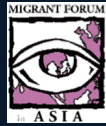


Government-to-Government Recruitment Benefits & Drawbacks¹

Open Working Group on Labour Migration & Recruitment
Policy Brief #3



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Issue

Migration for employment has long been a feature of human mobility. As nation states coalesced into sovereign entities with entrenched national identities, mobility became politicized and restrictions were put in place to govern entry into the territory of the state. Labour migration from developing countries to developed countries for both low-wage and high-wage labour has increased over the last five decades, and the governance of migration corridors has shifted from a primarily state-driven system to a market-driven system.² In addition, south-south migration flows have come to dominate the migration landscape.

Beginning in the 1950s, Western governments began formalizing labour migration through government-to-government (G2G) recruitment agreements with countries of origin. These agreements set out the terms governing migration corridors in bilateral agreements (BLAs). Public employment services in countries of origin and destination played an important role in the recruitment of workers at this time, overseeing contracts, wages, and working conditions.³ In the 1970s, the oil

crisis and consequent global economic downturn resulted in a scaling back of the demand for migrant labour as unemployment rates in countries of destination increased; thus, G2G recruitment fell out of favour with countries of destination.

Over the past two decades, demand for low-skilled migrant labour from developing countries has increased at the same time as border controls and immigration restrictions have tightened. States have increasingly pursued policies of temporary rather than permanent migration—a policy direction actively encouraged during the UN High Level Dialogue on International Migration and Development (UNHLD) (2006) and carried forward in the discourse of the Global Forum on Migration and Development (2007-2015) and the second UNHLD (2013).

Many countries of destination have developed visa regimes to allow low-wage migrant workers to enter the country temporarily to take up work in specific industries, placing restrictions on the terms of their employment and residency in the country. In the absence of G2G recruitment, private recruitment agencies emerged to link up prospective workers with employers and to provide services to facilitate travel arrangements and necessary documents.

The emergence of a market-driven system for migrant labour recruitment gave rise to a number of human rights concerns related to

¹ This policy brief is written based on contributions from members of the Open Working Group on Labour Migration & Recruitment.

² Wickramasekara, P. (2012). “Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers through Bilateral Agreements and Memoranda of Understanding.”

³ ILO (2010). *International labour migration: A rights-based approach*

debt bondage, forced labour, and labour trafficking.⁴ The activities of private recruitment agencies, sub-agents, and labour brokers operating in countries of origin and destination continue to prove difficult to regulate.

A return to G2G recruitment through BLAs and memorandums of understanding (MOU) has come to be seen as a viable migration management solution, particularly in the Asian context. The emergence of this new wave of G2G recruitment is related to government concerns regarding undocumented migration of low-wage workers as well as the human rights concerns associated with employer-tied visa arrangements. State involvement in the recruitment process and the limiting and/or elimination of the role of private recruitment agencies is often among the goals of G2G recruitment negotiations.

Migrant communities and migrants' rights advocates often call for G2G recruitment, seeing BLAs and MOUs as a potential means of eliminating private actors from the recruitment process and of building in additional human rights protections for migrant workers. Unfortunately, few of the more recent G2G recruitment programs fully eliminate private actors from the migration process, and most are based on non-binding MOUs rather than legally binding BLAs. In essence, the new wave of G2G recruitment represents a watered-down version of the G2G recruitment programs of the 1950s and 1960s. Even with G2G recruitment in place, "[t]he international mobility of workers is now increasingly in the hands of private recruitment agencies and state agencies play a minimal role."⁵

⁴ Open Working Group on Labour Migration & Recruitment. (2015). "Recruitment Fees & Migrants' Rights Violations."

⁵ Wickramasekara, P. (2012). "Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers through Bilateral Agreements and Memoranda of Understanding."

Analysis

Currently, we see three primary bilateral G2G recruitment modalities:⁶

G2Gs that eliminate private recruiters

South Korea's Employment Permit System (EPS), established in 2004, is perhaps the clearest example of a G2G recruitment regime that has replaced private recruitment agencies with public employment services. The EPS operates through the conclusion of MOUs between South Korea and countries of origin. To date, 15 MOUs⁷ have been signed under the program.

As set out in the provisions of each MOU, government institutions in countries of origin are tasked with selecting competent job seekers based on job sector quotas and qualification standards. The South Korean government approves the roster of job seekers sent by the country of origin, and Korean employers can select foreign employees from this roster. Under EPS workers can apply for positions in South Korea's manufacturing, construction, fish breeding, and agriculture and livestock breeding industries.⁸ There is no space for private actors in the EPS recruitment process.

Bangladesh's MOU with Malaysia (2012) is another recent example of an attempt to remove private recruiters from the recruitment process. Under this agreement, the Malaysian Ministry of Home Affairs

⁶ Note that trade agreements also often include provisions for labour mobility; however, G2G recruitment through free trade agreements falls outside the scope of this analysis. Here we focus only on those G2G recruitment regimes governed by BLAs and MOUs.

⁷ South Korea has signed MOUs under EPS with the following countries: Philippines, Mongolia, Sri Lanka, Vietnam, Thailand, Indonesia, Uzbekistan, Pakistan, Cambodia, Bangladesh, Kyrgyzstan, Nepal, Myanmar, China, and Timor Leste.

⁸ EPS, "Introduction of Industries."

Typology of Bilateral G2G Agreements

Type 1:

G2G agreements that eliminate private actors from the recruitment process, establishing recruitment through public employment services — e.g., South Korea's Employment Permit System; MOU between Bangladesh and Malaysia; original version of the Canadian Seasonal Agricultural Workers Program

Type 2:

G2G agreements that set out guidelines and monitoring processes for private recruitment agencies operating in countries of origin — e.g., MOUs between the Philippines and Canadian select provinces

Type 3:

G2G agreements that set out guidelines and monitoring processes for private recruitment agencies operating in countries of origin and destination — e.g., MOUs between Bangladesh and Saudi Arabia, Thailand and Cambodia, Philippines and Lebanon, India and Saudi Arabia

determines the number of jobs available, and the Bangladesh Bureau of Manpower, Employment, and Training (BMET) recruits and deploys the workers. As in the EPS, there was no space for private recruiters under this MOU.

The *Canadian Seasonal Agricultural Worker Program* (CSAWP) cannot be considered as part of the new wave of G2G agreements, and as such is an interesting case to consider. The CSAWP was established in 1966 to fill labour shortages in Canada's agricultural and horticultural sectors. Like the EPS, CSAWP was based on MOUs with select countries of origin, beginning with Jamaica (1966) and expanding to Trinidad, Tobago, and Barbados (1967), Mexico (1974), and the Organization of Eastern Caribbean States⁹ (1976).

Originally, the Canadian federal government managed the CSAWP. Worker recruitment was the joint responsibility of government officials in Canada and the countries of origin. However, as the program grew, the administration of the program was ultimately privatized. Foreign Agricultural Resource Management Services (FARMS), a non-profit organization established and funded by Canadian farmers, took control of the program in 1987 and has administered it ever since.

Under this system, government officials in countries of origin and FARMS—i.e., the employers—facilitate the recruitment process. The Canadian government is no longer involved in the recruitment process, and has also relinquished its role in monitoring the integrity of work placements.

The evolution of CSAWP from entirely state-led to the inclusion of private actors in the

⁹ Grenada, Antigua, Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Montserrat

recruitment process is very much in line with global trends towards privatization and deregulation, and is consistent with the trends seen elsewhere with respect to the increasing role of private actors in migrant labour recruitment. Indeed, since the 1960s Canada has introduced a series of visa programs to recruit migrant workers from abroad, and few G2G agreements have been negotiated. The role of private actors involved in the recruitment of workers bound for Canada has continually increased.

It remains to be seen if the South Korean EPS or other G2G agreements that exclude private actors will likewise degrade over time.

G2Gs that include private recruitment agencies operating in countries of origin

Some bilateral G2G recruitment agreements are set up to enhance coordination of existing migration corridors. In the last decade, the Philippines has signed a number of MOUs with the governments of Canadian provinces.¹⁰ Currently, the Philippines has signed MOUs with Alberta, British Columbia, Manitoba, and Saskatchewan for visas issued under Canada's Temporary Foreign Worker Program.¹¹

Under these MOUs, the provincial government and the Philippine government oversee much of the recruitment process, which is clearly defined. However, private recruiters in the Philippines remain central to the recruitment process under these agreements. Once the governments have

¹⁰ Because of differences in provincial labour laws and standards, it is logical for governments to sign MOUs with Canadian provinces rather than with the Canadian federal government, as the MOUs will be specific to the province in question.

¹¹ Canada's Temporary Foreign Worker Program differs from the CSAWP described in the previous section, which is only for positions in the agricultural sector.

agreed to the jobs available for recruitment, the Philippines Department of Labour and Employment (DOLE) informs licensed recruiters in the Philippines of the positions available, and gives them permission to recruit. The Philippine government also provides Canadian officials with lists of licensed recruiters such that they can verify that no unauthorized recruiters are involved in the recruitment process.¹²

G2Gs that include private recruitment agencies operating in countries of origin and destination

The third type of G2G recruitment agreement makes no attempt to remove private actors from the recruitment process. These agreements generally do not seek to modify the existing channels of labour recruitment. Where recruitment is mentioned, it is generally to introduce monitoring mechanisms and licensing provisions to ensure that recruiters act in accordance with the law. On the whole, these G2G agreements tend to focus more on wages, working conditions, and quotas for labour market access.

An example of this kind of agreement is the recently concluded MOU between Bangladesh and Saudi Arabia (2015), under which Saudi Arabia is authorized to recruit 120,000 workers per year for work as domestic workers, gardeners, and drivers. Under this agreement, worker recruitment will be facilitated by private agencies in both Bangladesh and Saudi Arabia. The Government of Bangladesh monitors the activities of recruitment agencies operating in Bangladesh.¹³ It is unclear if there are similar monitoring processes in place on the Saudi Arabian side.

¹² IOM (2014). "Recruitment Monitoring & Migrant Welfare Assistance: What Works?"

¹³ Mamun, S. (2015). "Bangladesh-KSA ink manpower deal"

Other examples of this kind of agreement include MOUs between Thailand and Cambodia (2003)¹⁴, with no mention of the recruitment process; Lebanon and the Philippines (2012)¹⁵, which stipulates a commitment to enforcing existing laws governing the activities of recruitment agencies; India and Saudi Arabia (2014)¹⁶, which stipulates that recruitment agencies must be licensed by their respective governments; among many others. This type of agreement seems to be the most common among the G2G recruitment agreements.

Critique

Many migrant communities and migrants' rights advocates have raised concerns about the increasingly dominant role of private actors in the migrant labour recruitment process, pointing to the actions of private recruiters and labour brokers as root causes of many of the human and labour rights violations against migrant workers, particularly against those employed in low-wage sectors. This has prompted a number of civil society groups to include calls for G2G recruitment in their advocacy with governments. However, G2G agreements are not a panacea for the human and labour rights abuses migrant workers experience in recruitment and throughout the course of their employment.

Private actors are not always eliminated from the recruitment process

As illustrated above, private actors are not always eliminated from the recruitment process under G2G agreements. In fact, few (if any) G2Gs governing labour recruitment are established with the intention of remedying problems that surface on account

of the activities of private recruiters. Many governments, particularly governments of countries of origin, claim that they lack the necessary capacity to take on the responsibility of recruiting workers, particularly when the number of workers slated for recruitment is large. In essence, governments rely on private recruiters to fill this role.

Where governments are concerned about the activities of recruitment agencies and other intermediaries, provisions for monitoring and licensing are sometimes included in MOUs, but enforcement is often called into question. Indeed, provisions stipulating that recruitment agencies must be licensed may be useful, but the degree to which licenses are effective largely depends on the criteria set out for the issuance of licensing. Whether or not licenses are issued on the basis of ethical and rights-respecting standards must be considered.

Human and labour rights protections are not always central to G2G agreements

Governments are primarily motivated to conclude G2G agreements by economic concerns, i.e., the need to fill labour shortages in countries of destination and the need to alleviate unemployment and encourage remittances in countries of origin. Human and labour rights concerns can motivate the inclusion of specific provisions in these agreements, but these protections are not always central to the agreements.

In fact, some G2Gs governing labour recruitment include explicitly discriminatory clauses. For example, Canada's MOU with Mexico under the CSAWP originally stipulated that only individuals with spouses and children residing in Mexico are eligible for the program. "The rationale for this condition is to reinforce the temporary nature of the program — as these workers are most likely to return upon completion of

¹⁴ ILO, "Memorandum of Understanding."

¹⁵ POEA, "Memorandum of Understanding on Labor Cooperation."

¹⁶ MOIA (2014) "Agreement on Labour Co-operation for Domestic Workers Recruitment."

their contract.”¹⁷ This provision was a clear violation of Canada’s national human rights and employment laws and was ultimately struck down, but the effects linger. The United Food and Commercial Workers Union has found that “women comprise on average less than four per cent of the thousands of migrant agriculture workers who come to Canada each year under the seasonal agricultural workers program.”¹⁸

In addition, the experience of South Korea’s EPS demonstrates that human and labour rights violations persist, even when G2G recruitment agreements are in place. Korean human rights advocates have documented many cases of passport and identity document confiscation by employers — an illegal practice that can result in serious labour rights violations. Employers also regularly violate minimum wage laws. Because under the EPS, the visas issued are employer tied, it is difficult for workers to bring forward their grievances, challenge exploitative conditions or work, or seek redress.¹⁹

G2G recruitment does not always eliminate rights violations in the recruitment process

Migrant communities and migrants’ rights advocates have often called attention to corruption and collusion in migrant labour recruitment. Government officials of countries of origin often have dual and conflicting responsibilities: to maximize spaces in the labour market of the country of destination for their workers and to protect the rights of their workers abroad. This dual

role has led to the suppression of migrants’ rights.

For example, with so many governments competing for worker quotas under the South Korean EPS, many countries of origin strive to satisfy the Korean government to guarantee job placements for their nationals. As a result, many have taken measures to prevent migrant workers from overstaying their visas. Such measures include obliging migrants and their families to deposit large sums of money to be returned to them upon repatriation and encouraging migrants to report on fellow nationals who become undocumented. Migrants’ rights advocates denounce such measures, arguing that they result in debt bondage and further rights violations.

In the context of Canada, Mexico’s consular officials have reportedly colluded with Canadian employers to blacklist migrant workers who speak out against human and labour rights violations. Once blacklisted, a worker will be unable to secure a future work permit.²⁰

G2G recruitment does not always eliminate costs/fees for migrant workers

Even when G2G agreements completely remove private actors from the recruitment process, migrant workers still incur costs to secure work. While fees vary across countries of origin, workers often pay for such services as pre-departure training, visas and work permits, medical checks, language classes, insurance schemes, and travel, among other expenses.

The human rights violations that occur on account of recruitment fees is well documented, and zero fees for migrant

¹⁷ Flecker, K. (2011) “Canada’s Temporary Foreign Worker Program (TFWP): Model Program or Mistake?”

¹⁸ Perkel, C. (2014) “Union alleges migrant farm worker program discriminates against women.”

¹⁹ For a full analysis, see Open Working Group on Labour Migration & Recruitment (2015). “South Korea’s Employment Permit System: A Successful Government-to-Government Model?”

²⁰ CBC News. “Mexico blocking labour activists: Canadian union.”

<http://www.cbc.ca/news/canada/british-columbia/mexico-blocking-labour-activists-canadian-union-1.1108826>

workers is the cornerstone of civil society advocacy on recruitment reform.²¹ The failure of a G2G agreement to eliminate fees for migrant workers undermines their effectiveness in protecting migrant worker rights.

Private recruitment agencies are not beholden to the provisions of G2G agreements

G2G recruitment agreements in the form of BLAs or MOUs are strictly agreements between states. Private recruitment agencies or other intermediaries are neither signatories to these agreements, nor do they have any legal obligations to uphold their provisions. As such, in G2G agreements that do not exclude private actors from the recruitment process it is incumbent upon the governments to enforce rules relating to recruiter activities. The degree to which national laws and regulations address concerns related to the activities of recruitment agencies varies across country contexts, as does the level of enforcement of those rules.

MOUs are not legally binding

Whereas in the early phase (1950s-1960s) of G2G agreements on migrant labour governments were willing to sign legally binding BLAs, the current G2G wave is dominated by MOUs — agreements signed by states that are not legally binding. In his analysis of BLAs and MOUs in Asia, Wickramasekara states “...an MOU may represent a softer option than a legally binding bilateral agreement ... providing a broad framework to address common concerns.”²² He goes on to explain that MOUs are preferred by states because they are easier to negotiate and implement than

BLAs; they provide more flexibility in responding to changing economic and labour market conditions; and they reinforce the temporariness of low-skilled labour migration.²³

Despite their non-binding status, many migrants’ rights advocates see G2G recruitment via MOUs as having the potential to hold governments to account. Where governments agree in MOUs to take action against errant recruiters, civil society can refer to the MOU to challenge governments to uphold their agreements. Where human rights and labour rights violations occur, the MOU can serve as a useful document for advocacy. In cases such as the Canada-Mexico MOU, where discriminatory clauses that contravene the country’s labour laws are built into the agreement, this represents another opportunity for migrant workers and migrants’ rights advocates to lobby for change.

Governments often implement competing systems of migrant labour recruitment

Many countries of destination that accept large numbers of low-wage migrant workers lack policy coherence in the means by which these workers are recruited and granted access to the labour market. Migrants’ rights advocates point to examples in which states have implemented G2G recruitment for some sectors or with some countries, while simultaneously having non-G2G protected labour migration streams.

Taiwan’s experience with simultaneous G2G and non-G2G labour recruitment policies demonstrates how such policy incoherence can undermine G2G recruitment efforts.²⁴ In

²¹ See www.RecruitmentReform.org/
<http://recruitmentreform.org/zero-fees-for-migrant-workers/>

²² Wickramasekara, P. (2012). “Something is Better than Nothing.”

²³ Ibid.

²⁴ Insights from Peter O’Neill, migrants’ rights advocate, Taiwan. Contribution to Open Working Group on Labour Migration & Recruitment online discussion, May-June 2015.

1989, the Taiwan Government implemented G2G agreements with Thailand to bring in labourers for 14 government projects and with the Philippines to recruit domestic workers. Notably, these workers did not pay placement fees. In 1992, the Taiwan government implemented its Foreign Workers Policy, opening the labour market to migrant workers in four sectors: manufacturing, construction, household service (domestic workers and caretakers), and fishing.

The Foreign Workers Policy enabled private recruiters to enter the market, and they proved to provide faster and more efficient (although sometimes corrupt) service to migrant workers. Thai workers wanted to enter Taiwan's labour market as quickly as possible, thereby opting for the non-G2G option and hiring the services of private recruiters. The government largely ignored the resultant corrupt practices and rights abuses experienced by workers.

Although some avenues for G2G recruitment exist in Taiwan, private recruitment continues to thrive. "The majority of companies in Taiwan continue to use the broker system to recruit migrant workers because they can get kickbacks from the brokers. These monetary kickbacks are from the placement fees paid by the migrant workers."²⁵

G2G recruitment does not address root causes of migrant worker vulnerability

While G2G recruitment is often seen as a good practice for the governance of labour migration, these agreements do not address the root causes of migrant worker vulnerability — namely, the commodification of labour that has become the normal practice in our global economic system. As early as the 1950s and 1960s, the institution of G2G recruitment agreements institutionalized a demand for low-skilled

migrant workers and created global circular migration corridors. Until today, as non-citizens in countries of destination, migrant workers cannot fully participate in the countries in which they live and work and often lack access to basic labour rights protections.

Most G2G agreements facilitate labour migration under employer-tied visa regimes, making it very difficult for migrant workers to assert their rights or seek redress when their rights are violated. Although members of the Open Working Group on Labour Migration & Recruitment indicate that reported rights violations tend to be fewer and less severe when migration is governed by G2G agreements, particularly when private actors are eliminated from the recruitment process, they are careful to note that rights violations may be underreported or suppressed, as migrants do not always know where or how to safely seek assistance or file complaints.²⁶

Recommendations

Acknowledging the urgent need for the institutionalization of human and labour rights protections for migrant workers everywhere, and the potential of G2G recruitment to improve government accountability with respect to migrants' rights, the Open Working Group on Labour Migration & Recruitment strongly urges governments to consider the following recommendations:

Where G2G agreements are pursued, enhance state accountability

- Governments should take responsibility for each step of the recruitment process, fully overseeing the role of any private actors involved in the process, to prevent profiteering

²⁵ Ibid.

²⁶ Reflected in discussion during "Migrants in Crisis Civil Society Parallel Event," Manila, March 2015.

and exploitation.

- Governments must be transparent in the design and implementation of recruitment procedures, instituting strong measures to prevent corruption in the system.
- Governments should ensure policy coherence in migrant labour recruitment.

Ensure transparency and participation in the G2G process

- Governments must consult migrant communities and their representatives in the drafting of G2G agreements on migrant labour and ensure that their concerns are addressed in any agreements signed.
- Governments must ensure that G2G agreements on migrant labour recruitment and rights protections are publicly available and accessible online.
- Governments should involve CSOs and trade unions in the design, monitoring, and implementation of G2G labour migration schemes
- Governments should implement review mechanisms to monitor the successes and failings of G2G agreements. These mechanisms should involve migrant workers who have availed of the programs

Ensure that human and labour rights are central in G2G agreements

- G2G agreements on migrant labour recruitment should refer to relevant normative frameworks on the governance of labour migration (e.g., ILO R86 and the Multilateral Framework on Labour Migration) to

ensure a robust, rights-based focus.

- G2G agreements on migrant labour recruitment must not contradict the labour laws of the country of employment.
- G2G agreements on migrant labour recruitment must include robust enforcement mechanisms and monitoring procedures for the provisions articulated within those agreements. Governments must allocate sufficient human and financial resources to ensure monitoring and compliance.

Ensure that G2G agreements include the following provisions

- Zero fees for migrant workers. No worker should pay for his or her job placement abroad.
- Clear, streamlined processes for accessing employment opportunities
- Clearly stated minimum wage and standards for working conditions
- Accessible complaints and redress mechanisms
- Process for regular labour inspections
- Robust and portable social protection programs for all migrant workers
- Process by which workers can change their employers without fear of losing their job / repatriation, and that ensure their right to mobility
- Full implementation of rules against passport and identity document confiscation by employers

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With members from civil society organizations across the world, the Open Working Group is committed to knowledge sharing and collective advocacy to reform migrant labour recruitment practices globally. Building upon years of civil society advocacy on labour migration, human rights, and recruitment reform, the Open Working Group was initiated in May 2014 by Migrant Forum in Asia and the Global Coalition on Migration (GCM) together with other civil society organizations. The Working Group is coordinated by Migrant Forum in Asia and forms part of the Migration and Development Civil Society Network (MADE).

To learn more about the Open Working Group on Labour Migration & Recruitment and its Recruitment Reform Campaign, visit our website: RecruitmentReform.org.