



UNODC

United Nations Office on Drugs and Crime



**The role of recruitment fees
and abusive and fraudulent
recruitment practices
of recruitment agencies
in trafficking in persons**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

The role of recruitment fees and abusive and fraudulent practices of recruitment agencies in trafficking in persons



UNITED NATIONS
Vienna, 2015

© United Nations, October 2015. All rights reserved, worldwide.

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Information on uniform resource locators and links to Internet sites contained in the present publication are provided for the convenience of the reader and are correct at the time of issue. The United Nations takes no responsibility for the continued accuracy of that information or for the content of any external website.

This publication has not been formally edited.

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

Acknowledgments

The present publication was developed by UNODC's Human Trafficking and Migrant Smuggling Section under the overall leadership of Ilias Chatzis and the coordination of Silke Albert. The publication was drafted by Quinn Kepes and Philip Hunter, with the support of Daryll Delgado (in-country survey in Indonesia), Livia Wagner (in-country survey in Peru and desk review for Latin America) and Azzeddine Salmane (in-country surveys in Bahrain and the United Arab Emirates).

Particular thanks are owed to Tatiana Balisova, (UNODC), who reviewed and revised and contributed significantly to the present publication.

Two expert group meetings held in Vienna, Austria, in October 2014 and in Bangkok, Thailand, in November 2014, elaborated concepts and provided inputs to this publication. The meeting in Bangkok was jointly organized with the International Labour Organization (ILO) who carried out a parallel, related research ("*Regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities*"). The meetings brought together more than 100 experts from national governments, employer and worker organizations, academia, inter-governmental and non-governmental organizations, as well as private business and civil society.

UNODC expresses its gratitude to the experts who participated in the expert group meetings and who substantially contributed to the present report including: Daniele Santa Catarina, Brazil; Mansour Jobe, Gambia; Heike Rudat, Germany; Dimistrijs Trofimovs, Latvia; Hanne Sophie Greve, Norway; Sasa Gosic, Serbia; Patricia Fernandez Olalla, Spain; Joan Kagezi, Uganda; Carla M. Bury, United States; Greenwell Lyempe, Zambia; Gulnara Shahinian, Council of Europe, Group of Experts on Action against Trafficking in Human Beings, (GRETA); Zuzanna Muskat-Gorska, International Trade Union Confederation, (ITUC); Sandro Pettineo, International Confederation of Private Employment Services, (Ciett); Vassilij Yuzhanin, International Organization for Migration, (IOM); Neill Wilkins, The Institute for Human Rights and Business, (IHRB); Mariyana Radeva-Berket, International Centre for Migration Policy Development, (ICMPD); Liliana Sorrentino, The European Institute for Crime Prevention and Control, affiliated with the United Nations, (HEUNI); Ruth Pojman and Aimée Comrie, Organization for Security and Cooperation in Europe, (OSCE), Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings; Marija Andjelkovic, ASTRA (Anti-Trafficking Action), Serbia; Irena Konečná, La Strada International; Hanny Ben-Israel, Kav LaOved (Protection of Workers' Rights), Israel; Matthew McEvoy, Proyecto de Derechos Económicos, Sociales y Culturales, A.C. (ProDESC), Mexico; Neha Misra, Solidarity Center and Suzanne Tomatore, City Bar Justice Center, United States, as well as:

Mohammed Al Busmait, May Al Asmi and Mohammed Dito, Bahrain; Rahmar Sori, Indonesia; Shree Adhikari, Nepal; Narayanappa Janardhan and Mohsin Ali Al Nasee, United Arab Emirates; Krystal Thompson, Australia-Asia Program to Combat Trafficking in Persons (AAPTIP); Lara White (IOM); Gerard Smith, United Nations Development Programme (UNDP); Paul Buckley, United Nations Inter-Agency Project on Human Trafficking (UNIAP); Klara Skrivankova, Anti-Slavery International; Bandana Pattanaik, Global Alliance Against Traffic in Women (GAATW);

Geeta Sekhon, Independent Expert; Rami Asrawi, Jordanian Association of Recruiting Agency in the Domestic Work Sector and Orient Recruiting Agency, Jordan; Vichuta Ly, Legal Support for Children and Women, Cambodia; Marie Apostol, The Fair Hiring Initiative (TFHI), the Philippines and all the other experts who participated in the two expert group meetings, including those, whose participation in has been facilitated by the ILO.

UNODC also expresses its gratitude to the Governments of Bahrain, Indonesia, Peru and the United Arab Emirates and the experts nominated by them for their participation in the in-country surveys. Thanks are also extended to Paula Switon, Rahel Gershuni and Henna Mustonen (UNODC) for their contributions and guidance, as well as to the colleagues from the ILO, in particular Beate Andrees, Alix Nasri and Houtan Homayounpour for their support and cooperation.

Contents

	<i>Page</i>
I. Background	1
1.1 Context of the study	1
1.2 Methodology	2
1.3 Structure of this report	4
2. Understanding the linkages between abusive recruitment practices and trafficking in persons	5
2.1 Introduction: abusive recruitment practices and recruitment fees	5
2.2 Examples of abusive recruitment practices, including charging recruitment fees	9
2.3 Links between abusive recruitment practices and trafficking in persons	14
2.4 Relevant international legal framework	17
2.4.1 Trafficking in Persons Protocol	17
2.4.2 Transnational Organized Crime Convention	18
2.4.3 Smuggling of Migrants Protocol	19
2.4.4 United Nations Convention against Corruption	20
2.4.5 International instruments concerning forced labour	21
2.4.6 International standards on recruitment agencies and fees	23
2.4.7 Child labour and child trafficking	23
2.4.8 Migrant workers	24
2.4.9 Other relevant international instruments	24
2.4.10 Instruments addressing the private sector	25
3. National law, regulation and institutional mechanisms	27
3.1 Legislative approaches to the linkages between trafficking in persons and abusive recruitment practices	27
3.2 Differences between countries of origin and destination	28
3.3 Good practices and gaps in addressing recruitment abuse through legislation	30
3.3.1 Good practices in legislative approaches	30
3.3.2 Institutional frameworks	37
3.3.3 Gaps in legislation	39

4. Law enforcement and criminal justice	41
4.1 Prosecuting abusive recruitment practices as trafficking in persons . .	41
4.2 Tackling abusive recruitment practices using other laws	46
4.3 Challenges and weaknesses in addressing abusive recruitment practices	50
5. Voluntary initiatives	53
5.1 The role of business	53
5.2 Risks to businesses related to recruitment abuse and human trafficking	53
5.3 Company efforts to address the risk of trafficking in persons	54
5.4 Shortcomings in corporate social responsibility (CSR) strategies	55
5.5 Good practice in voluntary initiatives to address recruitment abuses	55
5.6 Government initiatives to incentivize private sector action to combat trafficking	56
5.7 Other stakeholder initiatives to address recruitment abuse	58
5.8 Industry initiatives addressing recruitment abuses	58
5.9 Employers' associations	59
5.10 Intergovernmental organizations	59
5.11 Trade unions	60
5.12 Non-governmental organizations	61
6. Next Steps: Recommendations	63
Annex. Survey instrument	71

I. Background

1.1 Context of the study

The United Nations Office on Drugs and Crime (UNODC), as the guardian of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Trafficking in Persons Protocol), assists Member States in their efforts to effectively implement the Trafficking in Persons Protocol and to build comprehensive and effective responses to trafficking in persons. Among other work, UNODC supports Member States through the development of various research and issue papers and reports on trafficking in persons. The purpose of this work is to help improve understanding of the complex nature of the crime of trafficking in persons, with the ultimate goal to allow for better prevention of the crime, prosecution of traffickers, protection of trafficking victims, and creation of more effective partnerships and cooperation among States and between different stakeholders. The present report aims to shed light on one of the burning issues concerning trafficking in persons, namely the linkages between recruitment fees and abusive and fraudulent practices of recruitment agencies and trafficking in persons.

Recruitment agencies can play a legitimate and essential role in facilitating supply and demand in labour markets, across geographies and sectors. In particular, they often facilitate the movement of workers looking for job opportunities outside their home countries. Yet, abusive recruitment practices seem to flourish in all parts of the world. Such practices seem to be closely linked with trafficking in persons.

In many countries recruiters and recruitment agencies charge workers fees for recruitment services that far exceed the legal limits or that might be prohibited altogether. The indebtedness that often follows and the need to repay the debt often drives workers to accept difficult or exploitative working conditions, making them vulnerable to trafficking in persons. In addition, the role of recruitment fees and agencies in trafficking in persons can go beyond just creating vulnerabilities in workers to trafficking in persons. Recruiters and recruitment agencies might be directly involved in trafficking criminal networks aiming to exploit workers.

The purpose of this paper is to examine the relationship between recruitment fees and other abusive and fraudulent practices of recruitment agencies and trafficking in persons, with a particular focus on criminal justice measures to address this

relationship. While there have been numerous incidents of abusive recruitment practices and subsequent labour exploitation reported in all parts of the world, little is known about how States respond to the phenomenon and whether they use their anti-trafficking legislation to prosecute persons involved in such recruitment practices. The paper examines the State practice with a view to highlighting lessons learned and providing recommendations on how to adequately respond to the issue.

Addressing the role of recruitment fees and agencies in trafficking in persons is a challenging undertaking, since the topic has not yet been thoroughly examined and globally the criminal justice responses and measures in this regard appear to be very limited. Yet, it is hoped that the report will increase knowledge and awareness of the linkages between trafficking in persons and abusive recruitment practices and shed light on the existing responses.

It should be noted that the present report is complemented by the report “Regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities” prepared by the International Labour Organization (ILO), an outcome document of the ILO’s parallel, related research. While these are two separate reports, UNODC and the ILO have developed joint recommendations stemming from both Organizations’ research, which will be launched together with the respective publications of ILO and UNODC.

1.2 Methodology

The methodology for preparation of this report was as follows:

Desk research and expert consultations: UNODC carried out in-depth desk research on the role of recruitment agencies and fees in trafficking in persons and how these issues are being addressed by criminal justice practitioners and the private sector, both in law and in practice. This entailed a detailed review of the international legal framework and relevant country case law, including cases collected in the UNODC Human Trafficking Case Law Database (www.unodc.org/cld). UNODC also reviewed published information on existing criminal justice responses relevant to the issue and other material on trafficking in persons and unethical recruitment. To complement desk-based research, UNODC also conducted individual expert consultations with relevant stakeholders. This enabled the collection of detailed information on the scope and scale of recruitment abuse in the context of trafficking and relevant laws and criminal cases at the country level. It also introduced UNODC to a diverse set of perspectives from leading experts with extensive on-the-ground experience. These experts included criminal justice practitioners, researchers, representatives from academia, governments, international organizations, non-governmental organizations and the private sector.

Country surveys: To gather greater insight into the role of recruitment fees and agencies in national contexts and supplement desk-based research, UNODC carried out in-depth surveys in four countries in Asia, the Americas, and the Middle East, namely Indonesia, Peru, the United Arab Emirates, and Bahrain. The purpose of the surveys was to gain a more nuanced view of the scope and characteristics of recruitment

abuse, links to trafficking, and criminal justice responses and whether or how they differ on a regional and country level. A survey instrument (see annex) was prepared to guide in-depth surveys with experts and practitioners and to collect qualitative information on laws, regulations and law enforcement. Through the country surveys, UNODC consulted a total of 47 experts representing government ministries, regulatory bodies, police, civil society, academics and international organizations, with two experts interviewed in Bahrain, four in the United Arab Emirates, 23 in Indonesia and 18 in Peru.

Expert group meetings: UNODC facilitated two inter-regional expert group meetings in Vienna, Austria and Bangkok, Thailand (the latter jointly convened with ILO) to allow for an open exchange and brainstorming to facilitate greater awareness and understanding of the issues involved. These meetings included a diverse cross-section of stakeholders, benefiting from the constituents and networks of UNODC and ILO, including governments, international organizations, trade unions, business, and civil society to ensure that diverse perspectives and backgrounds were represented. Participants included:

- Government representatives from selected countries, including criminal justice practitioners, representatives of Ministries of Justice and Interior, and other public authorities and agencies.
- Employer organizations, such as the International Organization of Employers (IOE) and affiliates and the International Confederation of Private Employment Agencies (Ciett).
- Trade unions, including the International Trade Union Confederation (ITUC) and affiliates, UNI Global Union, Building and Wood Workers International (BWI), the International Union of Food workers (IUF), and IndustriALL Global Unions.
- International organizations such as ILO, the International Organization for Migration (IOM), the Office of the High Commission for Human Rights (OHCHR), UN Women, the United Nations Inter-Agency Project on Human Trafficking (UNIAP), the World Bank, the International Centre for Migration Policy Development (ICMPD), the Organization for Security and Cooperation in Europe (OSCE), and Interpol.
- NGOs focused on trafficking, recruitment and migration, including Anti-Slavery International, the Global Alliance Against Trafficking in Women, Migrant Forum Asia, the Institute for Human Rights and Business, Verité, La Strada International, Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC), and Legal Support for Children and Women.
- International development cooperation agencies, including the United Kingdom Department for International Development (DFID), the Swiss Agency for Development and Cooperation (SDC), Irish Aid, the Australian Department of Foreign Affairs and Trade (DFAT), the Canadian Department of Foreign Affairs, Trade and Development (DFATD), and the Soros Foundation.
- Members of academia with expertise in the field of labour recruitment, migration, and trafficking in persons.

The meeting in Vienna was held in October 2014 and focused on the Americas, Europe, and Africa. The meeting in Bangkok was held in November 2014 and focused on the Middle East, Asia, and the Pacific.

Both meetings discussed and examined good practices and gaps concerning regulations and legislation, as well as enforcement and criminal justice at national and international levels. The meetings helped to generate an increased understanding of the ways in which unethical recruitment practices and fees contribute to trafficking in persons and how these practices are addressed in law and practice. More particularly, the meetings focused on national, bilateral, and multilateral challenges in regulating, monitoring and enforcing regulations on recruitment agencies; innovative approaches to addressing recruitment abuses in the context of human trafficking; and effective criminal and labour justice, and private sector and multi-stakeholder responses to combating unethical recruitment. Conclusions from these expert group meetings are reflected in this report and enabled UNODC to develop recommendations for more effective cross-stakeholder engagement.

The desk research, expert consultations, expert group meetings, and country surveys were used to inform this report. Because the country surveys focused on Asia, the Americas, and the Middle East, the report provides more in-depth information on these regions.

1.3 Structure of this report

The report is divided into six parts, with the present Part 1 introducing the context of the study, the methodology used and the relevant terminology.

Part 2 provides an overview of the relevant considerations and challenges in the understanding of the linkages between abusive practices of recruitment agencies, charging of recruitment fees and trafficking in persons. It commences with a brief overview of known abusive recruitment practices and how these can be linked with trafficking in persons. Part 2 also analyses the international legal framework concerning the issue.

Part 3 and 4 analyse the State practice in addressing abusive recruitment practices, focusing on legislation and criminal justice responses to the phenomenon, respectively. They examine the State practice with a view to highlighting lessons learned, noting existing challenges and providing recommendations on how to adequately respond to the issue.

Part 5 outlines the existing voluntary initiatives supplementing the States' efforts to address the phenomenon.

Part 6 of the report provides recommendations on how to more effectively address the linkages between abusive recruitment practices of recruitment agencies, including charging recruitment fees, and trafficking in persons.

In addition, the survey instrument, used to guide interviews with practitioners during the country surveys, is attached as annex 1.

2. Understanding the linkages between abusive recruitment practices and trafficking in persons

2.1 Introduction: abusive recruitment practices and recruitment fees

Recruitment agencies play a legitimate and indispensable role in the smooth and efficient operation of labour markets. There might be complex supply chains that necessitate levels of coordination and expertise that are not easily found within a given company because the challenges are spread out over multiple countries and time zones, and workforces are in many instances comprised of workers from different parts of the world. Recruiters and recruitment agencies are especially sought in sectors where there is a seasonal demand for workers, in situations where workers and employers do not speak a common language, or where aspiring workers need to travel long distances (including across borders) to reach the job site. Companies also turn to recruitment and job placement agencies to manage the inherent challenges related to recruitment and hiring, while jobseekers look to recruiters to help them navigate the complex waters of migration for employment.¹ Recruitment agencies may also be involved in recruiting foreign domestic workers to work in private households.

Recruitment agencies can be involved throughout the recruitment, job placement, and employment process. Agencies can take responsibility for visas, medical check-ups, travel arrangements, pre-departure orientation and training, and even contract negotiation. In some cases, the agencies also go on to manage workers at their job sites, becoming their on-site supervisor and manager.²

Recruitment agencies can take various forms and shapes, running the gamut from one individual recruiter or loose networks of intermediaries to small or mid-size agencies, or multinational enterprises with global operations. In addition, terminology used for recruiters and recruitment agencies and their status in national contexts differs from country to country. While in some countries there is a high level of

¹ Verité. Summary Report – *Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy*. June 2010. http://www.verite.org/sites/default/files/images/Help_Wanted_2010.pdf

² Verité. Summary Report – *Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy*. June 2010. http://www.verite.org/sites/default/files/images/Help_Wanted_2010.pdf. The present report, in line with the ILO Private Employment Agencies Convention (No. 181) of 1997, article 1, paragraph 1(a), focuses on “any natural or legal person, independent of the public authorities, which provides services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom”.

regulation and licensing of recruitment agencies, in other countries there is minimal regulation and recruiters often operate in regulatory “grey zones” where their responsibilities for worker protection are unclear or non-existent.

Although there are many ethical recruitment agencies that play a positive role in the recruitment process and aim to protect workers’ rights, there are also many that engage in abusive recruitment practices. The problem seems to concern not only illegal or unlicensed recruitment agencies, but also legal recruitment agencies that often secretly use various illegal practices. In addition, ethical recruitment agencies may also unintentionally contribute to abuses of workers’ rights, for example through selecting untrustworthy partner agencies or employers in the destination countries.

There have been numerous reports of recruiters and recruitment agencies deceiving workers regarding the nature of the job for which they are being recruited, as well as the location of jobs, their end employer, living and working conditions, their legal status in destination countries, and travel conditions. Unscrupulous recruitment agencies also engage in coercive recruitment practices, including debt bondage, isolation, surveillance, withholding of money, violence, and threats of violence and of denunciation to authorities. In many cases, workers’ identification documents and passports are withheld by recruiters or employers. The retention—or confiscation—of workers’ identity documents typically affects international migrants, but can also involve those that do not cross international borders. It can result in restrictions on workers’ freedom of movement, and be used as a means to bind them to a particular job or employer, forcing them to do work that they may not have originally consented to for fear of losing their documents permanently—or their jobs and consequently be deported to their country of origin. Workers who flee exploitative work arrangements without their documents would become undocumented, without access to protection or services, and in many cases even more vulnerable to abuse. Workers can also be subject to contract substitution, where they sign contracts prior to their departure, but are later forced or lured into signing different contracts, often including worse conditions of work and pay.

In addition, recruitment agencies sometimes facilitate the work of individual brokers who, for example, operate in rural areas and lure people by offering well-paid jobs. In such cases, recruitment agencies’ abusive practices are hidden under the surface and the agencies may claim that they are not accountable for brokers’ recruitment practices.

Migrant workers are particularly likely to rely on recruitment agencies to handle the recruitment, owing, for example, to very complex visa procedures, or a general lack of familiarity and connection of the worker with the destination country. Unscrupulous recruiters and recruitment agencies often take advantage of migrant workers’ lack of education, language skills, and information to deceive them and prevent them from leaving their employment. In some cases, they provide false information about the law or the workers’ migration status, or take advantage of relationships with authorities to prevent workers from approaching authorities themselves. As a recent report by the United Nations Special Rapporteur on the human rights of migrants notes: “Migrants are at heightened risk of exploitation and abuse in the workplace, due to (a) deceptive recruitment practices, both by employers and intermediaries; (b) frequent lack of social support systems; (c) unfamiliarity with the local culture, language, their rights at work and national labour and migration laws in the country of employment; (d) limited or

denied access to legal and administrative systems; (e) dependence on the job and employer due to migration-related debt, legal status, or employers restricting their freedom to leave the workplace; and (f) reliance by family members on remittances sent back home by the migrant. These factors are amplified by the discrimination and xenophobia that migrants are increasingly facing everywhere.”³

A common practice of recruitment agencies is to charge workers recruitment fees, which further increases their vulnerability to exploitation.

According to article 7 paragraph 1 of the ILO Private Employment Agencies Convention (No. 181) of 1997, private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

It is worth mentioning that the United States Federal Acquisition Regulatory Council, responsible for developing implementing regulations for the United States President’s Executive Order—Strengthening Protections against Trafficking in Persons in Federal Contracts, for example, has released a draft definition of recruitment fees for public comment. “Recruitment fees” are defined as fees, charges, or costs used for “for soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, or placing potential employees; for covering the cost, in whole or in part, of advertising; for certifying labor applications; for processing petitions; for visas and any fee that facilitates an employee obtaining a visa such as appointment and application fees; for government-mandated costs such as border crossing fees; for procuring photographs and identity documentation, including any nongovernmental passport fees; fees charged as a condition of access to the job opportunity, including procuring medical examinations and immunizations and obtaining background, reference and security clearance checks and examinations; and for an employer’s recruiters, agents or attorneys, or other notary or legal fees.” It further states that “Any fee, charge, or cost may be a recruitment fee regardless of whether it is deducted from wages, paid back in wage or benefit concessions, paid back as a kickback, bribe or tribute, remitted in connection with recruitment, or collected by an employer or a third party, including but not limited to agents, recruiters, staffing firms (including private employment and placement firms), subsidiaries/affiliates of the employer and any agent or employee of such entities.”⁴ Subsequently, the International Labour Rights Working Group (ILRWG), a United States-based coalition of organizations working on labour recruitment and trafficking issues, recently developed a definition of recruitment fees based upon feedback from a number of prominent anti-trafficking organizations, which was provided to the FAR Council. Accordingly, the ILRWG recommended that the definition of recruitment fees also includes fees for “labor broker services, both one-time and recurring; pre-departure or post-arrival skills testing, training, or orientation, including, but not limited to, testing of competency or skill level in foreign languages, strength, or machinery use; ... exit clearances or certificates; work permits, residence certificates, and security clearances (including renewals); sending, transit and receiving country government-mandated fees, levies, and insurance; ... documentation services including notarization and translation; ... pre-employment medical examinations or vaccinations in the sending country; receiving country medical examinations;

³ United Nations Human Rights Council. *Report of the Special Rapporteur on the human rights of migrants, François Crépeau*. April 3, 2014. <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>. Paragraph 18.

⁴ Government of the United States of America. Federal Acquisition Regulatory Council. Senior Policy Operating Group to Combat Trafficking in Persons Draft Definition for “Recruitment Fees”. http://www.acq.osd.mil/dpap/dars/docs/Draft_Definition.pdf

transportation and subsistence costs while in transit, including, but not limited to, airfare or costs of other modes of international transportation, terminal fees, and travel taxes associated with travel from sending country to receiving country and the return journey at the end of the contract; transportation and subsistence costs from the airport or disembarkation point to the work site; bribes, tips or tributes; security deposits and bonds; the inclusion of a collateral requirement, such as land deeds, in contracts; contract breach fees; an employer's recruiters, agents or attorneys, or other notary or legal fees; insurance; contributions to worker welfare funds or government provided benefits in sending countries required to be paid by supplier."⁵

Recruiters and recruitment agencies often promise workers high salaries and excellent conditions of work and charge workers large recruitment fees—sometimes legal, sometimes illegal. Fees can cover a variety of costs, including travel, passport and visa processing, medical exams, and unspecified fees and service charges, much of which may go directly to the recruiter.

In reality, workers often do not pay the real price for the services provided by recruitment agencies and the recruitment fees can be extortionately high. Recruitment agencies can behave as money lenders, charging excessive interest or exchange rates, or arrange for illegal deductions from wages and force workers to buy services at inflated rates. Also, recruiters and recruitment agencies do not always charge recruitment fees only at the initial recruitment phase, but often require various fees or fines during the employment phase. In addition, migrant workers often encounter multiple labour brokers in their travels—one in their country of origin and one in the receiving country—and must pay service fees to each intermediary.

Low-skilled workers appear to be the most vulnerable group to be charged recruitment fees. Research has shown that lower-skilled workers tend to pay a higher percentage of job-matching fees than do higher-skilled workers. In turn, these workers are less able to bargain for higher wages and better working conditions once on the job.⁶

Migrant workers often take on substantial debt to pay the fees required by their agents and to cover the overall cost of migration, a reasonable decision when considered in light of the high salaries and good working conditions that are often promised. Recruitment fees can reportedly run into the tens of thousands of dollars and workers often have to take out loans to pay these fees, with interest on the debt as high as 80 per cent annually.⁷ To secure loans, workers sometimes use family resources, such as ancestral land, as collateral, or they may mortgage their homes.⁸ Workers may also take out loans through overseas employment schemes, set up by banks in their countries of origins in exchange for monthly instalments sent by the workers to lending banks through remittances.⁹ Failure to repay loans can have severe personal and social consequences, particularly if the money is owed to those with

⁵ International Labor Rights Working Group (ILRWG). *Definition of Recruitment Fees*. March 9, 2015. http://www.acq.osd.mil/dpap/dars/public_comments/Recruitment%20Fees/ILRWG%20Final%20Recruitment%20Definition.pdf

⁶ Verité. Summary Report – *Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy*. June 2010. http://www.verite.org/sites/default/files/images/Help_Wanted_2010.pdf

⁷ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

⁸ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

⁹ https://www.nccbank.com.bd/index.php/nccbnrb_overseasemploymentloan

connections to criminal elements, or if family assets have been leveraged as collateral. The existence of the debt—and workers' urgent need to repay it—means that workers can more easily be manipulated by employers to accept lower wages than were promised by recruiters, poor working conditions, excessive work hours, or similar abusive practices. Debt-burdened migrant workers are also much more vulnerable to threats of deportation—and consequent loss of their earning potential—than workers with no debt obligations.

While some fees may be legally permitted, they can still impoverish or indebt workers. According to the Institute for Human Rights and Business (IHRB), there are a number of impacts associated with recruitment fees. These include a cycle of debt for workers and their families that results in an inability to leave their jobs. Indebted workers are less likely to complain or file grievances regarding working conditions because of the risk of termination or other repercussions that affect the ability to pay their debt. In some cases, workers may also be unable to send money home to their families, who invested in their migration for that purpose. This, in turn, can lead to an unwelcome cycle of labour migration to pay off the existing debt, which can have negative consequences for family and community life.¹⁰

Charging of recruitment fees often goes hand in hand with fraud and deception about conditions of work and employment. When an aspiring migrant is offered an attractive job with high wages, for example, the high costs of recruitment and migration may seem like a good investment. However, if the worker discovers that conditions are less favourable upon arrival, the debt that was assumed to cover such costs can act as a “bond” or tie to the workplace, as it may take years for the workers to pay off their recruitment debt. The presence of the recruitment agency, in this case, not only increases the cost of labour migration, but compromises transparency and accountability in the recruitment and hiring process. Because the worker is not negotiating directly with the employer, he or she may suffer from “imperfect information” about the eventual working conditions.¹¹

2.2 Examples of abusive recruitment practices, including charging recruitment fees

There are numerous reports of abusive recruitment practices, in particular charging of recruitment fees, in all parts of the world.

In Africa, for instance, abusive and fraudulent recruitment practices of recruitment agencies are not an unknown phenomenon. Criminal justice experts from West Africa consulted by UNODC, for example, confirmed that human trafficking appears to be a very lucrative business adventure concerning activities of recruitment agencies. The readiness of these agencies to cover travel expenses for victims of trafficking is what usually lures them into being trafficked. Interestingly, fees are usually not demanded up front from the victims, rather the recruitment agencies, mostly resident out of the jurisdiction of the victim's origin country, assume responsibility of

¹⁰ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

¹¹ Verité. Summary Report – *Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy*. June 2010. http://www.verite.org/sites/default/files/images/Help_Wanted_2010.pdf

securing the victims passports, visas and air ticket, thereby “greatly influencing the minds of intended victims”. Often, there may not be registered agencies known for the recruitment of persons for the purpose of travelling from one jurisdiction to the other for commercial recruitment. However, external recruitment agencies do keep in touch with local recruiters who participate in securing young girls and women with promises of better jobs with good pay in other countries of, for example, South Asia or the Middle East. These local agents are remunerated with mega fees, and investigation into some cases have shown that local agents themselves are sometimes misled by the recruitment agencies on false pretences that the victims will be provided with better and decent jobs. Premised on these empty promises, the local agents are reported to disseminate the information to young women in particular, who are in search of a better future. It has also been reported that both the recruitment agencies and their local agents used deceptive means to deceive victims of human trafficking. Victims of human trafficking in West Africa “suffered disappointment from the recruitment agencies who flagrantly dishonoured their contractual terms, seized their passports, gave them limited or no access to internet or telephone and restrained their movements, thereby subjecting them to degrading and inhuman treatment”. Also NGOs in the region reported to UNODC that there is knowledge that fake recruitment agencies exist, but in many cases people deceived by them would not be identified as victims or would not want to come forward as they would not be protected from the traffickers, given the lack of sustainable protection mechanisms in many of the countries in the region. Also anecdotal newspaper reports mention cases of girls being trafficked from West Africa to Northern Africa and the Middle East for sexual exploitation, with the involvement of recruitment agencies. NGOs also reported on the risks of people related to travelling to Europe to try to pursue their dream of becoming professional football players, through recruitment agencies. Also experts from East and Southern African experts confirmed to UNODC that though cases are not systematically identified and documented, there are indications that people who are suspected to have been trafficked may have been recruited through bogus recruitment agencies and their intermediaries.

A report by the United States-based NGO Verité found that workers from Latin America and Asia were charged fees by recruiters in the range of US\$ 3,000 to US\$ 27,000 to secure visas and jobs on farms in the United States of America. On average, according to worker interviews, fees depended on the origin of the workers: the farther away, the higher the fee. Workers from a neighbouring country were charged US\$ 3,000 to US\$ 5,000; from Central America US\$ 5,000 to US\$ 6,000; and from South East Asia between US\$ 17,000 and US\$ 27,000. Sending country recruiters typically required these payments up front in local currency or by direct deposit and, as such, workers needed to obtain significant loans, often with high interest rates and unfavourable conditions. In these cases, informal moneylenders are often the only financing option for workers, because in order to obtain a loan at banks, they must meet stringent financial requirements, in addition to the time it takes for loan approval. Workers from both Central America and South East Asia reported signing over the titles to their land in order to obtain the loans and losing their land when they defaulted on loan payments because their earnings were lower than what was promised by their recruiter.¹²

¹² Verité. Regional Report – *Immigrant Workers in U.S. Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor*. June 2010. http://www.verite.org/sites/default/files/images/HELP%20WANTED_A%20Verite%CC%81%20Report_Migrant%20Workers%20in%20the%20United%20States.pdf

In Indonesia, labour brokers reportedly deceived workers about the characteristics and terms of their employment and charged them fees of US\$ 600 to US\$ 1,200 to secure them employment. Workers, including children, were reportedly subjected to exploitative conditions of work, such as 14 to 16-hour workdays, and were subjected to threats, sexual abuse and passport confiscation to prevent them from leaving their jobs.¹³

Experts consulted by UNODC to develop the present report suggested, that in general it can be assumed that the brokers involved in abusive and fraudulent recruitment practices such as the ones mentioned above, would know about the exploitation that is to come.

In a South East Asian country, approximately 1,000 of its citizens were estimated to have been recruited to work on fishing vessels by a large recruitment company based in East Asia. They were reportedly sent as far away as West and Southern Africa. The recruitment company deceived these workers about their earnings and conditions of work, failed to provide them with detailed information or a contract, and retained their wages. Some workers reported that when they expressed their wish to leave the boats, in many cases due to drastic changes in payment terms, they were denied permission and became trapped in their jobs through physical isolation.¹⁴

In factories of another South East Asian country, there were reports of multiple cases of extreme indebtedness, confiscation of passports, and restrictions on freedom of movement among foreign contract workers. Some workers reported that they were misled during the recruitment phase about the terms of their employment agreement, including terms regarding wages and overtime. Foreign workers were also highly constrained in their freedom of movement, in large part due to the illegal but common practice of withholding workers' passports.

One report found that migrant workers from South Asia routinely had to pay fees far in excess of legal limits in a number of destination countries.¹⁵

In the United States, there were reports of temporary migrant workers who had to accept whatever living and working conditions were offered to them for fear that loss of employment would result in undocumented status and possible deportation. In addition, millions of undocumented foreign workers are estimated to work in the United States, many of whom incur significant debt in order to pay smugglers or cover recruitment fees.¹⁶

In a Central American country, workers who used recruiters to secure jobs in the coffee sector reported experiencing exploitative working conditions. The workers reported earning lower wages than those promised and often experienced cases of fraud or deductions in their salaries, making it difficult to cover their expenses and

¹³ United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Reports 2014*. 2014 <http://www.state.gov/j/tip/rls/tiprpt/2014/>

¹⁴ Cambodian Working Group for Migrant Fishers. *Report on the Situation of Cambodian Fishermen Trafficked Overseas by Giant Ocean International Fishery Co., Ltd.* September 2012.

¹⁵ Verité. *Labor Brokerage and Trafficking of Nepali Migrant Workers*. 2012. http://www.verite.org/sites/default/files/images/Humanity%20United-Nepal%20Trafficking%20Report-Final_1.pdf

¹⁶ Verité. Regional Report – *Immigrant Workers in U.S. Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor*. June 2010.

causing them to face an increased rate of indebtedness. A 2012 survey of coffee sector workers found that use of a labour broker was linked to 25 per cent lower wages, and nearly 75 per cent of workers surveyed were found to be in debt. Furthermore, workers' movements were restricted, workers could not leave the jobs at will, and they reported feeling frightened and unsafe during their time on the coffee plantations.¹⁷

In a South American country, recruitment often takes place in markets; recruiters place fraudulent job offers with their contact information at market places, and after contact is made, they meet jobseekers at the market and attempt to persuade the prospective workers, offering advance payments (without mentioning that the money must be repaid) and offering to transfer them to the job within the day. As in other countries, workers employed in remote or isolated locations out of sight of authorities are particularly at risk for trafficking, including in domestic work, illegal mining, work on coca plantations, or work on construction sites.¹⁸

Reports indicate that in one of the Middle Eastern Gulf states, many workers enter into the country through labour brokers who charge them excessive fees. Workers also report receiving false visas from recruiters and being arrested by authorities upon arrival.¹⁹ In 2014, migrant workers, particularly low-skilled workers, reportedly paid excessive recruitment fees and were victims of contract substitution, in which workers were offered one contract prior to departure, but after deployment, received a labour card for an alternate position to which they had never agreed.²⁰ According to the International Trade Union Confederation (ITUC), in 2012, immigrants entering that country through recruiters often received lower wages than promised and were faced with extremely long work hours and poor working conditions.²¹

In another Gulf country, there were reports of recruiters arranging for foreign workers to work in the construction sector, where they were subjected to withholding of wages, hazardous working conditions, poor living conditions and passport confiscation. In addition, workers were tied to a specific employer through the so-called kafala sponsorship system.²² This sponsorship system has its roots in traditional hospitality rules towards foreign guests, but over time, however, has "formalized in the various national legal frameworks that determine the terms of residence and employment for migrant workers, and today the kafala system governs the lives of most migrant workers in the Mashreq and Gulf Cooperation Council countries".²³

¹⁷ Verité. *Research on Indicators of Forced Labor in the Guatemala Coffee Sector*. 2012. http://www.verite.org/sites/default/files/images/Research%20on%20Indicators%20of%20Forced%20Labor%20in%20the%20Dominican%20Republic%20Sugar%20Sector_9.18.pdf

¹⁸ UNODC data.

¹⁹ Verité. *Help Wanted Regional Report: Indian Workers in Domestic Textile Production and Middle East Manufacturing, Infrastructure, and Construction*. http://www.verite.org/sites/default/files/images/HELP%20WANTED_A%20Verite%CC%81%20Report_Indian%20Migrant%20Workers.pdf

²⁰ United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report 2014*. <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>. (Accessed August 2014).

²¹ International Trade Union Confederation. *Internationally Recognised Core Labour Standards in the United Arab Emirates*. Report for the WTO General Council review of the trade policies of the United Arab Emirates. http://www.ituc-csi.org/IMG/pdf/final_tpr_uae.pdf (accessed December, 2012).

²² For example, United States Department of State, Bureau of Democracy, Human Rights and Labor. *Country Reports on Human Rights Practices for 2013: Qatar*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220373> (Accessed June 2014).

²³ ILO, *Tricked and trapped: human trafficking in the Middle East*, Hélène Harroff-Tavel and Alix Nasri, Beirut: ILO, 2013.

Sponsors, so-called kafeels, meet their demand for labour either by direct recruitment or through intermediaries, such as private employment agencies, and a migrant worker's immigration status is tied to an individual sponsor for their contract period.²⁴ Foreign workers' travel documents are frequently withheld—often illegally—by employers and an employee may not leave his employer and seek another employment without approval.²⁵

Abusive and fraudulent recruitment practices, including excessive fees, have also been reported to occur in Northern European countries and the Baltic states,²⁶ where migrant workers who faced labour exploitation often did not know anything about their rights and about assistance available to them. Work sectors identified as particularly prone to the exploitation of workers included the agriculture, hospitality, construction and cleaning sectors, as well as factories. Two Baltic states studied by the European Institute for Crime Prevention and Control were found to be primarily countries of origin for migrant workers. The research found that employment agencies based in these sending countries were able to exploit migrant workers due to their lack of awareness and language skills. Although recruitment fees were prohibited by local legislation, the research found that large recruitment fees were common. The two Northern European countries studied, were found to be primarily destination countries for migrant workers, both documented and undocumented. While some workers were vulnerable to trafficking in persons, due to high recruitment fees paid in their countries of origin, undocumented migrants already in their countries of origin were vulnerable to deception regarding their terms of employment and were unlikely to complain about violations of their rights due to their irregular status.²⁷

And in June 2014, in Serbia, an indictment was issued against twelve persons, including recruiters, for the criminal offence of organized crime, in conjunction with the criminal offence of trafficking in persons, as well as against two persons, for the criminal offence of money-laundering.

As the examples above show, recruitment-related abuses, including charging of excessive recruitment fees, appear to affect all countries and regions in the world. They can take myriads of forms, while there appear to exist specific patterns arising in certain regions.

Yet, little is known about States' responses to such abusive recruitment practices. In particular, it is unclear how States deal with unscrupulous recruiters and recruitment agencies and what laws they use to punish them—be it anti-trafficking laws, other provisions in criminal laws (e.g. concerning fraud, deception, abuse, exploitation, blackmail, taxes, etc.), labour laws or regulatory laws specifically concerning recruitment-related abuses.

²⁴ Ibid.

²⁵ UNODC, *Combating trafficking in persons in accordance with the principles of Islamic law*, 2010, http://www.unodc.org/documents/human-trafficking/Islamic_Law_TIP_English_ebook_V0985841.pdf.

²⁶ European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), *Exploitation of migrant workers in Finland, Sweden, Estonia and Lithuania: Uncovering the links between recruitment, irregular employment practices and labour trafficking*, Natalia Ollus, Anniina Jokinen and Matti Joutsen (eds.), Helsinki 2013.

²⁷ Ibid.

2.3 Links between abusive recruitment practices and trafficking in persons

Trafficking in persons is defined by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking in Persons Protocol).²⁸ According to the definition provided, the crime of trafficking in persons consists of three constituent elements:

1. An act (recruitment, transportation, transfer, harbouring or receipt of persons);
2. A means by which the act is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and
3. The purpose of exploitation (at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

In line with the definition in the Trafficking in Persons Protocol, behaviour of recruiters and recruitment agencies can constitute the crime of trafficking in persons if they recruit a person through fraud, deception, abduction, etc. for the purpose of exploitation.

Recruitment agencies also could be part of complex organized criminal groups involved in human trafficking, knowing that the victims were going to be exploited.²⁹

In such cases, their behaviour would fulfil the elements of the definition of trafficking in persons (actually irrespective of whether or not the actual exploitation takes place: recruitment through the use of means listed in the trafficking definition for the intended exploitation is sufficient to establish the crime of trafficking in persons).

Sometimes recruiters and recruitment agencies may not be aware of the exploitative situations that the victims will eventually find themselves in, but may still engage in practices that make people particularly vulnerable to ending up in exploitative work. While such practices may fall outside the definition of trafficking in persons, they may still contribute to the vulnerability of people and a climate in which trafficking in persons can flourish. For example, recruiters or recruitment agencies may charge excessive recruitment fees for other purposes than the subsequent exploitation of workers, such as taking advantage of weak legal and regulatory frameworks to increase their profits. Their behaviour may not amount to trafficking in persons, but may still create vulnerabilities in workers to later become victims of trafficking. Building effective responses to abusive recruitment practices, including charging excessive recruitment fees is therefore also key to reducing workers' vulnerabilities and preventing the crime of trafficking in persons.

²⁸ General Assembly resolution 55/25 of 15 November 2000, annex II.

²⁹ In line with articles 2 and 5 of the United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25 of 15 November 2000, annex I.

The ILO also considers deceptive, coercive or leveraged recruitment to be key elements in trafficking in persons. In its 2009 publication, *Operational Indicators of Trafficking in Human Beings*, the ILO breaks down indicators of trafficking of adults for labour exploitation into six categories, three of which are focused on recruitment. For example, Indicators of Deceptive Recruitment include deception about the nature of the job, location, employer, conditions of work, the legality of work contracts, housing and living conditions, legal documentation or obtaining legal migration status, travel and recruitment conditions, wages and earnings, and educational opportunities. Indicators of Coercive Recruitment include violence against victims or their family members, confiscation of documents, debt bondage, isolation, confinement, surveillance, threats of denunciation to authorities, threats against victims or their family members, and withholding of money. Indicators of Recruitment by Abuse of Authority include abuse of victims' difficult family situations or lack of education, language skills or information; provision of false information about the law or migration; or taking advantage of relationships with authorities, or workers' legal status.³⁰

In reality, as confirmed by experts consulted by UNODC and based on the definition of trafficking in persons described above, it can be very challenging to prove trafficking in persons at the recruitment stage where the intended exploitation has not yet transpired. In particular, in situations where the recruiter's role ends when the victim is recruited, it may be difficult to prove that the recruiter knew about the intended exploitation, and that he or she was part of the trafficking chain. In addition, recruiters often reside in one country, while the actual exploitation takes place in another country, thus creating jurisdictional challenges to investigate, not to mention prosecute them.

Determining whether certain behaviour of recruiters and recruitment agencies fulfils the elements of the definition of trafficking in persons is not merely a theoretical subject. Under the Trafficking in Persons Protocol, States have a legal obligation to prosecute those involved in trafficking in persons. Trafficking in persons usually attracts serious penalties and sanctions, including deprivation of liberty, confiscation and seizure of assets and proceeds of crime. In addition, workers that are identified as trafficking victims are entitled to special protection and assistance measures, including protection during the trial, right to remain in the territory, provision of reflection and recovery period, safe and voluntary return, and various assistance services (legal, medical, and psychological support, etc.).

It should be noted that some form of recruitment takes place at the beginning of a majority of trafficking cases, including cases of the exploitation of the prostitution of others or other forms sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs. Those involved at the recruiting stage often establish contact with victims and build trust in order to lure them into exploitation. Given the complexity of the broader concept of "recruitment" as one of the "acts" listed in the definition of trafficking in persons and the various roles "recruitment" can play in the different forms of trafficking, the report leaves the analysis of this concept to future papers. Instead, the present report limits its scope on the role of recruitment fees and other abusive practices of recruitment agencies in trafficking cases for the purpose of labour exploitation.

³⁰ International Labour Organization. *Operational indicators of Trafficking in Human Beings*. March 2009. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf

Case studies: recruitment agencies creating vulnerability to exploitation/being possibly involved in trafficking in persons^a

In order to apply for a job, Vivianna from country X had to pay an application fee of 100 country X Dollars to be interviewed by the recruiter. She then had to pay another 100 country X Dollars for a final interview by a recruitment agency staff and hotel employers, who came from country Y to country X to conduct an interview with Vivianna. She next paid 600 country Y Dollars for the recruiter to process the job offer and give her a labour certificate, and another 600 country Y Dollars for a physical examination. All of this was paid before she was actually offered a position. Vivianna waited a month to be offered a job. She had to pay another 200 country Y Dollars for an embassy interview to get a foreign temporary worker visa, and then the recruitment agency took over the processing for the hotel group.

The interview took place in June 2007. If an applicant failed the interview, they would not get another opportunity and there was no refund for the money already paid. Vivianna was very thankful she passed the interview. About 3,000 people total came to the interview, but only about 500 people were selected and received a final offer. Vivianna arrived in country Y in October 2007, after paying 3,000 country Y Dollars to the recruitment agency for a processing fee and an airline ticket. In order to afford all of these fees, Vivianna pawned the title to her house, in exchange for a loan, which she planned to pay with the money she made working in country Y for the hotel. A friend of a friend loaned her the money, and she had to pay him back with 20 per cent interest.

Vivianna's story:

- Shared overcrowded apartment without freedom of choice
- Rent deducted from salary
- Meal plan deducted from salary
- Tax deductions were not explained
- Working hours not guaranteed
- Paycheck ended up being as low as 3.25 country Y Dollars for a two-week period.

A globally operating recruitment agency recruited hospitality workers falsely; promised free housing, transportation, food, etc. Fees up to US\$ 5,000 charged. Visa renewal fees US\$ 3,000 and families were threatened with additional fees.

In May 2009^b, A.A., a 31-year-old from Central Asia, and 11 co-defendants were indicted by a federal grand jury in the United States, for their participation in a racketeering conspiracy, spanning almost a decade and involving numerous crimes, including most notably trafficking for forced labour exploitation. A.A. was the leader of a criminal enterprise that recruited hundreds of foreign workers from Latin America, South East Asia, Eastern Europe, Central Asia, and elsewhere, through false promises of good employment, free housing, transportation, food etc. When the workers arrived, A.A. and his co-defendants compelled them into service in various jobs in the United States. The defendants forced the workers to live in greatly overcrowded apartments with exorbitant rents and coerced their labour through threats of deportation and by withholding their wages. Recruitment fees of up to US\$ 5,000 had been charged, as well as visa renewal fees of US\$ 3,000 and families were threatened with additional fees.

This case was the first instance of trafficking in persons for the forced labour exploitation being charged as part of a Racketeer Influenced and Corrupt Organizations Act, or RICO conspiracy.

On October 20, 2010, A.A. pleaded guilty to racketeering conspiracy, fraud in foreign labour contracting, evasion of corporate employment tax, and identity theft and, on May 9, 2011, he was sentenced to 12 years in prison and three years of supervised release. He and the co-defendants were also sentenced for their respective roles in this criminal enterprise.

^a Adapted from a real case provided by the New York based City Bar Justice Center at the UNODC Expert Group Meeting in Vienna, Austria, October 2014.

^b See also: section 4, under 4.1 and 4.2, as well as <http://www.justice.gov/crt/about/crm/selcases.php#humantrafficking>

Recruitment and trafficking for sexual exploitation

Labour recruitment and recruitment fees can be linked to trafficking in persons for sexual exploitation in a number of ways. In many cases, victims of this type of trafficking are deceptively recruited to work in jobs unrelated to sexual services, and end up being trafficked for sexual exploitation. Victims of sex trafficking are also often charged excessive recruitment fees and travel expenses and are told that they have to pay back this money through the provision of sexual services.

UNODC received reports from NGOs concerning human trafficking in the mining industry that referred to trafficking for sexual exploitation in the context of fraudulent recruitment practices of recruitment agencies and their intermediaries. A local NGO in Latin America, for example, calculated that in the region it operated there were approximately 2,000 “sex workers” working in about 100 brothels in 2010, almost all of whom had been deceived, kidnapped, forced into debt bondage, and/or faced threats if they complained or tried to leave their employment. NGO researchers have also seen hand-written signs in recruitment offices advertising jobs for men in illegal mining alongside jobs for girls and women in “discobars” that said the “senoritas” (young women) would receive “a good salary”. Subsequent interviews revealed that some girls and women who worked in brothels were recruited this way. In other cases, girls and women responded to advertisements or were directly recruited by middlemen that offered unspecified employment in the mining camps or jobs as cooks, store clerks or waitresses, and were subsequently submitted to sexual exploitation.

2.4 Relevant international legal framework

As abusive recruitment practices can take various forms and levels of seriousness, there is no one specific response as to how to effectively address them. While some practices may amount to trafficking in persons, some may merely create a climate friendly to trafficking in persons, and some may be other types of labour law violations. The challenge for States is to recognize the true nature of such practices and to adequately respond to them, bearing in mind the legal obligations arising from the existing international framework. Several international legal instruments can be relevant when addressing the abusive recruitment practices of recruitment agencies and their linkages to trafficking in persons.

2.4.1 Trafficking in Persons Protocol

As described in the previous section 2.3 on the links between abusive recruitment practices and trafficking in persons, the Trafficking in Persons Protocol provides an internationally agreed upon definition of trafficking in persons, consisting of three constituent elements of the crime: (a) an act (recruitment, transportation, transfer, harbouring or receipt of persons); (b) a means by which the act is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (c) the purpose of exploitation (at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).³¹

³¹ Article 3 (a) of the Trafficking in Persons Protocol.

The Trafficking in Persons Protocol also explicitly stipulates that the consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means set forth in the definition have been used.³² In addition, for child trafficking, the Protocol states that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is to be considered trafficking in persons, even if this does not involve any of the above mentioned MEANS.³³

In line with the Trafficking in Persons Protocol, abusive recruitment practices should be seen as trafficking in persons if recruiters or recruitment agencies recruit a person using one or more of the above listed MEANS (or no means in the cases of child trafficking) for the purpose of exploitation. The same applies if they engage in other ACTS, such as transportation, transfer and harbouring or receipt. States are required to criminalize such behaviour in their national legislation.

The Protocol also requires States to establish as criminal offences:

- Attempts to commit trafficking in persons
- Participating as an accomplice in trafficking in persons
- Organizing or directing other persons to commit trafficking in persons

In addition, the Protocol sets out States' obligations to protect victims of trafficking in persons. This includes protection during trial against traffickers, provision of the physical, psychological and social recovery, physical safety and possibility of obtaining compensation for damage suffered. Furthermore, States are required to consider taking measures to permit trafficking victims to remain in their territory and facilitating safe and voluntary return of victims.³⁴

The Protocol requires States to take measures to prevent trafficking in persons and to increase cooperation and partnerships to combat the crime.

2.4.2 Transnational Organized Crime Convention

The Trafficking in Persons Protocol supplements the United Nations Convention against Transnational Organised Crime (Organized Crime Convention), which is the main international instrument addressing transnational organized crime. The Convention's provisions apply to the Trafficking in Persons Protocol and include, among others, the following obligations for the States parties: criminalization of the laundering of proceeds of crime (article 6); criminalization of corruption (article 8); liability of legal persons (article 10); prosecution, adjudication and sanctions (article 11); confiscation and seizure (article 12 to 14); establishment of jurisdiction (article 15); extradition (article 16); mutual legal assistance (article 18); use of special investigative techniques (article 20); protection of witnesses and enhancement of cooperation with law enforcement authorities (article 24 to 26); and law enforcement operation (article 27).

³² Article 3 (b) of the Trafficking in Persons Protocol.

³³ Article 3 (c) of the Trafficking in Persons Protocol.

³⁴ Articles 6 to 8 of the Trafficking in Persons Protocol.

In line with article 5 of the Transnational Organized Crime Convention, States are required to take measures against organized criminal groups. The Convention defines an organized criminal group as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”³⁵ Article 5 lists criminal offences that need to be criminalized by States parties. Translating article 5 into the context of trafficking in persons, States are required to criminalize not only the attempt and completion of trafficking in persons, but also: (a) agreeing with one or more other persons to commit trafficking for a purpose relating directly or indirectly to the obtaining of a financial or other benefit; (b) conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crime, takes an active part in criminal activities of the group or other activities in the knowledge that his or her participation will contribute to the achievement of the criminal aim.³⁶ Some of the conduct of unscrupulous recruitment agencies may clearly fall under the listed offences.

The Transnational Organized Crime Convention very importantly requires States to establish the liability of legal persons. This is critical to trafficking in persons and related crimes, since traffickers may seek to hide behind the cover of legal persons, such as companies and recruitment agencies, in order to avoid liability and sanctions. In addition, in line with the Convention, if recruitment agencies engage in trafficking in persons, States are required to take measures to enable confiscation of proceeds of crime derived from trafficking in persons as well as of property or equipment used in trafficking in persons.

It should be noted that despite the fact that the Trafficking in Persons Protocol supplements the Transnational Organized Convention, the Trafficking in Persons Protocol does not limit its scope only to those forms of trafficking in persons involving organized criminal groups and an element of transnationality. Domestic trafficking as well as trafficking committed by one individual, such as a labour broker, can still fall under the scope of the Trafficking in Persons Protocol.

2.4.3 Smuggling of Migrants Protocol

Many migrants who ultimately become victims of trafficking may first be smuggled across international borders. In some cases, recruiters, who also act as smugglers, front workers’ smuggling fees, which they are forced to pay off through work for specific employers under substandard conditions, resulting in debt bondage. In cases where smuggled migrants are also undocumented migrants, they are often reluctant to go to the authorities to complain about possible labour exploitation.

The Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling of Migrants Protocol)³⁷ is, besides the Trafficking in Persons Protocol, another instrument supplementing the Transnational Organized Crime Convention. The Smuggling of Migrants Protocol requires States to criminalize smuggling of migrants,

³⁵ Article 2 of the Transnational Organized Crime Convention.

³⁶ Article 5 of the Transnational Organized Crime Convention.

³⁷ General Assembly resolution 55/25 of 15 November 2000, annex III.

defined as “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

Smuggling of migrants is a distinct crime from trafficking in persons. At the heart of trafficking in persons is the intended or actual exploitation of victims. Trafficking in persons often takes place without the consent of victims, or if they consented, the consent becomes irrelevant because of fraud, deception, coercion, etc. used by traffickers. In smuggling of migrants, most migrants agree to being smuggled. Yet, smuggled migrants may not know about the dangers that the journeys often pose, such as horrible travel conditions or abuse at the hands of smugglers. The relationship between smuggled migrants and smugglers usually ends when the illegal entry is facilitated and smuggling fees are paid, as opposed to trafficking in persons where the relationship between trafficker and a victim is an ongoing process of exploitation.

In reality, there is a lot of overlap between the two crimes as traffickers often act as smugglers (and vice versa) and traffickers and smugglers use the same routes. In addition, smuggled migrants are particularly vulnerable to becoming victims of trafficking in persons, and trafficked persons often use illegal smuggling services for getting into the countries of destination.

The provisions of the Smuggling of Migrants Protocol can be relevant to the abusive recruitment practices of recruitment agencies. Recruitment agencies can be part of smuggling networks, facilitating illegal border crossing of migrant workers and charging them smuggling fees for this service. Fees related to smuggling are often enormous and migrant workers incur significant debts to pay them, in addition to traditional recruitment fees.

2.4.4 United Nations Convention against Corruption

Recruitment systems are often opaque and sometimes tainted by corruption. Officials may be paid bribes or engage in other corrupt behaviour to look the other way when faced with abusive recruitment practices, such as the retention of migrant workers' passports by employers, compulsory payment of “runaway insurance” fees by workers, or illegally high deductions from workers' wages. Labour brokers may also bribe government officials in order to gain access to work permits or factory placements, passing along the cost of kick-back “commissions” to workers who are already being charged high recruitment fees.

Often these commissions or bribes may be funded by excessive fees charged to workers, which are almost invariably illegal and so excessive that workers take on considerable debt at usurious interest rates in order to secure what they were fraudulently led to believe would be well paying contract jobs.

Experts who participated in the expert group meetings organized to develop the present report also emphasized that corruption not only facilitates abusive recruitment practices and trafficking in persons, but it also obstructs prosecution and victims' access to protection. Corruption also opens up companies to the risk of prosecution for corrupt practices perpetrated by recruiters employed in their

supply chains. The foreign subsidiaries, franchisees, joint ventures and suppliers of global multinationals who end up employing trafficked migrant workers frequently show ignorance about the possible—and largely hidden—scourge of human trafficking in their supply chains and the direct connection between the corrupt practices occurring in the foreign migrant labour supply chain and the types of red flags associated with human trafficking and forced labour. These red flags include: deception regarding employment terms and conditions, illegal or unethical placement fees charged to foreign contract workers, unexplained fees and costs, lack of transparency, and workplace practices such as passport retention and “runaway insurance” deposits. Experts that were consulted by UNODC stressed that companies could not afford to ignore signs that suppliers, agents, or intermediaries may be engaged in trafficking-related activities and that avoiding knowledge of the conduct of third parties in the supply chain will not suffice to reduce a company’s potential liability.³⁸

The United Nations Convention against Corruption is the key international instrument in addressing corruption. The Convention calls for preventive measures and criminalization of the most prevalent forms of corruption in both public and private sectors, including bribery, obstruction of justice, embezzlement, trading in influence, abuse of functions and laundering of the proceeds of crime or concealment.³⁹ It also requires States to take effective law enforcement measures, promote international cooperation, and to allow for asset recovery.

Also the previously mentioned Organized Crime Convention recognizes the linkages between corruption and organized crime. In articles 8 and 9, the Transnational Organized Crime Convention calls for the criminalization of corruption and for taking measures to prevent, detect and punish corruption of public officials.

2.4.5 International instruments concerning forced labour

Forced labour is among the listed forms of exploitation in the definition of trafficking in persons in the Trafficking in Persons Protocol. Those subjected to forced labour are often trafficked into such situation. Yet, not all situations of forced labour fulfil the elements of the definition of trafficking in persons and may fall outside the scope of the Trafficking in Persons Protocol. In addition, it should be noted that not all trafficking in persons results in forced labour.

When discussing abusive recruitment practices, including charging of excessive recruitment fees, understanding the concept of forced labour is of particular importance as workers may end up in situations that could be considered forced labour.

The ILO’s Forced Labour Convention (No. 29) of 1930 defines forced labour as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴⁰ This

³⁸ See also: Verité. *Corruption & Labor Trafficking in Global Supply Chains*. December 2013. <http://www.verite.org/sites/default/files/images/WhitePaperCorruptionLaborTrafficking.pdf>

³⁹ See chapter 3 of the United Nations Convention against Corruption.

⁴⁰ International Labour Organization. C029 – Forced Labour Convention, 1930 (No. 29). June 28, 1930. http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029

means that a person is in a forced labour situation if he or she is working under conditions to which he or she did not originally consent, or consented to due to deception or coercion; and they cannot leave that job without penalty or a threat of penalty. A penalty could include physical constraint or punishment, or other forms of abuse such as threats of deportation, the confiscation of passports, or the non-payment of wages, which effectively binds a worker to a job or employer. According to the ILO, the indicators of forced labour include: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; and excessive overtime.⁴¹

In June 2014, a legally binding Protocol and a non-binding Recommendation were adopted by governments, employers, and workers to supplement Convention No. 29 and complement other existing standards. The Protocol must be ratified by countries before it can go into force; as a supplemental protocol, it can only be ratified by countries that have already ratified Convention No. 29.⁴² The purpose of the Protocol and Recommendation is to “give impetus to the global fight against forced labour, including trafficking in persons and slavery-like practices”.⁴³ In particular, the Protocol calls for taking effective measures to prevent forced labour, including protection from abuses arising during the recruitment processes and addressing root causes and factors that heighten the risks of forced labour.⁴⁴ The Protocol also calls for providing victims with protection and access to remedies, including compensation.⁴⁵ The Protocol explicitly states that measures taken under the Protocol must include specific action against trafficking in persons for forced labour.⁴⁶

Other relevant ILO instruments include the ILO’s Worst Forms of Child Labour Convention (No. 182) and the ILO’s Declaration on Fundamental Principles and Rights at Work. The Declaration, for example, was adopted by the employers, governments and workers organizations that comprised the ILO’s tripartite structure in 1998, which established that all States shall work towards compliance with the ILO’s core conventions, including Convention No. 29, regardless of their ratification or level of economic development. It specifically mentions the protection of migrant workers.⁴⁷ In June 2011, the ILO adopted the Domestic Workers Convention (No. 189), which addresses the issue of domestic servitude. The Convention sets out protections against domestic servitude, outlining specific rights for domestic workers, including fair terms of employment, decent working and living conditions, respect for privacy, and protection against all forms of abuse, harassment and violence.⁴⁸

⁴¹ ILO Indicators of forced labour. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

⁴² International Labour Organisation. Strengthening the global fight against all forms of forced labour: The Protocol to the Forced Labour Convention. 2014. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_321414.pdf

⁴³ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_321414.pdf

⁴⁴ Article 2 of the Forced Labour Protocol.

⁴⁵ Articles 3 and 4 of the Forced Labour Protocol.

⁴⁶ Article 1 (3) of the Forced Labour Protocol.

⁴⁷ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers’ passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

⁴⁸ International Labour Organization. C189 – Domestic Workers Convention, 2011 (No. 189). June 16, 2011. http://www.ilo.org/dyn/normlex/en/F?p=1000:12100:0::NO::P12100_ILO_CODE:C189

2.4.6 International standards on recruitment agencies and fees

There are international standards that specifically prohibit charging workers recruitment fees or costs related to their recruitment, making illegal deductions from workers' wages, and the confiscation of workers' identity documents, all of which can be linked to trafficking in persons.

ILO Convention No. 181 of 1997, known as the Private Employment Agencies Convention, establishes in article 7 that "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers." In addition, article 8 states that "A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate engage in fraudulent practices and abuses." While the Convention is a positive advance and could go a long way to preventing debt bondage linked to recruitment fees, it has not been widely ratified.

Other ILO Conventions also prohibit illegal deductions from workers' wages. ILO Convention 95 of 1949, the Protection of Wages Convention, prohibits all deductions from workers' wages intended to directly or indirectly obtain or retain workers' employment. Under the Convention, these deductions may be made by employers, their representatives, or labour intermediaries, such as recruiters or labour brokers. ILO Convention 189 of 2012 on Domestic Workers requires that signatories ensure that private employment agencies do not make deductions from the wages of domestic workers.

International standards also prohibit the retention of workers' identification documents. Article 9 of ILO Convention 189 explicitly prohibits employers from withholding domestic workers' passports. Article 21 of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families prohibits employers from confiscating workers' passports under any circumstances.⁴⁹

2.4.7 Child labour and child trafficking

ILO Convention No. 138 (Minimum Age Convention) establishes in article 2 that the minimum age for employment must not be lower than the maximum age required for obligatory schooling or below 15 years of age. However, it also states that in the case in which member country economies or educational systems are not sufficiently developed, the minimum age may be set at 14 through consultations between employer and worker organizations, if such organizations exist.

Article 10.3 of the International Covenant on Economic, Social and Cultural Rights states that, "Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law."⁵⁰ Drawing on this, the ILO's Worst Forms of Child Labour Convention (No. 182) defines and prohibits the Worst Forms of Child Labour, including child

⁴⁹ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

⁵⁰ United Nations General Assembly. International Covenant on Economic, Social and Cultural Rights. 16 December 1966. United Nations, *Treaty Series*, vol. 993, p. 3. <http://www.refworld.org/docid/3ae6b36c0.html>

trafficking.⁵¹ The United Nations' Convention on the Rights of the Child⁵² and the ILO's Worst Forms of Child Labour Convention⁵³ both protect children against conditions akin to domestic servitude.

2.4.8 Migrant workers

The United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in 2003, is a treaty that seeks to protect the human rights of migrant workers and their families. It includes a number of stipulations relevant to human trafficking, including the requirement that States prevent inhumane treatment and working and living conditions, including physical and sexual abuse; guarantee that migrants have access to information on their rights; provide migrants with equality under the law; and ensure that migrants have the right to form and join unions.⁵⁴

2.4.9 Other relevant international instruments

Many other international legal instruments are relevant to the topic and should be taken into consideration when taking action against trafficking in persons and abusive recruitment practices of recruitment agencies. These include, among others:

- The United Nations Convention on the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)
- The International Covenant on Civil and Political Rights
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- The Convention on the Elimination of All Forms of Discrimination against Women
- The 1926 Slavery Convention
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted in 1956

For example, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt of the length and nature of those services are not respectively limited and defined.” Serfdom is defined as “the condition or status of a tenant who is by law, custom or

⁵¹ International Labour Organization. C182 – Worst Forms of Child Labour Convention, 1999 (No. 182). 1999. http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182

⁵² United Nations Office of the High Commission for Human Rights. Convention on the Rights of the Child. November 20, 1989. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁵³ International Labour Organization. C182 – Worst Forms of Child Labour Convention, 1999 (No. 182). June 17, 1999. http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182

⁵⁴ United Nations Educational, Scientific and Cultural Organization. International Migration Programme. *Information Toolkit: United Nations Convention on Migrants' Rights*. France, 2005. <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>

agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”⁵⁵

Of particular relevance for an adequate response to fraudulent and abusive recruitment practices of recruitment agencies is ILO Convention No. 81, Labour Inspection Convention, 1947, which states in its article 3:

1. The functions of the system of labour inspection shall be:
 - (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
 - (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
 - (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.
2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

2.4.10 Instruments addressing the private sector

As business has become increasingly global, the international community has also responded by adopting non-binding global frameworks that address business practices. For example, the United Nations *Guiding Principles on Business and Human Rights* offers companies guidance on key labour and human rights issues relevant to human trafficking.⁵⁶ These principles, which were endorsed by the United Nations Human Rights Council in June 2011, cover all aspects of human rights, including ILO core labour standards.⁵⁷

They mark the emergence of a new platform for corporate and multi-stakeholder engagement, and provide a common reference point for mitigating the risk of negative human rights impacts linked to business based on the three pillars of the:

1. State Duty to Protect Human Rights;
2. Corporate Responsibility to Respect Human Rights; and
3. Access to Remedy.^a

^a See: United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2011.

⁵⁵ United Nations Human Rights: Office of the High Commissioner for Human Rights. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. September 7, 1956. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

⁵⁶ See: <http://www.unglobalcompact.org/> and *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2011. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁵⁷ See: United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2011.

Although trafficking is not explicitly referenced, the *Guiding Principles* set out protections against it in the general framework of business responsibility. Notably, the principles clarify the respective roles of State actors and business enterprises, emphasizing the objective of enhancing standards and practices to achieve tangible results for affected individuals and communities, thereby contributing to a socially sustainable globalization. Further, the *Principles* state that companies should adhere to international standards on human rights in countries in which national law is not in compliance with these standards, meaning that companies should prohibit recruitment practices and fees that violate international standards across their supply chains.⁵⁸

⁵⁸ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

3. National law, regulation and institutional mechanisms

The previous section focused on the various international instruments and non-binding frameworks that cover a range of issues related to trafficking in persons and abusive recruitment practices, including charging of recruitment fees.

The following section is intended to provide information on how the existing international legal framework is used in national contexts to address these issues.

3.1 Legislative approaches to the linkages between trafficking in persons and abusive recruitment practices

The Trafficking in Persons Protocol has had a substantial impact on shaping trafficking legislation around the world since it came into force in December 2003. Following the adoption of the Protocol, many countries have improved their legislative frameworks in order to define, prohibit, and sanction human trafficking, and to protect victims. According to the 2014 UNODC *Global Report on Trafficking in Persons*, 85 per cent of countries⁵⁹ currently have legislation criminalizing all forms of human trafficking. Yet, some countries have only partial legislation covering only some victims of certain forms of exploitation.

It should be noted at the outset that very few States specifically address recruitment agencies or the charging of recruitment fees in their anti-trafficking legislation.

States, like the Trafficking in Persons Protocol, usually include the broader term “recruitment” in their definition of trafficking in persons, hence allowing for the abusive behaviour of recruitment agencies to fall under it.

Some experts UNODC consulted argued that there has been too little focus on regulating the recruitment practices and fees in anti-trafficking legislation. Others, however, argued that a lack of legislation is not a key challenge as most countries have sufficient legislation to address recruitment-linked abuses, but it is the enforcement of legislation that is limited or non-existent.

⁵⁹ Of the 173 countries considered for the analysis done for the 2014 UNODC *Global Report on Trafficking in Persons*.

The question remains as to what impact the explicit reference to the recruitment agencies and fees would have in practice. In particular, would the criminal justice responses be more effective in cases where anti-trafficking legislation explicitly mentions abusive recruitment practices, than in cases where anti-trafficking laws only include the broader term of recruitment? While there is no clear answer to this question, it should be mentioned that the Trafficking in Persons Protocol establishes only a baseline for States to build their anti-trafficking responses and allows for flexibility and diversity in States' implementation of the Protocol.

As mentioned earlier, a number of other crimes are linked with human trafficking and recruitment abuses, including but not limited to, migrant smuggling, fraud, exploitation, blackmail, corruption, organized crime and money-laundering. Therefore, as shown above, laws covering these crimes are also relevant when addressing abusively and fraudulently acting recruitment agencies, including where it may not be possible to prove the agencies' involvement in trafficking in persons. In all cases, legal frameworks used to address the issue should be flexible and responsive to the contextual realities in a given geographic region.

In addition, some States have created legal mechanisms to monitor and/or sanction recruitment agencies that are found to be engaging in abusive practices. Some States have passed laws to better regulate private recruitment agencies or establish protections for migrant workers and foreigners living within their borders. States often prohibit recruitment agencies from charging workers recruitment and job placement fees, although charging recruitment fees under certain conditions is permitted in some States.

In view of the above, the purpose of the section is to present some of the legislative approaches taken in different States to address abusive recruitment practices of recruitment agencies, including charging of recruitment fees, in particular in the context of trafficking in persons. While some responses are embedded in anti-trafficking laws, others are part of other criminal laws, labour laws or regulatory frameworks.

3.2 Differences between countries of origin and destination

In reality, it appears that the focus of relevant legislation and regulation sometimes depends on whether a certain country or region is a point of “origin” that primarily “sends” migrant workers, or a “destination” country that “receives” them. Of course, as there is also a substantial amount of domestic trafficking in persons, as well as concurrent inflows and outflows of migrant workers in many countries, a given country may be both a country of origin and destination for migrant workers. Nevertheless, certain differences in legislation and regulation appear between countries of origin and destination of workers.

From the input UNODC gathered from various research publications and experts from different regions around the world, it seems that in countries of origin, legislation tends to focus on the regulation of recruitment fees, private employment

agencies, and the general recruitment process. Most sending countries appear to have at least passed legislation stating that the government has the power to regulate fees, while many other governments have gone further and limit the amount of recruitment fees and have itemized and regulated different recruitment fees elements (agency fees, placement fees, visa fees, transportation, etc.) that workers can be charged.

Some countries of origin have taken steps to reduce the risk that their citizens will become victims of or vulnerable to trafficking in persons through abusive recruitment practices when they migrate overseas for employment. For example, Nepal's Foreign Employment Act of 2007 delineates the role of the government in the management of overseas employment through the regulation of recruitment agency licences. It also defines the process of recruitment for overseas employment; sets minimum wage, labour contract, and insurance requirements; requires pre-departure trainings; and sets procedures for filing complaints.⁶⁰ In May 2012, the government of Nepal announced a policy of mandatory verification of migrant workers' documents by Nepali missions abroad and that it was working with receiving-country governments to establish a minimum salary for Nepali migrant workers in Malaysia, Qatar, Saudi Arabia and the United Arab Emirates, which are amongst the largest employers of Nepali workers.⁶¹

In countries that are primarily "receiving" countries for migrant labourers, legislation regarding recruitment fees tends to focus on fees that are charged within the receiving country rather than in workers' countries of origin. Legal fee levels for migrant workers must be determined by examining the laws of both migrant-sending and migrant-receiving countries, and hence depend on the countries of origin of the migrants, and on any bilateral agreements (such as memorandums of understanding) that may exist between sending and receiving countries. Receiving countries may also require the reimbursement of recruitment fees after workers have worked a specific amount of time.

Many destination countries for migrant workers have established mechanisms to combat exploitative recruitment and hiring practices, which increase the risk of trafficking in persons, and/or specific protections for migrant workers, many of whom are particularly vulnerable to trafficking in persons.⁶² In one Asian country, for example, the law requires government oversight of the agencies through which migrant workers are recruited in order to ensure that they are not charged excessive service fees. The government has also designed a model contract for recruitment agencies, including a wage affidavit designed to regulate working conditions and service fees.

In the Czech Republic, a country of destination for many migrants, the Employment Act was amended in January 2011 to require the regulation of employment agencies. Such agencies must now be insured, pass a criminal record check, and report statistics on the number and nationality of workers placed in employment.⁶³ In 2011, the Czech Republic made several legislative changes to improve protections for migrants

⁶⁰ Narayan Manandha and Jagnath Adhikari, *Study of Issues on the Recruitment of Migrant Labour in Nepal*, submitted to the World Bank Country Office, Nepal, July 2010.

⁶¹ "Govt to fix minimum pay for migrant workers," *The Kathmandu Post*, May 10, 2012. <http://www.ceslam.org/index.php?pageName=newsDetail&nid=2009>

⁶² Verité. Summary Report – *Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy*. 2010. http://www.verite.org/sites/default/files/images/Help_Wanted_2010.pdf

⁶³ Bičáková, Olga. *Změny v agenturním zaměstnávání od 1. ledna 2011*. Ministry of Labour and Social Affairs. <http://www.mpsv.cz/cs/10041> (Accessed February 2, 2012).

and reduce their vulnerability to exploitation. The Act on Residence of Migrant Nationals was amended to require that employers cover the costs of repatriation when they exit the country before the expiration of their work permit.⁶⁴

Many countries of origin are also transit and destination countries for victims of trafficking in persons. In many cases, as with India, there is also a significant incidence of internal trafficking, that is trafficking that occurs within the borders of the country. Indian law has attempted to reduce the risk of all of these types of trafficking through the Employment (Amendment) Rules 2009, Section 13, which states that, “No recruiting agent shall collect from the worker the charges more than the equivalent of his wages for 45 days as offered under the employment contract, subject to a maximum of 20,000 rupees, in respect of services provided by it to that worker and the recruiting agent shall issue a receipt to that worker to the amount collected by it in this regard.” This Indian law demonstrates several important concepts related to recruitment fees: a maximum limit, a limit related to the worker’s anticipated salary, and the need for workers to be provided with receipts.

3.3 Good practices and gaps in addressing recruitment abuse through legislation

3.3.1 Good practices in legislative approaches

Government legislation addressing abuses related to labour recruitment varies significantly by country and region, and differences can be attributed to more than simply whether a country is a point of origin or destination for migrant workers. It also depends in part on the country’s experience with labour migration: the migration could be a recent phenomenon that may still be relatively unmonitored and unregulated by the government; it could be the result of a long-term government strategy of alleviating joblessness and poverty by encouraging citizens to find work abroad; or it could fall somewhere between these examples and incorporate elements of both.

In this report, we focus on government responses in three key regions: Asia, the Middle East, and the Americas.

Asia

While some Asian countries are destinations for migrant workers, many Asian countries are primarily countries of origin for migrant labour. In these countries, legislation tends to focus on the regulation of recruitment fees, recruitment agencies, and the general recruitment process.

Most South East Asian countries have, at minimum, passed legislation empowering the government to limit recruitment fees which are often a significant contributor to the vulnerability of migrants to trafficking in persons. Many governments have gone further, actively limiting the amounts and types of fees that recruitment agencies may charge workers.

⁶⁴ Horakova, Milada. *Mezinárodní pracovní migrace v České republice v době pokračující hospodářské recese v roce 2010*. [International Migration in Time of Ongoing Economic Crisis in 2010]. VÚPSV. 2011 http://praha.vupsv.cz/Fulltext/vz_338.pdf (Accessed February 13, 2012).

Some countries, such as Indonesia, have tasked numerous government agencies with oversight of aspects of the recruitment process and, as a result, have developed many laws and regulations for overseas recruitment of workers. Recruitment agencies and fee-charging are regulated by laws on the overseas placement of workers, and recruitment agencies that place workers overseas can lose their licences and be fined if they commit unlawful acts, which are identified in relevant regulations. Law 39 (2004) is the main law that regulates recruiters: it establishes a licensing system to supervise recruiters, and establishes fee limits. In some cases, fee limits are also established by memorandums of understanding with destination countries. With regard to law enforcement and criminal justice, unethical recruitment, in particular by unlicensed agencies, is punished by minimum prison sentences of three years, fines and requirements of restitution.

The Sri Lanka Bureau of Foreign Employment published a Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees in November 2013. The Code was developed in order to regulate the practices of recruitment agents and improve professionalism, accountability and transparency in the industry. It encourages Licensed Foreign Employment Agencies (LFEA) to develop ethical standards and guidelines consistent with the Decent Work Policy of Sri Lanka, Sri Lankan regulations and international labour standards. The Code also requires LFEAs to “protect the industry and their clients against fraud, misinterpretation and unethical practices,” including a prohibition on contract substitution and regulations on the charging of recruitment fees.⁶⁵

Recruitment agency licensing may be used to regulate recruitment practices and fees. However, for licensing to be effective, it must include in-depth and frequent assessments of recruitment practices, including interviews with workers. In Indonesia and Nepal, alongside a licensing process, there is a system by which workers can report abuses committed by recruitment agencies to the government. And in yet other countries, such as the Philippines, there is a large bond requirement as part of the licensing process, which is designed to provide a safeguard for workers. However, care needs to be taken that these bonds, combined with long delays in the licensing process do not also prevent ethical recruitment companies from obtaining licences.

Cambodia has issued a number of decrees regulating the rights of migrant workers, as well as recruitment agencies and fees. Sub-decree 57 of 1995 regulates the sending of Cambodian migrant workers abroad (1995), and Sub-decree 70 of 2006 created a government agency on manpower training and the sending of migrant workers abroad. Sub-decree 195 of 2013 allows for the issuance of normal passports to Cambodian workers legally employed abroad and Sub-degree 205 of 2014 reduced the passport fee. Sub-decree 190 of 2011 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, supplemented by eight Ministerial Orders issued in 2013, regulates private recruitment agencies, the recruitment process, pre-departure training for migrant workers, job placement service contracts, inspections of recruitment agencies and related sanctions and rewards, and the repatriation of migrant workers. Further, a private recruitment agency code of conduct was issued in 2009, and a standard contract between potential migrant workers and recruitment agencies was issued in 2012.

⁶⁵ Sri Lanka Bureau of Foreign Employment. Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees. November 2013. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_233369.pdf

Some destination countries within the region have also stepped up efforts to regulate private employment agencies, as required by ILO Convention 181.⁶⁶ For example, in 2011, the Malaysian Government amended its Employment Act of 1955, defining the term “labour contractor” and requiring that wages paid to domestic servants be deposited into a bank account, that labour contractors register employees with the Director General of Labour, and that the termination of foreign workers’ employment be reported to the Director General of Labour. This amendment also created a new type of legal labour relationship between third-party contractors and employees.

Some sending and receiving countries of migrant workers have signed bilateral agreements or memorandums of understanding (MOUs) to address recruitment abuses. A new MOU for the Employment of Indonesian Maids was signed between the governments of Malaysia and Indonesia in 2011 to update a 2006 agreement. This agreement requires an employment contract, sets a limit on recruitment fees, provides for a weekly day of rest, allows maids to keep their passports, and requires a one-month training of Indonesian maids prior to entering Malaysia as workers.⁶⁷ The agreement lifted a two-year ban that Indonesia had imposed on migration to Malaysia for domestic work.⁶⁸

*The Americas*⁶⁹

In the Americas, there are a number of prominent sending and receiving countries for migrant workers. In some cases, countries such as Brazil, Colombia and Mexico, which were previously primarily countries of origin for migrant workers, have become destination countries. While countries in the Americas have passed a number of relevant laws on recruitment and trafficking of their own citizens abroad, which can be considered as best practices, some emerging destination countries appear to lag behind others in protections for incoming migrant workers. However, some countries in the Americas, including Peru, have explicitly prohibited recruitment agencies from engaging in trafficking and from charging workers any recruitment fees.

Mexican law provides for extensive protections for Mexican workers migrating abroad. Article 123, XXVI of the Mexican Constitution⁷⁰ states that a contract of employment concluded between a Mexican and a foreign employer must be certified by the municipal authority and countersigned by the consul of the country in which the worker will be employed. In addition, it states that any repatriation costs shall be borne by the foreign employer. Furthermore, it specifies that contracts may be considered void if they stipulate inhumane tasks or the retention of wages for longer than a week or as punishment, or if contracts obligate workers to acquire goods in company stores.⁷¹ The Federal Labour Law, last amended in November 2012, requires

⁶⁶ International Trade Union Confederation. *How to Combat Forced Labour and Trafficking*. February 2009. http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf

⁶⁷ *Malaysiakini.com*. “Fees set at RM4, 511 to hire Indonesian maids.” May 31 2011. <http://www.malaysiakini.com/news/165588>

⁶⁸ *New Straits Times*. “Indonesian maids coming by year-end.” 12 September 2011.

⁶⁹ Information in this section mainly collected by Livia Wagner, UNODC; (desk review, in-country survey in Peru and personal interviews with various experts from the region).

⁷⁰ Estados Unidos Mexicanos. La Secretaría del Trabajo y Previsión Social (STPS), Constitución Política de los Estados Unidos Mexicanos. Ley Federal de Trabajo, article 123, XXVI.

⁷¹ Estados Unidos Mexicanos. La Secretaría del Trabajo y Previsión Social (STPS), Constitución Política de los Estados Unidos Mexicanos. Ley Federal de Trabajo, article 123, XXVII.

a number of protections for Mexican workers employed abroad, including that repatriation be covered by employers and that contracts must include conditions of transportation, housing and benefits, and must be submitted to the Conciliation and Arbitration Council for review. It also establishes that recruitment agencies must receive approval from the Mexican Secretariat of Labour and Social Welfare (STPS) to contract workers.⁷² Under article 10 of Regulation on Worker Placement Agencies, these agencies are prohibited from charging any fees to job applicants in cash or in any other form; conspiring, directly or indirectly, with employers to have fees deducted from workers' salaries; or publishing fraudulent job advertisements or engaging in any act or omission that constitutes deceit.⁷³

In Colombia, under article 95 of Law 50 of 1990, job placement should always be free of cost to workers. Decree 722 of 2013 regulates labour intermediation and states that the agency providing labour placement services abroad must have special permission from the Ministry of Labour.⁷⁴ Article 34 of the Labour Law states, that independent recruiters are individuals or companies that provide one or more labour tasks or the provision of services, with their own resources and technical and managerial freedom and autonomy. Under Colombian law, recruiters are not authorized to hire subcontractors to provide these services. Labour recruiters must provide workers with written contracts that must include a legal stamp containing the identities and addresses of the parties; the place and date of signing; the place of employment; the nature of work; the amount of remuneration, the form and frequency of payments; other in-kind benefits, such as food and housing; and the duration of the contract.⁷⁵ Colombian law includes a number of requirements for recruitment agencies bringing migrant workers into Colombia, including that recruiters provide the Colombia Migration Authority with a written statement detailing the hiring conditions and duration of the contract. Recruiters are also required to cover the expenses of workers' and their family members' repatriation to their home country upon termination of the contract or visa.

According to the Chilean Labour Code,⁷⁶ recruiters and contractors have to register in a special index of recruiters at the labour inspectorate. Companies using the service of unregistered recruitment agencies or individual contractors may be subjected to legal sanctions under article 477 of the Labour Code. When the services provided by labour brokers are limited only to the intermediation between workers and employers, employers may be held legally liable. Article 183-B⁷⁷ of the Labour Code states that the beneficiary company shall be held responsible for labour obligations affecting contractors, including any legal indemnity payments related to termination of employment. Such liability shall be limited to the time or period during which the workers rendered services for the employer. Likewise, the law allows for joint liability in that labour brokers and end employers may be held jointly liable for the actions of their subcontractors, such as village-level recruiters.

⁷² Estados Unidos Mexicanos. La Secretaría del Trabajo y Previsión Social (STPS), Constitución Política de los Estados Unidos Mexicanos. Ley Federal de Trabajo, article 28.

⁷³ Estados Unidos Mexicanos. La Secretaría del Trabajo y Previsión Social (STPS), Reglamento de Agencias de Colocación de Trabajadores, article 10.

⁷⁴ Sandra Tafur Soto, Tercer Secretario de Relaciones Exteriores, Coordinación de Prevención del Delito, Dirección de Asuntos Políticos Multilaterales, Ministerio de Relaciones Exteriores, Colombia, e-mail 9 September 2014.

⁷⁵ Colombian Labour Code, article 34.

⁷⁶ Republic of Chile. Ministerio de Trabajo y Previsión Social. Código de Trabajo, article 92.

⁷⁷ Republic of Chile. Ministerio de Trabajo y Previsión Social. Código de Trabajo, article 183-B.

Peru is one of the few countries that explicitly prohibits recruitment agencies from engaging in trafficking in persons. Supreme Decree No. 020-2012-TR on Labour and Employment Promotion regulates the activities of Private Employment Agencies in Peru and Abroad. Article 7 of the Supreme Decree explicitly prohibits these agencies from “carrying out activities related to trafficking in persons, smuggling of migrants, forced labour or child labour.” Article 6 explicitly prohibits these agencies from charging job seekers fees.⁷⁸

In Guatemala, article 8 of Supreme Decree No. 020-2012-TR requires employment agencies to train their staff to detect fraudulent jobs offers that could be linked to trafficking in persons, smuggling of migrants and child labour. Employment agencies are also required to inform job seekers and employers of the prohibition of these crimes. In another country in the Americas, human traffickers and their facilitators are often tried under statutes on visa fraud or alien harbouring, rather than under laws covering trafficking in persons or recruitment, due to a lack of comprehensive laws on recruitment and high evidentiary bars for trafficking in persons.⁷⁹

The governments of Guatemala and Mexico signed a bilateral cooperation agreement on migrant workers in August 2014, to ensure better regulation of the conditions on which migrant workers are recruited and employed. The initiative, which was subsequently extended to Honduras and El Salvador, seeks to promote a fair labour migration process.⁸⁰ Mexico and Guatemala agreed to increase cooperation and information sharing, create an observatory to monitor recruitment and employment conditions and migration flows, and co-design policies to protect migrant labourers from exploitative recruitment and conditions of work. They also agreed to implement an inspections programme, as well as a transnational registry of labour brokers to ensure that recruitment is legal, just and transparent.⁸¹

In the United States, a number of states have included the crime of trafficking in persons in their gang offence statutes. Human trafficking has been included as a crime on the federal level in the Racketeer Influenced and Corrupt Organizations (RICO) statute, making investigations more efficient, and resulting in successful prosecutions of whole trafficking rings, as well as increased penalties.⁸² A successful RICO case requires proving that the accused is a member of a “criminal enterprise” that commits at least two predicate acts which are related to and indicate a continuation of criminal activity. Importantly, “criminal enterprise” is defined to include both natural and legal persons—any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals. RICO indictments carry harsh penalties and allow the courts to seize any assets or ill gains in order to prevent those charged from evading prosecution. This statute allows for any individual that benefits from trafficking or importing immigrants for “immoral purposes” and

⁷⁸ Republic of Peru. Ministry of Labour and Employment Promotion. Supreme Decree No. 020-2012-TR. Regulation of private employment agencies. 2012.

⁷⁹ 18 United States Code § 1546 – Fraud and misuse of visas, permits, and other documents. <http://www.law.cornell.edu/uscode/text/18/1546>

⁸⁰ “Guatemala y México suscriben acuerdo para trabajadores migrantes.” *Agencia Guatemalteca de Noticias (AGN)*. August 7, 2014. <http://eleconomista.com.mx/sociedad/2014/08/08/mexico-guatemala-suscriben-acuerdo-sobre-trabajadores-migrantes>

⁸¹ Sanchez, Julian. “Protegerán México y Guatemala a trabajadores migrantes.” *El Universal*. August 8, 2014. <http://www.eluniversal.com.mx/nacion-mexico/2014/mexico-guatemala-migrantes-trabajadores-1029015.html>

⁸² The Polaris Project. *Tools for Law Enforcement*. <http://www.polarisproject.org/what-we-do/policy-advocacy/prosecuting-traffickers/tools-for-law-enforcement>

financial gain to be charged with racketeering. RICO indictments carry harsh penalties and allow the courts to seize assets and earnings, and allow victims to seek additional civil damages.⁸³ The confiscation of assets gained through human trafficking can be used to disincentive individuals from engaging in trafficking.

In 2013, the State of São Paulo, Brazil passed a law that makes companies liable for trafficking and related abuses in their production chains (including in the operations of their subcontractors). The law allows the state government to cancel complicit companies' tax registration for ten years, thereby making it impossible for them to continue operating legally.⁸⁴

The Middle East

Countries in the Middle East are primarily destination countries for migrant workers.⁸⁵

Bahraini law includes extensive regulations on the actions of recruitment agencies, as well as stiff penalties for natural and legal persons that fail to comply with the law. Bahrain's Act No. 19 of 2006 on labour market regulation prohibits recruitment agencies or private persons from charging fees to migrants for their recruitment. The same law requires recruitment agencies and employment offices to register with the Labour Market Regulatory Authority (LMRA) to receive a permit to operate. Recruitment agencies seeking permits are also required to put down a deposit of BHD 10,000 (US\$ 26,526) with the LMRA. The LMRA may use such deposit to settle any fines or fees imposed on the recruitment agency for infringement of the law. Article 36 of the 2006 law provides penalties for operating without a licence, including imprisonment of three months to one year and a fine of BHD 1,000 to BHD 2,000 (US\$ 2,652.59 to US\$ 5,305.19). Penalties may be increased for repeat offenders or aggravating factors. In addition, courts may order the cessation of business or the closure of premises for up to three years, or the cancellation of business registration in the case of repeat offenders. Article 23 of Act No. 19 prohibits any person from charging workers fees in order to secure them a job, and the Act includes penalties for charging recruitment fees. Bahraini law allows for joint liability for recruitment-related or trafficking offences where there is conspiracy or joint "involvement" in the commission of the offence, including offences committed under the auspices of a corporation or a legal person. Legal persons can be subjected to fines of BHD 10,000 to BHD 100,000 (US\$ 26,526 to US\$ 265,259.45) for involvement in trafficking in persons, in addition to the criminal responsibility of natural persons working for these legal persons.

UNODC's survey found that in Bahrain, the Labour Market Regulatory Authority (LMRA) is responsible for registering and monitoring recruitment agencies, and is given the legal authority to investigate illegal recruitment, recruitment fees, and other abuses. The LMRA checks the validity and authenticity of all documents related to

⁸³ Verité. Regional Report – *Immigrant Workers in U.S. Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor*. June 2010. http://www.verite.org/sites/default/files/images/HELP%20WANTED_A%20Verite%CC%81%20Report_Migrant%20Workers%20in%20the%20United%20States.pdf

⁸⁴ Brito, Agnaldo. "Law bans companies that use slave-like labor in São Paulo." *Folha de S.Paulo*. January 29, 2013. <http://www1.folha.uol.com.br/internacional/en/business/2013/01/1222079-law-bans-companies-that-use-slave-like-labor-in-sao-paulo.shtml>

⁸⁵ Information concerning Bahrain and the United Arab Emirates mainly collected by Azzeddine Salmane, UNODC (in-country surveys).

employment visas and verifies that there is a workplace with a need for the workers so that they are not left in Bahrain undocumented and without employment. Furthermore, employers that have committed previous offences and recruitment agencies that misled migrant workers about conditions of employment are not allowed to hire migrant workers. When workers arrive in Bahrain, the LMRA provides them with a brochure in their native language, as well as a working SIM card, which they can use to report any violations. Information on their working permit and any changes is sent to the SIM card.

In the United Arab Emirates, the law does not allow recruitment agents to charge workers fees associated with their recruitment or travel costs. The Ministry of Labour may require that recruitment agencies reimburse workers any fees they paid, in the United Arab Emirates or abroad, to the recruitment agency or any of its partners. Ministerial resolution 1283 of 2010 require recruitment agencies to register with the Ministry of Labour and deposit a guarantee which can later be used to settle any sums resulting from defaults under the resolution. In such cases, permits are suspended until forfeited sums are settled. More importantly, natural persons or any partners in the legal entity applying for a permit to operate as a recruitment agency may not be granted such permit in case of prior convictions for human trafficking crimes. The Ministry of Labour may also suspend or revoke recruitment agencies' licences for violation of any of these provisions or any involvement in human trafficking/forced labour.⁸⁶ Ministerial Resolution No. 1186 of 2011 allows migrant workers to transfer from one employer to another after their contracts expire.⁸⁷

Promising practice

Case Study: The Relevance of the (United States) Foreign Corrupt Practices Act

It is becoming increasingly clear that the routes and mechanisms used by traffickers to subject vulnerable foreign contract workers to trafficking in persons expose certain companies and persons to potential liability under the Foreign Corrupt Practices Act. It is important to note that under that Act, a parent company may be held liable for bribes paid by its subsidiaries, agents and others working on its behalf under a variety of legal theories, including traditional agency principles. This means that a company can be held accountable for the actions or failures of its subsidiaries, agents, employees, and its officers and directors can also be held personally liable. Companies subject to that Act need to understand that the agents and brokers they hire may be paying bribes to an assortment of players in the foreign labour supply chain including sub-agents and labour department officials involved in immigration, border control, and law enforcement.⁹

Laws and regulations encouraging private sector action to combat trafficking

Recent laws that require businesses to take measures to decrease the risk of trafficking in their supply chains have the potential to bring about significant advances through the substantial resources and influence of major companies. In October 2010, the State of California adopted new legislation to tackle human trafficking in global supply chains. The California Transparency in Supply Chains Act requires all retailers and manufacturers doing business in the state with annual revenues of more than US\$ 100 million to disclose information about their efforts to eradicate human trafficking from their direct supply chains. The Act requires businesses to publicly post information on their websites and describe to what extent they engage in each of the following:

⁸⁶ Human Rights Watch. *The Island of Happiness Revisited*. 2012. <http://www.hrw.org/ru/node/105799/section/6>

⁸⁷ See also: Verité. *Research on Situation of Nepalese Migrant Workers in the UAE*. 2012.

- Verification of product supply chains to evaluate and address risks of human trafficking
- Performance of supplier audits to determine compliance with company standards
- Training of relevant company employees and management on human trafficking, particularly concerning the mitigation of risk within supply chains

In 2012, the United States President issued Executive Order 13627 Strengthening Protections Against Trafficking In Persons In Federal Contracts, which requires federal contractors to take preventative action to mitigate the risk of trafficking in persons in their supply chains. It directs federal contracting regulations to include stricter prohibitions to combat trafficking and, in the case of contracts exceeding US\$ 500,000 performed abroad, an obligation to develop and implement detailed compliance plans. The Federal Acquisition Regulation issued on January 29, 2015 implements EO 13627 and Title XVII of the 2013 National Defense Authorization Act and imposes requirements on prime and subcontractors that prohibit both trafficking in persons and trafficking-related activities, such as document retention, deception in recruitment, fees charged to employees and failing to provide accurate information on terms of work before workers depart their home countries.

^a See: Verité. *Corruption & Labor Trafficking in Global Supply Chains*. December 2013. <http://www.verite.org/sites/default/files/images/WhitePaperCorruptionLaborTrafficking.pdf>

3.3.2 Institutional frameworks

There are a number of other mechanisms (some of which may have been mentioned earlier already) by which trafficking in persons and abusive recruitment practices can be combated, including licensing and monitoring of recruitment agencies, memorandums of understanding (MOUs) and regional initiatives. Recruitment agency licensing may be used to regulate recruitment practices and fees. However, for licensing to be effective, it must include in-depth and frequent assessments of recruitment practices, including interviews with workers. According to experts interviewed, in some countries, such as the Netherlands, there are no licences, but there are other safeguards and functional mechanisms, such as collective labour agreements, in place designed to ensure legal compliance. In other countries such as Indonesia and Nepal, alongside a licensing process, there is a system by which workers can report abuses committed by recruitment agencies to the government. And in yet other countries, such as the Philippines, there is a large bond requirement as part of the licensing process, which is designed to provide a safeguard for workers.

However, care needs to be taken that these bonds, combined with long delays in the licensing process do not also prevent ethical recruitment companies from obtaining licences.

Some sending and receiving countries of migrant workers have signed bilateral agreements or MOUs to address recruitment abuses. Argentina and Peru, for example, recently established a MOU on migrant domestic workers,⁸⁸ while a new MOU for the Employment of Indonesian Maids was signed between the governments of Malaysia and Indonesia in 2011 to update a 2006 agreement. This agreement requires an employment contract, sets a limit on recruitment fees, provides for a

⁸⁸ United Nations General Assembly. *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian (Domestic Servitude)*. June 18, 2010. http://www.ohchr.org/Documents/Issues/Slavery/SR/A.HRC.15.20_en.pdf

weekly day of rest, allows maids to keep their passports, and requires a one-month training of Indonesian maids prior to entering Malaysia as workers.⁸⁹ The agreement lifted a two-year ban that Indonesia had imposed on migration to Malaysia for domestic work.⁹⁰

The governments of Guatemala and Mexico signed a bilateral cooperation agreement on migrant workers in August 2014, to ensure better regulation of the conditions on which migrant workers are recruited and employed. The initiative, which was subsequently extended to Honduras and El Salvador, seeks to promote a fair labour migration process.⁹¹ Mexico and Guatemala agreed to increase cooperation and information sharing, create an observatory to monitor recruitment and employment conditions and migration flows, and co-design policies to protect migrant labourers from exploitative recruitment and conditions of work. They also agreed to implement an inspections programme, as well as a transnational registry of labour brokers to ensure that recruitment is legal, just, and transparent.⁹²

UNODC's survey found that in Bahrain, the Labour Market Regulatory Authority (LMRA) is responsible for registering and monitoring recruitment agencies, and is given the legal authority to investigate illegal recruitment, recruitment fees and other abuses. Before issuing work permits to migrant workers wishing to travel to Bahrain for work, the LMRA checks the validity and authenticity of all documents related to employment visas and verifies that there is an actual workplace with a need for workers so that migrants are not brought into Bahrain and left undocumented, unemployed and prone to abuse. Furthermore, employers that have committed previous offences and recruitment agencies that misled migrant workers about conditions of employment are not allowed to hire migrant workers. When workers arrive in Bahrain, the LMRA provides them with a brochure in their native language, as well as a working SIM card, which they can use to report any violations. Information on their working permit and any changes is sent to the SIM card.

The Sri Lanka Bureau of Foreign Employment published a Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees in November 2013. The Code was developed in order to regulate the practices of recruitment agents and improve professionalism, accountability and transparency in the industry. It encourages Licensed Foreign Employment Agencies (LFEA) to develop ethical standards and guidelines consistent with the Decent Work Policy of Sri Lanka, Sri Lankan regulations and international labour standards. The Code also requires LFEAs to "protect the industry and their clients against fraud, misinterpretation and unethical practices," including a prohibition on contract substitution and regulations on the charging of recruitment fees.⁹³

⁸⁹ *Malaysiakini.com*. "Fees set at RM4, 511 to hire Indonesian maids." May 31 2011. <http://www.malaysiakini.com/news/165588>

⁹⁰ *New Straits Times*. "Indonesian maids coming by year-end." 12 September 2011.

⁹¹ "Guatemala y México suscriben acuerdo para trabajadores migrantes." *Agencia Guatemalteca de Noticias (AGN)*. August 7, 2014. <http://eleconomista.com.mx/sociedad/2014/08/08/mexico-guatemala-suscriben-acuerdo-sobre-trabajadores-migrantes>

⁹² Sanchez, Julian. "Protegerán México y Guatemala a trabajadores migrantes." *El Universal*. August 8, 2014. <http://www.eluniversal.com.mx/nacion-mexico/2014/mexico-guatemala-migrantes-trabajadores-1029015.html>

⁹³ Sri Lanka Bureau of Foreign Employment. *Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees*. November 2013. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_233369.pdf

3.3.3 Gaps in legislation

There are still a number of limitations and challenges that create legal gaps in prevention and protection measures.

First, some countries have failed to ratify the Trafficking in Persons Protocol or other relevant international instruments, and in other cases, countries have not brought their national law into line with international standards. There is often a confusion between trafficking in persons, forced labour, labour exploitation and other related concepts, that hamper the efforts to effectively address the issues. There is also often a lack of other criminal, civil and administrative law to address the issue.

In some destination countries, migrant workers are tied to specific employers (some of which are recruitment agencies themselves or “sponsors”), independent of whether their conditions of work differ from those promised to them during recruitment, and the requirement that workers obtain approval before leaving employment can be used to force them to pay back recruitment debt. In such cases, workers’ labour mobility is significantly restricted, as workers are unable to legally change employers or leave their jobs. In addition, identity documents are sometimes withheld to prevent workers from leaving the country of employment without approval.

Many work visa processes are so complex and burdensome, including requirements that prospective migrants obtain job offers, that they necessitate that migrant workers, especially illiterate or rural ones, use recruitment agencies to obtain work visas. Some countries’ legislation even requires that employers or recruiters hold migrant workers’ passports or deposits as a form of “runaway insurance”. These types of laws can and have been used by recruiters to pressure workers to continue working for the duration of their contracts, even if the actual conditions differ from those promised during recruitment, or to pressure them to pay off excessive recruitment fees before they are allowed to leave their employment.

In some countries, the law fails to adequately regulate recruitment fees and to explicitly prohibit recruitment agencies from charging workers recruitment and placement fees. In addition, even if there are limits on recruitment fees, the legal regulation of fees is often very limited or guidelines governing the itemized payment of fees are lacking, allowing recruiters and recruitment agencies to take advantage of loopholes and charge workers excessive fees.

An additional challenge is that while the right to remedies is enshrined in most criminal and civil procedural codes, in many cases domestic workers are not provided with access to justice because they are excluded from legal protections. In some countries, domestic workers are not covered by labour laws.

4. Law enforcement and criminal justice⁹⁴

While abusive practices of recruitment agencies can in many cases amount to trafficking in persons, little is known about whether States use their anti-trafficking laws to prosecute criminals and protect victims. Respondents across the four countries in which UNODC conducted surveys, as well experts who participated in the expert group meetings organized to develop the present publication, emphasized that often, the laws in place can be seen as robust and consistent with international conventions, but weak implementation and law enforcement actions impeded progress in combating the phenomenon. It was commonly acknowledged that prosecutors and law enforcement face difficulties in using anti-trafficking laws to prosecute cases, in particular those that involve unethical recruitment.

The next section aims at shedding light on how States use their existing legislation, in particular anti-trafficking laws, and mechanisms to address abusive recruitment practices. It is important to note that there are significant differences between law enforcement efforts to combat the phenomenon across regions and between countries and regions.

4.1 Prosecuting abusive recruitment practices as trafficking in persons

From UNODC's research, it appears that there have been very few prosecutions or convictions of labour recruiters and recruitment agencies for involvement in trafficking in persons. This is not surprising given the fact that the conviction rates for trafficking in persons in general are very low in all parts of the world. The UNODC 2014 *Global Report on Trafficking in Persons* found that 4 in 10 countries reported having fewer than 10 yearly convictions, with nearly 15 per cent having no convictions at all. According to the *Global Report*, the low number of convictions can be attributed to a number of factors. One factor could be the fact that a large number of traffickers are prosecuted for non-trafficking offences, either because there are gaps in trafficking laws or because evidentiary standards are too high. Another factor could be that over 60 per cent of trafficking victims are foreigners who have been identified in destination countries after crossing at least one national border, leading to jurisdictional

⁹⁴ Information in this section has been largely gathered and analysed by Tatiana Balisova, UNODC.

issues and challenges in collecting evidence and capturing traffickers.⁹⁵ Another issue could be the still limited capacity of police, judges, and prosecutors to hold traffickers accountable due to resource limitations, as well as the fact that traffickers often operate in dangerous and hard-to-access areas.

Securing trafficking convictions is an ongoing challenge for practitioners in most States of the world. This is all the more so difficult in trafficking cases involving recruiters and recruitment agencies.

As involvement of recruiters and recruitment agencies often takes place in the “pre-employment” phase, it may be very difficult to prove that they were part of the chain of trafficking or that they knew that the victims were going to be exploited. Criminal justice practitioners who were consulted confirmed that it is generally easier to prove the actual exploitation of victims than a situation of trafficking in which the exploitation may have been already intended, but has not yet transpired. However, it is important to understand that, in line with the Trafficking in Persons Protocol, the actual exploitation is not necessary to occur in order for the behaviour to fall within the definition of trafficking in persons. States should increase their efforts to combat all forms of trafficking in persons, including those committed by recruiters and recruitment agencies and even in the cases where the victims were not yet subjected to exploitation. And it will be equally important, to also look in cases of exploitation of workers, for the “mosaic of evidence” to show what led to the exploitation, which may point towards the other elements of trafficking in persons (acts and means).

Parts of that mosaic of evidence, including exploitative practices and excessive fees, that may prove that trafficking in persons could be linked to recruitment agencies.

Analysing the circumstances of a case and better identifying red flags may help to encourage proactive investigations. In these cases, a number of techniques and tactics can be used to build evidence before arresting suspects and initiating reactive investigations after an offence has been committed and an immediate response is required, such as the rescue of a victim.

Because the cultural and social contexts and dynamics of the phenomenon of recruitment-linked abuses vary significantly between regions, countries and migrant workers’ countries of origin versus destination countries, criminal justice responses need to be tailored to regional and national contexts and the types of trafficking that occur in each country if they are to be effective in preventing trafficking, protecting victims and prosecuting traffickers. In order for recruitment-linked abuses and trafficking in persons to subside, effective enforcement actions must be carried out and sufficiently dissuasive sanctions need to be imposed in order to reverse the current state of affairs in which trafficking is viewed by criminals as a low risk, high reward crime.⁹⁶

During its research, UNODC came across very few cases of recruitment agencies that were tried and successfully convicted under trafficking in persons laws.

This could indicate that recruitment agencies and their intermediaries are not at all involved in trafficking in persons cases.

⁹⁵ United Nations Office on Drugs and Crime. *Global Report on Trafficking in Persons 2014*. November 2014. http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf

⁹⁶ Ibid.

But criminal justice and other experts consulted by UNODC suggested that it can be assumed that some of the recruitment agencies or other intermediaries who apply fraudulent and abusive means of recruitment do so with the ultimate intention to exploit the recruited person or knowingly provide them for forms of exploitation mentioned in the Trafficking in Persons Protocol.

The experts advised further that it would be worthwhile for criminal justice and labour practitioners to actively look for and examine the role and involvement of recruitment agencies when encountering cases of exploitation.

Naturally, this requires a close cooperation between these practitioners, that is practitioners from the criminal justice and the labour sectors.

Experts consulted by UNODC flagged the following factors potentially contributing to the low level of trafficking convictions of recruiters and recruitment agencies:

- Some victims do not see themselves as victims and are often reluctant to come forward and testify.
- Authorities, including law enforcement, labour inspectors, judges and immigration officials, lack the capacities to address the issue.
- Lack of evidence to prove that recruiters or recruitment agencies were involved in trafficking in persons. For example, there is often a “word against word” situation or it may be difficult to prove that the recruitment fees charged were unreasonable.
- Trafficking in persons is a crime of complex nature, often involving organized crime structures that operate across international borders.

As for those few trafficking cases that UNODC identified, for example, Indonesia prosecuted and convicted two directors of a recruitment company that sent 160 workers abroad, including children. The directors knew that there were children among the workers and were involved in the production of fake documents for the victims. Evidence in this case included the fake documents and other documentary evidence, testimonies of the victims and testimonies of the directors and a broker. The directors were convicted of trafficking in persons and sentenced to three years and fined.⁹⁷

In another case in late 2011, Cambodian United Nations agencies, NGOs and authorities became aware of one of the largest and most complex cases of human trafficking in Cambodia in recent history: the case of Giant Ocean International Fishery Co., Ltd, a joint Taiwanese-Cambodian recruitment agency.⁹⁸ In some of the known cases, Cambodian fishermen were promised jobs in Japan, monthly salaries of \$190 and bonuses to be paid directly to their families. In other cases, Giant Ocean did not explain the working conditions to be expected nor did they inform the men which country they would be going to. They were flown to countries as far as South Africa, where they were immediately transferred to fishing vessels and forced to work days as long as 20 hours with sometimes little to no food, in some cases docking only once in two years. Some victims reported being physically abused if they were

⁹⁷ The case was reported during the joint UNODC-ILO Workshop in Bangkok, November 2015, by an Indonesian expert.

⁹⁸ Cambodian Working Group for Migrant Fishers. *Report on the Situation of Cambodian Fishermen Trafficked Overseas by Giant Ocean International Fishery Co., Ltd.* September 2012.

not working fast or hard enough, or forced to work through bouts of sea sickness or other illness. A Taiwanese national who ran Giant Ocean was arrested in May 2013 in the region of Siem Reap, where she was in hiding under a false name. In April of 2014, she was sentenced to ten years in prison for the trafficking of hundreds of Cambodian fishermen to work in slave-like conditions between the years of 2009 and 2011. The judge ordered the woman and her five accomplices to jointly pay US\$ 2,000 to US\$ 15,000 in withheld wages to each of the 156 victims who filed complaints in the case. (Under the Municipal court Judgment dated on May 29, 2014, there were 156 victims. In April 2015, the Appeal court upheld the judgment.) The six were also ordered to jointly pay each victim US\$ 3,000 in compensation, and US\$ 650 to US\$ 1,000 in damages. Five associates, who remain at large and were tried in absentia, were also given ten-year sentences.⁹⁹

In Argentina, in one notable court case, a judge ordered the owners of a garment factory that was employing Bolivian workers who had been trafficked to turn the factory over to the workers.¹⁰⁰ In Bolivia, the government has confiscated land on which individuals were subjected to trafficking and turned it over to those who were forced to work on it.¹⁰¹

Although not a criminal case, the case *Bachpan Bachao Andolan v. Union of India (UOI) and Ors*¹⁰² explicitly mentioned that some illegal recruitment practices amount to trafficking in persons. The case concerned a petition filed in public interest under article 226 of the Constitution, following a series of incidents of recruitment agencies being involved in trafficking in persons. In particular, it was reported that a young girl was initially placed at one residence to work as a domestic worker, only to be later trafficked by the recruitment agency for forced labour. In another incident, many girls were rescued from placement agencies who had trafficked them for various purposes. The girls had been food-deprived and slept in the agencies' offices. In yet another incident, the placement agency trafficked women and girls for forced labour, not paying them the promised wages and subjecting them to abuse and threats. The High Court of Delhi acknowledged the importance of addressing the illegal practices of recruitment agencies in India and gave directions to the respondents in the present case (i.e. Union of India and the Government of Delhi) on how to better address the illegal recruitment practices. The Court noted that in many instances the agencies placed people, in particular children, in local residences for domestic help, only to later traffic them to other locations for forced labour or sexual exploitation. The Court expressed concern about the absence of regulatory control over the functioning of the agencies, especially those dealing with domestic child labour. The Court emphasized the need "to bring into immediate effect a specific and stringent law to

⁹⁹ Kongkea, Buth Reaksmeay and Barron, Laignee. "Trafficker gets 10 years". *The Phnom Penh Post*. April 30, 2014.

¹⁰⁰ Duarte, David. *La eliminación de todas las formas de trabajo forzoso u obligatorio*. Oficina Internacional del Trabajo.

¹⁰¹ Verité. *Research on Indicators of Forced Labor in the Bolivia Brazil-nut, Cattle, Corn, and Peanut Sectors*. 2012. http://www.verite.org/sites/default/files/images/Research%20on%20Indicators%20of%20Forced%20Labor%20in%20the%20Bolivia%20Brazil-nut%2C%20Cattle%2C%20Corn%2C%20and%20Peanut%20Sectors_9.19.pdf

¹⁰² *Bachpan Bachao Andolan v. Union of India (UOI) and Ors*, 24 December 2010, The High Court of Delhi, India. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. IND018). An expert from India explained that the writ petitions in India are a constitutional remedy available to citizens to approach higher courts when their fundamental rights are violated/under threat or when the matter is of urgent public importance. In this case, two petitions were filed by NGOs and one petition by an individual, all of them concerning trafficking in persons incidents, and were dealt with jointly under the criminal jurisdiction of the High Court of Delhi. The decision of the Court was binding on concerned respondents.

deal with such illegal placement activities”,¹⁰³ and to provide a framework within which the placement agencies could be registered, regulated and monitored. In particular, the Court stressed the need to: establish mandatory registration for placement agencies; request the agencies to furnish their records; impose fines on the agencies where it is found that terms of the agreement are not followed; develop guidelines for effective implementation of the legislation; increase the efforts to investigate cases of missing children; and provide assistance and access to remedies for victims.

Human traffickers have also been tried under criminal enterprise statutes, including laws on gang offences, racketeering or participating in an organized criminal group. In the United States, trafficking in persons has been included as a crime on the federal level in the Racketeer Influenced and Corrupt Organizations (RICO) statute, and traffickers have been successfully prosecuted and sanctioned under the statute, resulting in significantly increased penalties.¹⁰⁴ A successful RICO case requires proving that the accused is a member of a “criminal enterprise” (including individuals, partnerships, corporations, associations or other legal entities) that financially benefits from trafficking or importing migrant workers for “immoral purposes”. RICO indictments carry harsh penalties and allow the courts to seize any assets or illicit gains. Additionally, plaintiffs can seek civil damages under RICO provided that they can show that there was criminal activity which directly caused harm to their business or property. In a case in the United States, workers were smuggled from Mexico into the United States by their labour broker and were subsequently held in a fenced housing complex and forced, under the threat of violence, to work on a farm to pay off their smuggling debt. The workers won a US\$ 7.8 million joint suit against the labour broker and the farm owner due to the fact that the case was brought under RICO provisions, which tripled the damages, resulting in the “largest judgment of its kind in the country.” The Mexican recruiters named in the suit failed to contest the charges, which resulted in a default judgment of US\$ 1.5 million for each plaintiff. The farmer named in the suit filed for bankruptcy in 2006 because of financial difficulties unrelated to the case. He settled the case for US\$ 10,000 (US\$ 2,000 per worker), plus an additional US\$ 60,000 from the bankruptcy. As part of the settlement, he also promised to do background checks on all future contractors and supervisors. Workers agreed to this settlement because the damages that they could receive were limited by declaration of bankruptcy.¹⁰⁵

Law enforcement may also use systems to monitor for money-laundering and the interception of communications to hold human traffickers accountable. For example, in the United States, the government, in cooperation with banks, has established transaction monitoring systems to flag transaction patterns typical of human trafficking revenue streams.¹⁰⁶ The Financial Action Task Force has established red flags for trafficking-linked money-laundering, and has reported on prosecutions of human traffickers and smugglers for money-laundering.¹⁰⁷ In Guatemala, wiretapping,

¹⁰³ Ibid, paragraph 9.

¹⁰⁴ The Polaris Project. *Tools for Law Enforcement*. <http://www.polarisproject.org/what-we-do/policy-advocacy/prosecuting-traffickers/tools-for-law-enforcement>

¹⁰⁵ Verité. Regional Report – *Immigrant Workers in U.S. Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor*. June 2010. http://www.verite.org/sites/default/files/images/HELP%20WANTED_A%20Verite%CC%81%20Report_Migrant%20Workers%20in%20the%20United%20States.pdf

¹⁰⁶ Guzman, Daniela. “How Financial Institutions Lead Way in Battle Against Human Trafficking.” *Insight Crime*. May 6, 2014. <http://www.insightcrime.org/news-analysis/how-financial-institutions-lead-way-in-battle-against-human-trafficking>

¹⁰⁷ Financial Action Task Force. *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*. July 2011, <http://www.fatf-gafi.org/media/fatf/documents/reports/trafficking%20in%20human%20beings%20and%20smuggling%20of%20migrants.pdf>

internet communication, interception, financial analysis of syndicates and asset recovery have been instrumental tools for investigating and sanctioning human trafficking, according to UNODC interviews.

4.2 Tackling abusive recruitment practices using other laws

In combating recruitment abuses, illegal recruitment fees and trafficking in persons, law enforcement should use all of the tools at their disposal. If abusive recruitment practices amount to trafficking in persons, recruiters-traffickers should be tried under anti-trafficking laws, which carry stiffer sentences and provide expanded rights to individuals identified as victims of trafficking. The burden of proof is, however, generally high in these cases and there is often little hard evidence to be used in many cases, as in some cases investigators fail to carry out proactive investigations or are unaware of the red flags of trafficking in persons. Trafficking is especially difficult to prove in cases in which victims are afraid to testify, due to threats or fear of deportation or being tried for crimes committed as a result of being trafficked.

Therefore, in some cases, it may be necessary to try recruiters and recruitment agencies for other crimes or under labour laws and regulations or administrative law. Although these charges may carry lower sentences, prosecutors can achieve significant sanctions by charging abusive recruiters for multiple crimes and/or on multiple counts. Holding employers and recruiters jointly liable for the trafficking of workers will push companies to look closer into their labour supply chains. Other strategies, such as wiretapping and the confiscation of assets, can also help law enforcement to investigate and sanction traffickers.

Some recruiters have been prosecuted under human trafficking laws, but due to high evidentiary standards, prosecutors have used a number of other laws to achieve significant sanctions against them. Often, recruiters and recruitment agencies are tried under laws related to fraud, including visa, health care and mail fraud. For example, in the case of *United States v. Askarkhodjaev*, three affiliates of the recruitment agency Global Labor Solutions were found guilty of fraud in foreign labour contracting for engaging in deceit when recruiting workers in the Dominican Republic, Jamaica and the Philippines, and to work in hospitality in 14 states under H-2B guest worker visas.

Employees of another recruitment agency, International Personnel Resources, were convicted on multiple immigration and visa fraud charges in the case of *United States v. Glah et al.* for fraudulently applying for H-2B visas and using these visas to force Mexican guest workers to remain in the United States for more time than originally agreed upon.¹⁰⁸

Global Horizons, a recruitment agency (based in a third country, that is neither in the origin nor the destination countries of the migrants), recruited Thai nationals to come to Hawaii to do agricultural work, under false promises that they would make substantial money. (In addition to recruiting the workers, representatives of Global Horizons also supervised them on the job.) Between 2003 and 2007, the company

¹⁰⁸ Alliance to End Slavery and Trafficking. *Strengthen Regulation of Foreign Labor Recruiters to Prevent Human Trafficking & Forced Labor*.

enticed hundreds of Thai male nationals into working at farms with deceptive promises of steady, high-paying agricultural jobs along with temporary visas allowing them to live and work in the United States legally. The opportunity came at a price: high recruitment fees created an insurmountable debt for the Thai workers,¹⁰⁹ with some as high as THB 600,000, or about US\$ 18,460.¹¹⁰ Investigations found that the Thai workers were often paid less, made to work in less desirable and more demeaning jobs and denied breaks, yet worked longer hours than non-Thai farm workers.¹¹¹ Food, housing and living conditions were also deplorable for the Thai workers. The workers were underpaid and forced to live in inadequate housing infested with rats and insects, with dozens sleeping in the same room, many with no beds. On the job, they endured screaming, threats and physical assaults on the part of supervisors, and were isolated from non-Thai farm workers who appeared to be working under more tolerable conditions, according to the United States Equal Employment Opportunity Commission (EEOC).¹¹² If they complained, workers were threatened with deportation or transfer away from the farms. Global Horizons retained their passports and tried to stop them from going anywhere other than their housing and the orchards.¹¹³ In April of 2011, the EEOC filed its case against Global Horizons and eight of its client farms after the Thai Community Development Center in Los Angeles brought victims to the EEOC. Civil, not criminal, lawsuits were filed in the states of Hawaii and Washington. Claims against the defendant included a “pattern or practice of discriminatory treatment because of national origin, race, retaliation, and/or constructive discharge”, “hostile work environment/harassment”, “discriminatory terms and conditions of employment”, and “retaliation for engaging in protected activity”.¹¹⁴ In March of 2014, United States District Court Judge Leslie E. Kobayashi found Global Horizons liable for its violation of federal anti-discrimination laws. “Global Horizons exploited the enormous debts the Thai workers incurred to pay the recruitment fees,” her decision said. “The EEOC has presented evidence that Global Horizons specifically chose Thai workers based on a stereotype that Thai workers would be more compliant and less likely to escape or cause other problems.”¹¹⁵ Five of the Hawaii farms settled for sums equalling US\$ 3.6 million in total,¹¹⁶ and some of the farms agreed to offer the Thai workers full-time positions with benefits or undergo extensive training and policy changes.¹¹⁷ As of early 2015, Global Horizons had insufficient resources to continue the case,¹¹⁸ which had determined that each Thai worker would receive an award of US\$ 50,000 in compensatory damages and US\$ 100,000 in punitive damages, for a total award of US\$ 150,000.¹¹⁹

¹⁰⁹ United States Equal Employment Opportunity Commission. Press Release, April 20, 2011. <http://www.eeoc.gov/eeoc/newsroom/release/4-20-11b.cfm>

¹¹⁰ “Thai Workers Claim Vindication In Long Battle With Farm Labor Contractor”, *Mint Press News*. March 31, 2014.

¹¹¹ United States Equal Employment Opportunity Commission. Press Release, March 24, 2014. <http://www.eeoc.gov/eeoc/newsroom/release/3-24-14.cfm>

¹¹² United States Equal Employment Opportunity Commission. Press Release, April 20, 2011. <http://www.eeoc.gov/eeoc/newsroom/release/4-20-11b.cfm>

¹¹³ University of Michigan Law, Human Trafficking Database. (Accessed March 18, 2015). <http://www.law.umich.edu/clinical/HuTrafficCases/Pages/CaseDisp.aspx?caseID=791>

¹¹⁴ University of Michigan Law, Human Trafficking Database. (Accessed March 18, 2015). <http://www.law.umich.edu/clinical/HuTrafficCases/Pages/CaseDisp.aspx?caseID=791>

¹¹⁵ Orzeck, Kurt. “Labor Contractor Liable For Trafficking Thai Workers: Judge”. *Law 360*. March 24, 2014.

¹¹⁶ Gurierra, Vin. “4 Hawaii Farms To Pay \$2M To Settle Thai Worker Bias Claims”. *Law 360*. June 3, 2014.

¹¹⁷ United States Equal Employment Opportunity Commission. Press Release. March 24, 2014. <http://www.eeoc.gov/eeoc/newsroom/release/3-24-14.cfm>

¹¹⁸ Gurierra, Vin. “Default OK’d In EEOC Case Over Thai Laborer Treatment”. *Law 360*. March 4, 2015.

¹¹⁹ Findings of Fact and Conclusions of Law. United States District Court, District of Hawaii. Filed December 19, 2014.

In certain cases, workers are voluntarily smuggled across international borders and are made to pay off their smuggling fees through work under substandard conditions, resulting in debt bondage or trafficking in persons. For this reason, recruitment agencies and recruiters may in fact act as smugglers and be tried under laws on migrant smuggling.

Unscrupulous recruiters and recruitment agencies may also be tried under tax evasion laws. For example, in the United Kingdom, the revenue and tax authority's (HMRC) Criminal Taxes Unit investigates and taxes illicit income earned through criminal activities, including trafficking in persons. The Unit also cooperates with law enforcement to hold criminals, as well as business associates, liable for tax evasion.¹²⁰ It should be noted that not all such cases are dealt with as criminal matters. Furthermore, a number of employment agencies attempt to subvert tax regulations to use what are referred to as "travel and subsistence schemes" (the alleged expenses of workers are deducted from the gross wage to reduce taxable pay, encouraging workers to join the scheme [which may not be in practice voluntary], explaining they will receive greater net pay as the expenses are added back after tax, but where GBP 20 expenses may be deducted from the gross, only GBP 15 is added back, and the GBP 5 is a hidden fee). In the long-term, there is an adverse effect on workers' entitlement to social security benefits, and in the immediate term, the employer reduces its tax exposure (in some cases the worker ends up paying their social security contributions and the amount the employer should pay). Where the United Kingdom Gangmasters Licensing Agency identifies such behaviour, which is also considered to breach the GLA's licensing standards, the employment agencies licence is revoked. There have been no HMRC test/legal cases but the GLA has successfully taken action against a number of such companies.¹²¹

The seizure of assets and money tied to recruitment-linked abuses, including in the context of trafficking in persons, is also an essential tool as it serves both as a sanction against traffickers and a disincentive for others to engage in trafficking in persons. Further, confiscated assets can be used to reimburse recruitment and job placement fees illegally charged to workers and to compensate them for lost earnings or other physical or emotional harm. The potential of receiving monetary compensation can encourage workers to report recruitment abuses and to testify against the unscrupulous recruiters and recruitment agencies. Finally, confiscated assets, such as cars and money, can also be used to subsidize the operating budgets of law enforcement officials focused on recruitment and trafficking in persons.¹²²

As was already noted in other places in the present report, not all abusive practices of recruiters and recruitment agencies should be considered trafficking in persons. While some practices may create vulnerabilities in workers to later becoming trafficking victims, those practices, as such, may not amount to trafficking in persons and using anti-trafficking laws may not be adequate. Yet it is important to tackle such

¹²⁰ Financial Action Task Force. *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*. July 2011, <http://www.fatf-gafi.org/media/fatf/documents/reports/trafficking%20in%20human%20beings%20and%20smuggling%20of%20migrants.pdf>

¹²¹ First case tribunal decision on GLA decision to refuse a licence to a company operating travel and subsistence schemes: <http://www.gla.gov.uk/PageFiles/1380/FS%20Commercial%20Ltd.pdf>; Most recent case: <http://www.gla.gov.uk/PageFiles/1380/FS%20Commercial%20Ltd.pdf>; GLA guidance to licence holders, which explains how the schemes operate, and why they impact workers and are non-compliant: <http://www.gla.gov.uk/PageFiles/1021/GLA%20Brief%20on%20Travel%20and%20Subsistence%20June%202014.pdf>; GLA related guidance on charging fees: <http://www.gla.gov.uk/PageFiles/1021/GLABrief%2038%20JobFindingFeesandProvidingAdditionalServices.pdf>

¹²² United Nations Office on Drugs and Crime. *Global Report on Trafficking in Persons 2014*. November 2014. http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf

practices to prevent trafficking in persons and to reduce people's vulnerability to falling prey to abusive recruiters and traffickers. States use various strategies and tactics, including those mentioned above, to tackle abusive recruitment practices.

For example, in many cases, States have revoked licences of recruitment agencies involved in abusive recruitment practices.

According to experts interviewed by UNODC as part of its country survey, the Indonesia National Police and the National Agency on Placement and Protection of Indonesian Overseas Workers have been conducting regular and unannounced inspections and raids of overseas labour recruitment agencies. Operational licences of hundreds of agencies have been revoked due to a lack of conformity with the existing regulations. A study released in 2013 found that Indonesia had significantly expanded enforcement actions to protect Indonesian migrant workers over the previous decade by actively regulating recruitment agencies and giving workers access to redress in Indonesia, as well as through Indonesian consulates abroad.¹²³

In Viet Nam in March 2014, the Ministry of Labour, Invalids and Social Affairs of Viet Nam (MOLISA) suspended 14 Vietnamese and 11 Taiwanese recruitment firms involved in sending Vietnamese workers to Taiwan. According to the Department of Overseas Labour, the companies were ordered to cease operations for 20 to 60 days for imposing on workers brokerage fees higher than the amount allowed by the government and for deducting money from workers' salaries or meal allowances. The government reported that it would investigate further and impose appropriate sanctions.¹²⁴ MOLISA also collaborated with the Viet Nam Association of Manpower Supply (VAMAS) and the ILO to develop a code of conduct for agencies sending Vietnamese workers overseas. The Code establishes fundamental principles and rights based on national legislation, ILO Conventions and Recommendations and other relevant international instruments, including twelve articles on topics such as legal compliance, recruitment, contracts, return and reintegration, and dispute settlement. In 2011, VAMAS launched a monitoring mechanism to measure the application of the code.¹²⁵

In Peru in February 2012, the Municipality of Miraflores, the Ministry of Labour and Employment Promotion and the Office for Women's Rights from the National Ombudsman launched the Campaign to Monitor Private Employment Agencies.¹²⁶ The campaign is focused on monitoring conditions among adolescent domestic workers older than 14 years of age in order to detect possible breaches of their human and labour rights, including human trafficking. The NGO, Alternative CHS, has conducted several awareness-raising workshops and trainings for staff working for private employment agencies, with the participation of over 100 representatives registered with the Ministry of Labour and Employment Promotion. The issue of false job offers was addressed, along with the crime of trafficking in persons.¹²⁷

¹²³ Farbenblum, Bassina; Eleanor Taylor-Nicholson; and Sarah H. Paoletti. *Migrant Workers' Access to Justice at Home: Indonesia*. Open Society Foundations, 2013.

¹²⁴ "Ministry takes action against overseas employment firms." *Viet Nam News*. March 21, 2014. <http://vietnamnews.vn/society/252622/ministry-takes-action-against-overseas-employment-firms.html>

¹²⁵ Viet Nam Association of Manpower Supply (VAMAS). *Code of Conduct Applied to Vietnamese enterprises sending workers for overseas employment*. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_145267.pdf

¹²⁶ Interview with Dr Alejandro Delgado, Luis Encinas Guerra, Lucia Rios, Department for Fundamental Rights for Governance, Ministry of Interior, September 2014.

¹²⁷ Interview with Iván Landaveri, Jennifer Flores, Ana Ladera, Alicia Solari, Capital Humano y Social (CHS) Alternativo, in September 2014.

In Canada, the province of Manitoba passed the Worker Recruitment and Protection Act (WRAPA) to actively monitor and sanction recruitment abuses. WRAPA seeks to promote ethical recruitment and to ensure that workers are paid properly by requiring the registration of recruitment agencies and employers and promoting proactive investigations. Recruiters must obtain licences to operate and need to pay a security deposit of CDN 10,000 to do so. The Manitoba Employment Standards Division (MESD) carries out inspections to ensure that migrant workers are being properly paid and are provided with legal benefits. MESD carried out over 500 inspections between 2009 and 2014, over 200 (40 per cent) of which found at least one issue of non-compliance. Under WRAPA, employers are held accountable for recruitment abuses across their whole supply chain.

4.3 Challenges and weaknesses in addressing abusive recruitment practices

There are a number of challenges and institutional weaknesses that prevent the full enforcement of laws against recruitment abuses, excessive fees and trafficking in persons.

In particular, some cases may not be tried under anti-trafficking laws despite the recruitment-related practices clearly amounting to trafficking in persons. The reasons for this may include:

- A failure to recognize the connection between recruitment and trafficking in persons
- Charging traffickers under non-trafficking laws with reduced penalties due to evidentiary challenges
- Jurisdictional barriers
- A lack of inter-institutional and cross-border coordination and cooperation
- A lack of resources
- The difficulty of locating and identifying victims
- Corruption
- Inadequate confiscation of traffickers' assets

In many cases, law enforcement fails to recognize the connection between recruitment agencies and trafficking in persons. Law enforcement and prosecutors may not investigate or even be aware of the full range of indicators of abusive recruitment practices that can lead to trafficking in persons. Recruitment agencies can be involved in trafficking in persons, for example through exacting excessive or illegal recruitment fees or by deceiving workers about their pay or conditions of work. However, because many law enforcement efforts to combat trafficking in persons are focused on other more obvious forms of trafficking, they may fail to detect these abuses. In addition, there are many evidentiary challenges linked with abusive recruitment practices. For example, in many cases the victim testimony is the only piece of evidence and it may be difficult to prove trafficking in persons in “word against word” situations or if victim testimony includes inconsistencies or false statements.

Common is a reliance on other laws, notably labour or immigration laws, for prosecution, resulting in reduced charges and penalties. Legal and regulatory responses to unethical recruitment, as mentioned by experts UNODC consulted, were by-and-large not criminal justice responses but rather labour justice responses, for instance, through labour laws, regulations and institutions. These include licensing schemes for the industry and/or registration of agencies by the public authority. While such measures are important too, behaviour that fulfils the elements of trafficking in persons should be treated as such.

Investigations may focus narrowly on individual recruiters who may commit a crime such as fraud, which is an element of trafficking in persons, but may fail to identify the wider organization of recruiters and the end result of trafficking in persons.

It is also difficult in many cases for investigators to obtain and analyse documents pertaining to investigations, such as passports, contracts or seafarers' books, because they may be kept in other countries or written in languages that investigators do not understand. In many cases, government agencies charged with combating recruitment abuses and trafficking lack the resources to translate documents or to carry out effective investigations.

Transnationality aspects of abusive recruitment practices and trafficking in persons also pose challenges to effectively tackle the problem. For example, the question of jurisdiction is often raised, since money is usually paid to a local agent in the country of origin, but the abuse (whether it is a change in the conditions of work, confiscation of identification documents or non-payment of wages) generally occurs in the destination country. There may be multiple victims, as well as suspects, across various regions, countries and jurisdictions, making gathering evidence and arresting suspects difficult. There may also be issues with extradition of suspects due to a lack of extradition treaties between two countries.

In many countries, there are a large number and diversity of public ministries, departments and agencies potentially involved in addressing and/or remedying trafficking cases, including Ministries of Interior, Labour, Social Affairs, Foreign Affairs, Migration, etc. In many cases, there is a lack of coordination and cooperation among these institutions. Therefore, justice can be slow, complex and inefficient, which may inhibit workers' willingness to come forward. In some cases, seemingly parallel mechanisms of redress may also exist, and there may be a lack of in inter-agency cooperation.

A lack of resources and low levels of awareness and understanding often manifest themselves in deficiencies in labour inspectorates and other public enforcement institutions, severely limiting governments' ability to detect trafficking victims or prosecute traffickers. Labour inspection system can be deficient, including a lack of staff and funding and the inability of inspectors to set fines. Even when inspectors have access to workers, it can be difficult to identify victims because, unlike child labour or dangerous working conditions, in which inspectors may identify victims by sight, it is difficult to identify those trafficked workers without conducting extensive assessments. Authorities often do not carry out in-depth investigations and worker interviews to ascertain whether they are being forced to work under conditions to which

they did or did not originally consent and whether there is a menace of penalty for leaving their employment.¹²⁸

Additionally, many workers do not identify themselves as victims of trafficking and they may be reluctant to come forward out of fear of being treated as criminals due to their lack of legal status, due to being forced to carry out illegal activities, or due to having been threatened with being denounced to authorities. There are also cases in which they may feel ashamed that they were deceived and exploited and are reluctant to come forward and report abuses. Workers can fear being blacklisted by recruiters who can prevent them from getting jobs or work visas in the future. Also, migrant workers sometimes sign contracts upon arrival in the destination countries that include terms different to those originally promised, either because of the language barriers or because they fear they have no other choice. In such cases, a very few workers have a copy of the original contract and courts can claim that the new contracts are valid and no workers' rights were violated. In addition, victims often do not see any incentive to complain and cooperate with authorities. These are only some examples of the challenges pertaining to the victim identification. Effective responses require authorities to have a much higher level of training, time and resources at their disposal.

A further compounding problem relating to victim identification and protection is that even in countries in which authorities have the will and resources to combat human trafficking, they face the difficulty of locating victims. Trafficking in persons often involves hidden populations, some of whom perform illicit work. It can occur in isolated areas and access can be challenged or compromised when workers are involved in illegal activities, when they are geographically isolated, or when they work in violent or politically unstable countries or regions. Another challenge is the failure of governments in some countries to adequately protect survivors, while in other countries punitive actions by the State can exacerbate worker vulnerability, in some cases forcing workers deeper underground and making it harder to detect the crime.

In many countries in which abuse occurs, survivors are poor, have few political connections and have little power to voice their grievances. In contrast, perpetrators may be wealthy, well-connected individuals who are able to influence policy and enforcement. This can result in corruption and a system in which there is little pressure on authorities to take action to combat exploitation. For example, in a country in Latin America, one report found a significant incidence of trafficking in persons in illegal gold mines, a high-level official reported that "gold is like drugs" in that it generates tremendous profits and breeds corruption at every level, making it extremely difficult to combat labour abuses in illegal gold mining, including trafficking in persons. Such corruption facilitates the continued operation of illegal mines and gold laundering. In many cases, even when authorities have the will to carry out enforcement, they lack the training and resources to adequately do so.

One way for government agencies responsible for combating trafficking and recruitment abuses is through the confiscation of traffickers' assets. However, confiscated assets related to trafficking in persons cases are often very low, which is less than needed to compensate victims, let alone subsidize law enforcement budgets.

¹²⁸ International Trade Union Confederation. *How to Combat Forced Labour and Trafficking*. February 2009. http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf

5. Voluntary initiatives

5.1 The role of business

In cases in which governments are unwilling or unable to take action to combat abuses, or where complex problems require the coordinated action of multiple stakeholders, new initiatives have developed to tackle these issues. While national authorities are the primary entities responsible for combating trafficking in persons,¹²⁹ other stakeholders have recently emerged to add their efforts, including companies, inter-governmental organizations, trade unions and NGOs.

Companies and employers have a pivotal role to play in the fight against human trafficking, particularly in global industries and markets. They are well-placed at a number of levels to provide effective and sustained action: for example, *(a)* in their own operations; *(b)* in the communities where they do business; *(c)* alongside their suppliers and business partners; and *(d)* in the global economy. In recent years, many observers have noted that business engagement is an essential aspect of global anti-trafficking campaigns, and this extends to tackling unethical recruitment in supply chains.

5.2 Risks to businesses related to recruitment abuse and human trafficking

Companies and businesses are affected by trafficking in a number of ways, both directly and indirectly. In the first instance, employers face direct risk if a victim is recruited into the company or into one of its subsidiaries. This can happen whether or not the company is aware of it, and may or may not involve a number of different actors, including its own management, Human Resources Department or a third-party labour provider, and/or others involved in the movement of workers. At the level of global brands and the first tier of supply chains, forced labour and human trafficking can often be hidden from view, the result of complex and frequently outsourced recruitment and hiring practices.

¹²⁹ Weissbrodt, David and Anti-Slavery International. Office of the United Nations High Commissioner for Human Rights. *Abolishing Slavery and Its Contemporary Forms*. 2002. <http://www.ohchr.org/Documents/Publications/slaveryen.pdf>

Employers can also be indirectly linked to trafficking. This refers to actions by suppliers, subcontractors and business partners, where the operations of otherwise independent companies can place the reputations of global brands at risk. In this case, supply chain insecurity linked to human trafficking grows as contracting and sub-contracting grow, for example in the global garment and electronics industries. Whether directly or indirectly implicated, risks for business can be legal, reputational, trade-related and finance- or investment-based.

There are also other reasons why employers and businesses should be concerned about trafficking. According to the ILO, these include ethical and moral considerations—trafficking in persons and related abuses are morally unacceptable—but also the growing importance of voluntary corporate policies such as codes of conduct.¹³⁰ Trafficking and unethical recruitment are emerging as nascent issues within these policies and, in some cases, are integrated into business contracts and brand due diligence programmes. This means companies working in global supply chains are likely to face new expectations that recruitment and employment conditions in the production of their goods comply with internationally-agreed human and labour rights standards.

Finally, employers and businesses also have many positive reasons for addressing human trafficking. Companies face key risks in their supply chains, but they also face opportunities and incentives to establish themselves as leaders among their peers. These include enhancing brand value and reputation, building trust with local stakeholders in communities of operation, strengthening relationships with business partners, ensuring uninterrupted access to international markets and global business relationships, and building stronger investor relationships and gaining access to capital and markets.¹³¹

5.3 Company efforts to address the risk of trafficking in persons

Irrespective of sector and geography, leading enterprises adopt focused, risk-based strategies to effectively address forced labour and trafficking in their supply chains. These abuses are complex, and their manifestation is frequently subtle and hidden—particularly where supply chains include complex subcontracting and outsourcing. Risk-based strategies include assessing country-based and supplier-based risks, including indicators of vulnerability associated with migrant labour, migration management and the management of third party recruitment and employment service providers.

In many cases, global companies have corporate-level policies, and supplier codes of conduct that include a clear prohibition of forced labour and human trafficking. Leading companies often also address these issues by communicating with and providing training to suppliers on these policy commitments and codes, including

¹³⁰ See: “Booklet 1: Introduction & Overview” in: ILO, *Combating forced labour: A Handbook for employers and business*, 2008. (http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf).

¹³¹ UNGIFT, *Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking*, 2010.

associated compliance benchmarks and reporting requirements. This is particularly important in the case of unethical recruitment and human trafficking, as hidden and complex forms of abuse that are frequently misunderstood. Communication and training initiatives may target specific at-risk countries and business processes before being rolled out to all operations within the supply chain.

5.4 Shortcomings in corporate social responsibility (CSR) strategies

Despite such measures, however, many companies continue to rely on common or “traditional” strategies in corporate social responsibility in addressing recruitment abuses and trafficking. For example, social audits are a practical tool used by many brands to assess their own facilities and those of their suppliers to detect code of conduct violations in the workplace. Audits provide brands with a direct view of working and employment conditions in the supply chain, and cover a diverse set of issues including core labour and human rights risks. Social auditing, however, typically provides a limited view of working conditions at a factory or facility level that may not illuminate systemic issues in company supply chains, such as migrant workers’ vulnerability to human trafficking, or broker-induced debt before they arrive at the workplace.

Human trafficking and recruitment do not feature prominently in most social audits, and auditors themselves are often not well-trained on these issues. This means that trafficking and recruitment abuse often go undetected during the audit process. Most “traditional” assessments also concentrate only on conditions in the workplace, without investigating how workers (for example, internal or cross-border migrants) obtain their jobs. In the case of human trafficking, a third party labour broker or intermediary may play an important part in recruiting and/or employing workers, and it can be here that deception and coercion occur. Social audits typically have little visibility at this stage of the employment cycle. In order for companies to effectively address recruitment-related abuses they must gain an understanding of both their product and labour supply chains and develop systems to obtain information and transparency on recruitment agencies and practices.

5.5 Good practice in voluntary initiatives to address recruitment abuses

To address the shortcomings in traditional CSR strategies, some companies have taken important steps to more effectively combat supply chain abuses and, in particular, unethical recruitment. One company, for example, has addressed the problem of excessive recruitment fees and worker debt by requiring their suppliers to reimburse all fees higher than the equivalent of one month’s net wages. It carries out “bonded labour audits”, targeting suppliers in countries that are more likely to employ foreign contract workers. According to a 2013 report, suppliers have reimbursed over US\$ 13 million (EUR 10,569,557) to contract workers since 2008. The company also developed a guidebook and supplier training programme on assessing

the recruitment practices of third-party labour providers. The training is supported by assessments of internal and external risk and action planning to revise policies and procedures, where necessary. At-risk suppliers are offered guidance on identifying and working with responsible recruiters, including conducting regular audits of recruitment practices and reporting violations to local government officials and to the company.¹³²

A United Kingdom-based retail consortium has also developed supplier guidelines on recruitment and, working with Next Plc, it has implemented a supplier training and pilot programme to provide guidance on employment contracts, recruitment practices, wage payments and other key issues. The consortium has developed Migrant Worker Guidelines as part of its *Code of Conduct Guidebook* with the aim of identifying best practices for managing migrant and contract labour.¹³³ These guidelines include a specific prohibition on the charging of recruitment and job placement fees, mandatory deposits and the retention of identity documents.¹³⁴

In early 2014, another globally acting company published its *Human and Workplace Rights Issue Guidance*, setting out standards on migrant worker recruitment and employment. This includes a requirement that employers pay all fees associated with recruitment, the renewal of documents and transportation as well as a prohibition of passport confiscation. And another international company has partnered with the international NGO Verité to pilot the Ethical Framework for International Labour Recruitment. The pilot focuses on United States-based suppliers to implement operational standards of responsible recruitment for labour providers that operate across international borders. There are also partnerships with the United Nations Inter-Agency Project (UNIAP) on human trafficking in Thailand to convene an expert consultation on labour exploitation in the seafood industry, including recruitment abuses faced by labour migrants.¹³⁵ A number of other companies have improved their codes of conduct and/or published worker management guidelines, including a major agricultural processor with facilities around the world, which recently adopted a Respect for Human Rights statement, which includes a no fee policy and prohibits withholding “money, identification or other personal belongings” without workers’ consent.¹³⁶

5.6 Government initiatives to incentivize private sector action to combat trafficking

In some cases, companies fail to address trafficking in persons due to a lack of incentives to voluntarily address recruitment abuses in their supply chains. While the ideal is to reward companies that take action, in some cases, countries have had to resort to publicizing and punishing recruitment agencies, employers and companies linked to trafficking in persons. For example, Brazil passed a decree in 2003 containing a list

¹³² Apple. *Supplier Responsibility*. <http://www.apple.com/supplier-responsibility/>

¹³³ Arcadia. *Ethical Trading*. <https://www.arcadiagroup.co.uk/fashionfootprint/our-products/Ethical%20Trading>

¹³⁴ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers’ passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

¹³⁵ Walmart. *2014 Global Responsibility Report*. 2014. http://cdn.corporate.walmart.com/39/97/81c4b26546b3913979b260ea0a74/updated-2013-global-responsibility-report_130113953638624649.pdf

¹³⁶ Archer Daniels Midland Company. *Our Commitment to Respect Human Rights*. <http://www.adm.com/en-US/company/Documents/HumanRights.pdf>

of 52 individuals and entities that use or have used “slave labour.” The individuals and entities on the biannually updated list are barred from receiving national subsidies or tax exemptions and from engaging in financial arrangements with a number of public financial institutions. The Bank of Brazil denies financing to landowners who employ slave labour.¹³⁷ The Ministry of Labour’s “dirty list” included 165 employers of trafficked workers in 17 states in 2009,¹³⁸ 220 employers in 2010,¹³⁹ 294 employers at the end of 2011¹⁴⁰ and 579 employers as of April 2014. Large-scale national and international companies have been blacklisted, including a major international apparel brand that was ordered to pay court fees and indemnities and whose appeal to be removed from the list was denied after one of its supplier factories employed trafficked labour.¹⁴¹ In 2014, one of Brazil’s largest construction companies was placed on Brazil’s “Dirty List” for subjecting 124 workers to exploitation.¹⁴²

In other cases, governments have taken efforts to award companies that take positive steps to combat trafficking for labour exploitation, including by offering access to state contracts. In Argentina, the National Institute of Industrial Technology (INTI) recently established a comprehensive national certification system for companies operating in the textile industry. The agency offers “certificates of quality” to firms that refrain from using trafficked labour and provide their employees with decent working conditions. Participating companies that are granted the certificate are eligible to bid on lucrative state textile contracts.¹⁴³ In a similar spirit, Bolivia operates a certification programme called the Triple Seal, which is designed to encourage compliance with national labour laws and is awarded to companies that prohibit child labour, discrimination, and labour trafficking across their entire supply chains.¹⁴⁴

It is important to incentivize ethical recruitment by engaging ethical recruitment agencies as partners in discussions, as they represent the best allies in the fight against trafficking in persons. In practice, many ethical recruiters might be more expensive for employers due to the fact that they do not subsidize themselves by charging workers excessive fees. On the other hand, FSI Worldwide, which was given the Business Leaders Award to Fight Human Trafficking in 2013, has argued that ethical recruiters can have a competitive advantage.¹⁴⁵ Ethical recruiters that work closely with workers, adequately matching them to employers based on their skill sets and providing them with decent work without deception or fees, will provide employers with better suited workers who will not want to leave their jobs.

¹³⁷ United States Department of State. Bureau of Democracy, Human Rights, and Labour. *Country Reports on Human Rights Practices*. 2009. <http://www.state.gov/g/drl/rls/hrrprt>

¹³⁸ *Ibid.*

¹³⁹ United States Department of State. Bureau of Democracy, Human Rights, and Labour. *Country Reports on Human Rights Practices – Brazil*. 2010. <http://www.state.gov/g/drl/rls/hrrprt/2010/wha/154496.htm>

¹⁴⁰ RepórterBrasil. *Slave Labour Laundry List*, <http://www.reporterbrasil.org.br/listasuja/index.php?lingua=en>

¹⁴¹ Cruza, Elaine Patricia. “Court rejects Zara’s appeal over slavery notification.” *Agencia Brasil*. April 16, 2014. <http://agenciabrasil.ebc.com.br/en/geral/noticia/2014-04/court-rejects-zaras-appeal-over-slavery-notification>

¹⁴² Ortiz, Fabiola. “Face of Slave Labour Changing in Brazil.” *Inter Press Service*. April 30, 2014. <http://www.ipnews.net/2014/04/face-slave-labour-changing-brazil/>

¹⁴³ United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report 2009*. June 22, 2009. <http://www.state.gov/g/tip/rls/tiprpt/2009/123135.htm>

¹⁴⁴ Bolivia avanza en promoción de los derechos laborales (IBCE). ABI F2908 21:19:00 25-07-2009 1-E ABI: BOLIVIA-SOCIAL Bolivia avanza en promoción de los derechos laborales (IBCE) Santa Cruz, Bolivia. http://abi.bo/index.php?i=noticias_texto_paleta&j=20090725211900&k=#

¹⁴⁵ *Honouring corporate creativity and courage in the fight against human trafficking*. January 29, 2013. www.unodc.org/unodc/en/frontpage/2013/January/honouring-corporate-creativity-and-courage-in-the-fight-against-human-trafficking.html

In order to ensure that recruitment agencies operate ethically, governments must send a strong message that recruitment agencies that charge workers excessive recruitment fees or engage in other exploitative recruitment practices such as deception, contract substitution or passport retention will be prosecuted under the full extent of the law. They should also incentivize best practices by rewarding ethical recruiters. Taiwan has taken actions to award recruitment agency good practices, while punishing agencies that underperform. Beginning in September 2008, the Council on Labour Affairs (CLA) published grades (from A to C) for private labour brokerage agencies. Grades were based in part on the number of violations reported. The top five agencies were publicly recognized, while agencies with a C grade were required to improve or lose their permits.¹⁴⁶

5.7 Other stakeholder initiatives to address recruitment abuse

Company efforts to combat trafficking in persons are commendable and can have broad and lasting effects across their supply chains. However, these impacts can be broadened and institutionalized through multi-stakeholder initiatives, which bring together diverse stakeholders including the private sector, employment agencies, inter-governmental organizations, trade unions and NGOs.

5.8 Industry initiatives addressing recruitment abuses

In recent years, increased awareness of the legal and reputational risks associated with human trafficking has led a number of companies and stakeholder to integrate these issues into such initiatives. One example of this is the Global Business Coalition against Trafficking (gBCAT), which was founded by corporate leaders in 2011 to mobilize the business community's experience, intelligence and resources to halt human trafficking.¹⁴⁷

Another example is the International Tourism Partnership (ITP), a United Kingdom-based non-profit comprised of leading international hotel companies. The ITP established a working group on human trafficking to develop a corporate policy and strategy for the industry. In July 2013, it published a "Know How" guide on human trafficking and developed an important set of guidelines on checking recruitment agencies, which encourage members to conduct due diligence when engaging private employment agencies to recruit workers. The guidelines include a "Good Recruitment Charter" for employers and agencies.¹⁴⁸

Finally, Stronger Together is a United Kingdom-based multi-stakeholder initiative developed to reduce human trafficking and other forms of worker exploitation. The Initiative provides guidance, resources and a network for employers, labour providers,

¹⁴⁶ *Law News*, Law Bank, September 12, 2007. http://www.lawbank.com.tw/fnews/news.php?keyword=&sdate=&edate=&type_id=19&total=24998&...

¹⁴⁷ Institute for Human Rights and Business. *Fees and IDs: Tackling recruitment fees and confiscation of workers' passports*. http://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

¹⁴⁸ International Tourism Partnership. <http://www.tourismpartnership.org/>

workers and their representatives, and hosts workshops across the United Kingdom to raise awareness about how to tackle hidden third-party labour exploitation.¹⁴⁹ The United Kingdom Gangmasters Licensing Agency is involved in this campaign. Also, the GLA is now developing accredited training with the University of Derby to go further to ensure that supply chain actors know how to identify forced labour and what to do/who to contact when they do.

5.9 Employers' associations

International associations of employers and employment agencies have also played a key role in addressing human trafficking and unethical recruitment practices in the global economy. The International Confederation of Private Employment Agencies (Ciett) was established in 1967 and is comprised of 47 national federations of private employment agencies and eight of the world's largest staffing agencies. In 2006, Ciett adopted a Code of Conduct which defines the common principles and shared commitment of its members towards a well-functioning international labour market. The Code outlines ten principles that promote socially responsible employment, including respect for ethical and professional conduct, free-of-charge service provision to job-seekers, safety at work and workers' rights. Ciett also endorses ILO Convention 181 on Private Employment Agencies and encourages its members to assist in ratification campaigns in their home countries.¹⁵⁰

The Alliance of Asian Associations of Overseas Employment Service Providers is another collaborative group working to promote ethical recruitment. It was created in April 2008 with the aim of establishing a credible, ethical organization to provide gainful overseas employment to improve people's lives. The Alliance adopted a "Commitment to Action in Pursuit of Ethical Recruitment", which requires participants to establish advocacy programmes on the rights of migrant workers, enhance partnerships with government, implement employer training programmes and exchange information, ideas and examples of good practice in the industry.¹⁵¹

5.10 Intergovernmental organizations

International organizations have also implemented initiatives to combat trafficking in persons linked to recruitment abuses and fees. The GMS (Greater Mekong Subregion) Triangle (tripartite of government, employer and worker) Project of the ILO, for example, aims to ensure safer migration by strengthening recruitment and labour protection policies and practices. This is done through partnerships with governments, and worker and employer organizations focused on policy and legislative change, building stakeholder capacity, and providing services to migrant workers. The project is operational in Cambodia, Malaysia, Myanmar, People's Democratic Republic of

¹⁴⁹ Stronger Together. <http://stronger2gether.org/>

¹⁵⁰ Ciett. "About Ciett." <http://www.ciett.org/>

¹⁵¹ International Organization for Migration (IOM) and the European Commission. *Organizing the Association of Employment Agencies in Asia: Moving Forward to Action on Ethical Recruitment*. April 3-4, 2008. https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/colombo/2008_Report_on_the_Conference_Workshop_Phillippines.pdf

Laos, Thailand and Viet Nam.¹⁵² The ILO is also working on a new project focused on preventing the trafficking of women and girls from South Asia. The project promotes education, fair recruitment, safe migration and decent work for women and girls. At least 100,000 women and girls will be the direct beneficiaries of the programme.¹⁵³

Another new initiative has been established by the International Organization for Migration called the International Recruitment Integrity System (IRIS), a voluntary ethical recruitment framework to address unfair recruitment and bridge international regulatory gaps in countries of origin and destination. IRIS will develop a voluntary accreditation framework, which will recognize members as fair recruiters to distinguish themselves from unscrupulous intermediaries. Under this framework, job seekers will have access to information on ethical recruiters through an online portal and publicly available roster of the accredited members.¹⁵⁴

5.11 Trade unions

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

Trade unions have also engaged in public and worker awareness campaigns. For example, the International Union of Food and Agricultural Workers (IUF) published a tool on migrant worker vulnerability.¹⁵⁵ The Italian General Confederation of Labour (CGIL) executed a media campaign about slave-like conditions in the Italian agricultural sector, which included outreach to migrant workers to inform them of their rights.¹⁵⁶ The Trade Union Congress of the Philippines (TUCP) set out to educate potential forced labour and trafficking victims by showing videos on public transportation and establishing information desks in airports and bus and train stations. The TUCP also runs community education programmes.¹⁵⁷

¹⁵² Australian AID and the International Labor Organization (ILO). *GMS TRIANGLE Project Update: June 2013*. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_218102.pdf

¹⁵³ United Kingdom Department for International Development (DFID) and the London School of Hygiene & Tropical Medicine. *Work in Freedom: Preventing trafficking of women and girls in South Asia and the Middle East*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/projectdocumentation/wcms_217626.pdf

¹⁵⁴ International Recruitment Integrity System (IRIS). <http://iris.iom.int/>

¹⁵⁵ International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). *Workers and Unions on the Move: Organising and Defending Migrant Workers in Agriculture and Allied Sectors*. May 2008. http://www.ituc-csi.org/IMG/pdf/IUF_migration.pdf

¹⁵⁶ International Trade Union Confederation. *How to Combat Forced Labour and Trafficking*. February 2009. http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf

¹⁵⁷ International Trade Union Confederation. *How to Combat Forced Labour and Trafficking*. February 2009. http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf

5.12 Non-governmental organizations

The International Labour Recruitment Working Group (ILRWG) was formed in October 2011 as the first coordinated effort to strategically address abuses in international labour recruitment into the United States. It is comprised of organizations working in various industries and fights for increased enforcement of existing laws, improved transparency in the labour recruitment process and comprehensive policy reform.¹⁵⁸

The Institute for Human Rights and Business (IHRB), in cooperation with Anti-Slavery International (ASI), leads the Staff Wanted Initiative to raise awareness within the United Kingdom hospitality industry of the steps needed to combat the exploitation of vulnerable workers, trafficking and forced labour. The Initiative works with business partners and other stakeholders to improve recruitment and employment conditions, identify practices that enable exploitation and advocate for improved practices and risk mitigation. To this end, it has developed a set of practical guidelines asking companies to Scrutinize, Engage and Ensure (SEE) in order to effectively address the challenges facing the sector.¹⁵⁹

A number of organizations have also published ethical recruitment and hiring frameworks or codes of conduct. For example, in 2012, Verité launched the *Ethical Framework for Cross Border Labor Recruitment* with the Manpower Group, setting out a mechanism for changing the way the recruitment industry responds to forced labour and human trafficking. The *Framework* establishes Standards of Ethical Practice, identifies benchmarks to help measure compliance to the standards, and outlines the basic requirements of independent systems of verification and certification so that recruiters themselves, as well as employers and other stakeholders, can confidently know whether recruitment practices are observing and upholding ethical standards.¹⁶⁰

¹⁵⁸ The International Labor Recruitment Working Group (ILRWG). <http://fairlaborrecruitment.wordpress.com/>

¹⁵⁹ Staff Wanted Initiative. <http://www.staff-wanted.org/>

¹⁶⁰ Verité and ManpowerGroup. *An Ethical Framework for Cross-Border Labor Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced labor and Human Trafficking*. 2012. http://www.verite.org/sites/default/files/ethical_framework_paper_20120209_PRINTED.pdf

6. Next steps: recommendations

A number of good practices as well as challenges have been identified during the desk review, in-country surveys, experts interviews and expert meetings carried out in the context of the UNODC research project on the role of recruitment agencies and recruitment fees in trafficking in persons, some of which have been discussed earlier in the present report. Based on these good practices and challenges, this part of the report aims to provide recommendations on how to better understand and more effectively respond to the complex relationship between recruitment-linked abuses, including charging of recruitment fees and trafficking in persons.

The following recommendations, focusing mainly, but not only, on law enforcement and criminal justice measures, have emerged from the UNODC research project on the role of recruitment fees and recruitment agencies in trafficking in persons.

These recommendations are linked to the requirements of

- Increased cooperation among relevant actors both across countries and within borders
- Adequate legal and institutional (and private sector) frameworks
- Targeted law enforcement and criminal justice measures
- Workers' and victims' rights and access to remedies
- Multi-disciplinary training, awareness raising and research

in order to target recruitment agencies that are facilitating trafficking in persons, plus

- Targeted prevention measures to avoid such scenarios

There is a need to investigate and prosecute the full chain of trafficking that often involves organized criminal networks with different actors at various stages of the crime. In the context of abusive recruitment practices and their links to trafficking in persons, there can be various actors, such as directors of the recruitment agencies, employees, labour brokers, intermediaries, transporters, final employers, etc., involved in the crime of trafficking in persons. Recruiters and recruitment agencies usually act before the actual exploitation takes place, and can reside in different countries than those where the victim is exploited. In such cases, it may be very hard to prove that recruitment agencies were involved in the crime of trafficking in persons.

In order to effectively combat trafficking in persons, it is important to look at all stages of trafficking in persons, including the recruitment stage where the exploitation may not yet have transpired. To this end, States should increase their efforts to use special investigative techniques, financial investigations and cooperate across borders (mutual legal assistance, joint investigations, etc.).

It is thus important to promote cross-border cooperation and partnerships at bilateral, regional and international levels. This can be done, for example, through agreements or arrangements to conduct joint proactive operations, investigations and prosecutions. When offenders and victims of crime are located in, and acts of a crime happen in, several jurisdictions, the traditional law enforcement approach, focused at the local level, is inevitably frustrated.¹⁶¹ The United Nations Organized Crime Convention, in article 15, sets out the mandatory and optional requirements for establishing jurisdiction over trafficking in persons offences established in accordance with the Convention and its Trafficking in Persons Protocol, on the basis of the territorial principle. That is, States must ensure they have jurisdiction over such offences when committed within its territory, on board a ship flying its flag or on board an aircraft registered under its laws. There might be cases in which other States parties will be called upon to cooperate in the investigation, but only a few of them may be in a position actually to prosecute the offenders. States are also required to establish jurisdiction in cases where they cannot extradite a person on grounds of nationality. In these cases, the general principle *aut dedere aut judicare* (extradite or prosecute) would apply. In addition, States are invited to consider the establishment of jurisdiction in cases where their nationals are victimized, where the offence is committed by a national or stateless person residing in its territory, or where the offence is linked to serious crimes and money-laundering planned to be committed in its territory. Finally, States are required to consult with other interested States in appropriate circumstances in order to avoid, as much as possible, the risk of improper overlapping of exercised jurisdictions.¹⁶² (In the absence of specific bilateral agreements between particular countries it should be remembered that the Organized Crime Convention itself can, depending on the legal system of the countries, serve as the basis of judicial cooperation.)

It is key for destination countries and countries of origin to have open channels of communication to know whether a particular recruitment agency is part of a trafficking in persons network.

Effective measures against abusive recruitment practices also require cooperation and coordination at the national level, among all concerned actors, including law enforcement officials, prosecutors, courts, labour inspectors and immigration and border officials. There should be a clear institutional framework established to allow for clear understanding within a State about which authority is responsible for which actions. Labour inspectorates and labour courts are particularly important entities, as they are on the frontline of detecting and sanctioning recruitment abuses. It is therefore essential that they function properly, and trainings, awareness-raising and a number of other reforms can ensure that they do so. In addition, trade unions could be involved in preventing and combating abusive recruitment practices as they are often in the position to document abuse, deal with complaints and

¹⁶¹ UNODC, *Legislative guide for the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, (page xvi), 2004.

¹⁶² UNODC, *Legislative guide for the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, (pages 104/105), 2004.

provide help to workers. Trade unions in the country of destination should support workers even if they are not members of that particular trade union or any other union in that country.

There is a need to bring legislation in line with the international legal framework, in particular to distinguish between trafficking in persons and other crimes, such as labour law violations or fraud.

Despite the importance of having robust national legislation to address abusive recruitment practices, it appears that it is not the lack of legislation but rather enforcement of legislation that remains to be the key challenge for many States. During the UNODC research, several experts commented that practitioners, both in origin and destination countries, may often use the lack of legislation as an excuse not to act, while there would be avenues to effectively address the issue if practitioners were more creative and proactive in searching for solutions.

As an overall recommendation, there is a need for increased understanding that abusive practices of recruiters and recruitment agencies, including charging of recruitment fees, can contribute to and in some cases constitute the crime of trafficking in persons. In line with the international legal framework, in particular the United Nations Trafficking in Persons Protocol, recruiters and recruitment agencies acting as traffickers should be prosecuted; trafficking victims—whether they are in the sending or destination country—need to be protected.

An essential element of protection of victims of crime and trafficking in particular and their rights should be that States do not prosecute or punish them for trafficking-related offences such as working without authorization, even if victims consented to doing so. The non-liability/non-punishment could be based on the “duress model”, which is grounded on the belief that despite a person committing an offence the individual should not be held responsible because he or she was compelled to commit the offence, and/or the “causation” model, according to which trafficked persons are not to be held liable for offences that are directly connected or related to the trafficking.

And while some practices may not amount to trafficking in persons, they may still contribute to an environment in which trafficking in persons flourishes and create vulnerabilities for workers to later become trafficking victims. States need to effectively address these practices too, such as through better oversight of recruitment agencies (inspections, monitoring, suspension of licences, training and education, etc.). States can also promote ethical recruitment (both in origin and destination countries) by rewarding good practice, for example with expedited or preferential treatment for ethical recruiters.

Licensing of recruitment agencies is an important form of regulating the industry and presents a mechanism whereby States can ensure higher standards of good practice. States should develop firm criteria for licensing the recruitment agencies and impose strict, and proactive, regular controls of the work of the agencies. [Concerning the regulation of labour recruitment in general, see also the forthcoming publication of ILO: *Regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities*, 2015]

States should revise their public procurement procedures so as to prevent, among other things, the use of abusive and fraudulent recruitment practices.

Recruitment agencies should be required to pay a deposit at the time of, and as a requirement of, their registration/application for a licence, which could be used, where and when necessary, to compensate workers.

The private sector has an important role to play in addressing risks of human trafficking and unethical recruitment in supply chains. This extends to labour supply chains and the recruitment of migrant workers into workplaces producing goods and services for the global economy. Business at all levels, and across regions and sectors, including the recruitment industry itself, should set out protections for vulnerable workers consistent with the framework provided by the United Nations Guiding Principles on Business and Human Rights. States are encouraged to adopt laws, policies and regulations that promote greater transparency, accountability and joint liability for trafficking and related abuses in supply chains.

To build effective criminal justice responses, criminal justice practitioners should be flexible and creative in using various laws there are put in place in their States to stop recruitment agencies from engaging in abusive practices, punish criminals and protect victims. While it is important to ensure that recruitment agencies acting as traffickers are charged under trafficking offences, in cases where the abusive and fraudulent practices of agencies do not amount to trafficking in persons, practitioners should, where appropriate, still aim at prosecuting criminals under other criminal charges, such as fraud, tax evasion, corruption, exploitation, blackmail, etc. Practitioners should use all relevant legislation to prosecute criminals engaging in abusive recruitment practices (that may facilitate trafficking in persons). States, in collaboration with non-governmental and inter-governmental organizations, should to develop guidelines to this end that comprise good practices, are based on international standards and take into account national specificities, be it with regard to legislation, regulation of recruitment, trafficking in persons patterns and trends, etc.

Trafficking in persons presents particularly difficult evidential issues, many of which relate to the complex and covert nature of the crime. When prosecuting trafficking cases, there is often an over-reliance on victim testimonies. However, victim testimonies might either be unavailable or, for various reasons, including the harrowing experiences victims have gone through, linked with various challenges, (inconsistencies, fear based omissions and protection of offenders, etc.), posing barriers to successful convictions for trafficking in persons. In addition, it may be difficult to prove trafficking in persons in “word against word” situations, where victims’ accounts of events contradict the account of defendants—without much supporting evidence that would support charges against fraudulent and abusive recruiters. Criminal justice practitioners should better understand the limitations linked to victim testimonies, such as common inconsistencies, false or irrational statements, and understand that these weaknesses may arise from reasons other than lack of credibility of victims. In addition, criminal justice practitioners should aim at using other kinds of evidence to prove trafficking in persons, including testimonies of other persons, documentary evidence and real evidence, as well as evidence gathered by special investigative techniques. In cases where the exploitation has not yet occurred, but also where it has, there is often no documentary evidence that the agency or the recruiter had an

intent to exploit or commit fraud. There may also be no evidence—other than the statement of the victim—that the agency was charging fees, as the agency or the recruiter may not have given any receipt to the workers. That is why it is important to conduct proactive investigations and to collect and obtain evidence so that cases would not solely depend on the testimony of the workers.

States should concentrate their efforts not only on the activities and practices of illegal or unlicensed recruitment agencies, but also on legal recruitment agencies which may covertly use illegal recruitment practices. In addition, States should improve regulation of the recruitment industry and encourage ethical recruitment by making illegal recruitment unprofitable. Training or development of guidance to recruitment agencies could also be provided to help them comply with laws and prevent trafficking in persons. Moreover, States also need to watch closely other businesses that might not be registered as recruitment agencies, but for other services (for example, tourist agencies) but that offer recruitment services. Such businesses may be subject to different types of inspections.

There is also a need for stronger law enforcement actions concerning financial investigations in order to increase the confiscation of traffickers' assets (and those of fraudulent and abusive recruitment agencies and recruiters), which can disincentive traffickers (and abusive and fraudulent recruitment agencies and recruiters), compensate and aid with the rehabilitation of victims while also encouraging them to come forward, and help to subsidize law enforcement budgets.

Law enforcers and prosecutor should take into consideration that recruitment agencies and recruiters that apply abusive and fraudulent recruitment practices can well act in concert with other actors (with the aim of committing trafficking in persons or related serious crimes), which may necessitate investigations into organized crime activities.

Red flags

The following could—and in actual cases did—point towards trafficking in persons and related crimes in the context of abusive and fraudulent recruitment, and that law enforcers and criminal justice practitioners have to pay attention to (as identified by experts consulted by UNODC) include (but are not limited to):

- Workers were requested to sign two contracts, possibly with different terms, or contracts in a language they cannot read.
- Salary bank account is not opened in the worker's name but in the name of a staff member of the recruitment agency.
- Family member of worker required to go with a staff member of the recruitment agency to the bank each time to withdraw money from the salary account.
- Neither the worker nor his family ever receive any or the full amount of the payment that was promised.
- Recruitment agency involved is unregistered/not licensed.
- The licence of the recruitment agency does not cover the country it recruited for.
- The licence of the recruitment agency does not cover the work sector(s) it recruited for.
- Tourist agency recruits workers.

- Excessive and illegal recruitment fees, as well as other fraudulent and abusive practices of recruitment agencies and individual recruiters, can point towards organized, coordinated activities with other associated actors, such as moneylenders in the country of origin or recruitment agencies and recruiters in the destination country—with the end result of trafficking in persons.

Sources of evidence include the following:

- Reports from labour inspectors
- Reports on abuse, exploitation, charging of recruitment fees, etc., from NGOs
- Money flows that show that money—possibly fees—were passed between different parties (e.g., from worker to recruitment agency, from one recruitment agency to another, etc.)
- Documentary evidence, such as contract(s) signed by the worker, seafarer book (continuous record of a seaman's service and qualification), passports, etc. (Resources for translation need to be made available.)
- Ads and websites of recruitment agencies
- Licence of the recruitment agency
- Records of registry for recruitment agencies
- Expert account of ethical recruitment agency/recruiter

It is important for governments of sending and receiving countries to ensure that workers have access to information and advice on their rights, and if they are victims of trafficking in persons, have timely access to effective remedies and compensation. Workers often do not know what rights concerning contracts and working conditions they have, and consequently do not self-identify as victims of crime, including trafficking. Also, workers are reluctant to go to the authorities or seek remedies, among others, because of fear of deportation, harm from traffickers, isolation, lack of incentive to complain and cooperate, and also because there is a lot of stigma around human trafficking and workers do not want to be labelled as victims. The organization of pre-employment and pre-departure seminars or the establishment of hotlines and information centres could increase workers' understanding of their rights and work-related administrative matters, thus reducing their vulnerability to becoming victims of trafficking.

There is a need to build strong capacities to detect abusive practices, conduct investigations and prosecute criminals. To this end, multi-disciplinary trainings should be provided to authorities, including law enforcement, judges, prosecutors, labour inspectors and immigration officials. Trainings should cover relevant law, victims assistance and protection mechanisms and techniques for identifying recruitment abuses and fees that contribute to trafficking in persons.¹⁶³ Ethical recruitment agencies could be consulted to get more insights into the risks and signs of abusive and fraudulent recruitment practices.

¹⁶³ International Trade Union Confederation. *How to Combat Forced Labour and Trafficking*. February 2009. http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf

Understanding of the linkages between recruitment agencies, recruitment fees and trafficking in persons should be increased through an evidence-based approach and conducting of additional, targeted research about the phenomenon.

Various strategies and tactics can be successful in tackling abusive recruitment practices, including through criminal and other laws and regulatory framework. These strategies should be customized to the needs, trends and patterns of a particular country or region. There is no one “ready-made” answer on how to effectively address the problem.

As a prevention measure, States should address the underlying factors that make people vulnerable to trafficking in persons, in particular charging of recruitment fees; the latter ideally by prohibition recruitment fees on workers. Moreover, cooperation between countries should also include agreements on safe and accessible processes concerning the employment of foreign workers.

Measures should be taken to tackle corruption as it fuels abusive recruitment practices and trafficking in persons, and affects the effectiveness of the enforcement efforts. Also licensing procedures in many countries are less robust than they should be and, in some case, also subject to corruption and fraud with the bribing of public officials or purchasing of licences. Measures should be taken to eliminate and prevent such corruption and strengthen licensing systems, from entry requirements and monitoring to suspension of licences in cases of illegal behaviour.

Annex. Survey instrument

Country:	
Name:	
Date/Time/Place:	

Introduction

The aim of this survey is to gain knowledge of the national mechanisms, practices and criminal justice responses in selected countries concerning recruitment agencies and recruitment fees in trafficking in persons (and related crimes). Its purpose is not to “evaluate” the different approaches taken by the examined countries, but to gain practical insight into the research subject. The role of recruitment agencies/fees in human trafficking presents a rather specific and not thoroughly explored topic. Good and promising practices to address the issue may already exist, but have to be collected and analysed in an organized manner.

Therefore, your responses to this questionnaire would be a significant contribution to our research. The survey seeks to examine both the legal and regulatory framework in your country and existing criminal justice responses (case law and practice). The survey is thus divided into two main parts—the first concerns the existing legislation/regulations and the second focuses on the criminal justice responses.

Introductory questions

1. What is your knowledge of/background on trafficking in persons and related cases and the involvement of recruitment agencies and recruitment fees?
2. What are the known abuses related to recruitment and trafficking in persons in your country?
 - What are the main trafficking in persons patterns and common forms of exploitation?

- Which sectors register the highest levels of trafficking?
- What types of recruitment agencies/agents are involved?

Part I. General laws on trafficking in persons

1. Please provide background information on national legislation on trafficking in persons:

- Which agencies are responsible for enforcing trafficking law?
- Is current legislation a useful tool for prosecution? Why or why not?
- What would you change/add to the current legislation?

2. How is trafficking defined in national law or regulations, and does offence include indicators related to recruitment fees?

- Is the definition of trafficking in legislation adequate? Please explain.
- What are the strengths and weaknesses of victim protection laws?
- What protections/benefits are provided to victims of trafficking under the law?

3. Are there any special protections in the law and legal framework regarding labour trafficking for women, children, other vulnerable groups?

4. Do trafficking laws require victim restitution? Please provide any relevant details.

5. Is there a liability of legal persons in the legislation? Is this liability criminal, civil, or administrative?

Part II. Laws and regulations

A. Recruitment in laws/regulations against trafficking in persons

1. Does your (criminal) law on trafficking in persons contain reference to:

- Recruitment agencies?
- Recruitment fees?
- Recruitment-related debt?
- Please provide any relevant details.

2. Do laws include joint liability for employers and recruiters for recruitment-related or trafficking offences?

3. In your opinion, is it important or not to include language on recruitment agencies, fees and debt in human trafficking legislation? Please explain.

4. Do you believe that having explicit language about recruiting in trafficking legislation influences enforcement? If yes, how so? If not, why not?

B. Other legislation regulating recruitment

1. Does your system of law (legislation and case law) include reference to recruitment in crimes other than trafficking?

- Does the law make sufficiently clear what is allowed and not allowed in recruitment, for example on fees?

2. Are there laws that require all recruitment agencies and agents to register with a government agency?

- If so, which agency do they have to register with?
- What are the requirements of registration?
- What are the penalties for failing to do so?
- Is this law enforced in practice?

3. Are there laws that set limits on recruitment fees?

- If so, what are the limits?
- Do they apply to all categories of workers employed domestically?
- Outgoing migrant workers, guest workers, undocumented workers?
- Who sets these fees, and on what basis?
- What are the penalties for charging excessive fees, and which agency is responsible for enforcement? Are limits on fees enforced in practice?

4. Are there laws that specifically prohibit exploitative recruitment practices, such as deceit, fraud, coercion, threats, etc.?

- If so, what are the laws?
- Do they apply to all categories of workers employed domestically?
- Outgoing migrant workers, guest workers, undocumented workers?

5. Are there any regulations that specifically prohibit recruitment agencies/agents from engaging in corruption, bribery and kickbacks to government officials?

C. Other legislation regulating practices related to recruitment and trafficking

1. Do you have laws that regulate practices related to recruitment and trafficking, including:

- Money lending (including informal money lending)?
- Interest rates?

- Collateral?
- Money-laundering?
- Human smuggling?
- Bribery of government officials?
- Wage and hour violations?
- Contract substitution?
- Blackmailing?
- Fraud and false promises?

Please provide any relevant details.

2. Can you describe the process used by prosecutors to build an anti-trafficking prosecution, e.g., the laws most frequently applied, evidence used, etc.

D. Laws on migration

1. Do you have a guest worker programme?

- If so, do guest workers have the same legal rights as citizens?
- Does the guest worker programme cover recruitment agency practices and recruitment fees (in sending country and your country)?
- Does the guest worker programme require that workers go through a recruiter (either in law or in practice)?

2. Has your country signed any memorandums of understanding (MOUs) with other countries regarding migrant workers?

- If so, which countries (identify whether countries are sending or receiving)?
- Do they only apply to specific sectors?
- Do MOUs establish regulations for recruitment agencies?
- If so, what are the regulations?
- Do regulations limit recruitment fees, and do they pertain to sending and receiving countries?
- Do MOUs mandate that all workers apply for jobs through a government office?
- Do they set fees?
- Do MOUs provide any protections for undocumented workers?
- How are MOUs enforced?

Part III. Enforcement

A. Law enforcement in practice

1. What level of jurisdiction is used to tackle recruitment, recruitment abuse, and who is responsible?
 - National, state, local and which ministries?
 - Is the law effectively enforced?
2. Are you aware of legislation other than laws and regulations on trafficking and recruitment that have been used to prosecute human trafficking or exploitative recruitment practices?
3. What are current penalties for human trafficking, for unethical recruitment practices (fines, prison time)?
 - Are there different penalties for cases where minors (under the age of 18) have been trafficked and exploited?
 - Are these penalties commensurate with the severity of the crime?
 - Are they sufficiently dissuasive?
 - Are fines successfully collected? Are prison sentences actually enforced?
 - Are trafficking victims provided with restitution in practice?
4. How are investigations conducted?
 - How do you access/protect workers in remote locations (e.g., plantations, fishing)?
 - How do you access dangerous areas, illicit industries (i.e. illegal mines or fishing, undocumented workers)?
 - What role do labour inspectors have? During their investigations do they also check on abusive recruitment practices?
5. How do you monitor recruitment agencies?
 - How do you monitor agents and sub-agents, informal recruitment?
6. Do you rely on other stakeholders to identify cases of labour trafficking and/or exploitative recruitment practices (i.e. unions or NGOs, migrants' rights organizations)?
 - Do you partner with civil society in prosecutions and victim rehabilitation?
7. Are police and prosecutors equipped to address recruitment-related abuses?
8. Do you think investigators, prosecutors and judges understand recruitment-related abuses and apply recruitment-related laws in prosecution of trafficking cases?

9. Do you work with other public offices/departments?

- How and why?
- What are the benefits and/or challenges?

B. Challenges and lessons learned

1. Have there been challenges in understanding regulations on recruitment fees in practice?

2. Are there challenges in law enforcement in cases in which recruitment abuses have occurred and/or excessive fees have been charged in other jurisdictions (Municipal/State/Country)?

3. Can you provide examples of challenges in cross-border enforcement?

4. What are key needs for criminal justice practitioners right now in your country: training, awareness, better law, cooperation?

5. What are the obstacles to successful prosecution in your country?

- What steps need to be taken to increase successful prosecution rates in your country?

6. What guidance, if any, do you think practitioners should be given on the issue of recruitment practices and fees in understanding trafficking in persons?

7. Can you identify specific cases for us to review regarding trafficking related to recruitment practices or fees?

- How have cases been prosecuted, and have they been successful?

Part IV. Other

1. Are there any other matters relevant to the study that you would like to raise and discuss?

2. Do you know of any other experts/practitioners who should be interviewed as part of this study?





UNODC

United Nations Office on Drugs and Crime

For more information about UNODC's work against human trafficking and migrant smuggling contact:

Human Trafficking and Migrant Smuggling Section

UNODC

P.O. Box 500, 1400 Vienna, Austria

Tel. (+43-1) 26060-5687

E-mail: htmss@unodc.org

www.unodc.org/unodc/en/human-trafficking/