

Background note for the Information Session

“Fair Migration with a Focus on Recruitment”

This document, which supplements the Report of the Director-General to the 16th Asia-Pacific Regional Meeting (Geneva, 2016), has been prepared as an additional informal resource for the Information Session: “Fair Migration with a Focus on Recruitment” (provisional title).

Context¹

1. Labour migration is an important phenomenon in both Asia and the Arab states. According to the most recent estimates, in 2013 there were 150.3 million migrants in the world² who are economically active out of 232 million migrants overall.³ The Arab States have the highest proportion of migrant workers to all workers (35.6 per cent) and hosts 11.7 per cent of migrant workers worldwide. Asia-Pacific hosts 17.2 per cent of migrant workers. The majority of migrant workers in Arab States originate from Asia, underlining the interconnectedness between the regions. In the Association of Southeast Asian Nations (ASEAN) region, the number of international migrants has also roughly tripled since 1990. In 2013, there were an estimated 9.49 million international migrants in ASEAN. Around two thirds of international migrants in ASEAN come from other ASEAN Member States.⁴ In the Pacific the overall numbers of migrants are much lower than in Asia, but attention to migration remains vital in the context of economic development and climate change.
2. Governance of labour migration is of core importance to the ILO and its constituents and the preamble to the ILO constitution highlights the need to protect workers employed in countries other than their own. The cross-border movement of workers potentially offers a triple win for the three parties involved. It is a win for destination countries as it contributes to economic growth and provision of labour and skills. It is a win for countries of origin, as it lowers unemployment, increases remittances and provides the possibility of acquiring skills abroad. It is also a win for migrant workers – provided they are offered decent work – as it gives them the opportunity to earn higher incomes and, often, escape poverty and material deprivation. However, the triple win is not equitably distributed among the parties. At the International Labour Conference in June 2014, the ILO Director-General called for “constructing an agenda for fair migration which not only respects the fundamental rights of migrant workers but also offers them real opportunities for decent

¹ The first two sections draws from: ILO, Realizing a Fair Migration Agenda: Labour Flows between Asia and Arab States – Background Paper / ILO Regional Office for Arab States, Beirut and ILO Regional Office for Asia and the Pacific, Bangkok: ILO, 2014.

² ILO. “ILO global estimates on migrant workers: Results and methodology”. ILO. Geneva. 2015. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf

³ Since the release of the ILO estimates, UNDESA has revised the total number of migrants worldwide to 244 million. Please see: UNDESA, 2015. International Migration Report 2015. Available at: http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf

⁴ UNDESA, 2013. Population facts. No. 2013/2. Available at: https://esa.un.org/unmigration/documents/The_number_of_international_migrants.pdf

work”.⁵ This means a fair sharing of the prosperity migrant workers help to create, and to build migration regimes which respond equitably to the interests of countries of origin and destination, migrant workers, employers and nationals.

3. The 2030 Agenda for Sustainable Development (adopted at the UN General Assembly (UNGA) in September 2015) includes targets in the Sustainable Development Goal (SDGs) that are closely linked to fair migration and fair recruitment as a means of creating decent work and promoting sustainable development:

- SDG 8.5 – By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.
- SDG 8.7 – Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.
- SDG 8.8 – Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

4. In addition, Goal 10 of the 2030 Agenda is to “Reduce inequality within and among countries”,⁶ with two targets focusing on migration :

- SDG 10.7 – Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.⁷

5. Proposed indicator: recruitment cost as proportion of wages in destination country

- SDG 10.c – By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.

6. The UNGA High-Level Summit on Refugees and Migrants (on 19 September 2016) adopted an Outcome Document and Declaration that calls for a new Global Compact on Migration to be adopted at a UNGA summit in 2018. It lists the ILO as a key agency to help prepare this framework and highlights the importance of regional dialogue.

7. Furthermore, the ILO General Survey on labour migration,⁸ the ILO Governing Body discussion on labour migration in March 2016, and the forthcoming General Discussion on labour migration at the International Labour Conference of 2017 all provide heightened attention to fair migration, and fair recruitment within that.

⁵ ILO. “Fair Migration: Setting an ILO agenda”. ILO. Geneva. 2014. Available at:

http://www.ilo.org/ilc/ILCSessions/103/reports/reports-to-the-conference/WCMS_242879/lang--en/index.htm

⁶ UN. “Sustainable Development Goals”. Available at: <http://www.un.org/sustainabledevelopment/inequality/>

⁷ ILO and World Bank are custodians of indicator 10.7.1 defined as: recruitment cost born by employee as proportion of yearly income earned at country of destination

⁸ ILO. “Promoting fair migration - General Survey concerning the migrant workers instruments (2016)”. Available at: http://www.ilo.org/global/standards/WCMS_453917/lang--en/index.htm

8. In response to recent interregional migration dynamics and the Fair Migration Agenda, the ILO initiated an inter-regional tripartite dialogue on Realizing Fair Migration in Labour Flows between Asia and Arab States in December 2014.

Fair recruitment

9. Migrant recruitment issues have been highlighted in international migration discussions in the recent past. Reducing the costs of migration is one of the eight action points in the UN Secretary General's Statement.⁹ These costs include, inter alia, the high fees paid to recruiters, which reduce the impact of migration on development. The Conclusions of the ILO's Tripartite Technical Meeting on Labour Migration urged the ILO to develop guidance to promote recruitment practices that respect the principles enshrined in international labour standards.¹⁰ As part of the Fair Migration Agenda, the ILO has launched the Fair Recruitment Initiative as a multi-stakeholder exercise and Fair Recruitment Principles and Guidelines were adopted by a Tripartite Technical Meeting in September of 2016 (see box 1).
10. The Global Forum on Migration and Development (in December 2016) will also pay attention to migrant recruitment through a round-table on lowering the costs of migration.
11. Within the interrelated regions of Asia and the Arab States, fair recruitment has furthermore been acknowledged in the Kuwait Declaration that was adopted at the 3rd ministerial meeting of the Abu Dhabi Dialogue (ADD), and the issue was discussed further at the ADD Senior Officials Meeting in May 2016.
12. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) called for States to intensify efforts to protect the fundamental human rights of migrant workers and adopt mechanisms to eliminate recruitment malpractices. The ASEAN Forum on Migrant Labour (AFML), a tripartite plus migration forum, has made detailed recommendations for action towards effective recruitment practices and regulations.
13. Given that the supply of workers in low wage countries far outstrips the demand in wealthier destination countries in Asia/Arab States, and that there are far more workers intending to work abroad than there are jobs, migrant workers are highly vulnerable to abuses during recruitment. Moreover, the high volume of migration of, in particular, low-skilled workers and their poor bargaining position, gives rise to rent-seeking behaviour on the part of local recruitment agents and their foreign counterparts as well as those in power. The recruitment fees charged are, by far, excessive in relation to actual costs incurred and they are charged of workers rather than their employers in case of low-skilled migrant workers. This results in an inequitable distribution of the potential gains from migration between migrant workers, employers, and the recruitment industry in countries of origin and destination.

⁹ ILO. "The 2013 UN General Assembly High-level Dialogue on International Migration and Development". Available at: http://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_222910/lang--en/index.htm

¹⁰ ILO. "Tripartite Technical Meeting on Labour Migration". Available at: http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_221809/lang--en/index.htm

Box 1

General principles and operational guidelines for fair recruitment¹¹

Scope

The ILO adopted General Principles and Operational Guidelines for Fair Recruitment in a tripartite meeting held in September 2016. In its 328th session, the ILO's Governing Body called on ILO to disseminate these principles and guidelines and draw upon them as a foundation for ILO programs on recruitment. The principles and guidelines draw on a number of international labour standards and related ILO instruments.

Although stimulated by the need of guidelines in the context of labour migration, the principles and guidelines refer to both international labour migration and work in the national context. The principles and guidelines are meant to serve as a central means to address the growing recruitment abuses, and apply to national workers as well as migrant workers. Implementation of these principles and guidelines at the national level should occur after consultation between social partners and the government.

General Principles

There are 13 general principles:

1. Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
2. Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.
3. Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.
4. Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
5. Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
6. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.
7. No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
8. The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the

country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.

9. Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.
10. Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
11. Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.
12. Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.
13. Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

Operational Guidelines

- Responsibilities of governments, and enterprises and public employment services (including labour recruiters and employers) in the form of 31 operational guidelines were adopted. For details please see Annex 1.

The guidelines and principles are available at: http://www.ilo.org/global/topics/labour-migration/projects/WCMS_536263/lang--en/index.htm

14. The lack of labour protection in domestic work and the restrictions placed on female migration, increases the vulnerability of women migrants. Some countries have attempted to protect women workers by selective bans and raising age barriers, which deny women the opportunity to make their own decisions about migration. This may result in women having no options but to migrate irregularly and without protection.
15. In Asia, private recruitment agencies directly or indirectly account for a majority of workers placed abroad from the Philippines, Indonesia, India, Pakistan, Sri Lanka, Bangladesh and Thailand. With the exception of the Employment Permit System (EPS) in Republic of Korea, private recruitment agencies dominate international low skill placement in Asia/Arab States. The dominance of private recruitment agencies in international recruitment in the Asia to Gulf Cooperation Council (GCC) migration corridor needs to be looked at in the context of scale and complexity of cross-border regulations. Employers generally find it more convenient to turn to private recruiters who have networks abroad and who are familiar with immigration laws. Researchers also point

¹¹ ILO. "Fourth Supplementary Report: Outcome of the Meeting of Experts on Fair Recruitment". 2016. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_532389.pdf

to the increasing role of social networks – i.e. friends/acquaintances, relatives and neighbours – in matching employers with workers.

16. Governments of countries of origin have generally responded to recruitment abuses by introducing regulations in terms of licensing requirements, limits on recruitment fees and mechanisms for complaints. GCC countries, such as Saudi Arabia, Qatar and the United Arab Emirates (UAE) have banned the charging of fees to migrant workers. Nepal has announced a ‘no fee, no travel cost to worker’ policy for GCC countries and Malaysia in 2015. The Philippines regulates the responsibility and liability of the actors through the Joint Liability clause which means that the recruitment agency at source can be held liable for abuse of the migrant worker at destination. Yet, overall, there has been limited success in curbing abuses in recruitment.
17. In line with efforts to reduce overall recruitment costs, ILO has commissioned surveys (using the KNOMAD¹² methodology) on the costs of labour migration to migrant workers (Box 2).

Box 2

Labour Migration Costs

Under the KNOMAD program of World Bank and in collaboration with the ILO, the development of a database on migration costs, with comparability across migration corridors, while challenging, is underway. This is based on a standardized survey methodology.

By examining the data set of the KNOMAD surveys,¹³ preliminary results of an ILO study¹⁴ reveal the *labour migration costs that workers experience due to deficiencies in their working conditions* (e.g. 70 per cent of respondents reported that their travel documents were withheld by the employer, 50 per cent reported not receiving the same wages as the native-born, among many others; 30 per cent reported not signing a contract prior to departure). The study reveals that contractual status, level of wages and periodicity of wage payments, hours worked, occupational safety and health issues, as well as trade union involvement and discrimination are all areas in which migrant workers report substantial decent work deficits.

Aggregating these losses, and assigning monetary values to them, the study finds that losses due to deficiencies in working conditions can represent at least 30% of total wage promised to migrants prior to departure, 27% of total actual wage, and are twice as high as recruitment and travel costs incurred to effectuate the migration process. These costs vary across migration corridors as well as across migrants’ age, gender, and occupation.

Emerging good practices to achieve fair recruitment

18. In 2016, the ILO commissioned a study on ways forward in recruitment of ‘low-skilled’ migrant workers in the Asia-Arab States corridor, and the results were made public in

¹² The Global Knowledge Partnership on Migration and Development (KNOMAD) is a global hub of knowledge and policy expertise on migration and development issues. Available at: <http://www.knomad.org/about-us>

¹³ In its first round of currently available data, the survey was conducted along seven migration corridors linking selected Gulf, Asian, and African countries that are particularly known for the intensity of labour migration.

¹⁴ Aleksynska, M., Kazi Aoul, S., Petrencu, V. (forthcoming). Deficiencies in Conditions of Work as a Cost to Labour Migration: Concepts, Extent, and Implications

September 2016.¹⁵ The findings of this study, and as well other ILO documentation and research on recruitment in the region, suggest a number of promising practices to be considered. What follows is a non-exhaustive list of promising practices to be considered for use and/or replication in the Asia-Arab States corridor. The good practices listed below can be directly linked with the ILO's General Principles and Operational Guidelines for Fair Recruitment and will inform their operationalization in the Asia-Arab State corridor.

- 19. Zero fees to workers (in line with General Principle 7):** Some sectors have been successful in implementing a zero fee policy. Seafarers are not required to pay placement fees in the Philippines and in the case of performing artists and entertainers bound for a Japan (signatory of Private Employment Agencies Convention, 1997 (No. 181)¹⁶), the fee is paid by the employer. In the New Zealand Recognized Seasonal Employers Scheme (up to 9,000 places available per year) with Pacific Island countries, recruitment is employer paid. The same is true of the Australian seasonal worker program. A few major countries of destination for Asian migrant workers have legislated zero fees to workers – namely Saudi Arabia, UAE and Qatar. However, in practice fees are generally exacted.
- 20. Standard contracts (in line with General Principle 8):** As part of three ministerial Decrees in the UAE that came into force in 2016, a standard contract has been adopted with extensive articulation of termination conditions. Along with new legislation that confers legal contractual status on the letter of offer before departure, the UAE initiative provides uniformity for both origin countries and the UAE to mitigate against illegal contract substitution.
- 21. Information dissemination (in line with General Principle 10):** Pre-employment orientation seminars and intensified information campaigns, especially in rural communities, to provide applicants with sufficient information to prevent illegal recruitment has been used by the Philippines. Sri Lanka has created a regional administration division with field level cadre who have been trained on safe migration. Migrant Worker Resource Centres that offer information, advice and services to migrant workers, have been promoted by International Organization for Migration (IOM) and ILO as well governments and Civil Society Organizations (CSOs).
- 22. Memorandum of Understandings (MOUs) and Government-to-Government arrangements (in line with Operational Guideline 13):** The Republic of Korea introduced the Employment Permit System (EPS) in 2004 to replace private recruiters with a non-profit public system managed by a public sector entity. The Korean authorities recognized the need for low skilled workers by Korean enterprises – particularly small and medium ones in construction, manufacturing, agriculture and services – and introduced a Government-to-Government labour recruitment programme based on mandatory MOUs. A major achievement is the reduction in the average cost paid by a worker from US\$ 3,509 under the trainee system in 2002 to US\$ 927 under the EPS in 2011.¹⁷

¹⁵ R. Jureidini. "Ways forward in recruitment of 'low-skilled' migrant workers in the Asia-Arab States corridor". ILO. 2016. Available at: http://www.ilo.org/beirut/publications/WCMS_519913/lang--en/index.htm

¹⁶ ILO. "C181 - Private Employment Agencies Convention, 1997 (No. 181)". Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C181

¹⁷ K.B. Kyung. Update on the Employment Permit System. Presentation at the "Effective implementation of the Employment Permit System", ILO/Korea Multi-Country Dialogue, 3rd- 4th December 2013, Bangkok, 2013.

- 23. E-based recruitment through a central clearing house (in line with General Principle 4 and Operational Guideline 10):** This can help minimize the number of intermediaries involved and is a potential good practice. In Europe, EURES is a publically funded jobs portal and cooperation network to facilitate free movement of workers within the European Union (EU) 28 countries plus Switzerland, Iceland, Liechtenstein and Norway.¹⁸ The system is operated through 1000 EURES advisors who maintain daily contact with employees and employers. In the Asia region there are a number of private sector jobs portals for placement of migrant workers in the GGC, and an assessment of their role in safe, quick and low cost recruitment is opportune.
- 24. Enforcement mechanisms and complementary support services (in line with General Principle 5 and Operational Guideline 2):** The effectiveness of legislation depends on law enforcement and is affected by political will and governance standards in the country concerned, as well as available resources. Law enforcement remains a challenge in a number of countries of origin and destination, and affects migration costs. In terms of enforcement, Singapore provides an illustration of enforcement and penalties in a destination country. Fines are imposed for unlicensed agencies (and employers using them), providing false information and overcharging. Among countries of origin, the Philippines is the most active in the number of recruitment violation cases filed (nearly 12,000 in 2010-14). This perhaps reflects better awareness and support services. Regulators in the Philippines cancelled as many as 96 licenses and suspended 52 others in 2014.¹⁹
- 25. Joint liability in both countries of origin and destination (in line with General Principle 3 and Operational Guideline 5):** Legislation in the United Kingdom, EU and the United States makes lead contractors liable for recruitment abuses in their supply chains. Under the Manitoba Worker Recruitment & Protection Act (WRAPA), employers are liable for recruitment fees charged to workers. (Fees and recovery of fees are banned). The Gangmaster Licensing Authority (GLA) in the UK requires origin country recruitment agencies “to also apply for a license with GLA and comply with its terms and conditions”.²⁰
- 26. Promoting self-regulation (in line with Operational Guideline 20):** There has been some promising self-regulation by private employment agencies through ethical codes of conduct. In Viet Nam, the ILO has supported the development of a monitoring mechanism that ranks agencies according to their compliance with the code of conduct of the Viet Nam Association of Manpower Supply (VAMAS).

Way forward

- 27. Implementation of the adopted ILO General Principles and Operational Guidelines for Fair Recruitment at the national level should occur after consultation between social partners and the government.**

¹⁸ EURES website. Available at: <https://ec.europa.eu/eures/public/eures-services>

¹⁹ N. Baruah. “Labor Migration Infrastructure and Services in Countries of Origin in Asia”. Labour Migration in Asia: Building Effective Institutions. ADBI-OECD-ILO. 2016.

²⁰ B. Andrees; A. Nasri; P. Swiniarski. “Regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities”. ILO. Geneva. 2015.

28. In line with the adopted fair recruitment guidelines, an analysis of international best practice, and thorough consultation among relevant stakeholders,²¹ government actions to achieve fair and ethical recruitment under the broader fair migration agenda in the Asia-Pacific and Arab States regions, could be guided by the following priority actions (if and where not already in place):

29. Lowering migration costs

- Establishing legislation and bilateral agreements to prevent recruitment fees or related costs being charged to migrant workers and establishing a ceiling on recruitment costs for employers to avoid excessive charging; ensuring the full extent and nature of costs are transparent.
- Reducing the number of layers of intermediation and sub-agents involved;
- Making payment of recruitment fees by employers' part of the procurement and tendering processes in for instance the construction industry (to ensure that contracts are not just issued to the lowest bidder, but to the party that has put in place effective measures to ensure decent work for migrant workers, including under any sub-contracting arrangements);
- Recruitment reform in countries of destination should consider: mechanisms to address visa trading in Arab States and simplification of immigration procedures where job vacancies are linked to labour market shortages at the sectoral level.

30. Increasing recruitment options

- Expanding recruitment options beyond private recruitment agencies; for example, public placement agencies and direct recruitment by accredited employers;
- Use of information technology (including E-matching services);

31. Better regulation

- Putting in place effective recruitment regulation (including through joint liability schemes) and harmonizing recruitment regulation throughout migration corridors among countries of origin and destination, including streamlining of medical tests and protection against mandatory HIV testing;²²
- Establishing effective licensing and oversight/monitoring of recruitment and placement agencies at source and destination; investing in credible and effective enforcement against culprits of abusive recruitment; putting in place effective complaints mechanisms and support services;

²¹ Realizing a Fair Migration Agenda: Labour Flows between Asia and Arab States – Summary Report of the Inter-regional Experts Meeting, December 3-4, 2014, Kathmandu.

²² As per ILO Recommendation No. 200 which was adopted with support of Asian and Arab states.

- Regulating and effective monitoring of outsourcing agencies (in particular in the construction sector);
- Supplementing statutory regulation by both industry self-regulation and monitoring by trade unions and CSOs;
- Establishing rating systems and incentives for recruitment agencies, including for instance, creating online forums for migrant workers to rate their recruitment experience;

32. Mobility within labour markets

- Fostering internal labour market mobility at destination (and allowing migrant workers to terminate employment and move to a different employer without approval of the first employer) to reduce overall recruitment costs, at a minimum within the occupational category in which there is a recognized labour shortage, while taking into account the needs of employers.