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WHAT WE KNOW ABOUT REGULATING THE RECRUITMENT OF MIGRANT WORKERS

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MIGRATION AND DEVELOPMENT

Executive Summary

Private recruitment agencies orchestrate much of the migration process, from predeparture to return. They provide information, assistance, and even financial support (if migrants need help with up-front costs for documentation or smuggling); facilitate transit to and from the destination; and in some cases employ migrants directly. Agencies have also been known to advocate for migrant workers, by removing them from abusive workplaces or even organizing repatriation. But migrants' dependence on private agencies for so many services — in a cut-throat market that crosses multiple jurisdictions — also creates many opportunities for exploitation and abuse.

Fees, and the debts they produce, are at the heart of many of these irregularities. Some migrants are overcharged at the point of service; others are encouraged to take out loans that later escalate. Debts can tie workers to exploitative employers if returning home would incur a "deployment cost" that they can ill afford.

While a consensus is building over the need for agency regulation, disagreements persist over the appropriate form and function of regulation. Existing recruitment regulations have several areas for further improvement. First, they often address the wrong piece of the puzzle, or do not strike the right balance between too little and too much intervention. For example, these regulations often frame migrants' relationships with recruiters and employers, but the relations among agencies, especially between agents at the origin and destination, also shape migrants' experiences. Second, regulations sometimes fail to address the real cause of recruitment irregularities, which can vary from the simplest (information asymmetry) to the most complex (a limited supply of jobs). And third, holding agencies accountable across multiple jurisdictions with differing regulatory regimes is not easy, and policy mismatches between origin and destination countries have created loopholes that allow unscrupulous agencies to game the system. Effective regulation requires strong cooperation between origin and destination countries and efforts by employers, civil society, and others to reduce pressure throughout the supply chain. It also requires more active government consultation with migrants themselves.

I. Introduction

Even with the advance of globalization, significant barriers to mobility remain. Businesses are now searching for more flexible and mobile staff, while workers are eager to move across national borders. Within this global labor market, private recruitment agencies fulfill an important role — bridging the gap between employers or sponsors and prospective migrants. Agencies guide migrants through the shoals of immigration policies, match them with employers, and provide information about living and working conditions in distant locations. While many of these services are provided in good faith, some agencies deliberately mislead and exploit their "clients."

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Despite private recruitment agencies' prominent role in the labor migration process, policymakers at both origin and destination have yet to forge a clear consensus on how best to manage their operations. Governments recognize the pivotal role recruitment agencies play in facilitating labor migration; without them, migration at the current scale would be impossible. At the same time, governments understand that, if left unregulated, agencies could abuse (at even higher rates than today) the very workers they are supposed to help, while increasing the cost of doing business for employers. Indeed, in a competitive international labor market where the supply of labor typically outweighs demand, regulating private recruitment agency operations is essential. The fierce competition for jobs coupled with poor monitoring and enforcement of rules and regulations make migrants, especially in the low- and mid-skilled sectors, vulnerable to abuse and exploitation.

Governments no longer face the question of whether they should intervene in the private recruitment marketplace, but instead must determine how they can do so most effectively. What is the most effective vehicle for government intervention on recruiters' operations? Is there a tradeoff between the level of regulation of private recruiters and their efficiency in "clearing" labor markets? What is the nature of the relationship among recruiters at origin, transit, and destination; and how can governments regulate entities over which they have no sovereign authority?

Answers to these policy questions are just beginning to take shape. For a long time, very few in academic and policy circles paid attention to recruitment agencies and their operations. Recent years, however, have seen a rise in the number of studies and reports on the issue of migrant recruitment. This policy brief outlines five key insights from the burgeoning literature, and ends with some recommendations to guide policymaking and implementation.

II. Five Key Insights on the Private Recruitment Process

A. The Importance of Recruitment Agencies at All Stages of Migration

Private recruitment agencies play a critical role at multiple stages in the migration process. They provide migrants with information, assistance, and logistical

support; and they do so prior to departure, while abroad, and even upon return. Since migration almost always requires significant up-front investment, recruiters can even help pay for placement or documentation (including passport, police clearance, and birth certificate fees), and for certification of qualifications and skills.

Many recruiters ultimately employ the migrants they recruit, which can be advantageous for migrants since it enhances their employability and allows them to keep abreast of job market changes and training opportunities.[1] This is especially true in Europe and North America, where employers often outsource their workforce to temporary staffing agencies. The International Confederation of Private Employment Agencies estimated that in 2011, more than 46 million workers used staffing agencies to find jobs in 23 countries.[2]

Recruiters can also play a role in promoting migrants' interests, such as by removing migrants from abusive workplaces or filing complaints with authorities. Studies in the Middle East have shown that some agencies have even facilitated repatriation.

B. Placement Fees

Fees — excessive charging, early collection, or failure to issue receipts for payments — are at the center of most recruitment irregularities. Placement fees differ depending on the country of destination, gender of the migrant, nature of work, prospective salary, and other variables. In general, migrants pay higher recruiting fees if the job carries prospects for settlement, if it is difficult to migrate via social networks or through irregular channels, and if the number of would-be migrants exceeds the number of contracts. Generally, costs are higher for migrants going to Europe, North America, and Australia.[3]

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While many agents act in good faith, some unscrupulous operators seek to profit by exploiting their migrant clientele. Though many origin countries have set limits on how much recruitment agencies can charge migrant workers, field studies suggest that these are generally not followed. For instance, the Ministry of Expatriates' Welfare and Overseas Employment in Bangladesh has fixed the maximum migration cost for low-skilled male migrants at 84,000 Bangladeshi takas (BDT, equal to about US $1,220), and at BDT 20,000 (US $145) for female workers. However, migrants interviewed in a number of studies report paying brokers an average of BDT 200,000 (US $2,900). This suggests that the cost of the middlemen and profit of the licensed recruiter is as high as BDT 150,000 (US $2,165), or almost two-thirds of the total cost to the migrant.[4]

C. Indirect Fees at Destination and Upon Return

Governments often limit fees that can be legally charged to migrants at the point of departure, but not all fees to agents are paid up-front. In fact, most problematic cases involve fees collected while at destination and even upon migrants' return. Rather than collect fees, some agencies provide loans, usually paid through a salary-deduction scheme, as a tool for enticing applicants. Migrants are often unaware of the payment terms and are charged at levels comparable to or even higher than those of informal moneylenders. If migrant workers refuse to work with their current employers and want to go home, agents typically

ask migrants to pay back the so-called "deployment cost"— the expenses agents incurred such as the round-trip airfare, visa processing, and other fees associated with the deployment.

Since many cannot afford to pay the deployment costs, which typically amount to almost a year's salary, migrants face the choice between resuming work and finishing the entirety of their contracts, leaving their employers to seek shelter in their embassy, or seeking better employment opportunities in the informal economy. The practice of demanding repayment of deployment costs makes migrants more vulnerable to exploitation, since — unlike placement fees — deployment costs are not regulated.

D. Exploitation and Abuse Among Agencies in an International Market

Exploitation and abuse arising from the relationship between recruiters at origin and destination can also increase the cost of the recruitment process. These extra costs are often passed on to the weakest chain in the link: the migrant worker. For instance, agents at destination often complain that their counterparts at origin ask for stiff commissions and arbitrarily increase the fees with no clear reason. Rather than face the risk of losing employers as clients — a daunting prospect in a competitive market where recruiters not only compete against each other but with recruiters in countries without regulation — agencies pass the cost onto migrants by reducing their salaries. Some agencies might not even inform migrants that they will receive a lower salary than stated in the contract because they are banking on the high probability that the migrants, fearing deportation, will not complain.[5]

The majority of existing recruitment regulations concentrate mainly on framing migrants' relationships with recruiters and employers, by outlining, for example, acceptable placement fees, minimum wage requirements, and bonds. In the Middle East, however, how migrants fare in the recruitment marketplace is ultimately determined not just by the nature of their relationship with the agencies that recruit them or the employers that hire them, but also by the nature of the relationship between agencies at destination and origin.[6]

E. Abuse of Low-Skilled Workers

Recruitment-related abuses occur in all destinations and at all skill levels. Highly skilled migrants sometimes pay exorbitant placement fees. Research in China suggests, for instance, that nurses aiming to enter the Australian and United Kingdom markets pay recruiters between US $4,000 and US $15,000; while Filipino nurses going to Jordan typically pay double the Philippine government's prescribed limit of one month of salary.[7] But low-skilled workers in particular sectors are especially vulnerable. Most disputes over recruitment and contract violations involve migrants in low and unskilled sectors, particularly domestic work, construction, garments, agriculture, and fishing industries. Field studies show that low-skilled migrants, in general, pay more in placement fees relative to their prospective income. They are also more willing to accept less-than-ideal work conditions, including lower wage and benefits. Domestic workers are most vulnerable since their work is confined inside the home, which

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government authorities find difficult to monitor.[8]

III. Moving Forward in Policy and Practice

While a consensus is building over the need for more regulation of recruitment agencies, disagreements persist over the appropriate form and function. A bright line between the level of regulation the market will bear, and the need to regulate exploitative charges or practices, rarely exists — a situation that makes policymaking difficult.

For instance, the appropriate fees agencies can legitimately charge migrants remain a contentious issue. One straightforward way to settle this debate is for regulators to set fees that basically reflect agencies' cost of provision plus what may be considered "normal" or competitive profits. From this prospective, a policy that bans agencies from charging fees to migrants for services that are already paid for by the employer makes sense. Indeed, in many developed countries, temporary work agencies, by custom, do not charge placement fees to workers.

However, in cases where the demand for jobs is extraordinarily high relative to the supply — such as one typically finds in international migration — or when there is high unemployment within internal markets, the concept of prohibiting fees may not easily apply in practice. As economist Manolo Abella argues, the "fee is not determined by the financial value of the good procured but by demand itself… What the recruiter gets is not a fee for the recruiter service but a 'bribe' to the job he or she offers."[9]

Indeed, migrants tapping highly competitive local and global labor markets are typically willing to pay more. A general policy that bans placement fees or keeps them within the cost of provision may be conceptually sound, but will be difficult to enforce on the ground. Even the International Labor Organization (ILO) recognizes that there are cases where legal agencies may have to collect fees from migrants to be competitive vis-à-vis their illegal counterparts who are making money by receipt of bribes.[10]

Indeed, in extremely competitive markets, the challenge is to identify regulations that balance realities on the ground without disregarding concerns over fairness. A nuanced approach that better recognizes the main source or recruitment irregularities in the migrant labor market is key. Interventions should adjust depending on whether the recruitment problems are due mainly to information asymmetry, the presence of monopolies and gatekeepers, or the limited supply of jobs themselves.

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A. Information Asymmetry

Migrants' limited access to information sometimes explains the preponderance of recruitment-related problems. Numerous studies have highlighted migrants' limited awareness of their rights, alongside a poor understanding of safe recruitment, travel, and employment procedures; options for legal migration; and labor and migration regulations. This lack of knowledge means that private agencies have the monopoly on this type of information: a recipe for migrant abuse.

In these cases, the deregulation of agencies and increased government focus on distributing accurate information may be

the best policy route. Such measures would limit the government's role to the dissemination of information, helping migrants make informed decisions when dealing with recruiters.

Explicit regulation of placement fees may not be necessary, especially considering the costs associated with enforcement. Indeed, in sectors with high demand for workers, such as the medical and health professionals, agencies typically do not charge placement fees to migrant workers; rather, they collect fees mainly from employers. For instance, a survey of nurse recruiters in the United States found that a substantial majority (82 percent) do not charge migrant nurses an up-front fee.[11]

Initiatives to "name and shame" unscrupulous agencies or to rank and/or label agencies based on merit may also work. For instance, government regulators can rank agencies based on a set of criteria that they consider important, such as deployment figures and the number of prior violations. Governments can also encourage recruitment agencies to earn international standard certifications. For instance, agencies could use the International Standards Organization's "ISO 9000" quality-management label — which places emphasis on client satisfaction — in their advertising and marketing campaigns as a guarantee of quality.

B. Monopolies and Gatekeepers

If the problem is not just information asymmetry, but that migrants have limited *access* to jobs, a more proactive policy stance may be necessary. In this case, the recruitment agent is acting as the gatekeeper and is capable of using this position of market power to make migrant workers pay more. For example, in Europe and North America, many employers have arrangements where "block contracts," "preferred supplier lists," and "service-level agreements" allow a single agency or a group of agencies to provide all workers at a fixed-volume discount. In this situation, the appropriate policy response would be to increase competition among agencies by relaxing entry rules and allowing new players to build their base.

For instance, to increase competition, the United Kingdom implements a differential, or "banding," approach in charging licensing fees to gangmasters (those regulating the supply of workers to the agricultural, horticultural, and shellfish industries). In this policy, the license fee is proportionate to the expected size of the business. If the government asked for a flat license fee instead, small businesses would have to pay significantly more, which would then create a financial barrier to entry. In addition, it would deter less-than-fully compliant agencies from coming forward for licensing.[12]

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C. Limited Supply of Jobs

The most difficult cases to regulate are instances where the key problem is not access to information or access to jobs, but the lack of jobs themselves. Migrants in very competitive international labor markets are generally willing to pay more simply because there are more people who want to emigrate than there are (legal) jobs, and illegal entry is increasingly difficult for an individual to accomplish on his/her own. Especially for international moves, migrants will pay high fees not because recruiters have

market power, but because of job rationing by the countries of destination.

In these extremely competitive markets, aspiring migrants do not choose the agencies that will represent them; rather the agencies choose migrants. Increasing competition among agencies is, therefore, not the solution. Although it may be counterintuitive, regulation should aim to limit the number of players to a qualified few. Competition to a certain degree is necessary, especially in private-sector driven recruitment industries like that of the Philippines; however, too much competition if coupled with poor enforcement of regulations can actually increase the likelihood of worker abuse.

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Indeed, the Philippine regulatory system was created primarily to deter what Filipino policymakers characterized as cut-throat competition among recruitment agencies. In particular, the Philippine experience suggests that encouraging economies of scale among recruiters would be a better option because it serves two purposes. For one, larger and more stable recruiters tend to be more efficient and have lower overhead. They profit from many migrants, not just a few, and therefore can afford to lower their placement fees because their fixed costs are spread across a larger number of clients. Second, a smaller number of larger players are relatively easier to monitor — an important consideration for many developing-country governments whose institutional capacity may be severely constrained.

Policymakers in the Philippines fear that in an overcrowded market, some recruitment agencies will not make enough profits and, instead of closing shop, will recoup their losses by cutting corners and breaking the rules (i.e., charging exorbitant recruitment fees or colluding with employers). To serve the objective of guaranteeing worker protections, Philippine regulators have imposed stiff entry conditions to weed out potential violators and keep the market from becoming saturated. Regulators require recruitment agencies to prove competence in four areas: financial capacity, personal and professional qualifications, and management and marketing capabilities. The government's "hard-to-enter" policy is coupled with an "easy-out" approach. In cases of violation of regulations, agencies get a reprimand, a suspension order, or an outright cancellation of their license, depending on the nature of the violation.

Identifying the main source of recruitment irregularities in the migrant labor market has important policy implications, especially in countries with parallel, dual labor markets — one for native workers where the problem is mainly access to information or access to jobs; and another for migrants, where the problem is the lack of jobs themselves, not just access to jobs or information about them. National regulations that do not recognize and act upon these differences are bound to fail. For instance, information campaigns alone will rarely solve the problem of recruitment abuse in highly competitive labor markets.

IV. Conclusion: Beyond Recruitment Policies

The recruitment marketplace does not exist in a vacuum. Beyond instituting policies that directly control recruitment practices, governments at both origin and destination should also introduce parallel measures that contribute to a beneficial recruitment environment. Indirect polices aimed at

granting a core set of rights to migrant workers; forging meaningful cooperation between origin and destination countries; and enlarging the role for employers, civil society, and migrants themselves in policymaking and implementation will have direct, positive and lasting impact on recruiters' operations.

A. Granting a Core Set of Rights to Migrant Workers

It is important to empower labor migrants and give them the needed negotiating leverage in an otherwise unequal employment relationship. As already noted, recruiters play an important, positive role that rests on their ability to provide migrants with a wider range of choices than they can access without assistance. Typically, in this exchange, migrants' bargaining position is low, which often leads to fraud and abuse. Indeed, a less-direct, yet crucial component in controlling the recruitment process is granting migrants equal treatment and the same basic rights as native workers. It is not a coincidence that many cases of recruitment-related abuse occur in those sectors that afford very limited protection to migrants, such as domestic work.

Of course, the composition of a set of core rights will be a matter of intense debate among sending and receiving governments and other stakeholders. Protecting migrants from abusive recruitment practices requires, at the minimum, an honest discussion of the basic protection mechanisms that should be accorded at origin, transit, and destination.

B. Meaningful Cooperation between Origin and Destination Countries

Regulating recruitment agencies is not easy because it requires managing a global movement over which the regulator typically does not have complete control. Enforcing worker protection rules in multiple legal jurisdictions — especially where regulatory regimes differ dramatically across jurisdictions — is difficult. For instance, with regards to worker abuse, it is unclear to what degree an employer or recruiter should be held liable for abuse that occurs in a different jurisdiction. Policy mismatch between origin and destination countries on key policy areas has also created loopholes that allow unscrupulous actors to game the system.

Regulatory and enforcement efforts would be more effective if both destination and origin countries were equally committed to introducing and enforcing compatible rules. National regulations banning payment of recruitment fees, for instance, would be more effective if these regulations could be monitored or enforced across borders.

Indeed, some of the good practices identified in recent years, such as the recruitment of seasonal agricultural workers from Pacific Island countries to New Zealand, and the deployment of factory workers to South Korea from elsewhere in Asia, include innovations that simplify the rules at origin and destination and address inconsistencies in critical areas such as allowable fees, standard employment contracts, minimum wages, and level of recruitment-agency liability for workers.

Bilateral agreements can be an effective tool to jointly regulate agency operations. For example, a Memorandum of Understanding (MOU) between the Philippine government and three Canadian provinces bans charging placement fees to migrants. The Philippines' MOU with Japan states the actual recruitment fees employers must pay: US $425 as processing fee, inclusive of contract guarantee, and an additional US

$25 contribution to the Worker's Welfare Fund.[13] Jordan's MOU with Indonesia concerning domestic workers is noteworthy for covering costs migrants incur during the predeparture, destination, and return stages. It includes provisions that require the Indonesian agent to pay for the deployment cost if the domestic worker is not qualified and/or refuses to work without reason.[14] Likewise, South Korea bilaterally signed an MOU with a number of origin countries within Asia outlining the recruitment process and the types of fees that can be legitimately charged from employers and workers alike, both before departure and once the migrant reaches South Korea.[15]

Ultimately, government efforts to control recruiters will not alone eliminate the abuse of migrant workers.

C. An Enlarged Role for Employers, Civil Society, and Migrants Themselves in Policymaking and Implementation

Ultimately, government efforts to control recruiters will not alone eliminate the abuse of migrant workers. Employers — with or without government pressure — may have to assume a more active role in the recruitment phase, and ensure that their recruiters follow ethical recruitment practices. Employment practices will likely change if there are incentives to do so from within the supply chain.

However, large and/or multinational corporations have initiated most of the changes in employment practices to date, and small- and medium-sized business (SMEs) and household employers have rarely followed suit. Efforts, especially from civil society, have convinced large businesses, particularly multinationals, to include specific protections for migrant workers in their codes of conduct, auditing activities, and purchasing decisions. SMEs, however, are the backbone of many destination economies, accounting for a huge majority of all enterprises. Households also employ migrant workers for care and domestic work, many of whom are extremely vulnerable to abuse and exploitation.

Creating meaningful partnerships with civil society can also improve implementation of recruitment regulations. Civil-society groups are not just an excellent source of talent and technical expertise; their cooperation with the government regulator enhances the institution's credibility and lends legitimacy to its rulings. They can also provide oversight and monitor the implementation of programs and policies.

There is also room for the insurance industry to share the cost of protection against recruitment abuse. Countries with healthy or burgeoning insurance industries could explore the potential value of requiring recruitment agents to purchase insurance benefits for each worker they send abroad. As the case of the Philippines suggests, private insurance providers curb recruitment-agency abuse since it is in their interest to send only qualified and healthy workers in order to minimize claims. Checks should be instituted, however, to ensure that insurance premiums are not passed on to migrants directly or indirectly; that a level playing field exists among insurers; and that recruitment agents are barred from owning insurance companies.

It is also important for governments to create clear avenues or mechanisms that allow them to regularly and directly consult with migrant workers. In many countries, the recruitment industry, employers, and some actors in civil society, using the media and through active lobbying, have been vocal and specific about their desired regulations. The

voices of migrants themselves — especially those in low-skilled and domestic work — are notably missing from the current discourse.

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ENDNOTES

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Governments, multilateral agencies, and development specialists have rediscovered the connections between migration and development. Research focuses on the actual and potential contributions of migrant communities to sustainable development or the reduction of poverty in their countries of origin; the findings, however, have not been systematically translated into policy guidance.

The Migration Policy Institute is deeply engaged in efforts to encourage a multilateral discussion and exchange of experience through the Global Forum on Migration and Development and the UN High-Level Dialogue on International Migration and Development.

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