



Responsible Recruitment:

Addressing Gaps
in Protections for
Migrant Workers



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About this report: This report is the second of two reports developed by the Institute for Human Rights and Business (IHRB) in collaboration with Equidem Research & Consulting (Equidem). Building on the November 2017 report “Responsible Recruitment: Remediating Worker-Paid Recruitment Fees”, this research focuses on practical steps companies can take to address systemic governance gaps that exist in transnational recruitment processes.

The Leadership Group for Responsible Recruitment: IHRB convenes the Leadership Group for Responsible Recruitment (www.employerpays.org), a collaboration between leading companies and expert organisations to drive positive change in the way that migrant workers are recruited through implementation of the Employer Pays Principle.

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Contents

| | |
|---|-----------|
| Executive Summary | 4 |
| 1. Introduction | 6 |
| 2. Gulf States' Regulation of the Recruitment Process | 8 |
| 2.1 Laws Governing Recruitment | 8 |
| 2.2. Access to Justice | 9 |
| 2.3. Visa Application Procedures | 9 |
| 3. Nepal's Regulation of the Recruitment Sector | 11 |
| 3.1 Laws Governing Recruitment | 11 |
| 3.2 Institutional Capacity to Enforce Regulations | 12 |
| 3.3 Access to Justice | 13 |
| 3.4 Opposition from the Recruitment Sector | 14 |
| 3.5 Weak Regional Response | 15 |
| 4. Business and Responsible Recruitment | 17 |
| 4.1 Human Rights Responsibilities of Businesses | 17 |
| 4.2 Business-led Initiatives to Promote Responsible Recruitment | 18 |
| 5. Summary and Recommendations | 21 |

Executive Summary

Transnational recruitment processes are often the starting point to a cycle of abuse that traps migrant workers in situations of human trafficking and forced labour. Workers pay large recruitment fees to agencies and brokers offering potential jobs in other countries. These agencies play an important role in connecting employers to prospective migrant workers, negotiating the terms and conditions of their future employment and helping facilitate the issuance of passports, visa documents, pre-departure training programmes, skill tests and medical check-ups by origin state authorities.

Complex and opaque recruitment practices are common in many labour migration corridors, and this increases the risk of recruitment-related exploitation. The governance gaps are significant and resolving this type of systemic exploitation requires wholesale reform of enforcement mechanisms in both sending and receiving countries of migrant labour.

Companies that rely on a migrant workforce face many challenges and dilemmas in navigating transnational recruitment, especially in states where the use of intermediaries is unavoidable. This report outlines the considerable gaps in protection for migrant workers and offers some practical suggestions to businesses seeking to recruit responsibly in challenging environments.

This report focuses on the recruitment process that takes low-paid migrant workers from Nepal to work in the Gulf states, where many work in the region's booming and highly competitive construction sector. This corridor has been chosen as a case study to illustrate the challenges and responses to responsible recruitment that are relevant to businesses regardless of their location or context. Abuses of workers in the Gulf construction sector have been documented extensively, and the recruitment process is consistently identified as a key factor in abuse and exploitation. Recruitment debt – equivalent to several months or years of potential wages - can lead to conditions of forced labour. However, none of the Gulf states nor any of the states that supply them with labour have demonstrated a strong commitment to protecting low-paid migrant workers from rights abuses and the recruitment process is an area where this collective inertia is most evident.

The situation facing migrant workers creates serious challenges for companies seeking to recruit responsibly. But as this report makes clear, there are practical steps companies can take to protect workers in their labour supply chains and to protect their companies from reputation and legal risk. The key element of any company's commitment to responsible recruitment should be adherence to the Employer Pays Principle, which states that: *No worker should pay for a job - the costs of recruitment should be borne not by the worker but by the employer.*

Key recommendations for businesses:

- **Develop recruitment policies** that adopt the Employer Pays Principle and require suppliers to pay the costs of recruitment directly to the extent possible. When not possible, or where the migrant worker is legally required to pay a fee or cost directly, reimburse the migrant worker as soon as possible.
- **Develop a pre-qualification review process** for prospective suppliers that, at a minimum, reviews supplier recruitment guidelines and practices including:
 - If the company has implemented a written worker welfare policy and standards and communicated these to employees.
 - If the company has provided all employees with a written employment agreement/contract in a language they understand detailing all the terms and conditions of their employment.
 - If the company has conducted a due diligence process to ensure the use of ethical employment agencies.
- **Establish robust screening and selection processes** for key business relationships, such as suppliers and sending and receiving country recruitment agencies, including assessing their ability to comply with responsible recruitment policies and whether additional oversight may be required.
- **Include in all procurement tenders and contracts** between suppliers and recruitment agencies a requirement to have welfare and human rights requirements including on responsible recruitment, that are legally binding on suppliers with sections on prosecuting and punishing corrupt practices.
- **Map the various points of leverage** that are available to a business to help drive more responsible recruitment practices whether via traditional commercial leverage, leverage through collective action with business partners and peers, or via bilateral or multi-stakeholder engagement and collaboration with governments, trade unions and civil society, and other stakeholders.

By first identifying the gaps in protections available to migrant workers in the Gulf states, and then in Nepal, this report illustrates the extent of the governance gap that exists in transnational recruitment. The report then looks at the role of business in bridging these gaps and concludes with practical recommendations for companies to recruit responsibly.

Introduction

Every day, thousands of men and women around the world travel abroad for work in the hope of a better future for themselves and their loved ones. The construction sector is one of the largest employers of migrant workers worldwide,¹ and the Gulf is one of the most active regions for this sector. An estimated 56.5 percent of Nepal's mostly male low-wage workers are employed in the Gulf.² Migrant worker remittances account for over 30 percent of Nepal's gross domestic product (GDP).³ Working abroad therefore offers communities living in regions with underemployment a chance to seek better prospects. Worker typically seek overseas job vacancies through word of mouth from friends, relatives and local sub-agents, or advertisements in the local media.⁴ But ignorance of their rights, weak enforcement of labour protections, and poor skills training leave thousands at risk of debt bondage and other forms of exploitation.

The total value of construction and infrastructure projects either in the planning stage or in the delivery stage across the Gulf is estimated to be close to \$2.7 trillion and construction is a sector where the impact of unethical or illegal recruitment practices has been keenly felt by low-paid migrant workers from south Asia and east Africa.⁵ In a 2012 report on the abuse of migrant workers in Qatar, Human Rights Watch found that workers had paid up to \$3,651 to get their jobs. Many took out loans at high interest rates and mortgaged family property.⁶ These fees and associated loans can trap indebted workers in abusive jobs, significantly increasing their vulnerability to forced labour.

From the perspective of businesses, recruitment fees can represent a significant cost in sectors that can be extremely competitive. According to Deloitte, in 2015 up to 27% of contractors in the Gulf's construction sector were ready to accept small or no margins at the tender stage to try to secure a project.⁷ One construction industry expert reported that

1 Michelle Buckley, Adam Zendel, Jeff Biggar, Lia Fredriksen and Jill Wells, *Migrant Work & Employment in the Construction Sector*, International Labour Organisation, 2016, available online at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_538487.pdf.

2 Nepal Labour Market Update, International Labour Organisation, January 2017, available online at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_543497.pdf.

3 According to the World Bank, in 2016 remittances accounted for 31.4% of Nepal's GDP. "Personal remittances, received (% of GDP)," World Bank, 2018, available online at: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NP>.

4 "Labor Brokerage and Trafficking of Nepali Migrant Workers", Verité, November 2016, available online at: https://www.verite.org/wp-content/uploads/2016/11/Humanity-United-Nepal-Trafficking-Report-Final_1.pdf, pg. 28.

5 "GCC invests \$2.7 trillion on construction projects", Gulf Property, undated, available online at: <http://www.gulfpropertyme.com/778/INVESTMENTS.aspx>.

6 "Building a Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022", Human Rights Watch, June 12, 2012, available online at: <https://www.hrw.org/report/2012/06/12/building-better-world-cup/protecting-migrant-workers-qatar-ahead-fifa-2022>

7 Deloitte GCC Powers of Construction 2015", Deloitte, Pg.47, available online at: <https://business-human-rights.org/sites/default/files/documents/Deloitte-GCC-Powers-of-Construction-2015.pdf>

construction companies often 'pre-sell' labour at low margins in order to win fixed price bids and hope not to be affected in the future by material price fluctuations.⁸ Suppliers who have been finally awarded a competitive project with tight budgets will be reluctant to absorb incremental labour costs including the payment of recruitment fees.

Ray Jureidini, Professor of Migration Ethics and Human Rights at the Centre for Islamic Legislation and Ethics at the Hamad Bin Khalifa University in Qatar has commented that: *"Payments received by company personnel may be used to cover the costs of recruitment in the destination country including worker's insurance and residency permits."*⁹

A recruitment agent in Qatar, speaking anonymously, reported that suppliers usually pre-calculate and analyse the potential financial impact of responsible recruitment on their supply chain. Suppliers who calculate that the cost will significantly reduce their profits or their competitiveness will likely opt for traditional, exploitative, recruitment models.¹⁰

It is also far more profitable for recruitment agencies to transfer recruitment costs to migrant workers. If recruitment agents were negotiating with well-informed commercial entities, the fees paid by businesses, in a competitive sector, would reflect the true, market cost of recruitment. Instead, recruitment agents are dealing with often less well-informed migrant workers and are therefore able to charge higher rates for their services. As an expert on responsible recruitment reported, this is the main reason why the fees paid by workers greatly exceed the legitimate, reasonable, and customary costs of cross border recruitment, and why recruitment agencies prefer to charge workers rather than their clients.¹¹

8 Telephone interview with construction industry expert, January 2018

9 Telephone interview with Prof. Ray Jureidini, July 2017.

10 Telephone interview with recruitment agent in Qatar, October 2017.

11 Telephone interview with labour expert on responsible recruitment, January 2018.

Gulf States' Regulation of the Recruitment Process

2

2.1 Laws Governing Recruitment

Qatar, the United Arab Emirates and Saudi Arabia have passed laws that explicitly prohibit recruitment agents in their respective jurisdictions from charging workers fees, but these laws have no effect on recruitment agents in labour-sending countries.¹² Labour laws in Oman, Kuwait and Bahrain do not mention recruitment fees and who should pay them, but even if they did, the transnational character of recruitment makes it easy for the Gulf states to claim that the deception takes place in the labour-sending states, where they have no jurisdiction.¹³

There is evidence to suggest that Gulf-based recruitment agents profit from exploitative recruitment practices. A World Bank study from 2011 revealed that Qatari recruiting agents received up to 43% of recruitment fees paid by migrant workers in hidden money transfers – where agencies did not receive any fees *directly* from workers but from manpower agencies in sending countries.¹⁴ The majority of labour cases brought by the Public Prosecutor's Office in Qatar against recruitment agencies and private companies in the Gulf are directed towards the non-payment of salaries, work hour limitations, granting mandatory rest days, or paying overtime and it is not clear how many individuals, if any, have been prosecuted for recruitment-related bribery.¹⁵

The Gulf states also choose not to prosecute illegal recruitment practices via their anti-trafficking laws. All six Gulf states have anti-trafficking laws, but these are rarely, if ever, used to prosecute employers or recruitment agencies for trafficking or forced labour, despite deception being commonplace in the recruitment process.¹⁶ As a general rule, the

12 Qatar Labour Law, 2004, Article 33: "The person who is licensed to recruit workers from abroad for others shall be prohibited ... To receive from the worker any sums representing recruitment fees or expenses or any other costs." Saudi Labour Law, 2005, Article 40: "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." UAE Labour Law, 1980, Article 18: "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 any expenses except as may be decided or approved by the Ministry of Labour and Social Affairs."

13 "Ways forwards in recruitment of low-skilled migrant workers in the Asia-Arab States corridor", Dr. Ray Jureidini, International Labour Organization white paper, 2016, available online at: http://www.ilo.org/wcms-sp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_519913.pdf.

14 "The Qatar-Nepal Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process," The World Bank, 2011, Pg.9, available online at: <https://openknowledge.worldbank.org/bitstream/handle/10986/2330/634050PUB0Qata00Box0361515BOPUBLIC0.pdf?sequence=1&isAllowed=y>.

15 "2017 Trafficking in Persons Report: Qatar", Office to Monitor and Combat Trafficking In Persons, US Department of State, available online at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271267.htm>.

16 See for example: In 2016, officials did not prosecute any Qatari employers or recruitment agencies for

Gulf states regard trafficking as a crime pertaining to the sexual exploitation of women and children, not the labour exploitation of low-paid migrant workers. In Saudi Arabia for example, instances of employers withholding wages or passports are regarded as labour law violations, and are not investigated as potential trafficking crimes.¹⁷

2.2. Access to Justice

Authorities in the Gulf states tend to attempt to resolve labour violations without recourse to criminal prosecutions, for example by transferring employer sponsorship, getting employers to pay unpaid wages, imposing fines, or blacklisting persistent violators. In the rare cases where workers succeed in bringing cases against employers to court, employers find it all too easy to obstruct the judicial process by not appearing in court. Hearings are regularly postponed, effectively blocking access to justice for workers.¹⁸

2.3. Visa Application Procedures

Not only do the Gulf states not hold recruitment agents criminally accountable for their role in placing workers into situations of forced labour, but their visa quota systems are poorly regulated and minimal due diligence is exercised on prospective sponsors and employers.¹⁹ Employers are typically required to provide information on the number of workers they need, the type of jobs they want to recruit, and the nationality of workers they are looking to employ. Once applications are submitted, labour ministries perform perfunctory checks of sponsor documents and issue the total number of visa letters required.²⁰

The ease with which employers can secure visas leads some to sell them on the informal market at several times the actual cost of the visa.²¹ The visa costs paid by the original employer, the cost of kickback payments, and other indirect expenses are then transferred to migrant workers.

This informal arrangement, commonly referred to as the ‘free visa’, enables a low-paid migrant worker to work in the informal labour market, and in exchange for this labour mobility, he or

forced labor under the anti-trafficking law, as compared to its conviction of two private companies in 2015, “2017 Trafficking in Persons Report Qatar”, Office to Monitor and Combat Trafficking in Persons, US Department of State, 2017 available online at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271267.htm>.

17 2017 Trafficking in Persons Report Saudi Arabia, Office To Monitor And Combat Trafficking In Persons, US Department of State, 2017 available online at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271271.htm>.

18 “Labour migrants and access to justice in contemporary Qatar”, Andrew Gardner, Silvia Pessoa, Laura Harkness, London School of Economics Middle East Centre, November 2014, pg. 28, available online at: http://eprints.lse.ac.uk/60241/1/___lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_LSE%20Middle%20East%20Centre%20Papers_Labour%20migrants%20acces%20to%20justice_2014.pdf.

19 “Eluding the “Saudization of Labor Markets”, Steffen Hertog, Princes, Brokers, and Bureaucrats: Oil and the State in Saudi Arabia, Cornell University Press, Ithaca, 2011.

20 In the case of Saudi Arabia see: “Exploited Dreams: Dispatches from Indian Migrant Workers in Saudi Arabia”, Amnesty International, 4 July 2014, available online at: <http://www.refworld.org/docid/53bbe3d4.html> In the case of Qatar see: “Migrant Labour Recruitment to Qatar”, Ray Jureidini, Qatar Foundation, 2014, available online at: http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant_Labour_Recruitment_to_Qatar_Web_Final.pdf.

21 “Exploited dreams: Dispatches from Indian migrant workers in Saudi Arabia”, Amnesty International, July 2014, available online at: <https://www.amnesty.org.in/show/entry/exploited-dreams-dispatches-from-indian-migrant-workers-in-saudi-arabia>.

she pays the sponsor a monthly or annual fee, as well as any charges for renewing their work and residency permits. Workers found to be working on free visas risk being forced to pay heavy fines, or even detention and deportation, but despite these risks an estimated 15 percent of the workforce in the Gulf have worked on free visas.²²

Rather than implement rigorous visa application procedures and tackling the root cause of the problem, destination countries have targeted irregular migrant workers via regular crackdowns and documentation drives that punish workers who are employed by different sponsors or doing a job different to the one stated in their residency documents.²³ The sponsors who profit from the free visa system are rarely, if ever, punished, and this impunity ensures the free visa system goes largely unchecked.

Nepal's Foreign Employment Act 2007 provides for the appointment of a labour attaché to countries with over 5000 Nepali migrant workers and outlines general responsibilities to resolve disputes between employers and migrant workers and provide assistance to workers in distress.²⁴ In practice and due to a number of factors discussed here, embassies have been unable to effectively negotiate with exploitative employers, help migrant workers access labour courts, or prevent fraudulent employers from recruiting workers. First, the Foreign Employment Act 2007 does not outline specific responsibilities for Nepalese labour attachés, meaning it is up to each individual attaché to decide what support and guidance to offer to migrant workers.²⁵ Second, embassies are also severely understaffed. Nepalese embassies in the Gulf have only one labour attaché per country to deal with thousands of migrant worker grievances and complaints.²⁶ Labour attachés report feeling overwhelmed with the number of complaints they receive and receive minimal training and support in dealing with these cases. Third, labour attachés are often discouraged by host governments from playing an active role in resolving labour disputes involving Nepalese workers and are instead told to refer complaints to the local labour courts.

While the Gulf states have laws that directly and indirectly address the recruitment process, they commonly point to a lack of jurisdiction over the issue, which often results in no appropriate action being taken. This is the case despite evidence suggesting that recruitment agents in the Gulf also profit from exploitative practices that leave workers vulnerable to forced labour and other abuses. Lax visa application procedures contribute to the problem and when remediation fails, the courts in Gulf states often offer little hope of remedy for low-paid migrant workers, while embassies are under-staffed and ill-equipped to cope with the problem.

22 "Ways forward in recruitment of 'low-skilled' migrant workers in the Asia-Arab states corridor", Dr. Ray Jureidini, International Labour Organization white paper, 2016 available online at: http://www.ilo.org/wcms-sp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_519913.pdf.

23 "Detained, Beaten, Deported: Saudi Abuses against Migrants during Mass Expulsions", Human Rights Watch, 10 May 2015, available online at: <https://www.hrw.org/report/2015/05/10/detained-beaten-deported/saudi-abuses-against-migrants-during-mass-expulsions> and "Indian migrant workers return home with horror tales from UAE", The Times of India, 13 February 2013, available online at: <https://timesofindia.indiatimes.com/nri/middle-east-news/Indian-migrant-workers-return-home-with-horror-tales-from-UAE/articleshow/18473461.cms>.

24 Foreign Employment Act 2007, Art 68, available online at: <https://www.colomboprocess.org/images/pdfs/foreign-employment-act.pdf>.

25 "Overseas Assistance for Nepali Migrant Workers Seeking Justice Abroad", Centre for the Study of Labour and Mobility, December 2014, available online at: <https://www.ceslam.org/docs/publicationManagement/CESLAM%20Policy%20Brief%206.pdf>.

26 "Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers", Amnesty International, 6 June 2017, pg. 76, available online at: <https://www.amnesty.org/en/latest/news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/>.

Nepal's Regulation of the Recruitment Sector

3

3.1 Laws Governing Recruitment

Nepal regulates the overseas migration of labour with the Foreign Employment Act 2007 (FEA) and the Foreign Employment Rules 2008 (FER).²⁷ These laws provide the institutional framework for overseas migration and include the general duties and functions of recruiting agencies, and the manner in which they must undertake a recruitment exercise. The law includes various provisions set out to improve the welfare of migrant workers such as setting up labour attachés in destination countries, launching an insurance programme for workers, and the establishment of a welfare fund. The law also outlines offences and penalties for any violations of its provisions.

Under the FEA, recruiting agencies must obtain a licence before they can recruit prospective migrant workers.²⁸ Unregistered entities that recruit men and women for work abroad, are liable to pay fines ranging from 300,000 to 500,000 Nepalese rupees (\$2950 to \$4920) and can face a possible jail term between three and seven years.²⁹

Recruiting agencies are required to provide migrant workers with an employment contract in Nepali before they migrate to a foreign country.³⁰ They may also not charge recruitment fees more than a prescribed maximum limit set by the government including visa fees, service charges and promotional costs.³¹ Recruiters found guilty of charging workers fees above the statutory limit and deceiving individuals about prospective working conditions such as the type of job, the employer, salary and hours of work can be fined up to 100,000 Nepalese rupees (\$980).³² The law also prohibits recruitment agencies from recruiting people to countries that have not been approved by the government and from recruiting minors – below the age of 18 - for overseas jobs.³³

27 "Foreign Employment Act (2007) and Foreign Employment Rules (2008)", Government of Nepal, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258&p_classification=17.

28 "Article 10, Chapter 3", Foreign Employment Act, 2007, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258.

29 "Article 43, Chapter 9", Foreign Employment Act, 2007, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258.

30 "Article 25, Chapter 4", Foreign Employment Act, 2007, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258.

31 "Article 53, Chapter 9", Foreign Employment Act, 2007, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258.

32 "Articles 53 and 55, Chapter 9", Foreign Employment Act, 2007, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258.

33 "Articles 45 and 46, Chapter 9", Foreign Employment Act, 2007, available online at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78258.

In July 2015, the government of Nepal passed a ministerial directive – termed the ‘free visa, free ticket policy’ – which requires foreign employers from seven countries including all six Arab Gulf countries and Malaysia to pay for all visa processing and flight ticket expenses for migrant workers. The policy limits the amount that recruitment agencies can charge migrant workers in service fees – up to a maximum of 10,000 Nepalese rupees (\$96) – and only in situations when these fees have not been paid by employers. Previously, recruitment agents had been able to charge migrant workers between NPR 70,000 to NPR 80,000 (\$677 to \$775) in fees. Workers are still required to pay for their pre-departure services, such as medical tests, insurance, and orientation, but the policy significantly reduces the fees workers have to pay.³⁴

Despite the existence of laws to regulate Nepal’s recruitment sector and limit the costs Nepalese workers have to pay recruitment agents, recent research by Amnesty International again found that “the Nepali government’s failure to crack down on recruitment agencies which charge illegal fees for jobs abroad is leaving migrant workers trapped in a vicious cycle of debt and exploitation.”³⁵

Interviews for this report with thirteen Nepalese workers in Qatar’s construction sector support this conclusion. All of the men said they had paid recruitment fees in excess of the prescribed legal maximum of 10,000 Nepalese rupees (\$96) to secure work abroad. The men reported that they paid fees ranging from 55,000 to 85,000 Nepalese rupees (\$500 to \$780), and eleven of the men paid 70,000 rupees or more – seven times the legal maximum. Four of the men reported they had to take out loans to pay for the recruitment fees, requiring monthly repayments at rates of interest as high as 24%. A construction worker with four dependents said, “I wanted to clear my loan quickly so I stopped traveling into the city on our weekly holiday. I avoided calling home and eating out, just so I could meet my monthly interest payments.”

All of the men interviewed for this report noted that they were given receipts stating they had paid the legal maximum of 10,000 rupees and said their recruiters in Nepal told them not to tell their employer that they had actually paid much more in recruitment fees. A scaffolding helper from Kathmandu reported that his recruitment agent said there would be repercussions if he revealed he had paid an illegal fee: “the recruiter said ‘just tell the company you paid 10,000 [rupees], otherwise you will not get any job with them or anyone else’.”³⁶

3.2 Institutional Capacity to Enforce Regulations

One of the main reasons why Nepal’s recruitment sector continues to charge workers excessive fees is that the authorities have not dedicated sufficient resources to ensuring the laws regulating the recruitment sector are properly enforced.

Despite the fact that remittance flows into the country amount to 30 percent of Nepal’s

34 “Free-visa, free-ticket” The Kathmandu post, 02 May 2016, available online at: <http://kathmandupost.ekantipur.com/news/2016-05-02/free-visa-free-ticket.html>.

35 “Migrant workers failed by government, exploited by businesses”, Amnesty International, 18 December 2017, available online at: <https://www.amnesty.org/en/latest/news/2017/12/nepal-migrant-workers-failed-by-government-exploited-by-businesses/>.

36 Interview in Qatar, June 2017.

Gross Domestic Product (GDP), the Nepalese government has allocated less than 1 percent of its annual budget to the Ministry of Labour and Employment (MoLE) to regulate the recruitment of migrant workers.³⁷ The Department of Foreign Employment (DoFE), which is responsible for monitoring recruitment agencies and investigating complaints of fraud and deception is critically understaffed, with only six to eight officials responsible for monitoring the recruitment of an annual outflow of 630,000 migrant workers.³⁸ As a result, officers are unable to adequately monitor recruitment agencies including auditing financial books, conducting surprise checks and physical reviews of recruitment agency offices. Between 2015-2016, an estimated 84 percent of recruitment agencies did not receive a single inspection audit at their facilities.³⁹

Amnesty International has criticised the Nepalese authorities for failing to effectively disseminate information about the ‘free ticket free visa’ policy, attributing the failure to a lack of coordination between the government departments responsible for its implementation.⁴⁰ The Nepal parliament’s sub-committee of international relations and labour singled out the Ministry of Labour, the Department of Foreign Employment, and the Ministry of Labour and Employment for criticism, accusing them of failing to properly coordinate to enforce the policy.⁴¹ Amnesty also pointed to government failures to effectively monitor recruitment agencies’ compliance with the policy – rather than actively inspecting compliance, the authorities allow recruitment agencies to self-report.⁴² The ostensible explanation for this given by the Nepal authorities is that they lack the resources to actively monitor recruitment business practices.⁴³

3.3 Access to Justice

Between 2012 and 2016, migrant workers have filed more than 3,163 cases against individual brokers and over 8,016 cases against their recruitment agencies.⁴⁴ Despite the number of complaints received, the government has failed to improve the quality of justice mechanisms and workers continue to face practical obstacles to submitting complaints. The Department of Foreign Employment offices and the foreign employment tribunal – the first point of access for workers who have been deceived or faced some

37 “Migration and Development”, Bandita Sijapati, The Kathmandu post, 4 March 2016, available online at: <http://kathmandupost.ekantipur.com/news/2016-03-04/migration-and-development.html>.

38 “Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers”, Amnesty International, 6 June 2017, pg. 76, available online at: <https://www.amnesty.org/en/latest/news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/>.

39 “Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers”, Amnesty International, 6 June 2017, pg. 76, available online at: <https://www.amnesty.org/en/latest/news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/>.

40 “Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers”, Amnesty International, 6 June 2017, pg. 43, available online at: <https://www.amnesty.org/en/latest/news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/>.

41 See for example, reference to Nepal’s parliamentary International Relations and Labour Committee report on free-visa, free-ticket policy, “Free visa free ticket’ scheme a dud: Panel”, Chandan Kumar Mandal, The Kathmandu Post 10 August 2017, available online at: <http://kathmandupost.ekantipur.com/news/2017-08-10/free-visa-free-ticket-scheme-a-dud-panel.html>.

42 Ibid.

43 See footnote 37 above, pg. 44.

44 “Labour Migration for Employment: A Status Report for Nepal: 2014/2015”, Government of Nepal, available online at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_500311.pdf

kind of abuse - are both in Kathmandu. Workers who live in districts and villages outside Kathmandu are discouraged by the expenses involved traveling to the city and often give up their claims.⁴⁵ This accounts for a large portion of all migrant workers from Nepal. According to government statistics, approximately one third of all migrant workers in the county come from just seven districts outside Kathmandu.⁴⁶ In 2016, only four recruitment agencies were referred to the Foreign Employment Tribunal for prosecution and a further 85 agencies were fined between 50,000 and 100,000 Nepalese rupees (\$480 - \$970) for recruitment violations under the Foreign Employment Act.⁴⁷

A 2014 Open Society Foundation report on access to justice for migrant workers in Nepal found that only 17 of the 54 workers interviewed were issued employment contracts and none of the contracts that were issued included the contact details of the recruitment agency.⁴⁸ Migrant workers who took cases against recruitment agents said that threats of abuse and violence led them to accept smaller out-of-court settlements or drop their cases altogether.⁴⁹

3.4 Opposition from the Recruitment Sector

A 2016 report by Verité on corruption in labour migration across three transnational migration corridors, including between Nepal to Qatar, found that Nepali private recruitment agencies can make payments from \$300 to \$500 in kickback payments for each migrant worker they recruit.⁵⁰ In view of the profit margins involved, it is little surprise that the recruitment sector has opposed the new policy.

The Nepal Association of Foreign Employment Agencies (NAFEA) is the largest and most prominent Nepalese recruitment association, with a membership of 760 recruitment agencies.⁵¹ NAFEA has been a strong critic of Nepal's 'free visa free ticket' policy and has organised a number of industry-wide strikes and demonstrations to protest against the enforcement of the policy.⁵² In 2015, the president of NAFEA filed a writ in the local court challenging the policy on legal and procedural grounds.⁵³ In previous years, NAFEA has

45 "Migrant Workers' Access to Justice at Home: Nepal, Open Society Foundations, 2014, pg. 149 available online at: https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf

46 "Over one-third migrant workers hail from seven districts", The Himalayan Times, 22 October 2017, available online at: <https://thehimalayantimes.com/business/over-one-third-migrant-workers-hail-from-seven-districts/>.

47 "Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers", Amnesty International, 6 June 2017, pg. 79, available online at: <https://www.amnesty.org/en/latest/news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/>

48 "Migrant Workers' Access to Justice at Home: Nepal, Open Society Foundations, 2014, Pg. 149 available online at: https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf

49 "Migrant Workers' Access to Justice at Home: Nepal, Open Society Foundations, 2014, Pg. 151 available online at: https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf

50 "An Exploratory Study on the Role of Corruption in International Labor Migration", Verité, January 2016, available online at: <https://www.verite.org/wp-content/uploads/2016/11/Verite-Report-Intl-Labour-Recruitment.pdf>

51 "Nepal Association of Foreign Employment Agencies (NAFEA)", available online at: <http://www.nafea.org.np/introduction>

52 "Nafea to protest free visa, ticket provision", the Kathmandu post, 28 June 2015, available online at: <http://kathmandupost.ekantipur.com/news/2015-06-28/nafea-to-protest-free-visa-ticket-provision.html>

53 "Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepali Migrant Workers", Amnesty International, 6 June 2017, pg. 76, available online at: <https://www.amnesty.org/en/latest/>

criticised various government policies aimed at reducing deception, including translating worker contracts into Nepali arguing that stronger procedures would encourage irregular migration and reduce the number of potential migrants from Nepal.⁵⁴

NAFEA has made promises to follow recommendations made by government and civil society to better enforce their own code of conduct, which includes provisions to prevent human trafficking and guidelines to prevent fraud, deception and exploitation, and develop a grading system for recruitment agencies, but there is no evidence to suggest concrete steps were taken to implement these recommendations.⁵⁵ Sectoral best practices, such as the joint liability principle of recruitment agencies together with the foreign employers - from more progressive labour migration systems such as the Philippines – have not been implemented by NAFEA.⁵⁶

3.5 Weak Regional Response

While the government of Nepal has taken steps, albeit largely ineffective ones, to reform its domestic recruitment sector, it has not attempted to exercise a positive influence over the countries to whom it supplies manpower. In the bilateral agreements that Nepal has signed with Qatar, Bahrain and the UAE, there is no mention of the human rights of migrant workers or of the recruitment process or access to remedy more specifically.⁵⁷ This in large part reflects the power imbalance in the relationship between the wealthy Gulf states and the relatively poor states that compete to supply them with labour, but it is also true that these states have failed to act effectively as a bloc to collectively negotiate better terms for their citizens.⁵⁸

In 2016, the South Asian Association for Regional Cooperation (SAARC), a multi-lateral organisation whose members include Nepal, India, Pakistan, Bangladesh and Sri Lanka, committed to work together to formulate a common set of standards for salaries and facilities given to migrant workers and develop a strategy to ensure protection of their

news/2017/06/nepal-unscrupulous-recruiters-given-free-rein-to-exploit-migrants/

- 54 “Recruitment agencies must prioritize the protection of migrant workers”, Amnesty International, 27 November 2012, available online at: <http://www.amnestynepal.org/downloads/PS-on-Migrants'-Rights-English.pdf>
- 55 Nepal Association of Foreign Employment Agencies (NAFEA) Code of Conduct”, 9 November 2005 available online at: <http://www.nafea.org.np/code-of-conduct>
Regulation of the recruitment process and reduction of migration costs: Comparative analysis of South Asia”, Piyasiri Wickramasekara, International Labour Organization, 2014 available online at: https://www.researchgate.net/publication/264860923_Regulation_of_the_recruitment_process_and_reduction_of_migration_costs_Comparative_analysis_of_South_Asia
- 56 “Joint And Several Liability Of Recruitment/Placement Agencies With The Principal/ Employer Under Philippine Laws”, Migrant Forum Asia, Winter 2014, available online at: http://mfasia.org/migrantforumasia/wp-content/uploads/2015/06/policybrief_jointandseveraliability_winter2014.pdf
- 57 See for example: Memorandum of Understanding (MoU) with the Government of Qatar, available online at: <https://ceslam.org/mediastorage/files/Agreement%20between%20the%20Government%20of%20Nepal%20and%20the%20Government%20of%20the%20State%20of%20Qatar.pdf>, MoU with Government of Bahrain, available online at: <https://ceslam.org/mediastorage/files/Memorandum%20of%20Understanding%20between%20the%20Government%20of%20Nepal%20and%20the%20Government%20of%20the%20Kingdom%20of%20Bahrain.pdf> and MoU with Government United Arab Emirates, available online at: <https://ceslam.org/mediastorage/files/Memorandum%20of%20Understanding%20between%20the%20Government%20of%20Nepal%20and%20the%20Government%20of%20the%20United%20Arab%20Emirates.pdf>
- 58 “Letter to SAARC on Improving Protections for Migrant Workers”, Human Rights Watch, 17 December 2013, available online at: <https://www.hrw.org/news/2013/12/17/letter-saarc-improving-protections-migrant-workers>

rights.⁵⁹ However, there has been no further reported progress on these commitments. Other regional initiatives such as the Colombo Process⁶⁰ have made some progress, particularly with regard to the adoption by member states of improved legislation, setting up new government departments to monitor migration flows and negotiate bilateral agreements with sending countries. However, these efforts have been unable to effectively regulate and monitor recruitment agencies, curb illegal and deceptive recruitment practices, reduce the cost of migration in key corridors, strengthen capacity and improve protections in destination countries.⁶¹

59 “Saarc countries to formulate common standards on facilities to migrant workers”, the Kathmandu Post, 3 May 2016, available online at: <http://kathmandupost.ekantipur.com/news/2016-05-03/saarc-countries-to-formulate-common-standards-on-facilities-to-migrant-workers.html>

60 The Colombo Process is a Regional Consultative Process on the management of overseas employment and contractual labour for countries of origins in Asia. It is a member state-driven, non-binding and informal forum to facilitate dialogue and cooperation on issues of common interest and concern relating to labour mobility. The Colombo Process was established in 2003 in response to calls from several Asian labour sending countries who increasingly recognized the need for optimizing the benefits of organized labour migration whilst protecting their migrants from exploitative practices in recruitment and employment. For more information see: <https://www.colomboprocess.org>.

61 “Labour Migration From Colombo Process Countries: Good Practices, Challenges And Ways Forward”, Dovelyn Rannveig Agunias and Christine Aghazarm, International Organization of Migration, May 2012, available online at: <http://apmagnet.ilo.org/resources/labour-migration-from-colombo-process-countries-good-practices-challenges-and-ways-forward-1>

Business and Responsible Recruitment

4

4.1 Human Rights Responsibilities of Businesses

The UN Guiding Principles on Business and Human Rights (UNGPs) require businesses to avoid ‘causing or contributing to adverse human rights impacts through their own activities’, and to address negative impacts where they occur. They must also play a role in preventing adverse impacts that they may not have caused or contributed to but which are “directly linked to their operations, products or services by their business relationships.”⁶²

The responsibility to respect human rights exists independently of the ability or willingness of states to fulfil their own human rights obligations.⁶³ Even in situations where there is a failure of migrant worker origin and destination governments to guarantee labour rights protections, companies have a responsibility in their labour supply chains to address recruitment practices that lead to violations of the rights of migrant workers.

The UNGPs require companies to carry out due diligence to help identify, prevent and mitigate adverse human rights impacts in their business activities. This due diligence should be ongoing throughout the lifecycle of their activities, meaning they are applicable in the contract tendering phase as well.⁶⁴

In its Recommendations on Supplementary Measures for the Effective Suppression of Forced Labour, the International Labour Organisation (ILO) called on businesses to address abusive and fraudulent practices during the recruitment and placement process. In 2016 the ILO issued General Principles and operational guidelines for fair recruitment which included a recommendation that companies and recruitment agencies should carry out human rights due diligence assessments of recruitment procedures and address adverse human rights impacts where they are involved.⁶⁵ Other international standards such as the OECD Guidelines for

62 “Foundational principle 13”, Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework, available online at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

63 “Foundational principle 11”, Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework, available online at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

64 “Principle 17, Human Rights due-diligence”, Guiding principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ framework, United Nations Human Rights Office of the High Commissioner, 2011, available online at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

65 R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)”, Recommendation on supplementary measures for the effective suppression of forced labour, 103rd ILC session, 11 June 2014, available online at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174688.
“General principles and operational guidelines for fair recruitment”, International Labour Organization, 2016, available online at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/pub-

Multinational Enterprises⁶⁶ require businesses to conduct due-diligence on the human rights impacts of operations and to respect the rights of workers not only employed directly by the business, but employed by various suppliers in business relationships.

4.2 Business-led Initiatives to Promote Responsible Recruitment

In their role as clients in many of the Gulf's largest construction projects, authorities in the Gulf states could do more to enforce responsible recruitment standards through their contracting and procurement functions. Procurement standards impose significant contractual terms and conditions on contractors such as the submission of performance bonds and bank guarantees. These can therefore act as a secondary check on the performance of the contractor's obligations. Government clients could, in theory, classify failures by contracting parties to pay recruitment costs as a material violation of the underlying contract, prompting a penalty on the performance bond or bank guarantee, but to date these mechanisms have not been exploited by clients to ensure responsible recruitment across the labour supply chain of large construction projects.⁶⁷ However, there have been numerous multilateral and unilateral initiatives aimed at improving the recruitment process.

IHRB convenes the Leadership Group for Responsible Recruitment⁶⁸, a collaboration between leading companies and expert organisations to drive positive change in the way that migrant workers are recruited through implementation of the Employer Pays Principle. Launched in May 2016, the Leadership Group commits to implementing the Employer Pays Principle, which underscores that no worker should pay for a job. This Principle is increasingly being adopted by companies across a range of industry sectors and locations. The Leadership Group acts as a vehicle for advocacy and collaboration and serves as a knowledge hub for sharing good practice, tools and guidance in relation to responsible recruitment.⁶⁹ Its aim is threefold: to create demand for responsible recruitment by raising awareness about the benefits of ethical practices; to increase the supply of responsibly sourced labour by supporting the development and implementation of systems to identify and use responsible recruitment agencies; and to advocate for improved protection for workers by brokering dialogue to promote effective regulation of the recruitment industry.⁷⁰

lication/wcms_536755.pdf.

66 "Chapter II, General policies", OECD Guidelines for Multinational Enterprises, available online at: <http://www.oecd.org/corporate/mne/1922428.pdf>.

67 "A Way Forward for Qatar?", Verité, available online at: <https://www.verite.org/way-forward-qatar/>.

68 www.employerpays.org

69 "The Leadership Group for Responsible Recruitment", Institute for Human Rights and Business, available online at: <https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment>.

70 See, "Driving Positive Change: About the Leadership Group", Institute for Human Rights and Business, available online at https://www.ihrb.org/uploads/member-uploads/About_the_Leadership_Group_-_Leadership_Group_for_Responsible_Recruitment.pdf.

In February 2017, six leading engineering and construction companies – Amec Foster Wheeler, Bechtel, CH2M, Fluor, Multiplex, and Vinci - launched “Building Responsibly”, an initiative to improve and promote the welfare and rights of workers in the construction industry.⁷¹ Improving recruitment practices is one of the initiative’s three priorities.⁷² Three of the core members of “Building Responsibly” have launched multi-stakeholder initiatives of their own to ensure ethical recruitment in their supply chains.

Multistakeholder Initiatives Supporting Ethical Recruitment in Supply Chains

- Vinci, through QDVC, a joint venture between Qatari Diar and Vinci Construction Grands Projets, conducted an extensive survey of workers in their supply chain in 2014 and discovered that the vast majority of their low-paid employees and subcontractor employees had paid fees, in contravention of company policy.⁷³ In response, QDVC conducted detailed surveys into various recruitment corridors, reviewed its relationships with the recruitment agents with whom it was doing business, verified that all recruitment advertisements for QDVC projects were in the language of prospective hires and explicitly mentioned QDVC’s free-recruitment policy. Most notably, the organisation sent human resources personnel to countries of origin to monitor the recruitment process.⁷⁴ According to QDVC, the roll-out of the new recruitment policies eliminated the charging of recruitment fees and audits with close to 1500 newly inducted workers found that only two workers had paid fees – each amounting to less than \$20.⁷⁵
- CH2M, now Jacobs, announced in March 2015 the launch of a global worker welfare policy, which includes company regulations on fair worker recruitment and payment practices, as well as accommodation and living standards. Where recruitment is concerned, all contractors are required to conduct a due diligence process to ensure the use of employment agencies who operate ethically.⁷⁶
- Multiplex, a global construction contracting company, is currently implementing a Welfare Management System (WMS) for its Middle East operations, to help it meet its own human rights commitments as outlined in the Multiplex Middle East Welfare Policy Statement & Welfare Principles.⁷⁷ A key Multiplex Welfare Principle pertains to responsible recruitment practices which require the entire Multiplex value chain to ensure that recruitment is ‘ethical, legal and without discrimination’. In order to meet

71 See “Announcing Building Responsibly”, Humanity United, March 15, 2017, available online at <https://humanityunited.org/announcing-building-responsibly/>.

72 Ibid.

73 “Qatar: Protecting the human rights of migrant workers”, Eloise Neal, Sedex, Augst 10, 2017, available at <https://www.sedexglobal.com/qatar-protecting-the-human-rights-of-migrant-workers/>.

74 “Vinci company response 2016”, Migrant Workers and Gulf Construction, Business and Human Rights Resource Centre, available online at: [https://business-humanrights.org/en/vinci-0?questions\[\]=136173](https://business-humanrights.org/en/vinci-0?questions[]=136173).

75 “Responsible Recruitment: Remediating Worker-Paid Recruitment fees”, Institute for Human Rights and Business, November 2017, available online at: https://www.ihrb.org/uploads/reports/IHRB%2C_Remediating_Worker-Paid_Recruitment_Fees%2C_Nov._2017.pdf.

76 “Worker Welfare Policy”, CH2M, 13 March 2015, Available Online At: https://www.ch2m.com/sites/default/files/content/basic_page/attachments/CH2M-Worker-Welfare-Policy-and-Guidance-Notes.pdf.

77 “Welfare Policy Statement”, Multiplex Middle East, available online at: <https://www.multiplex.global/wp-content/uploads/2016/11/Multiplex-Welfare-Policy-Statement-2016.pdf> Modern Slavery and Human Trafficking Statement for 2016”, Multiplex, available online at: <https://www.multiplex.global/wp-content/uploads/2017/10/Multiplex-Modern-Slavery-and-Human-Trafficking-Statement.pdf>.

this commitment, one of the mechanisms Multiplex requires prospective recruitment agencies to undergo is a rigorous pre-qualification exercise. First, the recruitment agency is advised about the purpose of the due-diligence process and requested to submit information about their recruitment practices. In the second stage, a member of Multiplex's Welfare Team attends the recruitment drive, to verify the initial findings of the questionnaire and to review their processes and procedures; this is further supported by conducting random and anonymous interviews with the applicants. Thirdly, prior to a recruitment drive, all selected recruitment agencies undergo an induction and training programme on Multiplex's welfare principles and other detailed expectations on responsible recruitment.

“*Implementing the Welfare Management System in our supply chain has been a gradual and iterative learning process with our suppliers and recruitment agencies. It wasn't easy to begin with, but we are beginning to see some tangible results. Our initial findings point to happier, more productive employees and the majority of our suppliers and sub-contractors see the value of taking a holistic approach to worker welfare, inclusive of ethical recruitment practices.*”⁷⁸

Stephen Smith, Executive Director for SHEQ at Multiplex Middle East

Outside of Building Responsibly, another relevant example is seen in the initiative of Laing O'Rourke, a UK-based construction company with operations in the United Arab Emirates. The company has a detailed policy designed to ensure that workers do not pay any recruitment fees. According to information in its 2017 anti-slavery and human trafficking statement, prospective labour suppliers must also complete a pre-qualification vendor questionnaire to determine whether their policies, processes and procedures are compliant with the company's code of conduct. Between 2016 and 2017, the business held more than a dozen supply chain forums and over 500 supply chain relationship meetings.⁷⁹ Laing O'Rourke staff visit recruitment field offices and participate directly in the recruitment process at various levels and Laing O'Rourke supplier contracts with recruitment agencies explicitly prohibit the charging of recruitment fees. Members of the Laing O'Rourke management team have travelled to origin countries and participated in individual recruitment consultations with migrant workers. In cases when labour audits reveal that workers have paid fees, the company takes steps to ensure that migrant workers are reimbursed.⁸⁰

78 Telephone interview, January 2018.

79 “Laing O'Rourke Anti-Slavery And Human Trafficking Statement”, available online at: <http://www.laingorourke.com/responsibility/modern-slavery.aspx>.

80 “Laing O'Rourke company response 2016”, Migrant Workers and Gulf Construction, Business and Human Rights Resource Centre, available online at: [https://business-humanrights.org/en/laing-o%E2%80%99ro-urke-0?questions\[\]=136166](https://business-humanrights.org/en/laing-o%E2%80%99ro-urke-0?questions[]=136166).

Summary and Recommendations

5

In highly competitive sectors characterised by weak regulation, businesses' cost-saving measures typically have negative impacts on workers' rights. The Gulf construction sector is a prime example of this reality. The exploitative recruitment of low-paid migrant workers from south Asia is a practice that offers significant profits to recruitment agents in both sending and receiving states, and significant cost benefits to construction companies. In countries of origin, like Nepal, laws to promote responsible recruitment can be undermined by weak enforcement mechanisms, and by governments without the will or the power to protect workers from an unethical recruitment sector at home or abusive governments abroad. Gulf states fail to investigate fraudulent practices by their own recruitment agents and pointedly refuse to implement anti-trafficking laws which could be used to prosecute both companies and recruitment agents for charging workers exorbitant recruitment fees, which lead to situations of forced labour. This presents a challenging environment to businesses seeking to recruit responsibly and there are few indications that these considerable gaps in protection will be satisfactorily addressed in the short to medium term. However, as this report has demonstrated, there are steps that businesses can take to adhere to industry best practice and evolving corporate human rights standards.

Businesses have an opportunity to take a leadership role and make significant positive changes to the lives of thousands of men and women employed in their supply chains. Businesses must lead from the front and work collectively on long-term strategies that are comprehensive and sustainable and involve governments, trade unions and rights groups, labour experts, and migrant workers themselves.

The following recommendations outline measures that businesses can take to address recruitment challenges:

- **Develop recruitment policies that adopt the Employer Pays Principle** and require suppliers to pay the costs of recruitment directly to the extent possible. When not possible, or where the migrant worker is legally required to pay a fee or cost directly, reimburse the migrant worker as soon as possible.
- **Develop a pre-qualification review process for prospective suppliers** that, at a minimum, reviews supplier recruitment guidelines and practices including:
 - If the company has implemented a written worker welfare policy and standards and communicated these to employees in a language they understand.
 - If the company has provided all employees with a written employment agreement/contract in a language they understand detailing all the terms and conditions of their employment.
 - If the company has conducted a due diligence process to ensure the use of responsible employment agencies.

- **Establish robust screening and selection processes** for key business relationships, such as suppliers and sending and receiving country recruitment agencies, including assessing their ability to comply with responsible recruitment policies and whether additional oversight may be required.
- **Include in all tender requirements of bidders for separate, detailed, and transparent “migrant worker cost reports”** that indicate the variable and fixed costs of recruitment, including labour costs of suppliers.
- **Include in all supplier and recruitment agency contracts binding welfare and human rights requirements**, including on responsible recruitment, and with sections on punishing and prosecuting corrupt practices.
- **Adopt a standard employment contract for all workers** employed in the supply chain, consistent with international human rights standards and local labour laws, and ensure all suppliers and recruitment agencies use the contract.
- **Ensure all migrant worker contracts are translated** into a language that migrant workers understand and that contracts include precise information about terms and conditions of employment.
- **Interview all new employees, and as many subcontractor employees as possible**, to determine what fees and expenses they incurred during recruitment and check any receipts. Follow up with further enquiries 3-6 months later when workers feel more secure in their employment.
- **Review accounts of suppliers and recruitment agencies** to demonstrate that they have borne the costs of recruitment, and have not indulged in corrupt practices including the buying and selling of employment visas. This should include: all demand letters, visa application documents, purchase orders, electronic transfers for payments, receipts and detailed itemisations of costs, and evidence of all other expenses.
- **In each situation, map out the various points of leverage that are available** to help drive more responsible recruitment practices whether via traditional commercial leverage, leverage through collective action with business partners and peers, or leverage via bilateral or multi-stakeholder engagement and collaboration with governments, trade unions and civil society, and other stakeholders.



This report is the second of two reports developed by IHRB in collaboration with Equidem Research & Consulting. Building on “Responsible Recruitment: Remediating Worker-Paid Recruitment Fees”, this report offers practical guidance to businesses seeking to recruit responsibly in challenging environments.

Developed from research focussing on the recruitment process that takes low-paid migrant workers from Nepal to work in the Gulf states, this report illustrates the extent of the governance gaps that exists in transnational recruitment, making the following recommendations to businesses:

- Develop recruitment policies that adopt the Employer Pays Principle and require suppliers to pay the costs of recruitment directly
- Develop a pre-qualification review process for prospective suppliers that, at a minimum, reviews supplier recruitment guidelines and practices
- Establish robust screening and selection processes for key business relationships
- Include in all procurement contracts a requirement to have human rights requirements, including on responsible recruitment
- Map the various points of leverage that are available to a business to help drive more responsible recruitment practices.