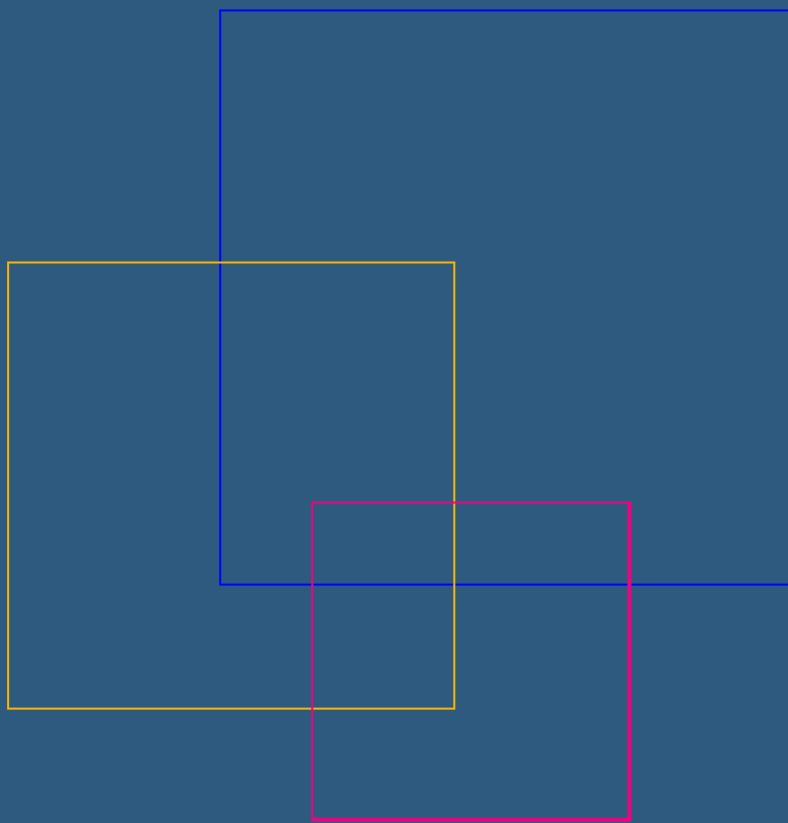




International  
Labour Office



# TRAFFICKING FOR FORCED LABOUR

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How to monitor the recruitment of migrant workers

SPECIAL ACTION PROGRAMME  
TO COMBAT FORCED LABOUR

**T R A I N I N G   M A N U A L**

# TRAFFICKING FOR FORCED LABOUR

## HOW TO MONITOR THE RECRUITMENT OF MIGRANT WORKERS

Training Manual

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## How To Use The Manual

This training manual aims to raise awareness amongst labour inspectors, police, government officials, employers' organizations, trade unions, and others, on the issues of trafficking, forced labour and job placement systems. More specifically, it focuses on the recruitment of migrant workers into highly exploitative working situations that could amount to forced labour.

The manual aims both to inform and guide on action. It provides information on abusive recruitment practices and trafficking as well as the socio-economic factors that facilitate the incidence of trafficking. The main emphasis, however, is on policy measures, skills and techniques to be applied in curtailing these practices. It promotes hands-on learning and encourages constant sharing and interaction among participants who benefit from each other's experience and ideas.

As each national context is different, trainers should complement the generic approach of this manual with information on a particular country's laws, policies and socio-economic environment, which may limit the extent to which the countries can implement the recommendations included in this training manual. The materials are adaptable to different situations, types of participants and different national contexts. They have been designed as a flexible tool that can be used in a variety of ways and trainers should use the parts of the kit they find most relevant, depending on the amount of time available as well as the profile of participants.



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## Key to symbols

KEYWORDS      Terms necessary to understand the topic under discussion



Self-assessment question



Group exercise



Relevant reading



Relevant ILO Conventions and Recommendations



Relevant UN Conventions and Recommendations



Case study or Good Practice example



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# Trafficking And Forced Labour: Background And Overview

# 1

## 1. KEYWORDS

**MIGRATION:** Migration is the general movement of people who leave their place of origin in a free search for a better life or who feel compelled to leave it. Migration for employment is the movement of people in search for work. At the beginning of the 21st century the ILO estimated that around 175 million people were living outside their home countries, including refugees. Of those, 86 million are estimated to be economically active.

**FORCED LABOUR:** According to the ILO Forced Labour Convention 1930 (No. 29) 'forced or compulsory labour shall mean 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' (Art. 2(1)).

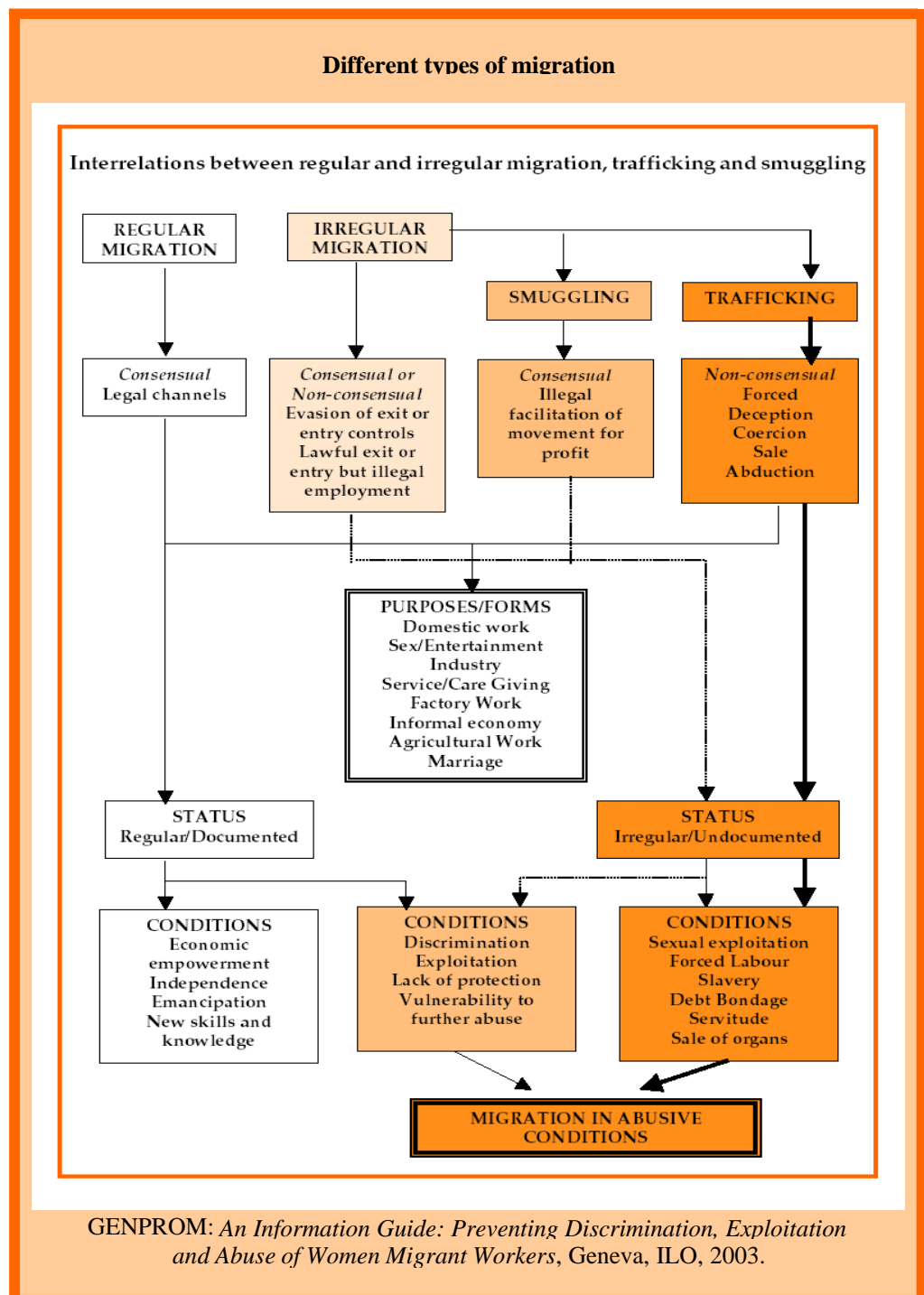
Though forced labour is often called the 'new slavery', the concept of ownership differentiates forced labour from slavery in the traditional sense. Whereas traditional slavery presupposes the ownership of a slave by a master, forced labour solely postulates the exercise of coercion and the denial of freedom. Thus slavery is a form of forced labour, but not the only one. There are many types of forced labour.

**MIGRANT WORKER:** According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the term "migrant worker" refers to 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national' (art. 2.1).

**DEBT BONDAGE:** This is an example of forced labour. According to the definition of the UN Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956), debt bondage is a situation that arises when a person provides a loan to another and uses his/her labour/services, or those of another person over whom the debtor has control, to repay the debt. When the value of the work, as reasonably assessed, is not applied towards the liquidation of the debt, the situation becomes one of debt bondage.

**TRAFFICKING IN HUMAN BEINGS:** According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), "Trafficking in persons" shall mean 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, 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' (Art. 3(a)).

**SMUGGLING:** According to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000), "Smuggling of migrants" shall mean 'the 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' (Art. 3(a)). Smuggling of people is seen to involve a voluntary agreement, to which the smuggled person has been a party. Smuggling occurs when migrants, due to legal restrictions and lack of knowledge of legal channels, cannot freely move across borders. Therefore they pay a smuggler to help them to get across the border. In practice it may be hard to distinguish between smuggling and trafficking since the former may lead to the latter.



## 2. HISTORICAL BACKGROUND AND PRESENT CONCEPT OF TRAFFICKING

The term trafficking itself is not new and was first used during the 16th century, it was then a synonym for trading and 'going back and forth'. As such, there was no negative connotation attached to the word. However, by the 17th century trafficking had become associated with the sale of illicit and/or untrustworthy merchandise. Though at first trafficking was understood to mainly concern the sale of drugs and arms across borders for profit, by the 19th century it also included the trade in human beings, treated as a commodity and sold into slavery. This 'traditional' slave trade was to be outlawed in the late 19th century. At the beginning of the 20th century the term trafficking mostly referred to the "white slave trade", which was the movement of women and children for the purpose of prostitution across international borders. It was only in the late 1990s that trafficking became associated with prostitution and sexual exploitation of women and children.

With the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in the year 2000 (hereafter, the Trafficking Protocol) two innovations in the field of trafficking were introduced. First, a basic and comprehensive international definition of trafficking in persons is now available. Secondly, and even more importantly, the Trafficking Protocol definition is very broad in its scope of application as it contains forced labour as one purpose of trafficking besides sexual exploitation. While the Trafficking Protocol draws certain distinctions between trafficking for sexual exploitation on the one hand, and trafficking for forced labour and services (and also slavery and slavery like practices and servitude) on the other, this should not be taken to imply that coercive sexual exploitation does not constitute forced labour. Indeed, the ILO supervisory bodies have regularly dealt with forced prostitution and sexual exploitation under the Forced Labour Convention, 1930 (No. 29). Generally speaking, trafficking thus now refers to the movement of people, often illegally, across borders or within a country, treated as a commodity and resulting in labour or sexual exploitation.

A difficult issue regarding the protection of victims of trafficking is the question of the consent of the trafficked victim. Even if the victim has given his or her consent initially, this does not in any way mean that the right of accused persons to a full defence and to the presumption of innocence is restricted. Further, the Trafficking Protocol should not be interpreted as placing a burden of proof on the victim. Generally speaking, the consent by an adult victim of trafficking is not at all relevant when any of the means set forth in the Trafficking Protocol have been used.

The movement of people for the purpose of forced labour and services usually involves an agent or recruiter, a transporter, and a final employer, who will derive a profit from the exploitation of the trafficked person. In some cases, the one and the same person carries out all these trafficking activities. With increased possibilities for travelling and telecommunications and a growing demand for cheap labour in the developed world on the one hand, and increasingly restrictive visa regulations on the other, possible channels for legal labour migration have diminished. Private recruitment agencies, intermediaries and employers may take advantage of this situation, and lure potential migrants into exploitative employment.



For victims of trafficking the journey itself can be hazardous, whereas the work in the destination country is most likely to be irregular and dirty, degrading and dangerous (3D jobs). While in the wealthier countries there appears to be a persistent demand for a labour force willing to accept low-paid and insecure jobs, often of a seasonal nature, at the same time nationals of the wealthier countries are understandably reluctant to do the 3D jobs. This in turn creates a situation in which victims of trafficking do not face competition of nationals regarding their job, but rather that of other victims of trafficking, thus creating a supply surplus, which leads again to a downgrading of working conditions ("race to the bottom").

### 3. SOME FACTS ABOUT TRAFFICKING

It is difficult to estimate the number of people trafficked, as most of this movement is irregular and unregulated. However, the ILO has recently published a global estimate of forced labour, including the forced labour outcomes of trafficking.

The global minimum estimate number of persons in forced labour as a result of trafficking is 2,450,000. About 20 per cent of all forced labour and about one quarter of the forced labour exacted by private agents is an outcome of trafficking, thus representing a significant proportion. However, there are important geographical variations concerning the proportion of trafficked victims of the overall number of victims of forced labour. Trafficked people as displayed in the table below are counted in the region of destination (i.e. where they are forced to work) and not in their region of origin. The relatively low estimates for Africa or transition countries should not obscure the fact that many people from these regions are trafficked towards other regions, including industrial countries.

#### Regional distribution of trafficked forced labourers

Regions/Countries	Number of people in forced labour as a result of trafficking
Asia & Pacific	1,360,000
Industrial countries	270,000
Latin America & Caribbean	250,000
Middle-East and North Africa	230,000
Transition countries	200,000
Sub-Saharan Africa	130,000
<b>World</b>	<b>2,440,000</b>

Source: ILO: *A Global Alliance Against Forced Labour*, p. 14, 2005.

Looking at the trafficked persons working under forced labour conditions, the picture is slightly different to that of the overall one of all victims of forced labour: most people are trafficked into forced labour for commercial sexual exploitation (43 per cent) but many are also trafficked for economic exploitation (32 per cent). The remainder is trafficked for mixed or undetermined reasons (25 per cent). Here too there are geographical variations, with trafficking for economic exploitation ranging from about a quarter of all trafficking in industrial countries to about 90 per cent in the Middle East and North Africa.

Trafficking also differs according to region in terms of who is trafficked, the sectors in which they work, and their areas of origin and destination:

- Children and young women are trafficked internally and across borders in Central and South America, and in West and Central Africa for exploitation primarily in domestic services and the sex industry.
- Mostly men are trafficked within and across borders of South America to work in remote rural areas and in agriculture.
- People of all ages are trafficked across the land borders of South Asia for work in carpet and garment factories, for street hawking and begging, on construction sites and tea plantations, in manufacturing and brick kilns.
- In the Middle East and North Africa, women and girls are trafficked to work in domestic service, and Asian men are trafficked into construction and manual labour.
- Migration flows to Western Europe from Eastern Europe and Asia (often transiting through Eastern Europe) include women and girls trafficked into the sex industry, as well as men and women trafficked for labour exploitation in agriculture or construction.
- Central and Caucasian Asian migration flows tend to converge mostly in the construction and agricultural (cotton) sectors, with Russia being an important destination country. Furthermore, Central and East Asia is considered an important transit area for victims of trafficking.
- In China, massive internal migration from rural to urban areas puts many young women and girls at high risk of labour and sexual exploitation. Many Chinese migrants are also vulnerable to smuggling and trafficking into ethnic business enclaves in Europe and North America, mainly in sweatshops, restaurants and domestic work.

Only recently has the broader picture of human trafficking begun to emerge. Though initially human trafficking was associated with women, children, and sexual exploitation, the world is starting to realize that trafficking encompasses persons of all ages and both sexes, as well as a range of economic sectors.

## 4. CAUSES OF TRAFFICKING

A factor contributing to the increased incidence of trafficking is globalization. Technological developments have facilitated communications, resulting, for example, in increased television broadcasting and a high use of mobile phones by traffickers. Travelling has also become much easier and faster. Furthermore, while globalization has contributed to increased standards of living in the developed world, this has been accompanied by growing inequality, both between and within countries. Globalization has also contributed to the reduction of barriers in international trade and capital movements. This has not been accompanied by similar political action to lift restrictions to migration.

Factors giving rise to trafficking include:

### On the supply side:

- Poor governance that creates a climate in which traffickers can prosper, due to an ineffective, absent or corrupt public administration

- Inadequacy of the legal and judicial system
- Unemployment, underemployment and underpaid employment
- Gender-based discrimination in employment, education and information. For example, a bias of formal employment opportunities abroad in favour of men, makes women easier targets for traffickers
- Inefficient or non-existent legal migration channels and lack of information on existing means to obtain work abroad
- Poverty and indebtedness
- Illiteracy and low levels of education
- Lack of knowledge of the risks associated with labour migration
- Trafficking is a low-risk and high-profit business

On the demand side:

- Competitive pressures in the developed world leading to cost cutting through sub-contracting, outsourcing and downward pressure on wages.
- Tendency of nationals to refuse employment in manual jobs due to increased education, improved welfare schemes (unemployment insurance, family allowances, minimum wages) and heightened expectations.
- Increased female participation in the labour force, which creates the need for domestic help, and carers for children and the elderly
- Consumer demand for products and services at low cost and with quick delivery
- Growth of sex and entertainment industries, thereby growing demand for sexual services
- Absence of an effective regulatory framework and lack of enforcement
- Lack of respect for and/or violations of human rights
- Low-risk, high-profit nature of the trafficking business
- Lack of awareness
- Corruption of immigration and customs officials in origin, transit and destination countries

## 5. TRAFFICKING AS A CYCLE

The trafficking cycle can be described as a well-organized business that is divided into three consecutive stages, following the elements of crime as outlined in the Trafficking Protocol:

- A) Recruitment of potential candidates for employment abroad
- B) Transferring of recruited workers to their assigned jobs abroad
- C) The receipt or harbouring of migrants in order to put them to work under coercive, exploitative or forced labour conditions

However, one should keep in mind that the abusive conditions of each stage of this trafficking cycle do not have to be met cumulatively in order to constitute a situation of trafficking. Coercion and exploitation can for instance take place at a later stage of the trafficking cycle when starting to work, while the recruitment and transport of the migrant have been as agreed upon before departure. Thus, it should be noted that the trafficking cycle and its three stages are very fluid: it is not necessarily the case that every recruited and transported migrant will end up in a forced labour situation; it may however also be the case that a migrant worker although having been recruited and transported in a regular way finds him/herself working under forced labour conditions. Indeed, many of those who end up in situations of forced labour have migrated of their own volition and become victims during their journey or at their destination.

## **A) Recruitment stage**

Traffickers who seek to lure people into a trafficking situation use a number of different means:

- Force, coercion and deception  
Recruiters may lure victims through false promises of well-paid jobs in foreign countries. They may also use violence and coercion. Some victims have been abducted, but in most of the cases there is a certain degree of complicity between the trafficker and the potential victim at the recruitment stage.
- Voluntary recruitment of unsuspecting victims  
Enticed by prospects of a better life, many migrants voluntarily go with recruiters, even seeking them out, willingly paying for expenses incurred and accepting to become indebted to the recruiter. They then risk becoming a victim of trafficking if the debt is used as a means of coercion.
- Prostitution and trafficking  
Women working in the sex industry of the country of origin are particularly at risk of being trafficked. This is because pimps are often part of criminal networks and sex workers have often already been trafficked internally, sold and resold, etc.
- Forged documentation  
Migrants can be supplied with forged documents including forged passports and visas, work contracts, marriage certificates, etc.
- Enforcement of procedures  
Prior to departure, traffickers may make the migrants and their families pay for their passage in part or in full, in cash or in kind. Traffickers may also impose certain conditions on the migrants, such as:
  - a) Sponsorship by a representative of the trafficking network in the country of destination
  - b) Obligatory employment in the destination country on terms dictated by the traffickers
  - c) Occupation in sectors selected by the traffickers with no right to complain
  - d) An "oath of silence" which, if broken, generates police arrest and deportation

## **B) Transport**

Trafficking can be:

- Within countries or across national borders
- Through the use of a variety of means or methods  
For example, traffickers may employ transport providers and operators.
- Through the use of a variety of modes of transport  
For example, transportation can be by plane, container, ship, speedboat, and truck or even on foot.
- Through simple and complex routes  
The time between departure and arrival may be several months or even years. The traffickers, not the migrants, make the choice of destination.

Some examples of bad conditions during the journey:

- A breach of the initial agreement by the trafficker, for instance, arriving in a different destination country than initially agreed on
- Travelling in crowded groups and unsafe modes of transport
- Being passed on from trafficker to trafficker
- Physical, emotional and sexual abuse

### **C) Reception and job assignment stage**

Traffickers often disclose their coercive, exploitative and abusive methods only after the migrant worker arrives at destination. There, they close their victims in a web of dependence and choke all attempts at rebellion. As such, what appeared at the outset to be smuggling can in reality turn into trafficking.

The most common examples of abuse by employers:

- Breach of the initial contract  
Resulting in, for example:
  - working too many hours
  - not getting paid
  - not receiving the agreed salary or wages being paid in non-monetary form
  - working in a different sector than agreed (e.g. prostitution)
- No sick leave
- No holidays
- Physical, mental and sexual abuse
- Seclusion and sub-standard accommodation
- Forced drug use
- Inadequate food and even starvation

A standard feature of the trafficker's behaviour is to impose a permanent and inescapable bond of domination over his/her victim. This cruel and often inhuman bondage can sometimes take place at the early stage of transfer but always at the stage of job assignment. The most common ways of imposing this bondage are:

- Confiscation of identity documents so that the migrant is unable to travel back home
- Threats of denunciation to the authorities of the country of employment
- Threats of or actual physical violence against the migrant
- Threats of physical harm to the migrant's loved ones
- Social isolation
- Locking up
- Debt bondage
- Withholding of payment or excessive wage deductions for non-compliance with employers' demands

## FURTHER RESOURCES AND EXERCISES



- ILO: *Trafficking in Human Beings: New Approaches to Combating the Problem*, Geneva, 2003
- ILO: *A Global Alliance Against Forced Labour*, Geneva, 2005.
- ILO: *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement*, Geneva, 2005.
- ILO: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference, 92nd Session, Geneva, 2004.
- ILO: *Stopping Forced Labour: Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, 2001.
- ILO: *The role of private employment agencies in the functioning of the labour markets*, Report VI, ILC 81st session, Geneva, 1994.
- US State Department: *The Annual Trafficking in Persons Report*, 2005. [www.state.gov/g/tip](http://www.state.gov/g/tip)
- Bales, Kevin: *Disposable People: New Slavery in the Global Economy*, California: University of California Press, Ltd. 1999.
- [www.ilo.org/forcedlabour](http://www.ilo.org/forcedlabour)
- [www.antislavery.org](http://www.antislavery.org)



Annex I - Case studies A-J



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# The Trafficking Process: The Case Of Recruitment

## 2

### 1. KEYWORDS

**RECRUITMENT:** The term “recruitment” commonly refers to job advertizing, candidate canvassing, candidate selection, job brokerage, direct hiring or hiring by delegation. In fact, recruitment is a precise legal notion that indicates the first step in a relation of employment. In this respect, it can be defined as a free act of contractual agreement whereby one party commits itself to pay pre-determined wages in exchange for which the other party commits itself to perform pre-determined tasks in a pre-determined time.

However, in the context of trafficking, recruitment is considered to mean: advertizing and offering to prospective migrants job opportunities in another location or country, selecting applicants and transferring the selected applicants to the jobs abroad by using force, coercion, deception or fraud.

Sometimes recruitment implies a direct contractual relationship linking the recruiter to the worker. Sometimes recruitment is an act of brokerage linking a user abroad to the worker. Abusive recruitment tends to be based on verbal agreement and therefore is either falsely documented or not documented at all.

**EMPLOYER OF FOREIGN WORKERS:** A natural or legal person or enterprise whose headquarters are located outside the State of the migrant worker and who seeks to engage, has engaged or had engaged the migrant worker in a remunerated activity under a written or oral contract.

**PRIVATE EMPLOYMENT AGENCY:** Any natural or legal person or enterprise, licenced or not, independent of the public authorities, which provides one or more of the following labour market services:

- Services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationship, which may arise therefrom.
- Services consisting of employing workers with a view to making them available to a third party.
- Other services related to job seeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of job-related information, that do not set out to match offers and applications for employment.

### 2. THE ILO AND PRIVATE EMPLOYMENT AGENCIES (PEA)

The view of the ILO on PEA has changed significantly over the last two decades. Traditionally, the ILO favoured public employment services over private recruitment agencies, as monopolies of public employment services were considered better positioned to deal with the recruitment, placement and employment of workers. In turn it was feared that private recruitment agencies were primarily acting in self-interest and could therefore be prone to be engaged in abusive practices.



In the course of the break-up of monopolies of public employment services in many countries at the beginning of the 1990s, however, this view changed, also because in many countries the private recruitment industry gained in importance. This development mirrored the changed structural economic environment and a growing demand for flexibility on the part of employers. Private recruitment agencies and their services are now fully recognized by the ILO as a legitimate actor in the labour market, often providing job placement services more effectively, more flexibly and at lower cost than public employment services. The adoption of the ILO Private Employment Agencies Convention No. 181 (1997) reflects this change in thinking and aims at setting standards for the interaction of PEA with clients and state authorities.

Sometimes recruiters, either intermediaries or agencies, are former victims of trafficking. For example, women forced to work as prostitutes may use the routes and contacts they have known in the past to recruit other women whom, in turn, they victimize. A particular problem related to abusive job recruitment comes in the shape of press or Internet advertisements. These are abundant in countries of origin, but also in countries of destination, and entice the potential migrant with false promises. The sources of misleading advertisements are very difficult to trace. Individual intermediaries and private recruitment agencies may unknowingly recruit people into forced labour abroad. It is often difficult to establish a clear link between the recruiter and the abusive employer at the end of the trafficking chain. It is therefore important not to criminalize the recruitment business from the outset but rather to establish standards that prevent abuse at any stage of the migration cycle. Recruitment may also take place in the destination country upon arrival of the migrant. Trafficking is increasingly facilitated by underground networks, which are not formally registered as private recruitment agencies. In order to carry out their abusive recruitment activities these agencies often disguise themselves as other sorts of agencies, such as travel, au-pair, domestic services or mail order bride agencies. A brief description of these disguised agencies and possible loopholes for engaging in trafficking activities is given below.

### 3. PRIVATE RECRUITERS: A TENTATIVE PROFILE

Recruiters can be roughly divided into two categories:

**Intermediary** An individual recruiter working on his/her own, but often part of a network

Intermediaries can operate under several disguises, for instance:

- A "friend of a friend"
- A family member
- Boyfriend/girlfriend, or, alternatively, fiancé/fiancée
- Respected village elder

**Agency** An individual recruiter, or an organization of recruiters, working legally, semi-legally or with a facade of legality

Private Recruitment Agencies may operate under several disguises, for instance:

- Private Employment Agencies (PEA)
- Travel agencies
- Model and fashion agencies
- Dancers and entertainment agencies
- Actors and performers agencies
- Bridal and matrimonial agencies
- Agencies that do not have recruitment as their primary activity, yet engage in it
- Pen and personal contact clubs

#### **a) Travel agencies**

Disguised private recruitment agencies often operate as travel agencies as intermediaries for trafficking into forced labour situations. Although they are mostly involved in the smuggling of people, evidence shows that they are also engaged in trafficking activities, especially in the recruitment and transportation of the victim. A lack of legislation may additionally lead to gaps in the protection of trafficked victims. Increasingly, travel agencies are engaged in offering their services to students, who want to attend language schools abroad. Student visas provide them with the opportunity to work besides studying in order to pay off education fees but also the often very excessive service fees of the travel agencies.

- First, as already mentioned, the problem of the blurring line between smuggling and trafficking becomes apparent in the case of travel agencies involved in such malpractices.
- As these travel agencies work semi-legally or even illegally and therefore do not fall under the scope of application of private recruitment agency legislation and regulations, it is difficult to detect and sanction cases of trafficking. What especially hinders the effective enforcement of this is the lack of appropriate legislation in the vast majority of countries pertaining to the specific problem of disguised travel agencies and their possible and actual malpractices.
- As travel agencies operate as a normal business, in most countries (of origin and destination) no special legislation regulating travel agencies with regard to their involvement in recruitment exists at all.
- In addition, the travel agency industry has so far only come up with self-regulation relating to the sexual exploitation of children. This Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (the Code) is a project joining the tourism private sector and the children's rights non-governmental organization ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), which aims to prevent sexual exploitation of children at tourism destinations. The tour operators and their umbrella organizations, travel agents, hotels, airlines, etc. which endorse the Code, commit themselves to implement it.

#### **b) Au-pair agencies**

"Au-pair" placement is the temporary stay of young foreigners with families, in exchange for certain services. Au pairs come in order to improve their linguistic knowledge and their knowledge about the receiving country. They usually stay in their host families for up to two years and receive board and lodging and some pocket money in exchange for help with housework and baby-sitting. The work is supposed to be light and should not exceed five hours, and au pairs are not meant to replace housekeepers or nannies. Agencies offering the placement as an au pair in a foreign country have increased rapidly in recent years, especially those operating via the Internet.

Unfortunately, malpractices of agencies and abuses and exploitation of au pairs by host families have also increased:

- The situation of exploited au pairs differs from those of migrant domestic workers. Au pairs usually enter the host country legally, and the au pair therefore cannot be easily isolated.
- However, due to their young age, au pairs are particularly vulnerable to abuses and exploitation.
- As the au-pair sector is in many (sending and receiving) countries not regulated at all, and adequate self-regulation through the “International Au Pair Association” (IAPA) does not exist to the extent that it serves for the protection of au pairs from abuses.
- The IAPA was in 1994 set up to self-regulate the au-pair industry. In 2002 a revised Code of Conduct for Au Pair Organisations was established. It is however very general in its scope of application, as it mainly provides guidelines for screening procedures of employers and au pairs. It does not stipulate any regulations as to the working conditions and duties and rights of the au pair. The IAPA itself however is in favour of deepened regulation across Europe in order to avoid the exploitation of au pairs.
- Many au-pair agencies operating through the internet seem to provide for the trafficking of young au pairs into labour exploitation as cheap and easy to control domestic workers.

### **c) Mail-order bride agencies**

Women available for marriage and willing to marry a foreigner are especially vulnerable to abuses and malpractices through trafficking activities by mail-order bride agencies. The Committee on the Elimination of Discrimination Against Women (CEDAW) has described such marriages arranged through an agency as a new form of sexual exploitation.

- These mail-order bride agencies often operate through a variety of media e.g. magazines, videos and the Internet, like dubious au-pair agencies. Often women are advertised as commodities rather than people; this portrayal coming close to various forms of pornography.
- Women who leave their families at home to marry a husband abroad are vulnerable to being trafficked through unscrupulous agencies as they are unfamiliar with their residence country, lack language skills and have not yet obtained a permanent residence permit. The last point puts mail-order brides at particular risk to stay in abusive relationships, as they are dependent on the marriage/relationship for a visa.
- Mail-order brides tend to find themselves in a situation similar to that of migrant domestic workers, as they have “chosen” to live and work in the home of men who prefer the more subservient behaviour of foreign women. These women are at risk of being forced into domestic servitude and of becoming a victim of domestic violence, including not only physical abuse, but also sexual harassment and rape.

Contrary to the at least partly self-regulated au-pair industry, the mail-order bride business is not regulated at all. Given the structure and character of the industry, self-regulation seems to be futile, so that governmental regulation is necessary to prevent mail-order brides from being trafficked for sexual or forced labour exploitation. However, evidence from the Philippines shows that State regulation can also be counterproductive. In 1990, the Republic Act 6955 outlawed all types of mail-order bride agencies. As a consequence, these agencies simply relabelled themselves as “pen-pal clubs”, so they did not fall under the above-mentioned regulation. As this example shows, so called pen-pal or contact agencies can operate as a disguise for mail-order bride agencies.

**d) Models and fashion, dancers and entertainment, and actors and performers agencies**

These kinds of career management agencies are well established in the entertainment and fashion industry as well as in professional photography and sports. They mostly involve short-term engagements in countries abroad. The basic role of these agencies is to manage their clients’ careers through negotiating terms of contracts and advising clients on future career moves. However, as these agencies have spread in recent years, especially through the internet, more and more of them are engaged in the recruitment of victims into trafficking. This can happen in various forms.

- As the nature of the service carried out by these agencies relies on trust and credibility, and the clients often are overcredulous about their career prospects, breaches of trust in the relationship between the clients and the agencies often occur.
- One the most common forms of deception probably takes place through offering non-existent jobs. Thus, the fee paid by the victim is not related to any service carried out by the agency. This especially holds true for model and fashion agencies.
- A different problem related to recruitment through these agencies is that they often charge excessive fees, which might lead into a debt even before starting the job promised.
- Another method of deception is false information on the nature of the job. A job as a dancer or performing artist may in fact turn out to be one in prostitution or the sex industry in general.

## **4. LATITUDE ALLOWED TO RECRUITERS**

In general, abusive recruitment is made easy in environments characterized by social, legal and administrative failures. Some of the major factors or conditions, which seem to facilitate abusive recruiting practices, are:

- Lack of respect for human and labour rights
- Lack of mainstream legal migration flows directly managed or controlled by the government
- Lack of information about migration in general, as well as about employment opportunities and conditions in other countries
- Inability of prospective migrants to finance their trip
- Lack or weakness of administrative tools and structures to monitor the action of recruiters

### Trafficking from Indonesia

By the 1990s Indonesians were amongst the fastest-growing migrant population in Asia. Indonesians desiring to work abroad are officially required to find jobs through 400 government-sanctioned agencies. These charge excessive fees for training, processing applications and placements. Because of this, migrants are usually already seriously indebted before even leaving the country. Furthermore, they are required to sign contracts with the recruitment agencies and have little or no power to negotiate their terms.

The agencies require prospective migrants to live in training camps for one to 14 months. Here they are often forced to work for agency staff, as well as perform tasks such as cleaning, shopping and cooking. The majority of migrants in the camps does not have mattresses to sleep on and are underfed. Physical and sexual abuse also occurs, illness is rampant and there is insufficient medical care. Agencies continue to profit from the migrants' labour when the latter finally leave for a job abroad. The salary of the first months of work is used to pay off the debt to the agency. However, even after the debt has been paid off most migrants still face forced labour conditions, this time at the hands of their employer/exploiter abroad. Indonesian migrants are unable to leave the forced labour situation because of the contract they signed with the agency, though often they have not even seen the contract or it is in a foreign language.

Even on return migrants are exploited. Returning migrants are required to pass through a special terminal of Soekarno Hatta International airport. Here, there have been reports of migrants subjected to rape and physical abuse. Moreover, many have to pay bribes in order to obtain basic information and services. If the migrant is dependent on the agency for transport, this once again leads to excessive fees, about ten times higher than the real cost.

*Anti-Slavery International,  
Asian Migrant Centre and the Indonesian Migrant Workers Unions  
<http://www.antislavery.org/archive/submission/submission2003-indonesia.htm>  
ILO: Application of International Labour Standards: Report of the Committee of  
Experts on the Application of Conventions and Recommendations, Geneva, 2005.*

## 5. THE GANG SURROUNDING AND HELPING THE RECRUITER

The recruiter rarely acts in isolation. Most of the time he or she is part of a network and relies on a chain of accomplices in his/her nefarious enterprise. The helpers and supporters of the recruiter can be:

- A "signalman or woman" at the local village level who identifies vulnerable persons
- The entire range of people involved in supplying false documentation
- The entire range of people involved in providing transportation
- Corrupt officials
- Employers including brothel owners, factory or sweatshop owners and employers of domestic workers
- Clients/customers

## 6. RECRUITMENT FOR FORCED LABOUR: AN ENTERPRISE OF DECEPTION

Recruitment involves not only coercion and persuasion, but also deception, which is the key element of trafficking. Deception can take place during all three stages of the trafficking cycle: first at the time of attracting the possible victim into a work relationship, then during her transportation and later by lying and cheating while the work relationship is in preparation or in progress. Deception is not only carried out by private recruitment agencies, but often through fake or disguised travel, model, au-pair or matchmaking agencies, which try to lure victims into an exploitive forced labour situation.

Deception can take place in the following ways:

- Excess charging of fees for visas and other travel documents
- Processing and provision of fake travel documents without informing the migrant of their illegitimate status
- Recruitment for non-existent jobs
- Misrepresenting the job and work conditions (e.g. women going abroad who believe they will work as domestic help but end up in prostitution)
- Providing the future migrant worker with a loan that is hard to pay back (particularly since the interest on the loan and the loan itself tend to be falsely inflated, though the migrant is not usually aware of this), leading to situations of debt bondage and forced labour

## 7. THE GENDER DIMENSION

Women are particularly vulnerable to trafficking and forced labour. It can be asserted that not only a “feminization of migration” has taken place, but also that consequently more and more women and girls become victims of trafficking. Evidence shows that in forced economic exploitation women and girls represent 56 per cent of the victims, and regarding forced commercial and sexual exploitation, an overwhelming majority of 98 per cent are women and girls. Women are preferred targets of unscrupulous employers, who view them as cheap, easily controllable and easily abused labour.

### a) Women and the labour market

In national labour markets, women are discriminated against in various ways:

- They suffer disproportionately from unemployment
- They suffer a gender bias in wage determination
- Their work is concentrated on a limited number of occupations, especially those which are associated with traditional female roles as carer and homemaker and sex stereotypes
- They are in an unfavourable position not only with regard to jobs but also regarding training and education
- They are confined to lower status jobs (low-skilled, low-paid, and inferior working conditions), often in the informal economy with decent work deficits and/or not adequately covered by labour legislation or social protection
- They often lack organization and representation, as they mostly work in sectors where workers are not organized and have no bargaining power
- They are often confined to individualized work situations with greater isolation and no possibility of establishing networks of information and social support

In general, labour market discrimination exposes women more than men to poverty (the so-called “feminization of poverty”) and therefore to the risks of trafficking.

**b) Women and illegal recruitment**

Several other forms of discrimination push women toward illegal recruitment. Most important among these are:

- Legal migration channels mainly offer jobs for men (in construction and agriculture)
- Women have even less access to accurate and reliable information
- Women are subject to restrictive, time consuming and costly legal migration procedures
- Countries attempt to protect women and girls by banning or restricting their employment abroad
- Women, more than men, lack financial resources to migrate legally
- The nature of the work and the forms of migration open to women often force them to rely on dubious recruiters ■

## FURTHER RESOURCES AND EXERCISES



- Weissbrodt, D. and Anti-Slavery International: Abolishing Slavery and its Contemporary Forms, Geneva, 2002.
- Langevin, L. and Belleau, M.: Trafficking in Women in Canada, Ottawa, 2000.
- Council of Europe: Domestic slavery: Servitude, au pairs and mail-order brides, Doc. 10144 19 April 2004.
- Committee on the Elimination of Violence Against Women (eleventh session, 1992), UN Doc A/47/38, General Recommendation No. 19.
- ILO: Application of International Labour Standards: Report of the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 2005.
- ILO: The role of private employment agencies in the functioning of the labour markets, Report VI, ILC 81st session, Geneva, 1994.





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# The General Policy Response To Trafficking

# 3

The most important way of preventing trafficking in human beings is for governments to establish a mainstream of legal and legitimate migrant flows. Getting most migrants to go through legal channels will help governments to better identify, isolate and combat illegal practice. In addition, legal migration flows can have positive effects on society as a whole. These can be:

- To connect migration and domestic employment policies: e.g. encourage migration of redundant skills and discourage that of rare, sought-after skills
- To better estimate the amount of remittances and encourage their use for productive investment
- To put to good domestic use the skills acquired abroad by returning migrants

## 1. THE GENERAL POLICY APPROACH

Foreign employment policies, including their institutional structures, aim to manage migration in an orderly and efficient fashion.

Possible policy areas of pre and post-migratory intervention are:

- Standard-setting and enforcement  
Elaborating rules and regulations governing migration
- Regulation of private recruiters  
Monitoring of private recruiters in order to ensure their compliance with rules and regulations
- Foreign market development  
Investigation of demand for migrant workers in foreign countries as well as promotion of the migrant workforce of the country of origin
- Migrant worker supply management  
Management of the pool of available migrant workers ready to leave the country in order to work abroad, for instance, creating a database of the characteristics of the potential migrant workers
- Support services  
These can be both pre and post-migratory. For instance, language training before leaving the country of origin and reintegration assistance upon return
- Remittances  
Managing remittances includes aspects such as how these should be transferred from one country to another
- Migrants' savings and investments  
Advising on the most appropriate way for migrants to spend their savings and encouraging the creation of microenterprises
- Return of talents and skills  
The skills of returned migrant workers should be utilized for the benefit of other nationals

Amongst other things, therefore, employment policies for work abroad aim to protect the potential migrant worker from recruitment abuses in the country of origin that may lead to trafficking and forced labour.

A central question when considering employment policies for work abroad is whether the State should intervene, and if so, to what extent. For example, should the State simply set the ground rules for recruitment so as to induce private firms to follow certain directions or should the State itself provide recruitment services, either in competition with private firms or as a monopoly?

When confronted with a social problem like mass migration, governments can choose among different policy options:

- a) They can allow migrants free movement in and out of the country, relying on market forces to regulate these flows
- b) They can opt to tightly regulate these flows, denying any free choice to individual migrants or to private entrepreneurs
- c) They can finally choose a mixed approach in which the government sets policy as well as regulations and intervenes to prevent or correct market failures, and allows latitude to private business to manage current flows

Specific and judicious policy interventions can help to maximize the benefits for, and minimize the risks to, migrants.

## 2. THE FOUR MAIN MODELS OF EMPLOYMENT POLICIES FOR WORK ABROAD

### **Laissez-faire**

The State does not intervene at all in the employment of migrant workers abroad. This liberal approach allows intermediaries and traffickers free rein

### **Regulated system**

The prime objective is to ensure that nationals obtain legal employment abroad under conditions which the authorities in the home country find acceptable. PEA are allowed to operate. The State usually intervenes at three levels:

- 1) Regulating recruitment by restricting the entry of foreign employers and their agents into the labour market
- 2) Setting minimum terms for employment contracts
- 3) Restricting the exit of workers to certain categories of workers or to those who satisfy certain conditions

Example: India has an institution called The Office of the Protectors of Emigrants. Though regulation exists, there are doubts as to the effectiveness of this institution in protecting migrant workers.

### **State-managed system**

This calls for the more active involvement of State institutions, and implies the creation of a specialized organization devoted solely to ensuring that the foreign employment policy objectives are attained: the foreign employment office. The foreign employment office has the authority to:

- 1) Establish labour attaché services abroad
- 2) Negotiate recruitment and employment agreements with foreign governments (bi- and multilateral labour agreements) or private employers

- 3) Restrict the emigration of selected categories of workers
- 4) Supervise the activities of recruitment firms
- 5) Collect fees and financial guarantees from workers and from foreign employers or their agents

Multi and bilateral agreements can be backed up by labour attachés, often part of a foreign employment office. Labour attachés are representatives of the labour migrants' country of origin. They carry out functions usually performed by national authorities in receiving countries where labour institutions are weak.

Their functions are:

- Inspecting working conditions
- Ensuring that employers behave in accordance with the contract
- Mediating between the employer and the employee
- Promotion and marketing of the "work abroad" programme

N.B. The recruitment procedure under a State-managed regime does not differ substantially from that under a regulated regime, except that the former includes the option of recruitment through the foreign employment office.

Example: The Philippines Overseas Employment Administration (POEA) is a well-known example demonstrating good practice in this area.

### **State monopoly**

The private sector plays no role in migration. The structure of this kind of system is very simple, consisting mainly of a central foreign employment authority under one of the ministries. This authority organizes recruitment directly or through public employment exchanges and may operate representative offices abroad (labour attachés)

Example: State monopolies on migration are frequent in post-socialist countries such as China or Viet Nam. However, this kind of regime may also be an option chosen by countries, such as the Russian Federation, that believe that it is the only way to avoid fraud and excessive profit-making in recruitment.

Experience has shown that trafficking is most likely to thrive under the first two policy options. When left unchecked, market forces can produce huge social damage among those people least able to understand and turn these forces to their advantage. On the other hand, an autocratic and monopolistic policy approach can prove to be too stifling on individual choice and push many potential migrants to exploit legal loopholes and seek quicker and illegal means of migrating. The following sections will explore how to implement a mixed policy approach.

## **3. THE ROLE OF LEGISLATION**

It should be recalled that all legislation - either concerning migration management or the regulation of PEA - has to be viewed in a broader context, which has to provide a coherent policy approach. In order for a State to be able to identify and protect victims of trafficking, to punish offenders and to deal with structural factors necessary for effective prevention and elimination of forced labour outcomes of trafficking, a coherent policy and legislative framework is essential. The question should therefore not only be whether to establish the criminal offence of trafficking and/or forced labour, but also to set up a consistent migration policy and to adopt administrative rules relating to PEA.

In order to establish a proper model of migration management and, by inference, to deal with trafficking and forced labour, the first stage is the drafting and implementation of appropriate legislation. Unfortunately, this is often lacking. Legislation however cannot be viewed without taking into account the broader policy framework in which migration is taking place and is being regulated this being true for both sending and receiving countries. A solitary focus on the regulation of PEA will not necessarily lead to positive outcomes and could at times even be counterproductive, especially in cases where various parts of the legislation at hand is contradictory and thus difficult to enforce. Legislation should be based on:

- Identified and defined policy objectives  
e.g. creation of a framework within which PEA operate, with appropriate sanctions if the established procedures are not followed
- Criteria to identify actors involved and their roles  
e.g. government institutions, private businesses, individual migrants and offenders
- Determination of appropriate action to identify problems and deal with them  
e.g. sanctions against traffickers
- Gender-sensitive law and policy framework

## BOX 2

### **United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

(entered into force 25 December 2003)

#### **Key features**

- Defines trafficking as a crime against humanity, marked by the intent to deceive and exploit
- Expands the range of actions considered part of the trafficking process - recruitment, transportation, transfer, harbouring and receipt of persons
- Addresses a wide range of means used, from blatant force to subtle inducements that capitalize on vulnerability, to achieve "consent"
- Makes "consent" to the intended exploitation irrelevant, where any of the means outlined in the definition are used
- Acknowledges that men are also trafficked, though it emphasizes trafficking in women and children
- Recognizes a range of purposes of trafficking, in addition to sexual exploitation
- Contains rights-based and protective social, economic, political and legal measures to prevent trafficking, protect, assist, return and reintegrate trafficked persons, and to penalize trafficking and related conduct
- Calls for international cooperation to prevent and combat trafficking

*UNIFEM and UN Project on Human Trafficking in the Mekong Sub-region, Trafficking in Persons, A Gender and Rights Perspective Briefing Kit, Sheet 2, 2002*  
<http://unifem-eseasia.org/resources/others/traffkit.pdf>

The main international legislation against trafficking is the United Nations Trafficking Protocol, which entered into force in 2003. ILO Conventions can help States to implement anti-trafficking legislation Protocol, which appends the UN Convention Against Transnational Organized Crime. The recruitment of migrant workers for employment in a country other than that of their nationality has been treated in a number of ILO Conventions, notably the Migration for Employment Convention (Revised), 1949 (No. 97), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and more recently the Private Employment Agencies Convention, 1997 (No. 181).

When considering the definition of trafficking in persons in the UN protocol, three activities are addressed by these Conventions: the recruitment, transportation and transfer of persons. The other two activities: harbouring and receipt of persons, relate to issues of forced labour, treated in two ILO Conventions: The Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). The Worst Forms of Child Labour Convention, 1999 (No. 182) identifies the trafficking of children as a practice similar to slavery. The Convention calls for countries to take immediate action to secure the prohibition and elimination of all worst forms of child labour.

In many countries national anti-trafficking legislation that complies with the international Conventions is lacking, or no legislation exists at all to outlaw trafficking. Both cases constitute serious obstacles in the fight against trafficking, and such countries should attempt to draft or amend their legislation as a matter of urgency. National legislation dealing with trafficking and forced labour can find inspiration in the provisions of international and regional legal instruments.

The ratification of international instruments can be helpful in tackling trafficking and forced labour as these instruments may serve as a guideline for drafting and implementing national legislation. Above all, however, legislation requires adequate enforcement in order to be useful at all. Again, this is lacking in many countries. As a follow-up to the adoption and implementation of adequate legislation, concrete action in the form of awareness raising efforts, e.g. the distribution of information pamphlets and posters, the institution of education and training programmes and the involvement of all relevant institutions has to be taken. An integrated approach such as this can best be formulated in a national action plan, although this requires financial and human resources and political will.

It should be recalled that international instruments regarding trafficking focus on different aspects of the trafficking process. As the trafficking cycle consists of several stages and activities, any anti-trafficking law has to be clearly formulated. Trafficking can also be dealt with by elaborating legislation not only through criminal law, but also civil and administrative law. Again, what is absolutely necessary is a broad policy framework in which PEA can operate and be regulated.

### **ILO Private Employment Agencies Convention, 1997 (No. 181)**

The Private Employment Agencies Convention, 1997 (No. 181) and its accompanying Recommendation (No. 188) include several provisions that are of relevance to the fight against human trafficking. Paragraph 8 (b) of the Recommendation stipulates that Private Employment Agencies should ‘inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment’.

Article 8 of Convention No. 181 states ‘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 protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.’ It is left to governments to determine the penalties for abuses by Private Employment Agencies, which can include criminal sanctions but also, most importantly, administrative sanctions.

Administrative sanctions include for example payment of fines, withdrawal of licences or the confiscation of assets gained via abusive practices. Article 14 (1) of the Convention states that ‘provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements’.

Labour inspection services or other competent public authorities should supervise the implementation of these provisions (Art. 14, 2). Furthermore, procedures should be in place ‘involving as appropriate the most representative employers and workers organizations [...] for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of Private Employment Agencies’ (Art. 10). There are several ways to monitor recruitment, which include regulatory as well as promotional measures in order to ensure compliance with the ground rules by private recruitment agencies: registration, licencing, self-regulation via codes of conduct, certification of profession, rating, or developing partnerships between Public Employment Services and Private Employment Agencies through joint monitoring activities of migrant workers.

The best defence against traffickers is to undermine the basis on which any profit from the activities can take place. Article 8(2) of ILO Convention No. 181 promotes in particular the negotiation of bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment of workers recruited in one country to work in another. Profits are not only derived through deception but also through excessive fees. The Convention stipulates that Private Employment Agencies ‘shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.’ Exemptions to this rule are allowed, ‘in the interest of the workers concerned’. However, social partners should be consulted and the imposition of fees will be monitored by ILO supervisory bodies (Art. 7).

## 4. MANAGING MIGRATION FLOWS: A REFERENCE

In order to establish a migration policy promoting the establishment of legal migration channels, governments have to take upon themselves certain functions and duties. Critics of the mixed management model maintain that this imposes too high a cost, but experience has shown that these costs are in fact much lower than the human and financial burden generated by haphazard, anarchic or unregulated migration flows.

The government functions needed to regulate migration flows can be identified as follows:

- Define a national migration policy. There should be a single migration policy to refer to, reflected in the relevant legislation
- Introduce a mechanism of coordination so that different parts of the government contribute to the policy
- Promote conventions and agreements with authorities of destination countries and negotiate provisions as favourable as possible to national workers
- Organize ongoing contacts and relations with actual and potential counterpart authorities dealing with migration
- Build a reputable image of the national worker among governments and employers of destination countries. This image building function inspires and permeates most other government functions
- Launch and manage public information campaigns directed at the potential migrant population (see chapter 5 for more details on this important issue)
- Organize support, relief and emergency measures in the countries of migrants' destination. This troubleshooting function is essential to instil confidence among migrant workers and to encourage them to follow legal channels. This function is to be entrusted to a network of labour or migrant attachés appointed as non-career diplomats in the consulates of destination countries (see chapter 3 section 7 on labour or migrant attachés)
- Negotiate, sign and implement bilateral migration agreements with equal quotas for men and women (see chapter 3, section 8)
- Manage current migration flows (advertising jobs, selecting applicants, providing information, transfer and allocation of workers to jobs abroad); organize turnover of workers in same jobs abroad
- Monitor and supervise private recruitment intermediaries (these include not just private employment agencies but all agencies acting under disguise, individual and groups of traffickers and smugglers, or those that do not have recruitment as their primary activity (see section 3 of preceding chapter))
- Define standards of good practice in job advertising, selection, testing, labour contract design, rates of chargeable fees, modes and cost of transfer. Encourage or enforce the respect of the standards of good practice
- Increase labour inspectorate and police monitoring of private recruitment agencies and job adverts in the press and on the Internet
- Establish a database in the country of origin on the migrant worker (details of the worker, the employer and the private recruiter or intermediary: name, age, sex, etc.)
- Train, retrain or upgrade prospective migrants for specific jobs abroad
- Gather and disseminate information to prospective migrants to prepare or support their decisions to migrate
- Organize methods and procedures for delegation, subcontracting or bidding of labour exchange agreements to private agencies
- Organize reintegration programmes for returning migrants



## 5. THE ROLE OF GOVERNMENT INSTITUTIONS

In different countries, different institutions will have different responsibilities with regard to labour migration policies. However, they tend, in general, to rely on two main institutions:

- The SMA (State Migration Authority)
- The PES (Public Employment Service)

In general, the SMA is in charge of:

- Foreign employment and migration policy design and coordination including the image building policy
- Regulatory measures and enforcement of policies
- Negotiation and signing of conventions and agreements
- Promotion and relations with counterpart institutions
- Organization of public information campaigns
- Support, relief and emergency measures

The PES administers the national public labour exchange. In many countries it also administers labour market programmes to improve skills and employability of jobseekers, and provides information on labour market conditions:

- Demonstrating standards of good practice in all areas of recruitment, for example, in job advertising, selection of workers, and skill testing. Basically, the PES should promote good practice in all the steps from applying for a job to obtaining one.
- If it appears that there is a mismatch between the skills of the workforce and those in demand abroad, the PES can organize the appropriate training in order to reduce the disparity.
- While the prime responsibility of the PES is to conduct national labour exchanges, it may also gather and put together information on jobs abroad, e.g. information on migrants' rights, conditions of pay and work in the country of destination, as well as its cultural habits and norms.
- Delegation or subcontracting of labour exchange agreements to PEA, or organizing bidding between PEA for these agreements, since the PES is the most informed institution and needs to assure high standards of practice.
- Responsibility for reintegration programmes for returning migrants.

In the developed world, the PES usually does not have a regulatory labour market function; it is often the responsibility of a labour regulation authority such as the Ministry of Labour and related government institutions.

However, in the developing world, the PES often does have a regulatory function. This may be, for instance, because there is no SMA or because the only functional employment institution at ground level is the PES. As a result the PES can take on a broader scope of responsibilities, including regulatory functions in the areas of:

- Employment of foreign workers
- Trans-border placement of national workers
- Regulation of the activities of PEA

Countries may not longer need these government institutions, if emigration becomes negligible and migration is effectively managed. For example in Spain, a former labour sending country, the SMA was abolished, and migration issues were conferred to the Ministry of Labour and Social Affairs.

## 6. THE ROLE OF PRIVATE RECRUITMENT AGENCIES

Private agencies operate in two possible ways:

- By delegation or as subcontractors or bidders for specific programmes entrusted to them by the Public Employment Service and under the latter's supervision. In this case, private agencies sell their services to PES for remuneration and operate on their behalf.
- By offering the same type of services as PES in a spirit of competition with PES. This involves in particular the management of migrant flows, i.e. advertising jobs, testing and selecting applicants, recruiting workers on behalf of the foreign employer, organizing the assignment of the worker to the job abroad including his or her transfer to the country of destination.

Private agencies claim to have a competitive edge over PES because of their greater efficiency and their culture of performance. Private agencies are widely acknowledged to have a competitive edge when it comes to:

- Job hunting and labour market prospecting in countries of possible destination
- Establishing contacts and agreements with counterpart private agencies in destination countries, which canvas jobs and vacancies to be filled by foreign workers.

## 7. LABOUR OR MIGRANT ATTACHÉS

Labour or migrant attachés are key figures in the management of migration flows. They report to the International Migration Institute and are attached as non-career diplomats to consulates (or embassies) situated in the countries of employment. Their role is to prevent problems and to solve them when they do occur. Some of the tasks they perform are:

- Promote and market the "work abroad" programme
- Supply the SMA with information on different employers' reputations, wages and working conditions, legislation, foreign workers' rights (e.g. freedom of association), etc.
- Maintain contacts with local labour inspection to inform them about any abuse or to gather information from them on implementation of legislation on working conditions
- Crosscheck dubious information or practice by suspected traffickers
- Identify and establish working contacts with non-profit organizations situated in destination countries providing help to migrant workers
- Settle disputes by mediation or conciliation
- File complaints if labour contracts are not respected, signal illegal or criminal practices to police in destination countries
- Listen to the concerns and problems of individual migrants and try to solve them
- Encourage organization of representative migrant associations
- Take emergency measures and organize repatriation

## 8. BILATERAL LABOUR MIGRATION AGREEMENTS

These are agreements between two countries on migrant workers. The aim of such agreements is the efficient matching of employers' requests with candidates for employment abroad.

These kinds of agreements, when implemented properly and based on sound guidelines, promote orderly migration and protection of human rights. Countries with a high incidence of trafficking should ensure that bilateral agreements provide equal opportunities for employment abroad for both men and women, since the latter tend to take a less prominent place in these kinds of agreements. This leads women to resort to irregular channels of migration, making them more vulnerable to trafficking.

A bilateral labour migration agreement formalizes each side's commitment ensuring that migration takes place in accordance with established rules and pre-agreed terms and conditions. The agreement will include, amongst others:

- Competent authority  
It must be decided which ministry or body is responsible for specific issues in the sending and receiving country
- Exchange of information  
Concerning working conditions, cultural differences, etc.
- Illegal migrants  
The countries must decide whether irregular migrants should be regularized, if they are to be returned to the country of origin, etc.
- Vacancy notifications  
Whether the country of employment should provide the sending country with vacancy notifications, and if so, what details these vacancies should include.
- List of candidates  
Whether the sending country should provide employers in the country of destination with a list of available candidates and how detailed the information about the candidates should be.
- Residence and work permits  
Whether migrant workers are obliged to obtain work permits in order to stay and work in the country of employment, who will issue the permits (e.g. employer or embassy) and when (before or after departure), and what conditions are to be fulfilled in order for the permit to be renewed.

Negotiation of bi and multilateral agreements between sending and receiving countries of migrant workers demands great diplomacy. This is because the authorities of the country seeking an orderly migration system need to convince the country of employment of the need for a labour agreement. As such, bi and multilateral agreements can take a long time to negotiate and to be concluded. ■

## FURTHER RESOURCES AND EXERCISES



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- Thuy, P., Hansen, E. and Price, D.: The Public Employment Office in a changing labour market, Geneva, ILO, 2001.
- ILO: Human trafficking and forced labour exploitation: Guidance for legislation and law enforcement, Geneva, 2005.
- The web site of the Philippine Overseas Employment Agency: <http://www.poea.gov.ph/>



### General

- ILO Declaration on Fundamental Principles and Rights at Work, 1998

### Forced labour

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

### Trafficking in children

- Worst Forms of Child Labour Convention, 1999 (No. 182)

### Migrant Workers

- Migration for Employment Convention (revised), 1949 (No. 97)
- The Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)

### Recruitment

- Private Employment Agencies Convention, 1997 (No. 181)
- Private Employment Agencies Recommendation, 1997 (No. 188)



### Human Rights

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- Convention on the Elimination of all Forms of Discrimination Against Women, 1979

### Slavery

- League of Nations Slavery Convention, 1926
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956

### Children

- Convention on the Rights of the Child, 1989
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Optional Protocol to the Convention on the Rights of the Child in Armed Conflict, 2000

### Crime

- Convention Against Transnational Organized Crime, 2000

### Trafficking

- Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000



### Annex II - Good practice examples A and B



Public Employment Services and its relationship with PEA: Imagine your-government has approved an increase in the budget allocated to public employment services, including the Public Employment Service and the State Migration Authority. The main task is to enhance employment placement services, both public and private. The overall objective is to increase the effectiveness of labour market services. Specifically, the government seeks with this measure to further promote recruitment and job placement activities undertaken by PEA.

- Develop a list of services the public employment services could deliver to their clients and which you can realistically offer given your limited budget
- How could the public employment services cooperate with PEA on specific employment related matters?
- Which services that are now being carried out by public services could PEA carry out? And how?
- Which additional services could be offered on a cost-recovery basis by PEA?

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# A Specific Response To Trafficking: Improving The Recruitment Process

# 4

## 1. BASIC ASSUMPTION AND PURPOSE

Private recruitment intermediaries, particularly agencies, can play an important role in preventing labour trafficking. Today, modern operators agree on the fact that private agencies can be useful actors in the labour market but, at the same time, can be prone to abuse and malpractice. The purpose of the following sections will be to identify possible areas of malpractice and to propose ways of changing private agencies' behaviour towards fair practice.

Since it is so easy for recruiters to work "underground", it is essential to combine regulatory with promotional measures in order to ensure compliance with the ground rules. There are numerous approaches to monitoring activities of recruiters and ensuring that potential migrants are protected from trafficking and forced labour. Some are more efficient than others, but all are complementary.

## 2. PRIVATE RECRUITMENT AS AN 11-STEP PROCESS

From the time a job is advertised until the time it is filled, recruitment goes through an 11-step process. It is useful to remember the exact order in which these steps take place:

- 1) A job or group of jobs comes to the knowledge of a private agency who advertises it in the media or in its own premises
- 2) Applicants to the job are registered and informed about the job, remuneration and general conditions of work
- 3) Applicants are interviewed and on the basis of this interview are pre-selected
- 4) Pre-selected candidates' applications are filed
- 5) Pre-selected candidates are skill-tested and then short-listed
- 6) The applications of short-listed candidates are shown to the employer abroad for final selection
- 7) The selected candidates are informed about the detailed contents of the job to be filled, about the general conditions of work and life, about conditions of travel and fees and charges to be paid
- 8) The selected candidates are shown and asked to sign a provisional or final employment contract
- 9) The selected candidates are provided with travel documents and travel tickets
- 10) The selected candidates are transferred to the country of employment and received by a representative of the agency or of the employer
- 11) The selected candidates are assigned to the jobs and fees are paid to the agency

### 3. ROOM FOR MALPRACTICE

Potential room for malpractice is very wide. Abusive agencies can cheat at any of the eleven steps mentioned in the preceding section. The most abusive agencies cheat at all steps, while others cheat sometimes at one or more steps. Here are some examples of malpractice:

- They can advertise non-existent jobs to attract applicants and use the number of job applicants as a marketing tool in their job prospecting
- They can misrepresent the job or the remuneration to lure applicants
- They can accept bribes
- They can overcharge for travel documents or deliver forged documents
- They can charge fees beyond the accepted levels or charge fees for the same service to both employer and worker.

Jobs and applicants are so numerous, and the recruitment process so long, that malpractice is very difficult to trace. Unless complaints are filed, most irregular behaviour escapes the attention of observers and inspectors. Among private operators, malpractice can be regarded as very tempting precisely because it is perceived as highly lucrative and low risk.

Apart from malpractice strictly linked to the nature of their job, agencies can violate the law in the same way as any other employer. They can for example:

- Impose clauses which are not mentioned in the written contract of employment
- Ignore the rules of equality of opportunity and treatment in access to foreign employment and to particular occupations
- Ignore the prohibition to supply child labour
- Ignore the prohibition on recruiting a worker in a job involving unacceptable hazards or risks or where the worker may be subjected to abuse or discriminatory treatment of any kind
- Ignore the prohibition to withhold or confiscate, albeit temporarily, a migrant worker's passport or travel documents
- Ignore the prohibition to engage in or tolerate contract substitution (for example, promising women work in the domestic service sector but putting them into prostitution in the destination country)

### 4. A YARDSTICK FOR CONTROL

In order to distinguish fair practice from foul, governments need a technical tool to be used as an example and yardstick to define fair practice. This yardstick can be a special act of parliament or a special regulation complementing an act of parliament or a circular issued by the competent ministry. These legal documents would list the different operations of an agency, define acceptable practice and malpractice, and set sanctions for non-compliance with rules.

The yardstick could also take the shape of an operational manual negotiated with and subscribed to by social partners. The manual can be a basic document of self-regulation issued by one or several associations of private agencies and imposed on its members.

Sometimes the yardstick is proposed on just one or two operations of private agencies like criteria for setting fees or a model employment contract (see box below).

### **The model employment contract**

Model employment contracts are one of the tools that should be used by recruiters to ensure that the rights of the migrant worker are respected and that situations of trafficking and forced labour are avoided. Model employment contracts should be skills-specific and country-specific, based on a proper understanding and in-depth knowledge of the working and living conditions of migrant workers, as well as the culture, traditions and legislation of the destination country.

The information in the employment contract can be used to establish a database of information on workers abroad. When matched with a database in the country of employment, this kind of intelligence will allow the proper monitoring of migrant workers.

General conditions to be included in a model employment contract:

- Description of the job, site of employment and duration of contract
- Basic monthly salary, including benefits and allowances, as well as rates of overtime pay
- Non-cash compensation and benefits, including free food and accommodation
- Regular working hours, rest days and holidays
- Maternity/paternity leave
- Transportation to and from the country/place of employment, including repatriation
- Employment injury and sickness compensation, emergency medical and dental care
- Social security rights and obligations
- Valid grounds for termination of contract
- Dispute settlement provisions

## **5. METHODS OF CONTROL**

Governments that allow private agencies to operate must adopt rules and administrative mechanisms to keep these agencies under constant control. There is no point eliminating viable and functional options! For many migrants, especially women, private employment agencies are the most efficient option/means of obtaining employment abroad. These agencies should therefore not be forced into situations where they operate “underground”, thereby becoming more difficult to monitor. This is why incentives for adherence to legal requirements should be combined with more traditional forms of control.

Control can be direct and authoritarian or indirect and participative. Governments have applied six basic methods of control, which will be briefly examined. These methods are not mutually exclusive.

### **1. Registration**

This is a loose type of control applied in the most mature labour markets. Private agencies are registered in the same way as any other industrial or commercial business and later inspected by central inspection services, with no different treatment than that reserved for other enterprises.



## 2. Licencing

This is the most traditional method of control. Licencing is mentioned in the early ILO standards as the most practical and easily enforceable way for governments to control private agencies. According to this method agencies cannot operate unless they apply for and are granted a licence. A licence is delivered when certain conditions are met. (See box 5). Licences are generally renewed. When the conditions that led to the granting of a licence are no longer met, the licence is withdrawn or not renewed.

The licencing system implies that governments set in motion special administrative mechanisms to regularly inspect agencies, measure compliance with rules in force and, in case of non-compliance, impose fines or withdrawal of licence. Weak inspection deprives the licencing system of its real worth. In these cases licencing ends up being a way for governments to levy taxes on private agencies (licences are generally granted after payment of an annual tax). Experience shows that withdrawal of licences is a relatively rare event.

Licencing should be done under a domestic commercial or trading law or by a special system of certification. Since different types of recruitment agencies may obtain licences from different ministries (e.g. the ministry of labour, the ministry of tourism, ministry of commerce), there should be institutional cooperation between them.

Licencing ought to be used as a means of improving the operations of the labour market. Licences should aim at reducing the cost of recruitment and improving the quality of job matching offers, thus preventing trafficking and forced labour outcomes.

### BOX 5

#### **Typical requirements (and documentary proof) for a recruitment agency licence**

- Legal personality or licence to conduct a business  
Documentary proof: Original articles of incorporation and limitations on foreign equity ownership
- Financial capability  
The candidate should have enough financial capability to:
  - 1 Support international operations
  - 2 Sustain possible claims for compensation by migrant workers or foreign employers or other business partners
  - 3 In the first instance, to satisfy the legal requirements for cash-bond deposits, surety bonds or such other minimum reserve stipulations or financial guarantees as may be a condition of obtaining a licence

This kind of policy is widely used because it does seem to discourage abuse and violations. In order to avoid discrimination against small businesses, the size of the financial guarantee should be linked to the number of jobs that a firm is allowed to recruit for.

Documentary proof: Significant minimum paid up capital, income taxes paid, statements of assets and liabilities, cash bond deposit, surety bond.

- Recruitment capability

Competence in identifying and selecting qualified persons for overseas jobs. Agency staff should include trained recruitment specialists and documentation officers.

Documentary proof: List of officers and staff with qualifications, clearance that staff have no criminal or adverse record.

- Management capability

Competence in organizing and managing a business, including the provision of adequate facilities to undertake international operations and extensive domestic networking

Documentary proof: Qualifications of managers, inventory of office equipment and facilities.

- Marketing capability

Competence in identifying overseas employment opportunities and negotiating contracts that benefit not only the agency owners but also the workers who are to be hired.

Documentary proof: Recruitment/service agreement with foreign principals attested by sending countries' officials or chambers of commerce in the destination country, job order or labour request, special power of attorney

N.B. Where the State apparatus for policing violations of the licence agreements is weak, licencing by itself will not prevent recruitment abuses. In fact, heavy financial commitments will simply push illegal recruiters even further underground. Therefore licencing should go hand in hand with imposed law enforcement.

*Abella, M.I.: Sending workers abroad, Geneva, ILO, 2000.*

### 3. Self-regulation and codes of conduct

Compared to licencing, self-regulation is a more recent and participative way of organizing control. It pre-supposes that individual private agencies agree to group in a representative professional association or society governed by its own internal rules and by-laws. One of the purposes of these associations or societies is to impose on themselves a code of conduct. A code of conduct:

- Defines acceptable and non-acceptable professional behaviour on the part of its members
- Establishes the basic common rules for professional conduct and responsibilities
- Provides a point of reference for members to use for self evaluation
- Sets the rules to enforce the provisions of the code and to decide on possible exclusion of members or other sanctions for non-compliance

In some cases codes of conduct are negotiated with, and seek the formal or tacit approval of government authorities. Sometimes the licencing systems and self-regulation co-exist and delivery of licences is made conditional on signing up to the code of conduct.

#### 4. Certification of profession

Attempts have been made to impose control not on the agencies but on the professionals operating in these agencies. According to this line of thinking, it is far more practicable to achieve permanent good practice by certifying the profession of employment adviser, in the same way as for lawyers, chartered accountants or architects. To be awarded a recognized certified professional title after passing State examinations would help to ensure that employment advisers comply with professional rules of behaviour.

Because of difficulties of implementation, this method of control has not gone beyond the experimental stage.

#### 5. Rating

This is the latest and most promising form of participative control. It implies the drafting and updating of a manual of good practice. The manual should be the result of a tripartite process, i.e. joint negotiation between associations of private agencies, government authorities and trade unions. A permanent joint committee would then be in charge of rating individual private agencies according to whether they comply with the professional behaviour set out in the manual. The agencies complying best would get highest ratings; those complying least obtaining the lowest ratings. It is of the utmost importance that the rating be performed by an organization independent from the controlling authorities in order to prevent corruption, particularly in the form of bribery.

The advantages of this method are that:

- It is based on negotiation and understanding between agencies and government authorities
- Rating can be advertized by agencies as a mark or guarantee of good practice and become a good marketing tool
- Those agencies with the highest ratings could receive government incentives, for example:
  - Tax incentives
  - Contracts that are processed more speedily or automatically
  - Invitations to participate in government organized missions for market development
  - Allocation of shares of the market developed by the government
  - Inclusion in a formal and publicly available list of recommended agencies
- It encourages efforts by single agencies to climb higher in the scale of ratings and improve performance.
- It is a more flexible and adaptable tool that can allow for different treatment for different agencies.
- It enables targeting of inspection and training to the lowest rated agencies.

However, a drawback to this approach is its cost and the high number of skilled professionals needed to implement it.

## **6. The Public Employment Service as a model**

This method consists in getting the PES to operate in the same type of premises, with exactly the same management methods (i.e. creativity, flexibility, and speed) as the best-managed private agencies. As such, the PES would function in the same way as a PEA, thus fostering competition between the PES and the PEA. In order for this method to be effective, the PES would need to be granted a different legal personality than that of the conventional PES, and would operate one or several agencies on a cost recovery basis.

The only difference between the PES and the PEA would lie in the fact that the PES would never deviate from legitimate practice. It would offer the market an absolute guarantee of fair practice, would compete with private agencies on their own ground and push them, by the force of example, to comply with the rules in force and with accepted good practice, leading to total quality management. ■

## FURTHER RESOURCES AND EXERCISES



- Abella, M.I.: Sending workers abroad, Geneva: ILO, pp.74-80, 2000.
- Böhning, W.R. and Noriel, C.: Protecting Indonesian migrant workers, with special reference to private agencies and complaints procedures, SEAPAT Working Paper 3, Manila, ILO, 1998.
- European Commission: Deregulation in placement services: A comparative study for eight EU countries, 1999.
- Leipziger, D.: The corporate responsibility code book, Sheffield, Greenleaf Publishing Ltd., 2003.
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- Simon Webely (Institute of Business Ethics): Developing a Code of Business Ethics: A Guide to Best Practice, 2003; <http://www.ibe.org.uk/developingPR.htm>
- Thuy, P., Hansen, E. and Price, D.: The Public Employment Office in a changing labour market, Geneva, ILO, 2001.



- Private Employment Agencies Recommendation, 1997 (No. 188)
- Private Employment Agencies Convention, 1997 (No. 181)
- Guidelines on Special Protective Measures for Migrant Workers Recruited by Private Agents, in the Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration (Geneva, 21-25 April 1997)



Annex I - Case study C, D, DF, H, Z

Annex II - Good practice examples C-H



Group work

Regulation and licencing: Imagine that you have been elected as member of a tripartite consultative body to discuss new regulations and monitoring mechanisms on PEA. Previous practice has been to simply register PEA like any other business but it has been proven insufficient. According to anecdotal evidence, there is a lot of malpractice but no official data has been collected so far. The Minister has decided to introduce a licencing scheme and assigned you the task of formulating recommendations to the ministry as well as to draft specific guidelines to implement the future bill.

- 1) How can you improve your information basis about the estimated number of operating PEA and common malpractice?
- 2) Draft the main provisions of a new law on PEA. The proposed law should at a minimum include a definition of PEA that you want to target, licencing requirements, agency fees (levied on clients), and the possibility to operate in foreign labour markets as well as to recruit foreign workers.
- 3) Draft guidelines for screening applications for licences and sanctions for non-compliance.

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# A Specific Response To Trafficking: Public Information

# 5

## 1. EFFECT OF INFORMATION

Accurate and timely information is the single most powerful tool that governments can use to deter potential migrants from dubious migration projects and, by implication, to prevent trafficking.

Ignorance among potential migrants is one of the main underlying causes of trafficking. To the question 'if you had known before leaving your country what you know now, if you had known in advance what experience you were going to be confronted with, would you have migrated just the same?', victims of trafficking in their vast majority reply: 'No, if I had known in advance the extent of the ordeal that I had to go through I would have never left the country or I would have left it later following other more protected channels'.

## 2. THE DISSEMINATION OF INFORMATION

### **a) Before dissemination, information must be organized:**

- a. Traced at the source
- b. Collected
- c. Ordered
- d. Updated
- e. Stocked
- f. Transmitted through numerous channels (web sites, data banks, books, pamphlets, flyers, newspapers, etc.)

In some cases, when migrants are the target users, the SMA is responsible for the funding and organization of this type of information; in others it is the PES. Organized information is then made available either directly to the individual migrant or to other intermediaries such as PEA.

### **b) Information disseminated should have three important characteristics**

- Clarity  
Simplification of procedures and reduction of paper work to the bare minimum so that potential migrants can understand the stages in the migration and recruitment process.
- Easy accessibility  
Future migrants must have rapid and easy access to information on recruitment agencies, including those that have been blacklisted or given awards, e.g. hotlines, web sites, etc.
- Consistency  
Different institutions, such as governments, trade unions, NGOs, and so on, may distribute information to potential migrants. Care should be taken that the information distributed is not contradictory and

conveys the same message. Countries should aim at creating a single market information system on jobs abroad, with the information gathered, organized, edited and distributed by the SMA.

**c) Information should be disseminated using a variety of channels:**

- Radio  
E.g. soap operas
- Television  
E.g. special reports
- Pre-recorded audiotape  
Especially for illiterate potential migrants
- Travelling exhibitions of photographs and videos
- Booklets in cartoon strip form  
Especially for illiterate and semi-literate potential migrants
- Local and regional newspapers
- Internet

### 3. STAGES IN DECISION MAKING BY POTENTIAL MIGRANTS

Empirical research has shown that potential migrants make their decision to leave their country only gradually. Decision making is a process that follows three distinct, albeit overlapping, stages:

1. Workers consider migration as one among several options
2. The general decision to migrate is made, but details such as the country of destination, the type of job, or migration channels, have not yet been decided upon
3. Jobs, channels and formalities are actively prospected and organized

The types of information that potential migrants need to make their decisions is different according to the stage they are in. Information goes from very general at the early stage to very specific at the final stage. Experience has shown that information provided at stages 1 and 2 has the strongest effect in building awareness of the dangers of trafficking and in turning the potential migrant away from risky choices. Providing general information directed at an as yet unidentified population is precisely the objective of public information campaigns.

### 4. PUBLIC INFORMATION CAMPAIGNS (PICS)

The general objective of Public Information Campaigns is to provide the right information at the right time in order to help prospective migrants to build sound and profitable migration projects. Public Information Campaigns are costly exercises in absolute budgetary terms, but costs are actually low when compared to the economic and social benefits of trafficking.

In order to be effective, Public Information Campaigns must meet some basic conditions:

- PICS must be a permanent feature of government action and not just a one-off endeavour; they should be financed with regular budget appropriations
- PICS require high artistic and technical skills: they should be entrusted to a team of specialists
- PICS should bear the mark of reliability and credibility and be conducted by an entity with an undisputed moral reputation like the SMA or a specialized body reporting to that authority

- Facts and data which feed PICs must be collected from reliable sources, checked, stored and organized on a permanent basis by a permanent team; ad-hoc surveys and enquiries should be entrusted to specially skilled contractors (e.g. the blacklist of private recruitment agencies should be continuously updated)
- To be compelling, the message should target the prospective migrants and be geared to their idiosyncrasies, expectations and language
- To be trustworthy, the message conveyed should be balanced, unbiased and well argued. In this regard, the question of trafficking should be clearly addressed: the risks, the methods used, the profile and behaviour of traffickers fully illustrated
- Not one, but a variety of forms of audio and visual communication should be used: radio and TV spots, documentaries, situation comedies, interviews, debates. The population reached expands with the number of different means used
- The message conveyed should not only be informative but educational; it should be convincing enough to replace or run counter to so-called popular wisdom, superstitions, abusive generalizations and hearsay, which influence individual thinking and, in the absence of better information, determine decisions and behaviour
- The message should be designed to reach all media users (essentially radio and TV, but also Internet)
- Messages should be designed not only to flow in media but to be stocked in Internet sites and printed publications; stocked information should be available on request to information seekers
- PICs should relay information material to other communicators and educators such as adult training centres, trade unions, churches and institutions of higher learning
- Impact of PICs should be regularly evaluated and their contents reviewed and compared to that of PICs in other countries

## 5. COUNTRY SPECIFIC AND JOB SPECIFIC INFORMATION

Public information, such as that disseminated by PICs, is targeted at a wide and general audience. Specific information, on the contrary, is meant to be delivered on a person-to-person basis and should serve individual needs, requests or projects.

### **Country specific information**

This is the type of information that migrants look for when they reach the second and third stages of decision-making. Even though it passes from one person to another, some of this information is recurrent and can be useful to many persons. We can call it country-specific, or labour market-specific. It includes data related to a country or labour market as a whole. It can touch on:

- General conditions of work and life
- Trade union organization
- Minimum wages
- Benefits
- Channels and transfer charges for cash remittances
- Housing
- Schooling
- Transport
- Facilities to learn the language




Country specific information also includes data related to the procedures required before departure, for example:

- Travel documents
- Visas
- Clearances
- Health certificates
- The time it takes, on average, to obtain these documents
- The permissible fees or upper limits of fees that be can be legitimately charged for services related to these procedures

### **Job specific information**

Detailed information needed at stage 3 of decision making should be job specific, i.e. specific to the position to be filled. Information of this kind relates to:

- The contents of the job
- The lines of supervision
- The rates of gross and net wages, and other benefits
- Means of reaching the worksite
- The reputation and reliability of the employer
- The working conditions  
For example, safety, health, risks of hazards
- Access to training
- Access to assistance  
For example, to trade unions and migrant organizations
- Amount of money to be paid for fees and charges, and other deductions

In the case of job specific information, the line between the source of information and the user is short and direct. The information is gathered and delivered by the broker between the employer and the migrant worker, i.e. the SMA, the PES or the private agency. 

## FURTHER RESOURCES AND EXERCISES



- Hugo, G. and W.R. Böhning: Providing information to outgoing Indonesian migrant workers, Manila, ILO, 2000.
- UN web site for children on forced labour and other core labour standards: <http://www.un.org/Pubs/CyberSchoolBus/3PLUSU/intro.html>



Annex II - Good practice examples I - K



### Public Information Campaigns

Divide the participants into groups of 3-5 people and give them 30 minutes to discuss how information concerning recruitment practices should be provided for potential migrant workers in their country during three distinct phases: Pre-migration, pre-departure, and post-arrival. Their answers can be guided by considering the following questions:

1. Who should be provided with the information?
2. What information is required?
3. Who should disseminate the information?
4. How the information should be disseminated (by looking at the characteristics of target groups)?
5. Where will the information be most effectively provided?



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# A Specific Response To Trafficking: Law Enforcement

# 6

When measures to prevent trafficking prove to be insufficient and incentives to encourage good practice fail, governments have no recourse but to monitor closely, clamp down on and prosecute offenders. The purpose of this chapter is to examine the issues linked to law enforcement and sanctions.

Law enforcement officials and labour inspectors both play a crucial role. It is imperative however, that they enforce the law in a consistent and coordinated fashion while complying with national legislation, criminal procedure and State practice.

In order to operate effectively, law enforcement officials must have clear benchmarks and standards against which the performance of private employment agencies, as well as other types of agencies, can be evaluated. The conditions and criteria stipulated in the licence can be used here, as well as codes of conduct and, of course, relevant legislation concerning recruitment, trafficking and forced labour.

## 1. TRACKING MALPRACTICE AND OFFENCE

Tracking malpractice is the first and often the most difficult step in the process of law enforcement. Before any investigation is started and any charge pressed, offence needs to be identified and proven. As such, activities that are sanctionable should be defined, for example:

- Aiding trafficking
- Abetting trafficking
- Instigating trafficking
- Attempting trafficking
- Omission to act against trafficking
- Conspiracy to undertake trafficking

In cases of self-regulation, like that agreed upon by associations of private agencies, the burden of tracking malpractice among the member agencies lies in the first place with the association. As set by the association's own rules, an internal system of investigation and ruling can lead to a sanction (blame, fine or exclusion) with no judicial effect. When the offence is an overt breach of law, law enforcement authorities become involved, followed by administrative or judicial procedures of investigation.

## 2. GATHERING OF INTELLIGENCE

Once the acts that constitute violation of the law have been clearly established and are well known to the relevant police authorities and labour inspectors, then intelligence must be gathered on abusive recruitment practices.

### **Type of intelligence required: Some examples:**

- Recruitment methods  
E.g. deception and/or abduction, details of suspects and other victims involved, premises, etc.

- Advertising mediums  
“Word of mouth”, printed media such as newspaper advertisements, internet advertisements. Here the full contact details mentioned in the advertisement are important, as well as the actual text. These types of advertisement are very hard to track down.
- Forged identity documents  
Preparation and acquisition
- False visas  
Preparation and acquisition
- Travel documents  
Type of payment made and travel agents used
- Travel routes and means  
Routes to the country of origin and means of transport
- Employment in destination country  
Sweatshops, prostitution, etc.
- Accommodation in destination country  
Personal space, other residents
- Financial intelligence  
Transactions in respect of all the above

### **Intelligence and information sources**

Sources that can provide vital information on trafficking can be both law enforcement or non-law enforcement. In both cases it is crucial that close cooperation is maintained between institutions that could be providing or channelling the right information.

- Victims of trafficking and forced labour
- Labour attachés who get their information from victims of trafficking in the country of employment
- Border police who stop migrants trying to get out of or into a country
- NGOs in the country of employment which offer assistance to migrant workers
- Trade unions and employers’ organizations in destination countries who receive and convey the complaints and pleas for help of victimized migrant workers
- Frontline police, border post personnel, labour inspectors  
E.g. following up on suspect advertisements in newspapers, on the internet and other media, undercover raids, labour inspections, informal surveillance, etc.
- Community surveillance  
E.g. by NGOs
- Information received from registered and spontaneous informants
- Local, regional and national databases
- International databases such as Interpol, Europol, the SECI Centre, etc.
- Relevant databases maintained by other agencies  
E.g. immigration services, customs organizations, border police, relevant ministries such as health, employment and labour, etc.
- Relevant international organizations and NGOs
- Public sources  
E.g. media reports, academic research

### 3. INTERAGENCY COOPERATION

When monitoring the behaviour of abusive employers as well as recruiters, it is essential that different groups and institutions work together at local, regional, national and international level in order to have the most up to date and complete information. The main way of organizing this intelligence is by creating a database of information on migrant workers: personal characteristics, employment conditions, recruiters, etc. This database should include the situation in the country of origin as well as in the country of employment, thus allowing the migrant to be traced.

One way to ensure effective interagency cooperation is by drawing up a memorandum of understanding. This mutual agreement sets out the roles and responsibilities of the different institutions involved.

Some examples of agencies that could cooperate:

- Law enforcement agencies (police, labour inspectors, immigration authorities, etc.)
- Prosecution agencies
- Inter-ministerial departments
- International organizations
- NGOs
- Trade unions
- Employers' organizations

### 4. LABOUR INSPECTORS

One important enforcement agency for the monitoring of private recruitment agencies is the institution of labour inspection. Generally, labour inspection has a key role in implementing and monitoring core labour standards, including the abolition of forced labour as the outcome of trafficking at the national, regional and community level. In addition, it is important for the mainstreaming of decent work across all economic sectors, including the informal sector. The ILO Constitution requires all member States to set up a labour inspection system, which is defined as a public function carried out by the government. The main functional areas of a labour inspection system are: general working conditions, occupational safety and health, (illegal) employment and industrial relations.

The basis of a labour inspection system engaged in anti-trafficking activities is first of all political will and political support, often expressed in State budget allocations to the labour administration system. Additionally, labour inspectors can only carry out their functions properly if their work is based on an appropriate policy framework and sound and consistent legislation; in the case of trafficking this is especially vital, as has already been discussed under "The Role of Legislation" in Chapter 3. Outdated, fragmented and contradictory legislation and regulations may hinder labour inspectors from carrying out their functions correctly.

One of the difficulties in combating the forced labour outcomes of trafficking is that these often take place in the informal sector. Labour inspections should therefore not be planned based solely on official business registers, but should also cover the informal sector. This however, especially in the case of the domestic servitude sector, is hard to achieve, since in most countries the law provides that when workers live and work at the same premises, the occupier's permission is required. In many cases this requirement is abused simply so that the (illegal) employment under exploitative conditions can not to be detected.

Labour inspection without determined enforcement and enforcement without visible application of available and effective legal sanctions will however not contribute to combating the problem of forced labour outcomes of trafficking. In addition, as a measure of deterrence, the detected cases should be publicized as a warning to other non-compliant employers.

Labour inspectors especially face difficulties in enforcing regulations on PEA acting under disguise. One common feature of these agencies is that they do not typically fall under the scope of the PEA regulations and legislation as they are not formally carrying out their business as a PEA. Thus, the monitoring of these businesses is made more difficult, as is also the possible sanctioning of wrongdoers. The supervision of these businesses not registered as PEA hence is left to the functions and duties of the general labour inspection system. A possibility of supervision of the disguised PEA is the identification of tax or fiscal revenues of these companies. Through this, it can be determined whether the companies are doing normal business or act under disguise as a PEA. Another possibility for better monitoring of these agencies is the more indirect way of the State encouraging self-regulation of the industry through codes of conduct and through awarding self-regulating efforts a “stamp of approval”. Joint committees with representatives of the respective industries could be set up with the responsibility of guaranteeing the application of the code and handling complaints and imposing penalties for any infringement of its provisions.

## 5. FILING COMPLAINTS

In many cases information on offenders is obtained through the complaints of returning victims of trafficking and forced labour. Even the complaint of a migrant not having been in a situation of forced labour, but having suffered abusive recruitment practices, can constitute an important lead. However, for complaints to be effective, a complaints procedure should be in place. Such a procedure tends to be composed of three tiers:

### Tier 1 Private Employment Agencies

The PEA of which the migrant is a client should be the first port of call in the case of abusive employment abroad. The PEA should attempt to settle the dispute between employee and employer amicably and by voluntary agreement.

### Tier 2 PES/SMA/trade unions

If tier 1 fails, then at this stage, the institutions mentioned should provide impartial and effective third-party assistance through conciliation, arbitration, and mediation. Institutions should get in touch with the counterparts in the country of employment. The PES and the IMI should revoke or suspend permits of PEA or satisfy claims for refunding. The trade unions should have a say in these actions.

### Tier 3 Adjudication

Though prolonged and costly, this is the best way to deal with human rights' abuses. Complaints involving acts that are criminal in nature and require the imposition of penalties such as fines and imprisonment are within the jurisdiction of the courts.

## 6. PROSECUTION: DEALING WITH VICTIMS OF TRAFFICKING

Most prosecutions of traffickers are based on the testimonies of victims. However, it is not always easy to obtain a testimony from a victim of abusive recruitment practices. The victims must first be identified and then be treated appropriately

### **Who is the victim?**

Depending on the stage in the trafficking cycle, the victim may be:

- Fearful of repercussions by the trafficker/recruiter on her/himself or loved ones
- Having severe financial problems
- Homeless
- Without ID documents
- Not speaking the language of the country of destination
- Afraid to disclose their irregular status in the country of employment
- Unfamiliar with the appropriate procedures in the country of destination
- Distrustful of authorities  
E.g. because they have encountered corrupt officials
- Afraid of stigmatization  
E.g. women that have been forced to work in the sex industry
- Seeking to migrate

As such, their physical and psychological well-being can be precarious. Because of the permanent fear they may live in, potential or actual victims of trafficking and forced labour may be unwilling to testify in order to protect themselves and /or their loved ones. Also, the ardent desire to migrate may make the person reluctant to cooperate with police as he/she may see this as eliminating their main migration prospect.

As such, law enforcement officials can be faced with different types of victims of trafficking and forced labour:

- A victim that will not cooperate with law enforcement officers and labour inspectors
- A victim that will provide intelligence but not testimony
- A fully cooperative victim who is willing to testify against the recruiter/trafficker

### **Dealing with witnesses**

- Potential witnesses must be provided with information about procedures and risks involved  
E.g. threats to oneself, to one's loved ones, etc.
- Requires the establishment of trust
- Requires addressing the victim's genuine needs and fears
- Witnesses should be treated as victims of abusive recruitment practices
- The safety of the witness and his/her loved ones should be paramount
- The confidentiality of the information given by the victim should be respected
- Safe ways of giving testimony should be provided  
E.g. video link, tape recordings
- The investigators should conduct a continuous risk assessment with respect to the safety of the victim and his/her loved ones
- The witness should be given information about other migration possibilities
- If the witness is a victim of trafficking and forced labour (thus finds him/herself at the end of the trafficking cycle), adequate social, psychological, legal and financial support should be provided



Law enforcement authorities realize that an effective fight against trafficking is not possible unless victims are encouraged to file complaints which would lead to prosecution and sanctions by a criminal court. They have recently introduced some forms of encouragement. If victims accept to formally file a complaint against their trafficker/exploiter, the law enforcement authority can, for example:

- Offer physical protection and a change of residence
- Obtain new ID documents
- Direct to or place the victim in a shelter
- Offer a residence or work permit in the country of employment

## 7. ADMINISTRATIVE AND CIVIL SANCTIONS

Once the offence has been tracked and the offender identified, the case is naturally brought to a judicial authority for ruling. The sanction is determined based on the nature of the offence and decided according to the provisions of the law. The case can be brought before an administrative authority or a civil court. The types of sanctions imposed by an administrative authority can be:

- Injunction to introduce changes
- Payment of fines
- Temporary closure of firm until changes are introduced
- Reinstatement of a worker
- Temporary or permanent withdrawal of licence

The types of sanctions imposed by a civil authority can be:


- Refund of financial damage caused
- Repair of moral damage with a lump sum
- Payment for space in the press advertizing the court ruling
- Removal of all possible measures limiting fair competition

## 8. CRIMINAL SANCTIONS

When the offence is defined by the law as a crime, it follows the procedure of investigation and prosecution included in the criminal code of justice. Sanctions of this type are the heaviest such as:

- Confiscation of assets
- Deprivation of rights to sign contracts or commit funds
- Home confinement or imprisonment

## 9. STIGMATIZATION OF OFFENDERS

A good deterrent to future possible foul action is to stigmatize the offence, which means, in practice, to publicize and circulate the court rulings concerning offenders and the sanctions imposed on them. This type of publicity would highlight the risks faced by all those practitioners or traffickers tempted by malpractice. This information on past rulings can become part of the Public Information Campaigns mentioned in the preceding chapter in the form of a black list of PEA. 

## FURTHER RESOURCES AND EXERCISES



- Kartusch, A.: Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe, Warsaw, OSCE, 2001.
- Böhning, W.R. and Noriel, C.: Protecting Indonesian migrant workers, with special reference to private agencies and complaints procedures, SEAPAT Working Paper 3, Manila, ILO, 1998.
- ILO: The role of labour inspection in combating child labour, Geneva, 2001.
- ICMPD: Regional standard for anti-trafficking police training in SEE: Training manual, Austria, BMI, 2003.
- UNDP: Best practice: Law enforcement manual for fighting against trafficking of human beings, 2003.
- WHO: Ethical and Safety Recommendation for Interviewing Trafficked Women, 2003.



### Annex II - Good practice examples L and M



#### Group 1: Inspection of workplaces suspected of forced labour

Please refer to case study 4 in Annex I. Divide the participants into several working groups. Distribute the case study to each group and give enough time to let them answer the corresponding questions. Then let each group choose a spokesperson who will give the rest of the participants a summary of the case study, as well as the answers to the questions accompanying the case study.

#### Group 2: Questioning victims of abusive recruitment practices

Please refer to the case study in Annex I. Let the participants discuss in small groups what questions should be asked of a recruiter suspected of trafficking or smuggling. Let them make a checklist and compare these between groups. Below are some suggestions.

#### Suggestions for a checklist:

1. Was the initial contact between victim and recruiter/trafficker voluntary; if so, who initiated it?
2. Where and when was the first contact made?
3. What was the method of contact - Was it by advertisement or personal contact direct with a recruiter/trafficker or through a third party?
4. What were the means of communication?

5. What were the arrangements and what did the person understand the arrangements to mean? Did the victim know what he/she was going to be involved in?
6. Where was he/she told she was going to live in the country of employment, and with whom?
7. What were the financial arrangements? Did he/she pay any money in advance or was a debt-bondage agreement made?
8. How were payments to be made? Directly to the recruiter/trafficker, to another person in the country of destination, by bank or money exchange transfer to the country of origin or to a third country?
9. Was he/she told that additional infrastructure costs might be incurred?
10. Did the recruiter/trafficker know the home address of the potential trafficking victim or of his/her loved ones? Did the recruiter/trafficker claim to know any of these details?
11. Was any sum of money or goods of value exchanged for the victim of abusive recruitment practices with a member of his/her family, or another individual having some control over him/her?
12. What travelling documents had he/she obtained?
13. In relation to the above, were there any other witnesses?

#### Group 3: Labour inspection, licensing and monitoring

Please refer to case study L in Annex I. Imagine you have been appointed by the Minister to set up a special unit within the labour inspection team that would issue licenses and monitor compliance with existing law. You will have a limited budget available to hire new enforcement staff, who you would also need to train. You will have to consult social partners and other stakeholders, such as the police, immigration service and other ministries.

1. Define the role of this enforcement unit in relation to other government authorities. Where would this unit be situated in the ministry and how can it reach out to the regions?
2. Make a proposal to the Minister to train the staff required for this new unit on law enforcement (intelligence, dealing with complaints). What would be the elements of such a training programme?
3. Develop a strategy to raise public awareness on these new regulations and how they will be enforced by your unit.



- Which specific measures should be taken in destination countries?
- What might be the reasons for slow prosecutions?
- How could prosecution of traffickers be expedited?
- How can corrupt law enforcement personnel be identified?
- How can evidence on corrupt law enforcement personnel be obtained?
- Where does the work of the labour inspectors end and that of the police begin?
- How can victims be encouraged to cooperate with the police?
- What are the most important difficulties that the police have to overcome?
- What is the nature of the police-judiciary relationship (Including criminal, civil and labour courts)?
- What can the police do to unmask disguised employment agencies?
- What police and labour inspectorate activities should be given priority in the case of a serious lack of resources?
- What skills are needed so that a multi-agency team can function?
- What incriminating evidence should be looked for during a raid?  
For example, during raids in countries of employment, door keys can be important incriminating objects as the possession by the trafficker of the key to the accommodation of the victim indicates the former's control over the latter.



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## RECOMMENDED REFERENCES

### Reading

Abella, M.I.: *Sending workers abroad*, Geneva, ILO, 2000.

Bales, K.: *Disposable People: New Slavery in the Global Economy*, California, University of California Press, Ltd, 1999.

Böhning, W.R.: *Employing foreign workers*, Geneva, ILO, 1996.

Böhning, W.R. and Noriel, C.: *Protecting Indonesian migrant workers, with special reference to private agencies and complaints procedures*, SEAPAT Working Paper 3, Manila, ILO, 1998.

ILO: *A Global Alliance Against Forced Labour*, Geneva, 2005.

ILO: *An information guide: Preventing discrimination, exploitation and abuse of women migrant workers*, Geneva, ILO, 2003.

Kartusch, A.: *Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe*, Warsaw, OSCE, 2001.

Kuptsch, C. (ed): *Merchants of Labour*, Geneva, ILO, 2005.

Le Breton, B.: *Trapped: Modern Day Slavery in the Brazilian Amazon*, London, Latin American Bureau, 2002.

ILO: *Human Trafficking and Forced Labour Exploitation. Guidance for Legislation and Law Enforcement*, Geneva, 2005

ILO: *Trafficking in Human Beings: New Approaches to Combating the Problem*, Geneva, ILO, 2003.

Thuy, P., Hansen, E. and Price, D.: *The Public Employment Office in a changing labour market*, Geneva, ILO, 2001.

US State Department: *The Annual Trafficking in Persons Report*, 2005  
<http://www.state.gov/g/tip>

WHO Ethical and Safety Recommendation for Interviewing Trafficked Women 2003.

## Web sites

Anti-slavery [www.antislavery.org](http://www.antislavery.org)

UN web site for children on forced labour:

<http://www.un.org/Pubs/CyberSchoolBus/3PLUSU/intro.html>

MacDonald, C.: Creating a Code of Ethics for your Organisation

<http://www.ethicsweb.ca/codes/>

POEA: <http://www.poea.gov.ph/>

## International Conventions and Recommendations



### General

- ILO Declaration on Fundamental Principles and Rights at Work, 1998

### Forced labour

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

### Trafficking in children

- Worst Forms of Child Labour Convention, 1999 (No. 182)

### Migrant Workers

- Migration for Employment Convention (revised), 1949 (No. 97)
- The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

### Recruitment

- Private Employment Agencies Convention, 1997 (No. 181)
- Private Employment Agencies Recommendation, 1997 (No. 188)



### Human Rights

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- Convention on the Elimination of all Forms of Discrimination Against Women, 1979

#### Slavery

- League of Nations Slavery Convention, 1926
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956

#### Children

- Convention on the Rights of the Child, 1989
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Optional Protocol to the Convention on the Rights of the Child in Armed Conflict, 2000

#### Crime

- Convention Against Transnational Organized Crime, 2000

#### Trafficking

- Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000





**CASE STUDY A**  
(GROUP 1)**Forced labour: The experience of Andrei<sup>1</sup>**

'My name is Andrei, I am Romanian and am 35 years old. I left for Spain four weeks ago as I had heard that there are many jobs in agriculture there for people like me. My plan was to get a "Schengen visa" for three months and to work as much as I could during this period of time. By the time I reached Budapest I had spent almost all of the money that I had saved for my journey. I decided to stay in Hungary for a while to earn some more money and then continue my travel.

In the bus I met someone working at a construction site in Hungary who told me that he could help me find a job. We travelled to Kobanya together. There is a place in Kobanya where employers would come to look for workers every morning. It was there that we met a man who needed workers on his farm to help with the harvest. He promised us that food and accommodation would be provided and that we would earn Ft 3,000 (~US\$ 13,40) per day. We accepted the offer and were taken to his farm 50 km away from Budapest.

There were already 17 other Romanians working on the farm: ten men and seven women. I was in shock to see the conditions they were living in. All 17 slept in a garage. I could not believe my eyes! I should have left at that very moment. Also, when we reached the worksite we were told that accommodation would be deducted from the Ft 3,000 and that we would receive less in cash, though the exact amount was not specified.

We were treated like slaves, prisoners. Huge pit bulldogs were watching us day and night. We tried to escape once but the dogs chased and bit us. When we were brought back we were beaten by the "master". The owner of the farm told us that if we didn't stay to work at the farm, he would hand us over to the police, tell them that we had stolen from him and that we would go to jail. He said that he had good friends within the police and that they accepted money from him.'



- What are the elements of coercion and exploitation in Andrei's case?
- How would you inspect a workplace such as this?
- What would constitute incriminating evidence? How would you interview the workers?

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<sup>1</sup> The case is based on the ILO rapid assessment on trafficking and forced labour in Hungary (Draft Report 2004). Names and places have been changed.

### **Trafficking for sexual exploitation: Mariam from Kazakhstan<sup>2</sup>**

'My name is Mariam and I am 17 years old. I am the eldest daughter of my parents who live in a small village in Kazakhstan. I dropped out of school when I was 16, trying to help my parents to take care of my younger sisters and brothers. We have a small farm, which helps us to survive. Sometimes, I can sell vegetables on the market. My father is entitled to a small State pension but he never received any money. A friend of mine who is also selling vegetables on the market sometimes, said she knew someone who could get me a well-paid job abroad. She introduced me to a man named Dastan who proposed me work as a sales-assistant in Samara. When he met my parents he offered them US\$ 300 for me and they accepted. Using forged documents and pretending to be my father, Dastan and I crossed the border into Russia.

When I arrived in Russia I was taken to a room in a hotel with other girls. There were many people there, looking at our bodies and asking our ages. I saw a man giving money to Dastan, who told me that this man would give me a job as a salesperson. But when I arrived at the flat where I was to live with other girls, I was told that I would work as a prostitute. I refused and said that they could do anything to me but that I would never prostitute myself. They punished me: beating me, raping me and starving me. After five days I gave in and obeyed the pimps.

Living in the flat was like living in a prison: iron doors and barred windows. There were guards watching us all the time and they took my forged ID documents from me. Even when we went to the clients by car, the chauffeur was watching us. One day, while on my way to a client, the chauffeur of the car was involved in a crash. I ran out of the car and hitchhiked to a nearby town. I was scared that the pimps would find me and did not dare to contact the police. Finally, a man who took pity on me brought me to this centre where I am staying with other girls who have been in similar situations. I would like to go home but I am too afraid that Dastan is still there and that he would tell my parents what I have been forced to do in Russia.'



- What are the elements of coercion and exploitation in Mariam's case?
- What questions would you ask a victim of trafficking such as Mariam in order to make her feel at ease and cooperate with law enforcement agencies?
- How would you track down intermediaries such as Dastan?

<sup>2</sup> The case is based on the SAP-FL study *The new forced labour in Russia: Irregular migration and trafficking*, Geneva, 2004. Names and places have been changed.

## CASE STUDY C

(GROUP 3)

### Abusive recruitment practices: The case of Petruso<sup>3</sup>

'My name is Petruso, I come from the Ukraine and am 20 years old. I would like to make money but there are no good jobs in my country. There are many Ukrainians who leave to work in countries such as England and Germany. When they come back they are rich. So I also decided to work abroad.

I didn't really know how to find a job in another country so I looked in the local newspaper. I found an advertisement for well-paid jobs in agriculture. The contact details given in the advertisement were those of a tourist agency. When I went to see them they told me that they not only provided the job, but also the necessary travel documents as well as transport. They told me that they had a good job for me in England. They could also help me obtain a passport in a short amount of time and a plane ticket. The fees for their services were around US\$ 5,000. Since I didn't have this amount of money, the agency offered me a loan, which I took.

When I arrived in England by plane I was met by a man who took me to a farm. Conditions were very bad. I worked many hours and was paid only half the salary that the tourist agency had promised me. I changed employer several times in England and met other Ukrainians. Most of them also had debts but some had found their work through official channels. They had paid almost nothing to find a job in England. I felt very betrayed but I couldn't leave because I had to repay the debt back home'.



- What are the elements of coercion and exploitation in Petruso's case?
- How could you use advertisements in newspapers and on the Internet to track down illegal recruitment agents?
- How would you inspect an agency such as the one above? What would you look for?

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<sup>3</sup> The case is based on the ILO rapid assessment on trafficking and forced labour in Ukraine (Draft Report 2004). Names and places have been changed.

**Assistance to actual and likely victims of trafficking and forced labour:  
The case of Corneliu**

Corneliu is a Romanian construction worker, aged 34. During most of his professional life he worked in Bucharest. He heard that he could make more money working on construction sites in Italy, so he contacted the Romanian National Office for Recruitment and Employment Abroad, but did not succeed in obtaining a work permit for any destination country. A private recruitment agency finally offered him a contract where he would be able to circumvent the bureaucratic hurdles. Corneliu signed the contract, paid a fee of US\$ 3,000 to the agency and left for Italy.

When he arrived at the worksite in Italy, he found that the accommodation was very bad and that he had to work longer hours than indicated in his contract. After one month, Corneliu demanded his monthly salary as agreed, but the employer put him off from day to day. After more than two months, Corneliu had an accident while he was carrying heavy steel girders without any protection. The employer dismissed him immediately, saying that he did not wish to see him again. When Corneliu demanded his salary, the employer gave him only a part of what was agreed upon at the beginning of employment, and threatened to denounce him to the police.

As he had no valid work permit for Italy, Corneliu did not dare to report to the police, but contacted a NGO that was affiliated to an Italian trade union. The NGO provided him with shelter and medical treatment after the accident. Local authorities insisted that Corneliu had to return to Romania and pursue his case from there. The Italian NGO and its affiliated trade union contacted their Romanian counterparts and reported the case of Corneliu.

Back in Romania, Corneliu demanded his fee back from the recruitment agency, supported by the Romanian trade union. The agency refused to take any responsibility and blamed the employer in Italy instead. Meanwhile, the Italian NGO contacted Italian labour inspectors who visited the workplace. They found several migrant workers without valid permits and contracts, working unprotected and under difficult circumstances. When interrogated, they refused to testify against their employer. With the help of the Italian NGO, Corneliu came back to Italy to testify and to reclaim his salary in court. The case was successful, yet the recruitment agency in Romania went unpunished.

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<sup>4</sup> The following case is fictional, but based on good practices from Romania and other migration sending and receiving countries around the world.

## CASE STUDY **E**

### **Prosecution of traffickers in Poland**

'In one of the few high-profile successes, Poland, in 1996-97, successfully prosecuted and convicted a Polish recruiter and two associates who had trafficked approximately 100 women to Turkey, Germany, Austria, France, Switzerland, and Spain. Good cooperation between law enforcement in the destination and transit countries enabled Polish police to investigate and prosecute the recruiter in Poland. Over 200 trafficking cases have since been investigated in Poland, but prosecutions and convictions are rare. According to a Polish police officer, criminal cases can take several years to get to court, and most offenders receive light sentences or are acquitted or released due to lack of evidence.'

OSCE: *Trafficking in Human Beings: Implications for the OSCE*, 1999  
<http://www.osce.org/odihr/documents/background/trafficking/#f56>

## CASE STUDY **F**

### **Exploitation of Indonesian migrant domestic workers abroad**

Ebet, an 18 year old Indonesian was promised by a middleman (middlemen, or calo, work as individuals, and are often villagers themselves and know who are interested in finding work) a good paying job as a domestic worker in Saudi Arabia. Before leaving, she signed a work contract at the recruitment agency office but was not allowed to study the contents of the work contract. She ended up in Malaysia instead. Her tasks covered cleaning, cooking, washing, and caring for children. At the holding centre, she was taught Arabic. She did not understand English and kept on making mistakes when using the electric appliances and communicating with her employer. She was not allowed any communications and could not tell her family that she was in Malaysia instead of Saudi Arabia. A relative helped her report to the police and she returned to her home village.

ILO: *Draft report on mapping forced labour and human trafficking for labour and sexual exploitation from, through, and within Indonesia*, Geneva, p. 60, 2005.

**Exploitation of Indonesian migrant domestic workers abroad**

Yani, 37 years old, a housewife with nine children, lives in Serang, Banten. The double burden of having to sustain too many children, and the expensive medical treatment her sick husband needed, always left Yani in financial difficulties. This caused her to look for employment as a domestic worker, as it was her only skill. A sponsor, Ana, promised to send Yani to Malaysia at no cost. The cost of departure would be deducted from her pay after she obtained a job. Yani and 24 other migrant workers left for Malaysia on a ship via Pontianak, West Kalimantan. She was directly sent to Entikong/Bedu. There, an agent from Kuching by the name of Akwan was waiting for her. The next day, she was assigned to work in a restaurant. The work lasted only a month. Akwan withdrew her because the restaurant did not fulfill his demand that Yani's 2-month salary was to be paid to him in cash. Yani's first month's salary from the restaurant was taken by Akwan. Then she worked in a café. Besides working in the café, she also worked in her employer's house. She had to wash, cook pork, and was even forced to eat the pork. She refused to do so because it was not in compliance with religious belief. She was also forbidden to pray because, according to her employer, it cut into her work time. She was also forbidden to communicate with her family. Her working hours were from 4 a.m. to 2 a.m. the next day - there was no time for her to rest. After putting up with the abuse and inhuman working conditions for two months, Yani decided to flee from her employer's house by jumping from the third floor the house at 3 a.m. She broke her leg and back and had to crawl from her employer's house to the highway. She met a police patrol car and gave them her Identity Card with her original Serang, Banten address and said nothing. Yani was taken by the police to the hospital, where she was hospitalized for one week. Someone from the Social Office of Malaysia came to Yani and escorted her to the Embassy of the Republic of Indonesia. The Embassy was unwilling to return Yani to her native village because they considered her an illegal migrant worker. By accident, Yani met a private TV station journalist, who was covering the Indonesian Presidential Election in Malaysia. Yani's plight was broadcast by the private TV station. With the assistance of the journalist and an activist NGO, Yani returned to Indonesia in July 2004.

*ILO: Draft report on mapping forced labour and human trafficking for labour and sexual exploitation from, through, and within Indonesia, Geneva, p. 70, 2005.*

**Exploitation of Indonesian migrant factory workers**

Santi, 16 years old, obtained work information from a sponsor who came to her house and met her parents. The sponsor promised a salary amounting to RM 9.20/day if she was willing to work in a plywood company in Bintulu, East Malaysia. She arranged her Identity Card herself with the village head, adding four years to her age to become 20 years old. The village head did not question her reason because she had her parents' permission. The sponsor then brought Santi from her village to the city of Sambas. Prior to this journey, he had prepared Santi's passport. In Sambas, she gathered with the other migrant workers at the house of an agent for a recruitment company. From Sambas, the group left for Entikong by bus. At the Malaysian border, they were collected by an agent from Malaysia, and were directly taken to Bintulu. When they arrived at the plywood company, they were welcomed by the manager of the company, who explained their work. There was no contract of employment, nor a work agreement shown to them. Santi worked from 7 a.m. until 7 p.m. She was paid according to what she was promised but it did not include overtime pay. If she worked overtime, she would obtain RM 1 per hour. The salary was paid once a fortnight. There was no holiday, and neither was Sunday a free day. After she had begun work, the sponsor asked that her pay, which would be received by Santi after working for one year, was to pay for the passport arrangement costs. Santi's passport, at this stage, was held by the company, and she was only given a photocopy. Santi's pay amounted to RM 400. Santi lived in a dormitory-like room with 12 other occupants. She slept on a mat on the floor. During her employment, she was not permitted to go outside of the company's premises. If she was absent without permission, her pay was deducted at the rate of RM 40 per day. During her employment, she was often scolded by the foreman if she made a mistake and/or did not achieve the target expected by the company. She would be punished by having to do tasks such as the disposal of waste, cleaning the restroom, and sweeping the plant for a week.

*ILO: Draft report on mapping forced labour and human trafficking for labour and sexual exploitation from, through, and within Indonesia, Geneva, p. 78, 2005.*



**Exploitation of Indonesian migrant construction workers**

Agung Susanto, 26 years old, had to leave Junior High School because his family was poor. A factory worker in Gresik, East Java, Agung had always wanted to work in Malaysia. A relative who had worked in Malaysia encouraged him to find work there. The relative introduced him to a calo, Supriadi, who said he would arrange for him to go. Together with a few others, Agung left for Medan without complete identification papers. After one night, they left on a boat carrying 100 passengers to the tiny island of Rupert. All the passengers, who came from towns in East Java were destined for Malaysia. After three days on Rupert island, they sailed for Malaysia. Prior to mooring in Malaysia, they were asked to jump into the sea and swim to a shore. Five people drowned. On arrival, Agung met Raja, a Malaysian accomplice of Supriadi. With no contract, only by oral agreement, he found work in a construction project, installing PVC pipes. Agung worked 11 hours a day, from 6 a.m. to 5 p.m., with two one-hour breaks. He had Sundays off, and in case he worked was paid a bonus of Rp 50,000. After five months of work, the Malaysian police caught him in the search for illegal migrant workers. He was imprisoned for a month on Besi Island, Sarawak, Malaysia, together with 3,000 others from India, Bangladesh, China, and Thailand. After several months, he was released and picked up by someone he did not know. He was brought to Dumai and then to another unknown island by ferry. After two days, he was taken by bus to Jogjakarta, a journey that took seven days. In Jogjakarta, he stayed in a house for four days, but was not allowed to go out. He was promised he would be sent home if he paid Rp1.9 million. He said he did not have the money but would pay when he arrived home. Finally, he was sent home by car, escorted by seven persons. At home his family and him had to borrow money from relatives and neighbours to pay off his escorts. Agung still hopes to work in Malaysia, but next time with legitimate papers. Despite the bad experience, the better pay in Malaysia is still an attraction for him.

*ILO: Draft report on mapping forced labour and human trafficking for labour and sexual exploitation from, through, and within Indonesia, Geneva, pp. 76, 2005.*

**Exploitation of Ghanese migrant workers**

‘Three years ago a native of this town came and recruited three of us to go and work on a cocoa plantation. He told us that on completion of the job, which was a period of one year, we were each to be paid GHC 2,000,000. We were also made to understand that we were only going to work on the farm. Unfortunately, when we started work we were made to fetch water daily in the morning and evening for the family of the man who engaged us. We were forced to pound fufu for the man’s family. When we complained, we were told it was part of the contract that was reached with us and if we did not do it we would not be paid. We had no alternative but to do this work alongside the farm work. It was terrible for us. We were even to meet our biggest disappointment when it came to payment because we were told that the person who negotiated the work for us had come to collect the money on our behalf. For one month we could not trace him and even as we sit here has not come back home. We were therefore compelled to look for jobs somewhere to work for another year before we could get some money to come home. It was a bad situation and I will not encourage anybody to go through the ordeal we did.’

ILO: *Report of baseline study on human trafficking and forced labour in Northern Ghana*, Geneva, p. 49, 2005.



### GOOD PRACTICE EXAMPLE

**A**

#### **The bilateral labour agreement between the Philippines and Kuwait**

MEMORANDUM OF UNDERSTANDING ON LABOUR AND MANPOWER DEVELOPMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT (hereinafter referred to as the "Parties")

CONFIRMING the existing fraternal ties between the Governments and peoples of the two Parties;

DESIRING to strengthen the existing bonds of friendship between them and support bilateral cooperative relations based on equality and mutual benefit;

WISHING to support cooperation and enhance coordination in the field of labour and manpower development;

HAVE AGREED AS FOLLOWS:

##### Article 1

Both Parties shall undertake to strengthen cooperation in labour and manpower development.

##### Article 2

Both Parties shall provide the necessary and relevant facilities for the fulfilment and promotion of such cooperation within the framework of existing rules and regulations of each country.

##### Article 3

Both Parties shall undertake to facilitate the mobilisation and development of manpower between the two countries, within the framework of existing and applicable laws, rules, and regulations of each country.

##### Article 4

Both parties shall exchange visits and undertake consultations to share knowledge and experience on job creation and generation.

##### Article 5

The basic conditions for the rights, duties, and terms of employment, applicable to both the employer and the employee shall be set out in a mutually agreed individual contract of employment which conforms with the relevant laws, rules, and regulations of both countries.

#### Article 6

In the settlement of labour disputes arising from employee-employer relationships, the government authorities concerned of both parties, in accordance with their respective laws, rules and regulations, shall work towards amicable settlements through negotiations, conciliation, and arbitration. When efforts to amicably settle the dispute fail, the parties concerned may resort to the courts in accordance with their respective laws, rules and regulations.

#### Article 7

A Joint Committee shall be formed to carry out the following tasks:

- a) to ensure the implementation of this Memorandum; and
- b) to propose revisions of the

Memorandum as necessary and resolve difficulties in its implementation.

The Committee shall meet whenever necessary upon request by either party.

#### Article 8

This Memorandum shall be valid for four (4) years. It shall enter into force on the date of the later notification by the Parties indicating compliance with their respective internal legal requirements for its entry into force.

This Memorandum shall be automatically renewed for the same period unless one Party notifies the other in writing, through diplomatic channels, of its desire to terminate or amend this Memorandum six (6) months prior to its expiration.

Done in Kuwait City this 14<sup>th</sup> day of September 1997 corresponding to 12 Jamada A1 I 1418Hijra in two originals in the Arabic and English language, both texts being equally authentic. In case of conflict in interpretation, the English text shall prevail.

## The Philippines Overseas Association (POEA) Model Employment Contract

This employment contract is executed and entered into by and between

- A. Employer:  
Address and telephone:
- B. Represented by:  
Name of agent/company:  
Address:
- C. Employee:  
Civil status: Passport Number:  
Address: Place and date of issue:

Voluntarily binding themselves to the following terms and conditions:

1. Site of employment
2. Contract duration \_\_\_\_\_ commencing from employee's departure from the point of origin to the site of employment
3. Employee's position
4. Basic monthly salary
5. Regular working hours: maximum of 8 hours per day, six days per week
6. Overtime pay
  - (a) Work over regular working hours
  - (b) Work on designated rest days and holidays
7. Leave with full pay
  - (a) Vacation leave
  - (b) Sick leave
8. Free transportation to site of employment and, in the following cases (to be specified by recruitment agency), free return transportation to the point of origin:
9. Free food or compensatory allowance of US\$ \_\_\_\_\_, free suitable housing
10. Free emergency medical and dental services and facilities including medicine
11. Personal life and accident insurance in accordance with host government and/or \_\_\_\_\_ government laws without cost to the

worker. In addition, for areas declared by the \_\_\_\_\_ government as war risk areas, a war risk insurance of not less than \_\_\_\_\_ shall be provided by the employer at no cost to the worker

12. In the event of death of the employee during the terms of this agreement, his remains and the personal belongings shall be repatriated to the \_\_\_\_\_ at the expense of the employer. In case the repatriation of the remains is not possible, the same may be disposed of upon prior approval of the employee's next of kin and/or by the \_\_\_\_\_ Embassy/Consulate nearest to the job site.

13. The employer shall assist the employee in remitting a percentage of his/her salary through the proper banking channel or other means authorized by law

14. Termination:

- a. Termination by employer: the employer may terminate this contract on the following just causes: serious misconduct, wilful disobedience of employer's lawful orders, habitual neglect of duties, absenteeism, insubordination, revealing secrets of the establishment, when employee violates customs, traditions and laws of \_\_\_\_\_ and/or terms of this Agreement. The employee shall shoulder the repatriation expenses;
  - b. Termination by the employee: The employee may terminate this Contract without serving any notice to the employer for any of the following just causes: serious insult by the employer or his representative, inhuman and unbearable treatment accorded to the employee by the employer or his representative, commission of a crime/offence by the employer or his representative and violation of the terms and conditions of the employment contract by the employer or his representative. Employer shall pay the repatriation expenses back to \_\_\_\_\_.
  - b1. The employee may terminate this Contract without just cause by serving one (1) month in advance a written notice to the employer. The employer upon whom no such notice was served may hold the employee liable for damages. In any case, the employee shall shoulder all the expenses relative to his/her repatriation back to his/her point of origin.
  - c. Termination due to illness: Either party may terminate the Contract on the ground of illness, disease or injury suffered by the employee. The employer shall shoulder the cost of repatriation.
15. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules and regulations. In case the employee contests the decision of the employer, the matter shall be settled amicably with the participation of the Labour Attaché or any other authorized representative of \_\_\_\_\_ Embassy or Consulate General nearest the site of employment. In case the amicable settlement fails, the matter shall be submitted to the competent or appropriate body in (host country) or \_\_\_\_\_ if permissible by the host country laws at the option of the complaining party.
16. The employee shall observe employer's company rules and abide by the pertinent laws of the host country and respect its customs and traditions
17. Applicable law: Other terms and conditions of employment which are consistent with the above provisions shall be governed by the pertinent laws of \_\_\_\_\_.

Philippine Overseas Employment Administration

### **A licenced private employment agency's efforts to protect women migrant workers**

Under the Private Employment Agency Proclamation in Ethiopia, the Meskerem Employment Agency is the one duly registered and functioning agency licenced to process the employment of Ethiopians in Lebanon. Only those workers able to produce a letter stating that they have gone through the agency will be issued exit visas. (In the case of direct recruitment, the migrant has to produce a contract of employment authorized by the Ministry of Labour and Social Affairs). Officials of the Ministry went to Lebanon in 2001 to inspect the working conditions of migrant Ethiopian women recruited through the Meskerem Employment Agency and came back satisfied.

Among the measures the agency has taken to better protect migrant women:

- It only recruits high school graduates, since it believes that the women need a certain level of education to be articulate enough to have their rights protected and they should be able to write home to their families. [However, returnees in a focus group interview were totally against this; they did not feel that women needed to finish high school to work as housemaids and thought that the measure was discriminatory, and could, in fact, leave those who had not graduated from high school at the mercy of traffickers]
- Even if the migrants have not been recruited by the agency, it helps them to obtain exit visas and to check the reliability of their prospective employers through its representative in Lebanon. Once the conditions of employment have been confirmed, the agency provides these migrants with the same training and orientation it provides to its own clients
- It provides its clients with an ID written in Amharic (the Ethiopian official language) before the migrants leave for their destination. The migrants are supposed to keep the card hidden for emergencies. The card contains the name of the employee, their file number with the agency, the address/phone number of the agency in Ethiopia as well as the address/phone number of the representative in Lebanon. It also informs them that the agency in Lebanon provides service 24 hours a day and that they can contact it whenever they want to. Whenever a migrant worker is in trouble she needs only to call and mention her file name and the people at the agency will identify her address and go to her. The agency has a van with a driver available 24 hours a day
- The agency keeps a record of employees and any concerned citizen can go to the office and look at the records to find out the whereabouts of the migrant workers sent through the agency. The record contains information on the file number of the migrant, their full name and telephone number, passport number, employer's full name and telephone number, date of departure from and date of return to their country of origin
- The agency calls each employee twice a month to check on their condition as well as to find out whether the employer is satisfied with the services of the migrant worker. The agency talks with employers to find out whether they have complaints. If either has complaints, the agency tries to reconcile differences



- If it is impossible to reconcile the differences, the agency returns the migrant worker back to her country. If the employee has to be returned before her contract of employment expires, the agency pays the migrant US\$ 1,500. If a migrant has been abused, the agency immediately takes her out of the abusive situation, pays her salary if the employer refuses to do so and returns her back to her country, and then takes the necessary legal action against the employer

Kebede, E.: *Ethiopia: An assessment of the international labour migration situation: The case of female labour migrants*, Geneva, ILO GENPROM Series on Women and Migration, pp. 22-36, 2002.

## GOOD PRACTICE EXAMPLE **D**

### **The Code of Conduct of the National Recruitment Federation in Ireland**

The National Recruitment Federation (NRF) is a voluntary organization set up to establish and maintain standards and codes of practice for the recruitment industry. The NFR represents over 100 recruitment agencies throughout Ireland, which have opted for self-regulation. The society aims to provide its members with service in terms of support, communication, advice sharing and problem solving and in doing so aims to promote professional competence within the industry.

#### Code of conduct

##### 1) GENERAL

It is a condition of Membership that all Members, Member companies and employees engaged by them shall comply with the Code of Conduct of the Federation and by the rules and regulations outlined below and any conditions or amendments to these rules as approved by the Federation.

##### 2) SUBSCRIPTIONS

It is a condition of Membership that the annual subscription and any levies agreed by the NRF are paid within 30 days of the date they fall due.

##### 3) LICENCING

It is a condition of Membership that the individual, agency or company is properly licenced to operate as an employment agency within the terms of the Employment Agency Act 1971 and any amendments thereto.

##### 4) APPLICANT HANDLING/CONFIDENTIALITY

- Applicants must be treated in a courteous and dignified manner at all times. Their right to privacy must be respected including their right to be interviewed in a private area in accordance with health & safety regulations. Regard must be had to the Employment Equality Acts 1977 and 1998.
- All applicants must be interviewed by the agency prior to being put forward to the client for interview.
- Applicants must be given full details of any job for which the agency intends to recommend them and permission sought from the applicant. An applicant's permission must be sought and obtained before his or her details are revealed to an employer. The agency should also determine whether or not the applicant has been approached by another agency about the same job.

- d. Applicants must be kept informed of the progress of their application.
- e. References must not be sought without an applicant's consent.
- f. Members must protect the confidentiality of any information obtained on applicants business in the course of a recruitment assignment and use such information only for the purpose of staff selection and recruitment. The agency must have regard to the provisions of the Data Protection Act 1988.

#### 5) TEMPORARY/CONTRACT APPLICANTS

- a. Rule 4 shall apply to all applications for temporary or contract employment.
- b. Full details of the work, conditions of employment, method and frequency of payment must be supplied to applicants immediately on assignment to temporary employment in accordance with requirements of current legislation.
- c. All payments, tax refunds, benefits and tax certificates must be given promptly to temporary employees when due.

#### 6) CLIENT (EMPLOYER) HANDLING

- a. Members must provide full details of fees, charges, expenses and all Terms and Conditions of Business (confirmed in writing) before proceeding with a recruitment assignment.
- b. Members are not allowed under any circumstances to "poach" applicants whom they have placed in permanent employment without the express permission of the employer.
- c. Members must protect the confidentiality of any information obtained on client's business in the course of a recruitment assignment and use such information only for the purpose of staff selection and recruitment for that client.

#### 7) DISPUTES/COMPLAINTS

- a. The agency that obtains the first interview with the client is entitled to the fee if the applicant is successful.
- b. All complaints will follow the standard grievance procedure set out in clause 8 of this Code of Conduct.
- c. Members should not under any circumstances involve clients or applicants in inter-agency disputes.
- d. All complaints/grievances should be aired through the Grievance Committee.

#### 8) TESTING

Where testing procedures are taking place, these tests must be carried out by properly licenced and qualified testers and must comply with normal standards and ethics of test procedures.

#### 9) GRIEVANCE PROCEDURE

When a complaint is recorded a copy of it is sent to the Members involved and any other parties involved. A written response is required within 7 days. On receipt of same, the Disciplinary Committee (DC) will investigate the complaint and may at its discretion interview all or any of the parties involved. The DC will make a decision on the complaint/grievance including recommending any action which is required based on facts placed before it at that time. A complete record of events will be kept. The Executive Committee (EC) may decide to hear an appeal against a decision of DC. A decision on an appeal will be final. If the appeal is to be heard, the President and two members of the EC nominated by the EC and who are not members of the DC will hear the appeal. The DC or the EC at their

discretion may adjudicate on a complaint/grievance or appeal as the case may be based on written submissions or oral representations or a combination of both. Under Section 12 of the Articles of Association, a decision may be made whether to suspend or expel the Member. NRF has an important role to play in continuously improving standards within the recruitment industry. Complaints against NRF Members whether from applicants, clients or other Members will be investigated at all times. Following full investigation the Executive Committee of the NRF has the right to acquit, suspend, reprimand or expel a Member and to publish its decision.

#### 10) AGENCY STAFF

Members must not make direct or indirect approaches to any staff employed by another member agency. A breach of this rule will result in instant expulsion from the Federation. Members are advised to advertise openly any vacancies within their organization and to follow proper ethical procedures in recruiting staff.

#### 11) ADVERTISING

1. Display advertisements should wherever possible, carry the "NRF Member Logo"
2. Only real jobs may be advertised

National Recruitment Federation  
<http://www.nrf.ie>

## GOOD PRACTICE EXAMPLE

**E**

### **The International Confederation of Temporary Work Businesses (CIETT)**

#### General conduct

1. Members shall state their terms of business to their clients without ambiguity.
2. Members and their staff shall make themselves fully conversant with any national laws relating to the conduct of temporary work businesses. Breaches of the law may be deemed to be in contravention of this Code.
3. Members shall ensure that temporary workers are suitable for the assignments for which they are supplied.
4. Members shall take all reasonable steps to protect the security of any confidential information obtained from both clients and temporary workers when arranging assignments.

#### Publicity

1. Members are required to abide by any national code of advertising standards.
2. An advertisement for a specific temporary work vacancy must be genuinely open at the time of going to press and be removed from advertising displays once filled.
3. For the purpose of this Code the words "advertising" or "advertisements" apply to advertising and promotional material of any description.

#### Terms and conditions of employment

1. When a temporary worker is being supplied to a client the business shall advise the temporary worker as follows:
  - the conditions under which the work is engaged;
  - the kind of work which the workers to be supplied to a client may do;
  - the remuneration for the work to be done and details of any expenses payable.

The temporary worker must be advised of any changes in the above.

2. Temporary workers have to be paid regularly and payment may not be subject to the temporary work business being paid by its client.
3. Where not in violation of local laws such as anti-trust legislation, temporary work businesses shall comply with any national laws in relation to the supply of temporary workers to work on premises where an industrial dispute is in progress, unless the authorised representatives of all parties to the dispute are in general agreement with such an assignment.
4. Members shall comply with any national laws relating to sex, ethnic and religious non-discrimination.
5. Members shall inform their temporary workers whenever they have reason to believe that any particular assignments carry a health or safety risk.
6. Members shall endeavour to safeguard the hiring and working conditions of temporary workers by complying with national rules relating to Social Security benefits.
7. Members shall not seek to prevent temporary workers from seeking jobs where they wish to do so.
8. The services of temporary work businesses shall be available to temporary workers free of charge.
9. Where appropriate, members shall be encouraged to provide essential vocational training of workers concerned in accordance with the qualifications required.

#### Self-determination

1. Members shall support the principle of self-regulation of temporary work businesses in co-operation with the relevant institutions.
2. Nothing in our Code shall prevent a national member of CIETT from creating its own Code. National codes should reflect the spirit of the CIETT Code.
3. Depending on national laws, customs and traditions, temporary workers may be found in all categories of staff and disciplines in industrial, technical, managerial and professional occupations. National members may adopt codes that are applicable to specific occupations, provided that such codes reflect the spirit of this Code.

The International Confederation of Temporary Work Businesses (CIETT)  
<http://www.ciett.org>

**Gütegemeinschaft Au-Pair e.V. Code of Conduct (Germany)**

After the au-pair industry in Germany had been deregulated during 2002, several cases of abuse of au pairs came to the attention of the public. In November 2004, the German Au-Pair Association and the Minister of Family, Seniors, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend) agreed on a code of conduct, regulating the preparation, placement, and supervision of au-pair stays. In detail, the rights and duties of the au pair, the host family and the sending and receiving au-pair agencies are regulated. The code of conduct entails inter alia the following provisions:

- The conditions of placement of the agency shall be publicly accessible
- The agency is reachable at least ten hours per week, and five working days
- The agency shall install an emergency hotline, which is reachable 24h/ 7days a week
- The au pair shall be between 18 and 24 years old
- The maximum duration of the au pair stay shall not exceed 12 months
- Working hours - including baby-sitting - are for the maximum six hours a day with a maximum weekly workload of 30 hours
- The allowance is € 260 (starting from 1.1.2006); cutbacks due to lesser working hours are not permitted
- The allowance shall be paid in case of illness of the au pair, up to six weeks
- The work consists of baby-sitting and light domestic work
- The host family bears all social insurance costs, including health insurance of the au pair
- The accommodation of the au pair in an own, heatable, lockable room (min. 8 m<sup>2</sup>) with a window and furnished, has to be secured.
- The cancellation period is 14 days, in urgent or extreme cases without previous notice
- The supervision of the provisions of the code of conduct is carried out through an independent, qualified, licenced institution or expert

## GOOD PRACTICE EXAMPLE

**G**

### **The ISO label of quality management**

Rating has been widely discussed over many years, especially in the UK and Ireland, by all interested parties: PES administrators, PEA managers, trade unions and other labour market specialists. The system appealed to the modern, forward-looking PES administrators who were aware of the limitations and rigidities of the licencing system. It was also found smart and dynamic by the best performing PEA who liked the idea of being classified according to performance. The leading PEA (the multinationals) decided to go their own way and seek rating not in the context of national laws and regulations but internationally. The result was the ISO 9000 label of quality management by the International Standards Organisation. They currently use the ISO 9000 label in their advertizing and marketing campaigns as a guarantee of fair practice.

International Standards Organisation (ISO)  
<http://www.iso.ch>

Website of the International Standards Organisation (ISO)  
<http://www.iso.ch/iso/en/iso9000-14000/iso9000/qmp.html>

## GOOD PRACTICE EXAMPLE

**H**

### **The T-Sérvice Interim in Belgium**

In Europe, starting from the late sixties, and especially after the break-up of PES monopolies in the eighties, there was a strong push among PES to go by the motto: Feel public but look and act private. Growing doubts about a PES monopoly in a liberalized market resulted in the adoption of the ILO's Private Employment Agencies Convention, 1997 (No. 181).

The Convention recognizes that PEA can contribute to the smooth functioning of the labour market, and sets parameters for the regulation, placement and employment of workers hired by PEA, in particular by temporary work agencies. Moreover, the Convention promotes cooperation between the PES and PEA in order to maximize the efficiency of the labour market.

An example of a PES acting like a PEA is a public temporary work agency called T-Sérvice Interim (a branch of the PES) created in Belgium in 1980 with the aim of introducing a regulatory element in the recruitment market. It became self-supporting in 1994. The PES collaborates with temporary work agencies (PEA) in several ways:

- Job offers
- Access to information (e.g. job banks)
- Participation in an information forum and common working forum for all relevant partners in the labour market with a view to promoting transparency
- Fees

- Projects on integration through temporary work, in which the PES collaborates with T-Sérvice Interim and PEAs to place school-drop outs under 25 years old, long-term unemployed people as well as those living solely on social benefits, in temporary work. Common criteria for candidates to be placed in temporary work are defined by the PES, T-Sérvice Interim, before the mission is entrusted to the PEAs. This enhances the candidate profile from the point of view of the PEAs and ensures a return of information to the PES.


Méan, J.P.: *Relations entre service public d'emploi et agences d'emploi privées: Analyse de la situation et perspectives pour la région de Wallonie et éléments clés d'une stratégie pour les PSE dans le marché mixte européen*, unpublished paper submitted at the EU meeting of Heads of Public Employment Services, Baden (Austria), 16 November 1998, cited in Thuy, P., Hansen, E. and Price, D.: *The Public Employment Office in a changing labour market*, Geneva, ILO, 2001.

## GOOD PRACTICE EXAMPLE

Information campaign of the Kanlungan Foundation, Indonesia:  
'To Be a Domestic Helper in the Middle East is No Joke!'

**Beware! Illegal recruitment has many faces.**

- Do not trust just anybody offering you an overseas job.
- Make sure that the recruitment agency has a license.
- Write down all agreements and keep a copy for yourself.
- Do not sign any document that you have not read nor understood.



**Illegal recruitment** is any form of canvassing, procuring, promising, contracting or transporting of workers for employment abroad by an unlicensed agency. Illegal recruitment is a crime punishable by 6 to 12 years and a fine of not less than P200,000.00 and not more than P500,000.00. If committed by a syndicate, the punishment may be life imprisonment and a fine of not more than P1 million.





**European Employment Services (EURES)**

A number of European countries cited the European Employment Services (EURES) as the primary means of recruiting non-national workers and of coordinating regional recruitment policies. EURES is a European labour market network aimed at facilitating the mobility of workers in the European Economic Area (EEA). It brings together the European Commission and the Public Employment Services of the countries belonging to the EEA. EURES operates through more than 450 EURO advisers stationed throughout Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

The objectives of EURES are to provide information, counselling and assistance in relation to placement and recruitment to nationals of EEA countries. Potential migrants and interested employers are provided with information on living and working conditions, legislation, administrative formalities, advice on how to find a job and access to the public employment services of other EEA countries. EURES has established two databases, the first dealing with job vacancies for EEA nationals, and the second containing general information on living and working conditions in EEA countries. EURES also provides a service to ensure the comparability of qualifications within the EEA.

ILO: *Migrant workers*, International Labour Conference, 87th Session, Geneva, 1999  
p. 63. Further information on EURES can be found at  
<http://europa.eu.int/eures/index.jsp>



**Regional Centre of the Southeast European Cooperative Initiative for Combating Transborder Crime**

As part of the Southeast European Cooperative Initiative (SECI), a Regional Centre of the Southeast European Cooperative Initiative for Combating Transborder Crime was established in Bucharest. The Centre is part of the SECI's efforts to curb the illegal trade across regional borders. A SECI working group, meeting from May 1998 to May 1999, produced an Agreement on Cooperation to Prevent and Combat Transborder Crime. The Agreement was signed on 26 May 1999 by Albania, Bosnia-Herzegovina, Bulgaria, Greece, Hungary, Macedonia, Moldova, Romania and Turkey and paved the way for establishment of the Centre. The Centre became operational on 1 January 2001.

There are 15 liaison officers from the member States working at the Centre, handling the daily exchange of information, which is collected and supplied by police and customs administration of the member States. The Centre has set up numerous task forces of police and customs officers, which are coordinated by representatives from law enforcement agencies from SECI member States. One of these task forces is the task force for Combating Trafficking in Human Beings, coordinated by Romania.

In 2001, 3,112 exchanges of information were conducted under the umbrella of the Centre, of which 1874 were in connection with trafficking in human beings, drug smuggling, commercial frauds, stolen vehicles, fraudulent documents, terrorism and other fields.

Centre for the Study of Democracy (2002): Smuggling in Southeastern Europe, <http://www.csd.bg/publications/book10/SMUGGLING%20ENG.pdf>

### Special Mobile Inspection Unit in Brazil

In Brazil, thousands of men live in slavery-like conditions on fazendas (extensive ranches) in the Amazon. Migrant labourers from Brazil, they move within the country from contract to contract in a never-ending cycle of debt bondage that often ends in death. Leaving their homes to make their fortunes, they fall prey to labour contractors, or *gatos*, who deceive them about the nature of the work they are being hired for. Conditions in labour camps are gruelling, malaria is prevalent, and all expenses are deducted from the wages. The migrant worker is lucky to get any money at all for his labour. However, since the money earned is so little, if any, it will not be long before the migrant worker signs up for a new contract with a *gato*. Thus the cycle of forced labour continues.

One of the measures to combat forced labour implemented by the State of Brazil has been the creation of a Special Mobile Inspection Unit: a flying squad of labour inspectors and federal police officers. Both are drawn from a body of volunteers, none of which operate in the State of residence for reasons of personal safety and independence from local pressures. Their job is to investigate allegations of slave labour on fazendas. Sometimes judges are also part of the Unit so that prosecution can be done swiftly and on the spot.

Regular evaluations of the operations of this Unit have pointed to two main criteria for effectiveness: centralized organization and absolute secrecy in planning. Any attempts to decentralize activities have proved unsuccessful in that news of inspection raids has invariably reached landowners in advance, enabling them to disperse workers or to cover up the situation.

The low-budget interagency team has proven crucial in the fight against forced labour.

For example, the investigative work of the federal Special Mobile Inspection Unit has been picked up on at the local and State level. The municipality of Vila Rica, in the State of Mato Grosso do Sul, set up a commission with the participation of the Mayor's office and municipal council, and the agricultural producers' and rural workers' organizations. Upon receiving forced labour allegations, the commission has negotiated with local landowners and intermediaries. The very threat of calling in the Mobile Unit, and the prospect of fines, tended to facilitate negotiations. The Mobile Unit was only brought in if such negotiations broke down.

Le Breton, B.: *Trapped: Modern Day Slavery in the Brazilian Amazon*, London, Latin American Bureau, 2002.

ILO: *Stopping forced labour: Global report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, 2001.

**Dutch temporary residence permits for victims of trafficking:  
Immigration law circular B-9**

The Dutch authorities consider it of the utmost importance that victims or witnesses of trafficking who report an offence remain available to the Public Prosecution Office for an extended period of time in order to provide evidence. The B-9 regulation reflects these concerns, though being mainly aimed at women victims of trafficking for the purpose of sexual exploitation.

The B-9 regulation is two-fold: It stipulates the provision of facilities for the investigation and prosecution of perpetrators of trafficking, as well as the provision of shelter and protection for victims. Persons who are possibly a victim of trafficking can obtain (temporary) residence in the Netherlands, as well as shelter and reception, medical assistance, legal aid and special provisions for maintenance. Even if there is only the slightest indication that a person is a victim of trafficking, the police must bring to his/her notice the rights linked to regulation B-9.

Once the possible victim is identified, he/she will be offered a three month reflection period. During this time, the person must decide whether to officially report the crime of trafficking in human beings. If the victim decides to report the offence, this is automatically taken as an application to grant a residence permit for a certain time. The application is honoured in the case of a criminal or prosecution investigation.

The three month reflection period is not offered to witnesses of the crime of trafficking or to those that are possible victims of it but have not worked in prostitution in the Netherlands. They must decide immediately whether they want to report the offence. For them, like actual victims of trafficking, the reporting of the crime is considered an automatic application to grant a residence period for a limited amount of time.

Dutch National Rapporteur: *Trafficking in human beings: Third report of the Dutch National Rapporteur*, The Hague, Bureau NRM, 2005.