



Driving Responsible Recruitment in Southeast Asia

Regional Roundtables in
Bangkok and Kuala Lumpur

Meeting Notes
20 & 22 March 2018



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Introduction

On 20th and 22nd March 2018, the Institute for Human Rights and Business (IHRB), the Leadership Group for Responsible Recruitment and The Consumer Goods Forum (the CGF), with the support of Humanity United, organised two roundtable events in Malaysia and Thailand on Driving Responsible Recruitment in Southeast Asia.

Each of the events was attended by over 70 participants representing brands, supplier companies, recruitment agencies, civil society and international organisations aiming to engage in constructive discussions on transitioning to an “Employer Pays” model of recruitment with the objective of ensuring that “No Worker Should Pay for a Job”. The roundtables, in Kuala Lumpur and Bangkok, were tailored to the local context and included expert inputs and practical learnings from those directly involved in the different stages of the recruitment cycle in Malaysia and Thailand, as well as in migrants’ countries of origin, including Nepal and Cambodia.

The roundtables aimed to raise awareness on the need for ethical standards of recruitment of migrant workers; initiate dialogue on the roles of brands, suppliers and recruiters; encourage discussions on the transition to and operationalisation of an Employer Pays model of recruitment; and identify entry points for dialogue between business and governments on steps to improve the professionalisation of the recruitment industry.

Overview from Kuala Lumpur

Summary of Presentations

Context

- Prevailing business model is the “worker pays” model in Asia, and awareness of another model is quite low.
- Existing regulatory gaps disincentivise changing the model- i.e. Costs to business.
- Many migrant workers in Malaysia are still paying the foreign worker levy even though this is now the employer’s responsibility since January 2018. Furthermore, the levy paid by workers is often higher than its actual cost.
- In many cases, workers will need to take out loans at a very high interest rate to pay the recruitment fee upfront, and this leads to many remortgaging, selling their land and/or leads them into debt bondage.

- There are huge differences in the recruitment fees according to worker and origin country.
- Whilst workers should have their return flights paid, they often have to pay the initial flight in to Malaysia.
- Migrant workers specific vulnerabilities (where suppliers/employers can have an impact):
 - Indebtedness.
 - Lack of transparency on terms and conditions of employment.
 - Limited access to grievance and remedies.
 - Discriminatory job selection practices: recruitment agencies and employers have been known to apply discriminatory and abusive practices to select workers e.g. requesting workers to strip to demonstrate they have no tattoos.
- There is limited involvement and understanding by employers over recruitment processes in origin countries.
- Charging of recruitment fees and related costs to workers is often beyond legal limits, and leads to indebtedness.
- Some workers are made to hand in passports to recruitment agencies 6 to 10 months before obtaining employment.
- Workers may be obliged to live in accommodation provided by the recruitment agency which they have to pay for whilst not working or earning. Agencies do this to have access to workers easily, but this means workers are forced to stay and live abroad in this accommodation whilst not earning.

Opportunities

- The demand for ethical recruitment will not go away, there will be increasing number of companies joining this movement.
- Recruitment agencies should value this as a real business opportunity.
- There is a strong business opportunity around responsible recruitment: by demonstrating themselves as responsible businesses, companies pave the way for improved market access.
- Having numbers and data is extremely important to demonstrate you understand the problem notably to influence decision makers, and to make better decisions at sourcing level.

What is needed?

- Need to address the origin countries: more understanding and data required on the different costs and actors: who has the power, who are the enablers.
- Need to be proactive on fees: the long-term aim is not to reimburse fees to workers since this is more a reactive approach. The source of the issue needs to be tackled for lasting impact.
- Need to identify those with leverage and power to track which fees are actual and which are inflated, as workers often are powerless and lack the bargaining power.
- Concrete solutions on how to resolve the issues, currently their main focus is on addressing passport retention and ensuring contracts are drafted in local languages but suppliers need greater support in gaining greater visibility of labour agencies in sending countries.

Summary of Breakout Discussions

Transparency

- Clarity of costs- what's involved, what is it that people are paying, how can we map those costs, what are the genuine costs as opposed to the costs migrants are incurring, and how do we get more transparency on these costs?
- What is the cost sharing between brands and suppliers as we transition to this new model?
- Recognising that during the transition phase there will probably be an additional cost: there are not enough ethical recruiters and we will need to help build their capacity and training to help build a responsible recruitment industry.

Governments

- What businesses want is more joined up thinking- alignment of policies
- Ensuring policies in place help encourage ethical recruitment and do not challenge nor inhibit it.
- Simplifying processes and bureaucracy
- Strengthening licensing for agencies
- Often there is no shortage of laws, but a lack in proper enforcement

Viewing through a Western lens

- Need to be very conscious of this, for many migrant workers faced with few job options- any job is better than no job. Yet, the focus is to still ensure decent work where the employers pays model becomes the business norm.

Role of trade associations

- Very hard for brands to achieve this transition individually, and associations are another way to bring pressure on suppliers and effective engagement with government- > role and focus for the CGF and IHRB.

Important and encouraging to see the good participation of recruitment agencies at this roundtable, and to recognise that recruitment agencies are not the villain - everyone has a responsibility and role to play in transforming the recruitment market. We all need to work together in partnership.

Building an Ethical Recruitment Industry Working with Recruiters

- In the concluding session focused the discussion around how the recruitment industry needs to change, and what capacity building is required for recruitment agencies to

gain competitive advantage? Key elements highlighted include:

- **Consider auxiliary services:** Recruitment agents have their own supply chains; they work with many other auxiliary organisations e.g. hostel owner, travel agency, medical cabinet etc. with whom they have established close relationships. When mapping your labour supply chains, you cannot only look into the recruitment agencies, the auxiliary services also need to be taken into account.
- **Understand how workers are moved by others:** job seekers remain in a pool for 3 to 6 months sometimes without earning and this entails costs.
- **We have to understand the leverages.** Do not forget that labour agencies provide legitimate services. They have the contacts in the villages, the trust of the villagers, they have the proximity to job seekers.
- **Prioritise:** look at which country it will be the easiest to effect change and work with those suppliers and recruiters.

Closing Remarks

- IHRB and the CGF will report back on the discussions with the Malaysian government.
- The demand for ethical recruitment is not going away, and is only increasing.
- Progress is slow, but there is progress.
- This will only be achieved by working together.

Overview from Bangkok

Summary of Presentations

Legal Framework

- Along with Malaysia, Thailand is one of the largest countries of destination in ASEAN.
- About half of the foreign workers in Thailand are irregular, and most of them are arriving from other ASEAN countries.
- Previously, due to lack of capacity at governmental and institutional level, there has been little enforcement of labour migration regulations.
- Labour migration into Thailand has led to enormous economic benefit for both sending and receiving countries.
- ID cards for foreigners (the so called “pink cards”) were introduced in 2014 by the military government in order to regularise migration. The measure was implemented with a view to allowing workers who were looking to migrate or who were already in Thailand to regularise their situation.

- However legal channels to regularise visas, passports and work permits under the new system took 3 times as long and were 3 times more expensive (IOM and ILO 2017), resulting in 75% of workers deciding to migrate irregularly- irregular migration was often a rational choice for migrants.

Royal Ordinance on the Employment and Recruitment of Migrant Workers 2017:

- The Royal Ordinance abolished pink cards and replaced this with levies.
- There are now high fines for workers and employers who do not regularise their migration status, or those of their workers.
- The reliance on formal intermediaries will probably raise the cost of recruitment.
- The issue for companies: risk of legal liability if they do not comply with the Royal Ordinance. Yet, it is not clear what happens if workers are not registered through the National Centres for Registration of Foreign Workers, as provided in the Royal Ordinance. The response so far has been that companies terminated the employment relationship with workers who were in an irregular situation, and these were then left stranded.
- These are countries with long histories of informal recruitment and migration: often family members and friends will act as recruitment agencies, so typically the labour recruitment supply chain is complex since there is a mix of formal and informal agents who may or may not charge fees.
- The adoption of the Royal Ordinance without previous consultation of businesses had a negative impact and reaction from businesses and workers, and many went back to their country of origin fearing the fines imposed on them. Therefore a lack of clear implementation policies can pose risks to business and workers, but strong governance can be beneficial to both.
- Currently there have only been negative incentives included in the Royal Ordinance which focus on punishment. Nothing has been included on positive incentives and good business cases.

Draft Forced Labour Act:

- In 2016 Thailand started to revise the legislation and draft a Forced Labour Act, to run in parallel with the Anti-Trafficking Act and to fall under the mandate of the Ministry of Labour.
- The Anti-Trafficking Act does not provide for a specific offence of forced labour, although it recognises practices such as confiscation of passports and debt bondage as a means to exact forced labour.
- The drafting process has taken 1.5 years and was led by the Ministry of Labour. The Anti-Trafficking Act falls under the mandate of the Ministry of Social Development and Human Security (MSDHS) and takes a criminal justice approach.
- If the Forced Labour Act is adopted- the Ministry of Labour will have stronger capacity to identify and investigate cases of labour exploitation, which should in turn lead to more prosecutions and convictions for forced labour.

Migrant Worker Context

- Recruitment fee:
 - Prevailing business model in Asia is the “worker pays” model, and awareness of another model is quite low.
 - There are huge differences in the recruitment fees according to worker and origin

- country due to different approaches under national laws, amongst other reasons (e.g. in Myanmar, they allow for charging of recruitment fees which is not the case in Thailand).
- Charging of recruitment fees and related costs to workers is often beyond legal limits
 - Deceptive recruitment can occur in both the origin and destination country:
 - Case of workers being abandoned in the destination country or facing poor working conditions.
 - Finding a new job with the assistance of brokers rather than being sent back to country of origin, which puts worker at risk of another deceptive recruitment situation.
 - Debt Bondage
 - Mainly from the debt of recruitment fee and cost.
 - Misunderstanding or avoiding the responsibility of paying the recruitment fee by the employer.
 - Holding of workers' personal documents by the employer or the employment agencies.
 - Other issues highlighted:
 - There are limited opportunities for migrant workers to change employer under MoU agreements.
 - No prohibition on recruitment fees in the MoU, which CSOs have been trying to work into the MoU.
 - Difficulty in the prosecution of malpractice due to the trans-border nature of the recruitment process.
 - Migrant workers' limited access to grievance and remedies.
 - Some workers are made to hand in passports to recruitment agencies 6 to 10 months before obtaining employment.
 - Workers may be obliged to live in accommodation provided by the recruitment agency which they have to pay for whilst not working or earning. Agencies do this to have access to workers easily, but this increases workers' vulnerability to abuses and exploitation.

Lessons Learned So Far

- Direct hiring and employment is effective but expensive, challenging and a long process
 - HR staffing.
 - Screening of recruitment agents.
 - Frequent travels to sending countries.
 - Lack of regulatory understanding in sending countries.
 - Repayment of fees is complex and has unintended consequences
 - Lack of receipts and transparency- difficult to track.
 - Different rates in different countries.
 - Inequity created amongst the workforce within factories.
 - Difficult to drive change without leverage
 - One customer cannot create sustained change alone.
 - Difficult to get buy in, notably in managing turnover ethically.
 - Managing expectations from suppliers.
 - Myths cloud outcomes.

Opportunities

- The demand for ethical recruitment will not go away, there will be increasing number of companies joining this movement.
- Recruitment agencies should value this as a real business opportunity.
- If you are a supplier who is an early adopter there is a competitive advantage: first mover advantage.
- Reducing risk makes business sense.

What is needed?

- Collective action within and across industries.
- Regulatory frameworks that support ethical recruitment.
- A market for ethical recruiters.
- Transparency (ex: costs, sub-agent market, etc)- how to we deal with the sub agents in the market for example? Often these sub-agents are family or middle managers.

Summary of Breakout Discussions

Improved Clarity on the Employer Pays Model

- Must not forget that everyone in the process is a rational actor: the country and sector context may impact the way in which a recruiter operates, but all actors need to be aware of the costs, challenges, benefits and implications associated with an employer pays model, since there is a lack of understanding about this model. Clarity is needed:
 - With regards to cost.
 - Definition of fees.
 - Clear communication with the worker along the recruitment journey and better informed about their rights and responsibilities.
- One idea would be to have a list of good recruitment agencies so that suppliers know who to trust (“white list” of recruiters”).

Regulatory Environment

- Legal requirements are difficult to understand; information is not easily accessible.
- There is a lack of alignment between laws and regulations in sending and receiving countries.
- Government should provide clearer information on legal requirements in Thailand and in sending countries.
- There is an expectation from suppliers that government agencies strengthen law enforcement and monitoring of recruitment agencies. Suppliers and recruiters that are already implementing the employer pays principle need to be supported and those who are not should be punished accordingly.

- Businesses and business associations such as IHRB and the CGF also have a crucial role in asking governments to improve regulations and enforcement.

Mindsets and Beliefs

- Myth busting: there are common perceptions or misconceptions that the various actors may have regarding the employer pays model. Workers often assume that they need to pay in order to get a better job in both sending and receiving countries, and that this is a normal practice.

Brands and Buying Companies

- Main enabler is the buyer/brand's requirement to implement the employer pays model. There is need for a level playing field regarding brands' requirements; employers may face challenges when supplying to different brands with different demands.
- Both recruiters and suppliers agree that brands' main responsibility is to share the burden of transitioning to an employer pays model (including costs).
- Responsibility to ensure that industry peers understand their message and are aware of the necessary steps to move the process forward.

Recruitment Agencies

- Responsibility to communicate suppliers' requirements to agencies in migrant sending countries; need to help suppliers and brands monitor recruitment practices in sending countries.

Suppliers

- Responsibility to communicate with recruiters so that workers are recruited ethically; responsibility to comply with the employment contract that was signed with the worker, so that the worker is satisfied.

Business Benefits

- Most suppliers in the groups were already implementing the employer pays model. At the beginning, when they were transitioning, the biggest challenge was the costs associated with the transition.
- They acknowledged, however, that once employer pays model was implemented there were several other benefits for their business, including low staff turnover, improved workers' skills set and worker retention.

Best Practice Sharing and Guidance

- There is a need for a clear roadmap for the transition to employer pays model: breaking down into manageable components and establishing a realistic timeframe

for implementation.

- Technology and other alternative tools need to be considered.
- Need greater sharing of case studies and good practice.
- Perhaps could prioritise a few migration corridors allowing for progressive implementation of employer pays model.
- One of the practices that is being implemented successfully by some suppliers is the direct recruitment of workers in countries of origin. Suppliers are handling the whole process instead of relying on recruiters. This allows suppliers to assess workers' skills set and match this to their needs. The result is improved worker retention and reduced costs associated with ongoing recruitment of new workers.

Closing Remarks

- There is the brainpower and willpower to work on this issue in the room today- no excuse for inertia.
- We need to create a demand for ethical recruitment, part of that is also reflecting upon ways to better reach migrant workers on how to educate them on their rights, and about the employer pays model.



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