

# Research Brief

## Migrant Worker Recruitment Costs

# Brunei

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**Brunei Darussalam** has the smallest population in Southeast Asia and is one of the wealthiest countries in the world per capita. In 2014 the population of Brunei stood at 411,900 and the employed workforce was 189,500. The Southeast Asian region hosts two of the world's leading countries of origin for migrant labour, Indonesia and the Philippines, and two leading destination countries, Singapore and Malaysia. Brunei has the highest percentage of migrant workers in Southeast Asia. In 2014, forty-six percent of the 100,879 employees in the private sector were foreigners.

Although large in percentage terms, the smaller number of migrant workers in Brunei compared to other destination countries in Southeast Asia has allowed the country to implement measures to protect migrant worker rights that would be difficult in larger countries in the region. Nevertheless, most low skilled and domestic workers in Brunei still pay recruitment fees to work in Brunei.

This paper examines the impact of recruitment fees on migrant workers in Brunei in the context of economic and employment trends in the country. It also examines the behavioural influences that establish and reinforce the use of recruitment fees and possible drivers for change. Lastly, the paper highlights some of the steps the Government of Brunei has taken to protect migrant worker rights and discusses actions that some employers and the government and origin countries might consider to eliminate migrant worker-funded recruitment fees.

## Background

The International Labour Organization (ILO) estimates that there were 214<sup>1</sup> million international migrants in 2014 and over half of the migrants were women. International migrants remitted over US\$400 billion to developing countries making the supply of migrant workers one of the largest industries in the world.

## Recruitment Fees

The task of meeting supply and demand for international migrants across the globe typically falls on recruitment agencies and brokers. It presents a lucrative business opportunity. Employers need recruiters and recruitment agencies to help locate talent in foreign countries. Workers rely on recruitment agencies to identify job opportunities and manoeuvre complex hiring and immigration procedures. This function is indispensable for new unskilled workers living in rural areas in origin countries. Agencies in migrant worker origin countries and destination countries where potential employers are located facilitate visas, medical check-ups, travel arrangements, pre-departure orientation and training. Notwithstanding the good that these agencies bring, the central role that they play between the impoverished seeking a path to break out of the cycle of poverty and employers seeking low cost labour creates opportunities for abusive recruitment practices through the use of recruitment fees.

In a paper titled, **The role of recruitment fees and abusive and fraudulent recruitment practices of recruitment agencies in trafficking in persons**, the United Nations Office on Drugs and Crimes warns of the dangers of worker-funded recruitment fees:<sup>2</sup>

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

Fees may be charged for identifying, interviewing, referring, selecting, or placing a worker. They may

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<sup>1</sup> UN Development Agenda”. [www.ilo.org](http://www.ilo.org). 2015, "Mainstreaming of Migration in Development Policy and Integrating Migration in the Post-2015" [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/genericdocument/wcms\\_220084.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_220084.pdf) last accessed July 2016

<sup>2</sup> United Nations Office on Drugs and Crime, 2015, "The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons" last accessed July 2016 [https://www.unodc.org/documents/human-trafficking/2015/Recruitment\\_Fees\\_Report-Final-22\\_June\\_2015\\_AG\\_Final.pdf](https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf)

include travel, document and visa processing, medical exams, and unspecified service charges. Much of the fees go directly to the recruiter. The final price paid by the worker may be higher than the fees themselves. Agencies also sometimes act as money lenders, charging steep interest rates, and press workers to purchase other services at inflated rates. Workers may also have to pay fees to brokers in both the origin and destination countries. Lower skilled workers tend to be more likely to pay recruitment fees and research shows they pay a higher percentage of their salary in fees. They are also less able to negotiate higher salaries or working conditions once on the job. There is also a strong link between excessive fees and contract substitution as workers are persuaded to pay high recruitment fees in exchange for expected high salaries, only to find actual salaries much lower when they arrive in destination countries.

Verité, a global advocate for fair labour conditions, calls high recruitment fees a hiring trap: *“Big recruitment fees – sometimes legal, sometimes illegal – are often charged to the worker to obtain the job overseas. The worker might borrow money to pay the fees, wagering that the debt will be easy to pay off. But what if the terms of work – especially pay – wind up being less favorable than what the labor broker promised? Once a worker is on-site at the foreign workplace – with a big loan and attendant interest payments like a weight on her back and a work visa that ties her to one workplace – it is difficult, if not impossible, to escape.”*<sup>3</sup>

The distinction between the processes many migrant workers go through during their recruitment and those experienced by trafficked workers can be a thin one. Recruiters and recruitment agencies frequently recruit workers through fraud and deception and employ forms of coercion to control workers for the ultimate purpose of exploitation.

### **Brunei Darussalam**

Brunei Darussalam is a sovereign state located on the island of Borneo in Southeast Asia. The country shares the island with the Malaysian Federal territory of Labuan and the Malaysian states of Sabah to its north, and Sarawak to its south. It also shares the island with the Indonesian region of Kalimantan further to its south. Kalimantan occupies seventy-three percent of the island by area. Brunei is one of the wealthiest countries in the world, per capita, with oil and gas generating a substantial amount of foreign investment, income and jobs.

Brunei also has the smallest population in Southeast Asia. In 2014 the population of Brunei stood at

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<sup>3</sup> Verité, June 2010, “Summary Report – Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy” [http://www.verite.org/sites/default/files/images/Help\\_Wanted\\_2010.pdf](http://www.verite.org/sites/default/files/images/Help_Wanted_2010.pdf) last accessed July 2016

411,900 and the employed workforce stood at only 189,500<sup>4</sup>. The Southeast Asian region hosts two leading origin countries for migrant labour in the world, Indonesia and the Philippines, and two leading destination countries, Singapore and Malaysia. The absolute number of migrant workers employed in Brunei may be significantly less than the numbers in either of the latter countries, but it has the highest percentage of migrant workers in Southeast Asia within its borders. In a 2014 labour survey by the Department of Economic Planning, only 5,277<sup>5</sup> out of 88,694 employed in the public sector were foreigners, but forty-six percent of the 100,879 employees in the private sector were reported to be foreigners. The size distribution of earnings showed considerable inequality. The bottom ten percentile earned an average of US\$1.08 per hour. Since these low salaries are not attractive for migrant workers, some recruitment agencies advertise misleadingly higher salaries to justify high recruitment fees. The low-skilled migrant worker thinks the fees justify the expected salaries, but the actual salaries are much lower, and the worker, upon arrival is saddled with debt and long hours that act as a bond to the workplace<sup>3</sup>.

Excluded from the employment statistics are 18,000<sup>5</sup> persons employed in unregistered private business enterprises that did not keep records of accounts. Sixty-five percent of persons that worked in this informal sector were foreigners including 9,792 domestic workers.

Statistics from other sources reflect a higher number of domestic workers in Brunei than official statistics. In a study on Indonesian and Filipino domestic workers in Brunei, the Southeast Asian Women's Caucus<sup>5</sup> on ASEAN reported "*Indonesian domestic workers in Brunei numbered 17,000 or 30.9 percent of the total number of 55,000 Indonesian nationals in the country as of December 2012. The ease of travel from Kalimantan, Indonesia through Sarawak, Malaysia and finally Brunei allows many Indonesian migrant domestic workers to go to Brunei undocumented.*

*Smaller in number than the Indonesians, Filipino domestic workers in Brunei totaled 4,884 during the same period, or 23.2 percent of the 21,028 Filipino nationals employed there. Mostly Muslims, they originate from the southern Philippine island of Mindanao where the reputed "backdoor" gateway of Zamboanga Province affords a way to cross by sea to Sandakan, Sabah and by land to Brunei. Given this unofficial portal, it is highly possible that the actual number of Filipino domestic workers in Brunei is more than the official count."*

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<sup>4</sup> Department of Economic Planning and Development, "Labour force survey 2014 report"  
[http://www.depd.gov.bn/DEPD%20Documents%20Library/DOS/Labour%20force%20survey\\_KTK/Preliminary%20Report%20Labour%20Force%20Survey%202014%20\(updated\).pdf](http://www.depd.gov.bn/DEPD%20Documents%20Library/DOS/Labour%20force%20survey_KTK/Preliminary%20Report%20Labour%20Force%20Survey%202014%20(updated).pdf) last accessed July 2016

<sup>5</sup> Southeast Asia Women's Caucus on ASEAN, "Compliance with Women's Rights Standards. The Case of Migration of Domestic Workers from Indonesia and the Philippines in Brunei Darussalam"  
[https://womenscaucusonasean.files.wordpress.com/2014/01/compliance-with-womens-rights-standards\\_domestic-workers-from-indonesia-and-the-philippines-in-brunei-2.pdf](https://womenscaucusonasean.files.wordpress.com/2014/01/compliance-with-womens-rights-standards_domestic-workers-from-indonesia-and-the-philippines-in-brunei-2.pdf) last accessed July 2016

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A July 2014 article in the Brunei Times<sup>6</sup> (The Brunei Times ceased publication on 8 November 2016, links cited in this paper are no longer available) reported that there were 22,000 domestic workers in Brunei and that they originated mainly from Indonesia and the Philippines.

Many migrant workers in Brunei may be undocumented. The Southeast Asia Women's Caucus on ASEAN in a paper titled **Compliance with Women's Rights Standards: The Case of Migration of Domestic Workers from Indonesia and the Philippines in Brunei Darussalam** listed 52,280 Indonesian migrant workers in Brunei in 2011, only about 30,000 of whom are documented. Undocumented migrant workers usually enter Brunei through Entikong, West Kalimantan, the most accessible entry point since it only requires land travel, facilitated by family and friends who had experienced working there. Indonesia's labour laws offer undocumented workers no protection.

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<sup>6</sup> Quratul-Ain Bandial, Brunei Times, August 9, 2011, "Better justice for domestic workers"  
<http://www.bt.com.bn/news-national/2014/07/28/better-justice-domestic-workers#sthash.p0aXv52Y.dpbs> last accessed July 2016

## Government Procedures and Legislation that Impact Foreign Workers

### Procedures for Employing a Foreign Worker

In order for an employer to recruit a foreign worker the employer must<sup>7</sup>:

1. Register with the Labour Department
2. Apply for a labour quota license that specifies the number of foreign workers his company can employ
3. Obtain a bank guarantee or make a deposit to protect the government against incurring any expenses whatsoever in connection with the subsistence, housing, medical care or repatriation of the workers. The deposit can be as high as \$3,463, depending on the country of origin of the foreign workers. If the worker is from an ASEAN country, a bank guarantee of \$462<sup>8</sup> per worker is required. These deposits can be paid in the form of cash payment or by using banker's guarantee<sup>9</sup>.

NO	NUMBER OF FOREIGN WORKERS (INDIA/BANGLADESH/PAKISTAN)	FORMULA
01	LESS THAN 20 FOREIGN WORKERS ( $\leq 20$ )	100% CASH DEPOSIT
02	21 TO 40 FOREIGN WORKERS ( $21 \leq X \leq 40$ )	40% CASH DEPOSIT 60% BANKER'S GUARANTEE
03	41 TO 99 FOREIGN WORKERS ( $41 \leq X \leq 99$ )	50% CASH DEPOSIT 50% BANKER'S GUARANTEE
04	100 FOREIGN WORKERS AND ABOVE	FIRST 100 WORKERS – CASH DEPOSIT > 100 WORKERS – BANKER'S GUARANTEE

4. Purchase workmen's compensation insurance for this worker
5. Obtain an approval letter from the foreign worker section at the Immigration and National Registration Department
6. Require the foreign worker to undergo a pre-employment medical examination in his/her home country which then must be sent back to Brunei for approval
7. The application documents which are then filed should include an application letter from the employer to the Director of Immigration and National Registration, an Employment Pass application form, a visa application form and the employer's Labour License

<sup>7</sup> Dej-Udom & Associates, "Work Permits and Visas for Foreign Workers in ASEAN Countries"  
<http://www.dejudomlaw.com/immigration/overview/> last accessed July 2016

<sup>8</sup> Borneo Bulletin, May 25 2016, "Need proper guidelines on labour quota deposit"  
<http://borneobulletin.com.bn/need-proper-guidelines-on-labour-quota-deposit/> last accessed July 2016

<sup>9</sup> Borneo Bulletin, May 28, 2016, "Labour Department clears the air on foreign workers' security deposits"  
<http://borneobulletin.com.bn/labour-dept-clears-the-air-on-foreign-workers-security-deposits/> last accessed July 2016

8. After approval of the visa application, a foreigner can enter Brunei and the Department of Immigration and National Registration will issue an Employment Pass
  - An Employment Pass is valid for 2-3 years and can be extended 2-3 years each time
9. The foreign worker must then register with the National Registration Identity Card system for a Smart Identity Card (Green).

Prior to 2012, employers and individuals could hire foreign workers without using a recruitment agency. In 2004, the Government of Brunei wrote legislation to make it mandatory for employers to channel applications for new workers, including domestic workers, through licensed recruitment and recruitment(employment) agencies.

### The Employment Agencies Order

Employment Agencies Order, 2004 is designed to regulate employment agency activities within Brunei Darussalam through registration and licensing of all employment agencies. It was fully enforced on 1st January 2012.

There are three classes of employment agencies. Each requires its own license and security deposit which can be forfeited if the agency fails to comply with the law. An 'A' license, allows an agency to recruit domestic workers under personal employment. The security deposit for an 'A' license is US\$7,696. A 'B' license, allows an agency to recruit workers for companies. The security deposit for a 'B' license is US\$11,544. A 'C' license allows an agency to recruit both domestic workers and company employees. The security deposit for a 'C' license is US\$15,392.

The employment agencies order appears to restrict the charging of recruitment fees by recruitment agencies:<sup>10</sup> *“No licensee shall charge or receive any form of fees, remuneration, profit or compensation otherwise than is provided in this Order or in any regulations made thereafter.”*

This section of the law has not been implemented at the time of writing but the Department of Labour has said it will release guidelines that will cap<sup>11</sup> Recruitment fees charged to employers in Brunei. The Department of Labour does not plan on regulating recruitment fees in countries of origin<sup>12</sup>.

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<sup>10</sup> Government of Brunei Statues, Section 20, The Employment Agencies Order, 2004  
<http://www.agc.gov.bn/AGC%20Images/LOB/Order/DEF/Employment%20Agencies%20Order%2c%202004%20%28S%2084%29.pdf> last accessed July 2016

<sup>11</sup> Borneo Bulletin, November 12 2014, “Labour Dept addresses concerns of the public”  
<http://borneobulletin.com.bn/labour-dept-addresses-concerns-public/> last accessed July 2016

*“... we can only regulate(sic) that are within our jurisdiction including foreign worker license security deposits, visa applications, medical checks, employment pass and worker insurance. Any recruitment fees charged by those outside of Brunei Darussalam are governed by the laws and legislations of the respective Governments of the sending countries. Over time, recruitment practices abroad may cause recruitment fees to vary as sending countries may change their policies/regulations as required in order to regulate the activities of their employment agencies and such changes may affect the recruitment fees.”*

The concern with recruitment fees occurs when the fees are borne by the migrant worker. These fees are carried by the migrant worker as a heavy debt. Verité in **Help Wanted: Hiring, human trafficking and modern day slavery in the global economy** writes that *“Debt is perhaps the most powerful and determinant factor in setting the stage for a migrant worker to become enslaved. In traditional notions of debt bondage, the debt is held by the employer, thereby establishing a direct relationship of subservience and obligation. A modern-day understanding of debt bondage must be more nuanced, and should include scenarios under which debt is held by an independent party that does not work in collusion with the employer. Rather, the existence of the debt – and the urgent need of the migrant worker to repay it, particularly if the money is owed to those with connections to criminal elements, for example – means that this worker will be more easily manipulated by the employer to accept illegally low wages, poor working conditions, excessive work hours and the like. This worker will also be much more affected by threats of deportation – and consequent cessation of her earning potential– than a worker with no debt obligations.”*

Employment agency advertisements<sup>12</sup> in Indonesia for work in Brunei promise workers will be able to deduct recruitment fees from their salaries when they work in Brunei. The Department of Labour has repeated in newspapers several times that it has no objection to payment of recruitment fees by migrant workers in Brunei or in their country of origin<sup>12</sup>.

*“Various employment agencies offer several means of payments for the recruitment of foreign workers including deposits or down payment or even payments in instalments. The payment methods are an agreement between the various parties involved including the employer, Brunei employment agencies, the migrant worker and the employment agencies of the sending countries.”*

The deduction of recruitment fees from worker’s salaries is not allowed under **ILO Convention 95 of 1949, the Protection of Wages Convention**, which prohibits all deductions from workers’ wages intended to

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<sup>12</sup> <https://infotki.brunei.wordpress.com> last accessed July 2016



directly or indirectly obtain or retain workers' employment. It is also prohibited by the ILO in Article 7<sup>13</sup> paragraph 1 of the **ILO Private Employment Agencies Convention (No. 181) of 1997**, "...private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers".

In addition to debt bondage, Verité<sup>4</sup> identified a cluster of factors which, independently or in various combinations, were contributors to situations of human trafficking and forced labour for migrant workers. Verité refers to these as "red flags" for vulnerability in recruitment agency-induced hiring traps. One of those red flags is raised when recruitment agencies go beyond being intermediaries between the employer and migrant worker and go on to manage the worker for the employer during the contract period. An example of this practice appears to be found in a Brunei category 'C' employment agency web site<sup>14</sup> that *"...reserves the right to manage and be responsible for all migrant worker HR interests they facilitate hiring through the contract period."* This use of employment agencies to manage a migrant worker's HR interest blurs the line between intermediary and employer. Who is liable for unfair labour practices or unfair dismissal of the agency worker? Who is liable for transgressions in respect of wage regulation or basic conditions of employment? The practice also increases the cost of hiring the migrant worker, and compromises transparency and accountability in the recruitment and hiring process. The risk of abusive practices<sup>4</sup> is high where the employment agency is the moneylender because of high recruitment fees, or has connections to the moneylender in the country of origin that financed the recruitment fee.

There were eighty-one employment agencies operating in 2014<sup>12</sup>. The Department of Labour received ten complaints in 2012, fifty in 2013 and twenty in 2014. From press reports, most if not all complaints appear to come from employers and were related to workers failing to arrive, returning deposits and documents.

Prior to the licensing of employment agencies, domestic workers from the Philippines went to Brunei by relying on their own social networks rather than depending on labour recruitment agencies. About 37<sup>15</sup> percent of 216 respondents in a 1993 survey of past and present Filipino domestic workers reported that relatives already working in Brunei had helped them get a job, while 27 percent reported that friends had extended help. About seven percent said they were directly recruited by their employers.

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<sup>13</sup> ILO "C181 – Private Employment Agencies Convention, 1997 (No. 181)" [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326) last accessed July 2016

<sup>14</sup> Wanzee Employment Agency, <http://wanzeeagency.com/our-services/process> last accessed July 2016

<sup>15</sup> Mani, A, *Philippine Sociological Review*, Pg. 203 Vol. 44, No. 1/4, Filipinos as Transnational Migrants (January-December 1996), pp. 194-209, "Filipino Migrant Workers in Brunei Darussalam"

## Brunei Laws and Regulations Governing Employment

The two statutes that govern worker rights in Brunei are **Employment Order (2009)**, and the **Workmen's Compensation Act, (1957)**. The Employment Order, 2009<sup>16</sup>, is the main legislation governing the terms and conditions of employment in Brunei Darussalam. It sets out the minimum terms and conditions of employment including hours of work, rest days, holidays and payment of salaries. The order covers all persons who are employed under a contract of service, including migrant workers, but excludes seamen, domestic workers, and any person employed in a managerial, executive or confidential position-exclusions similar to those under Singapore's Employment Act. Civil servants and all employees of statutory bodies are also excluded. The order specifies the minimum contents of a contract service (section 11). It requires that the contract must be in writing and signed by the worker and employer (section 10). It makes any contract with terms less favourable to the employee than the order illegal (section 12).

The Brunei Department of Labour<sup>17</sup> requires that foreign workers sign their contracts in the presence of a Department of Labour officer to avoid forgery of documents and signatures. Domestic workers are also required to sign their employment contracts<sup>18</sup> before Department of Labour officers so that they can be briefed on their rights and obligations.

The order allows employees earning US\$1,231 or less a month to lodge complaints and seek redress for grievances under the Employment Order to a Commissioner of Labour appointed by the Minister of Home Affairs for violations of the order. This order does not provide for the Commissioner of Labour to address worker complaints against employment agencies.

The employment order excludes domestic workers. There are no laws that formally and legally define domestic worker rights and entitlements.

The Workmen's Compensation Act, 1957<sup>19</sup>, sets the guidelines for compensating a worker injured in the course of his work for the loss of earning capacity and also applies to domestic workers. The act was last updated in 1984. The maximum compensation for death and 100 percent permanent disability, is US\$21,548 and US\$27,705 respectively. This seems low for one of the wealthiest countries in the world,

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<sup>16</sup> Government of Brunei Statue, "Employment Order (2009)"

[http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2009/EN/s037.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2009/EN/s037.pdf) last accessed July 2016

<sup>17</sup> Brunei Department of Labour, Ministry of Home Affairs, "Department of Labour FAQs"

<http://www.labour.gov.bn/SitePages/FAQs.aspx> last accessed July 2016

<sup>18</sup> Quratul-Ain Bandial, Brunei Times, August 9, 2011, "73% drop in foreign workers' complaints"

<http://mail.bruneitimes.com.bn/news-national/2011/08/09/73-drop-foreign-workers-complaints#sthash.GE2q88Qx.MvFXtMzc.dpbs> last accessed July 2016

<sup>19</sup> Brunei Government Statues, "Workmen's Compensation Act (1957"

[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap074.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap074.pdf) last accessed in July 2016

per capita. As a comparison the maximum compensation for death and 100 percent permanent disability, is US\$154,225 and US\$201,631 respectively in nearby Singapore.

Despite the existence of the Workmen's Compensation Act, there are complaints of injured workers being unable to obtain compensation. The Southeast Asian Women's Caucus on ASEAN reported<sup>6</sup> that " *...in practice, some employers manage to skirt the law mandating them to provide for the health needs of their domestic workers, including compensation for injuries suffered in the course of their employment. One of the Filipino domestic workers interviewed said she was unable to get compensation for an injury she suffered while cleaning her employer's car; the injury eventually disabled one of her hands. Her employers brought her to the hospital only for first aid treatment and refused to shoulder further treatment.*"

A key strength of the Department of Labour procedures is the requirement for workers to sign their contracts before a Department of Labour officer. This helps to avoid contract substitution after the worker has arrived in Brunei. It does not, however, prevent differences in employment terms from those the worker agreed to in the country of origin and in Brunei. There appears to be no practical legal recourse for workers who paid high recruitment fees to obtain higher salary jobs only to find the terms of their contract reduced upon arrival in Brunei except common law, which is too expensive a process for migrant workers. There appears to be little protection for domestic workers under the law, except for the Workmen's Compensation Act, which as Southeast Asian Women's Caucus on ASEAN reports, may not be wholly enforced.

## Migrant Worker Experiences with Recruitment Fees

Reports of migrant worker experiences with recruitment fees come mainly from interviews in local newspapers and newspapers in migrant workers' countries of origin. The Brunei Council on Social Welfare, Solidaritas Perempuan, Women's Legal and Human Rights Bureau (WLB), Inc. and Southeast Asia Women's Caucus jointly published a study on the Migration of Domestic Workers from Indonesia and the Philippines in Brunei Darussalam.

### Origin and Destination Recruitment Fees

The magnitude of recruitment fees charged by recruitment agencies depends on the country of origin of the migrant worker. Workers who come from countries further away from Brunei appear to pay higher recruitment fees. An example of how fees are distributed is described by a recruitment agency in Brunei. The agency reported that Indonesian agents were charging between \$1,800 (US\$1,385) to \$2,400 (US\$1,847) for each domestic worker. The Brunei agent in turn charges the employer over \$3,000 (US\$2,309) to make a profit<sup>20</sup>. The recruitment agency went on to say *"If it costs \$2,200 (US\$1,693) to bring one in, then the customer will end up paying \$3,000 (US\$2,309) and above. Out of the say \$3,000, \$1,200 (US\$924) will eventually be paid by the maid, \$1,000 (US\$770) will go to the Indonesian agency, and we are left with \$800 (US\$616) as profit."* The \$1,200 (US\$924) recruitment fee borne by the domestic worker was deducted from monthly salaries through the duration of the contract. The Indonesian Government has regulations that currently cap the maximum cost for hiring – which includes training, flight tickets and document processing at \$1,200 (US\$924) for Brunei. The Head of the Labour Standards and Employment Agency Division in Brunei said that under the Employment Order, 2009, only half of a worker's monthly salary could be deducted to pay recruitment fees in Brunei. A former counsellor of Protocol and Consular Affairs at the Indonesian embassy disagreed this was so in practice. He said that although this provision is laid out under the Employment Order 2009, many employers deduct more than fifty percent of domestic worker's salary and the recruitment fees recovered were \$2,500 (US\$1,924) to \$2,900 (US\$2,232)<sup>21</sup>.

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<sup>20</sup> Aaron Wong, Brunei Times, March 14, 2016, "Manpower agents upset over cost of hiring Indonesian maids" <http://m.bt.com.bn/news-national/2016/03/14/manpower-agents-upset-over-cost-hiring-indonesian-maids#sthash.mxHPfpmg.dpuf> last accessed in July 2016 last

<sup>21</sup> Rachel Thien, Brunei Times, October 26, 2015, "No more than 50% can be deducted from a maid's salary" <http://www.bt.com.bn/news-national/2015/10/26/%E2%80%98no-more-50-can-be-deducted-maid%E2%80%99s-salary%E2%80%99#sthash.CfB6gjt6.dpuf> last accessed in July 2016

In a separate Brunei Times article<sup>22</sup>, the Indonesian embassy was quoted as saying there were over 30,000 domestic workers from Indonesia working in Brunei. The Indonesian Government had set the minimum salary for a domestic worker in Brunei at \$350 (US\$269) a month but the embassy said they had received some reports from Indonesian domestic workers about employer and employee having side agreements, and the salary ends up being only \$200 (US\$154) or \$250 (US\$192) per month.

A study by the Southeast Asia Women's Caucus concluded that all Indonesian and Filipino domestic workers interviewed for their study reported that employers in Brunei exact payment for these costs through salary deductions. The study said the practice was clearly onerous considering that an employment contract was only for two years. The study went on to say that it was also common for domestic workers not to be informed of the actual amounts deducted from their salary. They were only told that these deductions were repayments for the costs incurred in processing their employment in Brunei<sup>6</sup>. Contract substitution and hefty salary deductions to repay high recruitment fees were some of the most common complaints cited by Indonesian workers in a meeting with the Indonesian president when he visited Brunei<sup>23</sup> in 2015.

*"During a question and answer session, a woman said the burden of repaying recruitment fees — that can run as high as \$2,000 (US\$1,539)— was too much, when she only earned a salary of a few hundred a month. She asked the president to look into regulation of Indonesian employment agencies, and to standardise recruitment fees and employment contracts to avoid putting unnecessary financial burden on migrant workers.*

*Several domestic workers spoke to The Brunei Times about the prevalence of contract substitution, where they are promised higher pay and weekly rest days, but once in Brunei, amendments are made to their salary packages, often with \$50 (US\$38) to \$100 (US\$77) less. "*

High recruitment fees are not just confined to domestic workers. The Brunei Times reported<sup>24</sup> that four Bangladeshi men pleaded guilty to the charge of wrongfully confining an agent. The agency man received \$29,400, which was meant to be used to obtain visas for the defendant's relatives in Bangladesh who wanted to work in Brunei. His co-defendant had paid \$26,000 to the agent's business partner who had had

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<sup>22</sup> Sally Piri, Rachel Thien, Brunei Times, March 12 2016, "Indonesia: Maids get \$350 or no approval of contracts" <http://www.bt.com.bn/news-national/2016/03/12/indonesia-maids-get-350-or-no-approval-contracts#sthash.fEfpTJpE.dpuf> last accessed in July 2016

<sup>23</sup> Quratul-Ain Bandial, Brunei Times, Feb 9 2015, "Jokowi meets migrant workers, discusses labour issues" <http://www.bt.com.bn/news-national/2015/02/09/jokowi-meets-migrant-workers-discusses-labour-issues#sthash.JRUMNs9V.dpuf> last accessed in July 2016

<sup>24</sup> Brunei Times, 11 December 2015, "Bangladeshis plead guilty to wrongful detention" <http://www.bt.com.bn/news-national/2015/12/11/bangladeshis-plead-guilty-wrongful-detention#sthash.qLxB33dU.dpbs> last accessed in July 2016

been sent home by the Brunei authorities. The defendants admitted that desperation to get their money back led them to commit the offence.

In many instances, the promised visas are obtained but the migrant worker arrives in Brunei to find that promised salaries were imaginary and they had fallen for a bait and switch scam. The Bangladesh Daily Star reported<sup>25</sup> the story of two migrant workers who returned from Brunei empty-handed.

*“We paid Tk 4.5 lakh to 5 lakh (US\$6,350) each for the visa of a gardening job in Brunei to the agencies with the promise of a monthly salary of \$ 400 equivalent to Tk 30,540 (US\$387).*

*“However, we were given jobs of day labourers for only Brunei dollar 254, equivalent to Tk 14,288,” (US\$181) Jewel Rana, one of the cheated workers told The Daily Star.*

*At four phases, a total of 34 Bangladeshis went to Brunei through these agencies last February. Of them, a total of 30 migrants had to return home while only four are still in Brunei. The cheated workers had to work as day labourers instead of gardening jobs.*

*“We had no overtime although the agencies told us at least two hours of overtime would be provided. Besides, we had no weekly leave,” alleged Jewel who hails from Faridpur.*

*Several times, they approached their Brunei employer about their contractual rights but were denied outright, he mentioned.*

*The workers also approached the Bangladesh High Commission in Brunei to resolve their problems.*

*Upon the embassy’s intervention, the Brunei employer agreed to give them weekly leave but declined to increase their salaries.*

*“We had to work for 15 to 16 hours daily. When the company rejected our demand for increased salary, we requested them to send us back home but they declined to do that,” said Ramzan, another returnee from Brunei hailing from Brahmanbaria.*

*So, the workers left the job from April 5 and requested the High Commission to arrange their repatriation, he added.*

*The Bangladesh mission then arranged their air tickets to send them back home. “*

The stories fit what Verité calls the “hiring trap”. A worker seeks out a recruiter to help find work in Brunei. The labour broker or recruiter charges for recruitment, travel, and visa. The fees are exorbitant - some are legal and some are not. The worker borrows money, acquiring debt. The worker travels to Brunei. The worker is paid less than what was promised. The worker is forced to work long hours or return home and face a debt collector. The loans mean the worker cannot escape the consequences of crushing debt.

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<sup>25</sup> Star Online Report, Bangladesh Daily Star May 14 2015, “Two migrant workers return from Brunei empty-handed” <http://www.thedailystar.net/top-news/penniless-they-return-brunei-82268> last accessed in July 2016

## Brunei Employment and Migrant Worker Trends

Brunei's GDP stood at US\$16.7 billion in 2014. 63.3% of the GDP was contributed by the oil and gas industry. Crude oil, LNG and methanol account for 94.5% of Brunei's exports. Oil production has been steadily declining. It stood at 165,873 barrels per day in 2011 and declined to 126,425 barrels per day in 2014. GDP growth has mirrored the decline in oil production. Real GDP growth stood at 3.7% in 2011 and declined to -2.3% in 2014. The decline in oil production and lower global oil prices has impacted Government revenue. Brunei's government carried a surplus of US\$1 billion in the first quarter of 2013 on revenue of US\$2.6 billion. In the first quarter of 2015, the government recorded a deficit of US\$631 million on revenue of US\$910 million<sup>26</sup>.

With the decline in GDP and revenue the government has taken steps to reduce the number of foreign workers. Within one year, from July 2014 to June 2015, 10,772 foreign worker quotas issued to companies that were unused were withdrawn<sup>27</sup>. In May 2014, the Acting Commissioner of Labour announced that the Government was planning to have private sector employers pay levies of up to \$960 (US\$739) when employing a foreign worker. The levy on the employment of foreign workers would be imposed on a total of ninety positions under the five business sectors: wholesale and retail trade (16 posts), transport (28 posts), hotel and restaurant (34 posts), support services (eight posts) and Information Communication Technology (four posts). The amount of the levy would depend on the number of employees in the company and the ratio of foreign workers to locals<sup>28</sup>.

After the quotas were removed and foreign worker levies announced, the government announced a special permission license<sup>29</sup> that would significantly reduce the time it would take to recruit foreign workers in the service industry. These seemingly contradictory policies reflect the government's need, on one hand, to find employment for its youth and on the other hand, to meet its objective of diversifying Brunei's economy and making it less reliant on the oil and gas sector. In order to diversify its economy, it needs to attract foreign and domestic investment in new export industries and have policies that encourage productivity, economic openness<sup>30</sup> which in the short term means more foreign workers.

Irrespective of the direction the government takes, the need for migrant low skilled and domestic workers

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<sup>26</sup> Department of economic planning and development, August 27, 2015, "Brunei Darussalam recent economic performance"

<sup>27</sup> Danial Norjidi, Borneo Bulletin, July 31, 2015 "Quashed foreign quotas boost local employment" <http://borneobulletin.com.bn/quashed-foreign-quotas-boost-local-employment/> last accessed in July 2016

<sup>28</sup> Sally Piri, Brunei Times, May 29 2014, "Foreign worker levy can go up to \$960" <http://www.bt.com.bn/frontpage/2014/05/29/foreign-worker-levy-can-go-960#sthash.88BWS2pq.dpbs>

<sup>29</sup> Siti Hajar, Borneo Bulletin January 23, 2015, "New change in Labour policy" <http://borneobulletin.com.bn/new-change-labour-policy/> last accessed in July 2016

<sup>30</sup> World Trade Organization, December 19, 2014, "Trade Policy Review report by Brunei Darussalam" [https://www.wto.org/english/tratop\\_e/tpr\\_e/g309\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/g309_e.pdf) last accessed in July 2016

is expected to remain. Young Bruneians tend to prefer government jobs as they are perceived to offer better job security, high wages and benefits<sup>31</sup>. Private sector employers still prefer to hire foreign workers as they are regarded as more reliable and more committed than many Bruneians, who would leave as soon as they find a government job<sup>32</sup>.

As an ASEAN member, Brunei has endorsed programmes that promote or protect migrant worker rights. This began with the Vientiane Action Program in 2004; and at the 12th ASEAN summit in Cebu, Philippines in January 2007, the ASEAN Heads of State adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Declaration mandates ASEAN countries to promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers. Having adopted this Declaration, ASEAN is now at the juncture of defining a regional regulatory framework for managing migration. All ASEAN members are also bound as signatories and/or state parties to two legally binding treaties – the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>6</sup>. There are challenges to be overcome before a comprehensive agreement by ASEAN member states can be made as the origin countries aspire for a legally binding regional “agreement” but other mostly destination countries are bargaining for non-legally binding guidelines. Fundamental differences become roadblocks, like the definition and scope of migrant workers, which had resulted in four years of deadlock<sup>33</sup>.

Brunei also has bilateral discussions with countries of origin on improving migrant worker working conditions, although they don’t seem to make much progress. A meeting to discuss a Memorandum of Understanding (MOU) between Brunei Darussalam and the Republic of Indonesia pertaining to the recruitment of Indonesian workers was held in 2013 in Brunei and a follow-up meeting was scheduled for November 2015 in Indonesia<sup>34</sup>. At time of writing, there was no announcement of an agreement being signed.

While forced labour and human trafficking were seen as shared problems within ASEAN nations, destination countries are perceived as reluctant to discuss such matters. Origin countries therefore have to take unilateral measures to continue to improve mechanisms to hold recruitment agencies accountable

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<sup>31</sup> Borneo Bulletin, January 21, 2015, “We need foreigners but hire only deserving” <http://borneobulletin.com.bn/need-foreigners-hire-deserving/> last accessed in July 2016

<sup>32</sup> Employers still prefer to hire foreign workers, August 18, 2015 <http://www.bt.com.bn/news-national/2015/08/18/employers-still-prefer-hire-foreign-workers#sthash.rlkwqtrz.dpbs> last accessed in July 2016

<sup>33</sup> Sinapan Samydorai, ASEAN Civil Society Conference (ACSC) / ASEAN People’s Forum, March 22, 2014 “Is ASEAN closer to legal protection of the rights of migrant workers?” <http://aseanpeople.org/is-asean-closer-to-legal-protection-of-the-rights-of-migrant-workers/> last accessed in July 2016

<sup>34</sup> Amanda Yap, Adliena H Kamaludin Brunei, Brunei Times, October 11, 2015, “Indonesia to meet on labour cooperation next month” <http://www.bt.com.bn/news-national/2015/10/11/brunei-indonesia-meet-labour-cooperation-next-month#sthash.WTXW6AtO.dpuf> last accessed in July 2016



for their actions<sup>35</sup>. Some of these unilateral actions have resulted in lower demand for migrant workers from the origin countries making changes.

In the case of the Philippines, the decision to raise the monthly minimum wage for Filipino migrant workers in Brunei to \$520 (US\$400) caused a 23 percent decline in the demand for domestic workers from the Philippines. The Philippine Secretary of Labour and Employment told reporters that despite the declining demand for Filipino workers overseas, the minimum wage will remain at its current rate in order to protect workers against exploitation<sup>36</sup>.

While the government of Brunei is trying to reduce the number of migrant workers, it is expected that the demand for low-skilled and domestic migrant workers will remain. The current push by the government and Bruneians is for higher skilled jobs. There does not appear to be any attempt to rein in payment of recruitment fees by workers except through ongoing discussions with the government of Indonesia on signing a MOU.

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<sup>35</sup> GMA News Online, November 19, 2014, "ASEAN nations compare notes on protecting women migrant workers" <http://www.gmanetwork.com/news/story/388870/news/pinoyabroad/asean-nations-compare-notes-on-protecting-women-migrant-workers#sthash.HhV6iGDm.tg1IhbJy.dpuf> last accessed in July 2016

<sup>36</sup> Zafirah Zaili, Brunei Times, August 28, 2015, "Demand for Filipino helpers falls due to minimum wage" <http://m.bt.com.bn/news-national/2015/08/28/demand-filipino-helpers-falls-due-minimum-wage#sthash.MIMYsQLr.dpuf> last accessed in July 2016

## Conclusions and Recommendations

It appears the “hiring trap” for migrant workers in Brunei will continue for some time. High migrant worker salary expectations coupled with high recruitment fees and high debt followed by low actual salaries in destination countries create an impossible situation for the migrant worker. The behavioural influences that establish and reinforce the situation are unchanged. For the employer, worker-funded recruitment fees mean lower cost, higher profits and increased competitiveness and there do not appear to be any negative consequences. For the recruiting agencies, worker-funded recruitment fees mean low prices, and a more attractive product for employers. They also mean higher sales and profits and there do not appear to be any negative consequences. For the Brunei government, worker-funded recruitment fees mean lower costs for businesses and again, there do not appear to be any negative consequences. The migrant worker who suffers the consequences has no voice or ability to enable change. It is not surprising, therefore, that the government does not set an expectation that recruitment agency and employers should stop worker-funded recruitment fees.

The push for removing worker-funded recruitment fees in Brunei lies with the Government of Brunei’s long term goal for the country as spelt out in Wawasan Brunei 2035 (Brunei Vision 2035). The long term goal is to turn Brunei Darussalam into a nation widely recognized<sup>37</sup> for:

- *“the accomplishments of its well-educated and highly-skilled people as measured by the highest international standard;*
- *quality of life that is among the top 10 nations in the world; and*
- *dynamic and sustainable economy with income per capita within the top countries in the world.”*

One of eight approaches identified to meet this goal is:

*“An economic strategy that will create new employment for the people and expand business opportunities within Brunei through the promotion of investment, foreign and domestic, both in downstream industries as well as in economic clusters beyond the oil and gas industry”.*

A threat to this strategy of attracting foreign investment would be a negative reputation. Allegations of forced labour and human trafficking can present serious threats to brand value and the country’s reputation. In Brunei, recruiters and recruitment agencies charge migrant workers fees for recruitment services that induce indebtedness. The need to repay the debt makes migrant workers vulnerable and often drives them to accept difficult or exploitative working conditions. Companies do not want to be seen to invest in countries that have dubious labour and human trafficking records. Protecting migrant workers

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<sup>37</sup> BRUNEI VISION 2035 -WAWASAN 2035, The Embassy of Brunei Darussalam to the United States. <http://www.bruneiembassy.org/brunei-vision-2035.html> last accessed in July 2016

is not just about foreign individuals and their goals. Migrant workers are indispensable to the functioning of the Brunei economy. While some work has been done to protect migrant workers and improve working conditions, more has to be done by employers and the government, in particular, to stop the charging of worker recruitment fees to workers and break this perfidious business.

Brunei's small size offers the country the possibility of moving to the US Trafficking Victims Protection Act (TVPA) Tier 1 from its current Tier 2 ranking with less resources and effort than it would take larger destination countries to do so. For example, ninety-two percent of its exports are generated by just two employers rather than the hundreds or thousands of companies in larger countries. It is easier to implement change in two companies than in hundreds or thousands of companies. The following are recommendations to stop worker-funded recruitment fees. They are not comprehensive but they do require commitment from key employers, the Government of Brunei and major migrant worker origin countries. They start by setting new expectations of government, employer and recruitment agency behaviour with regard to migrant worker recruitment fees and rights. The recommendations start with the ones for those with the most resources in the country to make changes and for those who will benefit most from the changes.

### Employers

Companies and employers have a pivotal role to play in the fight against human trafficking, in Brunei. They are well-placed at a number of levels to provide effective and sustained action: for example, (1) in their own operations; (2) in the communities where they do business; (3) alongside their suppliers and business partners<sup>38</sup>. *In recent years, many observers have noted that business engagement is an essential aspect of global anti-trafficking campaigns, and this extends to tackling unethical recruitment in supply chains. Principles state that companies should adhere to international standards on human rights in countries in which national law is not in compliance with these standards, meaning that companies should prohibit recruitment practices and fees that violate international standards across their supply chains*<sup>3</sup>.

The drive to end the charging of recruitment fees for migrant workers to the workers themselves should be led by the two largest private oil and gas companies in Brunei. Together, they account for over 92 percent of exports and have the highest number of employees, contractors, sub-contractors, and vendors. They both have international shareholders from whom they are likely to face new expectations that recruitment and employment conditions in the production of their goods comply with internationally-agreed human and labour rights standards. The following recommendations for these companies are

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<sup>38</sup> Abolishing Slavery and Its Contemporary Forms. 2002. Weissbrodt, David and Antislavery International. Office of the United Nations High Commissioner for Human Rights. <http://www.ohchr.org/Documents/Publications/slaveryen.pdf> last accessed in July 2016

adapted from “**An Ethical Framework for Cross-Border Labor Recruitment**”<sup>39</sup>, by Verité and Manpower Group.

- The companies should have a Code of Conduct committing to the protection of workers in all phases of their operations, and recognize distinct challenges and responsibilities related to cross-border recruitment.
- The Code references and reflects the principles elaborated in key international agreements including: the UN Universal Declaration on Human Rights, UNHRC Guiding Principles for Business and Human Rights, and ILO Conventions on Core Labour Standards including ILO Convention 95 of 1949, the Protection of Wages Convention, which prohibits all deductions from workers’ wages intended to directly or indirectly obtain or retain workers’ employment.
- The scope of the Code should include the companies’ global operating units, global subsidiaries, and full global supply and recruitment chains.
- The Code should be supported by an institutional structure and written procedures for enforcement, monitoring and reporting, including appropriate measures related to cross-border movement of recruits. In particular, the principles in the Code should be:
  - communicated to all employees, partners, vendors, contractors, clients (employers, jobseekers and workers) and
  - external stakeholders,
  - included in employment contracts at all levels, and
  - included in business contracts at all levels. The Code and/or its supporting documentation should provide for corrective actions for non-compliance, establish sanctions where appropriate, and adopt standards and timelines for continuous improvement to bring agencies into complete compliance.
- The Code should establish grievance channels and mechanisms for cross-border recruits, including hotlines and confidential reporting, in all countries where the Company sources or places recruited workers. It creates documented procedures for investigation, reporting, mitigation, and remediation of violations, including protection for whistleblowers
- The companies should have a mechanism for regular assessment of Code compliance including reporting to Executive Management.

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<sup>39</sup> Verité and Manpower Group. 2012, “An Ethical Framework for Cross-Border Labor Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced labor and Human Trafficking”  
[http://www.verite.org/sites/default/files/ethical\\_framework\\_paper\\_20120209\\_PRINTED.pdf](http://www.verite.org/sites/default/files/ethical_framework_paper_20120209_PRINTED.pdf) last accessed in July 2016

## The Government of Brunei, The Philippines, Indonesia and Bangladesh

Brunei benefits from having a smaller number of migrant workers when compared to other destination countries in the region even though the number of migrant workers constitutes a larger proportion of its employed workforce. The combination of the two established facts means that it may be easier to make significant changes to Brunei's migrant labour practices than in more heavily populated countries. The vast majority of the population live in the Brunei-Muara district, where the capital of Brunei is sited, which also makes executing changes easier. The Government has taken some key steps to protect migrant worker rights such as having migrant workers be briefed by a Department of Labour officer on the contents of their contract and having them sign the contract in the officer's presence. Other key actions the Government might consider are:

1. Ratification of UN and ILO instruments that govern recruitment and treatment of migrant labour
2. National law, regulation and data analysis
3. Review of how workers can obtain access to justice in practice.

### **Ratification of UN and ILO treaties that govern recruitment and treatment of migrant labour**

Brunei should consider ratifying the ILO No.181, known as the Private Employment Agencies Convention, which will assist with establishing international standards for the regulation of private employment agencies to ensure fair recruitment practices, and prevent human trafficking and other forms of exploitation. This convention establishes, in Article 7, that "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers." In addition, Article 8 states that "A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate engage in fraudulent practices and abuses." While the Convention is a positive advance and could go a long way in preventing debt bondage linked to recruitment fees, Brunei should consider ratifying ILO Convention 189 of 2012 on Domestic Workers which requires that signatories ensure that private employment agencies do not make deductions from the wages of domestic workers. Brunei should also consider ratifying ILO Convention 95 of 1949, the Protection of Wages Convention, which prohibits all deductions from workers' wages intended to directly or indirectly obtain or retain workers' employment.

The completion of the negotiation of an MOU between Indonesia and Brunei should be expedited. The Governments of Indonesia and Brunei should make the drafting process of the MOU open and participatory by involving civil society organizations and migrant domestic workers<sup>6</sup>. Brunei should consider a MOU between Brunei and two other origin countries for migrant labour, the Philippines and Bangladesh. The MOU should include agreements to investigate and prosecute the full chain of trafficking, agreements or

arrangements to conduct joint proactive operations, investigations, and prosecutions and open channels of communication and a database to identify Recruitment agencies that are part of a trafficking-in-persons network.

Private employment agencies should be obliged to provide migrants with information on the procedures for filing complaints as part of the pre-departure training in origin countries. In addition, the Department of Labour should provide this information as part of orientation training during the contract signing process<sup>3</sup>.

### **National law, regulation and institutional mechanisms**

Brunei should consider enacting laws and regulations that require:

#### *No Fees for Workers<sup>6</sup>*

- Workers may incur some costs associated with their eligibility for the job (e.g., training courses) or for items that will become their personal property (e.g., identity documents such as passports). However, any costs associated with their recruitment once they have been formally hired are to be borne by the employer.
- Once a worker has been hired, the agency must not charge any fees; all fees associated with the worker's recruitment and deployment are to be borne by employers
- The agency must not require workers to post a bond, in cash or in kind, for reimbursement at the end of the worker's contract
- Workers should be informed of their right to recruitment without fees

#### *Transparency in hiring process<sup>6</sup>*

- Recruitment agencies must provide accurate details, in writing, on the nature, scope, and conditions of work for every employee hired
- Employment contract must be provided in a language the worker can understand, and the worker must be provided with a hard copy of the signed contract
- If changes are required for the terms of the contract, the employee must be informed and given the opportunity to consent to or decline the changes without penalty or threat of penalty

#### *Data Analysis*

Brunei parties should conduct and support quantitative and qualitative research, data collection and analysis to identify the problems and needs faced by migrant workers in every phase of the migration process in order to promote the rights of migrant workers and formulate relevant policies.

## Access to justice

Migrant workers should have easy procedural access to a fair hearing and receive a fair and just remedy if their rights have been violated. Protection of rights must continue through all stages of the legal process, from reporting a crime to the authorities to following the order of a remedy by the Department of Labour or court to make certain that it is enforced. Migrant workers are often fired by employers for filing complaints with Government officials or external advocacy groups like NGOs. Termination of employment results in the ending of the employment pass, which is the basis in law for the migrant right to stay in Brunei. Filing a complaint prompts action by the employer that makes the migrant complainant subject to immediate deportation. This is the risk that foreign workers will normally have to face and that deters them from lodging a formal complaint against their employers which should be addressed. The government should consider allowing migrant workers to change employers in Brunei which will help remove this deterrence to seeking redress for grievances.

Access to justice depends on the migrant worker's confidence in the justice system. Key elements<sup>40</sup> the government should consider to protect migrant worker rights are:

- Legal awareness  
Are migrant workers familiar with the Brunei Labour Court process, laws etc.? Do they know what evidence they need to keep to support their claims? Can they easily obtain copies of their recruitment agreement, employment contract, insurance card, and other documents needed to pursue claims for redress, and eliminate opportunities for corruption or obstruction by recruiters, brokers or insurers?
- Legal aid and counsel  
Are migrant workers given legal aid and counsel to help them present their claim?
- Adjudication  
Is the process open and fair? Are some laws that impact migrant workers enforced while laws that impact employers are not?
- Enforcement  
Is enforcement of remedies undertaken? Remedies are useless if they are not enforced. Ensure adequate authority to enforce judgments, and improve the efficiency of court administration and management. Consider the need for sufficient authority for judges, Assistant Commissioners of Labour and enforcement agents to enforce judgments, including authorities for issuing interim orders to freeze assets

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<sup>40</sup> United States Institute of Peace, "Necessary Condition: Access to Justice" <http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-law/access-justice>

- Civil society oversight

Are the Department of Labour's processes transparent; are statistics made available to the public?

Are cases and their resolution recorded to promote consistency of decisions and to provide a basis for appeal to the Common Law system?

The above recommendations are by no means comprehensive but they should create awareness and acceptance of responsibility by employers for how their goods and services are made and delivered. In the realm of worker protections, these efforts take account not only of working conditions in worksites, but also of the recruitment and hiring practices that precede the employment of workers. The leadership of Brunei Darussalam in this area will speed up the implementation of the ASEAN Regional Framework Instrument which would create an environment where the rights of workers are enforced, laws and policies are harmonized with core international labour standards, and social justice assured for all workers and their families. Employers, governments and others with an interest in preventing human trafficking and slavery will recognize the vulnerability of migrant workers to worker-funded recruitment-fee forced labour and seek to detect and remediate the hiring abuses that create this vulnerability.



# TWC2 Recruitment Costs Research Working Group

The great majority of migrant workers pay large sums of money in order to obtain jobs in other countries. The costs, often exorbitant, leave workers debt-ridden and in a more vulnerable position to pernicious labour abuse. At TWC2, we recognise the consequences of recruitment costs and the urgent need to eliminate such fees.

This report is part of a series of papers analysing the policies in various countries regulating recruitment costs. Through this evaluative process, we hope to be able formulate effective policy recommendations in reducing the recruitment costs of workers who come to Singapore.



***The full list of our country briefs and other TWC2 reports can be found at:***  
<http://twc2.org.sg/category/articles/research/>

Transient Workers Count Too  
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