

Summary of Online Discussion

Fair recruitment, how can we
make it work?

AP-Forced Labour Net Team

Online Discussion Summary

Introduction

From 27 of November to the 4th of December 2014, The AP-Forced Labour Net invites participants to share experiences on recruitment and its links to exploitation.

This online discussion is part of a follow-up to a tripartite meeting that was organized by the ILO and UNODC in Bangkok, Thailand from November 18th to 19th. At this meeting over 85 experts discussed the various issues related to recruitment – More specifically the discussions were focused on:

- National, bilateral and multilateral challenges in regulating, monitoring and enforcing regulations on private employment agencies;
- Innovative approaches to the regulation of recruitment and understand their preventive role in combating human trafficking practices and migrant exploitation;
- Recent evidence on the nexus between national regulation models and its impact on business practices in the recruitment industry; as well as
- Appropriate and effective criminal and labour justice responses in combating abusive practices of recruitment agencies in the context of trafficking in persons and related crimes against migrants.

Summary of Participants' Contributions

The moderator, Mr Houtan Homayounpour, started the ball rolling questioning the definition of 'fair recruitment'.

Mike opined that to put it simply, fair recruitment implies "a worker looking for a job is helped in finding a decent job at no cost, without any surprises along this process". While this seemingly straight-forward definition attempts to define the complex issue, various elements including 'decent job', 'no cost' and 'without any surprises' were unelaborated and begged further clarification.

Gao Yun added that the idea of 'fairness' should manifest in both content and procedures; "a process of negotiation and bargaining" should be present. Alix Nasri agreed, adding that "one of the key pillar of 'fair recruitment' is to ensure a recruitment process done without charging directly or indirectly, in whole or in part, any fees or costs to workers". It is very important to have proper procedures aimed at reducing the vulnerability of workers in the recruitment process. Migrant workers had signed contracts in a language that they do not understand, and/or received different contracts at their destination.

The moderator clarified a question by Leanne, who asked whether it is fair to charge "a genuine payment for a transparent service offered by the agency like pre-departure orientation". In essence, this practice is not fair.

According to Article 7 of the ILO Convention 181 - Private Employment Agencies Convention, 1997:

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.

3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefore.

The moderator welcomed concrete examples, perspectives and specific challenges faced in fair recruitment. The situation of sex workers at Empower is unique situation because, in many countries including Thailand, recruiting for prostitution is itself a crime and has been singled out under other laws such as anti-trafficking; yet the legal environment only serves criminal punishment for this offence, without considering the protection of sex workers' labour rights.

Sara D correctly identified that there is a need for comprehensive laws and regulations, regulated by proper enforcement. The moderator shared that there are 231.5 million international migrants and 740 million internal migrants searching of decent employment and this implies a challenge in proper enforcement. Another challenge is the growing number of unofficial, informal and/or unlicensed recruiters and agents operating in the recruitment market – and these black sheep are often difficult to trace and be accountable. This creates unfair competition for the law-abiding recruiters and agents.

In his solicitation for solutions, Paul Buckley from UN-ACT shared a document that is also available in AP-Forced Labour Net, "Recommended Guidelines for Migrant Recruitment Policy and Practice in the Greater Mekong Sub-region", developed by ILO-TICW, through convening a technical workshop with tripartite partners and international organisations.

The Guidelines provide a very useful reference point building on relevant research conducted by ILO and partners. Beyond the guiding principles and reference material, the guidelines contain specified standards or guidance on:

- Pre-departure procedures and services
- Regulation of recruitment agencies
- Fees for recruitment services
- Working conditions and rights

In the Great Mekong Sub-region, Paul believed that "it would be useful for concerned stakeholders to use these Recommended Guidelines more proactively for greater leverage in the development of migrant workers' rights protection and to get further buy-in from relevant government authorities. There is clearly good work being done by the ILO Triangle project in improving policies in the sub-region in these areas already, and this could be further built upon through the COMMIT Process as it moves into a next stage

of implementation. The intersection between the prevention of trafficking for labour exploitation and the protection of migrant workers brings the issue to a broader forum within and between the governments, for which relevant agencies will be more accountable for their specific responsibilities”.

The moderator concurred that it is duly important to be reminded of the importance of coordination and the different roles and responsibilities of each stakeholder. As mentioned by Paul, “the fourth COMMIT Sub-regional Plan of Action (SPA IV) is currently in development.... A coordinated inter-agency approach between both advocacies for such guidelines and their implementation, as well as the technical support to make them effective, will help to improve migrant recruitment and employment practices, towards prevention of forced labour and related exploitation of migrant workers.”

List of participants

Moderator: Houtan Homayounpour

Participants:

Paul Buckley

Alex Phuong Nguyen

Sara D.

Empower

Leanne

Alix Nasri

Gao Yun

Mike