illustrated by empirical examples.

The analysis includes the caveat, as noted in the introduction, that there are few available impact studies of each national legal and policy framework; the conclusions drawn should therefore be considered preliminary as well as generalized rather than specific to one particular country necessarily.

### 4.1 Overview of recruitment legal and policy frameworks

All CPMS and the destination states included in the study have implemented legislation that is directly targeted at establishing the legal status of recruitment businesses and conditions regulating their operation.<sup>128</sup> This includes:

- ❑ Requiring PRAs to apply for a licence to operate as a recruitment business;
- ❑ Setting rules on recruitment fee charging;
- ❑ Emigration and immigration rules;
- ❑ Government to government agreements on labour migration;
- ❑ Government-led Codes of Conduct.

The main relevant pieces of national legislation and associated rules in the CPMS are set out in Table 7 below.

<sup>128</sup>Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement. ILO, Geneva 2007. Available at: [http://www.ciett.org/fileadmin/templates/ciett/docs/ILO\\_Guide\\_to\\_PrEA\\_-\\_final.pdf](http://www.ciett.org/fileadmin/templates/ciett/docs/ILO_Guide_to_PrEA_-_final.pdf) [Accessed June 2014]. Article 3 of Convention 181 states that PRA legal status shall be established according to national law and practice and its operation, according to licensing or certification.

Table 7: Selected CPMS Laws Governing the Recruitment Industry

Country	Title of (Current) Legislation, Year and Associated Rules
Afghanistan	Regulation for Sending Afghan Workers Abroad (Government of Afghanistan 2005)
Bangladesh	Overseas Employment and Migrants Act 2013 and associated Rules, which replaced the Emigration Ordinance 1982 and 2002 Emigration Rules, Rules for Conduct and Licensing Recruitment Agencies (2002), Rules for Wage Earners' Welfare Fund (2002)
India	Emigration Act of 1983 (Act No. 31 of 1983)
Nepal	Foreign Employment Act, 2007, (Act No. 18 of 2064). <sup>129</sup> Foreign Employment Rules, 2008 (implementing Rules for above Act)
Philippines	The Migrant Workers and Overseas Filipinos Act (R.A. 8042), amended in R.A. 9422 (April 2007, and some major amendments were made in R.A. 10022 (July 2009) Philippines Overseas Employment Administration (POEA) Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.
Sri Lanka	Sri Lanka Bureau of Foreign Employment Act, Act No. 21 of 1985 Sri Lanka Bureau of Foreign Employment (Amendment) Act, Act No. 4 of 1994 Sri Lanka Bureau of Foreign Employment (Amendment) Act, Act No. 56 of 2000
Thailand	The Employment and Job Seekers Protection Act-B.E. 2528, enacted in 1985, amended in 1994 and 2001, and related ministerial regulations of the Ministry of Labour
Viet Nam	Law on Vietnamese Workers Working Overseas Under Contract (2006) (Law Decree 370 (1991), amended by Decree 07 (1995), Decree 152 (1999), and Decree 81 (2003)

### 4.1.1 Key features of licensing

Requiring recruiters to apply for licenses enables governments to differentiate between those PRAs that are authorized to engage in recruitment activities, and those that are not. Licenses, in theory, separate the 'good actors' from the 'bad actors'. In theory, this should make monitoring of the recruitment industry more straight forward as those not holding a license, by implication, are illegal recruiters. Licensing also makes recruiters visible and accountable. Table 8 lists the number of licensed PRAs in CPMS; Table 9 the numbers of licensed PRAs in destination countries, correct at the time of writing although these numbers are obviously subject to regular fluctuations. Only Afghanistan, the Republic of Korea (which instead operates government-to-government recruitment), and the EU Member States of Sweden, Denmark, Finland and the Netherlands do not require PRAs to apply for a license.<sup>130</sup>

Table 8: Numbers of (licensed) PRAs in CPMS, 2014<sup>131</sup>

Country	Approximate Number of (sed) PRAs
Bangladesh	1100
China	3000
Indonesia	515
India	3000

<sup>129</sup>Further amendments are currently under discussion.

<sup>130</sup>Finland's system of permits was abolished in 1994. The others removed the requirement for recruiters to be licensed during the mid-late 1990s, in a deregulatory drive across Western and Northern Europe. See Temporary Agency Work in an Enlarged European Union. European Foundation for the Improvement of Living and Working Conditions (EIRO). J. Arrowsmith, 2006, p19.

<sup>131</sup>Data is gathered from published lists of licensed agencies issued by the relevant authorities wherever possible; also from interviews conducted by the research team. The numbers are approximate and intended to give a snapshot view, given that the number of licensed agencies may change on a daily basis.

Country	Approximate Number of sed) PRAs
Nepal	760
Pakistan	1649
Philippines	1257
Sri Lanka	963
Thailand	220
Viet Nam	167

Table 9: Number of (licensed) PRAs in selected destination states, 2014

Country	Approximate Number of sed) PRAs
Bahrain	1004
Jordan	100
Kuwait	67
Lebanon	500
Saudi Arabia	16
Singapore	2500
United Arab Emirates	290
UK	900

Governments grant licenses for specific terms ranging from one year to 10 years, which are renewable. Table 10 presents the variations. The Philippines specifically refers to the initial year as a ‘probation’ period.

Table10: License terms in selected CPMS and destination states

CPMS	Term (in years)	Destination states	Term
Bangladesh	3	Malaysia	1
India	3	Qatar	2
Indonesia	5	Saudi Arabia	1
Philippines	1	Singapore	3
Nepal	1	United Arab Emirates	1
Sri Lanka	1		
Thailand (overseas recruitment)	2		
Viet Nam	1		

To operate without a valid license means that, by implication, even if this is not explicit in the law, a business’ recruitment activities are illegal.<sup>132</sup> This means that the sub-agents which operate across vast tracts of South and South-East Asia, and which are responsible for an important part of the exploitation which CPMS migrants are subject to, are in effect operating illegally. Sub-agents are explicitly defined as illegal recruiters according to the law in both Bangladesh and India.<sup>133</sup> For instance, the India Emigration (Amendment) Rules 2009 states that a licensed PRA ‘shall not employ sub-agents for the purpose of conducting or carrying on his business.’<sup>134</sup> On the other hand, in a very different approach, Nepal instead requires sub-agents to apply for their own license in order to operate. This process is conducted through

<sup>132</sup>Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement. ILO, Geneva 2007. Available at: [http://www.ciett.org/fileadmin/templates/ciett/docs/ILO\\_Guide\\_to\\_PrEA\\_-\\_final.pdf](http://www.ciett.org/fileadmin/templates/ciett/docs/ILO_Guide_to_PrEA_-_final.pdf) [Accessed June 2014]

<sup>133</sup>Bangladesh Overseas Employment and Migrants Act 2013 and associated Rules, and India Emigration Rules, 1982

<sup>134</sup>Emigration (Amendment) Rules 2009, Section 10, viii.

PRAs, with PRAs allowed to register up to 10 different agents. Sub-agents, on the other hand, can only register with one PRA<sup>135</sup> The objective is to try to ensure that PRAs exercise better control over the sub-agents with whom they always worked, regardless of their legality under the law.

In addition to differentiating between those businesses legally allowed to recruit and those that are not, states sometimes grant recruitment licenses only for specific types of recruitment. The aim is to control which activities PRAs can legally engage in. For instance, in the CPMS, recruitment licenses are granted for the purpose of international recruitment. In contrast, the EU Member States predominantly require PRAs to be licensed for the purpose of temporary work, and whether or not PRAs are legally allowed to recruit internationally is regulated through immigration regulation. As a result of its status in transition from an origin country to destination country for migrations, Thailand operates a mixture of both systems. In Thailand, international recruiters must apply for one specific license; temporary work agencies (known as 'out sourcing agencies') must apply for another.<sup>136</sup>

PRAs often have financial interests in other migration businesses such as pre-departure training centres, travel agencies, medical testing centres, and/or insurance companies, and that these associated businesses are often implicated in exploitation. Despite this, what constitutes legitimate recruitment activities are rarely precisely defined within legal and policy frameworks. One exception is Viet Nam, which details the legally allowed activities under the law, including:

- ❑ Signing contracts relating to the overseas employment of workers;
- ❑ Recruiting workers;
- ❑ Providing vocational training, foreign language, and necessary knowledge for workers prior to their departure for overseas employment;
- ❑ 'Performing the contract' for placement of workers to overseas employment;
- ❑ Supervising and protecting the legal rights and interests of overseas working workers;
- ❑ Effectuating the remuneration regulations and policies for overseas working workers;
- ❑ Finalizing contracts between the enterprises, state non-administrative organizations and the overseas working workers.<sup>137</sup>

Although other activities not listed here can be implicitly presumed to be unauthorized, they are not specified within the law. On the other hand, the Philippines however bars PRAs from providing any travel services (an acknowledged major source of abuse in the recruitment process) and to prohibit any person engaged directly or indirectly in the management of a travel agency from becoming a Board Director.<sup>138</sup> In a less firm approach but with the same intent of better regulating travel services, India requires PRAs that offer travel services to also be registered with the Indian Association of Travel Agencies.<sup>139</sup> A number of other governments stipulate that particular recruitment procedures must be followed. For instance, Bangladesh and Nepal require PRAs to advertise job opportunities in newspapers with the intent of attempting to bypass the need for sub-agents and to make recruitment transparent.

<sup>135</sup>Foreign Employment Rules, 2008.

<sup>136</sup>The Employment and Job Seekers Protection Act - B.E. 2528, enacted in 1985, amended in 1994 and 2001, and related ministerial regulations of the Ministry of Labo.

<sup>137</sup>'Law on Vietnamese Workers Working Overseas Under Contract, 2006', Article 4.

The Migrant Workers and Overseas Filipinos Act (R.A. 8042), amended in R.A. 9422 (April 2007, and some major.

<sup>138</sup>The Migrant Workers and Overseas Filipinos Act (R.A. 8042), amended in R.A. 9422 (April 2007, and some major amendments were made in R.A. 10022 (July 2009).

<sup>139</sup>Emigration Rules, 2009.

Ordinarily states only currently require PRAs domiciled within their territories to apply for a license. For example, whereas PRAs headquartered in India which recruit workers for Qatar are only required to apply for a license from the Indian authorities, and not from the Qatari authorities. One exception is the UK that requires all foreign (i.e. non-domiciled) PRAs that supply non-UK workers into the sectors of agriculture, horticulture, seafood and forestry to apply for a license.<sup>140</sup> PRAs which are domiciled in Bulgaria, Romania, and Poland but which recruit workers for jobs in the above sectors in the UK must apply for a license by the UK regulatory authority.

The above tables illustrate the large variations in numbers of (licensed) PRAs from country to country. Of the CPMS, unsurprisingly those countries with the biggest populations (e.g. China and India) and those with the longest-established traditions of temporary migration (e.g. Philippines, India, Bangladesh and Pakistan) have the largest number of (licensed) PRAs. In some cases, the licensing application process is used by states to maintain control of how many PRAs are active in international recruitment at any one time, in theory making the industry easier to monitor. For instance, respondents interviewed in Nepal told researchers that no new PRA licenses had been awarded in Nepal for several years with the objective of trying to control a highly competitive market.

Jordan, rather than limiting the absolute number of licenses which can be granted, limits licenses to recruitment businesses which are engaged in the recruitment of house servants (i.e. domestic workers),<sup>141</sup> gardeners, cooks and other similar household workers." Through denying licenses to PRAs for activities in other sectors, the Jordanian government has made it illegal for PRAs to operate beyond recruitment of household workers.

In a different approach, and in an attempt to better protect women migrants from recruitment abuses, Bangladesh requires licensed PRAs to apply for additional permission specifically for recruiting women. At present, twenty-nine PRAs hold this permission.<sup>142</sup> According to one interviewee, these PRAs are specially chosen and go through an enhanced scrutiny prior to being awarded this license permission.<sup>143</sup>

Terms of licenses commonly limit the number of branch offices which PRAs may legally open, with the objectives of centralising government monitoring of PRA activities and reducing illegal recruitment activities. For instance, Viet Nam only allows PRAs to open three branch offices in three provinces and central cities.<sup>144</sup> Other than in these areas, PRA activities are barred. On the other hand, Bangladesh allows PRAs to open unlimited numbers of branch offices throughout the country but requires PRAs to seek prior governmental approval and to publish office addresses.<sup>145</sup> In a different approach again, Indonesia also allows PRAs to open unlimited PRA branch offices throughout the country, but specifies that the main office must be the place in which candidate selection and placement should take place. Branch offices in Indonesia are only authorized to perform:

- Outreach and recording the data of prospective migrant;
- Registration and selection of prospective migrant;

<sup>140</sup>See <http://www.gla.gov.uk> [Accessed December 2014]

<sup>141</sup>Regulation No. 3/2003, "Organising the Private Offices Bringing and Employing non-Jordanian Domestic Workers."

<sup>142</sup>Overseas Employment Act, 2013.

<sup>143</sup>Interviewee, BK2, 2014.

<sup>144</sup>Article 16(1) of the Law.

<sup>145</sup>Overseas Employment Act, 2013.

- ❑ Case resolution of prospective migrant prior or post his/her placement;
- ❑ Signing of the placement agreement with the prospective migrant.<sup>146</sup>

Figure 7 summarizes the main variable features of licensing in CPMS and key destination states.

Figure 7: Key variable features of licensing

- ❑ Licences used as a 'tap' to control /limit numbers of active PRAs (e.g. Nepal);
- ❑ Licences granted specifically for international recruitment, or temporary work (e.g. Thailand, EU);
- ❑ Licences usually only required for domiciled PRAs (except UK which requires foreign PRAs to apply for a licence);
- ❑ Special permission required to recruit women (e.g. Bangladesh);
- ❑ Licences used to restrict activities to specific sectors of the labour market (e.g. Jordan);
- ❑ Licences used to restrict the number of branch offices or what activities can legally be carried out in them (e.g. Indonesia);
- ❑ Licences used to restrict/detail which activities are legally allowed as part of the recruitment business (e.g. Philippines);
- ❑ Licences required for sub-agents through the PRAs (Nepal).

The following section reviews how states make decisions about whom or what should be granted a license.

#### 4.1.2 How CPMS decide which PRAs are granted licences

Through screening businesses prior to granting a license, government authorities distinguish between those they consider suitable and legitimate operators and those that they do not. Pre-screening acts as a proxy indicator for which businesses are likely to comply with the rules. PRA registered owners, managers, and staff are screened, accompanied by a screening of the business' financial and organisational capacities. States also require PRAs to pay a fee for the license and to deposit a 'security bond' (escrow) in order to proceed with the application. Each is described, illustrated by examples, in turn below and summarized in Figure 8.

Figure 8: How CPMS make decisions about which PRAs to grant licenses to

Individual screening (Owners, Boards, Directors, Staff)	Organisational screening
Citizenship/nationality	Business plan
No criminal convictions	Contract already secured
Qualifications/vocational experience	Office premises
Moral character/code of conduct	Financial viability

Firstly, the owners and often Board members of the applicant PRA are required to pass through a screening process, including checks on their nationality/citizenship. The objective is to prevent the establishment of "front" PRAs<sup>147</sup> controlled by foreign employers and companies. For instance, Viet Nam bans any foreign citizens from owning or holding stock in PRAs; The Philippines on the other hand requires only that at least 75 per cent of the authorized capital stock should be owned and controlled by the Filipino citizens.<sup>148</sup> In addition to screening the registered owners of PRAs, the Philippines' authorities also require the details of all PRA employees to be included with the application paperwork.<sup>149</sup>

<sup>146</sup>Law No. 39/2004 Concerning the Placement and Protection of Indonesian Workers Abroad.

<sup>147</sup>Law on Viet Nameese Workers Working Overseas Under Contract (2006) (Law).

<sup>148</sup>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.

<sup>149</sup>Ibid.

PRA owners are also usually required to undergo a 'criminal check' to confirm that they do not have a previous conviction, especially in relation to recruitment and/or trafficking for forced labour. For instance, Bangladesh requires that:

License holders must be of sound mind, declared by a competent court to be solvent, not been convicted of trafficking, money laundering, international terrorism or any other serious crime, not convicted of a crime "involving moral turpitude" in past two years.<sup>150</sup>

Other than these basic checks, a small number of CPMS governments also require registered owners to have a certain level of formal education. For instance, India requires that registered owners have minimum education qualifications of a degree or a two year diploma from a recognized university or institute.<sup>151</sup> Viet Nam, on the other hand, requires that company executive directors must have obtained a university education or higher, and be able to demonstrate at least three years' prior experience in international recruitment.<sup>152</sup> Similarly, in addition to the possession of a bachelor's degree, the Philippines government also requires proof of three years of prior business experience.<sup>153</sup>

Some CPMS governments also stipulate that PRA registered owners must be of good 'moral character'. For example, Sri Lanka requires applicant PRA partners and owners to be "person(s) of good repute", evidenced by two testimonials.<sup>154</sup> On the other hand, the Philippines require PRA owners to commit to guarantees and assurances of ethical and professional conduct prior to being granted a licence.<sup>155</sup>

Secondly, CPMS authorities also scrutinize the organizational and financial capacities of applicant PRAs. The objective is to ensure that businesses have the necessary logistic and financial capacity to sustain it without damaging recruits or employees. For instance, Indonesia requires PRAs to present a three-year business plan for the envisaged placement and protection of workers at the time of license application.<sup>156</sup> The Philippines requires PRAs to have secured a 'job order' for 100 individuals in a 'new' market (a new sector or new employer) before the Philippines will grant a provisional license.<sup>157</sup> PRAs can then only apply for a permanent license after they have deployed a hundred workers within this first year of operation. Similarly, Viet Nam requires that applicant PRAs have already secured a contract for the overseas supply of workers the Viet Nameese authorities will grant a license.<sup>158</sup>

Some CPMS governments also specifically require PRAs to have already established office premises to ensure that applicants are capable of operating as a professional business. For example, India requires PRAs to submit documentary evidence of possession of office premises comprising at least 50m square.<sup>159</sup> Similarly, the Philippines government requires PRAs to submit a copy of a contract of a lease or proof of building ownership, providing for an office space of double that of India' - at least 100m square.<sup>160</sup> On the other hand, Sri Lanka merely requires the premises to be "suitable", having regard to the locality in which the premises are situated, the size of the premises, and the facilities in those premises."<sup>161</sup>

<sup>150</sup>2013 Overseas Employment and Migrants Act, Article 10.1a-f.

<sup>151</sup>Emigration (Amendment) Rules, 2009 Article, 3 (2) (i).

<sup>152</sup>Law on Viet Nameese Workers Working Overseas Under Contract (2006) (Law).

<sup>153</sup>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.

<sup>154</sup>Section 26(1)(e) and (f) of the Act.

<sup>155</sup>Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.

<sup>156</sup>Law No. 39/2004 Concerning the Placement and Protection of Indonesian Workers Abroad.

<sup>157</sup>Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.

<sup>158</sup>Law on Viet Nameese Workers Working Overseas Under Contract (2006) (Law).

<sup>159</sup>Emigration (Amendment) Rules, 2009.

<sup>160</sup>Law on Viet Nameese Workers Working Overseas Under Contract (2006) (Law).

<sup>161</sup>Section 27(1)(c) (as amended by Act No. 56 of 2009).

The financial capacity of applicant PRAs for a recruitment license is also an important criterion by which CPMS authorities assess recruitment businesses' suitability for participating in international recruitment activities. The aim is to prevent 'fly-by-night' operators entering national markets. The Indian authorities (Protector General of Emigrants, Ministry of Overseas Indian Affairs) requires candidate PRAs to submit a copy of the balance sheet of the previous year's accounts or a statement of accounts showing the assets and liabilities of the applicant business, duly verified by a chartered accountant which demonstrate the "financial soundness of applicant" as well as a copy of income tax returns for the previous three consecutive years.<sup>162</sup> The Philippines requires applicants to submit a savings account certificate showing a maintaining balance of not less than PhP 500,000 (USD 11,384), a minimum capitalization of PhP 2,000,000 (USD 45,537) in case of a single proprietorship or partnership, and a minimum paid-up capital of PhP 2,000,000 (USD 45,537).<sup>163</sup>

Thirdly, in advance of granting a license, CPMS licensing authorities require PRAs to lodge security deposits (known as escrows / bonds) as evidence of financial capacity to operate a business as well as to serve as a safeguard to ensure that PRAs comply with the provisions of the relevant legislation or that any compensation awarded to migrants by the courts or by the authorities can be paid. For example, Nepal requires the deposit of NPR 3 million (USD 31,000) in cash or 700,000 (USD 7,247) cash and a bank guarantee for the remaining NPR 2.3 million (USD 23,810).<sup>164</sup> Similarly, the Philippines also requires applicant PRAs to deposit an escrow of PhP 1,000,000 (USD 22,768) and a surety bond of PhP 100,000 (USD 2,277) from a bonding company deemed acceptable.<sup>165</sup> In contrast, the Indian government varies the amount to be deposited according to how many workers PRAs intend on placing overseas each year-300 workers (INR 3 lakh/6,500 USD), 301-1000 workers (INR 5 lakh, 10,800 USD), and 1000 and above (INR 10 lakh/21,650 USD).<sup>166</sup>

In addition to requiring PRAs to hold valid licenses to operate, CPMS and key CPMS destination states also set rules on what fees PRAs are allowed to charge to migrants for recruitment, reviewed in the following section.

### 4.1.3. Regulating fee-charging to workers

As outlined in Section 2.4, recruitment fees charged to workers by PRAs and sub-agents are a substantial risk to debt bondage and other forms of adverse human rights impacts.<sup>167</sup> Setting rules on what fees can be charged, to whom, and for what, is therefore a significant way by which states can monitor international recruitment. Of the CPMS, only the Philippines currently outlaws fee-charging to workers and only in two specific cases: women travelling overseas for domestic work, and 'sea-farers'. Of particular note, the Household Service Worker (HSW) Policy Reform Package implemented in the Philippines in 2006 was intended to:

- a) Minimize exploitation of domestic workers, through the transfer of recruitment costs to employers;
- b) Establish a minimum wage of 400 USD to be paid to domestic workers; and
- c) Establish a national 'certification' scheme for workers, requiring them to undergo training prior to departure.<sup>168</sup>

<sup>162</sup>Emigration (Amendment) Rules, 2009, Article 7(ii and iii).

<sup>163</sup>Law on Viet Namese Workers Working Overseas Under Contract (2006) (Law) .

<sup>164</sup>Foreign Employment Act, 2007, Article 11.

<sup>165</sup>Foreign Employment Rules, 2008.

<sup>166</sup>Emigration (Amendment) Rules, 2009. This is in accordance with the ILO Guidance for PRAs which stipulates that registration fees should be dependent on the actual size of the PRA, taking into account the financial capacity of the PRA, and thus, allows small and medium sized agencies to enter the market. However, as the Guide also notes, it is not always possible for PRAs to know in advance how many workers they will recruit.

<sup>167</sup>E.g. see Fees and IDs: Tackling recruitment fees and confiscation of workers' passports. K. Jones. Institute for Human Rights and Business. 2013. Available at: [http://www.ihrb.org/pdf/2013-09-06\\_IHRB\\_Fees-and-IDs-Report.pdf](http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf) [Accessed June 2014]

<sup>168</sup>See <http://www.poea.gov.ph/hsw/hsw.html>

In contrast, in most destination states PRAs are banned from charging recruitment fees to workers. For instance, United Arab Emirates legislation requires that: “It is not permissible for any licensed labour agent or supplier to demand or accept from any worker whether before or after his recruitment any commission or material reward in consideration for arranging such recruitment nor may he obtain from him except any expenses that may be decided or approved by the Ministry of Labour and Social Affairs.”<sup>169</sup> A further Decree signed in 1998, requires all PRA licence applicants to undertake that they “will not take any commission or financial reward from workers in return for employing them within the United Arab Emirates or bringing them in from abroad.”<sup>170</sup> In a slightly different approach, Saudi Arabia does not outlaw PRAs from charging fees, but instead requires that “an employer shall incur the fees pertaining to recruitment of non-Saudi workers, the fees of the residence permit (Iqama) and work permit together with their renewal and the fines resulting from their delay, as well as the fees pertaining to change of profession, exit and re-entry visas and return tickets to the worker’s home country at the end of the relation between the two parties.”<sup>171</sup> This is consistent with the Kafala system governing immigration that makes employer sponsors responsible for migrant workers.

The most common CPMS approach is to allow PRAs to charge recruitment fees to migrants, but to impose a ‘ceiling’ on the level of fees that can be legally charged, with variations set out in Table 11 (below). Of the destination states, Singapore and Hong Kong, China also operate recruitment fee ceilings. Singapore allows its PRAs to charge the equivalent of one month’s salary per year of contract to migrants, with a maximum of no more than two months’ salary (non-domestic workers).<sup>172</sup> Hong Kong, China allows PRAs to charge 10 per cent of the monthly salary.<sup>173</sup>

Table 11: Selected CPMS rules on fee-charging (workers)

CP Member State	Rules on fee-charging to workers (fee ceilings)
Bangladesh	1080 USD (84,000 Tk.) For G2G recruitment managed by BOESL, the fee is BDT 30,000 (388 USD). For women migrants the amount is BDT 20,000 (259 USD) and for Republic of Korea-bound workers the amount is approximately USD 850.
India	Up to 45 days equivalent wages (according to the employment contract) subject to a maximum of 334 USD ( 20,000)
Viet Nam	Equivalent to one month’s salary plus workers must refund the commission fee, which is the amount paid by the enterprise to the broker in obtaining the contract.
Philippines	A cap of one month’s salary for fees can be charged to workers (after employment obtained), exclusive of documentation costs. Domestic workers and sea farers should not be charged recruitment fees.
Sri Lanka	Ceiling of up to 2 month salary equivalent, to be approved by SLBFE.
Thailand	Ceiling of up to 2 month salary equivalent in service fee, including actual expenses incurred, up to 3 month salary equivalent. For 2 year contracts in Israel and Republic of Korea (including actual expenses), up to 4 month salary equivalent. For 2 year contracts in Taiwan (Inc. actual expenses incurred), up to 2.5 month salary equivalent.

<sup>169</sup>Art. 18 of the Labour Law.

<sup>170</sup>Art. 3 of Ministerial Decree 233 for 1998.

<sup>171</sup>Royal Decree No. M/51 (dated 27 September 2005) (Saudi Labor Law).

<sup>172</sup>Employment Agencies Act and Employment Agencies Rules/Regulatory Framework of 2011.

<sup>173</sup>E.g. see <http://www.scmp.com/magazines/post-magazine/article/1568215/maid-pay> [Accessed December 2014]

**Nepal**

Malaysia - Rs. 80,000 (USD 825)

Republic of Korea, UK, Hong Kong-China, Afghanistan-ceiling equivalent to 6 month salary

GCC - Rs. 70,000 (USD 722)

Poland - Rs. 80,400 (USD 826)

#### 4.1.4 Additional emigration requirements

International recruiters' core business is the negotiation of immigration and emigration rules. In effect, PRAs profit from migration controls, without which migrants would be able to freely travel to take up employment without their services.<sup>174</sup> In addition to the rules which directly govern how national recruitment industries operate, regulations that govern migration (exit and immigration controls depending on whether the state is an origin or a destination state) are critical to whether the activities which PRAs undertake are 'legal', 'illegal', 'regular' or 'irregular'. In other words, if a PRA in Sri Lanka recruits a migrant for a job in Saudi Arabia and facilitates her/his migration, but does not correctly process either the emigration documents required in Sri Lanka, or their partner (employer or PRA) in the destination country does not correctly process the immigration documents, then their recruitment activities will be illegal. Critically for the migrant, if not correctly documented as a result of the recruiters' actions or inactions, s/he will be left unprotected in the destination state unable to access any rights.

In addition, at any one time, governments may 'open' or 'close' destination or origin countries. This means that recruiters cannot recruit migrants from or to those countries. By way of example, a list of the destinations currently open to Nepalese recruiters is provided at Annex 3. CPMS have been most active in utilising this mechanism in relation to female migrants, especially domestic workers. For instance, many CPMS have banned PRA recruitment of women to Lebanon due to the endemic abuse of domestic workers in that country.<sup>175</sup> On the other hand, in April 2009, the Israeli government closed its borders to migrant caregivers from Nepal, based on evidence of illegally high recruitment fees, and other fraudulent recruitment practices, and growing numbers of unemployed or informally employed migrant caregivers. Following extensive bilateral collaboration between Nepal and Israel, the government of Israel lifted the ban on Nepali migration to Israel in 2011.<sup>176</sup> In short, these regulations are an additional layer of rules with which governments try to monitor recruitment. They intersect in two important ways with international recruitment and migrant welfare assistance:

- ❑ Emigration regulations operated by CPMS (origin countries) influence which destination countries migrants are allowed to work in often dependent on whether the migrant is male or female, which sectors they can work in, and sometimes which qualifications and skills are required. Immigration regulations operated by destination states (admission policies) also impact on whether, where and how recruiters conduct their business. They influence which nationalities are allowed into a country, which sectors migrants can work in, the length of term of contract, and sometimes the terms and conditions of the employment relationship.

<sup>174</sup>K Jones, 2014 (Forthcoming), "It was a whirlwind, a lot of people made a lot of money." The role of recruiters in facilitating migration from Poland into the UK between 2004 and 2008. Central and Eastern Migration Review Special Issue.

<sup>175</sup>E.g. see The invisible deaths of Lebanon's migrant domestic workers. Available at: <http://www.counterpunch.org/2014/07/09/the-invisible-deaths-of-lebanons-migrant-domestic-workers/> [Accessed December 2014]

<sup>176</sup>See Labor Brokerage and Trafficking of Nepali Migrant Workers. Verite, 2014. Available at: [http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final\\_1.pdf](http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final_1.pdf) [Accessed December 2014]

- ❑ CPMS migrations are usually temporary; migrants ordinarily have no routes to naturalisation or legal citizenship in destination countries. Contracts of employment usually last for between two and four years, although are sometimes also renewable. This means that CPMS migrants often migrate - and use the services of recruiters - more than once.

In addition, the issue of female migration is an extremely cogent one in CPMS. Bangladesh, India, Indonesia, Nepal, Pakistan, and the Philippines have all legally restricted their PRAs from recruiting young women for overseas employment at some point and/or for some destinations/ and or for domestic work.<sup>177</sup> For instance, in Nepal, while the Foreign Employment Act, 2007<sup>178</sup> opened all sectors of employment to female migrants, resulting in an increase of female migration, in September 2008, the Nepalese government restricted PRAs from recruiting women for employment in the Gulf or in Malaysia as domestic workers. Currently, the government requires a permission letter from the Nepali mission in the relevant destination country in order for women to be allowed to migrate for employment.<sup>179</sup> Women are also required to submit a written consent letter from their husband, parents or other "close family (male) members."<sup>180</sup>

In Bangladesh, a recruitment ban on women travelling overseas for low-paid, low skilled, work was first imposed in 1981, and amended in 1997, to women travelling overseas for domestic work.<sup>181</sup> Subsequently, several bans have been imposed with different age limits and for different destinations. Similarly to Nepal, women require written permission from their husband or father to migrate for overseas employment,<sup>182</sup> although interviewees noted that the age requirement is often flouted with many women workers starting to migrate at age 18<sup>183</sup> or even 16<sup>184</sup> with the help of false birth certificates.<sup>185</sup>

From time to time the Philippines have also restricted deployment of its female citizens to particular destinations when the exploitation has been too great. According to one study, the Philippines has used this as a bargaining tool with destination governments with the aim of raising the salary for its female workers or improving conditions rather than with the intent to completely prevent female migration.<sup>186</sup> For instance, most recently, in June 2014, the Philippines government attempted to restrict the recruitment of domestic workers and nannies to the United Arab Emirates (UAE).<sup>187</sup>

---

<sup>177</sup>Nepal government officials state that this is not technically a ban. However NGO respondents and PRAs widely believe there to be such a ban in place.

<sup>178</sup>Foreign Employment Act, 2007 (Act No. 26 of the year 2042).

<sup>179</sup>Cited in Dr. Ganesh Gurung, 2014 for IOM, Recruitment Monitoring Assessment, Nepal.

<sup>180</sup>Amnesty International, False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers, 2012, London, Amnesty International. 2012, 51.

<sup>181</sup>In 1997 a complete ban had been briefly imposed - opposed by civil society groups - on female migration other than highly qualified professionals such as doctors, engineers and teachers.

<sup>182</sup>Interviewee, BKI-14.

<sup>183</sup>Interviewee, BKI-4.

<sup>184</sup>Interviewee, BKI-10.

<sup>185</sup>Interviewee, BKI-5.

<sup>186</sup>E.g. see Migrants for Export: How the Philippines State Brokers Labor to the World. 2010. R. M. Rodriguez. University of Minnesota Press.

<sup>187</sup>Philippines trying to stop women travelling to the UAE to work as maids. The National. June 24 2014. Available at: <http://www.thenational.ae/uae/philippines-trying-to-stop-women-travelling-to-the-uae-to-work-as-maids> [Accessed June 2014]

### 4.1.5 Bilateral (State to State) agreements

Recent years have been witness to an increasing number of government-to-government agreements designed to formalize arrangements between origin and destination countries in Asia regarding labour migration.<sup>188</sup> These are another, additional layer, of legal and policy frameworks that govern the international recruitment industry active in particular ‘migration corridors’. They take many forms: bilateral labour agreements (BLAs); memorandums of understanding (MOU); agreements for cooperation and mutual assurance; bilateral social security agreements; anti-trafficking agreements; agreements between labour-sending countries; model employment contracts.<sup>189</sup> At their most informal, bilateral agreements can come in the form of statements or assurances of mutual cooperation in labour migration.<sup>190</sup> At their most formalized, some bilateral labour agreements also take the form of government-to-government (G2G) agreements to facilitate migrant worker recruitment without the services of PRAs. Bilateral agreements at their most formal have the status of international law, as states in effect sign a ‘treaty’. Most bilateral agreements deal with, often in non-binding terms, issues of recruitment, remittances, and return.<sup>191</sup>

Of the CPMS, the Philippines, followed by Bangladesh, have been most active in negotiating bilateral agreements with destination countries. Table 12 presents an overview of selected CPMS agreements made with destination states.

Table 12: CPMS bilateral labour agreements

CPMS	Agreements
Afghanistan	None found
Bangladesh	BLA- Qatar (1998 and 2008), Kuwait (2000), MoU- UAE (2008), Oman (2008), Republic of Korea (2007, 2010, 2012), Libya (2008), Maldives (2011), Malaysia (2003, 2006, 2012), Jordan (2012), Iraq (2013), Hong Kong, China (2012).
China	Korea, Malaysia.
India	Bahrain (2009), Jordan (1988), Malaysia (2009), Oman (2008), Qatar (1985 and 2007), UAE (2006, revised 2011), <sup>192</sup> Kuwait (2007). Yemen, KSA, Republic of Korea in process. <sup>193</sup>
Indonesia	Korea, Malaysia.
Philippines	Bahrain, Jordan, Iraq, Qatar, Kuwait, the United Kingdom, the Republic of Korea, Chinese Taipei, China (Taiwan Province of China), Norway, Switzerland, Indonesia, The United States of America (expired), Libya, Japan, Lao People’s Democratic Republic, Papua New Guinea, New Zealand, Spain, the United Arab Emirates, the Commonwealth of the Northern Marianas Islands, Germany, the Kingdom of Saudi Arabia, and Lebanon. It also has agreements with the four Canadian provinces: Alberta, British Columbia, Manitoba, and Saskatchewan.

<sup>188</sup>Something is better than nothing: Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memorandum of Understanding. P. Wickramasekara. Migrant Forum Asia. 2012.

<sup>189</sup>Ibid.

<sup>190</sup>Go, S. (2007). Asian Labour Migration: The Role of Bilateral Labour and Similar Agreements, Paper presented at the FES and Migrant Forum in Asia (MFA) Regional Informal Workshop on Labour Migration in Southeast Asia: What Role for Parliaments, 21-23 September 2007, Manila, Philippines.

<sup>191</sup>Something is better than nothing: Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memorandum of Understanding. P. Wickramasekara. Migrant Forum Asia. 2012.

<sup>192</sup>This includes an electronic contract registration and validation system aimed at streamlining the process. Contracts have to be endorsed by Indian authorities.

<sup>193</sup>See <http://moia.gov.in/services.aspx?ID1=83&id=m4&idp=81&mainid=73> [Accessed June 2014]

Nepal	Korea (2008), Japan (2009), Nepal has signed MoUs with the UAE, Qatar, and Bahrain; Malaysia, Lebanon and Jordan (2014 - in process).
Thailand	Korea (MOU), Malaysia, Lao (2002), Cambodia (2003), Myanmar (2003).
Sri Lanka	Korea, Malaysia.
Viet Nam	USSR (1980s), Japan, Korea (2004), Malaysia (2003).
Pakistan	Korea, Malaysia.

Agreements which are relevant to recruitment monitoring, include:

- a) Government to Government (G2G) agreements that establish recruitment through public employment services;
- b) Government to Government agreements which set out recruitment (monitoring) processes which must be followed by PRAs and establish standards of migrant worker protection.

PRAs are not signatories to these agreements. Provisions within them relate to states which agree to take responsibility for particular aspects of the migration process, or to implement new provisions. Because PRAs are not parties to the treaties, they themselves cannot be held accountable for non-compliance with the provisions. Instead, it is up to states to take appropriate action against PRAs according to the terms of the agreement.

The most well-known example of an agreement which establishes recruitment through public employment services is the Republic of Korea Employment Permit System (EPS) adopted in 2004. This scheme was established with the aim of controlling irregular migration and addressing the scarcity of Korean workers in primarily construction, manufacturing, and services and seeks to remove PRAs from the recruitment process. PRAs are consequently not allowed to operate in the Republic of Korea. The Republic of Korea has signed agreements (MoUs) with 9 of the 11 CPMS: Bangladesh (2007), China (2007), Indonesia (2006), Nepal (2007), Pakistan (2008), Philippines (2004), Sri Lanka (2004), Thailand (2009), and Viet Nam (2004). To illustrate the public recruitment process under this scheme, Figure 9 depicts the process of application of Nepalese workers to the EPS.

Figure 9: Process of application to the Korea EPS from Nepal (Boxed)

- ❑ After receiving a 'job order' from the Republic of Korea authorities, the Department of Foreign Employment issues first public announcement of recruitment, advertising the dates of language exams, the process of application, and the fees to be paid (USD24). (There are five exam centres: three in Kathmandu, one in eastern Nepal, another in western Nepal)
- ❑ All application forms, including candidate's scanned passports, are sent to the Republic of Korea authorities for initial screening (including age, criminal record, and immigration record). Successfully screened candidates take exams, overseen by Nepal EPS Department.
- ❑ Results are published within two days with the number of successful candidates usually matching the number of workers demanded by Republic of Korea.
- ❑ Successful candidates select a city in Republic of Korea, and occupation, with selections sent to Republic of Korea for processing. Three candidates are selected for every vacancy by Nepal EPS.
- ❑ EPS Nepal conducts a skills test with a focus on physical, IQ, and skills capability. Video footage of applicants is also undertaken of interviews.
- ❑ Republic of Korea employers select from the paperwork and video footage.
- ❑ Nepalese authorities issue the employment contract, which has been signed in advance by employers and visas are processed.

Of the CPMS, Bangladesh has made the most strident efforts to build up its public employment service (Bangladesh Overseas Employment Service Limited, BOESL), first established in 1984. With a staff of around 50 personnel supporting the programme, BOESL recruits female workers for 15 countries including Jordan, Oman, United Arab Emirates and Republic of Korea. More than 12 thousand women workers have been recruited for jobs in the garment industry in Jordan since 1984.<sup>194</sup> PRAs are not involved in this process. Migrants pay substantially less than through mainstream PRA routes, with the total cost approximately 20000 to 25000Tk. (258 USD).<sup>195</sup> Bangladesh has also, more recently, established a G2G programme with Malaysia. The Bangladeshi workers pay 40,000 taka (490 USD) in recruitment costs and earn 25,000 taka (300 USD) a month in Malaysia.

The clearest example of the second type of bilateral recruitment agreements are a series of agreements signed between the Philippines with the Canadian provinces, Alberta, British Columbia, Manitoba, and Saskatchewan, through the Temporary Foreign Worker Program. In addition to requiring that the costs for hiring Filipino workers are entirely borne by the employers in Canada, the agreements also establish a clearly defined recruitment process which must be followed by all parties, including PRAs. The agreements specify that that the Canadian employers should first inform their domestic Employment and Immigration Departments about the availability of jobs and seek permission to recruit. The Departments then inform the Philippines Department of Labour and Employment, which alerts licensed PRAs in the Philippines alerted to the recruitment opportunities. The Canadian authorities are supplied with a list of Philippines licensed PRAs which have permission to recruit for this programme in order that they can verify that no unauthorized recruiters enter the process. The objective is to maintain a tight control over which recruiters are involved, and enhance transparency and accountability.

Examples of the third type of agreements include those signed between the Philippines and Saudi Arabia (2013), Indonesia and Saudi Arabia (2014),<sup>196</sup> and Sri Lanka and Saudi Arabia (2014)<sup>197</sup> relating to domestic worker recruitment. In addition to general protection clauses (e.g. use of a unified standard employment contract), the latter agreements included a clause that only licensed PRAs that are authorized by both countries. The Philippines also managed to include the following clauses in their agreement with Saudi Arabia :

- ❑ A mutually acceptable recruitment and deployment system;
- ❑ Recruitment of domestic workers through ethical recruitment offices duly licensed by their respective countries;
- ❑ Prohibition to charge or deduct from salary any cost attendant to recruitment and deployment from workers' salaries;
- ❑ Right of recourse to the authorities in case of contractual disputes in accordance with applicable laws and regulations;
- ❑ Legal measures against recruitment offices, companies, or agencies for violations of applicable laws, rules, and regulations.<sup>198</sup>

<sup>194</sup>According to a government interviewee, following Jordan's rules, Bangladeshi women cannot be above the age of 32 although in some cases they do allow women to migrate up to the age of 40. Interviewee BK01 January 2014.

<sup>195</sup>Ibid.

<sup>196</sup>See <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140220196331> (Accessed May 2014)

<sup>197</sup>See <http://www.mofa.gov.sa/sites/mofaen/ServicesAndInformation/news/GovernmentNews/Pages/ArticleID2014115134734204.aspx> (Accessed May 2014)

<sup>198</sup>See [http://www.dole.gov.ph/ro\\_polo\\_updates/view/631](http://www.dole.gov.ph/ro_polo_updates/view/631) [Accessed December 2014]

### 4.1.6 Government-led codes of conduct for the recruitment industry

A final form of national legal and policy frameworks that directly govern the operation of the recruitment industry are government-led Codes of Conduct designed for the industry. These are not legally binding legislative requirements for which PRAs can be prosecuted for non-compliance or have their licenses revoked, but constitute a form of 'soft law'. 'Soft law' refers to rules that are neither strictly binding in nature nor completely lacking legal significance. It often refers to guidelines, policy declarations, or codes of conduct. The UN Guiding Principles on Business and Human Rights (UNGPs) advise states to provide human rights guidance to businesses, a potentially important area of 'soft law'.<sup>199</sup>

In an example of how this can be done, in 2011, the Sri Lanka Bureau of Foreign Employment (SLBFE), supported by the national ILO office, commissioned a series of reviews of recruitment practices in Sri Lanka and overseas, including 'best practices'. Following a consultative workshop with key stakeholders to discuss the review recommendations, the SLBFE in partnership with the ILO developed a Code of Ethics for the recruitment industry in Sri Lanka. This was based on the ILO Multilateral Framework on Labour Migration, aimed at ensuring the protection and rights of Sri Lankan migrants in-country and overseas.<sup>200</sup> The Code does not outlaw fee charging to migrants however.

In another example, VAMAS (Viet Nam) developed its Code of Conduct in 2010, in partnership with the ILO national office, and GMS Triangle project.<sup>201</sup> The Code covers legal compliance, business standards and best practices relating to job advertisements, recruitment, worker protection and welfare, worker training, complaints and dispute handling, obligations to clients and job seekers, partnership development and the return and repatriation of workers. Most importantly however, it prohibits fee charging to workers, requires issuance of receipts, and maintains commitments to avoid child labour, trafficking in persons, forced labour and contract substitution. The Code also covers implementation procedures, including mechanisms for its communication to members, and for grievance mechanisms.

Of the two, the best-documented approach is that of VAMAS (as part of a deliberate effort by ILO's GMS TRIANGLE Project to document the process as guidance for other PRA associations that might wish to monitor and evaluate their members against a similar Code of Conduct).<sup>202</sup> The monitoring and evaluation system for the VAMAS Code was developed in 2011 and is to be implemented in phases. The first phase was implemented in 2012-2013 and was applied to an initial 20 selected members, most of which were large agencies and considered top-performers in the industry. Implementing the monitoring and evaluation system-or the process of assessing PRAs against the Code-required training and capacity building for all participating actors in the process, including government agencies at national and provincial levels, as well as the PRAs that signed up to be assessed. Staff members of the 20 selected PRAs were also trained, to ensure that they understood what they would be assessed against and so they could make any changes to their operations that might help meet the Code's requirements.

<sup>199</sup>See <http://business-humanrights.org/en/un-guiding-principles-on-business-and-human-rights-1> [Accessed December 014]

<sup>200</sup>Code of Ethics available at:

[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms\\_233369.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_233369.pdf) [Accessed December 2014]

<sup>201</sup>The Code of Conduct is downloadable at:

[http://www.ilo.org/sapfl/Informationresources/NonILOpublications/WCMS\\_145267/lang--en/index.html](http://www.ilo.org/sapfl/Informationresources/NonILOpublications/WCMS_145267/lang--en/index.html) [Accessed June 2014]

<sup>202</sup>ILO, 2013, Monitoring and Evaluation of the Application of the VAMAS Code of Conduct. Available at:

[http://www.ilo.org/asia/whatwedo/publications/WCMS\\_219762/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/publications/WCMS_219762/lang--en/index.htm) [Accessed December 2014]

VAMAS assessed the initial batch of PRAs based on information taken from: media reports, reports from provincial government employees in the provinces where the PRAs operated, and the results of surveys and interviews with outgoing and returned workers whose recruitment was processed by the participating PRAs. The quality of the participating PRAs' development and delivery of pre-departure training also factored in the assessment. VAMAS used the information to grade the 20 PRAs and rank them as Excellent, Good, Satisfactory and Not Satisfactory. Most of the PRAs were rated either Excellent or Good.<sup>203</sup>

As an example of a destination country approach, the SORAL (Lebanon) Code of Conduct, established to respond to the increasingly dire situation of migrant domestic workers in Lebanon was developed in 2005. It was validated by some NGOs and women migrant domestic workers' groups whose inputs were integrated into the final version. The SORAL Code's implementation mechanism includes the establishment of a multilateral follow up committee with members from civil society organizations, to receive complaints of violations, verify the validity of complaints and blacklist repeat offenders. SORAL's Code does not commit to a no-fees policy.<sup>204</sup>

In a different approach, the UK, made an industry Code of Conduct a statutory instrument. In other words, for PRAs compliance with the Code became a legal requirement. The 'Conduct of Employment Agencies and Employment Business Regulations', 2003 and 2007 set out the expected business standards of PRAs in relation to the provision of ancillary services (i.e. services additional to recruitment and placement), terms of employment contracts, recruiting during industrial disputes, restrictions on charging fees to companies, prohibition on withholding payments to workers, provision of information to workers, situations where more than one PRA is involved, situations where the workers are deemed to be vulnerable, and charges for transportation and accommodation.<sup>205</sup> The Code also reminds businesses of the need to comply with related legislation such as that relating to discrimination, equal pay, health and safety, immigration, working time, and trade union membership.

Also in the UK, the Gangmasters Licensing Authority, the enforcement body which regulates PRAs active in supplying workers to agriculture, horticulture, seafood, and fishing, has enshrined eight key standards into a licensing Code of Practice. PRAs must satisfy these eight standards before being granted a license. They must also continue to meet these standards in order to retain their licence. If they fail to comply with one or more, they face having their license revoked. The standards are set out in Figure 10.

Figure 10: Gangmaster Licensing Authority Licensing Standards<sup>206</sup>

1. The license holder, Principal Authority, and any person named or specified in the license must, at all times, act in a 'proper and fit' manner.
2. PRAs must comply with all relevant pay and tax requirements.
3. A worker must not be subjected to physical or mental mistreatment by a PRA. Threats must not be made to workers.
4. A PRA license-holder who provides, or effectively provides, accommodation must ensure the property is safe for the occupants.

<sup>203</sup>Ibid.

<sup>204</sup>See <http://www.ohchr.org/EN/NewsEvents/Pages/LebanonCodeOfConduct.aspx> [Accessed December 2014]

<sup>205</sup>Available at: <http://www.legislation.gov.uk/uksi/2003/3319/contents/made> [Accessed December 2014]. The Conduct Regulations are currently in place for England, Scotland, and Wales only. The government is currently reviewing their status and may abolish in 2015 as part of a drive to deregulate the private sector.

<sup>206</sup>Detailed Guidance on Gangmaster Licensing Authority Standards. Available at: <http://www.gla.gov.uk/PageFiles/956/Licensing%20Standards%20-%20May%202012.pdf> [Accessed December 2014]. Please note that I have paraphrased these standards for the purpose of brevity.

5. A worker must be able to take the rest periods, breaks and annual leave to which they are legally entitled.
6. A PRA license-holder must cooperate with the labour user to ensure that: responsibility for managing the day to day health and safety of workers has been agreed and assigned, a suitable and sufficient health and safety risk assessment has been completed (and recorded where required) before work commences, and any risks identified are properly controlled.
7. All vehicles and drivers used to transport workers must be legally compliant, safe and roadworthy.
8. License-holders must not charge fees to workers for any work-finding services. License-holders must not make ancillary services conditional on the worker paying fees.

The following section turns to the second component of national legal and policy frameworks, how PRA compliance with the regulations is monitored and enforced.

## B Monitoring and Enforcement

### 4.2.1 How CPMS governments monitor compliance

How effective legal and policy frameworks are in regulating the international recruitment industry rests on how well laws and policies are monitored and enforced. Governments can monitor compliance through requiring PRAs to report to the authorities on their activities, or through inspecting their businesses. For instance, Indonesia, Nepal, and the Philippines require PRAs to formally report to the authorities on the numbers of migrants they have recruited since their last report, the recruitment fees which they have charged to migrants, details of future business plans, the numbers of migrants repatriated, and the numbers of terminated employment contracts. Some CPMS (e.g. Nepal and Sri Lanka), and some destination states (e.g. Bahrain, Jordan, Kuwait, Lebanon, United Arab Emirates) require that PRA premises must be inspected on a regular basis. Overall however, interviewees reported however that there was little evidence that inspections (i.e. other than in response to complaints) occur on a regular basis, nor any evidence that authorities have established specific bodies tasked with inspecting PRA premises.

Although, in one example, at the time the research was carried out for this report, Nepal, whose inspectors, according to the law, have the same powers as the police, including powers of arrest, search, taking custody of documents, and record depositions, was in the midst of conducting 'Operation De Pogo', targeting PRAs that were suspected to be non-compliant.<sup>207</sup> As a result of the inspections/raids, over 200 PRAs were reported, through the media, to have been charged and/or suspended since February 2014.<sup>208</sup>

The main way in which CPMS authorities seek to maintain an overview of PRA activities is through the emigration clearance system. Many CPMS migrants, if travelling for overseas employment through legitimate (i.e. regular) routes with a licensed PRA, are required to apply for and obtain emigration clearance from the relevant CPMS authorities. Study respondents highlighted the importance of the multiple opportunities during emigration clearance processes at which officials can monitor the activities of licensed PRAs. These opportunities arise because officials, prior to granting emigration clearance (which is usually indicated by a

<sup>207</sup>Foreign Employment Act, 2007.

<sup>208</sup>See <http://www.theguardian.com/global-development/2014/may/01/nepal-clampdown-migrant-worker-exploitation-operation-de-pogo> [Accessed June 2014]

'ticket' or 'stamp' in migrants' passport), are required to check that the PRA which is managing the recruitment hold (s) a valid license, that the immigration documents are in compliance, that there are no outstanding complaints against the foreign partner (PRA and/or employer), that the migrant's passport is valid, that health insurance has been purchased if legally required, and that the terms and conditions of the employment (contract) comply with laws. In short, the emigration clearance process is a hugely important component to recruitment monitoring, enabling oversight of industry activities on an ongoing basis. By way of illustrating the amount of paperwork which PRAs are required to coordinate and to submit to the authorities' in order to obtain clearance, Figure 11 describes the emigration clearance process in India.

Figure 11: Example of CPMS emigration clearance - India (Boxed)

Indian nationals with out secondary school level education require emigration clearance for 17 countries (including GCC countries, plus Malaysia, Jordan, Lebanon, Libya, Yemen, Sudan, Brunei Darussalam, Afghanistan, Indonesia, Syria and Thailand).<sup>209</sup> In other words, to work in these countries, Indian migrants must seek prior approval from the Indian authorities. Migrants must collate and submit the following documents in order to receive such approval: application form, valid passport, employment visa, work agreement and insurance policy document. Those intending to emigrate for 'unskilled work' or farm work (also female emigrants above the age of 30) are in addition required to also submit 'attestations' from the respective Indian overseas missions or a separate letter of permission from the concerned Indian mission that the intended job/employer complies with Indian regulation. Unsurprisingly, it is problematic for Indian migrants to collate this information themselves, and consequently many migrate with the assistance of a PRA.

PRAs which manage international recruitment as part of the emigration clearance process are required to produce: original copies of the 'demand' letter from the employer which states the need for one or more migrant workers as well as the terms and conditions of the employment, power of attorney from the employer, and a copy of the employment contract (both of which have to be verified by there levant overseas Indian mission). PRAs must also submit an affidavit to verify the validity of documents, that the demand is genuine, that workers will be deployed with the same employer for whoms/he is being recruited, that workers will be received by the foreign employer, that workers have been trade-tested and are fit for work, that workers will be paid the minimum required salary and provided with the minimum required standards and conditions of employment as required by destination country, that female workers will not bad employed as maids/domestics and that the PRA will maintain a register of all details of workers.

An important part of emigration clearance monitoring is that CPMS officials in the overseas missions have to 'attest' relevant documents. These officials are usually Labour Attachés, but may also be lower level administrative officials. In theory, Labour Attachés are in a pivotal position to be able to conduct checks on the employer for whom the migrant will be working, including the terms and conditions of that employment. Labour Attachés are also in a position, in theory, to be able to conduct checks on any destination country PRA which might be involved in the process, and whether there have been any complaints registered against either employer or PRA. Figure 12 reproduces the documents that PRAs (and employers) in Singapore must submit to the Philippines overseas mission for the Labour Attaché to attest.

<sup>209</sup>In India, the Emigration Act, 1983 brought in a system of 'emigration clearance' under which workers must seek authorization from the Ministry of Overseas Indian Affairs (MOIA) in order to emigrate. Emigration Act, 1983, Chapter V, Section 22.

Figure 12: Requirements for submission of employment documents for verification/authentication (new deployment-domestic workers)<sup>210</sup>

- Original copy of S\$2,000 performance bond (which the Singapore employer is required to pay);
- Original copy of S\$2,000 performance bond (which the Singapore agency is required to pay);
- Two original duly signed Standard Employment Contracts;
- Two copies 'In-Principal Approval' from the Singapore authorities (work permit approval);
- Two copies of Agency 'Undertaking' confirming business status;
- Two copies of Employer 'Undertaking' confirming business status;
- Two copies of prepaid ticket for migrant;
- Two copies of worker's passport;
- One copy of medical insurance purchased (as legally required) for migrant;
- One copy of employers' insurance card;
- One copy of Philippine agency's license.

If the submitted paper work does not comply with requirements, then the Labour Attaché can refuse to process the request. S/he may also 'blacklist' non-compliant PRAs (or employers) from undertaking any further recruitment. Blacklisting can be a powerful tool with which Labour Attachés can enforce their national law overseas. By way of illustration, a Qatar-based Philippines Labour Attaché described how he goes about this:

There are instances where recruitment agencies don't comply with our procedures and violate the contracts signed with us. We then give them warning or blacklist them completely. For example, if the recruitment agency has one or two cases in our POLO [Philippines Overseas Labour Office], we blacklist them or hold all their contracts both in Qatar and the Philippines to halt their transaction. This gives pressure for them to comply with our rules, and I will not tolerate this illegal activity. We've blacklisted more than 100 recruitment agencies last year, and are continuing to crack down on illegal recruitment agencies or bogus demands.<sup>211</sup>

Labour Attachés may blacklist PRAs according to official rules established by their home governments. Figure 13 sets out the process established by the Sri Lankan authorities and reproduced in a Manual for Labour Attachés.

Figure 13: Sri Lankan process for blacklisting non-compliant PRAs<sup>212</sup>

**Objective:** to establish a decent and dignified work ethic in the process of labour migration by identifying and expelling errant agents from the system.

**Conditions for blacklisting:**

- Severe negligence of handling of complaints of migrant workers;
- Abusing migrant workers, especially females during their custody in the agency;
- Non-cooperation with the Mission in recruitment dealings and breach of contract entered into with Sri Lankan workers;
- Unethical business practices which result in the exploitation of Sri Lankan migrant workers and Sri Lankan agents (E.g. recruitment of workers without genuine job opportunities, trading of workers);
- Violations of host country regulations;
- Any act against the national interest of Sri Lanka;
- Based on a recommendation by any other Mission in the host country.

<sup>210</sup>See <http://www.philippine-embassy.org.sg/labor/hsw/employment-docs/> [Accessed December 2014]

<sup>211</sup>Interviewee PLAQ 1, April 2014.

<sup>212</sup>Sri Lanka Labour Attache Guidance, p19-20.

**Procedures to follow:**

- Careful collection of evidence necessary for the determination of blacklisting;
- In the event of a recruitment agent/establishment found to be engaging in activities warranting blacklisting; sending of prior warning to rectify the reported allegations;
- Careful review of the evidence that will lead to blacklisting;
- Taking the decision for blacklisting;
- Submit the decision for the approval of the Head of Mission and the SLBFE;
- Effecting the blacklisting alongside the registration in the appropriate database maintained for this purpose.

## 4.2.2 State judicial and non-judicial remedy

Enabling migrant workers to access routes to remedy as well and to take appropriate action when complaints are lodged and are up-held, is essential to justice. The UN Guiding Principles on Business and Human Rights (UNGPs) sets out the right of victims to access both judicial and non-judicial routes to remedy:

*“As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”<sup>213</sup>*

The UNGPs make the point that unless governments take appropriate action to investigate, punish, and redress business-related human rights abuses, the state duty to protect can be weakened or even rendered meaningless. In other words, without providing the means by which individuals can complain about their treatment by business and to seek remedy for the wrong, governments are not protecting their citizens. Remedy, the UNGPs go on to define, many include apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines). The aim of the type of remedy should be to counteract or make good any human rights harms that have occurred.<sup>214</sup>

There is little robust or systematic data on the availability of ‘complaints mechanisms’ that allow CPMS migrants to register their grievances against PRAs. In theory, CPMS nationals can lodge complaints about PRA activities at home - either pre-departure or upon return - or in the destination country - either with the authorities or with the CPMS embassy. For instance, in India the Protector of Emigrants (PGE) holds open access hearings in its eight offices throughout the country and twice a week on Tuesdays and Fridays at the Ministry of Labour in New Delhi. In addition, IOM has helped establish the Overseas Workers Resource Centre in New Delhi in which workers can lodge complaints, seek advice and receive counselling.

Nepal has established a special investigative unit, the ‘Complaints Registration and Investigation Section’, which has the power to make orders and impose penalties against PRAs, or to refer onto the police (if the recruiters are illegal), or to the ‘Foreign Employment Tribunal’. After the complaint has been lodged, the investigation officer sends a letter to the company outlining the alleged offense and requesting that a representative come for an interview. For those cases deemed genuine, the officer will calculate how much compensation the PRA should pay to the worker, with most cases reportedly resolved in this manner. The

<sup>213</sup>UN Guiding Principles Business and Human Rights, OHCHR. Foundation Principle Pillar 3.

<sup>214</sup>Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) [Accessed December 2014]

unit includes lawyers who have been granted police powers to investigate the alleged crimes under the act, including that of arrest.<sup>215</sup> Established in 2010, the Foreign Employment Tribunal deals with the following cases:

- ❑ A person operating a foreign employment business without a proper license;
- ❑ A person or recruitment agency using deceptive techniques for recruitment;
- ❑ Sending a person for foreign employment without Department of Foreign Employment permission;
- ❑ Engaging in fraud
- ❑ Sending a minor for foreign employment;
- ❑ Sending a worker to an unauthorized country; and
- ❑ Concealing or tampering with relevant documents.<sup>216</sup>

Figure 14: Complaints mechanisms in selected CPMS

CPMS	Complaints Mechanisms
Bangladesh	Complaints can be lodged through overseas missions and through the relevant government department in Bangladesh (a new facility since 2013). <sup>217</sup>
India	Migrants can file complaints with Indian diplomatic missions, Labour Attachés, or welfare officers and receive assistance in settling employment disputes. Complaints about PRAs should be forwarded to the Ministry of Overseas Indian Affairs (MOIA). The Overseas Workers Resource Centre (OWRC) established by the MOIA has walk-in counselling centres at Delhi, Hyderabad and Kochi. It also operates an online complaint system.
Indonesia	Representatives of the Republic of Indonesia in the destination countries are tasked to receive complaints and facilitate dispute settlement between workers and employers or PRAs.
Nepal	Workers can complain direct to the Department of Foreign Employment or Labour Attaches in destination countries. <sup>218</sup> Once a complaint is lodged, an investigation officer from the Department initiates an enquiry. The findings and recommendation are then sent to the District Attorney General’s Office where the merits of the case are reviewed and a final recommendation is given on whether the case can be resolved through mediation, low level sanctions or should go to the Foreign Employment Tribunal for criminal disposals. The Tribunal is an independent court that was established in February 2010 through the Ministry of Labour. <sup>219</sup>
Philippines	Any aggrieved person may file a complaint in writing with the Philippines Overseas Employment Administration and under oath for violations of the Labor Code and the Rules and Regulations.

<sup>215</sup>Migrant Workers’ Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations.

<sup>216</sup>In the hearing, the victim is not a party to the case, but may serve as a witness during the hearing on evidence and the final hearing. The final decision is appealable. If the victim is awarded compensation by the tribunal, PRAs may be ordered to pay a victim from the agency’s deposit. In cases where the deposit is insufficient, or the defendant is an individual agent, compensation must be taken from the property of the perpetrator.

<sup>217</sup>HDRC (2013) Causes of and Redress Related to High Recruitment and Migration Costs, ILO Dhaka.

<sup>218</sup>Foreign Employment Act, 2007, Article 36.

<sup>219</sup>In practice, one of the biggest obstacles to accessing compensation through the Department is that very few migrant workers are aware that this complaints mechanism exists. Indeed, many are not even aware that the Department exists. The Department’s location in Kathmandu means that it is difficult and costly for the majority of migrant workers living in rural and remote areas of the country to access. Amnesty International, False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers, 2012, London, Amnesty International.

<b>Thailand</b>	Outbound Thai jobseekers can raise complaints against the PRAs, and other parties involved in the recruitment process for an overseas job, to the Department of Employment's Inspection and Job-Seekers Protection Division or to a local Provincial Employment Office, which receives and investigates such reports.
<b>Sri Lanka</b>	Section 44 of the Act (as amended by Act No. 4 of 1994) provides the procedure for handling by the Bureau of complaints received from or on behalf of any person recruited for employment outside of Sri Lanka, or reports from any of its representatives abroad. Labour welfare officials in Sri Lanka's diplomatic missions in receiving countries have general and specific procedures in place to attend to grievances or complaints of Sri Lankan migrant

### 4.2.3 Establishing liability in enforcement and remedy

There are often multiple migration businesses and individuals also involved in organising the recruitment of one individual. These include PRAs in origin and destination countries, sub-agents, pre-departure training centres, medical screening centres, travel agents, insurance companies and others. This presents challenges to individuals who wish to seek remedy if something goes wrong during the recruitment process—in other words, against which business should they seek remedy? Internationally, a number of governments have addressed this through instituting 'joint and several liability' requirements on recruitment businesses and employers.<sup>220</sup> Joint and several liability is increasingly being discussed internationally as an effective way in enabling individuals to seek remedy, by which international recruitment can be regulated. Joint and several liability means that multiple business partners can be held liable for the same event or act and can be held jointly responsible for restitution. This enables individuals who have been harmed by more than one business to sue and to be awarded damages and collect from any one, several, or all of the legally liable parties. For instance, if an individual has been exploited by the PRA or employer in the destination country, to sue the origin country PRA for compensation even if this business was not directly responsible for the harm.

Within the CPMS, there are two particular examples worthy of note.

1. Nepal: Nepal requires sub-agents to be registered through PRAs. PRAs then become legally liable for any wrongs which are committed by the sub-agents which are registered to them. This means that individuals can sue PRAs for the harmful actions of those sub-agents. The theory is that allowing individuals to sue the PRA enables a better chance of receiving proper restitution.<sup>221</sup>
2. The Philippines: The Philippines have established requirements under which PRAs are jointly and severally liable with the 'foreign principals' (employers and/or destination country PRAs) in the recruitment process. Filipinos can sue their Philippines PRA for claims that arise out of a misdeed occurring during the implementation of the employment contract (i.e. during employment), or during the recruitment process.<sup>222</sup> If a harm occurs in the destination country for which the employer is responsible but the individual is unable for whatever reason to successfully gain restitution from the employer, he or she can

<sup>220</sup>E.g. see J. Gordon, 2014, Joint Liability Approaches to Regulating Recruitment. Fordham University School of Law. New York.

<sup>221</sup>'Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations.

<sup>222</sup>Section 7, Philippines R.A. 10022.

request that the Philippines National Labor Relations Commission pursue the claim instead against the PRA. If the Commission finds for the individual, the PRA is obligated to pay financial compensation to the victim. PRA escrows which are posted as a condition of licensing can be drawn upon to cover such claims.<sup>223</sup> Joint and several liability requirements are written into the employment contracts which PRAs are required to ensure are signed prior to an individual's departure overseas. This is a condition for the contract's approval ('attestation') by the Philippines embassy in the destination country and by the authorities in the Philippines.<sup>224</sup>

#### 4.2.4 Punishable violations and sanctions for PRAs and illegal recruiters

A key component to regulation is to have a robust framework of sanctions and available to prosecutors if PRAs are found (resulting from an investigation by the authorities or as a result of a complaint made by an individual) to have engaged in exploitative activities. According to legal and policy frameworks in CPMS, violating the rules on recruitment fee charging, making 'false promises' to migrants about the type of job, its salary and/or the terms and conditions of the employment, confiscating passports or other identity documents, and deceiving individuals about their employment contracts are the most significant violations which should attract sanctions. Table 13 sets out the sanctions which each of these violations attract in selected CPMS.

Table 13: Sanctions by violations for selected CPMS

	Fee over-charging	Contract deception	Passport confiscation	False promises
Bangladesh	N	Up to 5 years prison and fine of not less than USD 1287	Up to 5 years prison and fine of not less than USD 1,287	Up to 5 years prison and fine of not less than 1 USD 1,287
India	2 years prison and /or fine up to USD 33	2 years. prison and/or fine up to USD 33	N	2 years prison and/or fine up to USD 33
Indonesia	Revocation of license	Suspension of license	Between 2 and 10 years prison and/or fine of min. USD166,736	N
Nepal	Licensee to return the monies paid, and pay a fine of USD1,037	Fine of USD1037 and the licensee is required to pay difference in wages, for the repatriation of worker, and a fine of between USD 3,112 and USD 5,187. May also receive between 3 and 7 years in prison. If individual has not yet left home, the punishment is halved. <sup>125</sup>		Fine of between USD 1,037 to USD 3,112 imposed with up to 6 years prison. In case of repeat offenders, the punishment is doubled. <sup>126</sup>

<sup>223</sup>Section 3: "The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to workers."

<sup>224</sup>See J. Gordon, 2014, Joint Liability Approaches to Regulating Recruitment. Fordham University School of Law. New York,

<sup>225</sup>Foreign Employment Act, 2007, Article 43

<sup>226</sup>Foreign Employment Act, 2007, Article 47

Philippines	From suspension (1st offense) to licence cancellation (3rd offense)	From suspension (1st offense) to licence cancellation (3rd offense)	From suspension (1st offense) to licence cancellation (3rd offense)	From suspension (1st offense) to licence cancellation (3rd offense)
Thailand	Up to 1 year in prison and fine x5 amount of the fees collected in excess of allowed amount. Or other properties accepted as security for such service charge or expenses	Between 3 and 10 years prison, or fine from USD 1,847 to USD 6,155		
Sri Lanka	Fine between USD 384 and USD 767 and up to 2 years in. prison. Refund of monies collected	Fine between USD 8 and USD 12 and between 1 and 2 years prison		

Other violations of note listed on the statute books include:

- ❑ If a PRA in Bangladesh is found to have engaged in trading visas for a fee (in other words, where a job does not exist), Directors can be imprisoned for up to seven years, and a fine imposed of not less than USD 3,863m imposed on the business.
- ❑ If a PRA in Nepal does not openly advertise job opportunities in the newspaper (as legally required), the business can be fined up to 50,000 NPR (USD 516), and the license may be cancelled.<sup>227</sup>
- ❑ If an unlicensed recruiter in Bangladesh publishes job opportunities in a newspaper in Bangladesh, the recruiter can be punished through a one year prison sentence and a fine of not less than 50,000 BDT (USD 643).<sup>228</sup>
- ❑ If a PRA in Nepal recruits workers for a country which is not on the government- approved list, the authorities can impose a fine of 300,000 NPR (USD 3,094) to 500,000 NPR (USD 5,156) and/or a prison sentence of between three and seven years on the PRA Director. If the person has not yet been sent abroad, the punishment imposed is 'halved'.<sup>229</sup> If on the other hand, PRAs send individuals abroad without emigration clearance or collecta recruitment fee without sending that person abroad (a 'job scam'), PRAs are required to refund the amount they have falsely collected plus pay another 50 per cent on top of that amount as restitution and a fine of 300,000 NPR (USD3,094) to 500,000 NPR (USD 5,156). Offenders also face a potential prison sentence of between three and seven years.<sup>230</sup>

<sup>227</sup>Foreign Employment Act, 2007, Article 49.

<sup>228</sup>2013 Overseas Employment and Migrant Act.

<sup>229</sup>Foreign Employment Act, 2007, Articles 45 and 46.

<sup>230</sup>Foreign Employment Act, 2007, Article 44.

The strongest penalties in all CPMS states however are applied to convictions for illegal recruitment and for trafficking. For instance, in Indonesia, offenders convicted of illegal recruitment can be sentenced to between two years and 10 years in prison and must pay a fine of between Rp. two billion rupiah (USD 165,440) and Rp. fifteen billion (USD 1.24 million).<sup>231</sup> The Philippines takes an even stronger line with those found guilty of illegal recruitment: offenders can be sentenced to between 12 and 20 years and be required to pay a fine of PHP 2,000,000 (USD 45,589). Across the CPMS, those convicted of human trafficking can be sentenced to between three and fifteen years in prison, with the highest penalties set in Indonesia under the Anti-Human Trafficking Law, 2007.<sup>232</sup> Annex 2 lists anti-trafficking legislation in CPMS and destination states.

The destination states included in this study also reserve the strongest sanctions for individuals and companies found guilty of illegal recruitment and trafficking. Being found guilty of operating a PRA without a license in Bahrain can result in a prison sentence of between three months and one year, and a fine of between BDT 1,000 (USD 2,652) and BDT 2,000 (USD 5,304). For habitual offenders, the sanctions are doubled. Similarly, individuals convicted of illegal recruitment in Jordan can be fined between 200 and 1000 JDs (USD 282 and USD 1,441) and/or sentenced to a minimum of thirty days in prison.<sup>233</sup> Meanwhile, the United Arab Emirates can impose sentences of up to six months and a fine of between AED3000 (USD 817) and AED10,000 (USD 2,723) on offenders.<sup>234</sup> Across the destination states, available prison sentences for human trafficking also range from three years to fifteen years, with two exceptions. United Arab Emirates and Kuwait give prosecutors and judges the option of imposing life imprisonment on convicted individuals.<sup>235</sup>

By way of comparison with CPMS sanctions, other violations and sanctions available to prosecutors in destination States are set out in Table 14. There are a number of similarities within, and between, CPMS and destination States in terms of the recruitment violations that attract sanctions, and the length of prison sentences that can be imposed. Relatively speaking however, the levels of fines that can be imposed on PRAs for non-compliance in CPMS are greater than those that can be imposed in destination states. For instance, Thailand with a GDP per capita of USD 5,480<sup>236</sup> can impose fines on PRAs of between USD 1,847 and USD 6,155, if found to have engaged in contract deception.<sup>237</sup> In contrast, Qatar, one of the richest countries in the world with a GDP per capita of USD 93,825<sup>238</sup> can only impose a fine of USD 2,747 on a PRA found guilty of confiscating migrants' passports.<sup>239</sup>

<sup>230</sup>Foreign Employment Act, 2007, Article 44.

<sup>231</sup>The Regulation of the Minister of Labor and Transmigration No. PER-10/MEN/V/2009.

<sup>232</sup>See <http://www.humantrafficking.org/countries/indonesia> [Accessed December 2014]

<sup>233</sup>Amendments to Article 3, Labour Code, Law No. 8, 1996.

<sup>234</sup>Ministerial Decree No. 233, Article 17.

<sup>235</sup>See [http://mofa.gov.ae/mofa\\_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx](http://mofa.gov.ae/mofa_english/portal/5b8a314e-750b-4f70-b75c-b3a71687b828.aspx) and

<http://english.alarabiya.net/en/perspective/features/2014/01/08/Are-you-guilty-of-human-trafficking-.html> [Accessed December 2014]

<sup>236</sup><http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> [Accessed June 2014]

<sup>237</sup>The Employment and Job Seekers Protection Act - B.E. 2528

<sup>238</sup><http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> [Accessed June 2014]

<sup>239</sup>Law No. (4) of 2009 or the Sponsorship Law Regulation of the Expatriates Entry, Departure, Residence and Sponsorship 4 / 2009

Table 14: Sanctions by punishable violations in selected destination states

Destination state	Fee charging to workers	Contract deception/violation terms and conditions	Passport confiscation
Jordan	No sanction	Warnings, fines, suspensions for up to 6 months and closure	No penalty for PRAs
Malaysia	Fine of USD621 or up to 6 months prison	Fine of USD621 or up to 6 months prison	
Qatar	Refund of fees/Cancellation of license/fine of USD 549 to USD1,648 or a jail term of up to 1 month or both		Fine of at least QR10,000 (2,746 USD)
Singapore	Maximum fine of USD 30,000; and/or Maximum imprisonment term of 24 months		Fine of at least QR10,000 (2,746 USD)
United Arab Emirates	License suspension or cancellation	Suspension or license cancellation	Suspension or license cancellation

The following section reviews the effectiveness of state monitoring of recruitment.

### 4.3 Overall effectiveness of legal and policy frameworks

Governments institute legal and policy frameworks that regulate the international recruitment industry. Together these components of legal and policy frameworks regulate who is allowed to operate a PRA, what activities they can legally conduct, what recruitment fees they are allowed to charge, what paper work they must prepare, the types of jobs they can send workers to, which origin and destination countries they can recruit from and to, how PRAs are monitored, and how and in what ways PRAs are held accountable for non-compliance. The rules are multi-layered and complex, involving multiple government departments and officials in both origin and destination countries. Figure 15 presents an overview of government (national) regulation of international recruitment according to the typology set out above in Figure 6 above.

Figure 15: State (government) regulation of international recruitment industries

A. Prevention	B. Monitoring and Enforcement
<ul style="list-style-type: none"> <li><input type="checkbox"/> Licensing and associated rules on recruitment activities;</li> <li><input type="checkbox"/> Rules on recruitment fees;</li> <li><input type="checkbox"/> Immigration/emigration rules;</li> <li><input type="checkbox"/> Bilateral agreements (G2G, recruitment processes, migrant worker protection);</li> <li><input type="checkbox"/> Codes of Conduct ('soft law').</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Requiring PRAs to report;</li> <li><input type="checkbox"/> Inspections of licensees;</li> <li><input type="checkbox"/> Action against illegal recruiters;</li> <li><input type="checkbox"/> Immigration and emigration processes;</li> <li><input type="checkbox"/> Complaints mechanisms;</li> <li><input type="checkbox"/> Liability;</li> <li><input type="checkbox"/> Sanctions regime.</li> </ul>

CPMS regulation of PRAs, in terms of legislation, policies, and rules is extensively detailed. How effective they are rests however on how well they are implemented as well as whether they meet their intended objectives, or lead to any unintended outcomes. As noted in the methodology section to the report, this report is not a compilation of in-depth assessments of the legal and policy frameworks of 28 countries, but a thematic analysis of their key features and effectiveness. The following section presents an analysis of these themes, illustrated by examples from CPMS and from destination states. As the report has been commissioned by the CPMS, activities in these countries provide the main focus.

Disappointingly, individuals interviewed for this project, especially those working for NGOs or trade unions, were overall overwhelmingly negative about the efficacy of overall recruitment monitoring in CPMS and key destination states. This view primarily rested on the level of continuing exploitation against migrants that occurs through the recruitment process, despite the extensively detailed legal and policy frameworks in place. However, there is no common understanding of what constitutes 'effectiveness' of legal and policy frameworks, or criteria for success of any given law or policy on international recruitment. Unfortunately, the existing country level studies of recruitment monitoring, often commissioned by international organizations, have largely been descriptive in content, with few conclusions about impact which could help shape this vision. For interviewees, lack of effectiveness resulted from four key areas.

1. Weak enforcement activities: Interviewees emphasized that the ineffectiveness of recruitment monitoring rests on weak enforcement activity by national governments (CPMS and destination countries). The following quote from a Nepalese PRA respondent about the situation in Nepal was relatively typical:

There are only about a dozen PRAs that actually follow the process, give workers copies of all their documents in advance. There are no penalizing systems in practice - only settlements. Revocation [of licenses] never happens. The only inspections that happen are to ferret out the illegal branch offices. The government knows that PRAs are charging more than what they're allowed to charge but they are not penalized. The government should use the renewal process [of licenses] to weed out the bad PRAs. Government has no control over sub-agents. PRAs are more powerful than the department, the bureaucracy.<sup>240</sup>

2. Lack of coherent vision about regulation: Interviewees in CPMS and destination countries pointed to a lack of coherent vision on the part of policymakers. Many of the legal and policy frameworks described above have been constructed on a piecemeal basis, often by multiple actors, over a long period of time. This means that maintaining a coherent vision of what the regulations are trying to achieve between politicians and those responsible for implementing them, across all relevant departments can be challenging. It was clear that a number of government interviewees lacked clarity about objectives, and expected outcomes, let alone cost benefit ratio and impact. Government officials agreed in general that the purpose of recruitment regulation is to reduce exploitation. However, views about other potential objectives of regulatory frameworks, such as reducing the extent of private recruitment industry involvement, increasing the role of public employment services, reducing recruitment fees/migration costs, developing better bilateral monitoring arrangements varied between officials.

3. Complexity of international recruitment industries: Interviewees (CPMS and destination countries) argued that the international recruitment industry is a hugely complex business to regulate with so much that is beyond the direct control of individual governments. Business enterprises involved in the CPMS recruitment system range from the part-time sub-agents, to multinational PRAs. Business relationships are often opaque (and deliberately so in order to hide abuses), with little evidence of formal commercial contracts. Business is largely conducted informally. This makes establishing liability - in other words, establishing which business or individual is responsible for the exploitative behavior-a significant challenge.

---

<sup>240</sup>Interviewee NP7, May 2014.

4. Lack of monitoring and enforcement of recruitment in destination states: Interviewees reflected that the majority of action taken on regulating recruitment has occurred in CPMS states. This is borne out by analysis of the regulatory frameworks reported on in the report.

The following sections discuss the study findings in relation to:

- ❑ The effectiveness of different components of the legal and policy frameworks;
- ❑ The challenges for CPMS governments in trying to regulate;
- ❑ Areas of promising practice that were shared by interviewees and which were drawn from an extensive literature review of previously compiled country level reports. Promising practice is reported with two caveats. Firstly, as none of these particular initiatives has been robustly evaluated, descriptions of these examples have been included as 'good ideas' for potential further exploration. The researchers were not able to assess their impact. Secondly, the regulatory frameworks that are required to effectively manage a complex cross-border industry such as international recruitment are likely to involve a multi-faceted approach. In other words, no one example included below will, on its own, solve the challenges associated with regulating recruitment.

### 4.3.1 Effectiveness of license frameworks in separating the 'good actors' from the 'bad actors'

Licensing is a way for national governments to separate the 'good actors' from the 'bad actors'; those that have the government's authority to act as recruitment businesses, and those that do not. How effectively authorities manage this is critical to maintaining the integrity of licensing frameworks. In other words, how much confidence stakeholders (including the industry itself) can have in the ability of authorities to make 'good' decisions about which businesses are granted a license. The screening process by which officials make a decision about who to grant a license to is therefore hugely important. Screening of license applications is, in effect, a proxy indicator for how well the authorities expect the PRA to comply with the required laws and policies.

Study respondents were asked about the effectiveness of screening. Many argued that it is not always possible to have confidence that a recruitment licence is a robust indicator that the PRA will not engage in exploitative business practices. That despite the extensive scrutiny processes on paper, documented above in Section 4.1.2 (How CPMS decide which PRAs are granted licenses), in practice this is not always effective in keeping the 'bad actors' out of the recruitment industry. Interviewees reported that PRA licensees engage in exploitative business practices almost as often as the unlicensed, illegal, recruiters. This finding was not specific to any one country, but was reported across CPMS and destination states.

Specific examples of where the application screening processes had failed to be fully effective were shared with the research team. For example, one interviewee reported that citizenship screening conducted by the Philippines authorities which is intended to filter out foreign companies, is not entirely successful. This meant that the authorities have had to take alternative approaches to manage this, as this quote from a Philippines official illustrates:

There are restrictions on foreign ownership of Filipino recruitment agencies but this is still prevalent.

We are invoking the Anti-Money Laundering Act to stop this. This is because money being funnelled to foreign owners is considered money laundering.<sup>241</sup>

Interviewees in the Philippines and in Nepal also referred to the prevalence of 'phoenix agencies'. This refers to the phenomenon in which individuals who have previously owned a PRA but have had their license revoked for non-compliance or wrong-doing, are simply able to re-apply for, and be granted, a new license under a new business name. This implies that conducting checks on the criminal and professional history of registered owners is not fully working in screening out those individuals that have previously had their licenses revoked.

Effective screening is hampered by the fact that, in most countries, application screening only requires a review of the documents submitted by PRA representatives, and which interviewees acknowledged could be easily forged or altered. Only India and the Philippines interview PRA owners in person as part of the application process, restricting effective scrutiny. Interviewees also identified that sometimes officials who are responsible for screening license applications may not be properly trained. As one respondent in Nepal noted, "Civil servants in Nepal are rotated, so they change a lot - every year they could go to a different agency altogether".<sup>242</sup> This, he reported, resulted in a constant drain on institutional knowledge within the department, with experience in screening licence applications constantly being lost.

Despite these challenges, the research identified three positive areas.

1. Maintaining a public, regularly updated, register of licensed PRAs: For the purposes of transparency and accountability, publishing the names and address details of which PRAs hold a current and valid license, as many CPMS do, is an essential component to monitoring. For instance, Migrant Resource Centres in origin countries (with several established and run by IOM), enable aspiring migrants to search for PRAs online using their internet facilities. The Philippines also produces a regularly updated hard copy of valid licensees for those without internet access. Where migrants only have contact with sub-agents who do not hold licenses (as is the case in many CPMS), this is likely to limit the usefulness of public registers for migrants. However, this means that more action is required in order to ensure that individuals migrate through licensed PRAs rather than sub-agents (see below) and does not negate the usefulness of public registers.

2. 'Foreign principals' (PRAs and employers) to be accredited and registered by CPMS overseas missions: In an attempt to address the challenges associated with establishing transparency and accountability over foreign business partners, the Philippines now requires that all 'foreign principals' (employers or PRAs) are accredited (by the overseas mission) and registered to Philippines PRA. This, in theory, allows both governments to have oversight.<sup>243</sup>

3. Public registers to include PRA 'grading': There were several examples of 'grading' PRA licensees according to either negative factors (i.e. complaints, violations, and sanctions) or positive factors (i.e. 'good' business behaviour). These were believed by interviewees to further enhance transparency and accountability. They were also understood potentially to allow migrants, or more likely, businesses, to make more nuanced decisions when selecting who to work with. Both the negative and positive approaches were believed by interviewees to provide incentives towards good practice by recruiters.

---

<sup>241</sup>Interviewee PH4, May 2014.

<sup>242</sup>Interviewee PH2, May 2014.

<sup>243</sup>Interview KIP03 April 2014.

For instance, one interviewee observed that Qatar annually grades the 135 currently licensed domestic worker PRAs into three categories. In 2012, the Ministry reported that only 17 PRAs had received an 'A' rating, and 79 PRAs received a 'C' rating. However, the criteria by which the PRAs are rated or the names of the PRAs are however currently published, which limits this process' usefulness in terms of transparency.<sup>244</sup> Similarly, in early 2014 Jordan announced that it will publish a grading of licensed PRAs based on how many times the PRA has been fined or otherwise sanctioned, although there have not subsequently been any further announcements.<sup>245</sup>

The Viet Nameese process of grading VAMAS members was described above in Section 4.1.5 (Government-led Codes of Conduct). According to the ILO, the grading process has gained credibility from different sectors. Viet Nameese banks, for example, have asked for lists of "excellent" or "good" agencies that they can use for vetting loan applications from PRAs, while local government staff acknowledged that if asked they would refer workers to the PRAs that VAMAS had rated well. The ILO also noted however, that the fact that the current process has no independent oversight from NGOs or trade unions could weaken the Code's credibility in the broader spectrum of international stakeholders. VAMAS itself also recognized that its initial implementation was only applied to the largest and top-performing agencies, even though the smaller agencies might be the more likely violators of the Code's requirements.<sup>246</sup>

In a different approach towards grading PRAs, the Philippines President present awards to PRAs dependent on 'good' business behaviour. Figure 16 illustrates this with a photograph from February 2014, in which President Benigno Aquino III presented an Award of Excellence to recruiters deemed to be high achievers.

Figure 16: Philippines Award of Excellence<sup>247</sup>



However, the Award System however currently weights the evaluation criteria towards PRA performance in relation to deployment, technical capacity and industry leadership rather than ethical business issues such as non-fee charging. The 'technical factors' together constitute 75 per cent of weighting, whereas compliance, social awareness, and responsibility only constitute one quarter 25 per cent of the weighting.<sup>248</sup>

<sup>244</sup>See Labour Ministry: Most Qatar-based maid recruitment agencies still subpar, but improving. Doha News, March 31st, 2013. Available at: <http://dohanews.co/labor-ministry-most-qatar-based-maid-recruitment/> [Accessed June 2014]

<sup>245</sup>Jordan only has licensing requirements for domestic work PRAs.

<sup>246</sup>Ibid.

<sup>247</sup>Screenshot from <http://www.gmanetwork.com/news/photo/53774/pnoy-awards-outstanding-employment-manning-agencies> [9th January 2015]

<sup>248</sup>Memorandum Circular No. 03. Series of 2012. Agency Performance Evaluation and Conferment of Awards. Available at: <http://www.poea.gov.ph/mcs/MC%202013/MC-03-2013.pdf> [Accessed June 2014]

In other words, the Philippines' Awards are mostly based on performance in terms of the numbers of workers sent abroad and influence within the industry, although one official interviewed for this study noted that the criteria are undergoing revision.<sup>249</sup> The Philippines criteria are set out in Figure 17.

Figure 17: Philippines' PRA Awards Systems

<p><b>PRAs which qualify include:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Previous winners of the award.</li><li><input type="checkbox"/> No record of suspension or revocation of license for non-compliance .</li><li><input type="checkbox"/> The number of complainants in pending recruitment violation cases should not exceed 1 percent of deployed workers, and</li><li><input type="checkbox"/> At least 1000 workers deployed during the period covered.</li></ul> <p><b>Evaluation criteria include:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Volume and quality of deployment .</li><li><input type="checkbox"/> Technical capability.</li><li><input type="checkbox"/> Compliance with laws, rules and regulations and policies on overseas recruitment, welfare programmes.</li><li><input type="checkbox"/> Industry leadership (entry to new or emerging markets, contribution to policies or development on overseas employment programme).</li><li><input type="checkbox"/> Social awareness and responsibility.</li></ul>
---

Overwhelmingly, respondents noted the existence of sub-agents across the CPMS as a fundamental barrier to effectively separating 'good' from 'bad' recruiters. Other than the limited example of Nepal which requires sub-agents to register with PRAs, sub-agents are 'illegal recruiters' as they do not hold recruitment licenses. At present, the movement of people for temporary employment within Asia is largely reliant on these sub-agents. Sub-agents are necessary to the system of labour migration and recruitment because PRAs, seeking to reduce both their costs as well government oversight of their activities, largely do not operate branch offices in the rural and regional areas from which they find their recruits. Dealing with sub-agents is extremely challenging for CPMS governments because of the large number of them and because they are not often easy to locate due to their lack of office premises. Even the most motivated government would not be able to prosecute all sub-agents. Nevertheless, taking action against illegal recruiters is essential in order to maintain integrity in national licensing systems. Thus far, CPMS authorities have attempted to manage the problem of illegal recruitment in different ways, including:

- Mounting intermittent police raids on known offenders;
- Requiring PRAs to recruit from a national database of workers rather than via sub-agents (Bangladesh);
- Requiring sub-agents to be licensed through PRAs (Nepal);
- Requiring PRAs to advertize overseas employment in newspapers in attempts to bypass the need for sub-agents. (e.g. Bangladesh and Nepal).

However, none of these attempts appear to be especially successful given that sub-agents remain integral to international recruitment in Asia. Table 15 summarizes the study findings briefly discussed above.

<sup>249</sup>Interviewee PKI2, June 2014.

Table 15: Effectiveness of licensing frameworks

Effectiveness and Challenges	Promising Practice
Holding a license nor always seen as an indicator of 'good business practice' - lack of external confidence in licensing systems	Holding panel interviews of PRA applicants (e.g. Philippines and India)
Application screening process not always robust as mainly based on desk review and documents can be forged	Requiring foreign principals (employers and PRAs) to be accredited through overseas missions (accountability and transparency)
Large number of sub-agents (illegal recruiters) who are often difficult to locate, can disappear easily, and who are too numerous to prosecute if found	Publicly available, and regularly updated databases of licensees enhances transparency and accountability
	Grading PRAs publicly according to violations, complaints, sanctions enhances transparency and accountability, and provides business incentives for compliance
	Presenting awards to PRAs for good business behaviour may incentivise compliance

### 4.3.2 Effectiveness of ongoing monitoring of licensees

For license frameworks to be effective, it is necessary for authorities to maintain oversight of licensed PRAs' activities. In other words, what PRAs do on an ongoing basis rather than simply what they are doing at the time that the license application is submitted. Governments manage this through:

- ❑ Requiring PRAs to formally report on their activities;
- ❑ Inspecting PRA premises and paperwork;
- ❑ Through reviewing PRA documents submitted as part of emigration clearance processes.

#### *Effectiveness of reporting and inspection regimes:*

The overwhelming view of respondents was that, too often, the relevant authorities in either CPMS or the destination states do not effectively monitor the activities of licensed PRAs either through reporting or inspections. Interviewees argued that the authorities have limited resources and capacity to conduct ongoing monitoring of PRA licensees, with many CPMS lacking labour market inspectorates trained or allocated to conduct this. This quote from a respondent from within the regulatory authority in the Philippines was typical:

Our budget was reduced from PHP360M (8 million USD) to PHP330M (7 million USD) this year. This doesn't help. We need more people. We also need equipment/gadgets that help communicate with people on the ground - we need to get better at this but don't have a budget for equipment.<sup>250</sup>

In part, limited capacity is associated with the large numbers of licensed PRAs, especially in CPMS. For example, one interviewee highlighted the enormous challenges associated with monitoring the regulatory compliance of the 3000 PRAs licensed in India:

<sup>250</sup> Interviewee PH1, April 2014

Even within just one state in India - it could be as big as a country. How to monitor all of the agents in a state? How much more [is needed] for the whole country?<sup>251</sup>

Interviewees in CPMS also observed that there is a lack of coordination between the different government departments that are responsible for different aspects of the process. There is often a disconnect between the departments responsible for licensing PRAs, the police which are often charged with tackling illegal recruiters, the department responsible for managing the emigration process, and that which is responsible for maintaining overseas missions. This, according to interviewees, hampers vital information-sharing that could lead to improved policymaking, and better targeted monitoring of the recruitment industry.

Corruption was noted by respondents as a major factor in weak monitoring of licensed PRAs. Examples shared ranged from financial 'back-handers' requested by officials responsible for processing documents (immigration/emigration, licensing, enforcement), to political complicity as leading politicians or civil servants were reported by interviewees to own or have financial interests in PRAs in some places and at some times. It is likely that this level of corruption threatens the integrity of regulatory bodies and weakens the credibility of enforcement bodies in the eyes of the industry. This quote from a PRA representative in Nepal is illustrative:

When we need to shorten processing time, the only thing that will make the process move faster is to pay people "commissions". Sometimes we have to pay the clerk and everyone else all the way to the Director General. Everyone earns even security guards and office boys. If there are 6 levels of approval (just to process the First Approval), we would have to pay people at each of the 6 levels. This doesn't happen all the time. I am at the Department almost every day. Sometimes I just pay for a party, or treat them with something. But sometimes we have to pay in cash. It depends on their mood. We pay about USD 50 to 100 per worker to each individual".<sup>252</sup>

Officials' corruption was also reported in destination states, as noted by a Jordanian interview respondent:

With respect to the work permits demand, some officials take bribery when issuing work permits. Even though local Jordanian farmers don't need more farmers, some officials give them without even monitoring it. These workers are not even agricultural workers; they only buy these visas to get another job in another sector. It becomes a 'business' in itself. This corruption does not end and our regulatory framework on recruitment agencies is not a long-term one. It is based on cash-driven corruptive politics that undermine the overall capacity of our institutions. Although there are government efforts the power of recruitment agencies seems to outweigh the government regulatory framework."<sup>253</sup>

There were two promising examples noted.

1. Combining resource and collaborating between regulatory authorities: One interviewee revealed that in order to tackle limited manpower, the authorities responsible for monitoring recruiters in the Philippines plan to conduct more frequent inspections of PRAs in partnership with the Department of Labour and

---

<sup>251</sup>Interviewee KIIn, April 2014.

<sup>252</sup>Interviewee NPRA 1, May 2014.

<sup>253</sup>Interviewee PLAJ 2, April 2014.

Employment labour inspectors.<sup>254</sup> In other words, the enforcement bodies will combine resources with the aim of increasing effectiveness in monitoring systems. An interviewee from a related monitoring and enforcement body – the Securities and Exchange Commission-also commented that from his perspective, there is also a need for greater collaboration between the different enforcement bodies, which he planned to work towards:

We need to collaborate more with the Bureau of Immigrations, maybe share databases - work more on how to stop workers going out through informal channels. On the issue of being able to buy and sell a recruitment agency: this should not be possible because there are prohibitions on transferring a license from one owner to another, but it is not [currently] in our SEC's [Securities and Exchange Commission] scope to look out for violations of POEA [Philippines Overseas Employment Association] rules.<sup>255</sup>

2. 'Intelligence-led' approach to policing recruitment industry: Another positive example shared was that of the UK Gangmasters Licensing Authority (responsible for monitoring the recruitment industry), which has developed an 'intelligence-led' approach to inspecting licensed PRAs in agriculture, horticulture, sea-food fishing, and forestry. Specially trained monitoring officers liaise with the other enforcement bodies in the UK-for instance, the tax and minimum wage enforcement body-to draw together intelligence about recruitment businesses. This intelligence is used to target PRAs for inspections which are suspected of non-compliance, and to not waste resources on those PRAs, which, the evidence suggests, are most likely to comply with regulation. The UK's priority is to identify PRAs which are likely to be engaged in forced labour and trafficking.<sup>256</sup> Table 16 summarizes the key challenges and areas of promising practice identified.

Table 16: Effectiveness of ongoing monitoring

Effectiveness and Challenges	Promising Practice
Resource, capacity to monitor large numbers of licensees	Coordinated inspections and information sharing between different government departments
Lack of coordination and information sharing between relevant government departments (e.g. emigration and licensing)	
Corruption destabilizes credibility and legitimacy of enforcement bodies	
PRAs deliberately seek to recruit using the services of illegal recruiters (sub-agents) as this avoids regulatory oversight of their non-compliant activities	

#### *Effectiveness of Labour Attachés and overseas missions:*

The emigration clearance process provides multiple opportunities for recruitment monitoring. Interviewees reflected that, on balance, monitoring activities conducted as part of the CPMS emigration clearance process are effective in screening out a number of PRAs engaged in exploitative practices. In theory, officials can verify that only licensed recruiters are involved in recruitment that requires emigration clearance. In particular, Labour Attachés occupy a unique position in being potentially able to screen PRA

<sup>254</sup>Interviewee PH1, April 2014.

<sup>255</sup>Interviewee PH2, April 2014.

<sup>256</sup>Interviewee UK1, May 2014.

activities in both origin and destination countries. This is because these officials receive a significant amount of information about recruitment both through emigration clearance documents and through the receipt of complaints from their nationals about wrong doing by PRAs.

However, study respondents noted that the success of this in recruitment monitoring is contingent first and foremost on whether there is an overseas mission in a particular country. Table 17 sets out current CPMS Labour Attaché representation by location. One respondent who works for a NGO in Kuwait commented that precisely because Labour Attachés can make a difference, some Kuwaiti PRAs recruit from countries that lack diplomatic representation in Kuwait:

Many recruitment agencies have begun targeting migrants, who have no diplomatic representation in the host country, mainly African countries. This is a problem because these migrants in turn do not have legal protection in the host country.<sup>257</sup>

Table 17: CPMS Labour Attachés

CPMS	Location of Labour Attachés
Bangladesh	Saudi Arabia (Riyadh and Jeddah), United Arab Emirates (Dubai and Abu Dhabi), Kuwait, Oman, Libya, Bahrain, Iraq, Malaysia, Singapore, Qatar, Republic of Korea, Japan, Jordan, Iraq.
China	China is reported to have only a very small programme of Labour Attachés that can provide assistance. There is also reported to be no budget allocation for labour attachés.
India	Labour Attachés have been appointed in major receiving countries in the Gulf, including Bahrain, Iraq, Kuwait, Libya, Oman Qatar, Saudi Arabia, United Arab Emirates, and Yemen. Consular Officers also work as quasi labour attachés by visiting workplaces and inspecting migrant living conditions where required.
Viet Nam	9 Labour Attachés in countries receiving greatest number of Vietnamese migrant workers, including United Arab Emirates.
Philippines	United Arab Emirates (Abu Dhabi, Dubai, Unaizah), Saudi Arabia (Alkobar, Riyadh, Jeddah), Bahrain, Brunei Darussalam, Geneva (UN), Greece, Hong Kong, Jordan, Taiwan (Kaohsiung, Taipei), Republic of Korea, Kuwait, Lebanon, Libya, UK, Macau, Spain, Italy (Rome, Milan), Oman, Qatar, Singapore, Malaysia, Japan, US, Australia, Syria, Canada (Toronto, Vancouver).
Nepal	Labour Attachés in Malaysia, Qatar, Saudi Arabia, United Arab Emirates, and Kuwait. Plans to appoint in Oman and Bahrain.

Even where there is a permanent mission, Labour Attachés and embassy officials interviewed for this study reported struggling with their current workload, which, they argued, prevents them from carrying out effective recruitment monitoring. This finding is consistent with what other recent research has found. For instance, one recent study of migrants’ access to justice in Nepal found that Nepali embassies are severely under-staffed and under-resourced, and therefore find it difficult to meet the diverse needs of migrant workers who sought assistance with their cases.<sup>258</sup> In confirming this finding, a Nepalese former official explained that, there is:

<sup>257</sup>Interviewee BHU, April 2014.

<sup>258</sup>Migrant Worker Access to Justice at Home in Nepal, E. Taylor-Nicholson et al. 2014. OSF.

No institutional mechanism for real monitoring. In a single day, we are issuing about 1500 work permits and have just 100 people to verify the documents before we issue the permits. We also had no capacity to address workers' complaints. I had no staff.<sup>259</sup>

A Philippines PRA respondent also observed that one issue for them is that where Labour Attachés in overseas missions are overloaded, decisions about employer accreditation for instance, may be made by relatively low-level administrative officials who are not sufficiently trained. CPMS interviewees frequently referred to the lack of resource and capacity available for monitoring recruitment. Specific challenges noted included the lack of specialized and trained officials in overseas missions, a lack of training and guidance for officials responsible for monitoring recruitment at home. One official noted that turnover of CPMS officials could also be a barrier to building up the good relationships required for effective recruitment monitoring between CPMS and destination state officials:

The real issue here too is that as Labour Attachés, we only serve three years, so if we build a good relationship, this will become unsustainable once the other leaves. This hampers the effectiveness of recruitment monitoring process.<sup>260</sup>

In addition, in the case of Nepal, there is also a 'loophole' in the 'attestation' process where by in practice, only a small percentage of PRAs actually seek attestation through the Nepalese overseas missions. The relevant Chamber of Commerce in the destination country can instead verify paperwork. Unsurprisingly, this route is reported by respondents to be preferred by PRAs, as argued by the Labour Attaché.

PRAs don't want to have their documents go through the Labour Attaché. If they do, the Khafeel is identified and recorded, and I would be able to monitor them. I also check on the status of the company that's making the demand, which is not done by the other offices that are authorized to verify/attest demand letters.<sup>261</sup>

Another interviewee observed a different challenge for Labour Attachés. This interviewee argued that there is a potential conflict of interest inherent in Labour Attachés' roles. CPMS Labour Attachés are required to not just protect the welfare of their overseas citizens, but also to expand market opportunities for migrants from their home countries. This, he argued, could provide for a potential conflict of interest for truly effective recruitment monitoring, as the following quote highlights:

Recruitment monitoring... For whom? This is a business scheme; and you know what, these officials protect these recruitment agencies because the government wants to keep more job orders and request for Filipino workers.<sup>262</sup>

Other respondents argued that a further limitation to effective monitoring of recruitment through the emigration clearance process is the lack of coordination between government departments in origin countries, and between these and destination state licensing authorities. Some of the limitations in terms of CPMS officials coordinating with destination state authorities were, according to Labour Attachés, associated with a lack of information about who they should contact when they uncovered cases of wrongdoing. One Labour Attaché observed that:

---

<sup>259</sup>Interviewee NPLA3, April 2014.

<sup>260</sup>Interviewee KLA4, June 2014.

<sup>261</sup>Interviewee NPLA3, April 2014.

<sup>262</sup>Interviewee BCSO 3, April 2014.

There needs to be more cooperation, but I don't see it. Also, I don't understand their procedures; they change them all the time. It would be good if we could get a copy of the formal procedure so we can follow them. But the problem is that they don't have the step-by-step method where you can easily follow up with them".<sup>263</sup>

In other words, even if the Labour Attachés have evidence of wrong doing among destination state PRAs that would help their authorities better manage their industries, they often do not know who to contact with this information. Labour Attachés in GCC states also recounted frustration about their lack of ability to influence, or at times even contact, counterpart officials within the destination state authorities. Whether or not individual Labour Attachés have influence, is related to what is commonly known as 'wasta' (nepotism/clout) in these countries. As a Philippines Attaché in Kuwait explained:

Relationship, relationship, relationship with these officials. As a general rule, if you want to get things done in Kuwait, you need these connections because it is important to build your new relationships with these government agencies. If you have these relationships, then you can easily facilitate cooperative recruitment monitoring against these recruitment agencies that violate both origin and host country laws.<sup>264</sup>

Another suggested that from his perspective, it would be helpful to share databases of those PRAs (both origin and destination country) that violate the rules:

The key challenge is database sharing [on PRAs]. We are still developing our database, and it would be important to cooperate with the receiving country with their data base to check those [PRA] violators. Information sharing is important. Lack of coordination and information sharing on database of violators are both important challenges here.<sup>265</sup>

On the other hand, the work of Labour Attachés and overseas missions was also however where the most promising examples of effectiveness were raised.

1. Jordan: Several interviewees referred to the promising practice of the Jordanian authorities choosing to work closely in partnership with CPMS Labour Attachés to co-monitor their PRAs which recruit domestic workers from CPMS, as described in this quote from a Jordan-based Labour Attaché:

We accredit Jordanian agencies, and we facilitate knowledge sharing on both sides. We share a list of agencies [which] violate or comply with our rules. If they are in good standing, we accept them and we'll put them into our system as good. The Ministry of Labour created a rule where before they even process recruitment agencies here, they need to be attested and approved by us in the labour office. They want this stamp showing that it has undergone, and this is a monitoring strategy they used to screen illegal fixers or recruiters who game the system.<sup>266</sup>

---

<sup>263</sup>Interviewee UAELA, April 2014.

<sup>264</sup>Interviewee PLAJ1, April 2014.

<sup>265</sup>Interviewee QLA, April 2014.

<sup>266</sup>Interviewee PLAJ 1, April 2014.

In other words, the overseas missions and Jordanian authorities have established mechanisms of sharing information about errant and about good recruiters. A senior member of an Inspectorate body in Jordan elaborated:

Sending country embassies often do not have the mechanisms/full capacity to monitor or organize the domestic work sectors. Therefore, they have to cooperate, along with recruitment agencies, with the Jordanian government. However, the Jordanian government in return developed a mechanism by which it assigned a Jordanian labour inspector per embassy to work closely with these officials on a daily basis to mitigate labour complaints. On a more policy level a Ministry of Labour representative also meets with certain policy making bodies of these sending country governments, and regularly discusses these labour issues, which facilitated knowledge sharing and best practices. This, from my perspective, contributes to effective recruitment monitoring. Coordination is a key here.<sup>267</sup>

The Philippines Labour Attaché who is based in Jordan also commented on the good coordination between the authorities in Jordan and CPMS embassies:

We have good partnerships with the Ministry of Labour in facilitating recruitment monitoring schemes here. We share information and meet regularly. They even assign labour inspectors here on a daily basis who help us settle cases. They are powerful because they have more clout over agencies to settle cases. They always update us with their laws and procedures, while giving us advice and feedback on how to deal with some employers. Because of this work dynamic, we've been able to facilitate effective recruitment and monitoring in general here.<sup>268</sup>

2. U.S. Embassy and international organizations: Where CPMS Labour Attachés lacked influence, respondents referred to the positive role of the U.S. Embassy officials who were able to bring influence to bear, as this quote from a Labour Attaché in Kuwait states:

The U.S. political officer at the American Embassy is an important point of contact. She facilitates various dialogues, helping other sending country governments share their best practices. Others lack communication with her and other sending country governments. This is certainly a big hole in the recruitment monitoring aspect, no coordination even among sending country governments.<sup>269</sup>

International organizations were also reported to be important in this regard:

The ILO always facilitates invitations for us sending countries to review our policies and procedures and update us on the Ministry of Labour. They also bring the human trafficking division, where they also share their information. This is a big step because it shows good political will resolve labour issues, and this contributes to effective recruitment monitoring. Strong network and partnerships can go a long way. International organizations provide a good platform to bring us all together, and they contribute and trigger good recruitment monitoring. I didn't know other sending countries here before, but I'm now beginning to reach out to them because we face the same labour issues. In fact, they even fund some our projects that enable us to go outside and conduct monitoring too.<sup>270</sup>

---

<sup>267</sup>Interviewee GK1, April 2014.

<sup>268</sup>Interviewee PLAJ 1, April 2014.

<sup>269</sup>Interviewee PLAK 1, May 2014.

<sup>270</sup>Interviewee PLAJ 1, April 2014.

3. Bahrain: A final example of good coordination between embassy officials and the destination country officials came from Bahrain, where the inspectorate was reported to be taking a stronger line on PRAs and had collaborated with the Philippines embassy on a number of cases, as this quote describes:

As for Bahrain government, I think the Bahrain Ministry of Labour is positively taking action against recruitment agencies here. In November 2013, there are thirteen Filipino workers (one recruitment agency) who faced contract violations and delayed/no salary. They even worked 12 hours without pay for three months. We [the Labour Attaché] focused and filed a complaint, and the Bahrain Ministry of Labour in collaboration with the Philippine [Overseas] Labour Office immediately took action and closed the recruitment agency. The Bahraini Ministry of Labour database found out [sic] that there are more complaints against this recruitment agency, and this led to its closure. This is a positive effort done by the Bahrain Ministry of Labour, and this made recruitment monitoring successful in the process.<sup>271</sup>

Table 18 summarizes the effectiveness of Labour Attaches and CPMS overseas missions in monitoring recruitment.

Table 18: Effectiveness of Labour Attaches and CPMS overseas missions

Effectiveness and Challenges	Promising Practice
Availability of overseas missions	Shared PRA licensee databases between CPMS embassies and destination State authorities
Lack of capacity and reliance on untrained low-level officials	Requirement for PRAs of both origin and destination countries to be attested by CPMS overseas mission
High turnover of staff (especially Labour Attaches) leads to lack of institutional knowledge	Destination State inspectors to be assigned to CPMS embassies (named contact)
Loopholes in the attestation process	Drawing on 'friends' to help build influence with destination State authorities (e.g. international organizations, US embassy)
Conflict of interest between monitoring recruitment and increasing job opportunities	
Lack of coordination with destination State authorities, including influence (wasta)	

### 4.3.3 Effectiveness of efforts on recruitment fees

Excessive recruitment fees charged by PRAs to workers are endemic across the CPMS. In this respect, as a whole, existing efforts by CPMS regulators to reduce or remove recruitment fees are not working. This is for a number of reasons. Firstly, despite the extensive rules in place as set out in Section 4.1.3 (Regulating fee-charging to workers), CPMS and destination governments conduct little ongoing monitoring of what recruitment fees are charged by licensed PRAs to migrants. Where PRAs have been caught charging excessive fees beyond that which is legally allowed, this has most commonly arisen from complaints lodged by migrant workers rather than as a result of any action taken by enforcement bodies.<sup>272</sup>

<sup>271</sup>Interviewee PBCSO 1, May 2014.

<sup>272</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations.

In principle there are multiple opportunities to potentially monitor what level of fees have been charged, most notably through the emigration clearance process by which documents and employment contracts are attested by embassy officials in the destination country and by emigration clearance authorities in the origin country. In general however, interviewees reflected that the attestation process does not normally include a check on what recruitment fees candidates have paid, only that PRAs are licensed and that there are no outstanding complaints or enforcement actions against them. And, as noted above, interviewees observed that there is little coordination between the emigration clearance and the licensing authorities.

In an attempt to better monitor what fees are charged and for what, Nepal requires PRAs to submit their receipts to the authorities before emigration clearance is granted.<sup>273</sup> However, PRA respondents in Nepal were open about how they easily by passed this oversight by submitting fake receipts when they had charged more to migrant workers than is legally allowed, as this quote from a PRA respondent illustrates:

Workers pay [the] agency at the time of departure, sometimes on the day of departure. But we have to show a receipt to the government of how much they paid before the Department of Foreign Employment give us final approval. And the approval is denied if the receipt is not exactly Rs. 80,000 (800 USD). I'd like to be able to issue a receipt for exactly how much the worker pays me but that would mean that I may not get approval.<sup>274</sup>

The respondent also noted how a significant contributory factor to high recruitment fees being charged to Nepalese migrants is that PRAs and employers in destination states often charge fees and commissions to origin country - CPMS PRAs as a condition of placing migrants, as this quote from another PRA respondent in Nepal demonstrates:

We have to negotiate. Companies know workers want these jobs and are willing to pay to get them. The companies don't want to pay for tickets, so we charge workers about Rs70,000 (692 USD). We also have to pay companies a commission of about USD 100/worker for the visa.<sup>275</sup>

PRA respondents reported passing on this commission in the form of recruitment fees charged to their recruits. In other words, part of the reason why recruitment fees in CPMS are so high is related to the fact that often PRAs and sometimes employers charge commissions to origin country PRAs for the job contract. In effect a bribe. However, destination states governments were reported to be doing little if anything about this practice. In general, recruitment monitoring in most Middle Eastern destination states was reported by interviewees to be relatively weak. The lack of training was also referred to frequently in relation to destination countries, especially of front-line officials, including the police, who were reported to have little knowledge of recruitment monitoring. This was attributed to a tendency to attribute recruitment abuses to origin country PRAs rather than acknowledging the role of PRAs within their own country.

By way of illustration of the above point, in response to Human Right Watch's report on the exploitation of workers in Qatar, the Qatar government responded that "it is not against the law for workers to pay any extra fees before coming to Qatar" and emphasized the responsibility of governments of workers' countries

<sup>273</sup>Foreign Employment Rules, 2008.

<sup>274</sup>Interviewee NPR1, April 2014.

<sup>275</sup>Interviewee PRAN04, April 2014.

of origin to address the issue.<sup>276</sup> This ignores the responsibility of Qatari companies in charging fees and commissions to CPMS PRAs. Similarly, an interviewee for this study who is based in Hong Kong, China asserted that: “the government’s position is that all this happened before they arrived in Hong Kong, Chian so it should be the sending country’s problem.”<sup>277</sup>

Moreover, study respondents commented that the complexity of the recruitment process and the number of fee-charging actors involved in CPMS (e.g. training centres, medical centres, travel agencies) can make the job of monitoring recruitment fees complex and problematic. In other words, it is rarely clear which organization or individual has charged migrants what, for what purpose, and whether this is legitimate or not. The complexity of the rules on PRA recruitment fees is likely to contribute to the challenges of recruitment monitoring.

Where multiple (and according to current laws, legitimate) fees have been charged for aspects of the migration process, it is far easier for PRAs to hide the excessive or illegitimate charges, according to interviewees. On the other hand, when a ‘zero-fees policy’ is in place, a receipt itself is evidence of wrong doing. Simply put, a ‘zero-fees policy’ is significantly more straight forward to monitor than one in which fee ceilings are set. For instance, an interviewee in the Philippines highlighted that when the government had banned PRAs from charging recruitment fees to domestic workers, this had made the job of recruitment monitoring vastly easier. A senior official responsible for monitoring explained:

We do spot inspections through random selection: we check personnel, do they have computers, other facilities. 4.5 per cent of the (2013) 63 revoked licenses arose from these spot inspections. In these cases we found receipts of what workers paid. Domestic workers are not supposed to pay anything, so the receipts by themselves were evidence of malpractice.<sup>278</sup>

However, PRAs can legally charge recruitment fees to migrants in all CPMS even though recruitment fees are by far the major contributory factor in debt bondage, a form of forced labour, and one of the biggest challenges for CPMS governments in regulating the industry. Arguably the ability to charge fees encourages unethical actors into the market, while deterring those that wish to act ethically (see below in Section 5.1 and 5.2 for a discussion of business motivations and challenges in terms of self-regulation). As long as fees can legally be charged, the vast majority of PRAs will continue to charge.

Interviews with CPMS government officials revealed that, in general, the CPMS are currently some distance from implementing banning recruitment fees. There was no consensus among government interviewees from CPMS countries that banning fees was necessary nor a recognition that fee-charging by PRAs is contrary to international human rights standards. Largely, officials argued charging recruitment fees to migrants would always be necessary and that changing the context in which outlawing fees would be possible, too difficult. Several officials referred to a fear that banning PRAs from charging recruitment fees may harm their ‘labour export policies’. This is because where migrants are not charged recruitment fees, employers in destination states will have to pay more for recruitment, as this quote from a PRA representative in Hong Kong, China demonstrates:

---

<sup>276</sup>Human Rights Watch, “Building a Better World Cup”.

<sup>277</sup>Interviewee HKN, April 2014.

<sup>278</sup>Interviewee PH02, March 2014.

If you go through an agency you would have to pay HK\$7000 (900 USD) for an Indonesian maid, or HK\$10,000 (1290 USD) to HK\$11,000 (1419) for a Filipino maid. Some agencies charge differently, but usually the amount includes documentation and air ticket. One and a half years ago we were only paying HK\$4000, but now agencies in Hong Kong, China have had to increase the price because the Philippine government said that domestic helpers should no longer have to pay any placement fees. This is not ideal, but what can we do? All expenses are paid by the employer to a total of about 1500 USD. This includes notarization cost, immigration fee (for visa/work permit) and OWWA [Overseas Workers Welfare Association] clearance which are required by the Philippine government.<sup>179</sup>

In this case, Hong Kong, China employers had continued to recruit from the Philippines despite the increase in cost. However, several CPMS officials reported fearing that if they banned PRAs from charging fees, this would make recruitment from their country more expensive for employers who would be likely in that case to recruit instead from other countries where recruitment fees were still legal, and the process would consequently be cheaper for them. And consequently harm labour export programmes, the argument goes.

The greatest success that CPMS governments have had in reducing fees has come as a result of government-to-government (G2G) schemes where PRAs are removed from the process entirely, such as that between Bangladesh and Jordan, and the Korean Employment Permit System. Reviews of these programmes have demonstrated that both programmes reduced the amount of recruitment fees charged to migrants, although neither has been completely successful in removing recruitment fees and exploitation from the process completely.<sup>280</sup>

However, these programmes have a number of challenges. Given the scale of labour migration from CPMS, they are not directly replicable on sufficiently large a scale in order to make anything more than a minor dent in problem of exploitative recruitment fees. There is also a clear conflict of interest if government departments that are responsible for regulating the private recruitment industry are also engaged in facilitating cheaper G2G recruitment. Private recruiters regard public employment programmes as unfair competition. For instance, the recruitment industry association in Bangladesh - BAIRA - opposes the agreement with Malaysia on these grounds.<sup>281</sup>

Beyond the examples of direct G2G recruitment, the effectiveness of bilateral agreements in reducing PRA recruitment fees or improving recruitment monitoring is more limited. For example, a recent World Bank study of recruitment between Nepal and Qatar found that despite a bilateral labour agreement in place that is supposed to place all recruitment costs on Qatari employers (as per Qatar Labour Law), Nepalis still pay high recruitment fees of around 1,216 USD. The authors attribute the fees to discrepancies between the rules on recruitment fees in place in Nepal and Qatar (in other words, charging recruitment fees is legal in Nepal), a lack of enforcement as well as an unclear mix of legitimate and illegitimate fees.<sup>282</sup> In particular, the fact that Nepali law legally allows PRAs to charge fees of up to NPR 70,000 (700 USD) means that PRAs continued to charge this amount even where they are aware of the existence of the agreement. This is

<sup>179</sup>Interviewee HKPR2 March 2014.

<sup>280</sup><http://www.amnesty.org/en/library/asset/ASA25/001/2009/en/8bc729f6-39d7-4ce9-aeab-86eea173451c/asa250012009en.pdf> [Accessed June 2014]

<sup>281</sup>Interviewee KIB January 2014.

<sup>282</sup>The Qatar - Nepal Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows By Reducing Inefficiencies in the Migration Process. I Endo and G G Afram. 2013. World Bank.

because charging this amount is not illegal under Nepali law, even if it is contrary to the terms of the agreement with Qatar.

In general however, bilateral agreements usually only contain the most basic clauses; recruitment monitoring is rarely the main or even subsidiary intent of labour agreements. A review of relevant literature reveals that bilateral agreements, although positive as a tool of dialogue and as a means of opening markets for CPMS migrants, are rather weaker when it comes to enforcing those provisions or protecting CPMS migrants.<sup>283</sup> Table 19 summarizes the effectiveness of state action in reducing or removing recruitment fees.

Table 19: Effectiveness of action in reducing or removing fees to workers

Effectiveness and Challenges	Promising Practice
Complexity of rules on recruitment fees makes monitoring difficult.	A zero-fee policy makes it easier to monitor.
PRA's forge receipts where these are required - no way of checking this.	Government to government agreements which reduce/remove PRA's from the process.
Lack of coordination between emigration departments and licensing departments.	Bilateral labour agreements removing fees some success.
Fees in CPMS result from fees charged by employers and PRA's in destination countries.	
Fees are legal in CPMS and no consensus that will change soon for fear of hampering labour export policy.	
Bilateral labour agreements aimed at removing recruitment fees may contradict domestic legislation which allows fees to be charged.	
Bilateral labour agreements aimed at removing recruitment fees are not enforced.	

### 4.3.4 Effectiveness of enforcement action and access to remedy

Section 4.2 above described access to remedy for CPMS migrants, and the sanctions regimes across CPMS and destination states for different PRA violations. With the lack of resource to monitor compliance on an ongoing basis a constant problem, monitoring in CPMS is almost entirely reliant on migrant workers lodging complaints. However, at present, individuals face multiple barriers in accessing complaints mechanisms. According to interviewees, CPMS migrants' access to complaints mechanisms is limited. Other reports have identified a number of specific barriers, including having the practicalities of having to travel to the country's capital city to lodge a complaint, fear of retribution by PRA's, and a lack of legal advice or legal aid.<sup>284</sup> Moreover, while in India, the police are often the first port of call for a migrant worker or her/his family for a complaint, respondents suggested that the police did not often take this seriously, as this quote from an Indian civil society representative illustrates:

<sup>283</sup>Labour Migration in Asia and the Role of Bilateral Migration Agreements: Market Access Facilitation by Informal Means. G. Battistella and B. Khadria, 2011. Part of Markets for Migration and Development (M4MD): Trade and Labour Mobility Linkages - Prospects for Development, Bern, 12-13 September 2011.

<sup>284</sup>E.g. see Migrant Worker Access to Justice at Home in Nepal, E. Taylor-Nicholson, 2014. OSF.

Police won't interfere while job seekers are being cheated. They believe that workers are paying these big fees to agencies voluntarily-so they ask, who has been cheated here? At the district superintendent (of police) level, they understand that the workers are being cheated, but this is not the case at any policemen who are on the street... When a complaint is made to the PoE [Protector of Emigrants] by a worker, it's sent to the police for investigation, but usually the police are just paid off by the agent. Even when they do an investigation, in the end they would take the PRA's side. They ask for evidence workers can't provide. Police would ask: how much did you pay? Do you have proof? Of course the workers won't have proof. No receipts, no valid evidence to give to police."<sup>285</sup>

Migrants were reported to often not realize that he or she has been exploited by their home recruiter until arrival in the destination state. 'Hotlines' by which migrants can lodge complaints with destination country authorities are increasingly common in Gulf and South East Asian destinations, although interviewees reported these to be limited in practice by capacity and availability. Few enforcement actions were reported to be taken by destination state authorities in relation to recruitment complaints by CPMS nationals.<sup>286</sup> Moreover, recent research found that the investigations unit in Nepal, specifically tasked with receiving complaints and taking enforcement action against recruiters (PRAs and sub-agents) was failing to meet expectations. This could be attributed, according to the researchers, to an insufficient number of investigation officers, that the required process only allows time for a handful of phone calls and meetings before a decision is made precluding an in-depth investigation. As a result, the researchers concluded, investigations are superficial at best.<sup>287</sup>

Consistent, verifiable and comprehensive enforcement data as to which sanctions have been applied to PRAs and illegal recruiters for all CPMS and key destination states were however impossible to access for the purpose of analysis. However, overall, the quantifiable data on enforcement actions taken against licensed and unlicensed (illegal) recruiters, and interviews with study respondents reveal that there is limited application of the full range of sanctions available to prosecutors and judges. Cases rarely reach court and prison sentences are rarely awarded. As yet, anti-human trafficking legislation has not been widely used to tackle abuse within the recruitment industry. Interviewees noted that even where institutions and plans for the implementation of anti-trafficking legislation did exist, there is little coordination between those parts of governments - either policy or inspectorates, which had responsibility for anti-trafficking action and those which were charged with monitoring and taking enforcement action against errant and or illegal recruiters. For instance, a recent review of Thailand's justice system went so far as to argue that: "when also considering the small number of punitive actions taken against recruiters in recent years, the picture presented appears to be one of an increasingly dysfunctional regulatory system that is considerably biased against workers and jobseekers".<sup>288</sup> This is not a view which is restricted to critical researchers, but one which was routinely shared by government officials, certainly by NGOs and trade unions in interviews conducted for this study,

<sup>285</sup>Interviewee IR1, May 2014.

<sup>286</sup>For instance, a recent report on recruitment monitoring in Malaysia found that although foreign workers are, by law, entitled to protection from the state, and can file complaints or formal cases in the State Employment Office, it is well-known that few foreign workers' reports are entertained or pursued. Chelvarajah, Leela. Perspective of Foreign Workers and Their Rights and Employment in Malaysia. Available at: [http://www.malaysianbar.org.my/human\\_rights/perspective\\_of\\_foreign\\_workers\\_and\\_their\\_rights\\_and\\_employment\\_in\\_malaysia.html](http://www.malaysianbar.org.my/human_rights/perspective_of_foreign_workers_and_their_rights_and_employment_in_malaysia.html)

<sup>287</sup>Migrant Worker Access to Justice at Home in Nepal, E. Taylor-Nicholson, 2014. OSF.

<sup>288</sup>Regulating recruitment of migrant workers: An assessment of complaints mechanisms in Thailand. Asia Research Centre for Migration, Institute of Asian Studies, Chulalongkorn University. ILO 2013.

These interviewees noted that CPMS authorities face significant barriers in taking enforcement action against PRAs which underlies the trend toward informal resolution of complaints. This quote from a civil society representative based in the Philippines was typical:

There are cases in which the Philippine government does not even pursue a legal complaint against the recruitment agency because of the lengthy legal procedures. They give up first before we even give up. This makes it difficult to monitor or create strong penalties against recruitment agencies in the process.<sup>289</sup>

However, PRA respondents, unsurprisingly, often took the view that governments were robust in their enforcement action. PRA respondents in the Philippines interviewees complained that on the basis of a complaint from an individual complainant the authorities will summarily suspend a PRA's license, before verifying or investigating the complaint. Interviewees alleged that there is no written guidance on how long the suspension will be upheld even though the PRA is unable to deploy workers while the suspension is in place.

The most common action by CPMS and destination states in response to wrong doing by PRAs, whether this results from an investigation by the authorities or through a complaint being made by an individual is to resolve complaints through informal mediation and financial restitution. For example, in Bangladesh, in 2013, a reported total of Tk. 133,839,500 (1.7 million USD) was collected from PRAs as fines, distributed among the complainants as compensation.<sup>290</sup> Nepal collected substantially more in fines. In 2011/12 there were 2172 complaints filed in Nepal against PRAs concerning missed salaries, fraudulent activities, as well as other misleading tactics used for luring migrant workers which attracted a total restitution amount of Rs 1,235,500,000 (USD 12.7 million). However, out of the 2172 complaints made by workers or their families, only 196 cases were however submitted to the Foreign Employment Tribunal for a criminal conviction.<sup>291</sup> Similarly, in 2013, the Philippines in 2013 processed a total of 4050 complaints filed by workers, and resolved 3000 of these complaints through mediation.<sup>292</sup> PRA interviewees however reported fines to not act as particularly strong deterrents as the 'bad actors' simply regarded the loss of their security deposit as an ongoing business cost and passed the cost onto new recruits in the form of fees.<sup>293</sup> In addition, although many workers may prefer to resolve disputes in this way, he/she may receive a far smaller amount of compensation than requested. This is because without proper legal representation, according to the researchers, workers may feel pressured into accepting a resolution.<sup>294</sup> Similarly, another report of migrants' access to justice in Thailand revealed a steady decline not only in the total amount of compensation which the authorities require PRAs to pay to workers but also in the proportion of the amount requested that workers actually receive.<sup>295</sup>

After fines, the next most frequently imposed sanction by CPMS authorities is license revocation. For instance, Bangladesh, over the last three years, has cancelled the licenses of 55 PRAs and confiscated their security deposit for fraudulent recruitment practices.<sup>296</sup> In Indonesia, during the month of December 2013,

<sup>289</sup>Interviewee PH7, May 2014.

<sup>290</sup>Interviewee KIB4, February 2014.

<sup>291</sup>Nepal DoFE Annual Report, cited in Dr. Ganesh Gurung, 2014 for IOM, Recruitment Monitoring Assessment, Nepal.

<sup>292</sup>Interview with PHC, March 2014.

<sup>293</sup>Interviewee PCSO2, April 2014.

<sup>294</sup>Migrant Worker Access to Justice at Home in Indonesia, 2013, B Fasenblum et al. OSF.

<sup>295</sup>Regulating recruitment of migrant workers: An assessment of complaints mechanisms in Thailand. Asia Research Centre for Migration, Institute of Asian Studies, Chulalongkorn University. ILO 2013.

<sup>296</sup>Interviewee KIB4, February 2014.

suspended the licenses of 213 PRAs and revoked 52 others due to severe violations. Of the destination states, the Jordanian authorities report closing three domestic work PRAs in 2013 and Qatar revoked 10 licenses in 2012.<sup>297</sup> Interviewees however commented that license revocations usually only result from intermittent enforcement actions on the part of the authorities. Interviewees also reflected that individuals could simply open another PRA if one were closed by the authorities, in a phenomenon known as ‘phoenix agencies’ as noted above in Section 4.4.1 (Effectiveness of license frameworks in separating the ‘good actors’ from the ‘bad actors’). This quote from a civil society respondent who supports Filipino workers in Bahrain was typical:

Actually, the Philippine government’s efforts to monitor recruitment agencies are not effective. There are cases where they block the agency in the Philippines, but they don’t know that it is so easy to change agency name in the Philippines. They can flip quickly, and this is a big hole in the recruitment monitoring. Therefore, POLO’s [Philippines Overseas Labour Office] blacklisting mechanism is not really effective. In fact, I don’t know why the Philippine government is not addressing this. I know a lot of people who can pay government officials in the Philippines to “unblock” it or create a faster way to create another recruitment agency; same recruitment agency but different name. How do you monitor this?<sup>298</sup>

The problem of phoenix agencies however is not one which is confined to CPMS, as this quote from a CPMS Labour Attaché based in the United Arab Emirates illustrates:

They [the United Arab Emirates authorities] should impose penalties not just cancel the license. In United Arab Emirates it is 10,000 AED (USD 2,722) for a company. They will get a new license as they can easily open another.<sup>299</sup>

The example of joint and several liability in the Philippines regulatory framework, is, according to one recent study, an important innovation which diminishes the jurisdictional challenges that origin countries face in seeking to protect their citizens working abroad.<sup>300</sup> This is because it establishes the recruiter as the actor in the home country responsible for answering for the employer and compensating migrants abused by employers abroad. The same study notes that although it is quite common for workers to recover compensation from recruiters under this provision, most often they receive less than the full amount owed.<sup>301</sup> Recruiters are then supposed to be able to recoup this compensation paid to the worker from the employer. In practice, however, unless the employer pays the recruiter back voluntarily, the recruiter must go to the destination country and initiate a lawsuit to recover the amount owed. This need – and the desire of recruiters to remain on the good side of the employers on which they depend for jobs – means, according to the study, that there are few examples of successful litigation of this sort.<sup>302</sup>

In addition, the author found that the National Labor Relations Committee responsible for processing claims is inadequately funded and the process slow which deters migrants from entering a claim or encourages them to settle early for less.<sup>303</sup> Claims processes are also hampered by the lack of affordable legal assistance available to migrants. Moreover, PRAs were reported to pass the cost associated with the extra financial risk of joint and several liability to workers as this quote from a PRA representative demonstrates:

<sup>297</sup>Doha News, March 31, 2013 “Labour Ministry: Most Qatar-based maid agencies still sub-par, but improving”

<sup>298</sup>Interviewee BCSO 1, April 2014

<sup>299</sup>Consultation, May 2014

<sup>300</sup>J. Gordon, 2014, Joint Liability Approaches to Regulating Recruitment. Fordham University School of Law. New York.

<sup>301</sup>Ibid.

<sup>302</sup>Ibid.

<sup>303</sup>J. Gordon, 2014, Joint Liability Approaches to Regulating Recruitment. Fordham University School of Law. New York.

This [joint and solidary liability] encourages cheating (fees payment). Philippine PRAs have a high risk and any businessman would cost their risk, and this “cost” is integrated into the price they charge to workers. It’s the joint and solidary liability that is “upping” the cost for workers”.<sup>304</sup>

In other words, an unintended consequence of a law brought in to protect workers and to regulate recruitment businesses, may have the unintended consequence of raising recruitment fees charged to workers. On the other hand, another recent study which reviewed the liability provisions in Nepal between PRA and sub-agent were reported to simply not be enforced. The study argues that as a consequence, transparency and accountability within the recruitment industry is greatly diminished and that in effect, there are no disincentives to PRAs continuing to work with individual agents who are unregistered.<sup>305</sup>

In summary, the full range of sanctions which are on the statute books in CPMS and destination states are not currently being used even when offenders are caught. Interviews with PRA respondents conducted for this study revealed an openness among them about wrong-doing, which served to highlight the sense of impunity with which PRAs in certain circumstances operate. Table 20 summarizes the effectiveness and challenges of monitoring and enforcement. There was a lack of promising practice provided by interviewees which is reflected by the blank column in the table.

Table 20: Effectiveness of enforcement actions

Effectiveness and Challenges	Promising Practice
Lack of physical access to complaints mechanisms at home and overseas.	
Police do not take complaints about illegal recruiters seriously.	
Joint and several liability ‘enforcement bodies’ inadequately funded.	
Lack of available legal help for migrants.	
Cost and length of time court cases take deters prosecutors and migrants means informal mediation is often preferred.	
Fines imposed on PRAs are not seen as a deterrent, but rather a business cost to be passed on to new recruits in the form of fees.	
If licenses are revoked, PRAs may receive another license another a different name.	
Little coordination reported between anti-trafficking departments and PRA enforcement bodies.	
Corruption.	

<sup>305</sup>Migrant Worker Access to Justice at Home in Nepal, E. Taylor -Nicholson et al, 2014. OSF.

<sup>304</sup>Interviewee PH5, May 2014.



## Chapter 5

# Non-State (Non-Governmental) Recruitment Monitoring

In addition to governments' activities in regulating recruitment, a range of other actors, including business itself, trade unions, and civil society influence recruiters' activities. This section reviews:

- 1) The actual and potential roles that businesses (PRAs and employers) can play in self-regulating their industries;
- 2) A review of how trade unions and NGOs contribute towards recruitment monitoring domestically, and internationally.

### 5.1 Self-regulation in the recruitment industry

Since the 1990s, global civil regulation – voluntary, private, non-state industry and cross-industry codes that specify the responsibilities of global firms for addressing labour practices, environmental performance, and human rights policies – has become a highly visible dimension of global economic governance.<sup>306</sup> These codes ('soft law') have become a new business norm for multinationals, as many governments have shown themselves to be unwilling to address corporate abuses that occur within their territories. Section 1.6 (Government-led Codes of Conduct) highlighted where the governments of Lebanon, Sri Lanka, and Viet Nam, have worked in partnership with the industry, facilitated by the ILO and OHCHR, to devise industry codes of practice.

The UN Guiding Principles (UNGPs) (see Section 3.1 (International human rights standards on recruitment)) represent a shift away from the past two decades of voluntarism and back towards establishing governments as the primary duty bearers for protecting individuals from corporate abuses. According to their primary instigator, Professor John Ruggie, their authority lies in the steering of a path through a mandatory treaty approach to regulating business activities - signing of an international treaty - and voluntary self-regulation approach.<sup>307</sup> The UNGPs establish that business has a responsibility to respect human rights regardless of what national legal and policy frameworks say. This means that even where states fail to adequately regulate business, or where regulation fails to meet or even contradicts international human rights law businesses, as a baseline, still have a responsibility to respect rights.<sup>308</sup> Figure 18 sets out the key policies and processes which businesses should implement in order to 'know and show' that they respect human rights.

<sup>306</sup>See *The Business of Human Rights: An Evolving Agenda for Corporate Responsibility*, A. Voiculescu and H Yanacopoulos (eds), 2011. London. Zed Books, or H Keller, *Corporate Codes of Conduct and their Implementation: the question of legitimacy*. Available at: [http://www.yale.edu/macmillan/Heken\\_Keller\\_Paper.pdf](http://www.yale.edu/macmillan/Heken_Keller_Paper.pdf) [Accessed December 2014]

<sup>307</sup>See J. Ruggie, *Just Business: Multinational Corporations and Human Rights*, Norton Global Ethics Series, New York, 2013

<sup>308</sup>See the Interpretive Guide produced by OHCHR. Available at: [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf) [Accessed December 2014]

Figure 18: Corporate respect for human rights: policies and processes

- ❑ A policy commitment to meet their responsibility to respect human rights;
- ❑ A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- ❑ Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Widely endorsed by business, governments, investors, and many NGOs, major multinationals have begun to adjust their corporate responsibility strategies. Equally significantly, the UNGPs have provided new opportunities and channels for trade unions and NGOs to hold businesses accountable and to demand more transparency.

Although with the usual caveat that this study is not a comprehensive evaluation of the recruitment industry in Asia, there were few examples of international recruitment businesses that adhere to international human rights standards collated during the course of this study. Although in a few limited examples, recruitment industry associations have developed Codes of Conduct, due diligence (especially across national borders), and grievance mechanisms (company complaints mechanisms) are largely absent from the activities of the international recruitment industry in CPMS and associated destination states. Often these are deliberately absent in order to prevent transparency and consequent effective regulation of the industry.

Globally, private regulation in the recruitment industry has largely been led by CIETT (the International Confederation of Private Employment Agencies). CIETT is a membership association of 41 national federations from every continent, and six global corporate members.<sup>309</sup> CIETT members agree to adhere to a Code of Conduct which includes a clause on 'zero fees':

Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement.<sup>310</sup>

The Code also includes clauses on ethical conduct, respect for laws, transparency in terms of engagement with workers, workers' rights, diversity, and respect for confidentiality. It is worth noting however, that CIETT's Code is not supported by a published monitoring system to vet members' practices against it although complaints about the actions of federations can be lodged with it and CIETT has previously taken action against its members for non-compliance. In 2012, CIETT, with the ILO, the International Trade Union Confederation (ITUC) and several company 'users' of PRAs was a key partner in the development of a European Commission-funded sector-specific guidance on the corporate responsibility to respect human rights.<sup>311</sup>

CIETT's members' business lies predominantly in the placement of (temporary) agency workers within

<sup>309</sup>The corporate members are: Adecco, Manpower, Randstad, Gi Group, Kelly Services, Trenkwalder, USG People, Recruit Co. Ltd.

<sup>310</sup>Principle 4. Code of Conduct available at: [http://www.ciett.org/fileadmin/templates/ciett/docs/CIETT\\_Code\\_Conduct.pdf](http://www.ciett.org/fileadmin/templates/ciett/docs/CIETT_Code_Conduct.pdf) [Accessed June 2014]

<sup>311</sup>With the research led by the author of this report, development involved extensive stakeholder interviews, web-based consultations, field-based research, and two multi-stakeholder roundtables hosted by the European Commission. The intent of the Guide is to help PRA companies "translate" the UNGPs into their own business context. The Guide is available at: [http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-era-hr-business\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-era-hr-business_en.pdf) [Accessed June 2014]

national labour markets and not international recruitment.<sup>312</sup> Nevertheless, in recognition that international recruitment is however a growing global market for its members, CIETT has steadily become more involved in (soft) regulatory initiatives in this area. In 2011, the global non-profit Verité joined forces with the Manpower Group to develop an Ethical Framework for Cross-Border Recruitment<sup>313</sup>, which expanded on each of CIETT's Code of Conduct principles. The document established "Good Practice Benchmarks" for PRAs and outlined a verification procedure that could be used by companies or other interested stakeholders to vet a labour supplier's practices against the benchmarks. Originally envisaged that it would be used by CIETT (of which the Manpower Group is a member), the Ethical Framework has also been offered to other actors working on voluntary recruitment monitoring initiatives. CIETT is also working in partnership with ILO and IOM on two key initiatives including the ILO Fair Recruitment Initiative and the IOM IRIS (International Recruitment Integrity System) project (see Section 3.2 International organizations).

Table 21 highlights the recruitment industry associations of selected CPMS, their approximate number of members and whether or not they have a publicly displayed Code of Conduct. Industry associations are typically set up to serve the business interests of its members, in other words to expand markets, reduce costs, improve processing times and services delivery.

Table 21: Selected CPMS recruitment industry associations

Name of national association	Code of conduct	Approx. no. of members
Bangladesh Association for International Recruitment Agencies (BAIRA)	Currently in development	1200
Viet Nam Association of Manpower Supply (VAMAS)	Yes-Developed with ILO	111
NAFEA	Yes	800+
Sri Lanka Association of Licensed Foreign Employment Agencies (ALFEA)	Yes-Developed with ILO	Membership is required of all licensed recruiters
Pakistan Overseas Employment Promoters Association	None evident	Unknown
China Association of Foreign Service Trades (CAFST)	None evident	Unknown
Thai Overseas Manpower Association	Yes - Code of Ethics	Unknown
Indonesia Employment Agencies Association plus another five associations	Yes	170
Philippines - Association for Professionalism in Overseas Employment (ASPROE), plus 23 associations of land-based recruitment agencies and 5 sea-based recruitment agencies	Yes (ASPROE)	Unknown

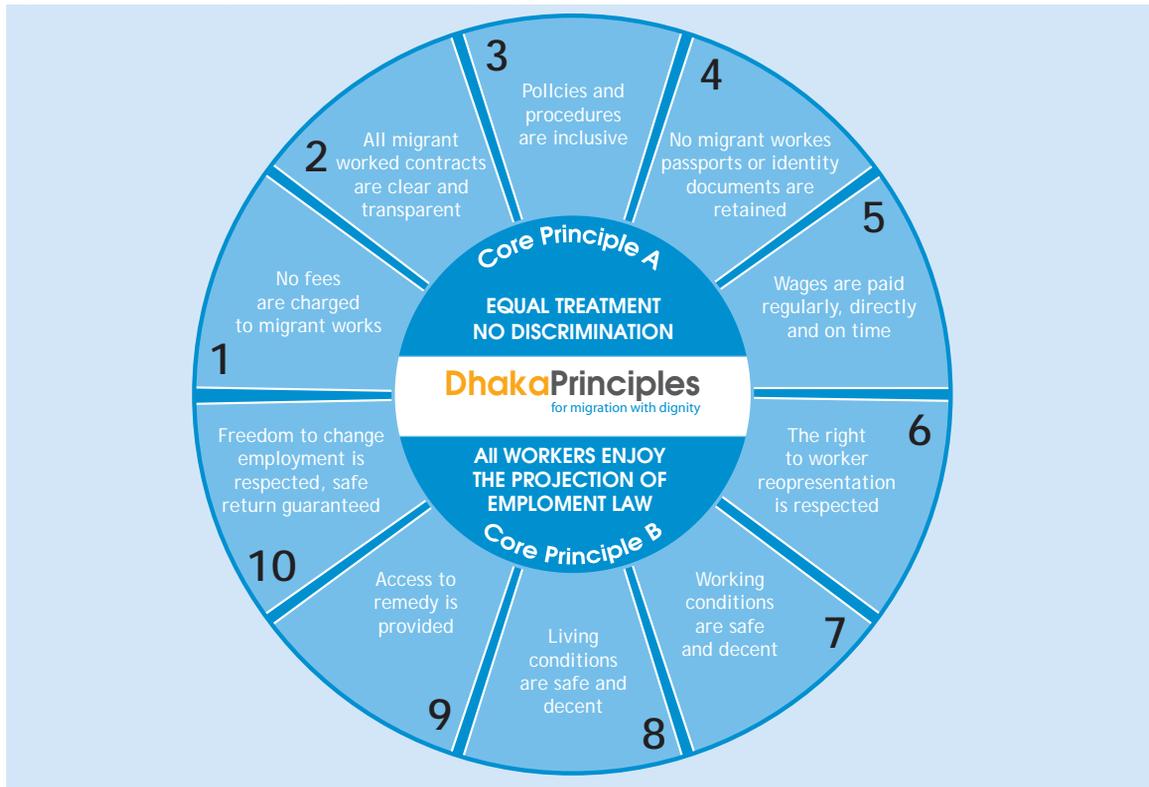
Of the study countries, CIETT's national federation membership only includes the following: China (CAFST), Indonesia (Asia Outsourcing), India (Indian Staffing Federation), Philippines (PALSCON), Singapore (SPRO), Republic of Korea (KOSTAFFs), and Viet Nam (VEAF). One of the most significant barriers to CPMS national associations of international recruiters joining CIETT is that CIETT's Code of Conduct requires its members to not charge recruitment fees to workers/migrants.

<sup>312</sup>Approximately 80% of the turnover of CIETT members, and members of affiliated associations is made from the placement of agency workers; the remaining 20% from the recruitment of (usually skilled or semi-skilled) permanent workers.  
[http://www.ciett.org/fileadmin/templates/ciett/docs/Stats/Economic\\_report\\_2014/CIETT\\_ER2013.pdf](http://www.ciett.org/fileadmin/templates/ciett/docs/Stats/Economic_report_2014/CIETT_ER2013.pdf)

<sup>313</sup>See [www.verite.org](http://www.verite.org) [Accessed December 2014]

As an example of another initiative, the Dhaka Principles for Migration with Dignity are based on current international human rights principles (as reviewed in Section 3.1 International human rights standards on recruitment), and were developed in partnership with ITUC, NGOs, CIETT, and employers.<sup>314</sup> Widely cited as a global reference point for companies, the Dhaka Principles are a set of human rights based principles to enhance respect for the rights of migrant workers from the moment of recruitment, during overseas employment, and through to further employment, or safe return to home countries. Figure 19 reproduces the Principles.

Figure 19: Dhaka Principles for Migration with Dignity<sup>315</sup>



Critical to assessing whether self-regulation can work effectively to curb the practices that stakeholders are concerned about regarding the recruitment industry, for example exorbitant fees charging to workers - is the question of whether PRAs can meet these business interests and still meet the social commitments they have signed up for. In the absence of regulation (and enforcement) that supports recruitment practices which adhere to human rights standards, there are numerous challenges to businesses acting ethically. The main ones are summarized below.

*1. There are currently few employers that value ethical recruitment businesses:*

A minority of PRAs will be motivated by human rights considerations regardless of the difficulties in finding employers willing to pay. However, for the most part the motivation for companies to voluntarily sign up to a Code of Conduct (especially one which commits them not to charge recruitment fees to workers) and

<sup>314</sup>See <http://www.dhaka-principles.org> [Accessed December 2014]

<sup>315</sup>Reproduced from <http://www.dhaka-principles.org> [Accessed December 2014]

submit themselves to assessment is to gain competitive advantage, particularly in terms of enhanced reputation. Yet, recruiting ethically, including not charging fees to workers significantly adds to employers costs of recruiting migrant workers. The first challenge therefore is the need for potentially ethical recruiters to find employers that are willing to pay the full costs of recruitment and for ethical business practices. Currently, there are few employers recruiting unskilled workers (for instance, widely seen to be domestic workers and labourers), that are willing to do so. In these sectors, cost management is the primary consideration of employers and not ethical recruitment.

### *2. Lack of a 'level playing field':*

As well as tackling business exploitation, the objective of government regulations are to 'level the playing field' for business in which all businesses have to comply with the same labour and human rights standards and therefore have the same chance to succeed. Where states do not regulate the recruitment industry - or do not effectively implement regulation - this creates a 'race to the bottom' in terms of standards. This is because recruiters compete with each other to gain service contracts with employers based on the lowest costs for 'delivering' workers. Those that charge fees or otherwise exploit workers will undercut those that try to comply with the law or adhere to human rights standards. If the majority of PRAs in any one country do not engage in ethical recruitment and the government does not effectively enforce regulation, then the "good businesses" will be outliers and will lose business to "bad" players. In the absence of a level playing field, business self-regulation initiatives will need to attract the participation of a critical mass of PRAs to be able to create significant behaviour change in the industry.

### *3. Uneven cross-border business relationships:*

Following on from the above point, the third challenge is the uneven cross-border PRA relationships. A PRA in one country which wishes to act as an ethical recruiter, if unable to open a branch office in the destination country, is reliant on finding a similarly ethical PRA or employer with which to partner. This is not an easy task. As noted above, PRAs and sometimes even employers in destination countries, charge commissions to origin country PRAs which is, in turn, charged to migrants.<sup>316</sup> In a highly competitive environment, an "ethical" PRA that does not charge fees to workers would need to absorb that cost (turning the transaction into a net loss), or turn down the business (foregoing a business opportunity) – both of which are unnatural behaviours for profit – seeking entities.

### *4. Complexity of international recruitment means that even 'good' businesses incur risks:*

International recruitment is not an easy business, and it is one in which even those businesses that want to be 'good' actors, incur high risks. The UNPGs highlight the importance of operating contexts, and for example, for CPMS PRAs which recruit migrants for employment in the GCC, there is much that is problematic. Risks can escalate according to the destination country and the occupation in which individuals are being placed. Acting with all appropriate due diligence required to ensure that recruits are safe, requires an enormous degree of knowledge of the legal and policy frameworks in both origin and destination countries and about the rights of individuals. It also requires recruiters to have significant confidence in their business partners. Even good CPMS recruiters, if unfamiliar with the particular destination country, employment or recruitment business practice, may inadvertently place individuals in risky situations in which exploitation or abuse is likely to occur. For good businesses, the risks may also act as a deterrent to entering the industry.

<sup>316</sup>Interview, PRA, Philippines, May 2014.

In recent years, there has been increasing international attention on how multinational companies can, and should, ensure transparency and good business behaviour from their suppliers, including recruiters. The following section reviews 'supply chain initiatives' that are relevant to improving regulation of the international recruitment industry.

## 5.2 Supply chain corporate responsibility programmes: the employers

In recent years there has been growing attention paid by companies to the leverage that they can use to curb recruitment malpractice in supply chains. The UNGPs define "leverage" as the ability of a company to "effect change in the wrongful practices of an entity that causes harm".<sup>317</sup> In short, it refers to its ability to influence the behaviour of others. Multinational companies and multi-stakeholder initiatives are beginning to include references to the activities of PRAs, with which they contract, in their Codes of Conduct. Employers have the ability to be able to influence the behaviour of their recruiters through:

- 1) Paying the full cost of recruitment so that migrants do not have to pay fees;
- 2) Only working with proven ethical recruiters;
- 3) Seeking to influence the behaviour of 'unethical' recruiters.

The following include some examples of initiatives that companies have taken:

1. The UK clothing retailer Arcadia Group was an early mover after it found debt-bonded workers in some of its supplier factories in Mauritius and traced the problem to PRAs in Bangladesh. Working closely with another UK retailer, Next Plc, NGOs and trade unions, Arcadia Group developed a set of Migrant Worker Guidelines that is applied to the companies' respective supply chains globally. Central to the Guidelines is a requirement for all suppliers to adhere to the principle of freely chosen employment - specifically, that workers are not required to pay fees for their recruitment, lodge "deposits" or their identity papers, including passports, with their employer and are free to leave their employer after reasonable notice. The Guidelines also include clauses requiring suppliers:

- To pay all costs associated with the migration process;
- To ensure that no reimbursements or inducements should be received or sought from PRAs;
- To ensure that there should be no recouping of fees paid to recruiting agencies from the worker on arrival;
- To ensure that suppliers must always allow the worker to retain his or her passport, keeping only photocopies on file; and
- To ensure that deductions made from wages provided for by national law be permitted without the express permission of the worker concerned.<sup>318</sup>

The Code is now written into commercial contracts that Arcadia Group and Next, plc. sign with suppliers and is covered in supplier training sessions.<sup>319</sup>

<sup>317</sup>Available at: [http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf) [Accessed December 2014]

<sup>318</sup><https://www.arcadiagroup.co.uk/fashionfootprint/code-of-conduct-and-guidebook/Guidebook-part-1.pdf> [Accessed June 2014]

<sup>319</sup><http://www.arcadiagroup.co.uk/fashionfootprint/code-of-conduct-and-guidebook/Guidebook-part-4.pdf> [Accessed June 2014]

2. In early 2014, Coca Cola launched a human rights policy for its suppliers, with recruitment practices as its focus. Like Next and Arcadia Group, Coca Cola prohibits its suppliers from charging recruitment fees to migrants, requires all suppliers to pay the full costs of recruitment, prohibits passport retention, and requires that recruited migrant workers are provided with transparent employment contracts.<sup>320</sup> Coca Cola is currently working on implementation of the policy.
3. The Fair Labour Association (FLA) and the Electronics Industry Citizenship Coalition (EICC) are examples of business associations that establish “freely chosen employment” requirements in their Codes similar to those mentioned above.<sup>321</sup> Both associations’ Codes prohibit their member companies from charging recruitment fees to workers (or to allow their recruitment suppliers to do so). The FLA and EICC aim to aggregate the commercial clout of their members to pressure next-tier suppliers to improve policies, procedures and practices. In the case of the EICC, member companies can their share supplier assessment reports (supplier audits). If a supplier is found to have weak systems or bad practices therefore, the commercial penalty may not be from just one company, but many.
4. Apple - a member of both the FLA and the EICC - implemented audits of suppliers which revealed that workers in Apple supplier factories had been charged high recruitment fees, leading to migrant workers being in debt bondage to these suppliers. Recognising that this occurred in factories in countries where recruitment fees were legal, Apple instituted a fee-reimbursement programme for those who had paid fees over and above the equivalent of one month’s salary, regardless of whether the limits placed by sending or receiving countries exceeded this. Apple suppliers have been forced to refund a total of 16.9 million USD<sup>322</sup> to workers since 2008, in accordance with Apple’s Code of Conduct.<sup>323</sup> Apple suppliers were expected to pay workers back (to take the workers out of their debt bondage status) or risk losing Apple’s business, demonstrating the extent to which commercial leverage can be used to create change.<sup>324</sup> Some of Apple’s suppliers, rather than continue to pay back enormous fees to workers due to continuing malpractice by PRAs, ended commercial contracts with the PRAs that were repeat offenders and found new PRAs which did not charge recruitment fees. They also began to develop better operational procedures for foreign worker recruitment, including PRA selection, monitoring and evaluation, as well as providing direct oversight of critical steps in the process. Some suppliers eliminated PRAs altogether from their recruitment process-opting to recruit foreign workers directly or not hire them at all.
5. In the Middle East, persistent international scrutiny led to the first corporate supply chain monitoring initiative in the UAE (probably the first in the region focusing on foreign worker recruitment and employment issues) and the only workplace monitoring initiative in the construction sector. The Tourism Investment and Development Company (TDIC), a semi-government corporation, was persuaded to establish an Employment Practices Policy (EPP) that includes requirements for good

<sup>320</sup>See [http://assets.coca-colacompany.com/71/b5/a03844a14c8a89966b1d93097088/issuance-guidance.2\\_12\\_14.pdf](http://assets.coca-colacompany.com/71/b5/a03844a14c8a89966b1d93097088/issuance-guidance.2_12_14.pdf) [Accessed June 2014]

<sup>321</sup>See <http://www.fairlabor.org> and <http://www.eiccoalition.org> [both accessed December 2014]

<sup>322</sup>Supplier Responsibility 2014 Progress Report, Apple, 2014, 4, available at: [http://images.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2014\\_Progress\\_Report.pdf](http://images.apple.com/supplier-responsibility/pdf/Apple_SR_2014_Progress_Report.pdf)

<sup>323</sup>[http://www.apple.com/supplierresponsibility/pdf/Apple\\_Supplier\\_Code\\_of\\_Conduct.pdf](http://www.apple.com/supplierresponsibility/pdf/Apple_Supplier_Code_of_Conduct.pdf)

<sup>324</sup>See Fees and IDs: Tackling recruitment fees and confiscation of workers’ passports. KJones. Institute for Human Rights and Business. 2013. Available at: [http://www.ihrb.org/pdf/2013-09-06\\_IHRB\\_Fees-and-IDs-Report.pdf](http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf)

recruitment practices and working conditions related to foreign workers hired for construction sites on Saadiyat Island (which hosts, among others, the Louvre and Guggenheim museums).<sup>325</sup> The EPP was developed in response to a campaign mounted by NGOs and trade unions. This included the threat of an artist' boycott of the museums.<sup>326</sup> TDIC hired the audit firm Price Waterhouse Coopers (PwC) to conduct annual audits of its construction contractors and their sub-contractors against the EPP. PwC reports have been closely scrutinized by civil society and pressure continues to force TDIC and the United Arab Emirates government to acknowledge the presence of poor conditions and to take measures to create improvements. Consequent improvements included a requirement that contractors on Saadiyat Island should reimburse workers for the amounts paid to their PRAs for recruitment and relocation costs (similar to Apple's initiative).<sup>327</sup> However, there have been no publicized impacts of these findings on the PRAs that brought the workers into the country in the first place.

6. The Qatar Foundation for Education, Science and Community Development is a private, non-profit organization that aims to support the development of Qatar into a 'knowledge-based economy'.<sup>328</sup> Qatar will host the 2022 FIFA World Cup, and media, trade unions and NGOs have launched campaigns to make the government give serious attention to the plight of foreign workers brought in to build the stadiums and other infrastructure for the event. In response, the Qatar Foundation (QF) Mandatory Standards of Migrant Workers Welfare for Contractors and Sub-Contractors, issued in 2013, outlines requirements for monitoring the practices of PRAs used by contractors working on QF-funded construction projects, including that migrant workers should not be charged fees by their recruiters.<sup>329</sup> Internal training and other preparations are being made to implement the standards through an audit/verification process. However, the standards currently only apply to Qatar Foundation-funded projects and there is yet no indication that they will be extended to other government and private sector projects, or to sectors other than construction.

That multinational companies are paying more attention to recruitment abuses in their supply chains is undoubtedly a positive step. In the examples given above, multinational companies have demonstrated that they can have a positive influence on international recruitment. There are however two limitations to this. The first is that, employers can only make the most significant difference if they properly invest in: a) capacity building and training of suppliers, and b) paying more-or paying at all-for recruitment services. In the cases referred to above, the actions of multinationals to lever better recruitment practices out of their suppliers did not occur with additional funding. In other words, the companies involved required their suppliers to bear the additional costs of recruiting ethically. Given that their suppliers are often located in developing countries with significantly lower profit margins than the multinationals, this is problematic and could lead to cost-cutting in other areas, are costs being hidden further down the chain instead.

The second point is that global businesses' recent focus on this issue has largely arisen out of the anti-trafficking and forced labour movement rather than a general concern for workers' rights. Coca Cola

<sup>325</sup>See <http://www.tdic.ae/TDIC/ourapproach/Pages/worker.aspx> [Accessed December 2014]

<sup>326</sup>See Gulf Labor - <http://gulflabor.org/timeline/> [Accessed December 2014]

<sup>327</sup>See <http://www.arabianbusiness.com/saadiyat-worker-welfare-improving-says-pwc-report-532039.html> [December 2014]

<sup>328</sup><http://www.qf.org.qa/about>

<sup>329</sup>Available at: <http://www.qf.org.qa/app/media/2379> [Accessed December 2014]. The QF Mandatory Standards also prescribes comprehensive and detailed requirements for the treatment of workers on the job-site, including basic employment terms and conditions, living conditions including accommodations and meals, and health and safety.

in particular, was a co-founder of the Global Business Coalition Against Trafficking, which claims to “mobilize the power, resource and thought leadership of the business community to end human trafficking, including all forms of forced labour and sex trafficking.”<sup>330</sup> Focusing attention only on the most egregious forms of human rights abuses risks missing whole layers of exploitation. Effectively tackling recruitment abuses requires companies to pay attention to all forms of employment conditions, and to work in partnership with workers’ representatives, including trade unions where these are allowed to operate, and relevant civil society organizations (NGOs) where not. The following section reviews the contribution of trade unions and NGOs in monitoring the activities of international recruiters.

## 5.3 The role of NGOs and trade unions in recruitment monitoring

Although trade unions’ roles are often limited in CPMS, and are largely non-existent in the Middle East where they are banned from operation (in contravention of fundamental human rights standards on freedom of association), NGOs are nevertheless active across both CPMS and destination States. Because NGOs and trade unions stand in support of migrant workers, they play essential roles in non-governmental recruitment monitoring, most often through:

- ❑ Advocating for individuals, often through litigation against PRAs;
- ❑ Exposing exploitation and campaigning for change;
- ❑ Helping recruiters to develop more ethical business practices.

Each point is illustrated with examples below:

1. Advocating for individuals, often through litigation against PRAs: Most directly, NGOs directly support and advocate for the rights of individuals who have been exploited by PRAs. NGOs provide an essential route for individuals who may otherwise face challenges in accessing complaints mechanisms either at home or in the destination country. NGOs also provide a source of legal help to migrants that might not otherwise be available (see Section 5.3 Role of NGOs and trade unions in recruitment monitoring). For instance, Tamkeen in Jordan has established a Legal Aid and Human Rights Programme which provides legal services for migrant workers in Jordan. In 2009, in the organization's first 10 months of operating a migrant worker programme, Tamkeen received more than 200 complaints of forced labour in different sectors from Egyptian, Sri Lankan, Indian, Pakistani and Syrian workers, some of which was attributable to PRAs.<sup>331</sup> In another example, in Nepal, the Pravasi Nepali Coordination Committee (PNCC), which is a non-profit organization of committed returnee migrant workers, provides legal support to migrants in seeking access to justice when wronged by PRAs.<sup>332</sup>
2. Exposing exploitation and campaigning for change: NGOs and trade unions can play a highly significant role in monitoring recruitment through exposing exploitation and using this as a platform to campaign for better regulation of international recruitment. When exposing abuse, NGOs often work in partnership with the media. For instance, recent media attention and sustained campaigning by the International Trade Union Confederation (ITUC) on the debt bondage experienced by migrant workers in Qatar have led to the government beginning to make changes.<sup>333</sup>

<sup>330</sup>See <http://www.gbcat.org> [Accessed December 2014]

<sup>331</sup>See <http://www.tamkeen-jo.org/programs.htm> [Accessed December 2014]

<sup>332</sup>See <http://www.pncc.org.np/?content&id=1> [Accessed December 2014]

<sup>333</sup>E.g. See <http://www.ituc-csi.org/qatar> and

<http://www.theguardian.com/world/2014/may/14/qatar-admits-deaths-in-migrant-workers>

In another example, in late 2013, over 100 national, regional and international NGOs submitted a five year Action Agenda, including recommendations on regulating the international recruitment industry, to the UN High Level Dialogue on Migration in New York. NGOs brought the issue of recruitment monitoring to the international stage, highlighting the issues of exploitation and abuse and proposing sensible solutions to better regulation.<sup>334</sup> The result of years of campaigning by dedicated organizations such as Migrant Forum Asia, a regional confederation of migrant advocate organisations, the Action Agenda proposed a framework around a limited set of key issues where there is a broad sense that progress is, ambitiously but reasonable achievable. This included two items of direct relevance to recruitment monitoring:

- ❑ Regulating the migrant labour recruitment industry and labour mobility mechanisms;
- ❑ Guaranteeing the labour rights of migrants.

As a result of this work, in May 2014 civil society established the Open Working Group on Labour Migration and Recruitment to bring together the multiple advocates working on recruitment reform.<sup>335</sup>

Exposing the wrongs of individual PRAs and campaigning for wider regulatory change can enable governments and employers to institute better monitoring of recruitment. An initiative by Centro de los Derechos del Migrante, Inc., (CDM), a transnational civil society organization based in Mexico with offices in the United States, is worthy of note here. The International Labour Recruitment Transparency Project, provided by CDM is produced through a compilation of publicly available data about PRA illegal and exploitative practices within the H-2A and H-2B visa programmes in the United States. Figures 20 and 21 reproduce searches made through the map.<sup>336</sup> Data is drawn from:

- ❑ Requests under the Freedom of Information Act (FOIA) in the United States and the Instituto Federal de Acceso a la Información y Protección de Datos (IFAI) in Mexico;
- ❑ Office of Foreign Labour Certification Performance Data. (Applications for Temporary Employment Certification (ETA Form 9142) that it receives on a quarterly basis);
- ❑ H-2A Public Job Registry. (All H-2A job orders posted in the last 30 days.);
- ❑ Registered and Ineligible Farm Labour Contractors. (Authorized Farm Labour Contractors, as well as ineligible Farm Labour Contractors.);
- ❑ Department of Labour Enforcement Data. (Searchable database of enforcement datasets including: Employee Benefits Security Administration (EBSA); Mine Safety and Health Administration (MSHA); Office of Federal Contract Compliance Programs (OFCCP); Occupational Health and Safety Administration (OSHA); and Wage and Hour Division (WHD);
- ❑ Additional information on recruitment actors is drawn from independent, publicly available sources, collected via field research, and contributed by users.

<sup>334</sup><http://hldcivilsociety.org/five-year-action-agenda/> [Accessed June 2014]

<sup>335</sup>Established by the Global Coalition on Migration and Migrant Forum Asia in 2014 during a series of meetings at the Civil Society Days of the Global Forum on Migration and Development and People's Global Action on Migration, Development, and Human Rights, the Open Working Group works on knowledge sharing and global strategising for recruitment reform. Migrant Forum in Asia serves as the secretariat for this working group with funding from the European Commission via the Migration and Development Network (MADE), Project of the International Catholic Migration Commission. [www.RecruitmentReform.org](http://www.RecruitmentReform.org) [Accessed December 2014].

<sup>336</sup><http://www.recruitmenttransparency.org/> [Accessed June 2014]

Figure 20: International Labour Recruitment Transparency Map (1)

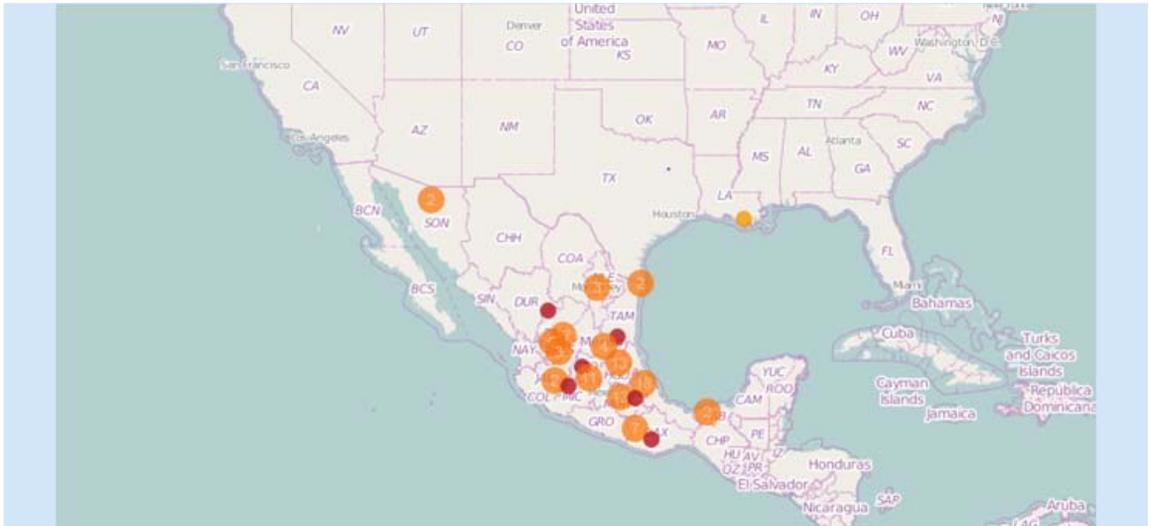


Figure 21: International Labour Recruitment Transparency Map (2)



In September 2014, CDM launched a complementary worker-facing website 'Contratados.org.'<sup>337</sup> The 'worker-facing' website allows migrants to insert their reviews and experiences of PRAs and sub-agents within the U.S. and Mexico. Protected from legal liability for slander, or libel, by the same legislation which allows users to post reviews on 'bulletin boards' such as Trip Advisor and Yelp, CDM is disseminating the interactive online tool to users through Mexico, and the U.S. via radio stations, print media, and email lists.

<sup>337</sup>See <http://contratados.org/en> [Accessed December 2014]

1. Helping recruiters to develop better business practices: In an example from the European Union, a Polish PRA in 2011, acting on concerns about the vulnerabilities of the Polish care workers they were recruiting for home-based care jobs in Germany, sought to collaborate with an experienced anti-trafficking NGO. Together they developed educational materials for workers who were going abroad, which was focused on risks as well as workers' rights. The NGO also helped the PRA develop a better policy focused on workers' human rights and specifically the rights of women (who were the main recruits for the domestic care jobs). The partners are now collaborating to promote awareness of the issues, including jointly attending relevant workshops to give presentations.<sup>338</sup>

NGOs and trade unions are fundamental to a well-functioning recruitment monitoring system. This is not without its challenges. For NGOs in particular, there are risks involved with working directly with governments and with business where this might compromise their independence and ability to advocate on behalf of individuals. Trade unions are prevented from openly operating in many places in the Middle East, NGOs are also in destination states included in this study largely prevented from acting in other than a humanitarian capacity, providing immediate support, as this quote from an NGO activist demonstrates:

As I said, only governments function to monitor recruitment agencies. It is sad but there is a big political agenda to block us because this is a private sector. It will harm their business, mostly of government officials too who own these recruitment agencies. The Philippine Community here is providing mainly humanitarian assistance like free tickets or food for abused workers. They don't have political or administrative power to improve welfare conditions, only temporary humanitarian angle. This should change as the embassy needs to recognize us Filipino communities-including Migrante-to contribute into the policy making process here.<sup>339</sup>

On the other hand, governments and businesses in particular, often subject to exposure by NGOs and trade unions may find it challenging to work with them. Workers' representatives and NGOs largely have no formal role in domestic policy making or official monitoring of the recruitment industry. These types of organizations, because they are in regular contact with migrants, have an enormous amount of expertise about what the issues are, where the exploitation happens, who the exploiters are, and what government authorities could do better. Not conducting dialogue with these organizations means that government departments are missing substantial layers of vital information which could usefully feed into their policymaking. The following section draws some conclusions on recruitment monitoring (supranational, state, and non-state) and makes recommendations to CPMS governments.

---

<sup>338</sup>Case study included in the EC Employment and Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights. Available at: [http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-era-hr-business\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-era-hr-business_en.pdf) [Accessed December 2014]

<sup>339</sup>Interviewee PNGO 1, April 2014.

## Chapter 6

# Recruitment Monitoring Conclusions and Recommendations

The first part of this report, commissioned by IOM for the Colombo Process (CP) Regional Consultative Process, has reviewed recruitment monitoring across CPMS and key destination states. The report:

- ❑ Compiles a comprehensive thematic overview of the key features of supranational, state, and non-state recruitment monitoring in and between CPMS and key destination states in the Middle East;
- ❑ Analyses the effectiveness of recruitment monitoring;
- ❑ Illustrates the above with empirical examples of promising practice.

As the vast majority of available assessments of recruitment monitoring, many of which have been commissioned by international organizations, are descriptive in content, the analysis is included with the caveat that the project scope did not include conducting a systematic evaluation of each of the different 28 recruitment monitoring frameworks. The report has instead been structured by a thematic analysis of monitoring effectiveness. Before setting out some key recommendations to CPMS governments, it is worth making a few observations about the wider context in which the infinitively challenging work of recruitment monitoring takes place.

Firstly, in focusing on monitoring of the international recruitment industry, it is extremely important to not lose sight of the wider political economy of migration in the region that has driven the importance of labour migration to CPMS and key destination state economies alike. This influences CPMS governments' ability to effectively maintain effective regulation of recruitment. Both CPMS and associated destinations are dependent on labour migration. For CPMS, the remittances that labour migrants send home have become essential components of their national economic development. For the destination states, especially those in the Middle East, industrial development could not have occurred and could not be sustained without the travails of migrant workers from South and South-East Asia. Origin and destination countries are consequently mutually dependent on each other, although it is a profoundly unequal relationship.

These broader globalisation processes underlie the emergence of the international recruitment industry in its current form in the region. Without private recruiters it is unlikely that labour migration within the region could have occurred on such a huge scale. Recruiters can facilitate significant volumes of migration to employers at relatively short notice. For employers, hiring without the services of private recruiters on this scale would not be possible; on the other hand, the dependence of CPMS on destinations in which their nationals can earn, and remit wages from, means that allowing recruiters to charge fees to migrants has become the norm. Arguably, this has influenced the development of CPMS regulatory frameworks governing recruitment, in particular, in allowing recruitment fees to be charged.

There is a competition process in play. Many companies choose suppliers in particular destinations precisely because of their weak labour laws. The same is true in the recruitment industry – when one source country starts taking protective measures for workers going abroad, the destination country starts hiring from countries with weaker protections, where workers will not only work for cheaper wages but are willing to pay the costs for their own recruitment simply because their laws expect them to. This is especially critical as a great many countries round the world legally allow recruitment fees to be charged to workers. In short, there is a perceived and real underlying and unresolved tension between effectively regulating international recruitment and successfully managing labour export programmes. This tension can be seen in the mixed views of CPMS officials about what should be considered ‘success’ in relation to recruitment monitoring. Should for example the success of a bilateral agreement be judged on the increase of numbers of workers who have migrated to a particular country, or by a reduction in their exploitation by recruiters?

The wider political economy of migration is played out between origin and destination states on a daily basis – between diplomats and politicians as well as between officials in overseas missions and destination state authorities. This is a hugely challenging issue for CPMS to traverse at all levels. Destination states are responsible for the demand for migrant workers. Exploitation during the recruitment process occurs because of this demand. However, recruitment monitoring is a low priority in destination states. When challenged, destination state officials tend to shift the focus of ‘blame’ for recruitment abuses to origin states. Yet, the nature of cross-border recruitment is that it cannot be separated from how employers opt to recruit and hire their workers.

A further factor related to the wider political economy of international recruitment within Asia is that migrant workers are largely denied the ability to realize their human rights in all sorts of ways. This is not restricted to exploitation arising out of recruitment. CPMS migrants working in Middle Eastern states are denied access to all types of labour rights under the Kafala system, including the right to change employer and right to join a trade union, which are largely banned in these countries. This means that migrants are themselves disempowered from effectively challenging exploitative recruiters.

The second contextual observation is that recruiters are intermediaries, what are known as ‘business to business’ service providers. In other words, ultimately they are hired by employers to recruit workers. In the case of PRAs in CPMS, they may be contracted by PRAs in destination states, which are, in turn, hired by the employers. Because of the nature of these business relationships, the greater power, known as leverage, lies with the employers. Although the gathering pace towards tackling recruitment abuses is of course positive, it is extremely important that monitoring the activities of employer which drive recruitment business practices is not ignored. Simply training recruiters in what constitutes ‘ethical recruitment’ will not work because there is not currently a market for ethical recruitment in this region on any significant scale. Employers do not want to pay the full costs of recruitment nor of ethical recruitment business practices. This means that most recruiters in CPMS countries, especially those operating in low-skilled sectors, compete to deliver migrants in the cheapest way. This means exploiting workers. Without addressing how employers engage with recruiters – and how much they pay for recruitment – it will simply not be possible to banish recruitment exploitation.

Thirdly, much of the business practices in which international recruiters in the region engage in are informal. There are few written commercial contracts between migration businesses which regulate the

relationships between them. In general, it is in PRAs' interests (but not in regulators) to avoid such formalized relationships as in this way they can avoid additional costs as well as regulatory oversight. An opaque industry is in the interests of the 'bad actors'. This however, is not unique to international recruitment and there are many lessons that can be learned from regulating other informal economies.

Fourthly, although most focus has been recruiters in terms of exploitation, it is also worth remembering PRAs operate within a far bigger 'migration industry' comprising a multitude of private sector actors. These include training centres, medical screening centres, insurance companies, transportation companies, and travel agents, amongst others. Many are engaged in business relationships with PRAs. PRAs also frequently hold financial interests in these other migration businesses. These businesses are also responsible for much exploitative business practices not addressed within this report, but these must also be tackled as these are also key actors within the international recruitment process.

In addition to these general observations, the following summarizes the key findings of effectiveness of recruitment monitoring frameworks. The purpose of this study is to identify what does not work as much as what does (or might). The study also seeks to identify target areas that CPMS governments could focus on, as well as to draw out promising practice.

## 6.1 Summary of findings

1. The study has analysed 'recruitment monitoring' as occurring at three levels: Supranational, state (government), and non-state (non-governmental), which influence the behaviour and activities of international recruiters to varying degrees. This typology is depicted in Figure 1 in the report. Figure 14 identifies the key components of national (state, governmental) laws and policies which are aimed at:
  - ❑ Preventing abuses by recruiters (licensing, rules on fees, emigration and immigration rules, bilateral agreements, government-led Codes of Conduct); and
  - ❑ Monitoring and enforcement of industry compliance with regulations (ongoing monitoring through inspections, reporting and emigration procedures; sanctions regime; access to remedy).
2. Analysis of interviews indicated that CPMS officials and politicians do not generally reference international human rights standards on recruitment when devising relevant laws and policies (see Figure 5 for a summary of main standards). The inclusion of 'no fee-charging to workers' clauses in the Private Employment Agencies Convention, 1997 (No. 181) (C181) and Domestic Worker Convention, 2011 (No. 189) (C189) will, for the foreseeable future, likely be a barrier to their ratification by CPMS governments. Although recruitment fees are probably the most significant contributory factor to exploitation, there is as yet no consensus among CPMS government officials and politicians that fee charging will, or even should, be banned in CPMS countries.
3. CPMS and associated destination state legal and policy frameworks that regulate international recruitment industries are extremely detailed and extensive, the key features of which have been described and assessed in the report (see Figure 7 for a summary of key features). Yet, the research found that CPMS officials often lacked a clear overall vision of the objectives of recruitment monitoring and lacked knowledge of the criteria by which laws and policies should be judged as having been successful. This is especially important in relation to the (perceived or real) tension

between: a) successful recruitment monitoring judged against a reduction in exploitation of migrants, and b) successful 'labour export' programmes assessed against how many migrants have been recruited. Policy makers also displayed, in interviews, little understanding of the 'theory of change' which lay behind how specific laws or policies were expected to achieve their objectives, or any unintended consequences that may have arisen. Unsurprisingly, views on for implementing different aspects of relevant policy (e.g. between Ministries responsible for emigration and those responsible for licensing.) The study found little evidence of ongoing data collection by CPMS governments which would enhance their ability to regularly review the effectiveness of their laws and policies on recruitment.

4. Overwhelmingly, study participants argued that **despite the extensive regulatory frameworks in place in the CPMS countries, these are largely not effective in reducing recruiters' exploitation of migrant workers.** The study found nine factors associated with this:
  - i. **A lack of robust screening by the authorities of applications from PRAs seeking a new license.** This means that the 'bad actors' also sometimes hold valid licenses, including those who have previously had a license revoked by the authorities ('phoenix agencies'). A lack of robust screening results from the fact that screening is usually only conducted through the submission of paperwork (with the exception of the Philippines and India), which PRA respondents to this study readily admitted could be faked. This contributes to an overall lack of external confidence in CPMS licensing frameworks.
  - ii. **Weak ongoing monitoring of PRA licensees by their home authorities** (i.e. the countries in which they are domiciled) to ensure that they comply with the extensive regulations in place. The research found few examples of CPMS governments or associated destination state governments requiring PRAs to formally report on their activities, or routinely inspecting licensees' premises or paperwork. Inspections were only reported to occur in response to complaints lodged by individuals. To various degrees, ongoing monitoring of compliance was reported by interviewees to be limited by a lack of: a) capacity within (CPMS) authorities, b) specialized units which have been charged with monitoring recruiters, c) training and guidance provided for officials, d) coordination between relevant government bodies which might have oversight of recruitment activities (e.g. emigration authorities, licensing authorities, tax authorities), and e) decentralized monitoring activities. Low-level corruption of officials as well as high level entrenched interests in maintaining the status quo were also reported as contributors to weak monitoring.
  - iii. **Despite extensive rules in place regarding what level of recruitment fees can be charged to migrants, there is almost no monitoring of what fees have been charged takes place.** Instead, as above, the system is reliant on individuals making a complaint about the fees he or she has been charged. However, according to interviewees, few individuals, even if they are aware of the law, are minded to do so either because they fear retaliation from the PRA, and/or because this will preclude him or her from working overseas.
  - iv. **CPMS authorities largely conduct ongoing monitoring of PRAs through emigration clearance processes, by which individuals (through their PRAs) apply for permission from their home authorities to emigrate, and from the destination state authorities for permission to work.** Study

respondents highlighted the multiple opportunities at which officials can monitor the activities of licensed PRAs during this process. These opportunities arise because officials are required to check that the PRA(s) which is managing the recruitment hold(s) a valid license, that there are no unresolved complaints or cases against the PRA(s), that the terms and conditions of the intended employment are compliant with relevant regulations, that there is a signed contract of employment, that identity documents are compliant, and that health insurance has been purchased if necessary. Interviewees reported that the emigration authorities in CPMS countries rarely however take action against fake documents received from PRAs.

- v. **Labour Attachés and other officials in overseas missions, where they are available, who are charged with 'attesting' documents as part of the emigration process provide an essential function in this regard and maintain a pivotal position in being able to have oversight of both ends of the recruitment process.** Overseas missions can refuse to process applications if the above conditions are not met, or they can even 'blacklist' PRAs from their own country as well as those based in the destination countries in which they are based. They are **however limited by often strenuous workloads which means they can do little more than 'firefight' day-to-day cases**, which are often to do with their nationals' immediate needs such as repatriation and/or detention. The study found that overseas missions often also **lack appropriate training and guidance necessary to be able to carry out effective recruitment monitoring.** According to interviewees, where overseas missions do uncover evidence of PRA exploitation through the attestation process, this information is not always shared effectively or systematically with the authorities at home. In other words, even though a particular PRA may be blacklisted or has their application refused by a particular Labour Attaché, often no further action is taken.
- vi. The study found that there is **almost no systematic bilateral sharing of information about exploitative PRAs between CPMS licensing authorities and those of associated destination states.** Where this does occur, it does so through the overseas mission and usually on an ad hoc basis because a particular Labour Attaché has succeeded in building a significant degree of 'wasta' in their contact networks. Labour Attachés, consulted for this study, revealed that overwhelmingly they struggle with liaising with destination state authorities and that often they do not know who to contact with evidence of exploitation by PRAs, nor do they have any confidence that the information that they provide will be acted upon. Labour Attachés reported that destination state officials tended to argue that recruitment abuses were the responsibility of origin state governments, suggesting that recruitment monitoring may not be taken seriously in some destination states.
- vii. One of the major factors hampering recruitment monitoring is **the continued existence of unlicensed sub-agents (illegal recruiters) in CPMS countries.** Despite the attempts of CPMS governments to regulate them out of the labour migration process by, for example, requiring PRAs to advertize job opportunities (e.g. Nepal), or requiring PRAs to recruit from a national database of aspiring migrants (e.g. Bangladesh), none of these activities has yet been shown to be successful in reducing the number of sub-agents. **One reason for this lack of success is practical.** Although CPMS authorities do launch intermittent targeted action against illegal recruiters, it simply is not possible to find and prosecute all sub-agents at any one time. Sub-agents rarely

operate out of an office so are able to quickly and easily disappear. **The second reason is because sub-agents' endemic existence is structural** rather than a few cases of criminal individuals. Sub-agents exist because PRAs in CPMS countries largely do not operate networks of branch offices in rural areas, with many only maintaining offices in the capital cities. The study found that PRAs do not open local or regional branch offices because utilising the services of sub-agents to find and recruit workers is substantially cheaper than the costs associated with opening and maintaining branch offices, because of regulatory restrictions, or because through paying for the services of sub-agents PRAs can avoid regulatory oversight over a significant degree of their activities. Sub-agents enable PRAs to largely avoid having contact with migrant workers, to avoid blame for high recruitment fees, and to prevent complaints being lodged against them.

viii. CPMS governments have established extensive regimes which detail which recruitment violations result in which sanctions, with illegal recruitment potentially resulting in a prison sentence for offenders of between three and fifteen years across the CPMS countries. However, in practice the full range of **available sanctions are rarely sought by prosecutors with few PRA violators ever reaching court. Instead, violations are dealt with administratively.** The study found that even where CPMS authorities do identify non-compliance by PRAs the **two most common approaches to dealing with it are to facilitate informal mediation between migrant (victim) and the PRA resulting in (limited) financial restitution, followed by revocation of the PRA license.** Neither was reported by PRA respondents to act as effective deterrents to exploitative behaviour within the industry. PRA interviewees revealed that amounts paid in financial compensation are regarded as an ongoing business cost and which are recouped from future fees charged to migrants. Other interviewees reported that even where PRA licenses are revoked, it is common practice for individuals to apply for a new license under a different name ('phoenix agencies') in order to continue to operate.

ix. Migrant workers who have been exploited by PRAs or illegal recruiters (sub-agents) face **huge barriers in obtaining restitution due to difficulties in accessing complaints mechanisms both at home and abroad.** Ensuring individual access to judicial and non-judicial remedy emerged as an especially weak part of legal and policy frameworks in both CPMS countries and associated destination states. Not enabling migrants to make complaints about PRAs is harmful not just to individuals who lack access to justice, but also because data gleaned from these sources is an essential component to effective recruitment monitoring. In other words, migrant workers who have been exploited by PRAs and illegal recruiters are able to provide information to the authorities about who, where, when, and how exploitation is taking place, in theory making the authorities' monitoring task much easier.

5. The study also identified five specific gaps in CPMS national legal and policy frameworks. These include:

i. The lack of rules aimed at regulating the business (commercial) relationships between PRAs, and between PRAs and sub-agents (illegal recruiters), is a major gap in CPMS legal and policy frameworks governing international recruitment. Business relationships in the recruitment

industry are largely informal, with few commercial contracts signed between PRAs. Despite the growing amount of regulation requiring recruiters to use standardized employment contracts (e.g. for domestic workers), there has been almost no regulatory attention paid to the (lack of) contracts between businesses. This allows the opaque, and largely unaccountable, international recruitment industry to flourish without oversight, hampering the authorities and individual seeking restitution, from establishing liability for wrongs.

- ii. **Complaints made about PRAs and sanctions applied are rarely shared publicly, meaning that licensing frameworks are not transparent.** Although some authorities attempt to maintain up-to-date and publicly available online databases of currently licensed PRAs, in practice, interviewees reported, updating rarely occurs. This precludes individuals being able to view information about the PRAs which may have recruited him or her; it also precludes associated destination state authorities and potential employers from being able to view this information and to use it in making business and/or enforcement decisions.
  - iii. **Provisions for recruitment monitoring (of PRAs, of the required process, or of government to government liaison regarding recruitment) are rarely included within bilateral labour agreements** concluded between CPMS governments and associated destination states. Instead, the focus of agreements has usually been on migrant worker protection in the destination country. Agreements rarely include steps for their own implementation and monitoring with little recourse if provisions are not followed.
  - iv. Although the main focus of national legal and policy frameworks is the international recruitment industry, there are actually a **multitude of often related 'migration businesses' which work in partnership with recruiters, and which are often contributors to various degrees of migrant exploitation.** These include pre-departure training centres, medical centres, insurance companies, travel agencies amongst others, some of which might be owned by PRAs. These businesses are often subject to different regulation, if indeed they are regulated, and are usually not overseen by the same authorities responsible for recruiters, despite the inter-relationship with recruitment exploitation. This hampers the ability of the authorities to effectively monitor international recruitment and of individuals seeking remedy, to establish the appropriate legal liability of the different private sector actors involved.
  - v. Regulatory frameworks are based on penalising those businesses which do not comply. **Connected with the above point, the study found almost no examples of incentives (rewards) provided within national legal and policy frameworks for PRAs to either comply or to go beyond compliance to act ethically.**
6. Trade unions and NGOs are essential contributors to monitoring of international recruitment industries through: a) advocating for individuals, often through facilitating litigation against perpetrators; b) exposing exploitation and campaigning for change; and c) helping recruiters to develop more ethical business practices. However, neither trade unions nor NGOs are engaged in effective partnerships in recruitment monitoring in either CPMS countries or associated destination states, limiting their usefulness in this regard. In associated destination states, trade unions are largely prevented from

operating, contrary to internationally recognized human rights standards, and NGOs are restricted to a largely humanitarian role.

7. The report indicated a **very few isolated examples of business self-regulation in relation to recruitment**—the global recruitment industry body, CIETT which is working with international organizations to improve the international industry, and a handful of multinational corporations which have instituted positive policies on working with recruiters. However, these examples are as yet few and far between in international recruitment. For recruiters, there are two major barriers to acting ethically. The first is the lack of effective legal and policy frameworks which ‘level the playing field’ and which could allow businesses to act ethically (for example to not charge fees to migrants) without losing business to competitors which undercut them through exploiting migrants. As it stands, charging fees is largely legal across the CPMS. This means that recruiters will continue to do so. Secondly, PRAs that seek to behave ethically struggle to find employers that are willing to pay the full costs of recruitment. Without this payment from employers, PRAs have to recoup these costs (plus their service charge) from migrants in order to stay in business. Moreover, PRA respondents to this study who are based in CPMS (origin) countries recounted many examples in which they have had to pay commissions to big employers and to their PRA partners in the destination state in order to obtain a job contract. The cost of this ‘bribe’ is then passed on to future recruits in the form of recruitment fees. Unless destination state governments begin to regulate their labour markets effectively, this practice will continue.
8. With the caveat that none of these practices have been systematically evaluated (beyond the scope of this study), the research identified a number of **examples of potentially positive practice** in regulating international recruitment, with the objective of reducing migrant worker exploitation by PRAs and illegal recruiters. Described within the report, these include:
  - i. **The role of international organizations** in working with national recruitment industry associations to develop **Codes of Conduct** which, to some degree, reflect international standards (e.g. in Viet Nam and in Lebanon).
  - ii. The role of international organizations in **disseminating information about good recruitment practice, better regulation, and about relevant human rights standards** such as the Private Employment Agency Convention, 1997 (No. 181), including activities conducted through the ILO Fair Recruitment Initiative, IOM IRIS project (International Recruitment Integrity Initiative), and dialogue through the Colombo Process and Abu Dhabi Regional Consultative Processes.
  - iii. Requiring ‘foreign’ PRAs which recruit workers into a destination country to also be licensed with the destination state authority (e.g. UK) with the aim of increasing bilateral oversight of international recruiters.
  - iv. Requiring ‘foreign principals’ (PRAs or employers) to be accredited through the overseas mission (e.g. the Philippines) enabling checks to be conducted as to whether any complaints have previously been lodged against these businesses.
  - v. Specifying in the law which activities are **legitimate recruitment activities** (e.g. Viet Nam) and specifying in the law **which recruitment activities are not legal** (e.g. the Philippines does not allow PRAs to have interests in travel agencies) so that there is clarity in regulating a highly complex, multi-faceted industry.

- vi. Requiring PRA owners to have **prior business experience before opening a PRA** (e.g. the Philippines) as international recruitment is a hugely complex and risky business, even for ethical actors.
- vii. **Requiring applicants for a PRA license to attend a panel interview** with a specialized committee before a license is granted (e.g. the Philippines and India) because paperwork submitted for scrutiny can be easily faked.
- viii. Requiring PRAs to **maintain office premises** (e.g. Sri Lanka) and requiring PRAs to have a **certain level of financial capacity before being granted a license** (e.g. the Philippines) to try to prevent ‘fly-by-night’ operators from entering the market.
- ix. **Banning PRAs from charging recruitment fees to migrants** (e.g. the Philippines in relation to domestic workers) with the aim of preventing debt bondage.
- x. Supporting the **pivotal role of Labour Attachés** in monitoring recruitment, through providing resource, training and guidance (e.g. Sri Lanka) because these officials are the only personnel with oversight of both ends of the international recruitment process and significant (potential) power to prevent exploitation.
- xi. **Bilateral agreements which specify procedures for recruitment monitoring** (e.g. the Philippines with Canadian provinces) to enhance bilateral, cross-governmental, recruitment monitoring.
- xii. **Special investigation units and tribunals** charged with monitoring and enforcing recruitment legal and policy frameworks (e.g. Nepal), but adequately resourced so that expertise in tackling recruitment abuses is created and nurtured.
- xiii. Maintenance of a regularly updated **hard copy list of PRA licensees** for migrants who do not have access to the internet (e.g. the Philippines) and public registers which include **‘grading’ according to sanctions applied or complaints made** (e.g. Viet Nam) or according to **awards for good practice** (e.g. the Philippines) in order to increase transparency and accountability as well as disincentives/incentives to good practice.
- xiv. **‘Intelligence-led’ enforcement** based on information-sharing between all relevant regulatory bodies (e.g. the UK) so that all available resources are effectively maximized.
- xv. Destination state authorities appointing a **liaison on recruitment to the CPMS overseas mission** and developing protocols for working together (e.g. Bahrain and Jordan) to increase bilateral coordination and oversight of recruitment.
- xvi. **Joint and several liability requirements** which enable CPMS migrants to sue their home recruiter for financial restitution even where the wrong has been committed by the destination state business.

## 6.2 Recommendations to CPMS governments

The following are recommendations to CPMS governments for concrete actions they can take in order to better monitor recruitment industries. These are based on the evidence collated and presented in this report. Although there is much that destination state governments need to do, recommendations to them are not included here as that the report was commissioned by IOM within the auspices of their role in coordinating the Colombo Process Regional Consultative Process.

16. CPMS governments may wish to consider developing **National Action Plans on Recruitment Monitoring**, using the examples of National Action Plans for the Promotion and Protection of Human Rights<sup>340</sup> and National Action Plans on Business and Human Rights as frameworks.<sup>341</sup> Plans could establish the overall vision and objectives of national level recruitment monitoring, including explicitly dealing with any perceived or real tensions between effective monitoring and managing successful labour export programmes for economic development. Plans should also include explicit steps on how to enforce regulatory frameworks and what actions are required at national and international level in order to implement the plans. These plans could be developed in a multi-stakeholder context, including NGOs and trade unions, as well as the private sector as partners in the process. NGOs and trade unions are largely not included in state processes of recruitment monitoring, despite the fact that these non-governmental organizations are often party to the best available evidence on recruitment abuses and what might work in addressing these. Relationships with recruiters, depending on the national context, can be too close or outright hostile, however, working in close partnership with business is necessary to understand the challenges that they face.
17. CPMS governments may wish to explore the possibility for establishing a **regional monitoring and enforcement body** ('InterRec') aimed at targeting exploitative and abusive recruiters, sharing knowledge about good enforcement practice, and developing better coordinated enforcement relationships with inspectorates and officials key destination states. This could be especially appropriate given the cross-border nature of international recruitment. (There are other international enforcement bodies, such as 'Interpol' upon which CPMS governments could draw.) Ideally, an organization such as this could operate as a physical entity, but in the early stage a 'virtual InterRec' would also be useful. Such a body could operate in particularly crucial recruitment corridors, and include seconded officials from both origin and destination states.
18. CPMS governments may wish to consider **working together as a bloc to abolish recruitment fees**. Abolishing recruitment fees is a momentous move and will not happen overnight; but it nevertheless could be set out as a long-term, aspirational goal, leading to the implementation of Private Employment Agencies Convention, 1997 (No. 181) (C181). As long as PRAs are allowed to charge recruitment fees to migrants, they will continue to do so. Yet, high recruitment fees have been repeatedly identified as the primary factor in causing or contributing to human rights abuses. The CPMS Secretariat may wish to consider facilitating an aspirational statement between CPMS governments on recruitment fees. CPMS governments may also wish to consider establishing a 'Working Group on Recruitment Fees' within the CPMS Process with the purpose of exploring the possibility for consensus on fee-charging among CPMS governments. The Working Group could be charged with mapping the transnational fee-charging in the different recruitment corridors, sharing information about good enforcement and regulatory practice, and establishing a roadmap for future action by CPMS governments.
19. CPMS governments may wish to consider introducing new regulation requiring PRAs to draft and sign written commercial contracts covering all their business relationships, including their

<sup>340</sup>See <http://www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx> [Accessed December 2014]

<sup>341</sup>See <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> [Accessed December 2014]

international business relationships, and the fees and commissions that are charged between the businesses. For transparency and accountability the contracts should be available to government inspectors.

20. CPMS may wish to consider **establishing specialist investigation units on recruitment and decentralizing their monitoring activities** enabling more and better oversight of PRA and sub-agent activities nationally. This would require building up regional and local offices of specially trained staff. Using intelligence from other enforcement bodies (e.g. tax authorities) has also been shown to be a useful way of highlighting which licensed PRAs are most risky in terms of non-compliance, or most likely to perpetrate or be engaged in grievous human rights abuses. Identifying the most risky licensed PRAs could enable authorities to target inspections (of premises and paperwork) on this group. In seeking intelligence about PRAs, migrant workers are an essential source of information.
21. CPMS governments may wish to consider **collecting evidence on the impact of positive examples of coordination** between destination state authorities and overseas missions, such as that reported between CPMS overseas missions and government officials in Bahrain and Jordan (see Section 4.3). Robust data will provide the evidence that can be used to share with other destination states about what works in recruitment monitoring, in order to build leverage and consensus within the Abu Dhabi Dialogue.
22. CPMS governments may wish to consider collecting more evidence as to **what extent PRAs and employers in destination states contribute to recruitment abuses** by, for example, not paying the full cost of recruitment or charging fees to CPMS PRAs that is then passed on to migrants. This could be used as robust evidence to challenge the view among destination State governments that recruitment abuses only occur in the CPMS and to build leverage and consensus as to how to tackle this.
23. CPMS governments may wish to consider reviewing the availability of access to **judicial and non-judicial remedy for migrant workers seeking redress for exploitation perpetrated by recruiters**. A regional compendium compiled of complaints mechanisms could be produced for sharing publicly between CPMS governments, with migrants and with advocates, including civil society. CPMS governments may wish to also consider establishing joint and several liability requirements in PRA legal and policy frameworks to enhance the opportunities for migrants to hold recruiters accountable.
24. CPMS governments may wish to consider seeking to include **recruitment monitoring requirements in bilateral labour agreements** concluded with destination state authorities. At a minimum, bilateral labour agreements between CPMS and destination states could include the requirement that employers and destination country PRAs should only contract with licensed PRAs, the names of which should be available to the authorities at both sides. This could be accompanied by clearly delineated sanctions for contracting with unlicensed PRAs, such as a Labour Attaché refusal to process paperwork for those employers and PRAs which have been to have not complied with agreed standards. Agreements could include a requirement for both implementing authorities to annually report progress.

25. In order to enhance the training available for officials responsible for scrutinising license applications, CPMS governments may wish to consider introducing **'Red Flag Guidance'**. Guidance which sets out the key 'red flags' which licensing officials should look for as warning signs when reviewing documentation submitted by applicant PRAs. The identification of red flags could stimulate a 'second pair of eyes' looking at the license application or potentially trigger an inspection to further investigate. Red flag systems are commonly used by other types of inspectorates such as those that monitor financial institutions.<sup>342</sup> Given the similarities in licensing systems, Red Flag Guidance could be jointly developed and shared within the CPMS.
26. CPMS governments may wish to consider clearly setting out **what business activities PRAs are allowed to engage in** according to the terms and conditions of their license. PRAs may engage in a multitude of different activities as part of the international recruitment process for which they charge a fee to migrants. Some activities - for instance, training centres and travel - are known to often result in activities which are harmful to or expensive for migrants. Restricting or placing requirements on the other business activities (such as travel) that PRAs can legitimately engage in or profit from has been identified as an area of promising practice in recruitment monitoring.
27. CPMS may wish to consider producing **'human rights guidance'** or **'performance standards'** for PRAs covering behaviour at home as well as through their business relationships. These could take the form of enhanced Codes such as those developed in Viet Nam, Sri Lanka, or the UK. They should be based on recognized international human rights standards, and be developed in a multi-stakeholder context so that all the dilemmas and risks involved in international recruitment can be included. Specific attention should be given to areas which are problematic, such as conducting due diligence on potential business partners, or setting up grievance mechanisms for migrant workers.
28. CPMS governments may wish to consider **grading licensed PRAs** according to the number of complaints and or sanctions made against them and publishing this information. A public register of PRAs which includes a grade based on the number of complaints and or sanctions applied makes the licensing framework transparent to users, which includes migrants, employers and destination country PRAs, and CPMS Labour Attaché. Such a system will enhance the ability of employers and other PRAs to exercise leverage over recruitment business practice as well as to create incentives/disincentives to recruitment businesses regarding their business behaviour. Similarly, CPMS may wish to consider establishing a grading framework which incentives good practice, such as that in the Philippines discussed in Section 4.3.1.
29. Where resources allow, CPMS governments may wish to consider **increasing Labour Attaché presence in key destination states accompanied with clear guidance on recruitment monitoring**, such as Sri Lanka's Labour Attaché Manual highlighted in Section 4.3.2. With limited resources, increasing the numbers of Labour Attachés may be beyond reach for CPMS, it is however included as a recommendation in order to flag the importance of Labour Attachés' roles in effective recruitment monitoring. Labour Attachés are able to effectively scrutinize both the

<sup>342</sup>E.g. See Federal Trade Commission red flag guidance.

<http://www.mondaq.com/unitedstates/x/247972/Data+Protection+Privacy/New+FTC+Red+Flag+Rule+Guidance+To+Help+Fight+Identity+Theft>

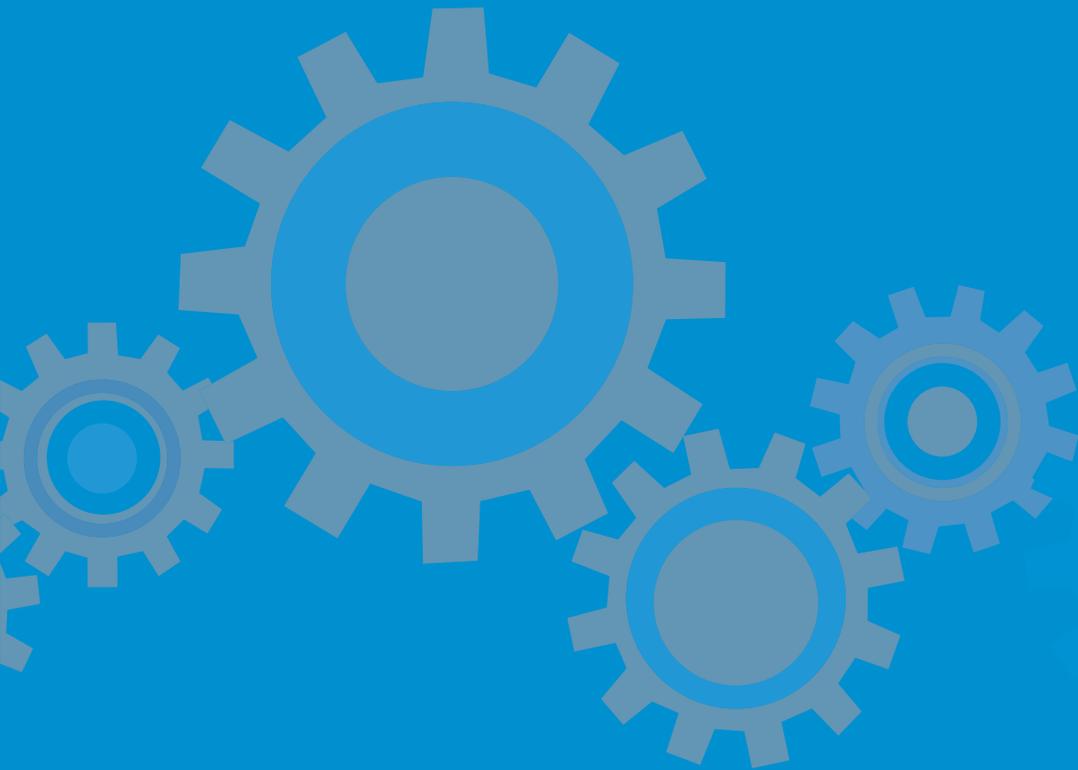
destination state end of the emigration/immigration process as well as that which takes place in the home country. Labour Attaches can screen out the 'bad actors' from the 'good actors' in the recruitment process. They are also ideally placed as a coordinating link between the monitoring and enforcement bodies in the destination state and the home authorities. Also identified in the body of the report, Labour Attachés would benefit from clear guidance and training on recruitment monitoring. In particular, a system of 'red flags' which Labour Attachés should be looking for when screening documents would be helpful in identifying which applications may require a 'second pair of eyes' or further investigation. Producing clear guidance would also ensure that the process is transparent to PRAs so that they are clear about the process.

9. CPMS governments may wish to consider establishing a joint Working Group aimed at developing more effective action against illegal recruiters/sub-agents. Sub-agents are prevalent across CPMS and as it stands, essential to the process of international recruitment; sub-agents are also a major cause of exploitation during the recruitment process. There is therefore an urgent need to tackle the phenomenon of sub-agents, but little understanding about what can work to overcome the substantial challenges in taking (consistent) enforcement actions against sub-agents. A CPMS Working Group, perhaps facilitated by IOM, could share practice and lessons learnt.



Part 2

# MIGRANT WELFARE ASSISTANCE





CPMS migrants receive few rights and are often subject to systematic exploitation in key destination states. Part 2 of this report discusses the welfare assistance to which CPMS nationals have access before, during, and after her/his migration, defined by the IOM as per Figure 22 below. Although most commonly framed in terms of ‘migrant worker protection’, access to these forms of welfare assistance are necessary in order that migrants can realize basic human rights, such as the right to health care, and the right to access remedy. After a brief review of the international framework which underpins migrants’ access to welfare, the report discusses the availability to CPMS migrants of migrant welfare funds, pre-departure programmes, credit, health care, repatriation, emergency lodging and shelter, legal services and bereavement services. Where evidence on the impact or success of a particular service or programme exists, this is also reported.

Figure 22: CPMS migrant welfare assistance





## Chapter 1

# The International Framework for Welfare Assistance for CPMS Migrants

This section (very) briefly reviews the human rights background to migrants' access to welfare, constituting primarily-but not solely-rights to access to health care and to social security.<sup>343</sup> All international human rights law is grounded in the principle of non-discrimination, meaning that such law refers to individuals regardless of her/his immigration status, sex, race, or sexuality (a non-exhaustive list).<sup>344</sup> The baseline of the international human rights regime is the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948. Although not a legally binding document, it nevertheless constitutes what the UN refers to as "the Magna Carta for all humanity".<sup>345</sup> The UDHR asserts that everyone (i.e. including those subject to immigration regulations) has, "the right to a standard of living adequate for the health and well-being [...] including medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control".<sup>346</sup>

Human rights pertaining to migrants are more specifically detailed in three ILO Conventions: Migration for Employment Convention (Revised), 1949 (No. 97) (C97), Migrant Workers Convention (Supplementary Provisions), 1975, (143) (C143), and Domestic Workers Convention, 2011 (No. 189) (C189). For example, C97 requires ratifying origin and destination states to be responsible for: "Ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination."<sup>347</sup> C97 also requires ratifying states to not discriminate against migrants in providing access to social security (legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment, and family responsibilities).<sup>348</sup> The more recently adopted Domestic Workers Convention, 2011 (No. 189)<sup>349</sup>

<sup>343</sup>This section is drafted with the caveat that it is a very brief overview of the relevant international human rights instruments, treaties, and Conventions - it is certainly not exhaustive. There are many other potentially relevant human rights instruments - for instance, the social security conventions, the European Convention on Human Rights, the European Charter on Fundamental Rights and Freedoms, and the The International Covenant on Civil and Political Rights (ICCPR), which, together with the Universal Declaration on Human Rights and the International Covenant on Social and Economic Rights (ICESCR) forms the basis of the International Bill of Rights, which have not been included here for reasons of space.

<sup>344</sup>Article 2, Universal Declaration of Human Rights - Available at: <http://www.un.org/en/documents/udhr/>. [Accessed December 2014]

<sup>345</sup>See <http://www.un.org/rights/50/carta.htm> [Accessed December 2014]

<sup>346</sup>Universal Declaration of Human Rights, Article 25. Available at: <http://www.un.org/en/documents/udhr/>

<sup>347</sup>Article 5, Convention 97 Migration for Employment (Revised), 1949. See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242). [Accessed December 2014] C97 has been ratified by 23 states, including Italy, Cyprus, Norway, Portugal, Slovenia, Sweden and the Philippines, but no South East Asian or Middle East destination state.

<sup>348</sup>Article 6.1b, Ibid.

<sup>349</sup>Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:2551460](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460)[Accessed December 2014]

also requires ratifying states to undertake effective measures to ensure the health and safety of domestic workers, and to ensure that domestic workers enjoy conditions that are no less favourable to all workers in regard to social security protection, including maternity.<sup>350</sup>

Another source of international human rights law for migrants arises out of the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 (UN ICPRMW, 1990). This requires Member states to ensure a right to emergency healthcare for migrant workers, “that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the state concerned”.<sup>351</sup>

However, as discussed in Section 3.1 (International human rights standards on recruitment), the international human rights framework for migrant workers is limited by the low number of ratifications by states; especially by those states that are destinations for large numbers of migrants (see Table 22). Officials interviewed for this study had a low awareness of the Conventions and their provisions as related to recruitment.

Table 22: Ratifications of Migrant Worker Conventions

Convention	Ratifications by (predominantly) origin countries covered in this study	Ratifications by (predominantly) destination countries covered in this study	Total ratifications
ILO C97, 1949	Philippines	EU: Belgium, Cyprus, France, Germany, Italy, Netherlands, Portugal, Slovenia Spain + Norway	48
ILO C143, 1975	Philippines	EU: Cyprus, Italy, Portugal, Sweden	23
ILO C189, 2011	Philippines	Germany, Ireland, Italy + Switzerland	16
UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990	Sri Lanka, Bangladesh, Philippines, Indonesia		38 signatories, 47 parties

Another limitation is that the ILO migrant conventions-C97, C143 and C189-unsurprisingly, as they were negotiated within the ILO tripartite framework which includes governments, businesses, and trade unions, only set out rights for documented migrants - those who are in compliance with immigration regulations. On the other hand, the instrument which gives most weight to migrants’ – documented and irregular – access to rights – the UN ICPRMW, 1990 – has largely only been ratified by origin states. The ICPRMW, 1990 has been

<sup>350</sup>Available at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REC,en,R201,/Document](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REC,en,R201,/Document) [Accessed December 2014] Accompanying Recommendation 201 sets out that arrangements for medical testing should respect the principle of confidentiality of personal data and the privacy of domestic workers, prevent any discrimination according to such testing, and ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status.

<sup>351</sup>Available at: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm> Article 28 [Accessed December 2014]

critiqued on the basis that states reliant on migrant labour are clearly reluctant to ratify any international conventions that limit their discretion and ability to restrict the rights of migrants living and working in their territories.<sup>352</sup> In other words, sovereignty – the desire of destination states to maintain control of their labour markets – even while benefitting economically from the labours of migrant workers, trumps the human rights of the incomers. Migrants’ rights to access welfare cannot be separated from destination state admission policies.

Nevertheless, the welfare of CPMS migrants is understandably an important topic of conversation within multilateral frameworks. Of note, the ASEAN ‘Declaration on Protection and Promotion of the Rights of Migrant Workers, 2007’ affirmed the rights that migrant workers from Colombo Process Member States (CPMS) have in key destination countries within the bloc (i.e. Malaysia, Singapore and Thailand).<sup>353</sup> The Declaration represented an attempt to facilitate access to social welfare, and to establish policies and procedures to facilitate the protection of migrant workers when abroad, as well as repatriation/reintegration to the countries of origin. It sets out the obligations of the destination states in clauses 5-10 (reproduced in Figure 23).

*Figure 23: ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers, 2007: Obligations of ‘Receiving States’*

**Pursuant to the prevailing laws, regulations and policies of the respective receiving states, the receiving states will:**

- Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
- Work towards the achievement of harmony and tolerance between receiving states and migrant workers;
- Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfil the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties;
- Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;
- Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and
- Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws or regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

However, seven years later, little concrete progress has subsequently been reported towards formalizing specific agreements on migrant welfare, with states reluctant to commit to formal treaties on this topic.

<sup>352</sup>M. Ruhs, 2013, *The Price of Rights: Regulating International Labor Migration*. Oxford. Princeton University Press.

<sup>353</sup>See

<http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-3> [Accessed June 2014]

Nevertheless, participants hope that the 2015 (ASEAN) regional integration process will involve establishing social protection for all migrant workers and common labour standards.<sup>354</sup>

Migrant welfare is regularly an agenda item in the multilateral and bilateral discussions which take place between Colombo Process and Abu Dhabi Dialogue (ADD) Member States. The most recent Ministerial consultation, in November 2014, committed its participants to collaborative regional proposals that “aim to improve the administration of the contract employment cycle in a manner that increases its beneficial and development outcomes for workers, employers and member countries of labour origin and destination.”<sup>355</sup> Especially of note, a ‘Comprehensive Information and Orientation Program for Migrant Workers’, developed by the Philippines authorities with the aim of better preparing migrant workers for life abroad, as well as protecting them whilst resident in the destination country, is to be implemented across all 18 ADD Members.<sup>356</sup> However, as befits a multilateral framework which declares itself a ‘voluntary, non-binding and informal state-led consultative process’, no formal agreements about welfare support have as yet been signed.

The CPMS governments have instead largely relied on negotiating bilateral labour agreements in order to try to secure welfare assistance for their nationals (see Section 4.1.4 Bilateral agreements). In particular, the Philippines has attempted to negotiate better working conditions for its nationals in key destination states, including access to health care, the use of standard employment contracts and increases in migrant salaries. As noted in the earlier section, bilateral agreements have their limitations, especially in the time it takes to negotiate such treaties, and their limited enforceability.<sup>357</sup> In general, the bargaining power of CPMS (origin countries) to negotiate agreements is weak, with the destination states able to set the terms of the agenda.<sup>358</sup> As a CPMS Labour Attaché based in Kuwait acknowledged, negotiating bilateral agreements is a time-consuming process and problematic if there are no accompanying monitoring mechanisms to ensure that the agreement is implemented and enforced:

We work step by step on bilateral labour agreements. We are working on one with the Kuwait Government. I personally do not believe in standard contracts without a legal framework of enforcement mechanisms.<sup>359</sup>

In order to mitigate the gaps in welfare assistance that is available to CPMS nationals during her/his migration(s), CPMS states have established packages of assistance, including migrant welfare funds and voluntary and compulsory schemes of insurance, to which this report turns to discussion of next.

<sup>354</sup>The Task Force on ASEAN Migrant Workers (TF-AMW) Civil Society proposal on the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers recommends developing a regional system of portable ‘migrant social security and health insurances.’ The proposal further explains that ‘an important element of an economically integrated ASEAN will be systems of social protection devised for migrant workers to ensure they are not deprived of social security as a result of extended periods of time working outside the home country? (TF-AMW proposal, paragraph 167).

<sup>355</sup>Kuwait Declaration, Kuwait, 27 November 2014. Available at:

[http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms\\_323901.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms_323901.pdf)

<sup>356</sup>See Opening Statement from Secretary Rosalina Dimapilis-Baldoz, Department of Labor and Employment, Republic of the Philippines, Third Ministerial Meeting of the Abu Dhabi Dialogue, Sheraton Hotel, Kuwait 27 November, 2014. Available at: <http://www.dole.gov.ph/files/27%20Nov%2014%20Speech%20-%20SRDB%20re%20ADD%20III%20as%20delivered.pdf> [Accessed December 2014]

<sup>357</sup>Interviewee KIIK02, June 2014.

<sup>358</sup>Puri, L 2007, Assuring development gains and poverty reduction from trade: the labour mobility and skills trade dimension. United Nations Conference on Trade and Development. [http://unctad.org/en/docs/ditctncd20078\\_en.pdf](http://unctad.org/en/docs/ditctncd20078_en.pdf)

<sup>359</sup>Interviewee PHLA2, May 2014.

## Chapter 2

# Migrant Welfare Funds and Private Insurance Schemes

Colombo Process Member States (CPMS) have established a mixture of private insurance schemes (mandatory and voluntary), and state-coordinated welfare funds in order to support migrants. These have been reviewed extensively elsewhere,<sup>360</sup> so this section therefore restricts itself to a brief overview of the key components of the schemes, highlighting the recognized challenges to successful implementation of such schemes, as well as promising practice.

Bangladesh, India, Nepal, Pakistan, Philippines, Sri Lanka, and Thailand have long-established migrant welfare funds. Such schemes involve either a voluntary or compulsory deposit by migrants, which is then used to fund services such as training and pre-departure services, assistance to families and returnees, emergency repatriation, life and medical insurance, and reintegration assistance. In short, migrant welfare schemes are contributory schemes insuring migrants against unforeseen circumstances during the migration process, and in some cases, offering support to migrants' families who have been left behind. They also provide a government 'pot of money' which can be used to fund more general services for migrants, including embassy services, and pre-departure programmes. Although schemes are usually government-run, they may also include a private insurance component upon which migrants can draw financially if s/he requires health care, is injured on the job, and/or has been repatriated. Typical services included within welfare funds are set out in Figure 24.

Figure 24: Typical services provided within migrant welfare funds<sup>361</sup>

Core Services	Secondary Services
Insurance against health, disability and health.	Vocational training.
Repatriation of workers due to contract violations, fraudulent job placement, and/or physical violence.	Scholarships for university education, or education fees for families of migrants.
Pre-departure training and information.	Re-integration loans upon return.

To elaborate on these points and some areas of comparison and difference between the CPMS schemes, some more specific details about the Nepalese, Philippines, and Indian schemes are outlined below.

The Nepalese government mandatorily requires outgoing migrants to contribute NPR1000 (approximately 10

<sup>360</sup>Protecting Temporary Workers: Migrant Welfare Funds from Developing Countries. N. Ruiz and D. Agunias. 2008. Migration and Development Brief 7. The World Bank; Comparative Study of Overseas Workers Welfare Fund of Pakistan, Sri Lanka, and the Philippines. E. Tan.

<sup>361</sup>Adapted from Protecting Overseas Workers: Lessons and Cautions from the Philippines. D Agunias and N Ruiz. 2007. Migration Policy Institute. Available at: [www.migrationpolicy.org/pubs/MigDevInsight\\_091807.pdf](http://www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf) [Accessed December 2014]

USD) to a welfare fund as a condition of receiving emigration clearance.<sup>362</sup> Managed by the government Foreign Employment Board (FEPB), the fund also receives the interest which is earned from the security deposits lodged with the government by private recruitment agencies (PRAs), the license fees which are collected from the PRAs and training institutions; and grants received from local or foreign entities. The fund is intended to finance skills training, post-return employment programmes, medical treatment for workers' families, and the establishment of childcare centres for children of female migrant workers.<sup>363</sup> Membership of the scheme lasts as long as the migrant is overseas. According to a recent report, at the end of 2009/10, the fund was estimated to hold NPR 580 million (USD 5,980,774), which by March 2014 had quadrupled to NPR 2.14 billion (USD 22 million).<sup>364</sup> PRAs are also mandatorily required to purchase life insurance for Nepalese migrants up to an amount of NPR 500,000 (approximately USD 5,000).<sup>365</sup> PRAs must submit this paperwork as a mandatory part of the emigration clearance process.

In contrast, the Philippines welfare fund, operated by the Overseas Workers Welfare Administration (OWWA) and created in 1977, does not require mandatory contributions. Migrants can choose to enrol in the contributory fund prior to departure or even in a Philippines embassy while working overseas. Like Nepal however, membership is valid until the employment contract expires. The scheme does however require mandatory contributions from both employers and PRAs which pay USD 25 into the fund on behalf of the migrants. OWWA members are entitled to six key benefits and services:<sup>366</sup>

- ❑ Health services (including to treat mental disorder, physical disability and paralysis, speech disorder, stroke, accident, other illnesses and injuries causing temporary physical incapacity).
- ❑ Medical Rehabilitation Program.
- ❑ Disability and Dismemberment Benefit (up to PhP50,000 (USD 1139) for partial disability and PhP100,000 (USD 2278) for permanent or total disability).
- ❑ Total Disability Benefit.
- ❑ Death Benefit (up to PhP120,000 (USD 2734) for natural causes, and PhP220,000 (USD 5013) for accident-related death).
- ❑ Burial Benefit.

OWWA has also developed a small scholarship program for migrants' families, providing grants of USD 1,200 per year for college-degree courses of one-year and six-month vocational courses. Also similarly to Nepal, PRAs are mandatorily required to take out insurance for all the workers they deploy overseas.<sup>367</sup> At the minimum, the insurance policy is required to cover the following contingencies: accidental death, natural death, permanent/total disability; compassionate visit; medical evacuation and medical repatriation.<sup>368</sup> In addition, migrants can voluntarily contribute to the government contributory Social Security System (SSS), which is aimed at anyone who is not part of the mainstream labour market,

<sup>362</sup>Nepal Foreign Employment Rules, 2008 Chapter 7.

<sup>363</sup>*Ibid.*

<sup>364</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations.

<sup>365</sup>Nepal has nine registered life insurance companies (listed on the DoFe website), four of which offer specialised life insurance products for migrant workers, with variable premiums dependent on the worker's age and duration of the overseas employment. See Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations.

<sup>366</sup>Comparative Study of Overseas Workers Welfare Fund of Pakistan, Sri Lanka, and the Philippines. E. Tan.

<sup>367</sup>The Migrant Workers and Overseas Filipino Act of 1995 (RA 10022 No. 8042").

<sup>368</sup>See <http://www.insurance.gov.ph/htm/pd612.htm> [Accessed June 2014]

including non-working spouses and migrants. The scheme covers retirement, sickness, disability, maternity, and death benefits.<sup>369</sup>

In a different approach to funding migrant welfare, the 'Indian Community Welfare Fund' (ICWF), established in 2009 and operational in 17 missions, is funded by a service charge on Consular services (including passports, and visas), attestation of employment documents in overseas missions, and voluntary contributions sought from the Indian community as well as budgetary support from the Indian Government (Ministry of Overseas Affairs) which is intended to continue until the fund becomes self-sustaining. The ICWF was established in order to support: "overseas Indian workers duped by unscrupulous intermediaries in the host countries, runaway house maids, those who become victim of accidents, deserted spouses of overseas Indians or undocumented Indian workers in need of emergency assistance or any other overseas Indian citizens in distress".<sup>370</sup> It provides for contingency expenditure incurred by the Indian Missions for carrying out welfare activities for Indian nationals, as well as specific support for migrants. Benefits and services include:

- ❑ Boarding and lodging for 'distressed Overseas Indian workers' in Household/domestic sectors and unskilled labourers;
- ❑ Extending emergency medical care to the 'Overseas Indians in need';
- ❑ Providing air passage to stranded 'Overseas Indians in need';
- ❑ Providing initial legal assistance to the Overseas Indians in deserving cases;
- ❑ Expenditure on incidentals and for airlifting the mortal remains to India or local cremation/burial of the deceased 'Overseas Indians' in such cases where the sponsor is unable or unwilling to do so as per the contract and the family is unable to meet the cost;
- ❑ Providing the payment of penalties in respect of Indian nationals for illegal stay in the host country where prima facie the worker is not at fault;
- ❑ Providing the payment of small fines/penalties for the release of Indian nationals in jail/detention centre;
- ❑ Providing support to local Overseas Indian Associations to establish Overseas Indian Community Centres in countries that have population of overseas Indians exceeding 1,00,000; and
- ❑ Providing support to start and run Overseas Indian Community-based student welfare centres in Countries that have more than 20,000 Indian students.

In addition, the fund has provided the finance required in order to establish an Indian Workers Resource Centre in Dubai, created as a 'one-stop shop' for addressing information and assistance needs of Indian migrants.<sup>371</sup>

The Indian government has also established a number of contributory insurance schemes for Indian migrants. In 2003, the Pravasi Bharatiya Bima Yojana (PBBY) insurance scheme was introduced. Contributions of Rs. 275 to Rs. 375 (4.5 to 6 USD) are mandatory, which provides cover for: repatriation of remains in case of death overseas; reimbursement of return flight ticket if contract is substantially changed or terminated early; medical cover; legal expenses in case of litigation; maternity benefits; and hospital

<sup>369</sup>See <https://www.sss.gov.ph> [Accessed December 2014]

<sup>370</sup>See [http://moia.gov.in/writereaddata/pdf/revise\\_icwf.pdf](http://moia.gov.in/writereaddata/pdf/revise_icwf.pdf) [Accessed June 2014]

<sup>371</sup>See

<http://www.government-world.com/917-indian-women-working-abroad-have-benefitted-from-indian-community-welfare-fund-icwf/> [Accessed June 2014]

fees for family members of a deceased/disabled worker. Cover of a minimum sum of Rs. 10 lakhs (USD 16,636) is payable to the nominee/legal heir in the event of death or permanent disability of any Indian migrant.<sup>372</sup>

Moreover, in 2012, the Indian government launched the Mahatma Gandhi Pravasi Suraksha Yojana (MGPSY) with the objective of encouraging low-wage overseas Indian workers to save for her/his return, resettlement, and pension, as well as provide an additional form of life insurance cover. For those who save between Rs. 1000 (16 USD) and RS. 12,000 (1937 USD) per year, the Indian government contributes an additional Rs. 1000 (16 USD). Women can receive an additional Rs. 1000 (16 USD) top-up from the government. On their return to India, the subscriber can withdraw the 'Return and Resettlement' savings as a lump sum.<sup>373</sup>

Overall, the various schemes of the CPMS are funded by mixtures of fees charged to migrants, PRAs, and destination country employers with some contributions from governments. The welfare funds are largely government-operated, with only the Philippines opting for a model of governance that separates responsibility from the organs of state into the separately constituted OWWA. Interestingly, the governance of the OWWA includes migrant participation on the Board to provide an additional layer of oversight.<sup>374</sup> Private sector insurance companies are increasingly important to the mix, with contributions often compulsory.

The underlying principle is to ensure at least a modicum of protection for migrants who may be denied these protections and rights in destination countries. On this basis, international organizations and researchers have tended to view welfare schemes as a success story. The following positive points are usually raised:

- ❑ Because of their contributory basis, migrant welfare schemes spread financial risk: they enable origin country governments to raise sufficient revenue to finance the, inherently expensive, welfare support which they would be unlikely or unable to otherwise fund.<sup>375</sup>
- ❑ Welfare funds also enable origin governments to provide key welfare services to their nationals in the country of destination, especially to fund their embassies' ability to fund repatriation in emergency situations.

According to one recent report, funds also have the potential to enable governments to financially support activities that can leverage migrant resources for development, such as business entrepreneurship and career development among returning migrants, although no evidence of these provisions were found during the course of this research.<sup>376</sup>

In addition to the achievements of welfare funds, recent studies have identified three challenges of note to their successful operation, as well as that of the private insurance schemes. The first of these is that migrants can find it difficult to access support from the welfare funds and/or compulsory insurance schemes. To use Nepal as an example, while migrants' surviving families have been able to claim for life

<sup>372</sup>Salient features of the Pravasi Bhartiya Bima Yojana. 1.04.08. Available on Ministry of Overseas Indian Affairs website: [http://moia.gov.in/pdf/p\\_b\\_b\\_ywef\\_%201\\_4\\_8.pdf](http://moia.gov.in/pdf/p_b_b_ywef_%201_4_8.pdf)

<sup>373</sup>This is targeted at migrants who do not have secondary school education and who hold Emigration Check Required (ECR) passports. Information available on Ministry of Overseas Indian Affairs: <http://moia.gov.in/services.aspx?id1=409&id=m12&idp=409&mainid=73> A Subscriber's Guide to MGPSY: [http://moia.gov.in/writereaddata/pdf/SubscriberGuide\\_MGPSY.pdf](http://moia.gov.in/writereaddata/pdf/SubscriberGuide_MGPSY.pdf) [Accessed December 2014]

<sup>374</sup>Development Policy in Asia: Case studies on development policy in Asia. Teresita Cruz-del Rosario. 2014.

<sup>375</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G Battistella, 2013. IOM.

<sup>376</sup>Ibid.

insurance in the case of death overseas, or for permanent disability, a recent report identifies that few claims have been settled for other purposes.<sup>377</sup> The study also found that migrants are not necessarily aware that s/he has paid into the welfare fund, nor even of its existence. Knowledge of insurance policies purchased by PRAs was equally weak.<sup>378</sup>

Consequently, the authorities are reported to have spent very little of the money from the welfare fund. Nepalese media reported that the fund had collected NPR 540.03 million between 2007 and 2009 but only spent NPR 84.5 million, leaving it with a surplus of NPR 453.8 million.<sup>379</sup> Also in Nepal, where PRAs are responsible for paying for their recruits' insurance cover, another study found that PRAs do not pass information about the policies to migrants, leaving migrants unable to access these funds.<sup>380</sup> In short, PRAs are not under any legal obligation to inform the migrant worker that he or she is insured, or to explain how to access insurance and although government-provided orientation sessions do provide basic information about the Welfare Fund, many migrants do not attend these sessions.<sup>381</sup>

Secondly, welfare funds and insurance schemes only provide limited coverage for those who travel through regular emigration/immigration channels. Individuals that travel irregularly—due to recruitment restrictions in place in CPMS, often likely to be women – cannot benefit from the schemes. In addition, most schemes only fund migrants who are within the period of their initial employment contract meaning that those that extend their contracts while overseas will not be covered.<sup>382</sup>

Thirdly, CPMS welfare and insurance schemes have been subject to allegations of financial mismanagement at various times. For instance, in Nepal in 2010, a (FEPB) board member accused his agency of approving items of expenditure such as refurbishing the office of the Minister of Labour and Employment, and providing fuel and maintenance of his vehicles.<sup>383</sup> A subsequent internal report confirmed that the fund was used for government expenses in violation of the rules.<sup>384</sup> The Indonesian insurance scheme has also been subject to a highly critical report from the World Bank, which, after a government review, eventually led to the disbandment of the consortium of insurance companies which were providing migrant worker insurance schemes.<sup>385</sup> Also on the topic of finance, the following section reviews the CPMS credit schemes which are offered to CPMS nationals, pre- and post-migration.

<sup>377</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>378</sup>E.g. see Amnesty International, False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers, 2012, London, Amnesty International, 2012.

<sup>379</sup>ILO 2009 Insurance Policies for Migrant Workers: Current Practices, Gaps and Solutions See [http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS\\_122088/lang--en/index.htm](http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS_122088/lang--en/index.htm) [Accessed June 2014]

<sup>380</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>381</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>382</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>383</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>384</sup>See <http://www.ekantipur.com/2014/03/13/headlines/Govt-misused-migrant-workers-fund/386662/> [Accessed June 2014]

<sup>385</sup>Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.



## Chapter 3

# Access to Credit for Migration in the CPMS

Recruitment fees paid by migrants in order to migrate have risen correspondingly with the growth in the number of recruiters and middle men facilitating the migration process.<sup>386</sup> For migrants the total cost of migration charges usually far outstrip the savings or collateral which migrants can raise through selling property or family possessions. At the same time, migrants in CPMS typically face significant barriers in accessing credit within mainstream banking systems. This leaves migrants often only able to finance their trips by taking loans from moneylenders ('loan sharks') at high interest rates.<sup>387</sup> For instance, a recent World Bank study of Nepalese migrants who migrated to Qatar found that individuals were paying up to 60 percent interest every six months while the debt remained outstanding, and as much as 156 per cent per year.<sup>388</sup> In some circumstances migrants 'borrow' the cost of recruitment fees from PRAs, which then deduct repayments from her/his salary in the destination country.

In order to try to prevent expensive and exploitative lending to migrants, among the CPMS, Bangladesh, Sri Lanka and Viet Nam have established systems of credit specifically for migrants who are seeking to work overseas. Bangladesh has a long history of developing low-interest, 'micro-credit' financial services aimed at supporting people who, and small businesses which, lack access to mainstream banking and related services. Bangladesh is also the home of Nobel Prize winner and the champion of microfinance, Professor Muhammed Yunus. In April 2011, Bangladesh established the Probashi Kallyan (PKB) or 'Expatriates Bank' to provide low-interest travel loans of up to 84,000 taka (USD 1,100), at interest rates of 9 per cent, to aspirant migrants. Thus far, over 4000 individuals have been advanced loans, which must be repaid through 23 monthly instalments after an initial two months 'grace period'.<sup>389</sup> The PKB was initially financed by a transfer of capital from the Bangladesh migrant welfare fund, referred to above; its purpose of establishing the PKB was to reduce the cost of migration from Bangladesh to that of comparable levels from other South East Asian countries. Reducing the cost of migration, would, it was believed reduce the cost of the loan repayments which Bangladeshi migrants must make, and in turn the Bangladesh government hoped to increase the value of remittances to the national economy.<sup>390</sup> In addition to advancing loans for migration, the PKB also provides 'rehabilitation loans' for returned migrants who wish to purchase land, property or other goods.<sup>391</sup> It is also seeking permission to start offering remittance services. At the time of writing, the bank operates 40 branches across Bangladesh and three booths at the three international airports.<sup>392</sup>

<sup>386</sup>Nepal Qatar Remittance Corridor. Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process. World Bank. I Endo and G Afram. 2011.

<sup>387</sup>Social networks and credit access in Indonesia, C Okten, 2004, World Development 32, 7, 1225-1246

<sup>388</sup>[http://lib.icimod.org/record/26943/files/attachment\\_749.pdf](http://lib.icimod.org/record/26943/files/attachment_749.pdf) [Accessed June 2014]

<sup>389</sup>See interview with PKB Managing Director / CEO CM Koyes Sami in Rising Bd. Available at: <http://www.risingbd.com/english/detailsnews.php?nssl=17662>

<sup>390</sup>See <http://www.pkb.gov.bd/index.php/mission-and-vission.html> [Accessed December 2014]

<sup>391</sup>See <http://www.pkb.gov.bd/index.php/pkb-activities.html> [Accessed December 2014]

<sup>392</sup>See interview with PKB Managing Director / CEO CM Koyes Sami in Rising Bd. Available at: <http://www.risingbd.com/english/detailsnews.php?nssl=17662> [Accessed December 2014]

A decade prior to this, Sri Lanka established the Ransaviya, Videshika and Siyatha schemes of low-cost loans to migrants, returnees, and returnees from the Gulf Cooperation Council (GCC) countries respectively. In contrast to the Bangladesh scheme, the size of the loans which individuals can apply for are dependent on the level of income offered by the employer and the duration of the employment. Loans accrue interest rates of between seven and 16 per cent, which are subsidized by the Sri Lankan Bureau of Foreign Employment (SLBFE).<sup>393</sup> Access to a re-integration housing loan of about LKR 400,000 (USD 3,069) is provided to migrant workers who are homeless upon their return and those who have become permanently disabled during their overseas employment.<sup>394</sup> Any Sri Lankan national who has worked in a foreign country for more than six months and who has complied with the mandatory registration with the SLBFE (i.e. has travelled through a regular route) can obtain the loan maximum of LKR 500,000 (USD 3,837), at an interest rate of 6 per cent to be repaid over five years. Collateral is however required to obtain a loan.<sup>395</sup>

In contrast again to either Bangladesh or Sri Lanka, Viet Nam has taken a different approach in targeting migration loans intended to cover the full cost of migration (according to the costs detailed within the employment contract) with preferential rates at poor and minority households. The purpose of targeting these loans is in order to encourage these groups to migrate, with opportunities at home limited.<sup>396</sup> For those who fall within these groups, the loan is interest-free for the first 12 months. Individuals who do not fall within the targeted groups are offered loans of up to 80 per cent, with subsidized interest rates during the first year.<sup>397</sup> Viet Nam law also provides that workers who return home and encounter hardships shall be entitled to preferential loan rates.<sup>398</sup> In these circumstances, commercial banks are authorized to lend up to VND 20 million (USD 937) to migrant workers from rural areas without collateral being required.<sup>399</sup>

The objective of all three countries utilising these schemes is to reduce the cost of migration through opening official routes to obtaining credit at far lower interest rates than are available through PRAs or moneylenders (and consequently increase the level of remittances). Yet, there is no available systematic evidence about the impact of any of these schemes, which precludes comparison of the success of otherwise of the different approaches which Bangladesh, Viet Nam, and Sri Lanka have taken towards migration loans. The study has however identified one challenge with migration lending - that the overall uptake of the credit schemes is reported to be relatively low in all three countries.<sup>400</sup> For instance, in Bangladesh, between April 2011 and August 2013, the PKB provided loans for only 2,500 people to go abroad while fewer than 100 returnees received rehabilitation loans. Yet, during the same period, around 1.3 million people migrated to different countries.<sup>401</sup> Low take-up in the Bangladesh situation has been attributed to low awareness of the scheme amongst outgoing migrants and to the alleged cumbersome

<sup>393</sup>See Development Policy in Asia: Case studies on development policy in Asia. Teresita Cruz-del Rosario. 2014. Page 206.

<sup>394</sup>Ibid.

<sup>395</sup>See <http://www.smib.lk/products-and-services/sirinika> [Accessed June 2014]

<sup>396</sup>In 2004, the State Bank Governor's 'Decision 365', aimed at enabling the poor to migrate more easily, led to the Vietnam Bank for Social Policies starting to extend preferential loans to migrant workers from poor households. Subsequently, the Prime Minister's 2009 'Decision 71' approved a project to send 120,000 poor and minority ethnic workers from 61 districts abroad between 2009 and 2020. Under this scheme, workers from identified 'poor' districts are to be fully funded from the state budget for migration costs, including fees for training, accommodation and transportation, and completing necessary procedures. This was followed in 2014, with a decision that poor and ethnic minority households are eligible to apply for a loan equivalent to the total costs of going abroad (as stated in the employment contract). See <http://www.ide.go.jp/English/Publish/Download/Dp/pdf/414.pdf> [Accessed June 2014]

<sup>397</sup>See <http://vietnamnews.vn/society/253496/migrant-workers-get-special-support.html>. [Accessed June 2014]. Migrants also are to be given a subsidy of USD50 to attend short-term vocational training courses, USD140 to take foreign language lessons, and financial support to apply for passports and visas, obtain health certificates, and to obtain a legal background check.

<sup>398</sup>Law on Vietnamese Workers Working Overseas Under Contract (2006)

<sup>399</sup>See <http://vietnamnews.vn/society/253496/migrant-workers-get-special-support.html>. [Accessed June 2014].

<sup>400</sup>Interviews with key informants in all three countries reflected on this fact.

<sup>401</sup>See <http://www.ilo.org/public/english//region/asro/bangkok/library/download/pub08-21.pdf> [Accessed June 2014]

processes for applying for credit.<sup>402</sup> Two further noted contributory factors to low take-up in Bangladesh include that the available loan amount (84,000 Tk. approximately 1000 USD) is often below what migrants from Bangladesh need to spent to be able to travel abroad (in reality migration may cost up to Tk.200,000, approximately 2,500 USD), and an alleged lack of skilled manpower and nepotism among bank employees.<sup>403</sup>

A further challenge reported was that the reintegration loans have reportedly been used to re-finance pre-departure loans and costs as many returnees are faced with debts from pre-departure expenses and have therefore resorted to borrowing to pay existing expenses or to finance re-migration.<sup>404</sup> If this is the case, then this would suggest that migrants are not making sufficient money during their overseas employment to pay back their loans in addition to saving. This in turn suggests that pre-departure credit schemes are not successful in reducing the cost of migration, and in fact are contributing to perpetrating a cycle of poverty and re-migration. Providing easier access to credit may in fact disincentivize the reduction of migration costs, or even incentivize intermediaries (PRAs, sub-agents, medical centres, training centres) to actually increase their fees. At the same time, it will do nothing to incentivize destination countries to reduce their costs.<sup>405</sup> There is also a final cautionary note about pre-departure credit schemes which comes from the Philippines, which in 2008, abandoned its scheme due to low repayment rates which threatened its commercial viability amidst huge financial losses.<sup>406</sup> The following section reviews pre-departure orientation and training programmes implemented by the CPMS.

---

<sup>403</sup>See <http://www.dhakatribune.com/banks/2013/sep/22/nepotism-widespread-probashi-kallyan-bank> [Accessed June 2014]

<sup>404</sup>See <http://www.ilo.org/public/english//region/asro/bangkok/library/download/pub08-21.pdf> [Accessed June 2014]

<sup>405</sup>For example in the higher education sector in the US, when the US government provided access to student finance, higher education tuition fees rose by 1,200 % due to the lack of regulation of costs.

<sup>406</sup>See <http://www.philstar.com/headlines/60252/owwa-suspends-ofws%E2%80%99-pre-departure-loan-program>. [Accessed June 2014]

This was established with the purpose of eliminating illegal recruiters and loan sharks, one of the earliest credit schemes for migrants was the now-defunct Philippines Migrant Workers Loan Guarantee Fund. Pre-departure loans could be made to migrants whose employers or PRAs had already paid the compulsory membership contribution to OWWA. With collateral, loans of up to USD4000 at a nine percent interest rate could be used for placement fees, clothing requirements, and other miscellaneous pre-departure expenses.



## Chapter 4

# Pre-departure Orientation and Training Programmes

International organizations, international funders as well as CSOs (civil society organizations) have invested powerfully in developing pre-departure programmes which train and disburse information to migrants prior to leaving home. Their rationale is that many migrants have incomplete and imperfect information about the risks associated with migrating, about job responsibilities, about living and working conditions abroad, and how, where and to whom they can turn to for help. In turn, a lack of information makes migrants extremely vulnerable to exploitation at home and overseas.<sup>407</sup> Within the CPMS, pre-departure programmes can be broadly divided into two: a) those that provide orientation and information and, b) those provide skills and language training. As these programmes have been extensively reviewed elsewhere,<sup>408</sup> this section briefly reviews the key components of selected programmes in CPMS and identifies challenges to their operation, as well as promising practice.

### 4.1 Pre-departure orientation and information programmes

The content of pre-departure orientation and information programmes usually includes information about the migration process, about conditions in the destination country, and about migrants' rights at home and overseas. For instance, the Philippines requires migrants to undergo free one-day pre-departure orientation seminars (PDOS), tailored to specific destinations, which include content on travel regulations, employment and social security concerns, and the rights and obligations of Filipino migrants.<sup>409</sup> Gaining emigration clearance, which is necessary in order to travel regularly, is contingent on participation in the PDOS. Although government-coordinated, the government has subcontracted delivery to 291 (at the time of writing) accredited NGOs and PRAs.<sup>410</sup> Nepal has also made attendance at pre-departure orientation and information session a condition of emigration clearance. Content includes information about the culture and language, labour and immigration rules of the destination country, HIV/Aids and other communicable diseases, sexual and reproductive health, occupational health and safety, conduct, treatment and security of workers, safe remittances.<sup>411</sup>

<sup>407</sup>Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G. Battistella, 2013. IOM.

<sup>408</sup>E.g. Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. D. Agunias, C. Aghazarm, G. Battistella, 2013. IOM; Siddiqui, T. and R Rashid, B Zeitlyn (2008) Information Campaigns on Safe Migration and Pre-Departure Training. Development Research Centre on Migration, Globalisation and Poverty, ILO Dhaka; Pre-departure Orientation Programmes: Study of Good Practices in Asia. A Comparative Study of Philippines, Bangladesh and Sri Lanka. AK. Masud Ali. International Organization for Migration (IOM) and DfID.

<sup>409</sup>See

[http://www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1378%3Apre-departure-registration-and-orientation-seminar-s&catid=145%3Aintegration-and-reintegration&Itemid=833](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1378%3Apre-departure-registration-and-orientation-seminar-s&catid=145%3Aintegration-and-reintegration&Itemid=833) [Accessed June 2014]

<sup>410</sup>See <http://www.gmanetwork.com/news/story/248571/pinoyabroad/ofw-guide-the-required-pre-departure-orientation-seminar> [Accessed June 2014]

<sup>411</sup>Compulsory according to the Foreign Employment Act, 2007.

In addition to formal seminars and information sessions, CPMS governments seek to inform migrants through the media about migration processes, and associated risks. For instance, Sri Lanka funds multiple information campaigns on how to migrate safely. Initiatives include community-level interventions, theatre, talk shows, and discussion programmes as well as information carried by the mainstream media. NGOs, trade unions and church groups are responsible for implementing some of these government-funded initiatives.<sup>412</sup>

Notably, international organizations also play an important role in helping to design and deliver pre-departure orientation sessions. For instance, in Pakistan, IOM offers programmes to assist migrants to:

- ❑ Develop objective and accurate information to help migrants develop realistic expectations (and dispel misconceptions) about life in the country of destination;
- ❑ Facilitate labour market integration through targeted sessions focusing on employment-related issues, including rights and responsibilities, conflict resolution, and how to access available resources related to the job search;
- ❑ Provide a non-threatening, risk-free forum in which migrants can ask questions, seek guidance, and share concerns they may have.<sup>413</sup>

IOM has also played a pivotal role in establishing Migrant Resource Centres (MRCs) in Bangladesh, Nepal and India in coordination with government authorities. Nepal's MRC, established in 2010, advises migrants in person, by email, and by telephone as well as supplying basic information about the requirements for overseas employment and how to avoid becoming a victim of trafficking. MRC websites provide information on actual migration costs, actual wages, and the addresses of organizations such as Nepalese missions abroad.

NGOs and PRAs also play an important role in delivering pre-departure training. In some places such as Sri Lanka, the role of NGOs is limited more or less to providing prospective migrants with information and finding a solution to the problems of returnees. However, in Bangladesh, NGOs have long been involved in the production of pre-departure training and awareness-raising. For instance, in June 2013, the World Bank provided USD 2.6 million to the NGO BRAC to educate potential migrants about work abroad.<sup>414</sup> And in Nepal, an NGO the PNCC - has replicated IOM's MRC in the Jhapa and Chitwan districts.<sup>415</sup>

## 4.2 Pre-departure skills and training programmes

CPMS governments also organize, subcontract and require migrants to attend pre-departure programmes, which are aimed at enhancing pre-departure skills and training. For example, Bangladesh operates 20 technical training centres (TTCs), an Institute of Marine Technology to cater for particular needs of employers in basic trades, and a specific TTC for Korea-bound migrants. Located in a number of districts, the TTCs can facilitate approximately 15,000 trainees each year.<sup>416</sup> The training is free for migrants recruited through government-to-government programmes (e.g. Jordan, Korea, and Malaysia); others must

<sup>412</sup>Pre-departure Orientation Programmes: Study of Good Practices in Asia. A Comparative Study of Philippines, Bangladesh and Sri Lanka. AK. Masud Ali. International Organisation for Migration (IOM) and DfID.

<sup>413</sup>See <http://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IOM-MT-LHD-Global-Statistics-2012.pdf> [Accessed June 2014]

<sup>314</sup>[http://migration.ucdavis.edu/mn/more.php?id=3851\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3851_0_3_0) [Accessed June 2014]

<sup>415</sup>Interviewee NK5, March 2014.

<sup>416</sup>Siddiqui, T. and R Rashid, B Zeitlyn (2008) Information Campaigns on Safe Migration and Pre-Departure Training, Development Research Centre on Migration, Globalisation and Poverty, ILO Dhaka.

pay fees of 200 to 400 Tk. (approximately 3 USD), and a deposit of 10,000 Tk. (approximately 129 USD). The purpose of the deposit is to encourage only those that intend to travel overseas to participate.<sup>417</sup>

The Philippines government has created specific training programmes based at enhancing the skills of domestic workers, performing artists and entertainers, nurses and seafarers (skill-based modules) or for workers migrating to certain countries/regions with special information requirements, such as Hong Kong, China Libya, the Middle East, Republic of Korea, and Taiwn Province of China. In Viet Nam, workers must attend vocational training and foreign language courses, study relevant laws, and undergo educational orientation before leaving the country.<sup>418</sup> And, financed by the migrant welfare fund, the Sri Lankan government has introduced “significant measures to prepare migrants for overseas employment that include training, preparation, registration, and other services to ensure that a worker does not leave the country unprepared for the tasks ahead”.<sup>419</sup>

Training programmes for domestic workers feature heavily in the CPMS, with such training mandatory in Bangladesh, Nepal, the Philippines and Sri Lanka. For example, since 2008, the Bangladesh government has required women migrants going overseas for domestic work to complete a compulsory 21-day orientation training programme, which includes modules on housekeeping skills, lifestyles, health and hygiene, and self-defence strategies. Migrants are also taught how to use domestic appliances. Discussions to extend the programme to 6 weeks are currently underway. Figure 25 gives an overview of the training modules which Sri Lankan women intending to travel overseas for domestic employment must successfully complete dependent on their intended destination.

Figure 25: Sri Lankan pre-departure training modules for domestic workers

- Domestic Housekeeping Training for Middle East Bound Female Workers (Sinhala and Tamil medium);
- Domestic Housekeeping and Care giving Training for Cyprus Bound Female Workers (Both Male & Female);
- Domestic Housekeeping and Care giving Training for Singapore Bound Female Workers;
- Care giving Training for Israel Bound Health Care Workers;
- Care giving Training for Israel Bound Experienced Health Care Workers;
- Literacy Training for prospective migrant workers (Sinhala and Tamil Medium);
- Special English Literacy Training for Cyprus Bound Workers;
- Special Training program for overseas job seekers other than domestic housekeeping;
- Training program for Experienced Domestic Sector Female Workers (Middles East and Cyprus).

Training in CPMS is provided, as with pre-departure orientation and information sessions, by a mixture of government, civil society and private organizations, with a variety of levels of government oversight and regulation. In Nepal, if an individual or business wants to establish a pre-departure training centre, they must apply for a license. Licenses require a cash deposit of NPR 100,000 (approximately USD1,000), and payment of a license fee of NPR 10,000 (approximately USD100) for the first year, and NPR 5,000 (approximately USD50) each subsequent year the license is renewed. As of March 2014, 101 institutes were licensed to provide the orientation training to departing migrant workers, the majority of which were based

<sup>417</sup>Interviewee BK4, 2014.

<sup>418</sup>Article 62 of the Vietnamese Law on Overseas Employment, 2006.

<sup>419</sup>National Labour Migration Policy for Sri Lanka, Ministry of Foreign Employment Promotion and Welfare, October 2008, page 20.

in Kathmandu.<sup>420</sup> This figure represents an almost 50 per cent increase in the number of organizations licensed in the previous two years, suggesting that pre-departure training is a profitable business. PRAs are eligible to apply for training centre licenses, and many do so. PRAs are also involved in skills training in Bangladesh, where recently, skills training programmes for domestic workers have been undertaken by the Bangladesh Association of Private Recruitment Agencies (BAIRA) in collaboration with specialist training NGOs.<sup>421</sup>

On the other hand, pre-departure processes in Indonesia require PRAs to play a substantial role. PRAs must provide education and training as part of the initial recruitment process with the Ministry's oversight, as well as additional training as part of pre-departure preparations; and a final briefing session immediately pre-departure. Figure 26 sets out the key components of the Indonesian pre-departure training system, reproduced from a recent report. This figure highlights the key role of PRAs at all stages.

Figure 26: Pre-departure training in Indonesia<sup>422</sup>

Timing	Method of delivery	Information provided	Responsible party	Location
Prior to application	In person counselling and guidance session	Recruitment process Documents required Rights and responsibilities of prospective/current migrant workers Situation, conditions, and risks in destination country Methods for protecting migrant workers  Regulation also requires that the information include fees and details of the position, including wages, leave etc.	Recruitment agency together with the local office of the Ministry. The local office must also approve the content of the briefing.	Local office of Ministry in region where recruitment will take place.
Pre-departure preparations	Education, training and/or work experience, culminating in "competency exams"	Work skills relevant to the job Situation, conditions and traditions of the destination country Communication in language of country of work Rights and responsibilities	Recruitment agency	In Jakarta, at an institution licensed to provide training either independent or owned by recruitment agency
Pre-departure	"PAP" briefing session in the several days before departure (not necessary for workers who returned from abroad within past two years)	Laws and regulations (immigration, labour, and relevant criminal laws) of destination country Employment contract, including type of work, conditions and wages, rights and methods for resolving disputes	Government Ministry (BP3 TKI) Recruitment agency responsible for enrolling worker	All Ministry (BP3 TKI) at the provincial level in Jakarta for those travelling to Middle East.

<sup>420</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations.

<sup>421</sup>Interviewee BK2, 2014.

<sup>422</sup>Source: Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations, p49.

Pre-departure training programmes have increasingly become an important issue for destination country governments, concerned with ensuring that only those migrants with appropriate skills are allowed entry. Most notably, the United Arab Emirates and Kuwait have recently established a pilot project on 'skill development, certification, upgrading and recognition'. Through this pilot project, up to 2,500 workers from India, Pakistan, and the Philippines, will receive training and testing in construction skills prior to arrival in the UAE.<sup>423</sup> Researchers from Zayed University in United Arab Emirates will follow the progress of the project and measure the impact of it on employees with the support of several international organizations led by the World Bank, the ILO, and IOM. One provider-a Singapore recruitment and training firm-has been contracted to deliver all the services associated with the project, in collaboration with the United Arab Emirates National Qualifications Authority, the Federal Demographic Council, Abu Dhabi Quality and Conformity Council and Zayed University.

Interviews and reviews of the published literature identify three key challenges associated with pre-departure programmes. Firstly, that the quality of information provided to workers through orientation and information sessions is variable. One recent study from Nepal found that few (if any) workers receive all the information they would find useful.<sup>424</sup> Another notes that Indonesian law and associated regulations do not specify which specific rights workers should be made aware of, or even the source of those rights, which limited the usefulness of the sessions.<sup>425</sup> Another study from the Philippines found that the trainers were simply not very good at communicating which limited the understanding of participants.<sup>426</sup> Disseminating information to the most vulnerable populations - usually rural women with low levels of literacy and who are isolated from mainstream activities - can also be problematic, a study in Sri Lanka revealed.<sup>427</sup>

Secondly, where there is a requirement for pre-departure information and orientation and / or skilled and education training as a condition of emigration clearance (e.g. Nepal, Bangladesh), studies have identified profiteering on the part of PRAs which often run training programmes or centres.<sup>428</sup> For instance, a recent study clearly identified this problem in Nepal, coupled with a proliferation of fake training certificates, which migrants simply purchase.<sup>429</sup> Fake certificates produced by PRAs have also been reported in Indonesia.<sup>430</sup>

Thirdly, while improving access to information about the destination country and migrant worker rights through orientation and information programmes, even the best pre-departure education can only be effective as an antidote to recruitment and employment abuse if: a) it occurs at a point in the migration process when the worker has not yet paid a recruiter and been given a job, and b) is provided to workers who will have the power, the protection from retaliation, and the institutional support necessary to actually exercise the rights about which they learn. Neither condition usually prevails, and largely not in destination countries.

<sup>423</sup>See <http://gulfnews.com/news/gulf/uae/employment/construction-workers-skills-to-be-tested-before-uae-arrival-1.1416736> [Accessed December 2014]

<sup>424</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>425</sup>Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Fassenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.

<sup>426</sup>Philippines: Good Practices for the Protection of Filipino Women Migrant Workers in Vulnerable Areas, ILO, Geneva.

<sup>427</sup>Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour, ILO, Geneva.

<sup>428</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

<sup>429</sup>National Planning Commission and IOM, 2011, Policy Review: Analysis of Policies on Foreign Labour Migration and their Implementation.

<sup>430</sup>Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati ,B. Fassenblum. Funded by Open Society Foundations.

Fourthly, increasing pre-departure education and training provision has increased the migration costs which migrants must pay in order to travel and work overseas. This increases the risks of increasing situations of debt bondage as migrants struggle to pay back the greater amounts of debts required in order to travel. At the same time, destination state governments and employers have managed to outsource the costs of training to the CPMS.

The following section reviews CPMS migrants' access to health care during migration.

## Chapter 5

# Access to Health Care

In a recent report to the Human Rights Council, the Special Rapporteur on the Right to Health, Anand Grover argues that migrants often start the migration process relatively healthy, however the complexity and diversity of circumstances throughout the various dimensions of the migration cycle can render them highly vulnerable to poor physical and mental health outcomes, which then compromises the attainment of other human rights. Migrants are often employed in 3D (Dirty, Dangerous, Degrading) occupations; construction, domestic work and farm-work are often especially identified as containing health risks. In hot climates especially, heat stroke, exhaustion, dehydration and heat-related cardiac conditions are of particular concern, especially for those compelled to work excessive hours. In addition, physical abuse by employers, overcrowded and unsanitary accommodation, non-payment of wages, confiscation of passports and contract substitution have all been identified as increasing the health risks posed by some forms of work. Overall, the health risks for migrants vary according to gender, to age, to disability and their education level. Women may face particular health difficulties that arise out of their concentration in work in private households, but also because they are more at risk of physical and sexual exploitation, and face barriers in receiving obstetric, pre or post-natal care if this is required.

Yet, many destination states deny CPMS nationals healthcare that is free at the point of access, or often indeed, any health care at all. If access is provided, there is ordinarily a cost attached, which either the migrant or the employer must pay. In one example, Kuwait requires (non-domestic) migrants to pay an annual fee of USD 175 to contribute towards healthcare costs. Kuwait has also introduced segregated medical care, with Kuwaitis given priority for medical check-ups at public hospitals and clinics during the morning, while foreigners are only able to access doctors in the afternoon, unless an emergency.<sup>431</sup>

On the other hand, in Oman, according to the Labour Law, employers, in theory, are required to provide medical facilities for their workers, regardless of her/his nationality.<sup>432</sup> If the number of workers at any one site exceeds 100, employers are also required to employ a nurse for first aid purposes, and to designate a doctor to visit workers, and if the number of workers at any one site exceeds 500, the employer must establish a treatment centre. The United Arab Emirates Labour Law requires employers to pay for the expenses related to the treatment of workers who are hurt or who become ill on the job.<sup>433</sup> Migrant workers are, in theory, also entitled to paid sick leave in this case.<sup>434</sup>

<sup>431</sup><http://www.arabianbusiness.com/kuwait-start-medical-care-segregation-on-june-1-501976.html>

<sup>432</sup>Article 33, Oman Labour Law. Available at: [http://www.manpower.gov.om/portal/en/pdf/toc\\_en.pdf](http://www.manpower.gov.om/portal/en/pdf/toc_en.pdf) [Accessed December 2014]

<sup>433</sup>Article 13 UAE Labour Law. Available at: <http://uaelaborlaw.com/> [Accessed December 2014]

<sup>434</sup>Article 9.3 UAE Labour Law. Available at: <http://uaelaborlaw.com/> [Accessed December 2014]

Requiring migrants and/or employers to take out insurance policies to cover this eventuality is a common way in which destination states deal with the situation. For example, in Malaysia it is mandatory for every employer to insure all the migrant workers hired by him or her under an approved insurance scheme. Employers must provide proof of their insurance certification prior to receiving Immigration Department approval and issuance of work and residence visa. Any employer that is found not to have purchased health care insurance is liable to a fine of RM 20,000 (USD 6,228) or to imprisonment not exceeding 2 years or both.<sup>435</sup>

Although not a comprehensive review, respondents interviewed for this study reported that few employers comply with requirements to facilitate access to health care for CPMS migrants, either directly or through purchase of an insurance policy. Respondents felt that legal requirements are rarely policed. Instead these are reliant on individual migrant workers lodging complaints about the denial of health care, something which they are largely unable to do.

CPMS governments have attempted to influence or even require foreign governments, which host large numbers of their nationals, over the provision of health care. For instance, the Philippines ensures that requirements for a standard employment contract that stipulates employer responsibility for health care and life insurance, are included within bilateral agreements which it signs with destination states.<sup>436</sup> Nepal has included this requirement within bilateral agreements signed with Saudi Arabia, Kuwait, Qatar and United Arab Emirates<sup>437</sup> as has Indonesia with Saudi Arabia and Malaysia.<sup>438</sup> Jordan, Lebanon and Kuwait also require employers to provide their foreign domestic workers with access to health care and an insurance policy, according to the terms of the employment contract.<sup>439</sup> However, interviewees argued that CPMS governments often lack sufficient leverage to ensure that these agreements are implemented, leaving migrants often unable to access health care.

The following section reviews what assistance is provided to CPMS migrants for repatriation.

---

<sup>435</sup>Workmen's Compensation Act 1952, amended 1996. Employers must ensure that a legitimately hired foreign worker is insured with any one of the insurance companies appointed to the panel of the Foreign Workers Compensation Insurance Scheme (SPPA).

Employers must ensure that Foreign Workmen Compensation Scheme insurance (FWCS) and Foreign Workers Hospitalization and Surgical (FWHS) are provided/available throughout the duration of employment.

<sup>436</sup>[http://ilsdole.gov.ph/wp-content/uploads/2012/07/De-Castro\\_Expanding-Social-Security-for-Migrants.pdf](http://ilsdole.gov.ph/wp-content/uploads/2012/07/De-Castro_Expanding-Social-Security-for-Migrants.pdf)

<sup>437</sup>Reproduced in MFA (2011) Compilation of Legislations and Good Practices on Domestic Work, September 2011, Vol II, Migrant Forum Asia, Philippines.

<sup>438</sup><http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20140220196331>

<sup>439</sup>both food and health care are sometimes denied.

## Chapter 6

# Assistance to Migrants for Repatriation

Repatriation (as opposed to deportation), the need for which may come about as a result of personal reasons, because of war, natural disasters or epidemics, or because of exploitation during the term of employment, can be facilitated by CPMS embassies, destination state governments, NGOs, or employers. In addition to stipulating requirements regarding access to health care, standardized employment contracts have also been used to specify which party should pay for migrants' return travel costs and in what circumstances. For instance, Lebanese employers of domestic workers must, according to the standardized employment contract, pay their employee's return air-fare unless the worker "commits a deliberate mistake, neglect, assault or threat, or causes any damage to the interests of the First Party [employer] or a member of his/her family", or "has committed an act that is punishable by the Lebanese laws in force under the provision of a court judgment."<sup>440</sup>

The Oman and United Arab Emirates Labour Laws specify that employers must pay for repatriation of foreign workers upon termination of the contract, unless sponsorship is transferred to another employer, or the employee her/himself terminates the contract early.<sup>441</sup> If an employer in Oman refuses to pay the repatriation costs, the Oman government 'repatriates' the worker, and recovers the costs of such repatriation from the employer.<sup>442</sup>

Multinational employers following good employment practice may also themselves sometimes take responsibility for ensuring the safe repatriation of migrant workers home if this is required or if the workers would like to return home. For instance, the Arcadia Group Migrant Worker Guidelines referred to above in Section 5.2 (Corporate social responsibility programmes: the employers) includes that: "The Supplier should pay for all transportation costs to the worker's home country for any Migrant Worker prior to conclusion of contract, if a Migrant Worker must travel home due to a family emergency or who wishes to leave the factory at any time, unless the Migrant Worker is in clear breach of contract."<sup>443</sup> In addition, the Qatar Foundation Mandatory Standards also discussed in Section 5.2 outlines that employers should pay for the return travel expenses of workers upon completion of their contract and that:

The Worker shall retain the right to return to his home country at the expense of the Employer in the following cases:

<sup>440</sup>See <http://www.ohchr.org/EN/NewsEvents/Pages/LebanonCodeOfConduct.aspx> [Accessed December 2014]

<sup>441</sup>Article 56, Oman Labour Law. Available: [http://www.manpower.gov.om/portal/en/pdf/toc\\_en.pdf](http://www.manpower.gov.om/portal/en/pdf/toc_en.pdf) [Accessed December 2014].

Article 15 UAE Labour Law. Available: <http://uaelaborlaw.com/> [Accessed December 2014]

<sup>442</sup>Article 56.

<sup>443</sup><https://www.arcadiagroup.co.uk/fashionfootprint/code-of-conduct-and-guidebook/Guidebook-part-4.pdf> [Accessed June 2014]

1. If the Employer commits a breach of his obligations under the employment contract or the Law;
2. If the Employer or his responsible manager commits an assault or immoral act upon the Worker;
3. If the Employer or his representative has misled the Worker at the time of entering into the employment contract as the terms and conditions of the work;
4. If continuance of the work endangers the safety and health of the Worker provided that the Employer is aware of the danger and does not take the necessary steps to remove it.<sup>444</sup>

CPMS governments may also require PRAs to be responsible for repatriating their recruits in certain circumstances. For instance, Thailand requires PRAs to be responsible for the repatriation of workers "in the case where a job-seeker reaches the country of employment but has not got a job as stipulated in the employment contract".<sup>445</sup> The Nepalese government requires that where a complaint has been made by a worker that the employer has not fulfilled the contractual obligations, or the PRA has failed to take the appropriate action to ensure that the employer fulfils these obligations, then the recruiting PRA should directly fund repatriation. Where this is not forthcoming, the Department can use the PRA security deposit (escrow) to repatriate the worker.<sup>446</sup> Similarly, where migrants are repatriated due to the negligence or illegal activity of a PRA, the Bangladesh Government can direct the concerned recruitment agent to bear the costs of repatriation of that migrant worker.<sup>447</sup>

Interviewees for this study reported that repatriation of destitute workers most often though falls to the embassies and consulates of CPMS in destination countries, and that Labour Attachés and other embassy staff are often overwhelmed by their requests for repatriation assistance. The inability of CPMS governments to successfully ensure that employers or PRAs pay for repatriation can negatively impact on migrants' human rights. For instance, in Lebanon, domestic workers' employers are supposed to pay for her exit visa and a ticket home according to the terms of the standard employment contract. If the employer does not do this however, the domestic worker can be held in detention and will remain there until she - or her embassy - pays a daily fine of 10.000 LL (approximately 7 USD) which accumulates day by day. A Labour Attaché based in Kuwait shared an example of one of his problematic cases this year with which he had had to deal, this time of a male migrant:

We had a national who was paralysed in a work accident. The sponsor had lodged an absconding case. She [the sponsor] was contacted by the embassy to try to get her to agree to remove this and to allow him to leave but she refused to engage and after that she did not respond any more. His exit visa was not valid so he could not leave by himself. The Ambassador had to talk to the Under-Secretary. It took three months to resolve and the person was in hospital all that time.

The following section reviews the access to legal services to which CPMS migrants are entitled.

<sup>444</sup>Qatar Foundation Mandatory Standards, Article 12.11, Available at: <http://www.qf.org.qa/app/media/2379> [Accessed December 2014]

<sup>445</sup>Employment and Job Seeker Protection Act, B.E. 2528, Section 28. Available at: <http://policy.mofcom.gov.cn/english/flash!fetch.action?id=634ce935-421c-49f2-a40d-ba338d917104> [Accessed December 2014]

<sup>446</sup>Foreign Employment Act, 2007, Article 35.

<sup>447</sup>2013 Overseas Employment and Migrant Act.

## Chapter 7

# CPMS Migrants' Access to Legal Services

Section 5 of this report briefly outlined the complaints mechanisms that CPMS migrants can access in origin or destination countries. Available legal help is pivotal to whether or not employees can enforce their contractual rights; it also strengthens the rule of law by increasing transparency within the system of contract migration, makes private and government actors accountable, and often addresses systematic gaps in rights protections.<sup>448</sup> In short, having access to legal services is essential for migrant workers to be able to access justice. This section briefly reviews what access CPMS migrants have to legal services at home, and in destination countries, before concluding with an overview of challenges and promising practice, with the usual caveat that this is not a comprehensive review.

Overall, access to free or affordable legal help at home varies greatly from some to none. In an example of the former, Sri Lankan domestic workers working overseas are entitled to assistance from the Legal Aid Commission (LAC).<sup>449</sup> LAC, in combination with the Sri Lankan Bureau of Foreign Employment (SLBFE), provides dispute settlement services, and takes steps to aid a migrant worker who encounters problems or hardships while employed abroad. If the complaint pertains to a specific employer, SLBFE will liaise with the diplomatic mission in the receiving country with the aim of settling the dispute.<sup>450</sup> However a recent study noted that in general, assisting migrant workers is far down the list of priorities for legal aid centres in Sri Lanka. Although there is a strong legislative and institutional basis for legal aid, current provision is limited in its geographic reach.<sup>451</sup>

According to another recent study, private legal aid services have a long and respected history in Indonesia, with Lembaga Bantuan Hukum (LBH) Jakarta, opened in 1970, a vital outlet for the pro-democracy movement.<sup>452</sup> Today, alongside other issue-mandated civil society groups with lawyers on staff, such as women's organizations, branches of the LBH Foundation operate in 15 provinces of Indonesia. However according to the study, researchers were informed by lawyers that migrant worker cases are "extremely rare" and fell generally within labour cases rather than receiving specific focus. While some private lawyers do specialize in migrant worker cases, one suggested these are relatively isolated due to the complexity of such cases, and most importantly, because migrant workers cannot usually pay their legal fees. The recent, Legal Aid Law (16 of 2011) recognizes a 'right to access justice' in Indonesia, and provides state funding for legal aid services provided by private lawyers and organizations. According to the report, it is not yet clear how the law will be implemented.<sup>453</sup>

<sup>448</sup>Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.

<sup>449</sup>International Labour Migration: A rights-based approach, International Labour Organization, 2010, page 97.

<sup>450</sup>See <http://www.slbfe.lk/article.php?article=28> (Accessed April 2014)

<sup>451</sup>See <http://asiafoundation.org/resources/pdfs/PolicyBrief.pdf> [Accessed June 2014]

<sup>452</sup>Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.

<sup>453</sup>Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.

As it stands, as an alternative, migrant workers seek legal help from NGOs which can be well-practised in providing such assistance as NGO staff are often returned migrants themselves, although are rarely legally qualified.<sup>454</sup> NGOs are also important to how returned migrants receive legal help in Nepal and in China. In Nepal, the PNCC (Pravashi Nepali Coordination Committee) assists migrants' families in cases of bereavement in destination countries, non-payment or under payment of salary, and fraudulent recruitment. The PNCC also assists both regular and irregular migrants in making claims for compensation.<sup>455</sup>

In Viet Nam, the Lawyers Association has established two consultation centres (in the provinces of Ninh Binh and Lam Dong) to offer free legal aid services to the community. Workers at the four legal aid clinics in these provinces meet face to face with people who live in remote areas to provide those wishing to work abroad with all of the information they need to ensure that their rights are respected from the time they sign the contract until they return to Viet Nam. In other words the centres function as a source of pre-departure information as well as providing assistance to returned migrants in accessing remedy. The centre receives financial support from SEARCH, a Canadian programme focusing on cooperation in human development in South-East Asia, and the Canadian International Development Agency (CIDA).<sup>456</sup>

NGOs are also often pivotal to the legal help that CPMS migrants receive in destination countries. For instance, the Migrant Workers Protection Society (MWPS) in Bahrain, funded by donations and sponsorships, offers legal casework for migrant workers. MWPS receives referrals from workers themselves, from members of the public, from police stations, from embassies, from officials at the Ministry of Labour and Detention Centres.<sup>457</sup> Similarly, Tamkeen Jordan, funded by donations and by the Open Society Foundation amongst others, provides free legal advice and representation for migrant workers in Jordan who find themselves in exploitative situations. Major violations which Tamkeen have addressed in recent years include: withholding personal documents, forced labour, low wages and non-payment of wages, long working hours, physical abuse and restriction on movements, denial of access to fundamental rights such as the right to health and freedom of association.<sup>458</sup>

On the other hand, the United States, a more numerically limited destination state for CPMS nationals, has been witness to the establishment of a number of 'workers' rights' centres, which provide useful models of practice. For instance, the Workplace Project, established in 1992 in New York, which offers free legal assistance to migrant and minority low wage workers. The Workplace Project additionally provides education, leadership development, and assistance in building worker cooperatives.<sup>459</sup> More broadly, the Employment Justice Centre (EJC), based in Washington D.C., in addition to providing a free Workers' Rights Clinic, advocates for legislative changes for Latino workers in the U.S., and established community organizing groups.<sup>460</sup>

Also in destination countries, CPMS migrants from time to time receive legal help from their own embassies and overseas missions. Section 5 highlighted the important role that CPMS Labour Attachés play in enabling

<sup>454</sup>Migrant Workers' Access to Justice at Home in Indonesia. 2013. B. Farbenblum, E. Taylor-Nicholson, S. Paoletti. Funded by Open Society Foundations.

<sup>455</sup>See [http://www.gaatw.org/index.php?option=com\\_content&view=article&id=724:pncc-&catid=95:member-profile&Itemid=67](http://www.gaatw.org/index.php?option=com_content&view=article&id=724:pncc-&catid=95:member-profile&Itemid=67) [Accessed June 2014]

<sup>456</sup>See <http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/eng/NAD-17153252-S4L> [Accessed June 2014]

<sup>457</sup>See <http://www.mwpsbahrain.com> [Accessed December 2014]

<sup>458</sup>See <http://www.tamkeen-jo.org/programs.htm> [Accessed December 2014]

<sup>459</sup>See <http://www.workplaceprojectny.org/history/> [Accessed June 2014]

<sup>460</sup>See <http://www.dcejc.org/about/> [Accessed June 2014]

migrants to lodge complaints about exploitation. Embassy officials sometimes offer direct assistance in resolving contractual disputes with employers. More rarely, they assist migrants to seek judicial remedy through the (Destination State) courts. This may involve hiring local lawyers to assist their nationals in destination States. For instance, the Sri Lankan authorities allow Labour Attachés to retain the services of a lawyer with the permission of the SLBFE. The Philippines government, on the other hand, specifically employ lawyers of their own that are briefed and trained to support migrant workers. In countries where there are large numbers of Filipino workers, embassies are required to establish a 'Migrant Workers and Other Overseas Filipinos Resource Center' to provide counselling and legal services which is accessible to migrants accessible 24 hours a day, seven days a week.<sup>461</sup> As a Labour Attaché based in Kuwait related:

The embassy has retained a law firm to prosecute labour abuses and to chase up employers who did not pay their salary. We will not allow a worker to go home if there is still a possibility of remedy in Kuwait. We have an Attaché who is a social worker; also female lawyers who are handling these cases.<sup>462</sup>

This level of provision was highly unusual however. More commonly, access through CPMS embassies was piecemeal and limited. For CPMS governments, the over-riding challenge of providing accessible legal help to migrants is its cost. Almost 50 million CPMS nationals travel overseas for work every year; a not insignificant proportion of them require legal help at some point on their journey or upon their return. Where it does exist, legal help is often funded through migrant welfare funds. For example, the Indian Community Welfare Fund (migrant welfare fund) provides contingency funding to its embassy officials specifically to support the provision of initial legal assistance to Indian nationals overseas. Assistance is limited however to "deserving cases", although what these constitute is not further elaborated upon.<sup>463</sup> Indian migrants may also receive further funding to cover her/his legal expenses, such as those accrued in any litigation relating to her/his employment. Subject to confirmation of the necessity of such proceedings by the relevant Ministry in that destination country, these costs can be covered under the 2012 Pension and Life Insurance Fund, referred to earlier.<sup>464</sup> The following section outlines what provisions are made for CPMS migrants in terms of emergency shelter and lodging.

---

<sup>461</sup>Section 19, Migrant Worker and Overseas Filipinos Act, 1995 (RA 8042). Available at: <http://www.pravasitoday.com/pbd-2012-pm-announces-new-pension-and-life-insurance-scheme-for-overseas-indian-workers> [Accessed December 2014]

<sup>462</sup>Interview with LAK3 June 2014.

<sup>463</sup>See [http://moia.gov.in.writeradddata/pdf/revise\\_icwvf.pdf](http://moia.gov.in.writeradddata/pdf/revise_icwvf.pdf) [Accessed June 2014]

<sup>464</sup>See <http://www.pravasitoday.com/pbd-2012-pm-announces-new-pension-and-life-insurance-scheme-for-overseas-indian-workers> [Accessed December 2014]



## Chapter 8

# CPMS Migrants' Access to Emergency Shelter and Lodging

Emergency shelter or lodging for CPMS nationals who have been exploited, who have 'run away' from their employers, or who are seeking repatriation may be provided within embassies or by NGOs in the destination country. For example, some overseas Indian missions have established emergency shelters for Indian nationals who are seeking redress for their grievance in the destination states. Some serve as transit homes prior to repatriation to India as well providing access to medical care and to legal services.<sup>465</sup> The Nepal Foreign Employment Rules, 2008 require the Foreign Employment Board to establish 'safe houses' for women who have gone abroad. Thus far, safe houses have been established in Saudi Arabia, Kuwait, Malaysia, and Qatar.<sup>466</sup>

Although male migrants are also known to experience high levels of exploitation and abuse, the researchers were unable to find any evidence that CPMS shelters are also used for men; shelters appear to be predominantly used to house female migrants. Sheltering women migrants within embassies or within embassy-supported safe houses is not however unproblematic for CPMS governments. In addition to the lack of available space within embassies, processing exit visas can take time (as outlined above), leading to the need for extended housing support. There is also a potential for alleged wrong doing. For instance, in Kuwait, temporary refuge for exploited domestic workers is provided by the Filipino Workers Resource Center (FWRC) at the Philippine Overseas Labor Office (POLO) in Jabriya.<sup>467</sup> However, early in 2014, three local hire officials were accused of sexual abuse of female migrants housed in the embassy.<sup>468</sup> Following a result of a Philippines National Bureau of Investigation case, the Philippines Embassy has instituted new processes in an attempt to reduce or eliminate the possibility of housing domestic workers at the shelter. As one official related:

Protection is the problem that we have, especially with the workers that run away to the embassy. Now they have to leave and cannot be transferred to another employer... [T]he Philippine embassy is relieved of any temptation for financial considerations. Before they were telling me that they [officials] can get 300 KD (1,027 USD) for each housemaid [who the officials were illegally hiring out]. If there is no physical violence we can return the worker to the employer under a new agreement.<sup>469</sup>

<sup>465</sup>UN Women (2009) Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States: A Gender and Rights based Perspective.

<sup>466</sup>National Planning Commission and IOM, 2011, Policy Review: Analysis of Policies on Foreign Labour Migration and their Implementation, IOM.

<sup>467</sup>See

<http://www.arabtimesonline.com/NewsDetails/tabid/96/smid/414/ArticleID/170034/reftab/96/t/131-distressed-Pinoys-fly-home-to-Philippines/Default.aspx> (Accessed May 2014)

<sup>468</sup>See

<http://www.gmanetwork.com/news/story/359202/pinoyabroad/news/embassy-labor-officer-accused-of-sex-for-flight-in-kuwait-rehired> [Accessed June 2014]

<sup>469</sup>Interviewee LAK1, May 2014.

Although the new processes are in the early stages, returning domestic workers to their employers, there is the risk that returning domestic workers to employers will result in further exploitation. At a consultation of CPMS Labour Attachés based in Kuwait, facilitated by IOM, the issue of emergency shelters for domestic workers was an especially cogent topic of discussion. Attachés were surprisingly concerned about how the provision of emergency shelters may serve as a ‘pull factor’ for women who simply wished to leave their employer, rather than as a result of exploitation. No evidence was provided as grounds for this view. In short, there is no consensus on whether it is appropriate for overseas missions to be providing this type of support, and if not, who should.

In addition to the shelters provided by CPMS embassies, NGOs have also established several emergency shelters for migrants in distress across the Middle East, especially the GCC States. These include the Bahrain Migrant Workers Protection Society referred to above, which runs a shelter for women. The majority of women sheltered in 2013 were from India, followed by Sri Lankan, and Ethiopian nationals. Physical abuse and non-payment of salary were the main reason that women arrived at the shelter, followed by sexual abuse and ill health. Almost all the women were not in possession of their passports, which had been confiscated by their employer or recruiting agent. They were consequently unable to leave Bahrain without the assistance of the NGO.<sup>470</sup> Also in Bahrain, another NGO, Migrante International, provides temporary shelter (plus food and clothing) to Filipino workers who have lodged cases in the Bahrain justice system, as this quote demonstrates:

As for us Migrante, we provide shelters through our community; we give them to Migrante volunteers and they can stay in their accommodations while waiting for their legal verdict. We only rented one room for these people, and this is the best thing we could do to assist migrant workers. Almost 99.9 per cent of these cases have been tricked by recruitment agencies; they had to run away because of contract substitution. In 2013 Migrante was able to assist nearly 100 workers who have been violated by recruitment agencies.<sup>471</sup>

Other examples of NGOs that provide emergency shelters include Tamkeen Jordan (referred to above) and Caritas in Lebanon. In 2005, the Lebanese General Security Division signed an agreement with Caritas to provide a “house of security” (i.e. a safe-house) to which their officials could take ‘distressed’ migrant women who come to their attention.<sup>472</sup> Moreover, in Singapore the Migrant Workers Centre (a bipartite initiative of the National Trades Union Congress and the Singapore National Employers’ Federation) runs two shelters for migrants that can be used in emergency situations. In Malaysia,<sup>473</sup> the NGO, Tenanganita, runs a shelter and halfway house, for women workers and victims of sex trafficking.<sup>474</sup>

There are no available systematic evaluations of emergency shelters’ impact. However, given the paucity of support for legal support for CPMS migrants in destination states, emergency shelters provided by NGOs doubtless provide an essential means of supporting migrant women. As with the provision of shelter by CPMS embassies, these shelters predominantly provide services and space for women, leaving male migrants outside the system of emergency provision. The following section reviews what assistance is provided to families of CPMS migrants.

<sup>470</sup>See <http://www.mwpsbahrain.com/> [Accessed June 2014]

<sup>471</sup>Interviewee BCSO3, April 4th.

<sup>472</sup>Interviewee LKI 6, 2014.

<sup>473</sup>See

[http://www.mwc.org.sg/wps/portal/mwc/home/aboutus/!ut/p/a0/04\\_Sj9CPykssy0xPLMnMz0vMAFGjzOIDfPw9Xd08jAwsLMPMDTxNgwY8fQNdnyJDTpULsh0VATn8Uuc!/](http://www.mwc.org.sg/wps/portal/mwc/home/aboutus/!ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAFGjzOIDfPw9Xd08jAwsLMPMDTxNgwY8fQNdnyJDTpULsh0VATn8Uuc!/) [Accessed June 2014]

<sup>474</sup>See <http://www.hati.my/women/tenanganita/> [Accessed June 2014]

## Chapter 9

# Assistance to Families of CPMS Migrants

The UK Guardian's recent coverage of employment conditions in Qatar has documented a number of deaths of Indian and Nepali migrants, allegedly associated with working conditions.<sup>475</sup> A subsequent report commissioned by the Qatar government acknowledged the deaths of hundreds of migrants, many from unexplained illness, over the past two years at a rate of one per day.<sup>476</sup> Deaths may occur as a result of natural causes or as a result of a workplace accident or poor health and safety conditions in the workplace. Regardless of the causes, CPMS do not routinely collect data on the deaths of CPMS migrants abroad. Yet, the death of a migrant worker can leave a family which is dependent on the remittances sent back bereft in financial terms, in addition to the emotional trauma which they have suffered. Families are most likely to be left in debt if any pre-departure loans taken out to pay the cost of migration have not been paid.

In general, CPMS governments provide assistance to the families of deceased migrants through migrant welfare funds and insurance schemes (see Section 2 above). For instance, the Indian Community Welfare Fund provides the costs of air lifting deceased migrants to India or a local burial / cremation in such cases where the destination country sponsor is unwilling to pay and the family is unable to meet the cost of repatriating the body. The compulsory insurance scheme in India - PBBY - also pays out financial support to families for the repatriation of dead bodies as well as continued support for hospital fees for the families of deceased migrant workers (defined as spouse and two dependent children up to 21 years of age). Moreover, the recent pension and life insurance scheme introduced in 2012, in addition provides for cover of USD 16,636 to a legal heir in the event of death.<sup>477</sup>

Through the migrant welfare fund, Nepal provides up to USD 1,500 to the families of migrants who have died while overseas. Claimants must provide evidence of their family relationship, photographs of the next of kin, and the death certificate not later than six months after the death.<sup>478</sup> In addition, families can apply for financial assistance through the life insurance which PRAs must compulsorily purchase in order for emigration clearance to be granted.<sup>479</sup> Families may receive 100 percent of the insured amount, amounting to NPR 500,000 for the death (USD 5,155), and NPR 50,000 (USD 515) to cover the funeral. The insurance company also ordinarily reimburses the family for the repatriation of the body from abroad up to NPR 100,000 (USD 1,030).<sup>480</sup>

<sup>475</sup><http://www.theguardian.com/global-development/series/modern-day-slavery-in-focus+world/nepal>

<sup>476</sup>See <http://www.theguardian.com/world/2014/may/14/qatar-admits-deaths-in-migrant-workers> The investigation was conducted by DLA Piper, an international law firm owned by the Al-Jazeera group. Report available at: <http://www.scribd.com/doc/225897899/Qatar-Dla-Final-Report-May-2014-For-Publication> [Accessed June 2014]

<sup>477</sup>See <http://moia.gov.in/services.aspx?id1=155&idp=155&mainid=73> [Accessed June 2014]

<sup>478</sup>See Migrant Workers' Access to Justice at Home: Nepal. 2014. S. Paoletti, E. Taylor-Nicholson, B. Sijapati, B. Fassenblum. Funded by Open Society Foundations

<sup>479</sup>Ibid.

<sup>480</sup>Ibid.

On the other hand, the Philippines welfare fund provides for a death benefit of up to USD 2,734 and USD 5,013 to families for migrant deaths that occur as a result of a workplace accident.<sup>481</sup> Financial provision for burials is also provided. Families of deceased migrants can also apply for assistance from the compulsory insurance scheme that provides for both accidental and natural deaths.<sup>482</sup> Next to India, the most generous scheme, the Sri Lanka welfare fund provides families of deceased migrants with USD 10,000. In contrast, the Bangladesh migrant welfare fund only provides financial help for the burial of a dead body, transportation cost, as well as more limited financial assistance to the families of those who die abroad.<sup>483</sup>

In addition to the financial assistance to families arranged by CPMS governments, a range of destination governments stipulate that employers must pay the cost of repatriating the bodies of deceased migrants home. For instance, Saudi Arabia requires employers to bear the cost of repatriating deceased migrants to the location where the contract was concluded, or where the migrant was recruited, except where the workman's body is buried in Saudi Arabia with the approval of his/her family. Moreover, in Qatar, under pressure as a consequence of the scandal over the death of migrant workers in the construction industry, the Supreme Committee for the Delivery and Legacy has issued a Workers' Charter to which all contractors must adhere. This states that "In the case of death of a Worker, all Wages and End of Service Gratuity due shall be promptly settled and transferred to the Worker's family."<sup>484</sup> The United Arab Emirates and Bahrain also require that employers meet the expense of preparing and transporting the body of a deceased migrant worker to her/his home country or place of residence should his family so request. This is as far as assistance from destination countries to families of deceased migrants extends however; no compensation is paid.

The following section concludes this section of the report, and provides recommendations to CPMS governments and international organizations.

---

<sup>481</sup>Comparative Study of Overseas Workers Welfare Fund of Pakistan, Sri Lanka, and the Philippines. E. Tan.

<sup>482</sup>Ibid.

<sup>483</sup>National Labour Migration Policy for Sri Lanka, Ministry of Foreign Employment Promotion and Welfare, October 2008, page 20.

<sup>484</sup>See <http://www.sportingintelligence.com/wp-content/uploads/2013/11/SC-WORKERS-WELFARE-STANDARDS-EDITION-1-2.pdf> [Accessed June 2014]

## Chapter 10

# Conclusion and Recommendations

How to provide services for or ensure the health and safety of CPMS migrants are understandably of significant concern to CPMS governments. As defined by the project Terms of Reference, welfare assistance includes: access to migrant welfare funds, access to health care, insurance, access to credit, assistance with repatriation, and assistance to families of deceased migrants, access to legal help, and pre-departure orientation and training. The section has described and where possible, with limited data, reviewed the effectiveness of services and programmes aimed at facilitating access to these. This section makes five reflections before making recommendations targeted at CPMS governments.

1. Although ‘welfare assistance’ is usually described in terms of ‘migrant worker protection’, in fact **this type of assistance is essential in order for CPMS to realize their human rights**, for instance access to justice or access to health care. Ensuring access is extremely challenging for CPMS governments in negotiating with those destination states which routinely deny any rights to migrants. Many, most notably the Philippines although not only, CPMS have made **valiant efforts to include provisions within bilateral agreements which set out the requirement for standardized employment contracts, the right to health care, and who is responsible for repatriation in different scenarios**. However, **enforcing these provisions is extremely problematic**. In particular, individual migrant workers are singularly unable to enforce the provisions included within standardized employment contracts (should they be aware of these) without access to legal help in destination states, which they largely do not have.
2. CPMS governments, because of the challenges associated with influencing destination state governments, have made **strenuous efforts to support their migrants mainly through establishing migrant welfare funds and private insurance schemes, which provide support for health care, repatriation costs, legal help, amongst others**. With certain caveats, these have emerged from prior reviews as offering the most promising practice in terms of offering support. The caveats include:
  - ❑ Where migrants are mandatorily required to contribute to the funds (and private insurance), this increases the costs of migration;
  - ❑ If PRAs are required to contribute on migrant workers’ behalf, they will simply recoup these costs from migrants themselves, again increasing the costs to migrants;
  - ❑ Recent research from Nepal and Indonesia recounted in the report demonstrates that there are multiple challenges for migrants in accessing funds and insurance schemes, not least that they are not always aware of their existence or that they have paid into them. This may be especially the case where the money has been channelled through a PRA;

- ❑ Where an increasing number of private sector actors are introduced into the migration process, there is a greater risk of fraud/exploitation and a greater need for increased vigilance on the part of the authorities.
3. Credit schemes aimed at lending money to aspiring migrants in order to migrate, including to pay PRA recruitment fees, risk increasing migration costs while fuelling migrant debt. Credit schemes are unlikely to do anything to reduce migration costs as intermediaries simply keep their fees in line with the maximum that can be borrowed.
  4. There is an increasing emphasis on CPMS provision of pre-departure orientation and training programmes, although not always clarity on what these should constitute and what is effective. Orientation programmes are usually targeted at increasing migrants' knowledge about the destination country, including their rights and have been reviewed within the literature as being relatively successful (in general) in these aims where the information is provided by NGOs and is destination-specific. Destination states have become increasingly enthusiastic about the skills-based training programmes, understandable as hiring already trained workers reduces the costs for employers of hiring migrants from overseas. However, the risk of increasing the number of training programmes is that this increases the cost of migration to migrants. Inviting more private sector actors into the process also increases the risks of fraudulent behaviour as PRAs which are associated with training centres have been noted as engaging in profiteering or fraudulent behaviour.
  5. With trade unions either banned or facing limitations on their operation, NGOs in destination countries try to fill the gaps in migrant welfare, but are however largely limited to providing humanitarian assistance. However, NGOs, often struggling financially, are usually limited to providing humanitarian assistance in the form of emergency shelter, assistance with repatriation. In more limited circumstances, NGOs at home and overseas also provide access to legal assistance for migrants to seek redress for wrongs - either financial or criminal. Advocacy on the part of individual NGOs is substantially more limited, with the exception of Migrant Forum Asia (MFA), which is a regional network of NGOs, associations and trade unions of migrant workers, and individual advocates in Asia who are committed to protect and promote the rights and welfare of migrant workers

## Recommendations

1. CPMS governments may wish to consider developing a set of **common strategic aims across the CPMS regarding migrant welfare**. Developing a set of common aims will enable greater consensus among the origin states and increased leverage vis. a vis. destination states. Migrant advocacy groups such as Migrant Forum Asia have specific knowledge and expertise which could be extremely useful to CPMS governments in developing these common strategic aims. In many cases there will be shared advocacy aims which can only serve to enhance the leverage of CPMS governments either in feeding in evidence or in assisting, especially as some MFA members are based in destination states.
2. Those CPMS governments which do not currently operate a **Migrant Welfare Fund** may wish to consider opening one. Overall, Migrant Welfare Funds, as long as they are operated well, have been shown to be the most effective in providing CPMS migrants with access to welfare assistance. There is however a

need to take into account the caveats noted above in relation to not increasing migration costs to migrants, the need to regulate any private sector actors involved in administration of the funds, and publicity shared with migrants about the funds' existence. Attention should also be paid to the governance of these and review mechanisms established so that funds can be evaluated and any barriers to their operation (for the benefit of migrants) are identified and rectified at the earliest possible stage.

3. CPMS governments may wish to consider **reviewing arrangements for access to free or affordable legal help for migrants** in overseas missions. Legal help is essential to assist migrants in receiving access to justice. It would be extremely useful to appoint an 'on-staff' local lawyer supported by a number of paralegals to conduct casework on behalf of migrants. Not only will local lawyers have the expert knowledge and contacts with which to enforce migrants' rights, especially in terms of the standardized contracts, they would also reduce the reported excessive workloads of Labour Attachés. Moreover, they may assist with better holding PRAs to account and developing better coordination with destination state authorities responsible for recruitment.
4. CPMS government may wish to review how to **increase the available, free or affordable legal help for migrants at home**. This could include discussing projects with Lawyers without Borders and establishing Workers Rights' Centres which combine access to legal services with empowerment and which have been shown to be a model of good practice within the report, in partnership with NGOs/trade unions. Where CPMS have limited resources to establish such centres, the assistance of international donors should be sought. The advice of employees and advocates of long-term workers' rights centres should also be sought.
5. **Pre-departure programme designers and programme funders should ensure that they have clarity in their objectives, intended audiences and content**. For the most utility, content should also be tailored to individual destination countries. Content should include information about migrants' rights, including access to remedy at home as well as in the destination country. CPMS governments may wish to consider allowing workers' representatives, including CSOs and trade unions input into designing pre-departure programme content as well as in delivering it. The participation of migrant returnees in programmes has also been highlighted as a model of good practice. The 'one-stop shop' model developed exhibited by the Migrant Resource Centres may be useful in delivering all-round services to migrants.







## ANNEX 1: Overview of Kafala Provisions in Gulf Cooperation Council<sup>485</sup>

Country	Sponsorship Law	Exit Permit
Bahrain	In 2009, Bahrain adopted the strongest sponsorship reforms in the region by permitting migrant workers to change employment without their employers' consent and in the absence of allegations of non-payment of wages or abuse. 2009's legal reforms allowed migrant workers to change employment after meeting certain notice requirements and provided a 30 day grace period to remain legally in the country while they seek new employment. However these changes do not relate to domestic workers.	Not required
Qatar	Expatriates are allowed to work only under sponsorship. Once sponsored, the employee cannot work for another employer unless special permission has been granted. Sponsorship can be transferred to another employer only after agreement from the existing and new employers. The right to change sponsors is not mandated by law and is left to the discretion of the sponsors. If the employee has not been granted a release letter or No Objection Certificate (NOC), he would be required to leave the country for a minimum of two years before returning to work for another employer.	Required
United Arab Emirates	United Arab Emirates laws require foreign nationals to be primarily sponsored by a United Arab Emirates national (citizen), except in case of domestic workers, where foreign nationals can be sponsors too. Businesses are able to sponsor their employees mainly because a UAE national is a partner, owner or a majority shareholder of the business -sponsor (this might differ in the free zones). As a general rule, a labour ban is still imposed on expatriate employees in the United Arab Emirates who are working in the private sector when they want to change employers if they left the current employment without having completed a minimum of two years' service. The ban could be for six months or a year. But the ban can be lifted if the new employer offers the candidate a higher position and a salary equal or above the salary set by the Ministry against her or his qualifications.	Not required
Kingdom of Saudi Arabia	The sponsorship system requires all migrant workers to have a Saudi Arabia citizen as their sponsor who is usually the employer. The sponsor is responsible for their visa and legal status. In 2012, the Labour Ministry had proposed abolishing the Kafala system by transferring immigration sponsorship to newly created recruitment and employment agencies, but later retracted this decision.	Required
Kuwait	Under Article 3 of Kuwait's Private Sector Law, an expatriate worker must obtain a work permit issued by the Ministry of Social Affairs and Labour, under the sponsorship of a Kuwaiti entity. The law also states that a release is required from the sponsor for the work permit of an employee to be transferred to the sponsorship of another Kuwaiti entity. According to recent reports, the Ministry of Social Affairs and Labour has established the Public Authority for Labour Affairs in a bid to abolish the sponsorship system for private sector labour force. The authority would be responsible for all matters concerning private sector employees, including recruitment of expatriate labour forces, and managing employer- employee relationship.	Not required

<sup>485</sup>Reproduced from <http://www.justhere.qa/2013/11/comparison-kafala-system-gcc-qatar-lags-behind-reforms/>

**Oman**

Under the Kafala system, migrant workers are not allowed to charge employers without their sponsor's consent. Otherwise the worker is considered as an illegal resident in the country according to a law issued in 2003. If the worker's service period was less than two years in Oman, there must be a release letter from the former sponsor indicating that he (the sponsor) has no objection to the employment of that worker by any other employer without being subject to the two year restriction. For a migrant worker to change his sponsorship to the new employer (sponsor) while still inside the country, there must be a release letter from the former sponsor and approved by the Directorate General of Labour.

**Not  
required**

## ANNEX 2: Main Provisions of Anti-Human Trafficking Legislation in CPMS and Selected Destination States

Table 23: Anti-human trafficking legislation in CPMS

CPMS	Trafficking Laws
Afghanistan	Law Countering Abduction and Human Trafficking/Smuggling 2008 with penalties of between 5 and 8 years imprisonment.
Bangladesh	Human Trafficking Deterrence and Suppression Act 2012, prohibits all forms of human trafficking but only prohibits fraudulent recruitment of labour migrants if the PRA knows that the worker will be subject to forced labour. Penalties are 5 - 12 years imprisonment, and a fine of not less than USD 600. Two cases of forced labour were investigated in 2013.
India	Section 370 if the Indian Penal Code criminalizes government officials' involvement in trafficking.
Indonesia	Anti -Trafficking Law, 2007 with penalties of between 3 and 15 years imprisonment.
Nepal	Human Trafficking and Transportation (Control) Act, 2007 and 2008 Rules criminalize slavery, bonded labour and the buying and selling of a person it does not criminalize the recruitment, transportation, harboring, or receipt of a person by force, fraud, or coercion for the purpose of forced labour. Vast majority of prosecutions have been of sex trafficking.
Pakistan	Transnational trafficking offenses, as well as some non-trafficking crimes—such as people smuggling and fraudulent adoption—are prohibited through the Prevention and Control of Human Trafficking Ordinance (PACHTO), which prescribes penalties of seven to 14 years' imprisonment.
Philippines	Anti-Trafficking in Persons Act 2003 and Expanded Anti-Trafficking in Persons Act 2012. In 2013, 90 cases of forced labour were investigated but the government did not obtain any convictions.
Sri Lanka	Article 360© of its Penal Code, with up to 20 years imprisonment.
Thailand	Anti-Trafficking Law 2008 prohibits all forms of trafficking with penalties between 4 and 10 years imprisonment. In 2013, 80 cases of forced labour were investigated; 53 were prosecuted.
Viet Nam	Anti-Human Trafficking Law, 2012 Supreme People's Court, the Supreme People's Procuracy the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice issued a joint circular setting out criminal penalties for crimes in 2012 law.

Table 24: Anti-trafficking legislation in selected destination states

Destination state	Anti-trafficking law
Bahrain	Law No. 1 of 2008, prohibits all forms of trafficking in persons and prescribes penalties ranging from three to 15 years' imprisonment.
Jordan	The 2009 anti-human trafficking law prohibits all forms of both sex and labour trafficking and prescribes penalties of six months' to 10 years' imprisonment for forced prostitution, child trafficking, and trafficking of women and girls.
Lebanon	The 2011 anti-trafficking law, Number 164, prohibits all forms of trafficking in persons. Prescribed penalties for sex trafficking and forced labour range from five to 15 years' imprisonment.
Malaysia	2007 Anti-Trafficking in Persons Act (amended) prohibits all forms of human trafficking and prescribes punishments of up to 20 years' imprisonment, penalties. November 2010 amendments to the law broadened the definition of trafficking to include all actions involved in acquiring or maintaining the labour or services of a person through coercion.
Kuwait	The government enacted anti-trafficking legislation in March 2013, which prohibits all forms of trafficking. The law prescribes penalties ranging from 15 years' to life imprisonment.
Oman	Royal Decree No. 126/2008, also known as the Law Combating Trafficking in Persons, the government prohibits all forms of both sex and labour trafficking and prescribes punishments of three to 15 years' imprisonment, in addition to financial penalties, for trafficking crimes.
Singapore	Singaporean law prohibits some forms of trafficking through its penal code and Women's Charter. The fact that the criminal code does not define trafficking in a manner that is consistent with the 2000 UN TIP Protocol continued to limit the government's ability to prosecute trafficking cases, particularly in situations of debt bondage or when the victim initially consented to migrate to Singapore for work in a specific sector and was subsequently subjected to trafficking in that sector. <sup>1</sup>
Qatar	Qatar's comprehensive anti-trafficking law, which was enacted in October 2011, prohibits all forms of both sex and labour trafficking and prescribes penalties of no more than seven years' imprisonment and up to the equivalent of approximately \$82,000 in fines, with penalties of no more than 15 years' imprisonment for trafficking offenses committed with aggravating circumstances.
Saudi Arabia	The 2009 Suppression of the Trafficking in Persons Act, promulgated by Royal Decree number M/40, defines and prohibits all forms of human trafficking, prescribing punishments of up to 15 years' imprisonment and fines of up to the equivalent of approximately \$266,700 for violations. Penalties may be increased under certain circumstances, including trafficking committed by an organized criminal group or committed against a woman, child, or person with disabilities, or if trafficking is committed by a law enforcement officer.
United Arab Emirates	Federal law Number 51 of 2006 prohibits all forms of trafficking and prescribes penalties ranging from one year to life in prison as well as fines and deportation.
Korea, Republic of	Chapter 31 of the criminal code, revised in 2013, prohibits all forms of trafficking, and prescribes up to 15 years' imprisonment for trafficking crimes.

<sup>325</sup>Trafficking in Persons Report 2014, p342. Available at: <http://www.state.gov/documents/organization/226844.pdf> [Accessed December 2014]

### ANNEX 3: Current Destinations that Nepalese PRAs Can Recruit to

Government of Nepal has given the permission for Nepalese to work for given Foreign Countries

Sl.no.	Country	Sl.no.	Country	Sl.no.	Country
1	Afghanistan	2	Albania	3	Algeria
4	Argentina	5	Armenia	6	Australia
7	Austria	8	Azerbaijan	9	Bahrain
10	Bangladesh	11	Belarus	12	Belgium
13	Bolivia	14	Bosnia Hertz Govina	15	Brazil
16	Brunei Darussalam	17	Bulgaria	18	Canada
19	Chile	20	China	21	Columbia
22	Cambodia	23	Costarica	24	Croatia
25	Cuba	26	Cyprus	27	Czech Republic
28	Denmark	29	Egypt	30	Estonia
31	Fiji	32	Finland	33	France
34	Germany	35	Great Britain (UK)	36	Greece
37	Guano	38	Holysee	39	Hong kong, China
40	Hungary	41	Iceland	42	Indonesia
43	Islamic Republic of Iran	44	Iraq* (not Allowed)	45	Ireland
46	Israel	47	Italy	48	Japan
49	Jordan	50	Kazakhstan	51	Kenya
52	Kosovo	53	Kuwait	54	Laos PDR
55	Latvia	56	Lebanon	57	Libya
58	Luxemburg	59	Macau	60	Malaysia
61	Maldives	62	Malta	63	Macedonia
64	Mexico	65	Moldova	66	Mongolia
67	Mauritius	68	Morocco	69	Mozambique
70	Myanmar	71	Netherland	72	New Zealand
73	Nicaragua	74	Nigeria	75	Norway
76	Oman	77	Pakistan	78	Panama
79	Peru	80	Poland	81	Portugal
82	Qatar	83	Republic of Korea	84	Republic of Slovak
85	Rumania	86	Russia	87	Saipan
88	Saudi Arabia	89	Singapore	90	Slovenia
91	South Africa	92	Spain	93	Sri Lanka
94	Sweden	95	Switzerland	96	Seychelles
97	Tanzania	98	Thailand	99	The Philippines
100	Tunisia	101	Turkey	102	Uganda
103	Ukraine	104	United Arab Emirates	105	United States of America
106	Venezuela	107	Viet Nam	108	Zambia

## ANNEX 4: Bibliography

Abrar, C., S. Irudaya Rajan, L.K. Ruhunage, T. Siddiqui (2014) Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, India, and Sri Lanka. Working Paper 23. Funded by UK Department of International Development (DfID)

Afsar, R. (2009) Unravelling the vicious cycle of recruitment: Labour migration from Bangladesh to the Gulf States. Geneva. ILO

Agunias, D. and N. Ruiz (2007) Protecting Overseas Workers: Lessons and Cautions from the Philippines. Migration Policy Institute. Available at: [www.migrationpolicy.org/pubs/MigDevInsight\\_091807.pdf](http://www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf)

Agunias, D., C. Aghazarm, G. Battistella (2013) Labour Migration from Colombo Process Countries: Good Practices, Challenges and Way Forward. IOM

Amnesty International (2012) False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers. London. Amnesty International

Anderson, B. (2000) Doing the Dirty Work? The Global Politics of Domestic Labour. 2000. London. Zed Books

Arrowsmith, J. (2006) Temporary Agency Work in an Enlarged European Union. Dublin. European Foundation for the Improvement of Living and Working Conditions (EIRO)

Battistella, G. and B. Khadria (2011) Labour Migration in Asia and the Role of Bilateral Migration Agreements: Market Access Facilitation by Informal Means. In Markets for Migration and Development (M4MD): Trade and Labour Mobility Linkages - Prospects for Development, Bern, 12-13 September 2011

Betts, R. (2011) The global governance of migration and the role of trans-regionalism. In R. Kunz, S. Lavenex and M. Panizzon, Multilayered Migration Governance: the promise of partnership. Oxford. Routledge

Business for Social Responsibility (2011) Step Up: Improving Migrant Worker Recruitment in Indonesia. Findings from a research visit to Semarang, Indonesia May 2011. Business for Social Responsibility (BSR)

Cooper, A. (2011) "Disempowered 'Heroes,' Political Agency of Foreign Domestic Workers in East and Southeast Asia," e-International Relations

Cruz del Rosario, T. (2014) Development Policy in Asia: Case studies on development policy in Asia. Abingdon. Routledge

Endo, I. and G Afram (2011) Nepal Qatar Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process. World Bank

Farbenblum, B., E. Taylor-Nicholson, S. Paoletti (2013) *Migrant Workers' Access to Justice at Home in Indonesia*. Open Society Foundations

Gammeltoft-Hansen, T. and N N. Sorensen (eds) (2012) *Introduction. The Migration Industry and the Commercialisation of International Migration*. London. Routledge

Gordon, J. (2014) *Joint Liability Approaches to Regulating Recruitment*. Fordham University School of Law. New York

Gurung, G. (2014) *Recruitment Monitoring Assessment, Nepal*. IOM Nepal

Held, D. and K. Ulrichson (eds) (2011) *The Transformation of the Gulf: politics, economics and the global order*. Routledge. Abingdon, UK

Human Rights Watch (2012) *Building a Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022*. New York. Human Rights Watch

ILO (2002) *Sri Lanka: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour*. ILO. Geneva

ILO (2003) *Philippines: Good Practices for the Protection of Filipino Women Migrant Workers in Vulnerable Areas*. Geneva. ILO

ILO (2007) *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement*. Geneva. ILO  
Available at: [http://www.ciett.org/fileadmin/templates/ciett/docs/ILO\\_Guide\\_to\\_PrEA\\_-\\_final.pdf](http://www.ciett.org/fileadmin/templates/ciett/docs/ILO_Guide_to_PrEA_-_final.pdf)

ILO (2009) *Insurance Policies for Migrant Workers: Current Practices, Gaps and Solutions*. See  
[http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS\\_122088/lang--en/index.htm](http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS_122088/lang--en/index.htm)

ILO (2010) *International Labour Migration: A rights-based approach*. Geneva. ILO

ILO (2011) *Indicators of Forced Labour*. International Labour Office. Special Action Programme to Combat Forced Labour. Available at:  
[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)

ILO (2013) *Monitoring and Evaluation of the Application of the VAMAS Code of Conduct*. Available at:  
[http://www.ilo.org/asia/whatwedo/publications/WCMS\\_219762/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/publications/WCMS_219762/lang--en/index.htm)

ILO (2013) *Regulating recruitment of migrant workers: An assessment of complaints mechanisms in Thailand*. Asia Research Centre for Migration, Institute of Asian Studies, Chulalongkorn University

IOM (2011) *Towards Effective Foreign Employment Recruitment Monitoring in Sri Lanka*. International Organization for Migration

Jan, M.A. (2010) Pakistan's National Emigration Policy: A Review. Policy Paper Series 35, December 2010. Sustainable Development Policy Institute (SPDI).

Jones, K. (2013) Fees and IDs: Tackling recruitment fees and confiscation of workers' passports. London. Institute for Human Rights and Business. Available at:  
[http://www.ihrb.org/pdf/2013-09-06\\_IHRB\\_Fees-and-IDs-Report.pdf](http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf)

Jones, K. (2015 Forthcoming) "It was a whirlwind": The role of recruiters in facilitating migration from Poland to the UK between 2004 and 2008. In Central and Eastern Migration Review (CEEMR). Special Issue

Jones, K. (currently unpublished) Fair Recruitment Baseline: Recruitment of domestic workers from Bangladesh, Nepal, and India into Lebanon and Jordan. Geneva. ILO

Jorens, Y., S. Peters, M Houwezijl (2012) Study on protection of workers' rights in subcontracting processes in the European Union. European Commission Official Journal

Kahdria, B. (ed). (2009) India Migration Report. Cambridge. Cambridge University Press

Kuptsch, C. (eds) (2006) Merchants of Labour, 2006 International Institute for Labour Studies. International Labour Office. Geneva

Lindsay, J. (2012) An Assessment of Migrant Worker Recruitment Monitoring in Indonesia. International Organization for Migration (IOM) Jakarta.

Masud, A.K. (2005) Pre-departure Orientation Programmes Study of Good Practices in Asia: A Comparative Study of Philippines, Bangladesh and Sri Lanka. Geneva. IOM

Migrant Forum Asia (2012) Reform of the Kafala (Sponsorship) System. Policy Brief No. 2. Migrant Forum Asia

Ministry of Foreign Employment Promotion and Welfare (2008) National Labour Migration Policy for Sri Lanka. Colombo. ILO

Moukarbel, N. 2009 Sri Lankan Housemaids in Lebanon. A Case of 'Symbolic Violence' and 'Everyday Forms of Resistance'. IMISCOE Dissertations. Amsterdam University Press

National Planning Commission of Nepal and IOM (2011) Policy Review: Analysis of Policies on Foreign Labour Migration and their Implementation

NIDS (2009) Nepal Migration Year Book. Nepal Institute of Development Studies

Okten, C. (2004) Social networks and credit access in Indonesia. World Development. 32, 7, pp1225-1246

Paoletti, S., E. Taylor-Nicholson, B. Sijapati, B. Fassenblum (2014) Migrant Workers' Access to Justice at Home: Nepal. Open Society Foundations

Puri, L 2007, Assuring development gains and poverty reduction from trade: the labour mobility and skills trade dimension. United Nations Conference on Trade and Development.  
[http://unctad.org/en/docs/ditctncd20078\\_en.pdf](http://unctad.org/en/docs/ditctncd20078_en.pdf)

Rajan, I. et al (2011) *Dreaming Mobility and Buying Vulnerability: Overseas Recruitment Practices in India*. London. Routledge

Rodriguez, R.M. (2010) *Migrants for Export: How the Philippines State Brokers Labor to the World*. 2010. University of Minnesota Press

Ruggie, J. (2013) *Just Business: Multinational Corporations and Human Rights*, Norton Global Ethics Series, New York

Ruhs, M. 2013, *The Price of Rights: Regulating International Labor Migration*. Oxford. Princeton University Press

Ruiz, N. and D. Agunias (2008) *Protecting Temporary Workers: Migrant Welfare Funds from Developing Countries*. Migration and Development Brief 7. The World Bank

Siddiqui, T. and R Rashid, B Zeitlyn (2008) *Information Campaigns on Safe Migration and Pre-Departure Training*, Development Research Centre on Migration, Globalisation and Poverty. ILO Dhaka

Steffen, H. (2012) *A Comparative assessment of labour market nationalisation policies in GCC*, In, H Steffen (ed.) *National Employment, Migration and Education in the GCC. The Gulf Region: economic development and diversification 4*, Gerlach Press, Berlin, Germany

Tan. E. (2012) *Comparative Study of Overseas Workers Welfare Fund of Pakistan, Sri Lanka, and the Philippines*

UN Women (2009) *Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States: A Gender and Rights based Perspective*

Verite (2014) *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Available at:  
[http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final\\_1.pdf](http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final_1.pdf)

Zohry, A. (2013) *Assessment of International Migration in the Arab Region*. Regional Conference on Population and Development in the Arab States, Development Challenges and Population Dynamics in a Changing Arab World. Cairo, 2013. See  
<http://www.zohry.com/pubs/Zohry-International%20Migration%20Report-12-May-2013.pdf>





