

Regional Workshop on Ethical Business and Recruitment Practices in Labour Migration

Program Report

Dubai, April 2016



Diplomacy Training Program
In partnership with Migrant Forum Asia
Middle East Centre for Training & Development
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Contents

Executive Summary.....	3
Frequently used acronyms.....	3
Program Partners.....	4
Program Location.....	4
Participants	4
The Chatham House Rule.....	5
Languages	5
Program background: DTP, MFA, migrant workers & the private sector.....	5
Knowledge building: key information from the program	7
The State Duty to Protect Human Rights and the Right to Remedy.....	7
The Corporate Responsibility to Respect and Protect.....	10
Access to Remedy	12
Further discussions	13
Shared experience: the private sector and local missions	14
Proven approaches and challenges from the private sector.....	14
Mission representatives.....	15
Group work: key issues, next steps.....	17
Participant concerns and key issues	17
Recommendations and moving forwards:.....	19
Concluding notes	21

Executive Summary

This is a report on the second regional capacity building workshop on ethical business and recruitment practices in labour migration, organised and run by the Diplomacy Training Program in partnership with Migrant Forum Asia and the Middle East Centre for Training and Development from 27-29 April 2016.

Violations of the rights of migrant workers in Asia and the Middle-East have become a focus of growing international concern. The DTP and MFA have worked together since 2004 to build the capacity of advocates promoting the rights of migrant workers in Asia and the Middle East. Previous workshops provided advocates with knowledge of international standards on the rights of migrant workers, skills in engaging international mechanisms and implementing frameworks for policy development and opportunities to network with advocates from a diverse range of sectors.

The April 2016 workshop brought together more than two dozen representatives from the private sector and civil society, as well as senior consular representatives from several key countries of origin for migrant workers, with a shared interest in protecting and promoting the rights and welfare of migrant workers in the Middle East. Together, they worked to share an understanding of international human rights and labour frameworks and standards; to exchange examples of best practice; and to look at how progress can be made through collaboration between civil society, government and the private sector.

Frequently used acronyms

DTP	Diplomacy Training Program
GCC	Gulf Cooperation Council
ILO	International Labour Organisation
MFA	Migrant Forum Asia
MECTD	Middle East Centre for Training and Development
NGO	Non-Governmental Organisation
UAE	United Arab Emirates
UN	United Nations
UNSW	University of New South Wales (Australia)

Program Partners

Migrant Forum Asia (MFA) is a regional network of non-governmental organizations (NGOs), associations and trade unions of migrant workers, and individual advocates in Asia who are committed to protect and promote the rights and welfare of migrant workers. It is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equity, particularly for migrant workers.

The Middle East Centre for Training and Development (MECTD) was set up as a training institute in Dubai in May 2014. It seeks to promote greater understanding among citizens, the corporate sector, government agencies, and other relevant bodies of the region of national, regional and international laws on human mobility for efficient and sustainable development. To realise this vision, it provides training and consultation to create a better understanding of the linkages between national, regional and international laws on human mobility and development.

The Diplomacy Training Program (DTP) is an independent NGO seeking to advance human rights and empower civil society through quality education and training and the building of skills and capacity in NGOs. It was established in Sydney, Australia by Nobel Peace Laureate Jose Ramos-Horta in 1989.

Program Location

The program was held in Al Barsha, Dubai, United Arab Emirates (UAE).

The UAE, along with other Gulf Cooperation Council (GCC) countries attracts millions of migrant workers, with many coming from South and Southeast Asia. Of the UAE's 9.4 million inhabitants, some 88% are migrants, with around 65% coming from India, Pakistan and Sri Lanka according to recent estimates¹ and over 5% from the Philippines.² They work in all sectors of the economy, including as domestic workers.

Participants



¹ 'Wages of Chagrin', *The Economist*, April 2016

² 'UAE population by nationality', *BQ Magazine*, April 2015 (based on Embassy figures).

The participants in this program came from civil society organisations, private sector organisations operating in the region, and diplomatic missions from key countries of origin.

Civil society representatives came from organisations working in countries both of origin and destination across Asia and the Middle East and playing active roles in NGOs, media, trade unions, and in expatriate/community associations. Private sector participants came from companies or related bodies with a manifest interest in, and commitment to, the welfare of their workers; it is important to note that these participants attended in a personal capacity, rather than as spokespeople or representatives of their respective organisations. Mission representatives attended from India, Sri Lanka and the Philippines: all countries with hundreds of thousands, or millions, of migrant workers in the region. They were likewise able to express personal views.

Invited by DTP, the MFA or the MECTD, each participant was asked to complete an application form demonstrating both their experience and their capacity to apply the program training to their ongoing work.

Please see the individual biographies attached as an appendix to this report.

The Chatham House Rule

The program was designed as a safe space for participants to share their ideas and experiences. All sessions were therefore held under the Chatham House Rule:

Participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.³

This report has been prepared accordingly. Only DTP and MFA trainers and speakers have been identified by name or implication, or otherwise cited.

Languages

All sessions were conducted in both English and Arabic, thanks to an exceptional team of dedicated simultaneous interpreters and a number of bilingual participants.

Program background: DTP, MFA, migrant workers & the private sector

Migrant workers can be amongst those most vulnerable to exploitation and human rights abuses. Often driven to work abroad by poverty or civil strife in their home countries, they can find themselves alienated in a foreign culture and outside the remit of local worker protection law, particularly undocumented migrants workers. Many find themselves at the mercy of employers or recruiters and are forced to work and live in dangerous or degrading conditions, have their passports confiscated, or made to pay hefty recruitment fees that can lock them into debt bondage.

As DTP executive director **Patrick Earle** pointed out in his opening address to the program, human rights issues around migrant workers were simply not on the wider agenda in 1989 when DTP was founded – except perhaps for that of MFA.

³ <https://www.chathamhouse.org/about/chatham-house-rule>

But DTP started working with MFA on the human rights of migrant workers in 2004, a collaboration that began with an international gathering around some of the key human rights in the Asia-Pacific APAC region and globally – shortly after the UN Convention on Migrant Workers (the Convention) had come into force in 2003. DTP and MFA decided to work together to raise awareness around the Convention, which at the time was not widely known, and the partnership began in earnest with their first Migrant Workers’ Rights program in Jakarta, Indonesia that year. The two organisations held a program each year in different countries of origin around the region from 2004-2011, bringing together migrant workers’ advocates, NGOs, trade unions and the like; from 2012, thanks to the MFA, it became possible to start holding the programs in countries of destination as well as working more intensively at the national level in countries of origin.

DTP and MFA have since been engaging with national human rights institutions and with governments – recognising their role as duty bearers, but also acknowledging that governments themselves, both in countries of origin and destination, are frequently constrained in their capacity to fulfil their responsibilities.

As Patrick also mentioned, it has also become apparent over the years that the private sector has a key role to play in every step of the migration process, meaning that there is a real need to engage the private sector on these issues. Therefore, in the last couple of years, DTP and MFA have started to bring private sector representatives onto the programs.

MFA director **William Gois** noted that just days before the April 2016 program, the UN Working Group on Business and Human Rights convened its first UN Asia Regional Forum on Business and Human Rights in Doha – and that migrant workers had been one of the most prominent issues, firmly putting it on the radar of the UN Working Group.



But, he warned, the road ahead was still unclear; that the chair of the Working Group had acknowledged that the Working Group itself had no clear agenda for the future at this stage.

William noted that rapid technological change made things even more complicated, with increasing automation changing the nature of the workforce. And he also pointed out that the migrant workers issue was connected with another large international concern, the ongoing crisis of refugees and mass forced migration. With the movement of such large numbers of people a major point for consideration, alongside their protection, is the question of integration with local workforces and how their rights can be protected in the process – as well as the rights of existing migrant workers in some destination countries.

Knowledge building: key information from the program

The State Duty to Protect Human Rights and the Right to Remedy

Paul Redmond is the Chair of DTP and Emeritus Professor of Law at the University of New South Wales (UNSW) in Australia; **Justine Nolan** is an Associate Professor at UNSW Law and Deputy Director of the Australian Human Rights Centre. On the first day of the program, they spoke on the implications for countries of the state duty to protect human rights and access to effective remedy – and on the gaps between international laws and standards, and actual conditions on the ground.



Guiding Principles on Businesses and Human Rights

Paul introduced the Guiding Principles on Business and Human Rights, endorsed by the United Nations (UN) Human Rights Council in 2011. These have been subsequently championed by the UN High Commissioner for Human Rights as “the global, authoritative standard providing a blueprint for the steps all states and businesses should take to uphold rights,” and are

reflected in the practices of organisations such as the Organisation for Economic Cooperation and Development (OECD).

The Guiding Principles are based on the ‘Protect, Respect, Remedy’ framework. States have existing obligations to protect human rights, as well as to respect them in their own activities. Business enterprises and other commercial organisations are required to comply with applicable laws and respect human rights. Finally, all rights and obligations must be matched with appropriate and effective remedies when breached.

Paul emphasised that, while all three principles are complementary and interdependent, they also operate independently of each other – so if for example a state should not be discharging its duty to protect, the responsibility of business enterprises to respect human rights in their operation within that state is not diminished.

Within the Guiding Principles, each of the three parts of the framework is underpinned by a series of foundational and operational principles. For instance, the state duty to protect human rights means that they must protect against human rights abuse within their territory or jurisdiction by third parties, including business enterprises; they must take appropriate steps to prevent, investigate, punish and redress such abuse through effective policy, regulation and adjudication. States should also set clear expectations regarding human rights on business enterprises operating in their territory – whether headquartered there, or as an overseas element of a multinational firm. Operationally, states should also enforce laws that require business enterprises to respect human

rights, monitor compliance and guide those businesses in respecting human rights through their operations and communicating how they deal with human rights impacts.

But Paul pointed out that a key question was how the Guiding Principles translated into international law and best practice – and whether they were currently pulling through into operational standards ‘on the ground’, both in countries of origin and destination in the context of migrant workers.

The Human Rights Framework

Paul then provided a summary of the various instruments and treaties that make up international human rights framework. These begin with the Universal Declaration of Human Rights (UDHR), adopted by the UN in 1948 – not a legally binding instrument but, said Paul, universally regarded as the basic and generally accepted set of human rights standards, applicable to all states, peoples and organisations. From there, international treaties turn the human rights identified in the UDHR into binding legal obligations on states, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Other subject-specific treaties contain further human rights obligations, such as International Labor Organization (ILO) conventions around forced labour, discrimination in employment, child labour and more.

There are various levels of ratification of these various treaties by different countries. **Patrick Earle** explained that independent committees of international experts (treaty bodies) are appointed - with states that have ratified these treaties reporting to these committees at regular intervals. This provides a potential avenue for advocacy and remedy even in areas where the Migrant Workers’ Convention itself has not been ratified, with the possibility of raising concerns directly with these committees. For example, Patrick noted that all of the governments in the UAE had ratified the Convention on the Rights of the Child (CRC) – meaning that concerns around the treatment of children in the migrant workers context could be raised directly with the committee monitoring compliance with that particular convention. And he added that non-discrimination – a core concern in many migrant worker issues – was a common theme in all of these covenants.

Justine Nolan examined in more detail the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990 – but noted that none of the destination countries in the Gulf region had ratified the treaty, meaning that none of them were bound by it, although four major Asian countries of origin (Bangladesh, Indonesia, the Philippines and Sri Lanka) had ratified it. Many Gulf countries have ratified the Convention on the Elimination of Discrimination against Women (CEDAW), however, and the CEDAW Committee has highlighted needs for countries to have awareness and education training for female migrant workers and to address the rights of female domestic workers (mostly migrants).

Justine also suggested that in some situations the working conditions for migrant workers could be classified as forced labour or slavery – relevant in those countries of destination that had ratified core ILO conventions on forced labour. And she noted that the ILO’s 2014 protocol to its Forced Labour Convention discussed specific practices for both destination and origin states in relation to migrant workers, including banning recruitment fees, avoiding deceptive conduct, education training and more, signalling that the ILO was focusing more on migrant workers and states’ duties to protect them.

Best practice models

Justine then went on to highlight some examples of how countries of destination were working to meet their obligations and protect the rights of migrant workers.

In 2008, Canada's Manitoba province passed a law called the *Worker Protection and Recruitment Act*, which essentially created a mandatory public license and registration requirement for employers of foreign workers; under the system, employers are prohibited from charging recruitment fees to workers or otherwise passing costs onto them, and must have their practices audited before they are allowed to hire foreign workers, with an ongoing annual audit process thereafter. Justine noted that other Canadian provinces were beginning to adopt similar standards.

The Netherlands, meanwhile, uses a mix of public law and voluntary schemes to regulate worker recruitment. The country has a joint liability model for its supply chain: should a recruitment agency or subcontractor violate Dutch laws on wage payments, social insurance contributions or the like, any companies above that agency in the supply chain are held jointly liable for compensation. There is also a voluntarily certification agency run by a local NGO, the Foundation for Employment Standards, which certifies recruiters on an annual basis. While this process is voluntary, Justine said that the system had become so widely accepted that recruiters would now go for certification as a standard operating process so that employers would use them.

As a country of origin, the Philippines has taken a particularly strong stance in regulating and licensing recruitment agencies; agency owners must provide comprehensive evidence to government before being licensed. The country also maintains a joint liability system for employment contracts for both employers and recruiters – although **William Gois** noted that one practical issue with the system was that migrant workers had to lodge any complaints themselves, making lack of legal expertise a potential barrier, and that the process of remediation itself was often long and drawn out.

In 2016, Pakistan's Ministry of Overseas Pakistanis & Human Resource Development announced an online complaint registration system for migrant workers, allowing them to lodge and track complaints from any location. Several program participants highlighted both Philippines and Pakistan embassies and missions as being some of the most effective and efficient in dealing with issues of their migrant workers.

India has recently brought in a new 'E-Migrate' system, which requires employers to register with Indian missions in country of destination and upload employment contracts before workers are given clearance to migrate.

Looking at these examples, however, also sparked a discussion amongst participants of the risk of registration systems being circumvented – through undocumented migration or hiring – or by stricter regulation actually increasing the effective cost to hire workers from a given country, and perversely leading to discrimination against workers from that country. Paul noted this as an effect of globalisation, and emphasised that it made international minimum standards on human rights even more important.

Justine also pointed out that globalisation in turn provided new channels to put pressure on employers at the top of the supply chain. The UK and US, both home to large numbers of multinationals, have recently brought in new reporting laws to encourage companies headquartered in their countries to consider human rights due diligence in relation to forced labour. The UK passed its *Modern Slavery Act* in 2015, which puts a reporting requirement on businesses to disclose how they verify there is no forced labour in their supply chains. In the US, California's similar *Transparency in Supply Chains Act* came into force in 2012. Neither carry penalties for companies; they are simply reporting obligations, giving customers a mechanism to hold companies to account.

The Corporate Responsibility to Respect

Paul now examined the second 'pillar' of the UN Guiding Principles on Business and Human Rights: the corporate responsibility to respect human rights. The foundational principle here is that business enterprises, regardless of size, operational context or structure, should both avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved. Paul emphasised that these obligations remained on businesses even when operating in countries that had not themselves ratified international human rights conventions.

A key provision is that businesses maintain a system of human rights due diligence in order to prevent, mitigate and where necessary to be prepared to remediate human rights abuses.

Another foundational principle requires that business enterprises avoid causing adverse human rights impacts through their own activities, and address such impacts where they occur; and that they seek to prevent or mitigate such impacts directly linked to their operations, products or services by business relationships, even if they are not themselves directly responsible. Paul noted that the definition of 'business relationships' here was very broad, encompassing everything from supply chains to shareholdings. To meet these responsibilities, business enterprise should have in place clearly defined policies and processes including human rights due diligences processes – to identify, prevent, mitigate and account for how they address their impact on human rights – and processes for remediation.

To bring this through into practice, the accompanying operational principles state that business enterprises should draw up a statement of policy – approved at the most senior level, internally and externally communicated, and embedded through the organisation – that stipulates human rights expectations of personnel, business partners and other parties linked directly to their business. Similarly, ongoing human rights due diligence processes should include assessing actual and potential impacts, integrating and acting on the findings, tracking responses, and communicating how impacts are addressed. Another operational principle emphasises the importance of assessment of human rights impact through consultation, with a particular regard to individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation – potentially very relevant in the case of migrant workers.

With assessment and due diligence processes in place and properly integrated, it is critical that appropriate action can be taken to address adverse human rights impacts where they occur. Where the impact is a result of a business enterprise's own dealings, it should take steps to cease or prevent the actions causing the impact and to mitigate any remaining impact. Where the impact is

linked to a business enterprise by its business relationship with another entity, however, the operational principles state that a business should use whatever leverage it has to bring the harm to an end – and if it lacks sufficient leverage to do so, should either take steps to build leverage (by coalition, for example) or ultimately to end the relationship completely.

Finally, where it is necessary to prioritise action to address human rights impacts, business enterprises should prioritise the impacts that are most severe, or where delayed response would make them irremediable.

Paul noted that while the Principles are not binding, they are also not discretionary – and not without sanction. Enterprises based in any one of the 34 OECD countries, for example, are bound by the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct Matters, which integrate the second pillar of the UN Principles; so are enterprises operating out of the 11 other countries that have voluntarily committed to adhering to the OECD Guidelines. The Guidelines stipulate that every party must have a national contact point (NCP) – an official/s responsible for promoting the Guidelines and able to hear and mediate complaints – providing a practical avenue for advocacy, and a mechanism for airing grievances.

Justine also highlighted the *Dhaka Principles for Migration with Dignity*, based on the Guiding Principles and intended to provide businesses with a ‘roadmap’ of ten very basic principles for responsible recruitment and employment of migrant workers.

Leverage

Given that the UN Guiding Principles do not place any legal requirement on companies, **Justine** explored the question of what might oblige them to comply.

One factor, she suggested, would be ‘peer pressure’ – what other companies might be doing – and in context how businesses’ own human rights credentials might impact their own brand and profits.

Justine noted in 2014, Hewlett-Packard had launched a *Foreign Migrant Workers Standard*, targeted particularly at the complex recruitment supply chain; the firm expressed a preference for direct recruitment by its suppliers, in an effort to cut out layers recruitment agencies and associated possible human rights abuses. Apple, similarly, has taken a strong stance against recruitment fees – in 2014, actively banning the payment of recruitment fees by its suppliers and even requiring them to return some US\$20 million to workers in compensation for recruitment fees charged from 2008-2012. Justine acknowledged, however, that these examples had worked because both firms held extremely strong leverage at the top of their respective supply chains in the technology sector – with the same approach less likely to work for a company in the garment sector, for instance, with a single-figure share of the market.

Justine also highlighted the role that industry bodies could play, citing the *International Recruitment Integrity System* recently launched by the International Organisation on Migration: a voluntary ethical recruitment framework under which members can be recognised as fair recruiters. However, she cautioned of the need for clear standards, criteria and definitions for ‘ethical recruitment’. Meanwhile the CIDTT, an international confederation of private employment agencies, adopted a new code in 2015 with a specific provision that all private employment services will include access to remedy, fair and decent employment practices and similar; as with the IOM, the underlying idea here is one of self-regulation. Justine warned that self-regulation had many limitations, but

suggested it could fit into a hybrid framework of both legal and voluntary obligations to help incentivise companies to create change.

Thirdly, Justine looked at the role of civil society in improving migrant worker recruitment practices. She noted the work of the Coalition of Immokalee Workers in the US, formed primarily to protect Central American and Mexican migrant workers in the tomato-growing industry in Florida who had been routinely subjected to extremely bad working conditions. The Coalition has now established the *Fair Food Program* to set strict standards for working conditions, including minimum wages and mandatory rest breaks – and convinced the brand-name companies who receive tomatoes to stop purchasing produce from suppliers who fail to comply with the Program. Justine also discussed the Centre for Migrant Rights in Mexico, which monitors the flow of workers from Mexico to the US and has set up an online resource for those workers to review and rate their experiences with particular employers, and to publicly raise complaints – a good example of the use of technology to improve conditions for migrant workers.

Trade unions also have their part to play. Participants noted that in Bahrain, unions had helped to set up online facilities and call centres for workers to lodge complaints, while the *Labour Market Regulatory Authority* – a government body on which the General Federation of Bahraini Trade Unions also has a seat – has set up a special facility at the airport with key information resources for arriving migrant workers. It was discussed that right to form or unions is a fundamental human right and a core ILO labour standard, and that unions in the workplace can provide a potential access to remedy.

In the ensuing discussion around the right balance between legislation, voluntary compliance and the actions of industry bodies and unions to motivate businesses to respect human rights participants noted the *Taqdeer Award* in the UAE. This awards points to construction companies based on self-submitted evidence of their own best practice in labour welfare; the UAE government will then award construction projects to those companies with higher scores.

Access to Remedy

Paul spoke about the third and final key element of the UN Guiding Principles: access to remedy. The UNGPs set a minimum expectation on states that they must ensure that those affected by human rights breaches have a remedy; at that enterprises also provide a remedy at an operational level. According to the related foundational principle:

“As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”

Remedies might include apology, rehabilitation, financial compensation and punitive sanctions, as well as efforts to avoid further harm. The operational principles underpinning this third ‘pillar’ say that states should consider ways to reduce legal, practical and other barriers that might impede access to remedy, with particular attention to groups that might be excluded from a given level of legal protection – particularly relevant to migrant workers.

The operational principles also say that business enterprises should run effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. Paul highlighted several key advantages of having such a grievance mechanism at company level: enabling a firm to identify human rights impacts, providing a ‘warning system’ to spot both

individual and systemic issues, allowing problems to be addressed before they grow larger, and forming a significant part of a wider stakeholder engagement strategy.

The GPs also lay out criteria for evaluating effective non-judicial grievance mechanisms: they must be legitimate and trusted, accessible, predictable, equitable, transparent, compatible with internationally recognized human rights, a source of continuous learning and – when at operational level – based on engagement and dialogue.

Justine noted that, for migrant workers, access to remedy was one of the areas where the gap between theory and practice was widest. She cited recent studies, including one focused on returning Indonesian workers and Nepalese workers, which had found that despite significant remedies being set down in law and available in theory, migrant workers had rarely found them accessible in practice on return to their home countries. Potential blockers, she added, might include cost or geography, with grievance systems sometimes located only in cities far away from where migrant workers actually lived; lack of legal assistance – when many of the processes really required legal assistance to follow through fully; a basic lack of awareness on behalf of workers; or processes so complex that workers settled early on in the process and missed out on possible compensation. She suggested that, in practice, there were no areas where the guiding principles on access to remedy were particularly strong in practice.

Participants noted, however, that technology had made some improvements possible – citing for example the case of the *Migrants' Call* app, with thousands of applications, launched on 1 January this year in Oman, which provides workers with a database to register onto, embassy numbers, nearby NGO numbers, hospital and emergency services contact details and the like (albeit currently only available on Android) – providing, at least, avenues for migrant workers to raise issues.

William also noted that there was a long way to go, given the complexity of the change needed to embed the GPs into corporate culture, particularly with the complexity of labour supply chains

Further discussions

Participants highlighted particular problems for domestic workers both in terms of protection of rights and access to grievance mechanisms or other forms of remedy. Justine acknowledged that 'informal work' of this case could be a huge loophole in many structures, although she did cite a recent example where a large multinational financial institution in Hong Kong – a major country of destination for migrant domestic workers – assumed responsibility for all its employees' domestic workers. Participants also noted other cases where employers could insist they set the terms on which senior staff engaged domestic workers.

Participants also noted the introduction of a 'zero recruitment cost' policy in Nepal, and similar policies elsewhere – but questioned whether recruitment fees might be such an entrenched part of the system in other countries that they would be harder to eliminate.

The importance of educating workers around their own rights, and available grievance mechanisms, was highlighted; though councils and missions do in some cases send representatives to labour camps and other migrant worker community hubs to help with this, the resources of countries of origin are limited, especially in destination countries. **Justine** noted it was a legal right for migrants to be informed of their rights by both origin and destination countries, under the Convention on the Rights of Migrant Workers and the ILO Forced Labor Protocol but that it did not always happen in practice. **William** suggested this might be an area where community organisations could help with these education programs; it was also noted that a model that had worked well in the Philippines was a very active civil society in the Philippines itself, with NGOs, media and a 'whole of government'

approach to educating migrant workers abroad about their rights, channels for redress and contact points becoming a potent force for change.

Participants highlighted the issue of ‘duplicate’ contracts being drawn up, once employees were already working in countries of destination that turned to be different in key areas from the contracts signed before workers left their countries of origin. The Indian E-Migrate system was held up as one solution, whereby electronic copies of contracts are stored before workers leave India, remain accessible to the workers, and remain legally binding even if new contracts are produced after the workers arrive in destination countries.

Shared experience: the private sector and diplomatic missions

Proven approaches and challenges from the private sector

The second day of the program featured participants from a number of significant private sector organisations working in the GCC – appearing on their own behalf, rather than as representatives of their associated companies or other bodies. They discussed the motivation for the private sector for becoming involved in human rights and migrant worker welfare, the concept of a duty of care to employees, and practical ways for the private sector to tackle issues.

These representatives highlighted a number of practical methods, already used by some companies and organisations, by which the private sector can help to protect workers’ human rights:

- Formal standards on project worker welfare, codified by government bodies contracting out to private companies, or large corporations at the top of supply chains. These can include employment and recruitment practices, living and working standards, and repatriation requirements – all backed with multiple layers of audit from prime contractors, subcontractors, governments and independent third parties.
- Pass/fail evaluations for contractors at pre-tender stage based on worker welfare standards. A key here is transparency, with clearly stated minimum requirements for compliance, and feedback reports on areas of compliance and non-compliance.
- The use of ‘completion bonuses’ for projects, incrementally decreased for any breach of ethical employment codes or standards by companies through the supply chain.
- Zero-tolerance approaches on recruitment fees from governments or companies at the top of supply chains, with those same companies reimbursing those fees to employees if they are found to have been paid.
- Cooperation with governments to set up uniform employment contracts, as in Jordan, where the local Ministry of Labor will not ratify non-standard contracts. These uniform contracts can be made available in multiple languages and designed to protect rights such as union membership.
- Explicitly focusing on ‘higher-risk’ aspects of worker welfare such as accommodation standards.
- An emphasis on a collaborative approach, with companies at the top of supply chains cooperating with contractors and sharing best practice around workers’ rights, as opposed to strictly enforcing harsh penalties in every case – which in the most extreme circumstances

might see contractors dismissed and their workers repatriated if local legislation did not allow for employment transfer.

However, the private sector representatives also noted a number of challenges:

- Recruiters banned from charging recruitment fees may simply pass the resulting shortfall in their own income onto the next employer they work with, by hiking up prices. And while employers at the top of supply chains may dictate that no recruitment fees should be paid at any stage, this can be difficult to enforce in situations where recruitment fees are legal in some countries of origin.
- Imposing harsh penalties, or releasing damning reports, on contractors can sometimes have the unwanted knock-on effect of harming worker welfare.
- The sheer complexity of relationships in global supply chains – with many tiers of contractors, joint ventures, and government involvement – and their intersection with all the aspects of worker welfare from visa processes and accommodation to contractual structures and wage payment poses a huge challenge.
- There is a need for improved collaboration between NGOs and the private sector, particularly so that NGOs can highlight issues in a timely manner so the private sector can respond appropriately.

Representatives also discussed the role of governments in encouraging responsible behaviour in the private sector. For example, they suggested that governments could enshrine key clauses into bilateral trade agreements to encourage companies to protect workers, or help expedite the legal treatment of workers' grievance cases to ensure workers are not effectively blocked from access to remedy by perceived lengthy, overly complex or expensive legal procedures.

Diplomatic Missions

Senior officials from the diplomatic missions (missions/embassies) of three key countries of origin, each representing hundreds of thousands or millions of workers in the UAE, spoke at length around what they could do in practical terms to help protect the human rights of migrant workers – and some of their challenges and limitations.

- If companies submit contracts to embassies, the embassies can review terms and conditions, and visit labour camps to compare contractual stipulations to the situation on the ground.
- Some embassies can assume workers' fees for filing cases in UAE courts for issues such as passport withholding, and provide other legal assistance. But this can be challenging when many migrant workers may not be legally versed or otherwise struggle to take action – and may not even be aware of the existence of their own diplomatic missions or how to contact them. There can also be huge issues if legal processes drag out for a long time, particularly if workers are not employed through the process – the terms of most visas prevent workers from changing employers, and they need the permission of their sponsor/employer even to leave the country. Missions cannot affect local judiciary processes.

- Representatives can also visit nationals of their embassy in local prisons. However, data on the number of nationals incarcerated or their release dates is not necessarily released to the missions by local authorities – even though this information is absolutely critical.
- Missions face a serious challenge with migrant workers coming to work in countries of destination through circuitous routes and unofficial, albeit legal, processes. This can leave migrant workers in a ‘grey area’ where they are vulnerable to trafficking, and can seriously delay help from the missions.
- Some missions try to ensure a “continuity of benefits” between countries of origin and destination.
- Missions run systems to get all of their expatriates to register – but when these are not mandatory, many migrant workers simply don’t do it, which makes it much more difficult for missions to contact their respective nationals at times of trouble or in emergencies.
- Where migrant workers die in countries of destination, missions cancel passports and issue death certificates. Some missions take responsibility for sending the mortal remains of deceased workers to families back in their countries origin – and, if death was a result of site accidents or the like, workers’ compensation as well. But the sheer amount of this compensation can be incomprehensibly large to families back home, giving the occasional unscrupulous lawyer the opportunity to take a large percentage of the payment on some pretext. Missions can try to convince families to give them the power of attorney to prevent this, but workers will not necessarily trust government officials in the missions.
- Some missions run shelters for *runaway*⁴ domestic workers. However, there are employers who refuse to file case reports on these matters out of spite, meaning that the workers in questions cannot be repatriated⁵. There are also restrictions on contact between the consulates and local households in country of destination.
- The only real recourse for missions in the case of local employers abusing the rights of their nationals is to place them on a consular blacklist. Generally these “blacklists” are not shared but the missions representatives thought it would be good practice to share among the missions of countries of origin and indicated a willingness to share these with each other.
- Some missions conduct awareness/welfare campaigns in local labour camps, including visits from professionals such as lawyers, doctors, bankers and psychological counsellors.
- Missions are often chronically short-staffed, with small numbers of employees to work on behalf of hundreds of thousands, or millions, of their nationals in countries of destination.

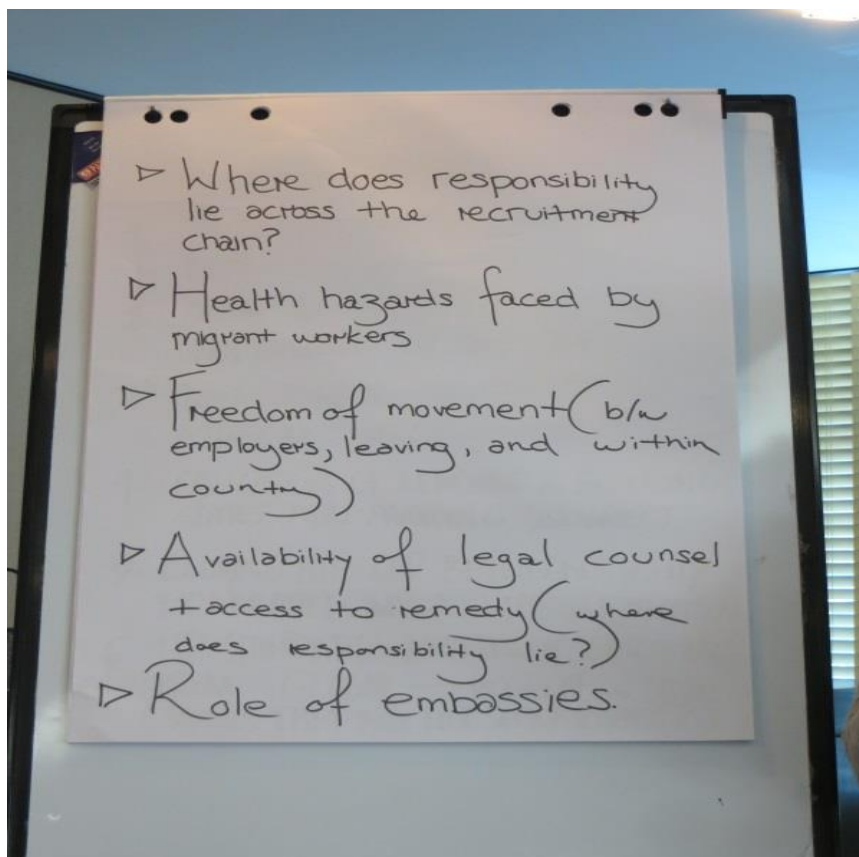
⁴ This term is widely used to describe the situation where domestic workers have left their (perhaps abusive) employer, thereby breaching their contract and becoming undocumented or irregular migrant without a valid visa – it is a term more associated with slavery than normal employment relationships.

⁵ Under the Kafala system the permission of the Kafeel/Employer is required in order to be allowed to leave the country

- There are limited fora for discussion between the consular representatives of different nations. There are few if any existing opportunities to come together.
- Mission representatives highlighted NGOs as a key force both in adding to their own capacity and in applying pressure to affect policy change. They also pointed to the media as a key force for highlighting issues.
- Some countries of origin have apparent/unrealised 'bargaining power' with hundreds of thousands or millions of workers in the UAE; but their respective governments may not necessarily wish to cause trouble, for fear of their migrant workforces being supplanted by those of other countries.

Group work: key issues, next steps

Participant concerns and key issues



In a collaborative group discussion early on the first day, participants were asked to list out the key concerns they were hoping to address. These included:

- Migrant families and their rights
- Domestic workers' rights
- Measurable standards on ethical recruitment
- Obligations of sending and receiving states and avoiding disconnect

- Closing the gap between policy formation, implementation and execution
- Human rights standards and their interaction with global, regional, and state law
- The labour supply chain
- Access to complaint mechanisms and to justice
- Language barriers
- Recruitment processes and identifying responsibility through the recruitment chain
- Living and working conditions
- Rules and regulations around ethical recruitment
- Establishing a shared responsibility amongst all stakeholders
- True definition of migrant workers
- Changing mindsets at all levels
- Ending exploitation
- Impractical policy
- Awareness raising on issues like trafficking, health and safety, financial literacy etc, in both sending and receiving countries
- Training and development for migrant workers
- Legal engagement, availability of legal counsel and access to remedy
- Health hazards facing migrant workers
- Freedom of movement – the issue of workers having passports confiscated, lacking 'exit permits' and the like
- The role of embassies and missions
- Health hazards; safe accommodation; hygienic food
- 'Recruitment fees' paid by workers at countries of origin and destination
- Lack of implementation of local legislation to protect migrant workers
- Social security insurance
- Access to health insurance
- Excessive fees both in sending and receiving countries
- Lack of information sharing between missions

Recommendations and moving forwards:

On the third day of the Program, for the final formal session, **William Gois** posed the question of how the participants – and the missions, NGOs and private companies they represented – could move forwards.

“We are trying to create a culture of human rights, working with private sector, business and state; a culture that has to be created around the way things are done,” he commented. “What is required for real change is change in behaviour, [which] requires embedding something in the way we look at life.”

Participants split into three groups, each including a mix of representatives from missions, civil society and private sector. Their objective: to propose ways to move forwards together, using the protect /respect/ /remedy framework.

The first group suggested the establishment of a regular, recurring forum for collaboration between private sector, mission representatives and NGOs in countries of destination, to share best practice around the protection of workers’ rights and to establish avenues for redress.

This of course would present challenges around resources and organisation; the group suggested that private enterprise might sponsor the event (perhaps on a monthly basis, with rotating sponsors) to provide a venue and to cover logistical costs. Embassies and missions might not be able to be seen directly sponsoring the events, but representatives could attend. The bulk of the organisational work – inviting key stakeholders, running the event itself – could be taken on by NGOs working in the area.



If successfully established, this type of regular collaboration would help break down the perceived ‘silos’ that can separate NGOs from business; it could help to direct the already overstretched resources of embassies and missions, while also putting them in touch with NGOs that might be able to help tackle problems that they themselves could not. It would ensure that all stakeholders – business, missions and NGOs – could maintain an awareness of each other’s perspectives and challenges around migrant workers’ rights, and could coordinate their efforts in the most effective way.

The second group suggested that ethical recruitment was a shared responsibility, requiring a paradigm shift to ensure workers were taken not as entities but as human beings – at government and business level – and to bring about meaningful change to improve working conditions and save workers from possible exploitation. They also suggested a concise document on labour rights be drawn up by countries of origin, with policies formulated to protect the rights of workers in countries of destination, to ensure their work was respected and their services honoured. This, suggested the group, would also have a trickle-down effect on workers’ laws. Increased vigilance, said the group, would be required at all levels for this process to work – from recruitment to

mobilisation up to repatriation. And appropriate resources would be required at consulate level – with civil societies and NGOs able to help fill any resources gaps.

Where there are different model contracts and subletting, the group suggested that where a total project outlay was a million dollars, 100,000 of that could be saved as a security, with the business concerned keeping vigilance over whether workers were treated fairly – and deducting the security in the case of any violation.

The group also looked at how to improve legal assistance in countries of destination, to ensure fair and expedited trials that would not deter workers from seeking redress where necessary; possible means might include labour departments or labour courts, legal assistance from embassies or from lawyers working with civil societies to fill gaps.

The group said that recruitment process should be clear and candid, with workers able to easily understand terms for departure – and contracts signed in countries of origin made enforceable in countries of destination.

And, while businesses and NGOs are already working together efficiently, they should connect themselves with local departments, and explain what their resources are in terms of volunteers, so they could be utilised for common objectives.

The group also suggested that the best practices evolved by different consulates should be shared together, to help other countries protect their own workers, and to provide feedback to improve legislation in both destination and host countries – and that stakeholders more broadly share experiences and thoughts, not least through the media.

The third group noted that trade unions provided an interesting framework for organisation of the recruitment process – starting with those in countries of origin, with valuable continuity if trade unions were also active in countries of destination. The group suggested that these unions could provide a valuable framework for informing workers of their rights.

In the absence of trade unions, however, the group suggested that embassies and consulates could fulfil some of these functions, pointing to the example of pre-departure orientation seminars run by embassies of the Philippines – and following up with workers once in the countries of destination.

The third group called for a minimum standard or policy coming from countries of origin that could be implemented across the board in countries of destination – but also standardisation of requirements across countries operating in difficult areas.

The group also looked at legal assistance, noting that lot of resources could be drained by the sheer length of court cases; therefore, a way of expediting cases could be key, such as with the small claims court model in Canada, to help redirect resources being spent on protracted legal cases.

Also calls to reform labour laws, abolishing Kafala sponsorship systems, encouraging change and referring to ILO and pressure from civil societies and non-profit.

The group highlighted the need to reframe the way we speak about workers, from a point of view of human dignity – bringing humanity back into the discussions, rather than ‘faceless statistics’.

The group also mooted the idea of setting up a representative body, drawn from both government and private sector, focused on human welfare – using either blacklist or whitelist models for assessing employers. And it suggested searching the supply chain for where there might be room for leverage or influence... and the need to standardise across the board.

Concluding notes

Paul Redmond, William Gois and Patrick Earle closed the Program by thanking all participants and organisational staff for their work, acknowledging the atmosphere of mutual respect and constructive cooperation that had run through the program, and looking forward to future productive collaboration.



Patrick delivered the concluding notes. “We’re all here because we’re all aware that there are very deep and significant problems, and we’re all interested in trying to address those problems and find a way forward,” he said. “It’s clear, also, that we each have different roles to play in that: both as individuals, as organisations, and in the sectors we’re in. And we have to continue those – but there is also value in trying to find ways of connecting with people in other organisations, and other sectors, with different perspectives.”

“So often, we hear that NGOs, government and business speak different languages; we have different organisational cultures. But over the last two and a half days and in the group discussions, I’m not sure that’s so much the case. One of the values of human rights is that it gives us a common language; we may have different cultural conditions, we may have different ways of trying to apply human

rights values in our areas and in the work that we do, but human rights values speak to all of us and provide a good common platform for coming together.”

“We talked at the beginning about international standards and legal obligations, what’s been built up through international law and the ILO... in terms of international human rights standards. These impose deep obligations, but both in international and national law there’s such a big gap in implementation that to many people, the international human rights standards seem both extraordinarily idealistic and remote from their lives, and impossible. In fact, they’re meant to be minimum standards. They’re not meant to be aspirational, they’re not meant to be some dream; they are meant to be the platform on which we can build, not the ceiling that contains us.”

“The challenge of how we make those standards a reality in people’s lives is a very long one... change doesn’t happen because you change a law,” he added. “But the UN framework on business and human rights, that set of guiding principles is valuable... the letter of the law is one thing, but what principles should guide us? We have this framework of ‘protect, respect and remedy;’ how do we divide that? It’s not so easy to say that just government have a role to protect, or just businesses have a role to respect.”

“I think we’ve concluded our discussions, in a way, with an emphasis on the power of people and the importance of people. We need to change the mindset and the culture away from job orders, away from numbers of people and the huge scale of movement, to thinking about migrant workers as individuals with rights: people who deserve to be treated with dignity and respect. That has to guide everything. And the power and importance of individuals in making change – the role of the champion within business, the role of inspired and inspiring labour attaches, consuls and ambassadors – each of us can think of individuals who go beyond the strict limits of their position to make significant change. And I think that’s the challenge for each of us here: how do we do that, and how do we continue to do that together.”

Afterword and Follow-Up

This program was the latest in a series of programs organised by DTP and MFA – and more recently with the MECTD. These programs have helped to build the capacity of MECTD staff – and MECTD has since been awarded contracts in Dubai to provide training to migrant workers in Dubai and the UAE. This program brought together some of the key organisations and their staff that are working to address the abuses of migrant workers. There has been positive feedback from these staff about the value of participating in the program and collaborations have continued since the program finished.

The training had been very useful. Since last 20 years I had been serving the community to all casts creeds & countries but the training opened up avenues and connected me to so many individuals within DTP/MFA and others who attended the workshop. The training enhanced my skills and I also gained information on the huge amount of community work going on in the background. I love the regular news letters DTP sends us, and keeps us in loop. I would love to be involved where ever I can be of any use to DTP / MFA.

The issues around modern slavery are taken very seriously by our company and we are investing a lot of time to elevate practice in areas such as recruitment. We have adopted a values-led approach, rather than looking at it solely from a business case viewpoint.

I found your Dubai program very helpful, interesting, and productive. Several of the issues raised contributed to inspiring subsequent lines of research we pursued, and I've definitely remained in touch with some of the folks in attendance.

The training program has been very useful for me in terms of advocacy, developing personal capacity, building relations and network. I have been participating on national and international forum through the people and organizations over the past 4 years but have felt needed more training to apply human rights terms on my daily work.

I feel no hesitation to say that I learnt a lot there and will make sure that I use my experience for making a positive difference.

DTP has stayed in touch with the participants and is following-up with some of them about the specific initiatives that were discussed. DTP has launched a regular E-Bulletin on Migrant Workers' Rights that goes to the participants of this and the other DTP/MFA programs circulating news and updates.

The diversity of the backgrounds of the participants in this program DTP/MFA enriched the discussions, but DTP/MFA have also agreed on the need for a greater level of private sector involvement in future programs, and will seek to reach out more actively.