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Hand:
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Development**

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Guiding the Invisible Hand: Making Migration Intermediaries Work for Development

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Abstract

Intermediaries are key actors that facilitate, and sometimes drive, migration within and across borders. By providing information and extending critical services in many stages of migration and in places of origin, transit and destination, legitimate intermediaries build migrants' capabilities and expand their range of choice — the very essence of human development. However their value is, in many cases, overshadowed by the costs they impose on migrants, from charging exorbitant fees to outright abuse of basic human rights. Clearly, there is much room for intervention to shape intermediaries' operations in more positive directions. Available policy levers are many, from imposing a system of regulation to fostering government-mediated migration. In weighing these policy options, there is rarely a bright line separating legitimate services and reasonable costs on one hand, and exploitative fees or practices on the other. This can be addressed by adopting a framework that recognizes the importance of identifying the nature of scarcity and recognizing how migrants can best overcome the constraints of scarce information, access and employment opportunities. Success will also depend on introducing parallel efforts centered on empowering migrants, monitoring the intermediating industries, building institutional capacity and drafting migration policies that reflect realities on the ground.

Keywords: migration intermediaries, recruitment agencies, regulation, self-regulation, development, migration policy, temporary labor migration.

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I. Introduction

The number of international migrants has doubled since 1965, nearing 200 million — a population that would constitute the 11th largest country in the world if they all lived in one place.¹ Migration within borders is thought to be much larger; China alone has an estimated 140 million internal migrants.¹ Facilitating and sometimes driving this huge migration flow are intermediaries who recruit and guide migrants through the shoals of immigration policies and the difficulties of transit, who match employers and workers, who provide information about living and working conditions in distant locations — and some of whom mislead and abuse their “clients”.

These intermediaries include informal social networks, recruitment agencies and their chains of subagents, travel agencies, legal advisers and similar businesses. Those that provide clandestine services such as unauthorized travel are labeled smugglers. Those whose actions are not only clandestine but abusive fall into the category of traffickers, whose ‘product’ has been characterized as modern-day slavery.

Legitimate intermediaries fulfill an important role — bridging the gap between employers or sponsors and prospective migrants. Despite the advance of globalization, significant barriers to mobility remain, not only at the international level but also, in some cases, domestically. At one extreme are outright restrictions on mobility, such as restrictive immigration policies and limits on rural to urban migration. Even in cases where migration is allowed, information and resource gaps can also constrain movement. Labor migrants, for instance, may not have the best information on jobs at destination or the financial and social capital to support a move.

¹ This reflects a near doubling of world population in the same period rather than a sharp increase in mobility; the proportion of world population who are international migrants has remained nearly constant — but the increase in the sheer number of people on the move creates an enormous role for migration intermediaries.

By providing information and extending critical services in many stages of migration and in places of origin, transit and destination, legitimate intermediaries build migrants' capabilities and expand their range of choice. In the best of cases, intermediaries allow migrants the opportunity to move and pursue a life of meaning — the very essence of human development. From this perspective, intermediaries become agents of development.

However, the services intermediaries provide come at a cost. It is difficult to draw a clear line between a reasonable fee for valuable services and exploitative charges or practices, or between exploitation and criminal abuse. Numerous accounts of intermediaries taking advantage of the migrants they purport to serve suggest the need for more intervention in intermediaries' operations.

Available policy levers are many, from imposing a system of regulation to fostering government-mediated migration. The success of these interventions, however, will depend on parallel efforts centered on empowering migrants, monitoring the intermediating industries, building institutional capacity and drafting migration policies that reflect realities on the ground.

Far from losing their relevance, intermediaries are likely to remain important actors in the movement of people in an immensely inter-connected world divided by porous and often arbitrary borders. The goal of public policy should be focused not only on minimizing the costs intermediaries impose on migrants but also on engaging them as potential agents of human development.

II. Who are the intermediaries?

Globalization provides opportunities for a wide range of migration intermediaries. Some operate formal legal businesses regulated by governments, while others exist in a parallel yet connected world of informal, semi-legal or even outright criminal recruiters. They operate in origin, transit and destination countries and facilitate many types of movement,

from legal permanent migration to outright trafficking. These intermediaries may be roughly categorized into five groups.

1. Social Networks

The first group, and one of the most studied, is made up of social networks — a prospective migrant’s relatives, friends, neighbors and others connected to him/her by social, cultural or economic bonds. Many scholars have long recognized that migration is deeply embedded in social relations. As Charles Tilly argued in the early 1990s, it is not individuals or even households who engage in migration, but groups of people who have kinship, professional or other ties.²

Academic and policy literature on migration recognizes these social networks as one of the key “engines of immigration”, providing critical information, resources and logistical support.³ In Bangladesh, for instance, about 55 to 60 percent of recruitment is conducted through individual initiatives and social networks. Usually, persons already deployed in the host countries arrange visas for their friends and relatives through their own contacts.⁴ Likewise, about 36 percent of Polish immigrants in the United Kingdom found their jobs because they knew someone who already worked for their employer.⁵ Half of garment industry workers in Argentina are Bolivian due to the sector’s heavy reliance on social networks to find jobs.⁶ Likewise in Fujian, China, majority of migrants take the initiative to contact kinship networks and social groups in order to migrate.⁷

Studies suggest that these informal networks have fueled and sustain migration in major corridors, like the Mexico-United States corridor.⁸ As the network theory of migration argues, initial migration flows typically experience more significant struggles to adapt. Subsequent flows, however, have an easier time because of improved access to information from their predecessors.⁹ As migrant networks develop, norms become institutionalized, some of which decrease the costs of migration. Networks can also serve to reinforce and even increase migration flows despite changes to the circumstances that caused the original migration, by creating a situation of path dependency, or factors that maintain the status quo such as the development of a culture of migration.¹⁰

2. Private Recruitment Agencies and their Chain of Sub-agents

Complementing and, in many cases, supplanting social networks are relatively more formal and organized intermediaries whose primary occupation is recruitment. Foremost among this second group are private recruitment agencies, some of whom are licensed by their governments while others are not. As the International Labor Organization acknowledges, very few industries in the world have changed their image as markedly as the recruitment and placement industry. Private recruiters now play a crucial role in the effective operation of global and internal labor markets. Businesses are now searching for more flexible and mobile staff, while workers are eager to move across national and state. Within this new environment, recruitment agencies have extended their business activities and increased their market share. The International Confederation of Private Employment Agencies records over 9.5 million workers using private agencies to find jobs, enhancing their employability and keeping them in touch with the job market and training opportunities.¹¹

Recruitment agencies play an especially vital role in the placement of workers abroad. For instance, agencies account for the majority of deployment from Asia, especially from the Philippines, Pakistan and Sri Lanka.¹² Their extent of operation varies across countries. A survey of foreign nurses in the UK, for instance, found that two thirds were recruited through agencies. However, while nearly all nurses from the Philippines and South Africa used an agency, very few nurses from countries in sub-Saharan Africa did. The study also found that most Filipino nurses moved through Philippines-based agencies while others typically used agencies based internationally or in the UK.

For the past two decades, the increasing need to provide services to a rapidly growing and flexible internal labor market has also led to the increased use of private recruitment agencies within countries. While they have long complemented the traditional employment market, they are now considered as a “catalyst for new forms of human resource management services and can be contributors to better working conditions.”¹³

Interestingly, the ILO formally recognized the role of recruiters only in 1997 when it overturned its ruling of 1919, which effectively banned fee-charging private recruitment

agencies.¹⁴ In 1997, private agencies represented 80 per cent of all movements of labor from Asia to the Arab States. In Europe, the growth of jobs provided by temporary work agencies was estimated at 10 per cent a year from 1991 to 1998.¹⁵ The ILO attributes private recruitment agencies' rapid growth to the "changing and flexible labor market, constraints in the operations of public employment services and the use of other networks for placement."¹⁶

Private recruitment agencies rarely work on their own, but rather use a host of mostly informal sub-agents or brokers to find prospective migrants or employers, creating additional layers of intermediaries. Most Bangladeshi recruitment agencies work with brokers in destination countries, many of them Bangladeshi, Indian or Pakistani. These brokers typically work for factories looking for employees from overseas.¹⁷ At the same time, private recruitment agencies also work with local sub-agents, known colloquially as *dalals*, who find and refer prospective migrants from villages and areas far from city-centers.¹⁸ Essentially the intermediaries of intermediaries, sub-agents or brokers are not formally connected to the agencies they work with and rarely are accountable to them or to the migrants they eventually help to deploy.

3. Quasi-intermediaries

Another group of intermediaries are primarily involved in other business activities and engage in recruitment part time or clandestinely. For lack of a better term, this third group can be described as quasi-intermediaries, for in many ways they are like other intermediaries in all but name. For instance, country-of-origin governments typically bar travel agencies from engaging in recruitment. However, field studies in Brazil, Bangladesh and the Philippines reveal that many travel agents facilitate migration despite the ban.¹⁹

Another example within this group is temporary staffing agencies. Employers outsource their workforce to these agencies, which place locals as well as migrants. Unlike other intermediaries, these agencies are not just recruiters but essentially act as employers as well. Temporary staffing agencies have been growing in Central and Eastern Europe. Their sole purpose is to post workers from the EU's eight new accession countries —

Poland, Hungary, the Czech Republic, Latvia, Lithuania, Estonia, Slovakia, and Slovenia — to work temporarily in various companies within the European Union.²⁰

Other examples of quasi-intermediaries are modeling and entertainment agencies, immigration lawyers and firms, refugee-assistance centers and cultural exchange programs — and even hospitals. As will be discussed later, governments and international and non-profit organizations can also be included in this group.

4. Smugglers

While the first three groups sometimes straddle the grey zone between legality and illegality, the fourth group operates a bit further down the continuum, somewhere between illegality and outright criminal activity. Smugglers move hundreds of thousands of people across borders worldwide each year.²¹ One estimate suggests that annually, some 800,000 people are smuggled across borders.²² The phenomenon, however, is more pronounced in some corridors. For instance, a 2006 study found that in the United States, around 73 percent of all newly arrived migrants from Mexico are undocumented; an estimated 74 percent of them hired a “coyote” to help them navigate the border crossing.²³

In 2004, a new protocol to the UN Convention on Transnational Organized Crime (UN TOC) dealing with smuggling came into force. The Smuggling Protocol defines “smuggling of migrants” as “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” (Article 3).²⁴

Human smuggling basically involves the “willing participation” of a client to migrate abroad without authorization.²⁵ The term commonly invokes consensual transactions where the smuggler and the smuggled person decide to evade immigration control to achieve mutually gainful objectives. Harvard’s Jacqueline Bhabha noted this definition includes two important ingredients: illegal border crossing by the smuggled person and receipt of a material benefit by the smuggler.²⁶

Given that smuggling is an underground and covert operation, it is difficult to completely understand its true scale and nature. For instance, since the early 1990's, immigration officials within the United States have associated smugglers with organized crime and street gangs. This connection is based on the premise that "human smuggling requires organizational structures and sets of activities, not just individual endeavors".²⁷

For some scholars, however, most smuggling operations are operated by "entrepreneurial" individuals from social and familial networks, not gang leaders. For instance, in the case of smuggling from China, Willard Myers noted that "Chinese transnational criminal activity is carried out as a form of entrepreneurial activity by and among persons who are linked by language (dialect group) and lineage (ancestral birth place), who may or may not be a member or affiliate of an organization recognized by law enforcement".²⁸ In another study, authors Sheldon Zhang and Ko-Lin Chin concluded that "most alien smugglers are otherwise ordinary citizens whose familial networks and fortuitous social contacts have enabled them to pool resources to transport human cargoes around the world".²⁹

Irrespective of their criminal orientation, from the perspective of migrants with no or very limited access to legal channels, smugglers provide essential and desirable services. However, as many observers have argued, these services usually come at a high cost, often to the point of being exploitative.

5. Traffickers

Unlike smugglers, traffickers are clearly criminal actors. They move an estimated 800,000-900,000 people a year into forced labor or slavery-like conditions.³⁰ The ILO placed the stock of trafficked persons in 2005 at 2.4 million, more than half of whom were in Asia.

Unlike smugglers who are seen to work with willing partners to an illicit or illegal enterprise, trafficked individuals did not give their consent and are considered "victims" or "survivors".³¹ By definition, trafficking involves coercion or deception and is clearly a human rights violation.

As with smuggling, there is a UN protocol on trafficking. Trafficking as defined internationally involves:

...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.³²

Trafficking, therefore, involves two components: exploitation and coercion. Coercion is not limited to using physical force or mental domination, but extends to "the abuse of a position of vulnerability." As Bhabha notes, coercion includes a potentially broad range of situations that constitute a position of vulnerability such as poverty, hunger, illness, lack of education, and displacement. The trafficking definition on exploitation include exploitative actions that are either sexual (i.e. prostitution of others) or non-sexual (i.e. indentured or bonded labor, child labor, or oppressive forms of labor and other "practices similar to slavery.")³³

Interestingly, the protocol remains unclear as to whether prostitution itself constitutes exploitation, reflecting what some considered as deeply polarized views within UN Member States on the topic.³⁴ For instance, the United States government considers prostitution as tantamount to exploitation, a stance that some civil society groups vehemently reject.³⁵

Connections Within and Without

These different intermediaries often work together. For instance, some Philippine-based recruitment agencies deploying nurses and teachers collaborate with agencies or brokers at the destination, which find employers and also recruit workers on their own. Mexican *coyotes* in regions with a long migratory tradition typically link with sub-agents in the United States, such as farm labor contractors, who in turn provide jobs and transportation to work sites.³⁶ Social networks have been known to connect would-be migrants to their preferred agencies, brokers and smugglers. In China, migration is often the fruit of

cooperation between familial and *guanxi* or “non-familial relations”. Human smuggling from China has been characterized as “essentially a business of social networking”³⁷ where those involved in the smuggling network could be part of the same social network. Studies involving female victims of trafficking even found that some were recruited through friends or acquaintances already inside a trafficking chain.³⁸

Intermediaries also work with other actors who have less than direct connections to the migration process. For instance, in Ecuador, travel agencies work with moneylenders to advance funds needed for migration and to supply counterfeit documents.³⁹ In El Salvador, micro-lending programs have been known to finance migration. While personal loans to pay *coyotes* are not part of their mission, micro lenders have saved some families from foreclosure on their land resulting from the exorbitant interest rates some *coyotes* charge on delayed payment for their services.⁴⁰ In Italy and Germany, brokers of caregivers have arrangements with drivers of the numerous minibus companies that travel across and within borders to advise their migrant customers to use a particular intermediary.⁴¹

In Pakistan, smugglers work with brokers, suppliers or forgers of passports and visas, airline staff and immigration officials at airports, as well as third parties who hold the payment until the journey is complete. Even more actors are involved in journeys with significant layovers in transit countries, or overland travel.⁴²

Ko-lin Chin’s analysis of human smuggling from China vividly paints the complexity of actors behind a smuggling operation. In Chinese parlance, the main agent of the smuggling operation is a “snakehead” and unauthorized immigrants are called “snake people”. Human smuggling from China involves: big snakeheads who arrange and invest money and other resources; little snakeheads who recruit migrants; transporters who assist migrants to their destinations; corrupt public officials who are bribed into obtaining official travel documents; guides and crew members who assist migrants in transit; enforcers who work mainly on ships to manage and police migrant social behavior and order; support personnel who provide food and clothing to migrants; and debt collectors who collect payment from migrants.⁴³

III. Value vs. Cost: Intermediaries and their Role in Human Development

Despite this diversity among intermediaries, all except those who deceive and exploit migrants satisfy an overarching goal — bridging the gap between employers or sponsors and prospective migrants. Despite globalization, this gap has remained significant, allowing intermediaries to assume important roles. Unlike in trade and capital markets, there is still significant friction in labor markets across and, in some cases, even within borders. For instance, due to restrictive immigration policy at destination or inadequate financial and social capital at origin, many people do not have even the minimal capabilities required to exercise their desire to move.

Intermediaries provide information and critical services that build on migrants' limited capabilities. In doing so, they expand migrants' range of choice, increasing the possibility that they will be able to pursue lives that they value. From this perspective, intermediaries can be seen as agents of human development.

Intermediaries' value extends beyond the initial recruitment phase and covers many stages of migration. They provide migrants with information, assistance and many kinds of logistical support in origin, transit and destination.

A. Value

1. Information

Many prospective migrants have incomplete and imperfect information about job opportunities and living conditions abroad. At the same time, employers in receiving countries are looking for efficient ways to fill vacancies with migrant workers but often have very little knowledge about appropriate candidates. Intermediaries play an important role in filling this information gap. Social networks are excellent sources of information, ranging from names of employers seeking workers to safer modes of travel to housing options at various destinations.⁴⁴

Recruitment agencies in the Philippines typically advertise openings abroad through websites, local newspapers and huge bulletin boards posted outside their centrally located local offices. Some provide access to databases of employers seeking migrant workers. The private H1 Visa Job Corporation, for instance, offers to submit, for an additional fee, a job-seeker's resume to thousands of US-based employers who purportedly are actively seeking foreign workers in many professional fields.⁴⁵

Many US-based immigration lawyers provide information on how to navigate more quickly and successfully the “metaphorical maze” of US immigration laws and procedures. These firms highlight what have been described as “process opportunities”— special laws, procedures, interpretations, rules, regulations and court cases that can be used to facilitate permanent and temporary movement. Some immigration lawyers also train and/or assist companies and/or their recruiters to make “wise, “immigration-friendly” hires.”⁴⁶

2. Matching Assistance

Most intermediaries do not just provide information. They also actively match migrants with employers. Matching can be an expensive, time consuming and tedious process. Intermediaries have to screen job orders and applications, conduct interviews, check documents, test workers and draw up contracts.⁴⁷

The process can be especially tedious for particular occupations. For instance, recruiting agencies that send nurses abroad have to evaluate a prospective migrant's formal qualifications and experience as well as personal qualities and match them with the requirements of institutions abroad.⁴⁸ These agencies then arrange interviews via telecom, video conferencing or in person.

Intermediaries typically use their local knowledge to select the best workers for the job, although they may in some cases discriminate against some applicants for reasons that are not related to job skills. For instance, recruiters of agricultural workers in Mexico are known to routinely weed out potential ‘trouble makers’.⁴⁹

Recruiters can also play an important role in facilitating migration flows and in matching employers and workers within countries. Indeed, substantial information gaps on labor market opportunities can exist between different regions of a country. For instance, during the first three decades of the twentieth century, manufacturing employers in the north and north-central United States faced both booming capacity and increasingly tight labor supply. Simultaneously, these employers faced growing demand for manufactures (both domestically and for export) and decreasing occupational specialization due to the mechanization of the industry. In response to these forces, Northern employers “discovered” a largely unexploited pool of low-skilled labor among the primarily rural African American communities in the South — which at that point was still recovering economically from the Civil War. Faced with limited prospects for socio-economic mobility in the South (as Jim Crow laws became widespread) and informed by recruiters of plentiful jobs in the North, African Americans began to migrate en masse — first seasonally, and then permanently — to northern cities such as Chicago, Detroit, Cleveland, and Boston.⁵⁰

Similar dynamics are still evident today. Many of the same informational, geographic and skill barriers that make intermediaries necessary for international job matching are also widespread within countries or labor markets unified through a common market agreement. According to Julia Henly, formalized job-search intermediaries can range from simple advertising agencies (often in professional or trade-specific media) to placement programs run through welfare offices, community organizations, non-profit groups, or private job-search agencies.⁵¹ Their services can include referrals to firms and access to demand listings.

Indeed, within the United States, the role of intermediaries in matching employees and employers has become more important. Temporary help firms, in particular, have grown explosively (although they still account to a relatively small fraction of total employment.) Interestingly, these firms have clienteles disproportionately weighted to the working poor. For example, 15 percent of those employed by temporary help firms in

1999 were high school dropouts, and 21 percent were college graduates. The comparable figures for people in traditional employment arrangements were 11 percent and 31 percent. African-Americans and Hispanics accounted for 34 percent of temporary workers, compared with 21 percent of people in traditional occupations. This suggests the important role of intermediaries in finding employment for members of disadvantaged groups.⁵²

For low-skilled occupations, government welfare agencies and personal networks seem to play a more important role than large-scale recruiters. For middle-skilled occupations, formal recruitment agencies and individual recruiters have become less prominent and have given way to job-matching sites such as monster.com, and professional and personal networks (e.g., alumni networks). However, the impact of the rise of Internet job-search technology is still ambiguous. Notably, the use of recruitment intermediaries continues to be widespread at the extreme upper-end of the labor market – for example among business executives, university administrators, engineers and technology specialists, physicians, architects and lawyers. Here, inter-firm competition and the race for talent yield a highly competitive human resources climate. However, for obvious reasons, the potential for worker abuse by intermediaries is much less than among low-skilled workers in an international labor market. And as a result, the argument for government intervention is much weaker.

More recently, as technological innovations have spurred the integration of regional labor markets, recruitment methods have become increasingly differentiated by skill level within many advanced industrial societies. Some researchers suggest that Internet job search software and websites facilitate better employer-employee matches by systematically bridging information gaps⁵³ while others claim that Internet searches simply put very disparate job candidates into the same labor markets, thereby increasing the premium on personal networks.⁵⁴

3. Logistical Support at Origin

Beyond information and matching, many intermediaries provide logistics support at origin. For instance, nurses bound for the United States reportedly wait an average of two years for a visa, even after a match is made. Recruitment agencies will fulfill tedious legal requirements — aptly called in one study “institutional checkpoints” — such as the filling and submitting of required immigration forms and visa applications on behalf of their clients.⁵⁵

Likewise, within the European Union, excessive bureaucratization of the process to obtain work permits often causes a lag between the availability of workers and the needs of companies. This makes direct recruitment of foreign workers from non-EU countries very difficult. Construction companies in the Netherlands address this problem by using temporary work agencies, which can quickly sort out all legal matters and easily provide non-EU workers.⁵⁶

Intermediaries also provide financial support to prospective migrants. Migration almost always requires significant initial investments which may include, among others, placement or smuggling fees, documentation costs such as passport, police clearance and birth certificate fees, and required tests and certifications of medical qualifications and other skills.

Instances of social networks financing migration of relatives and friends are well documented. Looking at Chinese migration to the US, Zhao Liang and his colleagues found that individuals chose to borrow money from members of their village at a low or even zero interest rate. Since newly arrived Chinese migrants in the U.S. work under an employer or within a business involving persons from the same village, risk for loan default is low.⁵⁷ Similarly, one recent study using data from the Mexican Migration Survey strongly suggests that loans from relatives tend to cover payments to *coyotes*.⁵⁸ Interestingly, migrants’ social networks are not only sources of financing; strategically connected networks can also lower the cost of financing. A case study of Chinese

migrants from Fujian found that recruiters typically approach village cadres to obtain permission to recruit migrants. The study suggests that persons who have village cadres in their family have a greater opportunity to migrate and are also likely to pay lower smuggling fees.⁵⁹

Private recruitment agencies and their strings of sub-agents and brokers also provide loans, typically paid through a salary deduction scheme. For instance, within India, construction workers from Madhya Pradesh typically migrate to neighboring states of Maharashtra and Gujarat. Until about 2005, recruitment was largely done by agents locally known as *mukkaddams*. The *mukkaddams* provide cash advances to migrants to help their families left behind until remittances start to flow. The advance is also used by the migrant to purchase essentials for the journey and is repaid through salary deduction.⁶⁰

Aside from financing, other intermediaries also provide necessary training. For example, some Indian hospitals have been engaging in “business process outsourcing”. These hospitals not only send nurses abroad, but also train and prepare them to take foreign nurse examinations. One study of this emerging trend revealed that these hospitals invest an average of US\$4,000 to US\$7,000 to cover training and other related costs and earn as much as US\$47,000 for every single nurse placed abroad.⁶¹

4. Logistical support in transit

Once migrants leave their countries of origin, intermediaries facilitate the actual move and provide accommodation while in transit to the final destination. In the case of Polish migration to Germany and Italy, for instance, many transport agencies run small bus lines which connect Polish, German and Italian towns, cities or villages. Some recruitment agents run their own transport agencies or work together with them to get more customers and to ensure that their clients get to the employer at the required time. Many agents who arrange jobs and travel to the place of work also maintain accommodation in Germany and Italy for newly arrived migrants and for migrants who would like to (for personal

reasons) or have to (for employers' reasons) be reallocated to other job arrangements in the destination country.⁶²

Studies of smuggling operations between Thailand and Myanmar reveal similar roles at transit points. Myanmar brokers usually transport migrants to the border and Thai brokers will receive them on the Thai side. The Thai brokers may deliver them directly into the employer or to one agreed location. In the latter arrangement, migrants have to locate another broker to find work.⁶³

5. Logistical support at destination

Intermediaries continue to provide services at the final destination, sometimes even well after migrants started work. For instance, members of social networks generally help migrants' find work and, in some cases, assimilate into the society.⁶⁴ Hometown associations are often seen primarily in terms of their engagement in development in countries of origin, but many actually perform key intermediation tasks such as connecting new migrants to social services, including legal services for help in obtaining work authorization and organizations that offer job placement assistance. For example, a 2000 study of Ghanaian immigrant associations in Toronto, Canada found that one of their main goals was to ease the settlement process for new arrivals by providing assistance in locating housing, employment, and other necessities. Members would ask other immigrants as well as their own employers to inform them of job vacancies for new immigrants.⁶⁵

In Malaysia, Indonesian domestic workers, regardless of whether they moved through legal channels or through a smuggler, often stay with Malaysian agencies or brokers for a period typically ranging from one day to two weeks before moving to their employers' homes. In cases where migrants have problems with or were rejected by their employers, Malaysian agencies typically arrange for another placement.⁶⁶

A study of farm labor contractors in the United States likewise shows that they not only arrange jobs for workers, but also offer services such as cash advances, transportation, housing, food, drink, false documents and other necessities at the destination. This is particularly true in cases where contractors recruit in border towns and places where migrants may have limited or no access to social networks.⁶⁷ A 2002 study on the domestic work industry in Italy and Germany reveals a roughly similar trend.⁶⁸

In the Russian Federation, where most migrant workers are recruited informally, intermediaries typically approach incoming migrants at train or bus stations and offer transportation to construction sites and other places that hire migrant workers. As in other cases, Russian recruiters also provide a wide range of services, from protection from arrest (through bribing the local police) to providing food and accommodation.⁶⁹

A survey of migrants working in Thailand's domestic service, agriculture, fishing and manufacturing sectors also revealed that intermediaries arrange remittances and communication to family members back home. Some recruiters also negotiate better pay or working conditions and remove migrants from abusive workplaces. Researchers in this study conclude that, contrary to common held beliefs in the region, recruiters are not often traffickers but "in fact play a positive role in terms of maintaining an ongoing relationship with the migrants."⁷⁰

Indeed, a study of entrepreneurs in Long Island, New York offers a glimpse of the gamut of services intermediaries provide or arrange at destination: smuggling itineraries packaged by travel agents, false work and residency documents assembled by notaries, and transportation provided by co-workers and neighbors.⁷¹

Intermediaries at destination do not cater only to undocumented or low-skilled migrants. Agencies recruiting teachers, for instance, provide a range of services, from help in purchasing insurance and finding accommodations to providing no-interest relocation loans to cover unexpected expenses.⁷²

B. Cost

The nearly full circle of services intermediaries provide are not given to migrants for free, but at a cost that many observers find unbearably high, to the point of being exploitative. Private recruitment agencies and their sub-agents have faced the strongest and most frequent criticism. As noted by the ILO in a report presented to the 85th session of the International Labour Conference in 1997, "...a disturbing number of (private employment agencies), often not widely known, exploit both workers and the countries involved, including the host countries."⁷³ This concern is shared by trade unions. For instance, the International Confederation of Free Trade Unions (ICFTU) — the predecessor organization of the International Trade Union Confederation — highlighted in a 1997 report the "modern-day slavery of temporary migrants." The ICFTU report cited recruitment agencies' wide range of abuses, from offering fictitious job offers to mafia style-trafficking.⁷⁴

Even the much celebrated social networks are gaining their share of critics. Studies have documented the less than symmetrical relationship between migrants and their social networks. Sociologist Sarah Mahler, for instance noted, that assistance within networks often comes at a very high price. Stuck near the bottom of the nation's labor markets, she argued that many immigrants profit at the expense of other migrants in their networks.⁷⁵

In both internal and international labor migration, intermediaries oversee one of the most critical junctures: The moment when the terms and conditions of the employer-employee relationship are still being negotiated, and when power asymmetries between actors can either lead to a mutually beneficial relationship, or to exploitation. In general, concerns over the actions of intermediaries fall into three areas: (1) fees and other types of transaction costs, (2) fraud and (3) human rights abuse.

1. Fees and other types of transaction costs

Fees are at the center of most recruitment irregularities, with intermediaries charging excessive prices, collecting fees too early, or failing to issue receipts. The level of fees

differs depending on many variables, such as the country of destination, nature of work and prospective salary.

For instance, research on China suggests that nurses aiming to enter the Australian and United Kingdom market pay recruiters between US\$4000 and US\$15,000⁷⁶ while Chinese construction workers bound for Japan and Singapore pay agents between US\$3,000 to US\$10,000.⁷⁷ Female domestic workers, who typically earn between S\$200 (US\$ 134) to S\$250 (US\$ 167) a month, pay about S\$600 (US\$ 403), or three months salary, to recruitment agents to get contracts in Singapore.⁷⁸ Teachers recruited to the United States pay between 7 to 15 percent of annual salary as a placement fee, on top of documentation and training costs.⁷⁹

Khalid Koser's study of smuggling from Pakistan suggests that, depending on routes and destination, smugglers ask between US\$3,000 to US\$20,000.⁸⁰ Smuggling fees from China to the United States are much higher, reported at various sources to be ranging from US\$30,000 to US\$70,000.⁸¹

In general, migrants pay higher recruiting fees if the job carries prospects for settlement abroad, if it is difficult to migrate via social networks or illegally, and if there are far more workers seeking to go abroad than there are contracts available.⁸²

Studies have shown that excessive fees levied on prospective migrants are often the first step into the cycle of dependency and coercion.⁸³ In order to pay recruitment and processing fees, migrants may take out large loans requiring repayment at extremely high interest rates or agree to a salary deduction scheme that holds the first three to five months of salary as payment. There are even cases in which intermediaries collect security bonds and housing or property certificates from migrants before their departures, as a form of collateral.⁸⁴

2. Fraud

Fraud and deceit are also believed to be common. Some intermediaries do not provide complete and honest information about job responsibilities, work conditions, or where and how migrants can turn for help while at the destination.

Some pay migrants less than the agreed amount. For instance, within India, workers from Western Orissa are usually recruited to work in other states by an agent or contractor known as a *Sardar* or *Khatadar*. At the time of recruitment, *Sardars* give the worker an advance and promise a wage which is to be adjusted against the advance at the end of every month. But this promise is rarely kept. Brick kiln workers are usually paid Rs 175-200 for 1,000 bricks made and typically work for 12 to 15 hours — and sometimes, up to 18 hours a day to make more money. Wages are settled at the end of the brick-making season and research found that *Sardars* typically cheat the illiterate migrants.⁸⁵

Indeed, underpayment seems to be evident among internal migrants working in other parts of India. Another example is in Andhra Pradesh, where companies typically pay the agent and not the migrant workers. A 2008 field study found that migrants were receiving the equivalent of Rs 1200 per month in cash and food even though the agents or *mestris* received Rs 4500 per month from the employer.⁸⁶

Other intermediaries arrange for jobs that do not exist or falsify documents that can endanger migrants' status at the destination. For instance, recruitment agencies in Bangladesh usually process a large number of passports at any given time. There are cases where agents sign the forms on migrants' behalf placing them at risk at the destination when immigration officials find their signatures do not match the signature in the passport.⁸⁷

Some agencies bypass checking systems for work permits and transport migrants under improper visas. Cases of professionals, particularly in the health sector, leaving under student visas have been documented. In Bangladesh, where the sale of visas is rampant,

there have been documented cases of a visa being sold to a worker other than the one to whom it was issued. The migrant bearing the fraudulent visa becomes an undocumented worker at the destination.⁸⁸

Others open centers that offer phony professional examination training. There are multiple instances of Filipina nurses bound for the United States who pay significant tuition fees to agency-run centers that purportedly train for the National Council Licensure Examination-Registered Nurse or NCLEX-RN, one of the tests required for employment as nurses in US health establishments.⁸⁹

Fraud affects even the highly-skilled and extends to developed destination countries. An in-depth study of international nurse recruitment in the United States revealed the myriad problems migrant nurses suffer at the hands of recruiters:⁹⁰

- Agencies collect payments from nurses for testing or travel and then never reappear to follow through on commitments.
- Some nurses sign contracts to work with a particular employer and, upon arrival, learn that they must work for another employer.
- Some nurses are told that they will work as direct hires and, upon arrival, learn that they are assigned to a staffing agency.
- Contracts are sometimes “sold” to another agency; nurses are then forced to work in the new agency’s hospital or nursing home.
- Some nurses who have been promised reimbursement of test fees and travel expenses never receive the funds.
- Nurses told that their temporary permit and Social Security number (SSN) would be ready upon their arrival in the United States sometimes find that the documents are not yet available. As a result, payment for work is delayed until issuance of the SSN, leaving the nurses with no option but to work as clerks for \$12 an hour until permit issuance.

3. Human Rights Abuse

There are also numerous reports, mostly from migrant NGOs, of agencies confiscating passports and forcing workers to stay with abusive employers. In the worst cases, migrants are harassed sexually or deprived of food and other vital necessities while in transit and at destination.

One case in Indonesia involved months-long confinement in overcrowded training centers run by recruitment agencies. The prospective migrants were reportedly trapped in heavily-guarded centers for three to six months without any income.⁹¹ Another study of Chinese migrants in the United States found that smugglers sometimes hire gang members to force migrants to pay long-standing debts and even compel women into prostitution. Many migrants in the restaurant and garment industries reported working long hours and living in crowded tenements. Research also found that many suffer from physical and mental exhaustion due to sweatshop-like conditions.⁹²

News accounts of smugglers operating overcrowded, rickety boats and cargo containers, sometimes resulting in the deaths of their passengers, point to dangers of smuggling. Research suggests that smugglers are keen to move several people at once because bribery is typically the same for one person as for several. It also increases the chances that at least one would arrive safely, allowing smugglers to recoup their initial outlay.⁹³

As Jacqueline Bhabha notes, some of those fortunate enough to reach their destination find themselves locked in cycles of violence, exploitation, and abuse. Victims' fear of arrest and deportation coupled with retribution by smuggling gangs led to the underreporting of these violations.⁹⁴

A study on internal migration in India show that abuses do occur even within internal labor markets. Priya Deshingkar and Shaheen Akter cite the various ways in which migrant construction workers within India are exploited by their agents or *mestries*, ranging from trapping them in bonded labour by paying less than subsistence level,

extracting overtime and child labour and using “caste based and patriarchal modes of oppression to maintain exploitative labour relations.” The authors conclude that the migrant workers are aware of the exploitation but still choose to use an agent due to lack of information for finding jobs independently. There is a belief that the *mestries* will “help them during times of difficulty” because of what the authors describe as the “feudal history of the region and their faith in patron-client relationships.”⁹⁵

IV. Policy Options

Paradoxically, migration is the most restricted but least regulated factor-of-production flow (relative to traded goods and financial capital). Unilateral migration management tightly limits labor mobility channels but, within those channels, government policy is often laissez-faire in relation to the intermediaries. An accounting of intermediaries’ value and cost to prospective migrants strongly suggest that this hands-off approach merits serious revision. Clearly, there is much room for intervention to shape intermediaries’ operations in more positive directions.

Current policy and academic discussions points to three potential areas of intervention: (1) control the intermediaries, (2) help their efforts to self-regulate, or (3) bypass profit-oriented intermediaries altogether. The appropriate policy interventions depend on the nature of the scarcity in the labor market, a concept that will be discussed at length in Chapter 5 of this paper.

A. Control the intermediaries

Since intermediaries are often in a very powerful position, one way to curb abuse is to control their leverage against migrants. This can be achieved by creating checks in four fronts: (1) regulation, (2) stricter enforcement and border control efforts and (3) employer-led and (4) cross-border initiatives.

1. Regulation

Regulation repeatedly comes up as a potentially effective tool of government control. Governments may register and/or license agencies. Registration required that agencies make themselves known to a government authority, while licensing entails the prior authorization of an agency before starting business. Some cases will justify registration only while some may require a licensing system.

The benefits of regulation through licensing are threefold. First, it allows for a pre-screening of the applicants' capabilities and professional experience in job placement activities. Second, it creates transparency by identifying agencies and their overall activities. Third, a licensing system facilitates record-keeping not only of the basic and critical information, such as agencies' business addresses, but also on the types of services that agencies offer clients.⁹⁶

The ILO recommends that, if a system of registration is adopted, agencies should at the very least be registered as a special category of private business to avoid malpractice and abuse of clients. The ILO argues that although agencies "in general, operate as a normal private business, their activities and operations relate to people wishing to find suitable employment. Services related to human resource management are unlike a brokerage business; they require specific skills and an understanding of human beings with their different needs, aspirations and idiosyncrasies."⁹⁷

Scope of Regulation

The types of recruitment services that agencies perform or the sectors in which they focus operations will typically determine the scope of licensing. For example, several countries regulate temporary work agencies, while others focus on recruiters of workers abroad or those that provide services beyond placement. Indeed, a number of countries regulate only certain types of agencies. Table 1 provides some examples of such countries and the types of agencies they regulate.⁹⁸

Table 1: Scope of Government Regulation

Country	Scope of Regulation
Austria	Temporary work agencies
Belgium	Temporary work agencies
China	Overseas employment
France	Temporary work agencies
Germany	Temporary work agencies
Indonesia	Overseas employment
Italy	Temporary work agencies
Philippines	Overseas employment
Poland	Temporary work agencies
Portugal	Temporary work agencies
Spain	Temporary work agencies
UK	Labor providers in agriculture

Source: International Labor Organization

Do's and Don'ts in a Regulatory System

Most regulatory systems allow origin and destination governments to set parameters in two critical areas: the minimum requirements for permission to recruit workers legally and operational guidelines, including maximum fees.

a) Entry Requirements

Entry requirements vary by country. In general, regulators require agencies to prove competence in four areas: financial capacity, personal and professional qualifications, and management and marketing capabilities.

Among countries of origin, the Philippines has the most sophisticated regulatory system in place. It has regulated recruitment agencies since 1974 and is widely recognized as having one of the most effective government bureaucracies in place to manage migration.

In 2008, nearly 1.4 million Filipinos left the country to work in more than 190 destinations, each bearing an employment contract issued by the Philippine government. About 95 percent of this labor flow used licensed, private recruitment agencies based in the Philippines. For many international observers, the Philippines' system of regulating migration has unrivaled sophistication, making it a model for other developing countries hoping to access the benefits of global labor mobility.⁹⁹

The Philippines enforces a set of entry requirements designed to weed out potential violators. To acquire an operating license, agency owners in the Philippines must have:

- Filipino citizenship or partnerships in which 75 percent of the capital is Filipino-owned or controlled. This ensures that agencies are within the Philippine government's jurisdiction should litigation be necessary.
- No criminal records or complaints, charges and convictions related to illegal recruitment
- Financial stability. Agencies have to prove they have at least 2 million pesos (US\$44,400) as capital, pay registration fees, and post bonds: one in the form of a bank deposit under an escrow account of 1 million pesos (US\$22,200) and a surety bond of 100,000 pesos (US\$2,200). The escrow deposit covers valid and legal money claims of recruited workers and must remain intact at all times to keep the license valid.
- Deployment capacity demonstrated by proof of manpower requests for not less than 100 workers.
- Access to new markets by partnering with foreign employers that did not employ Filipino workers for at least six months prior to the agency's application.
- A panel interview that successfully confirms and/or clarifies submitted information. In these interviews, agencies, especially those deploying household workers and entertainers, may be required to show additional proof of capital, such as a deed of sale and mortgage and bank statements.

Some of these requirements, along with other provisions, figure in other countries' regulatory systems. Germany conducts criminal checks and has minimum financial

requirements. However, it also requires agency owners to have at least three years of work which involved tasks in the field of personnel management, job placement, personnel consultation or the supply of temporary workers. Applicants must also have a recognized vocational qualification or a degree from a university or other higher education establishment.¹⁰⁰ Qatar also requires a bank guarantee as well as disqualifies applicants employed in a government agency or any public body or company owned by the state.¹⁰¹ Singapore gives license to applicants that are at least 25 years old, have Singaporean nationality or residency and bear a government-issued training certification.¹⁰²

Annex 1 shows a range of entry requirements found in a number of countries.

b) Operational Guidelines

Regulators can also set operational guidelines in three areas: limits on fees and adoption of joint liability provisions and standard contracts.

1) Limits on Fees

Since most of recruitment irregularities are fee-related, a number of governments have set limits on the placement fees recruitment agencies can legally charge clients. The limits vary quite considerably by country and, interestingly, by sector.

Some regulations set limits as a percentage of salary. The actual amount set out in legislation vary from 5, 10 or 15 per cent of the initial monthly wage up to 5 per cent of the first gross annual wage. For instance, in the Philippines, agencies can charge up to 100 percent of a migrant's first month's salary. Malaysia, Singapore and Zimbabwe set the ceiling much lower, at just 15, 10 and 5 percent respectively.¹⁰³ Switzerland allows agencies to charge up to 5 percent of the annual salary while Egypt set the limit at just 2 percent. Israel, on the other hand, limits placement fees to 120 percent of the minimum monthly wage or around US\$ 900.¹⁰⁴

Other governments set limits depending on a migrant's skill level or sector. India implements a set of differentiated fees depending on type of worker, ranging from \$US 45 for unskilled workers and up to US\$220 for the highly skilled.¹⁰⁵ The Philippines exempts from its placement fee policy all seafarers and domestic helpers as well as land-based workers whose destination countries prohibits — either by law, policy, or practice — the charging or collection of placement and recruitment fees.¹⁰⁶

One such country is Ireland, where all recruitment-related costs must be borne by the employers.¹⁰⁷ Interestingly five of the six countries of the Gulf Cooperation Council (GCC) States — Qatar, Saudi Arabia, Oman, Bahrain and Kuwait — also explicitly prohibit charging placement fees from workers. The other GCC country, the United Arab Emirates (UAE), likewise bans recruiters from charging migrants but allows certain exceptions to agents that can obtain special government consent.¹⁰⁸ This ban, however, only apply to agencies operating within the GCC states and not to foreign recruiters.

There is no clear consensus internationally on whether a complete ban on placement and other fees is ultimately a good policy. Even the ILO, which once prohibited charging any fees to employees, has softened its stance. Citing a “different environment”, ILO's Convention 181 allowed exceptions to be determined individually by member states.¹⁰⁹ Generally, charging fees to workers is prohibited in industrialized countries where temporary work agencies dominate the private employment market, such as in all of the EU-15 countries. Other countries with significant numbers of overseas recruitment agencies allow the collection of fees to select categories of workers or regulate the amount of fees to be charged. There are also countries that do not regulate fees at all and leave them to the discretion of the agencies.¹¹⁰ For a sample of these countries, see Table 2 above.

Governments tend to limit fees that can be legally charged to migrants, but very few have extended similar protection to employers. For instance, Singapore prohibits agencies from charging employers more than the stipulated registration fee of S\$5 and 80 per cent

of the worker's first-month earnings.¹¹¹ This is a critical policy oversight given that field studies show employers' tendency to eventually pass on their costs to migrants.

2. Joint Liability

Another potentially effective operational requirement that rarely comes up in policy discussions but deserves special mention is the idea of joint liability. In the Philippines, every licensed recruitment agency is liable jointly with and separately from the foreign employer. In other words, if the foreign employer fails to comply with the contract or violates any of its provisions; the worker can, in principle, file redress against the Philippine recruitment agency. This requirement essentially turns agencies into "co-employers".¹¹²

In effect, agencies become integral tools of government control, connecting not only Philippine workers to foreign employers but also foreign employers to the Philippine government. Through the joint-liability provision, the Philippine government can indirectly exercise pressure on foreign employers who are, after all, beyond the jurisdiction of the Philippines' justice system — a beneficial arrangement for workers who would otherwise be left without recourse for unfair treatment.¹¹³

3. Standard Contracts

Regulators can also limit recruiters' ability to determine the terms and conditions of employment by requiring the use of standard contracts. The standard contracts define the terms and conditions of service of migrant workers during their employment abroad. For instance, farm labor contractors in the United States who are hiring temporary migrant workers through the government's H-2A program are required to utilize contracts that spell out minimum wages, travel reimbursement, record keeping and minimum standards for housing. Canada has similar protections and standards regarding allowable wage deductions, insurance for illness and injury and minimum housing and transportation arrangements.¹¹⁴

According to the ILO, many countries have developed model employment contracts. Although they are not always mandatory, they serve as a guide to the prospective employers and workers in the formalization of the employment agreement. The ILO recommends that standard contracts for migrant workers should as a minimum include the following:¹¹⁵

- Description of the job, site of employment and duration of contract;
- Basic and overtime remuneration;
- Regular working hours, rest days, holidays;
- Transportation clauses to country/place of employment, and return;
- Employment injury and sickness compensation, emergency medical care;
- Valid contract termination grounds;
- Settling of dispute clause;
- Non-cash compensation and work related benefits.

c) Some Caveats on Regulation

Any government attempt to regulate intermediaries will doubtlessly face many challenges, particularly on two fronts: cross-border control and over-regulation.

Cross-border Control

Governments have limited options when it comes to dealing with matters within the domestic jurisdiction of other states. Once a worker leaves his or her country of origin, he or she will be at the mercy of the laws, traditions, and customs of the destination country. Regulating intermediaries is not easy because it requires managing a global movement over which the regulator typically does not have complete control. The enforcement of worker protection rules in multiple legal jurisdictions, and especially where the regulatory regimes differ dramatically across the jurisdictions, may not be impossible, but

it is certainly difficult. For instance, in the case of worker abuse, to what degree should the employer or recruiter be held liable?

The country of origin government's main objective is to protect and defend their citizens working abroad while the destination country government may be more interested in defending local employers. As already mentioned, the Philippines resolves this dilemma by requiring all intermediaries to accept liability for worker abuses. The onus for regulating the employer-employee relationship thus falls to the intermediaries who are often ill equipped to enforce labor standards effectively.

This policy conundrum of conflicting interests and jurisdictions is, of course, not unique to migration and has been addressed, with varying degrees of success, in other fields both internationally and within federal states. Two approaches are most common: (1) the granting of final authority to a supranational or national (in the case of federal states) entity, and (2) the establishment of minimum standards through agreements accompanied by the creation of monitoring and enforcement bodies and procedures. Perhaps the best known example of the latter is the governance system for international trade under the World Trade Organization.

However, labor law is much more of a national prerogative and more deeply enshrined in domestic policy than is trade. As a result, many states will be reluctant to grant meaningful regulatory authority to any supranational entity. At the same time, many countries will be unwilling to accept (and to enforce) binding labor standards for foreign workers as part of a formal agreement. The record of dispute resolution mechanisms created in bilateral or regional agreements is mixed and depends largely on the good will and political commitment of the signatories. Still, one successful example among others is the North American Commission for Environmental Cooperation.

Since migration — and especially migration via intermediaries — often occurs between regions and countries with widely divergent value systems, establishing and enforcing regulatory standards through dispute resolution bodies may be difficult. In this respect,

partnerships are likely to be easier between countries that share values with respect to individual and labor rights. Otherwise, the heavy-handed regulation of recruiters may be the only effective option for ensuring a minimum level of labor protection for workers abroad — although recruiters may feel that it is not fair to require them to play this role.

Control across states

The issue of control does not figure exclusively in international migration but also affects internal migration. In India, for instance, agents (*mukkaddams*) are required to be registered under the Inter-state Migrant Workmen Act (ISMWA) of 1979. The Act mandates all agents to register themselves and their migrant worker clients with designated government authorities. Agents are also required to provide migrant workers with decent accommodation, crèche facilities, access to health care and minimum wages. However, as Priya Deshingkar and Shaheen Akter note in a forthcoming study, activists and researchers of labour laws find that it is extremely difficult to prosecute agents from one state in another state.¹¹⁶

Over-regulation

It is also important to note the risk of over-regulation. Operating in one of the most regulated markets for outmigration, many Philippines-based agencies complain that regulation raises the costs of Filipino migrants “too much.” Most recruiters want less government regulation, arguing that it enables recruiters from other countries, particularly those from China, Indonesia and Vietnam to erode the competitive position of Filipino migrants in the international labor market.¹¹⁷

Not surprisingly, this is a sentiment shared by agencies in other countries. Participants of an IOM-sponsored workshop for heads of the biggest organizations of recruitment agencies in 9 Asian countries ranked “government policies, rules and regulations” as the toughest challenge facing their business operations.¹¹⁸

This response from the recruitment industry may well be an indication that regulations do work, in part by cutting into the intermediaries' profits, which many observers consider to be excessive in any case. By raising the bar in terms of standards and work ethic, regulation can potentially drive less efficient agencies out of business. The Philippine experience, however, suggests that the opposite scenario maybe also be as probable — Philippine agencies that do not make enough profits rarely close shop, but tend to recoup their losses by cutting more corners and breaking more rules (i.e., charging exorbitant recruitment fees or colluding with employers).¹¹⁹

For instance, the Philippines introduced more stringent requirements for domestic workers in 2006, including a provision banning agencies from asking placement fees from migrants. Within a year of the new policy, deployment of new hires dropped 56 percent. This translates to about 40,000 individuals who were kept from taking domestic work abroad. Migrant organizations are concerned that the policy had the unintended effect of forcing these migrants to take the irregular route.¹²⁰ Indeed, the Philippine government has seen an increase in domestic workers attempting to leave the country under a different occupation, or as tourists, to bypass the new requirements.¹²¹ Consulates have also reported instances of domestic workers willingly signing new contracts with salaries below the level the government prescribes.¹²² Since the new ruling banned agencies from charging placement fees and required pre-deployment training, some migrants allege that unscrupulous agencies are now jacking up the training cost to recover some of their lost income.¹²³

In a global employment market where stakes are high, cumbersome and rigid regulations can easily breed corruption and abuse. More than that, they can force agencies and migrants out of the legal system and into irregular channels. The key challenge is to develop a balanced set of regulations that are in tune with realities on the ground and stimulate informal recruiters to come forth and establish a legitimate business — not the other way around. This is an extremely difficult challenge given that informal labor markets, as Ibrahim Awad noted in a study of Egypt, typically do not lend themselves easily to government intervention.

2. Enforcement and Border Control

Even a perfectly balanced regulatory system is a blunt instrument without a correspondingly effective enforcement mechanism. Many have noted that governments are doing little or no monitoring of intermediaries' activities. Even the Philippines has been widely criticized locally for its failure to monitor licensed agencies adequately, impose appropriate penalties and stem illegal recruitment.

The solution typically put forward, especially in relation to undocumented movement, is stronger enforcement of rules, especially at transit points. This may mean checks on migrants as they transit in and out of a country. For instance, to ensure workers are properly documented before proceeding to their overseas job sites, the Philippines maintains what the government calls "assistance centers" at international airports and other exit points. Workers without proper documents cannot leave.

Refugee advocates, however, raised concerns that more stringent border controls runs the risk of reducing access to asylum systems, since many refugees rely on smugglers to escape persecution.¹²⁴

Studies also imply that, far from stopping undocumented flows, strict border controls can have the unintentional effect of increasing migrant smuggling, as people resort to unlawful means to cross borders. The more closed borders are, it is argued, the larger the role played by smuggling networks and organized crime.¹²⁵ Stringent control also forces adoption of more dangerous routes that can lead to more abusive and, in worst cases, even fatal practices.

Experience in the US-Mexico border serves as a prime example of this trend. Since 1993, the US government has spent tens of billions of dollars to reinforce the US-Mexico border to deter undocumented workers from crossing illegally into the United State. Both the spending on border enforcement and the number of border patrol agents have more than tripled in the last 15 years.¹²⁶

Instead of deterring illegal entry along the US-Mexico border, as the US government had intended, the intensification of border control led to more frequent use of *coyotes*. Among Oaxacan migrants, for instance, the percentage of *coyote* use has risen from 69 percent before 1995 to 80 percent between 2005 and 2007.¹²⁷

According to the data collected on migrants from Tlacuitapa in West-Central Mexico, *coyote* fees also rose proportionally with stricter enforcement. In 1990, border patrols clocked 2.5 million linewatch hours. At around the same time, the typical *coyote* fee was set at around US\$1,000. By 2002, however, linewatch hours increased to 9 million and *coyote* fees more than doubled, to nearly US\$ 2,500 per crossing.¹²⁸

Beyond the increase in *coyote* fees is an additional, non-monetary cost — the decline in migrants' agency. While potential migrants still make the fundamental decision of whether or not to migrate, a study by Fuentes, among others, suggest that migrants are increasingly leaving the logistics of border crossings up to smugglers. *Coyotes* are taking their clients through more dangerous crossing routes — resulting in higher dependence on smugglers, greater hardships and greater risks while crossing.¹²⁹

3. Making employers more accountable

Efforts to control actions of intermediaries either through regulations or enforcement may not, in themselves, be sufficient. Employers may have to assume a more active role in the recruitment phase and ensure that their recruiters follow ethical recruitment practices. As Bruce Goldstein argues, during the 19th century, slavery-like labor and recruitment abuses of contractors and agents in the United States, Great Britain and Australia waned after governments put pressures on the companies that hire them.¹³⁰

Indeed, businesses can be a crucial partner in influencing recruitment practices. For instance, in August 2008, an Australian TV channel exposed the poor working and recruitment conditions faced by migrant workers in a Malaysian factory producing Nike products. In response to media scrutiny, Nike asked the factory to reimburse all

employment-related fees, including recruiting and worker permit fees, to the migrants. In the future, Nike also promised that any and all fees associated with employment will be paid by the factory.¹³¹ Similarly, Gap developed a code of conduct for its contractors and recruiters. Some migrant groups have acknowledged that Gap's code has been particularly useful in influencing recruitment practices.¹³²

A 2008 report prepared by Business for Social Responsibility, a professional organization with a global network of more than 250 businesses, cited the following areas where companies can actively contribute to improving the recruitment system:¹³³

- Adjust companies' codes of conduct to include specific protections for migrant workers.
- Train suppliers on management issues related to migrant workers and support their efforts to ensure fair treatment.
- Include migrant-worker issues in auditing activities.
- Tie purchasing decisions to ethical treatment of migrant workers.

4. Cross-border Initiatives

Given the cross-border nature of international migration, the regulatory and enforcement efforts of different governments will be fully effective only if both host and source countries are equally committed to introducing and enforcing rules.¹³⁴ International migration is best addressed using transnational solutions.

Bilateral agreements or memoranda of understanding (MOUs) are potentially useful tools toward this end. For instance, an MOU between the Philippines government and three Canadian provinces signed in 2008 set parameters for recruitment, including a ban on charging placement fees to migrants. China and the United Kingdom's Department of Health made roughly similar arrangements involving Chinese nurse migration.¹³⁵

Dialogue and consultative processes at the regional level can be useful as well. For example, through funding from the International Organization for Migration, several

countries of origin from South and Southeast Asia established a regional dialogue in 2003, known today as the “Colombo Process.” The UAE later hosted and funded a Ministerial Consultation between the Colombo Process countries and 9 destination countries in the Middle East and East and South East Asia. In 2008, the joint group issued the Abu Dhabi Declaration, a set of principles which recognizes the need for “transparent, legal and humane recruitment practices.”¹³⁶ The group also launched a pilot project between the UAE, Philippines and India that will test recruitment and pre-deployment policies and procedures among the three countries.¹³⁷

A number of international treaties and instruments address concerns over human trafficking, smuggling and general recruitment practices, such as the Palermo Protocols already noted earlier. Likewise, two ILO instruments on migrant workers — the Migration for Employment (Revised) Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as their accompanying Recommendations — provide parameters for recruitment and contract conditions.¹³⁸

Assessments of the impact of these international instruments on the ground are mixed. For example, while some have praised the protocol for criminalizing recruiters who are involved in trafficking of human beings, others have questioned its unintended consequences. Given the blurred distinction between migration, smuggling and trafficking, there are concerns that criminalizing migrants or the industries they work in simply forces them "underground," making them more difficult to reach with appropriate services and increasing the likelihood of exploitation. The classification of recruitment to certain kinds of activities — prostitution or child labor, for example — as always involving trafficking may oversimplify or mischaracterize the realities of a particular situation.

For instance, a survey of child migrants in Mali who had been returned from the Ivory Coast and Vietnamese sex workers in Cambodia, involving 1000 subjects, found that only four could be classified as having been deceived, exploited, or not paid at all for

their labor. They could well have been said to move out of desperation, but were not, in most cases, coerced by intermediaries. The study found that the migrants' movement across international borders often depended on assistance from intermediaries, who in many cases were family members. Especially in Mali, there is a longstanding tradition of using intermediaries to facilitate a range of social and economic activities, such as looking for employment, negotiating purchases, handling disputes, and even seeking a spouse. The research found that intermediaries could protect the migrants during their journey and help them search for work. In destination areas, they advocated for young people in cases of non-payment of salary or abrupt termination of employment. Migrants also relied on intermediaries to negotiate with corrupt authorities that demanded bribes at international borders. The study concluded that "classifying such assistance as "trafficking" simplifies a much deeper cultural reality."¹³⁹

B. Beyond Control: Self-regulation

Although perhaps necessary for curbing abusive recruitment practices, efforts focused on control alone, either by governments, employers or through international, regional and bilateral agreements may not be sufficient. Since industry associations have been formed in many countries, some point to intermediaries' potential to develop and enforce voluntary codes of conduct among themselves. To counter their negative image in some quarters, top agencies aim to promote good business practice through developing mechanisms of self-regulation.

In developed countries, some have organized themselves into national industry associations employing industry codes of practice as a condition for membership. In Canada, for instance, agencies are organized into an Association of Canadian Search, Employment and Staffing Services (ACSESS) to guarantee professional ethics, standards and best practices in the recruitment, employment and staffing services industry.¹⁴⁰

Similarly in the Russian Federation, the International Association of Labor Migration (IALM) was founded in 2004 and includes over 70 private recruitment agencies from

Russia, Tajikistan and Moldova. IALM aims to develop “civilized” forms of labor migration through “advocacy, the organization of conferences and active participation in policy dialogue.” A Code of Business Ethics guides all IALM members’ operation.¹⁴¹

In the United Kingdom, the Recruitment and Employment Confederation (REC), representing 8000 recruitment companies, has likewise developed a *Code of Recruitment Practice* covering all member agencies. The REC code requires agencies to provide adequate information on terms of recruitment and employment so that migrants can make informed decisions. It also prohibits members from charging for services unless the services were legal and payment was part of normal custom. A standards team monitors the adherence to the code and issues quarterly reports on complaints and queries about agency conduct.¹⁴² Currently, REC has four enforcement officers to randomly inspect REC members.

One of the most recognized industry associations is the Belgian-based Confederation of Private Employment Agencies (CIETT), an international organization composed of representatives of national industry organizations, as well as large multinational enterprises, which has developed its own Code of Practice. Currently, it is home to 40 national federations of private employment agencies and six of the largest staffing companies worldwide, including Manpower and Adecco. CIETT aims to seek greater recognition of the contribution of agency work to overall employment creation, integration in the labor market and economic growth. The ILO recognized CIETT as the leader in establishing worldwide standards for its agency members in the recruitment industry.¹⁴³ CIETT’s code, among others, prohibits members from charging, directly or indirectly, any fees or costs to workers for job-finding services.¹⁴⁴

Beyond enforcing a code, agency associations also raise standards in the industry by collecting information about high-risk agencies via regular screenings of their members and new membership applications, as well as by organizing training seminars. Since recruitment is not a certified profession, business associations also disseminate know-how and good business practice.¹⁴⁵

In 1997, a meeting of international experts organized by the ILO elaborated recommendations to encourage self-regulation of agencies engaged in recruitment for employment abroad. The ILO Governing Body later adopted the following recommendations:¹⁴⁶

- minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers;
- the full and unambiguous disclosure of all charges and terms of business to clients;
- the principle that private agents must obtain from the employer before advertising positions in as much detail as possible, all information pertaining to the job, including specific functions and responsibilities, wages, salaries, and other benefits, working conditions, travel and accommodation arrangements;
- the principle that private agents should not knowingly recruit workers for jobs involving undue hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
- the principle that migrant workers are informed, as far as possible, in their mother tongue or in a language with which they are familiar, of the terms and conditions of employment;
- refraining from bidding down wages of migrant workers; and
- maintaining a register of all migrants recruited or placed through them, to be available for inspection by the competent authority, provided that information so obtained is limited to matters directly concerned with recruitment and that in all instances the privacy of workers and their families is respected.

Some observers are highly skeptical about the impact of self-regulation, with one industry analyst noting that it “did not prevent abuses that damage the entire sector.”¹⁴⁷ Others see codes-of-conduct as limited instruments due to their voluntary nature, while some see problems arising from the recruitment sector’s instability. In Australia, for

instance, of the 3,000 registered agents, nearly half have less than three years experience and only 12 percent have existed for more than 10 years.¹⁴⁸

Indeed, despite the existence of many recruitment agency associations in South and East Asia, none has emerged as a self-regulatory body similar to those found in the Western Hemisphere. Most have focused squarely on ensuring that their government's policy on migration is friendly to the recruitment industry — an observation found in many major sending countries like the Philippines, Bangladesh¹⁴⁹ and Sri Lanka¹⁵⁰.

The experience of the Philippine-based Association for Professionalism in Overseas Employment (ASPROE) points to the difficulties of self-regulation. ASPROE is the only agent organization in the Philippines that bans members from charging placement and other fees to workers. Not surprisingly, the association remains very small — with only 8 members out of the nearly 1,500 licensed agencies. As its founder and Chairman Rene Cristobal bluntly puts it in an interview: “there are a million reasons why I can count our members using fingers of my two hands, and they will not paint a pretty picture of the Philippine recruiting industry.”¹⁵¹

Despite these concerns, self-regulation has found a healthy following, especially among international organizations like the IOM, United Nations Development Fund for Women (UNIFEM) and World Health Organization (WHO). In 2008, IOM sponsored a series of events to help intermediaries' associations in Asia to form confederations and build their own code of conducts.¹⁵² UNIFEM's Bangkok office developed the *Covenant of Ethical Conduct and Good Practices of Overseas Employment Service Providers* in 2006, and since then has been working with intermediaries' organizations in the region to adopt the covenant.¹⁵³ Currently, the WHO is working to develop a code of conduct for the international recruitment of health personnel. A draft under current deliberation includes a ban on charging recruitment-related fees to migrants.¹⁵⁴

Recently, Academy Health, a non-partisan, scholarly society for health services researchers, policy analysts, and practitioners, convened a task-force of over 30 high level members representing hospitals, trade unions, nurse training and licensure organizations, foreign nurses and recruiters to craft a body of “standards of practice.”¹⁵⁵

Released in November 2008, the *Voluntary Code of Ethical Conduct for the Recruitment of Foreign-Educated Nurses to the United States* includes innovative measures. For instance, the code requires recruiters to secure written consent from the nurses before any sale or transfer of their contracts can take place. It also bans recruiters from charging recruitment-related fees to nurses when payment for the same services (e.g., fees solely for placement and/or recruitment of healthcare professionals) is already being provided by the employers.¹⁵⁶

Aside from voluntary codes of practice, another self-regulation tool is rating or labeling. Major multinational companies have earned the ISO 9000 label of quality management by the International Standards Organization. Agencies use the label in their advertising and marketing campaigns as a guarantee of quality, since throughout the ISO 9000 family, emphasis is placed on the satisfaction of clients.¹⁵⁷

C. Cutting out “commercial” intermediaries

Beyond a policy centered on control and self-regulation, another proposed solution is to simplify the recruitment process by cutting down the parties to bare minimum. The practice of outsourcing recruitment to brokers and sub-agents, as described earlier, carries far too many risks, and increases the costs to both workers and employers. As more and more parties try to make profits on every deployment, the system of accountability breaks down.

This can be addressed by banning the use of sub-agents or brokers, essentially reducing the layers of intermediaries — although this idea is difficult to apply in practice.¹⁵⁸ For instance, in July 2008, Saudi Arabia introduced a new contract scheme called “The Unified Labor Contract”. Under this scheme, foreign labor suppliers are required do business directly with the Saudi National Recruitment Committee (SANARCOM), a private association of Saudi manpower offices. SANARCOM will act as a broker in the issuing of visas, making it the key intermediary in connecting foreign workers with employers in Saudi Arabia. The Saudi government rationalizes this scheme as an attempt

to curtail the role of multiple recruitment agencies by ceding authority to one intermediary.¹⁵⁹ Recruitment agencies in migrant origin countries, particularly Indonesia and the Philippines, on the other hand, have voiced strong disagreement. They claim that, on the contrary, the scheme will only add another layer in the recruitment process. It will bar agencies at origin from contracting directly with Saudi employers. Indeed, its implementation, which was supposed to take effect in August 1, 2008, has been deferred as a result of formal protests from the Philippine and Indonesian governments.¹⁶⁰

Another approach is to keep for-profit intermediaries out of the system altogether. For instance, in Malaysia, both NGOs and the Malaysian Employers' Federation have advocated for a government-to-government system of recruitment to reduce costs, and, at the same time, improve transparency.¹⁶¹ There have been a number of cases where governments act as intermediaries, particularly in the highly-skilled sector. Sri Lanka's departments of Health and of Education have directly placed nurses in Malaysia and teachers in the Maldives and Mauritius.¹⁶² A government-managed twinning program between the United Kingdom and South Africa moves health care professionals of both countries to work in the other country for up to six months.¹⁶³ In a teacher exchange program between local government agencies in the United States and the governments of Spain and Mexico, Mexican and Spanish education ministries pre-screen applicants at origin, while the US state and local education officials interview and choose among candidates.¹⁶⁴

International and non-governmental organizations (NGOs) can also assume the intermediary's role. For instance, since 2003, IOM's Guatemala office has coordinated with the Canadian NGO FERME to facilitate the temporary movement of Guatemalan agricultural workers to Quebec, Canada. IOM assists in selection, pre-departure health checks and the transfer of the workers from Guatemala to Canada, and monitors their return. In addition, IOM coordinates banking services for remittance transfers and a healthcare program for the families of temporary workers.¹⁶⁵

Similarly, in Colombia, the Pan-American Development Foundation, with funding from the US Agency for International Development, works with the Colombian government, Colombian NGOs, and neighboring countries to help internally displaced persons move into new locations or return to their homes.¹⁶⁶

Movements through these programs are, however, small, raising questions about the approach's feasibility in large-scale deployments. Indeed, the Philippines, which currently deploys over one million temporary migrant workers annually, initially envisioned complete government control of overseas recruitment. Public Employment Agencies were set up in 1974 to replace private agencies (which were at that time blamed for widespread cases of abuse) through a four-year plan. However, by 1977, the government completely reversed course and opted for regulation, citing limited government capacity. Currently, the government handles less than 1 percent of annual deployment, or just around 9,000 workers per year.¹⁶⁷

Clearly, governments, NGOs and international organizations with their current capacities can realistically facilitate movement among only a limited number of migrants. Many simply do not have the capacity and flexibility to respond more effectively to a dynamic global labor market. Still, their value should not be dismissed. Experiences and lessons learned from these non-profit intermediaries can offer valuable insights in improving the operations of their much larger, profit-oriented counterparts. Indeed, a study of intermediaries in the Silicon Valley and Milwaukee areas in the United States found that unlike for-profit intermediaries, non-profit intermediaries provide more assistance, beyond placement. For example, 60 percent of people who worked with non-profit intermediaries received assistance in job-hunting skills compared to 33 percent among those who consulted commercial temporary-help firms.¹⁶⁸

V. Intermediation in a Condition of Scarcity: A Conceptual Framework

With traffickers as clear exceptions, intermediaries exist and thrive because prospective migrants find their services worthwhile. A better understanding of the difference

between the provision of useful services which are valued by the market and the exploitation of migrants who may be in a very weak bargaining position is critical to designing appropriate policy interventions.

As Tim Elrick and Emilia Lewandowska noted in their study of Italy and Germany's domestic care industry, there is a "fine line between an occasionally abusive treatment of migrants and the purposeful 'deception or coercion [. . .] for the purpose of exploitation' something regarded as trafficking by the United Nations."¹⁶⁹ Some cases cross quite clearly into abuse or even outright slavery.

A bright line between what the market will bear and exploitative charges or practices or between exploitation and criminal abuse rarely exists. Central to this ambiguity is defining the appropriate price intermediaries can legitimately charge migrants. Clearly separating legitimate fees for a service that expands the range of choices open to prospective migrants from predatory practices that arbitrage the difference between wages in home and host countries to the migrant's detriment is difficult and open to debate.

One way to settle this debate is for regulators to set fees that basically reflect intermediaries' cost of provision plus what may be considered as "normal" or competitive profits. From this prospective, a policy that bans agencies from charging fees to migrants for services that are already paid for by the employer makes sense. Indeed, as already indicated earlier, in many developed countries, temporary work agencies, by custom, do not charge the workers placement fees.

However, in cases where the demand for jobs is extraordinarily high relative to the supply — such as one typically finds in international migration — or when there is high unemployment within internal markets, the concept of prohibiting fees may not easily apply in practice. As Manolo Abella argues, the "fee is not determined by the financial value of the good procured but by demand itself... What the recruiter gets is not a fee for the recruiter service but a "bribe" to the job he or she offers."¹⁷⁰ Indeed, migrants tapping highly competitive local and global labor markets are typically willing to pay more. A

general policy that bans placement fees or keeps them within the cost of provision may be sound conceptually but will be difficult to enforce on the ground.

Even the ILO recognizes that there are cases where legal agencies may have to collect fees from migrants to make them competitive vis-à-vis their illegal counterparts who are making money through acceptance of bribes. Indeed, in these cases, the challenge is to identify the legitimate ceiling on fees that balances realities on the ground without disregarding concerns over fairness.¹⁷¹

What is the scarce good?

One way to reach a middle ground is to recognize the nature of scarcity in the migrant labor market. Is the scarce good access to information, access to jobs or the jobs themselves?

1. Access to information

In labor markets where the main constraint on movement is migrants' access to information, explicit regulation of fees may not be necessary, especially considering the costs associated with enforcement. Indeed, in sectors with high demand for workers, such as the medical and health professionals, agencies do not typically charge placement fees to migrant workers; rather, they collect fees mainly from employers. For instance, a survey of nurse recruiters in the United States found that a substantial majority (82 percent) do not charge nurses an up-front fee.¹⁷²

In these cases, the deregulation of agencies maybe the best policy route, which limits the government's role to dissemination of information. As will be discussed in more detail later, governments, along with other stakeholders, should focus on distributing accurate information so that migrants can make informed decisions when dealing with intermediaries.

2. Access to Jobs

If the scarce good is access to jobs, and not just information about jobs, a more pro-active policy stance may be necessary. In this case, the intermediary is acting as the gatekeeper and is capable of using this position of market power to make migrant workers pay more. This is the danger in an arrangement such as that in the United Kingdom where negotiations of ‘block contracts’, ‘preferred supplier lists’ and ‘service-level agreements’ in some sectors have been increasing since the 1990’s. As of 2007, about 66 per cent of UK organizations have ‘preferred supplier’ agency lists while 51 per cent have a ‘partnership relationship’ with their main agency supplier. Within the UK National Health Service, in particular, some trusts have signed ‘sole-supplier’ or ‘master vendor’ contracts that allow a single agency to provide all workers at a fixed volume discount.¹⁷³ In cases where this danger is realized, the appropriate policy response would be to increase competition among intermediaries by relaxing entry rules and allowing new players to build their base.

For instance, the United Kingdom implements a differential, or “banding,” approach in charging licensing fees to gangmasters. In this policy, the license fee is proportionate to the expected size of the business. For instance, applicants with expected earnings of less than £1 million belong to the lowest band and pay only £2,250 in entry fees, an amount that is significantly less than what is required from larger businesses.¹⁷⁴ If the government asked for a flat license fee instead, small businesses have to pay significantly more which will then create a financial barrier to entry. In addition, it would deter less-than-fully compliant agencies from coming forward for licensing.¹⁷⁵

3. Jobs

The most difficult of cases to regulate are instances where the scarce good is not access to information or access to jobs but the jobs themselves. As already mentioned, migrants in very competitive labor markets are generally willing to pay more simply because there are more people wanting to emigrate than there are (legal) places, and illegal entry is increasingly difficult for an individual to accomplish on his/her own. Especially evident

in international migration, migrants will pay high fees not because recruiters have market power but because of job rationing by countries of destination.

Therefore, in these cases, increasing competition among intermediaries is not the solution. Although it maybe counterintuitive, regulation should aim to limit the players to a qualified few. In particular, the Philippine experience suggests that encouraging economies of scale among recruiters would be a better option because it serves two purposes. For one, larger and more stable recruiters tend to be more efficient and have lower overhead. They profit from many migrants, not just a few and therefore can afford to lower their placement fees because their fixed costs are spread across a larger number of clients. Additionally, a smaller number of larger players are relatively easier to monitor — an important consideration for many developing country governments whose institutional capacity maybe severely constrained.

Indeed, the Philippine regulatory system was created primarily to deter what policy makers then characterized as cut-throat competition among recruitment agencies. Competition to a certain degree is necessary, especially in private sector driven recruitment industries like that of the Philippines; however, too much competition can actually increase the likelihood of worker abuse. As already mentioned earlier, in an overcrowded market, failing agencies do not necessarily leave the market and may prefer to recoup their losses by exploiting migrants. In these cases, instituting strict entry conditions to weed out potential violators makes good policy sense.

Regulation of fees may also be justified when the scarce good is the jobs themselves in order to prevent intermediaries from capturing too high a proportion of the wage differential between origin and destination. Of course, the difficulty lies in determining what a legitimate cap is. It is likely to lie somewhere between what a desperate migrant maybe willing to pay and a social and political consensus on what is fair value for the services provided — and who should pay for them.

In Manolo Abella's analytical framework, migrants' perception of how much they are willing to pay would depend on the wage differential at home and destination. In cases, where the wage differential is high, one may expect that migrants are willing to pay higher fees.¹⁷⁶ Many governments seemed to have adopted this idea. As already mentioned, some governments set limits on fees as a percentage of expected salary at destination while others chose to discriminate by skill level or job categories. In the Philippines, for instance, domestic helpers are exempted from paying placement fees because the wage differential in this sector is, in absolute terms, relatively small compared to other sectors, such as the medical field.

However, beyond the wage differential, there are other factors that determine migrants' cost calculations, such as the expected length of stay, potential for upward mobility, or even non-economic concerns such as freedom of movement or religious concerns. These factors are difficult to quantify and are often unstable, especially in the long run. Still, taking wage differentials into account in policy prescriptions will provide a fairly good, if not perfect, baseline.

This framework which centers on identifying the nature of scarcity in the migrant labor market has important policy implications especially in countries with parallel, dual labor markets — one for native workers where the scarce good is mainly access to information or access to jobs and another for migrants, where the scarcity lies in the jobs themselves, not just the access to or information about them. National regulations that do not recognize and act upon these differences are bound to fail.

For instance, as mentioned earlier, in almost all states in the Persian Gulf, a national “no placement fee” policy exists. This policy, however, is operative only in the labor markets reserved for the native population, not in the labor markets for temporary migrant workers. Anecdotal evidence suggests that, given the high demand for work in the region, agencies based in the Gulf still make money by “selling” their access to employers and jobs to agencies at the origin.

The same tension will be evident as traditional countries of permanent migration began accepting more and more temporary migrant workers. For instance, three Canadian

provinces signed a labor-export agreement with the Philippine government in 2008 that will send low and/or mid-skilled temporary workers to Canada. Since it is customary for Canadian agencies not to charge fees to workers, the provinces applied the same requirement to Philippine agencies sending workers to Canada. Given the huge demand for these limited temporary visas, it is doubtful that this requirement will be fully applied on the ground.

VI. Beyond the Intermediaries

Regardless of the nature of scarcity in the migrant labor market, the success of any chosen policy interventions to regulate intermediaries will still depend on introducing parallel initiatives that would create a conducive recruitment environment. Indirect policies aimed at empowering migrants and improving migration policy and administration will have direct, positive and lasting impact on intermediaries' operation.

A. Empowering migrants

As already mentioned, intermediaries' value rests on their ability to provide migrants with a wider range of choices than they could access without assistance. Typically, in this exchange, migrants' bargaining position is relatively low, which often leads to fraud and abuse. Empowering migrants and reducing this asymmetry can be achieved in four ways:

1. Information Dissemination

Governments, along with other stakeholders, should focus on distributing accurate information so that migrants can make informed decisions. Prospective migrants need to be knowledgeable about their rights at home and abroad; safe recruitment, travel and employment procedures; risks associated with unauthorized movement; available options for legal migration; labor and migration regulations at origin and destination; and what constitutes illegal recruitment.¹⁷⁷ Allowing the intermediaries to monopolize dissemination of this type of information is a recipe for migrant abuse.

Sharing of critical information can be done through information campaigns in the media and more directly, through training and seminars. For instance, the Philippines requires mandatory pre-departure orientation seminars (PDOS) to help build skill sets and familiarize would-be migrants with the culture and practices of their host countries. Specific modules are customized for household workers, performing artists and entertainers, nurses, and seafarers, as well as for workers migrating to certain countries/regions, such as Hong Kong, Libya, the Middle East, South Korea, and Taiwan. In conducting these seminars, the government partners with members of the private sector and civil society (e.g., workers' groups and nongovernmental organizations).¹⁷⁸

Such trainings and seminars, however, are difficult to implement. Reviews of PDOS are mixed. A 2005 survey conducted by the Philippine-based Scalabrini Migration Center found that 84 percent of respondents considered PDOS “useful” or “very useful,” particularly for first timers. However, the survey revealed the need for more country-specific information and smaller group discussions.¹⁷⁹ Some migrant groups also complained that PDOS are very short courses conducted late into the migration process, typically just days before departure.

In Indonesia, where roughly similar information seminars also take place, critics have pointed out that the training sessions are often routine and ineffective, and are predominantly undertaken by recruiting companies in the major cities — especially Jakarta. Further, not all workers receive training in all areas relevant to their work.¹⁸⁰

Destination countries can help in this area. For instance, the European Union recently inaugurated a European Employment Agency in Mali as an experimental portal to educate potential Malian migrants about the opportunities and risks of work abroad.¹⁸¹ Although mainly targeted at stopping the flow of illegal migrants into Europe, such centers can assist origin countries with their information dissemination efforts.

Information dissemination should also be extended not only at origin but also at destination. For instance, interviews of nurse recruiters and employers in the United States point to the value of developing brochure for nurses that specify their rights, obligations, and areas of caution. These brochures could be distributed by the U.S.

Department of State when nurses apply for visas. Other entities, such as trade unions, the National Council of State Boards of Nursing, and the Commission on Graduates of Foreign Nursing schools, could also distribute the brochure at destination and within the United States.¹⁸²

Likewise, in Hong Kong, booklets on migrant workers' rights and obligations are distributed upon arrival at the airport. The guides are translated into various languages of dominant migrant groups.

2. Welfare Support at Origin and Destination

Limited access to welfare support in cases of recruitment-related abuse also decreases migrants' leverage against intermediaries. There are three critical areas where migrants are most in need of support.

First, many governments with licensing systems face difficulties in controlling illegal recruitment. Few victims come forward and, of those who do, many do not pursue their case completely. Recognizing this problem, the Philippine government started an incentive program to encourage victims and witnesses of syndicated or large-scale illegal recruitment to participate in prosecuting such cases. Under the new ruling, victims and witnesses who work with the government are entitled to the following:¹⁸³

- free legal assistance
- financial assistance, including payment of docket fees, subsistence and transportation allowance, and other funding depending on availability
- welfare assistance, such as help in finding local employment or overseas employment
- free skills training

At this early stage, the incentive program's impact is difficult to gauge. This renewed focus on providing financial and welfare assistance, however, is clearly a step in the right direction.

Second, since potential migrants' own liquidity constraints force many to take out loans, often at exorbitant rates, it is also critical to improve migrants' access to fair credit. As

already noted, migrants can easily find themselves in an overborrowed situation where their inability to service accumulated debt has severe effects on their wellbeing. In many cases, this is due to lenders' predatory behavior, in which they deliberately exploit the gullibility, ignorance or desperation of the borrowers to trap them in spiraling charges.

Migrants need to be protected against abusive, deceptive, extortionate, or predatory behavior, but crafting policy to this effect is difficult. Protecting the vulnerable from unwise borrowing and dealing with the overborrowed poor have long been considered appropriate matters for public policy; however, as yet no generally agreed policy approach has emerged, even in the advanced economies.

One traditional approach, a ceiling on interest rates (usury laws), is still widely used, although it is increasingly considered rather ineffective as a measure, not least because opaque cost structures can result in total costs of credit greatly exceeding stated interest rates. Using what is known as "behavioral pricing," unscrupulous lenders advertise low interest rates knowing that they will attract naïve and disorganized borrowers who do not realize that their predictable behavior is sure to result in a very high overall cost of credit when penalties for late payments and other charges are factored in.¹⁸⁴

At the same time, to the extent that regulators can detect and limit these extra charges, low ceilings on interest rates are clearly counterproductive if they exclude many low-income households that could be creditworthy even at the high rates needed by lenders to cover the costs of processing the borrowings. As a result, although most advanced countries still have usury ceilings, these have been relaxed or qualified by exemptions.¹⁸⁵ Constraints on interest ceilings do exist in numerous developing countries, and it is widely accepted that they inhibit the expansion of credit by formal and semiformal intermediaries. For example, for some Muslims, conformity with the *Sharia* law prescribes a prohibition of *riba* or interest which entails avoidance of all interest-based finance.¹⁸⁶

A more proactive approach would be to provide subsidized loans to migrant workers. To

prevent illegal recruiters and loan sharks from preying on overseas workers and their families, the Philippine government extends the following loans:¹⁸⁷

- Predeparture loans (PDL) are offered to help defray the cost of predeparture requirements, including medical examinations, subsistence allowance, clothing, and pocket money.
- Family assistance loans (FAL) are for emergency purposes or family needs. The maximum loan amount is set at 40,000 pesos (US\$869), payable in six months to a year and with a 9 percent annual interest deducted in advance. This benefit is limited to members who have at least six months remaining in their employment contract.

One recurring problem with these loan programs has been low repayment rates. PDL and FAL loans have a repayment rate of 29 percent. Indeed, only 137 PDLs and 543 FALs were approved in 2006 before the Philippine government suspended lending pending further evaluation.¹⁸⁸ Clearly, more innovative subsidy-based financing mechanisms can and should be devised, preferably with the cooperation of the private sector.

Third, the role of foreign missions at destinations should be also redefined. The consulates remain the most important interlocutors for migrants, and through them some countries, such as Mexico and the Philippines, provide critical safety nets. Consulates can assume a wide range of roles that are complementary to policies described in the previous section. For instance, within a regulatory system, they can verify employment contracts and other documents, provide translation services, vouch for particular agents and hear and preside over complaints against recruiters as well as employers.

3. Links with trade unions

Another way of empowering migrants is to facilitate the efforts of trade unions to organize them. Initially wary of advocating in behalf of migrants, an increasing number

of trade unions now are working towards equal recognition of labor rights, regardless of migration status.

Unions in the United States reversed their anti-immigration stance starting in the late 1990s. Vernon Briggs attributes this to the rapid increase in the proportion of immigrants in the U.S. workforce. Unions do not want immigrants to be anti-union because it will complicate efforts to organize workers. They also understand that restrictions on migration encourage illegal entry, and that workers who lack legal status are vulnerable to sub-standard wages and working conditions which undercut all workers.¹⁸⁹

US government statistics suggest the number of immigrants belonging to unions increased 30 percent between 1996 and 2006, while the number of native-born union members declined by 9 percent. Both populations saw decreases in the proportions of unionized workers, but the proportion of union members who are immigrants increased from 9 to 12 percent.¹⁹⁰

Since trade unions are represented in tripartite commissions in a number of countries, they can considerably influence the operations of intermediaries. Trade unions' international networks in sending and receiving countries can also share and exchange information on recruitment and placement of migrant workers. They can particularly use these international networks and their influence to draw attention to abusive behavior on the part of recruitment agencies and to the needs of victims of illegal recruitment and trafficking, who are mostly women and children. Trade unions can also negotiate internationally recognized employment contracts that could be signed by employers, recruitment agencies and migrants.¹⁹¹

For instance, the British Transport and General Workers Unions has campaigned for a system of licenses for UK sub-contractors that hire migrant workers. These "gangmasters" employ about 100,000 workers, many unauthorized migrants. The union called for the introduction of a licensing system and a gangmaster register, which inspectors could then consult. These licenses would be valid for a limited period of time

and would be renewable as long as the gangmaster has not breached any obligations. In 2004, the United Kingdom passed the Gangmasters Licensing Act reflecting many of the union's recommendations.¹⁹²

4. Grant core rights

Finally, an important component of empowering migrants is the granting, at the very least, of equal treatment and basic rights. Without access to a core set of rights, migrants—especially those with undocumented status -- are vulnerable to exploitation. As Mary Cunneen argues, particularly in relation to migrant workers, “policies that seek to control intermediaries’ operation or to provide assistance to trafficked victims will ultimately be ineffective without an underpinning of core labor rights that can be claimed by all workers.”¹⁹³

It is not a coincidence that many cases of recruitment-related abuse occur in specific sectors and countries that afford very limited protection to migrants. Most countries with a huge proportion of temporary migrant workers exclude certain groups of migrant workers from the protections of their labor laws, including Bahrain, Singapore, Lebanon, and Kuwait. For instance, in an ILO study of national laws in 65 countries, only 19 have specific laws or regulations dealing with domestic work.¹⁹⁴

Some countries do not honor contracts signed in the country of origin or at the migrant's embassy. In Lebanon, this practice has led to side contracts that the recruiting agencies, employers, and workers sign. These contracts usually stipulate salaries below the minimum wage.¹⁹⁵ Similarly in Qatar, contracts that skilled and unskilled workers sign in their home countries are not honored. The employers require workers to sign a new contract, which may specify a different position, wage, and entitlement. As in other Arab countries, contracts have to be in Arabic, with the Arabic version serving as the official version.¹⁹⁶

In the United States, under the Fair Labor Standards Act, employers of farm workers are only required to pay the minimum wage if they have more than seven employees. Farm workers are also not entitled to overtime pay. The Migrant and Seasonal Agricultural Worker Protection Act of 1983 also exclude them from claiming rights to join unions and bargain collectively, one of the entitlements highly recommended by the ILO.¹⁹⁷

Indeed, although the North American Agreement on Labor Cooperation generally states that migrant workers should have the same labor protections as nationals in the country where they are working, exceptions are common. Some protections and benefits are not necessarily afforded to migrant workers. For example, certain Canadian provinces do not provide migrants with health insurance, and certain migrants do not meet the requirements for unemployment benefits in the United States.¹⁹⁸

Minimum Rights

The ILO came up with recommendations on the set of minimum rights that should be afforded to migrant workers. They include:¹⁹⁹

- freedom of association and collective bargaining.
- adequate protection in terms of minimum wages; working time and other working conditions;
- statutory social security benefits;
- access to training; occupational safety and health;
- compensation in cases of occupational accidents and diseases and insolvency and protection of workers' claims;
- maternity protection and benefits.

The ILO also requires agencies that deploy workers to a third party (referred to as “user enterprise”) not to replace workers on strike.²⁰⁰

Portability

Another promising area pertains to visa portability, which allows migrants workers to change employers without losing their work authorization. Portability of visas gives workers leverage in what is otherwise an unequal employment relationship ripe for abuse and exploitation. Though the United States does not have this across the board, current regulations, under certain conditions, allow portability for H-1B visa holders who are mostly professionals with at least a university education.²⁰¹

Doris Meissner, former head of the US Immigration and Naturalization Service recommends that this portability should be extended to all temporary workers in order to prevent labor exploitation. Meissner argues that “one way to overcome this problem is to allow portability of the visa — perhaps after an initial work period — as a way to try to level the playing field. In this way, if the worker can take the opportunity of being in the United States and move the visa to a different, comparable job, it gives him needed negotiating leverage in the employment relationship.”²⁰²

Some countries seem to be adopting this route. For instance, the UAE Cabinet has passed reforms in 2007 to combat abusive labor practices, one of which is to allow workers in all labor sectors to transfer employer sponsorship.²⁰³ The United States does offer programs with complete portability but on a much smaller scale than the H-1B. Foreign students, for instance, can find jobs as an adjunct to their studies without any employer restriction. Under the North America Free Trade Agreement (NAFTA), Canadian and Mexican professionals with proof of qualifications and a job offer can also enter the United States and are subsequently permitted to change employers.²⁰⁴

Of course, the composition of a set of core rights will and should be a matter of intense debate, but certainly should not be out of the question. Protecting migrants from abusive recruitment practices requires, at the minimum, a healthy and honest discussion of the basic protection mechanisms that should be accorded at destination.

Some Council of Europe member states have already adopted rules ensuring that temporary migrant workers receive the same treatment in terms of wages, working conditions and social rights as the local labor forces in their respective countries. Moreover, Article 19 of the revised European Social Charter also provides guidelines for some of the basic standards with respect to the right of migrant workers and their families to protection and assistance, including treatment in respect of remuneration and working conditions.²⁰⁵

B. Migration policy and administration

Fully addressing the challenges imposed by intermediaries also requires an understanding of the wider context surrounding migration policy and administration. As stated earlier, intermediaries exist because they fill gaps between employers or sponsors and the prospective migrants. Although the nature and extent of these gaps are shaped by myriad factors, migration policy and administration are foremost among them. The problem in this area is two-fold.

First, in many destination countries, there is a policy mismatch between restrictive entry and high labor demand, especially for the low and mid-skilled. This mismatch increases the likelihood that intermediation itself is either unnecessarily expensive or, at the limit, exploitative. As research has shown, where legal migration is limited and demand for migrant labor is high, prospective migrants are willing to pay higher prices and take the irregular route, where they often must depend on illegal recruitment agencies and smugglers, and, in the worst of cases, may fall into the hands of traffickers.

Second, excessive and complex regulations have created additional rents for intermediaries and other actors, such as corrupt officials and the like. In the United States, for instance, the labor certification process for foreign workers remains a complicated procedure that is often expensive and time-consuming. Although complex processes exist for temporary and permanent labor certification, workers seeking

temporary employment, especially those that are unskilled, are particularly vulnerable to the backlogs and fees associated with the certification process.²⁰⁶

Simplifying entry requirements would address this problem. So would housing concerned ministries and offices in one convenient location. For instance, in order to expedite the processing of foreign worker applications, Malaysia created a One-Stop Centre located in the Immigration Department. Officials who work full-time in the One-Stop Centre include relevant ministries such as the:²⁰⁷

- Ministry of International Trade and Industry
- Ministry of Human Resources
- Ministry of Agriculture and Agro-based Industry
- Ministry of Plantation Industry and Commodity
- Construction Industry Development Board

Among origin countries, the Philippines has also streamlined the deployment process by creating one agency that handles all the required steps.

VII. Conclusion

In an increasingly globalized world where migration routes — both legal and illegal — are in constant flux and migration flows are diversifying, intermediaries will continue to play an important role as providers of information and logistics support, at origin, in transit and at destination. Their services are critical to many prospective migrants whose range of choices is very limited. However their value is, in many cases, overshadowed by the costs they impose on migrants, from charging exorbitant fees to outright abuse of basic human rights.

Depending on the role they choose to take, intermediaries can, in the best of cases, be agents of human development. By expanding migrants' capabilities and their range of choices, intermediaries can enable migrants to realize their intentions to move and lead

lives that they value. In the worst of cases, however, intermediaries are detrimental to human development.

Policy prescriptions discussed in the two previous sections suggest room for many types of interventions. Governments, along with other stakeholders, can control intermediaries' operations via government regulations, stricter enforcement of existing rules, border control efforts and other employer-led and cross-border initiatives. Some also see potential in supporting intermediaries' effort to self-regulate, or in keeping them out of the system altogether by promoting movements mediated by governments, NGOs and international organizations.

In weighing these policy options, it is important to recognize that there is rarely a bright line separating what the market will bear from exploitative charges or practices, or exploitation from criminal abuse. This can be addressed by adopting a framework that recognizes the importance of first identifying the nature of scarcity and recognizing how migrants can best overcome the constraints of scarce information, access and employment opportunities.

The success of these policy interventions will depend on launching a parallel initiative that empowers migrants. To this end, governments and other interested stakeholders can choose to disseminate information, provide welfare support at origin and destination, link migrants to trade unions and other organized advocates and protect the basic human rights of migrants regardless of their status. Fully addressing the challenges imposed by intermediaries also requires an understanding of the wider context surrounding migration policy and administration, particularly concerns over unrealistic visa restrictions and complex administrative procedures.

Ultimately, however, the goal of policy interventions should not focus only on minimizing the costs that migrants incur by using intermediaries without any regard to how the very same policies might impact migrant's efforts to better their lives. The mantra — first, do no harm — applies with as much resonance to the recruitment industry, as it does to the remittance industry.

Given the difficulty in protecting migrants from exploitation, especially those in vulnerable and low-value occupations, some governments have initiated policies and regulations that essentially close or limit legal channels. A good case in point is the Philippines. In 2007, for the first time in nearly 20 years of active labor export, men comprised the majority of new hires. A few years earlier, the Philippines introduced new requirements that make it harder for workers to emigrate as entertainers and domestic helpers, sectors dominated by women. Interestingly, the Philippines considered this as one of its three greatest accomplishments for the year because it signifies the governments' success in shifting legal deployment away from low-skilled/vulnerable occupations — the very sector that disproportionately suffer from intermediaries' abusive and exploitative practices.

The irony in this case is hard not to miss: some policies that run under the guise of protecting migrants from unscrupulous intermediaries also run the risk of impinging on migrants' opportunity to migrate and pursue lives that they value — the very essence of human development.

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Annex 1: Legal Requirements for Establishing and Operating Recruitment and Placement Agencies in Various Countries

	Arizona	British Columbia, Canada	China	Connecticut	Cyprus	France
Registration and licensing	Agencies must obtain a license from the industrial commission if providing employment services for profit.	Agencies and Farm Labour Contractors must obtain a license by submitting application to Director of Employment Standards Branch.	Intermediary activities for overseas employment are subject to a license system administered by the Department of Labor and Social Security.	No person is allowed to open, keep or carry on any employment agency unless he procures a license from the Labor Commissioner.	Recruitment agencies without a relevant license are prohibited from operating and are penalized by the Minister of Labor and Social Insurance.	Agencies are required to provide advance registration and must include the legal characteristics of the business, the name of the operators, geographic area(s) of operation, and fields of expertise.
Registration or	Fees can range	Agencies: C\$100		\$150.00		

license fees	from US\$100 for an agency with fewer than three placement counselors to US\$300 for eight or more counselors.	Farm labour Contractors: C\$150				
Charges to workers				Fees can only to be charged for obtaining employment directly for the applicant within a time period upon which both parties agreed. Fees must be in accordance with schedule on file with the	Agencies are prohibited from charging employee for services.	

				regulatory authority and they cannot exceed 10 percent of yearly salary. Worker is entitled to a refund of fees if the placement lasted for less than 10 months.		
Financial capacities: deposit or minimum capital	Application for a license requires minimum cash deposit of US\$1,000 or surety bond in the amount determined by the commission, not to exceed	Farm labour contractors have to post a security equal to the amount obtained by multiplying the minimum hourly wage by 80, and multiplying the	Agencies must have a reserve fund of 500,000 Yuan.	Each person must file, with his application for a license, a bond to the state in the penal sum of US\$7,500, with surety approved by the commissioner.		Agencies must maintain a minimum capital of 8 percent of revenue and sufficient to cover employee compensation for injury. The amount must be

	US\$5,000, to be maintained at all times.	result by the number of employees specified in the license with multiplier reduced to 60, 40 and 20 after 1, 2 and 3 years of operation respectively.				certified by an auditor and revised yearly.
Personal and professional qualifications	Persons operating an agency must take a written examination regarding applicable employment and labor laws and regulations.	Agencies must satisfy the director that agency will operate "in the best interests of employers and persons seeking employment."	Agencies must meet the conditions for the establishment of business corporations; have sound work systems, staff rules, and full-	The commissioner may cancel or suspend the license of any person when it appears to his satisfaction, upon hearing, that such	Agencies must be operated by a citizen (or for a corporation, a majority of partners or shareholders who are citizens) possessing	

			<p>time staff members with the professional qualification for law, foreign language or accounting. Agencies must submit documents detailing qualifications, verification of capital and reserve fund, articles of association and agency rules, feasibility report and certification of business to the Ministry of</p>	<p>person has been convicted in a state or federal court of an offense which, under the laws of the state, is a felony or of any offense involving moral turpitude.</p>	<p>relevant qualifications, and who have no criminal record.</p>	
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			Labor and Social Security.			
Validity of license and re-application	Each license is valid for one year and may be renewed annually for a like period of time. Licensees are entitled to 45 days' prior written notice of license expiration.	A corporation that is licensed as a farm labor contractor must apply for a new license within 7 days after any change in its directors or officers.		Licenses must be renewed annually.		
Scope and transferability of license		License is valid for one year after the date on which it was issued, and is not transferable or		The legislation does not apply to nonprofits, private hospitals, religious or charitable institutions, nor		

		<p>assignable.</p> <p>The director may issue a 3-year license if the contractor renews its irrevocable letter of credit for each year of the term, and has not had a license cancelled by the director.</p>		<p>to organizations dedicated solely to preserving and furnishing financial records.</p>		
<p>Registration: other business regulation or tax authorities</p>	<p>The Industrial Commission supervises employment agents to enforce laws.</p>			<p>Records on employers and employees must be available to persons described therein and to the Labor</p>		

				Commissioner.		
Agreement to comply with labor and equal opportunity laws				Agencies must demonstrate to the Labor Commissioner knowledge of all applicable labor laws and regulations.		
Restrictions on operations	Agencies cannot split fees or compensation for its services with employers.		Agencies cannot establish branches without going through the same procedures of registration. Agencies cannot organize Chinese citizens to break Chinese law.	Applicants cannot be sent to a location where a strike is taking place without prior written notice, nor can they be sent to "a place of bad repute," or places kept for "immoral	Agencies are prohibited from providing inaccurate information, promoting employment where workers are on strike, discouraging applications to particular	

				<p>purposes." Knowingly falsifying advertisements or records is prohibited. Applicants are responsible for payment of fees, which must be included in advertisements.</p>	<p>employers, or recruiting minors.</p>	
Sanctions	<p>A classification A person, firm, association or corporation who acts as an employment agent without a license is guilty of a class 6</p>	<p>Licenses can be cancelled or suspended for falsifying an application, operating "contrary to the best interests of employers and</p>		<p>Agencies must pay for losses or damages to any person resulting from failure to comply with the legislation. Violators are also subject to fines of</p>	<p>Violations are subject to maximum imprisonment of 12 months and/or fine of CY£1,000.</p>	

	felony."	persons seeking employment," failing to inform employer of requirement to register domestic workers.		US\$5,200 per offense. Agencies operating without license are guilty of a class A misdemeanor.		
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Table 2: Legal Requirements for Establishing and Operating Recruitment and Placement Agencies in Various Countries

(cont'd.)

	India	Ireland	Morocco	Peru	Singapore
Registration and licensing	Inter-state migrant worker recruiters are required to obtain a license	Licensing is required for any person intending to conduct the business of an		Must register in advance of operations to receive a "proof of registration."	Agencies must submit application for a license to the Commissioner.

	from the specified authority from both the home and host states.	employment agency.		License application should include domicile of the business.	
Registration or license fees	Certificate of registration fees range from Rs. 60 for agencies employing 5-20 migrants to Rs. 1,500 for agencies employing over 400 migrants. License fees range from Rs. 15 for between 5 and 20 employees to Rs. 400 for over 400			Yes, unspecified.	Every licensee must pay such license fee as may be prescribed.

	employees.				
Charges to workers		Licensing fees must correspond to a scale approved by the Minister for Labor, and must not be charged based only on agreement to seek employment or employees.	Agencies cannot charge prospective workers any fees for placement.		
Financial capacities: deposit or minimum capital			Agencies are required to maintain 100,000 dirham in capital and a security deposit at the Caisse de Depot et de		The Commissioner shall consider the application and may grant a license with or without conditions or

			Gestion valued at 50 times the minimum wage.		refuse to grant a license.
Personal and professional qualifications		The Minister for Labor grants licenses upon an agency's demonstration of conforming to standards of accommodation, suitability, fitness, and no violations of the Act within the past 5 years.	Licenses cannot be granted to individuals convicted of "attacks on human honor" or having served more than 3 months in prison.	All private employment agencies must include natural persons.	Minimum 25 years old
Validity of license and re-application	Individual licenses specify a time period of validity, fees and conditions of	Licenses can be revoked for giving false information or failing to comply	Government authorities must be notified of any change to	The "proof of registration" is valid for 2 years; must request renewal 30 days	A license continues in force for one year from the date of grant of

	renewal. Renewal licenses are valid for one year.	with standards and requirements.	operations.	before expiration.	the license.
Scope and transferability of license		The regulation does not apply to Minister of State, the Civil Service Commission, nor the Local Appointments Commission.	Employers are required to provide lodging, food, medical care and repatriation to household employees leaving Morocco for a maximum of 6 months.	Must notify the registrar of any change of domicile within 5 days of the change (Article 10).	
Registration: other business regulation or tax authorities	Employers and agencies are required to cooperate with inspectors appointed by the			Must provide statistics regarding services provided to the National	

	government to enforce legislation.			Employment Authority	
Agreement to comply with labor and equal opportunity laws	Contractors are responsible for payment of wages within prescribed time frame.		Discrimination based on union activity, race, color, sex, religion, political opinion, ancestry, class, or other characteristics that inhibits equality of chances in terms of employment is prohibited. Agencies placing Moroccans abroad must	Must provide equal opportunities to all employment candidates; discrimination is explicitly prohibited. "Very serious" sanctions for for-profit placement of individuals without registration, or minors, or the advertisement or completion of discriminatory	

			comply with bilateral and multilateral treaties.	employment.	
Restrictions on operations			Agencies are required to provide reports each semester to the National Employment Service. These reports should include services provided and employers and workers served. Special provisions apply to "artistic" workers.		

<p>Sanctions</p>	<p>Licenses can be revoked for “misrepresentation or suppression of any material fact.” License holders have the right to appeal.</p>	<p>The Protection of Employees (Fixed-Term Work) Act of 2003 amended the Employment Agency Act to make offenders liable for fine up to €2000 and further fine up to €1000 a day.</p>	<p>Infractions of the law pertaining to the employment of Moroccans abroad are punishable by a fine of 2,000 to 5,000 dirham.</p>	<p>Failure to register or otherwise comply with the law subject to a graduated series of sanctions.</p>	<p>The Commissioner can revoke licenses at any time for any reason. Making false statements, overcharging or discouraging an employer from hiring someone outside the agency subject to a fine up to S\$2,000 (S\$5,000 for repeat offense) and/or to imprisonment up to 6 months. Knowingly facilitating the</p>
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					"moral corruption" of a girl or woman subject to a fine up to S\$5,000 and/or imprisonment up to 2 years.
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TABLE N. TITLE (cont'd.)

	South Africa	Switzerland	United Kingdom
Registration and licensing	Recruitment agencies must apply for registration to the Director-General of Labor.	Agencies must register with the Swiss Commercial Registry.	Businesses providing labor to agriculture, horticulture and shellfish industries must register and be granted a license through the Gangmasters Licensing Authority.
Registration or license fees		Range of registration fees: 700 to 1500 Swiss francs depending on	Fee is based on expected annual income. For instance: Less than

Sources: Arizona, Arizona Revised Statutes Title 23 Labor, Chapter 3, accessible at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=23>; Canada, Employment Standards Act Employment Standards Regulation [includes amendments up to B.C. Reg. 270/2008, 2008, accessible at http://www.bclaws.ca/Recon/document/freeside/--%20e%20--/employment%20standards%20act%20%20rsbc%201996%20%20c.%20113/05_regulations/11_396_95%20employment%20and%20standards%20regulation/396_95.xml]; China, Provisions on the Administration of Intermediary Activities for Overseas Employment, 2002, accessible at <http://www.lawinfochina.com/Law/list.asp?page=5&1db=1&kt=1&kf=0&keyword=Provisions%20on%20the%20Administration%20of%20Intermediary%20Acti>

		workload of authorities	£1m=£2,250; £1m - £5m=£4,050	vities%20for%20Overseas%20Employment ; Connecticut, Chapter 564 Private Employment and Information Agencies, 1995, accessible at http://www.ctdol.state.ct.us/wgwkstnd/pa-statutes.htm#31-130 ;
Charges to workers		Maximum fee of 40 Swiss francs, commission of 5 percent of first year's salary. Value added tax charge allowed. Range of 8-10% commission allowed for musical performers. Inscription tax charge and supplemental remuneration from employees to cover related		Cyprus, The Private Employment Agencies Law, No. 8(1)/97, 1997, accessible at http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/7B7556F1FCD4B535C2256DB1002B2165/\$file/Private%20Employment%20Agencies.doc ;
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		operations abroad are allowed. Commission charges are established by the Swiss Federation Council		l'Intermediation en matiere de recrutement et d'embauche, 2003, accessible at http://www.droit-afrique.com/images/textes/Maroc/Maroc%20-%20Code%20travail.pdf ; Peru, Decreto supremo No 005-2003-TR, Crea el Registro Nacional de Agencias Privadas de Empleo, 2003, accessible at http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/DS_005_03_TR.pdf , Resolucion Ministerial No 216-2004-TR, Aprueban directiva que regula el procedimiento para el Registro de Agencias Privadas de Empleos, 2004, accessible at http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/RM_216_2004_TR.pdf , Resolucion Ministerial 115-2007-TR, Aprueban Directiva que regula el Procedimiento para la inscripcion en el Registro Nacional de Agencias Privadas de Empleo, 2007, accessible at http://www.mintra.gob.pe/intranet/contenidos/NL/RM_151_2007_TR.pdf ; Singapore, Employment Agencies Act (Chapter 92), 1985, accessible at http://agcvldb4.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-
Financial capacities: deposit or minimum capital				
Personal & professional qualifications		Agencies must be operated by individual with Swiss residence rights, professional qualifications, a		

		good reputation and familiarity with labor regulation in countries of origin.		92&doctype=EMPLOYMENT%20AGENCIES%20ACT%0a&date=latest&method=part; South Africa, Skills Development Act No. 97, 1998, accessible at http://www.labour.gov.za/downloads/legislation/acts/skills-development-act/Act%20-%20Skills%20Development%20Act.doc ; Switzerland, Ordonnance sur les emoluments, commissions et suretes en vertu de la loi sur le service de l'emploi, 1999, accessible at http://www.admin.ch/ch/f/as/1999/2716.pdf , Loi federale sur le service de l'emploi et la location de services, 2008, accessible at http://www.admin.ch/ch/f/rs/8/823.11.fr.pdf ; United Kingdom, The Gangmasters (Licensing) Act, 2004, accessible at http://www.opsi.gov.uk/acts/acts2004/ukpga_20040011_en_1 .
Validity of license and re-application		Fee for changes to license: 200 to 800 Swiss francs, depending on workload. No expiration. Only valid in certain countries.		
Scope and transferability of license			The regulation applies to agricultural work, gathering shellfish, processing or	

			<p>packaging produce from agricultural work, or packaging fish or products derived from fish, within the United Kingdom or adjacent shore, seabed or river. License can be transferred with written consent of Authority.</p>
<p>Registration: other business regulation or tax authorities</p>		<p>Must "cooperate" with Swiss public unemployment and vocational</p>	

		training agencies.	
Agreement to comply with labor and equal opportunity laws		Written contracts must include character of the work, the place of work and start date, the duration, work hours, salary, benefits, itemized deductions, and the date of payment. Other Swiss labor laws apply.	
Restrictions on operations		Must publish advertisements of legitimate openings under	

		their own name and address.	
Sanctions	The Director General of Labor may cancel registration if the agency does not comply by the rules.	Licenses can be revoked for providing false or misleading information, repeatedly or seriously breaking the terms of their license, or failure to fulfill requirements. Unlicensed operation is subject to a fine of 100,000 Swiss francs and supplemental fines for illegally	A failure to obtain a license could result in a maximum penalty of 10 years imprisonment and a fine on conviction. The penalty for a Labour User such as a farmer knowingly employing an unlicensed Labour Provider could result in a conviction of up to 6 months in

		placing foreign workers. Employers knowingly using an unlicensed agency subject to fine of 40,000 Swiss francs (if unknowingly, then 20,000 Swiss francs).	Scotland and Ireland or 51 weeks in England and/or a fine.
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