



## BUSINESS AND PRIVATE SECTOR ENGAGEMENT FOR PROMOTING FAIR RECRUITMENT



International Labour Organization



International Training Centre

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*Training Toolkit on Establishing Fair Recruitment Processes – Module 5: Business and private sector engagement for promoting fair recruitment*

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# LEARNING OBJECTIVES



By the end of this module, you will be able to:

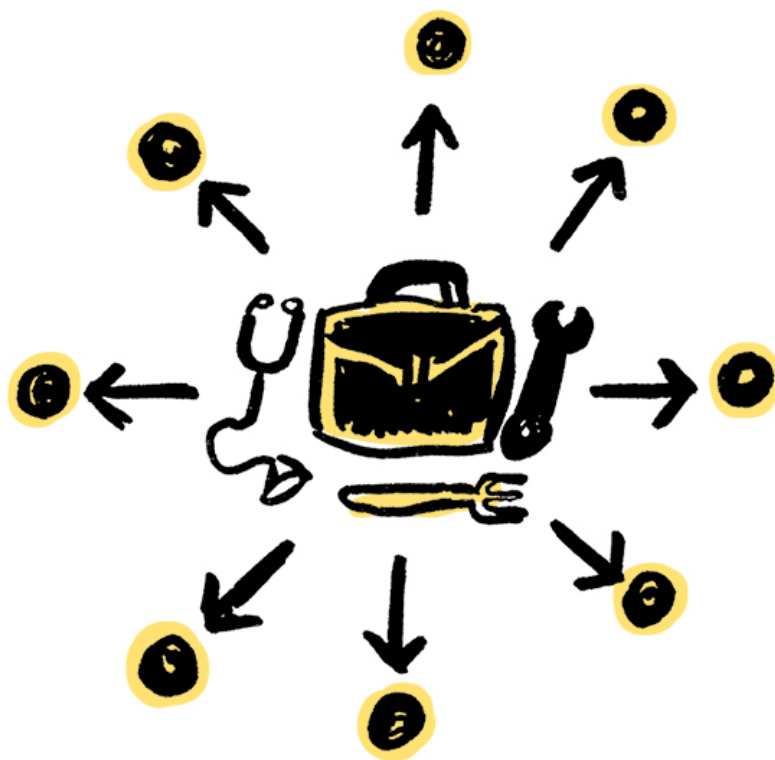
- Identify the advantages of fair recruitment for Employer and business membership organizations (EBMOs) companies and employers' organizations;
- Understand how the private sector can contribute to promoting fair recruitment practices;
- Recognise recruiters practicing fair recruitment of fair recruiters;
- Become familiar with concepts and terminology on due diligence;
- Learn about voluntary compliance schemes used by employers, private employment agencies and associations of recruitment agencies to promote good practices in their industry;
- Become acquainted with concrete tools, guidelines and associations useful to support the private sector to implement fair recruitment practices;
- Understand how employers, businesses and multi-stakeholder initiatives can support the transition to fair recruitment models.



# INTRODUCTION

In a global context of increasing transnational labour mobility, tens of millions of people regularly travel across borders and continents for a wide range of temporary work. Migrant workers are hired to do everything from harvesting fruits and vegetables to nursing, construction, and information technology. Challenges persist when it comes to ensuring fair recruitment practices, protecting migrant workers' rights and preventing abusive migration practices. To tackle these challenges and to prevent migrant workers from suffering abuses during the recruitment phase, employers and businesses have their role to play and are part of many initiatives to foster fair recruitment practices. The ILO [Global Business Network](#) on Forced Labour and the [modern slavery map](#) are good starting point to grasp the span of such initiatives.

- **TOPIC 1** will explore why fair recruitment is beneficial for the private sector, but also the challenges occurring while implementing fair recruitment practices.
- **TOPIC 2** will explore fair recruitment practices by the private sector, such as conducting due diligence.
- **TOPIC 3** will explore support to the private sector and initiatives by the private sector to implement fair recruitment practices.



# TOPIC 1: WHY IS FAIR RECRUITMENT IMPORTANT FOR THE PRIVATE SECTOR?

Fair recruitment and the respect of human rights is the job of every actor in the world of work. Businesses are also accountable, as are private employment agencies, trade unions and the government.

This first topic addresses the standards and principles on which all actors in recruitment processes must rely on to develop and apply sound recruitment policies. It follows with the benefits for businesses to apply fair recruitment policies and also addresses the challenges that can be encountered along the way. Furthermore, the good practices of fair recruiters will be enumerated, in order to help businesses understand what can be expected of fair recruiters.

## A. STANDARDS AND PRINCIPLES

### 1. The United Nations Guiding Principles on Business and Human Rights (UNGPs)

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The UNGPs is an instrument consisting of 31 principles implementing the [United Nations'](#) (UN) “*Protect, Respect and Remedy*” framework on the issue of human rights and transnational corporations and other business enterprises.

These Guiding Principles provided the first global framework for preventing and addressing the risk of adverse impacts on [human rights](#) linked to business activity, and continue to provide the internationally accepted framework for enhancing standards and practice regarding business and human rights. On June 16, 2011, the [United Nations Human Rights Council](#) unanimously endorsed the Guiding Principles for Business and Human Rights, making the framework the first corporate human rights responsibility initiative to be endorsed by the UN.

The UNGPs encompass three pillars outlining how states and businesses should implement the framework:

- The state duty to protect human rights;
- The corporate responsibility to respect human rights;
- Access to remedy for victims of business-related abuses.

The UNGPs have received wide support from states, civil society organizations, and even the private sector. This has further solidified their status as the key global foundation for business and human rights.

## 2. The ILO General principles and operational guidelines for fair recruitment

The Governing Body of the International Labour Office, in its [2014 Recommendations of Supplementary Measures for the Effective Suppression of Forced Labour](#), calls out the employers responsibility of “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” in combating forced labour. Additionally, in 2016 the Governing Body approved the [General principles and operational guidelines for fair recruitment](#) stating that companies and public employment services should include “human rights due diligence assessments of recruitment procedures, and should address adverse human rights impacts with which they are involved.”<sup>1</sup> The [Forced Labour Protocol](#), in recognition of this importance, requires measures for “supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour”. The [ILO Declaration on Fundamental Principles and Rights at Work](#), commits Member States to respect and promote principles and rights in four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of force or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. Along similar lines, [the G20 Leaders Declaration](#) issued in 2017 states that “We will work towards establishing adequate policy frameworks in our countries such as national action plans on business and human rights and underline the responsibility of businesses to exercise due diligence. We will take immediate and effective measures to eliminate child labour by 2025, forced labour, human trafficking and all forms of modern slavery.”



Furthermore, the SDGs call for multi-stakeholder partnerships, especially highlighted in Goal 16 and 17, to achieve sustainable development for all. The [SDGs Compass guide](#) is a useful resource for businesses wishing to implement policies in line with the 2030 Agenda. An [inventory of tools for businesses](#) is also available, gathering relevant resources for each SDG.

The guidance for implementing fair recruitment practices is well established in standards and principles. It shows the commitment of the business community to work towards a just and fair application of these standards.

## B. WHY IS FAIR RECRUITMENT GOOD FOR BUSINESS?

Fair recruitment is beneficial to every actor in the world of work and fosters the human rights of workers. As for every actor in the world of work, business enterprises should respect human rights. This means that they should avoid infringing on the human rights of workers and communities and should address adverse human rights impacts with which they are involved (ILO, 2015a).

<sup>1</sup> ILO (2019). *General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs*. Art. 15, p. 19. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf)

For businesses, fair recruitment provides the following benefits:

- Employee retention, decreasing significantly turn over.<sup>2</sup>
- Fair recruitment positively impacts performance at work. Workers who are fairly recruited are more likely to reach their production targets.
- Fair recruitment processes are conducive to matching the skills of the worker and the job offered.
- Considered within the context of risk management, fair recruitment fees and related costs paid by the employers are more cost efficient in the long-term than the cost of unfair recruitment. For example, if an unethical employment agency provides a worker that is not suitable for the company, then there will be additional costs for the company in repatriating the worker, recruiting a replacement worker, and possibly even fines if there has been any legal non-compliance or repayment of recruitment fees and related costs to the worker.
- Fulfilling global standards as established in the UNGPs and the General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs. These are globally endorsed standards positioning businesses as responsible actors.
- Implementing fair recruitment is in line with legal compliance. The vast majority of ILO member States have ratified Conventions No. 29 and 105 on forced or compulsory labour. This means forced labour is punishable as a crime in most countries around the world, and that companies found using it could face criminal prosecution.
- To be successful, companies must manage risk and their reputation in an environment where risk is not static and can emerge through the actions of the company itself, its suppliers and other actors. Allegations of forced labour or unfair recruitment present legal risks as well as serious threats to brand and company reputation and their standing in the community. By promoting and implementing fair recruitment, a company shows its respect of human rights, raises its credibility as a business and safeguards itself from criticism in the public eye. Furthermore, implementing fair recruitment and conducting due diligence provides the possibilities to foresee and manage risks and mitigate or prevent them from materializing.
- By using fair recruitment practices, companies create a fair management framework structured under one set of fair principles, endorsed by international standards and guidelines.
- Ensuring the dignity of employees, customers and clients, which increasingly demand high standards on social responsibility.
- Becoming a leading example and increasing credibility for clients, customers, communities and more.

To know more about the advantages of fair recruitment for businesses, see: WEC (2019). *Defining the Business Case: Ethical Recruitment*. Available at: [https://wecglobal.org/uploads/2019/07/WEC\\_Business-Case-Ethical-Recruitment.pdf](https://wecglobal.org/uploads/2019/07/WEC_Business-Case-Ethical-Recruitment.pdf)

<sup>2</sup> ILO (2019). The benefits of fair recruitment - Results of the impact study on the Nepal-Jordan corridor. Available at: [https://www.ilo.org/global/topics/fair-recruitment/publications/WCMS\\_750465/lang--en/index.htm](https://www.ilo.org/global/topics/fair-recruitment/publications/WCMS_750465/lang--en/index.htm)



## C. CHALLENGES FOR LARGE-, SMALL- AND MEDIUM- SIZED ENTERPRISES

Unfortunately, many challenges can be encountered, when impeding the implementation of recruitment practices. The absence of legislation, ineffective or poorly enforced legislation as well as the subcontracted structure of the global market for the recruitment of workers are some of the challenges that can be encountered. Except in the cases where a firm does its own recruiting, most employers of migrants contract an outside agent to do their recruitment, which is often due to the complexity of recruitment processes. The complexity and the possible lack of transparency in this recruitment process, the fees and difficult legal frameworks can hinder fair practices (ILO, 2015a).

### 1. Ineffective or poorly enforced legislation in countries of origin and destination

According to the General principles and operational guidelines for fair recruitment, appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.

However, legislations are not always effective, or can also be poorly enforced, leading to difficulties in implementing fair recruitment processes by businesses.

#### International standards

ILO conventions on a number of matters – forced labour, employment services and labour migration – can be the starting point for national legal framework to be properly developed and aimed at creating the right circumstances for fair recruitment. However, despite the existence of these international labour standards, principles and guidelines, it remains the responsibility of member States to ensure compliance with national regulations, including obligations that arise due to the ratification of relevant ILS.



Therefore, it is useful for businesses to understand the international standards in order to be compliant with the law and to respect human rights.

The ILO Private Employment Agencies Convention, 1997 (No. 181) and accompanying Recommendation (R188) set parameters for operating and regulating private employment agencies. The ILO Private Employment Agencies Convention, 1997 (No. 181), specified its purpose as “to allow the operation of private employment agencies as well as the protection of the workers using their services” (Article 2(3)). The Convention Guides Member States to establish clear policies, legislation and implementing mechanisms for effective registration and licensing of private employment agencies, reiterating the principle of no-fee charging of workers and jobseekers. Article 7 of Convention No. 181 stipulates, “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.” The Convention also encourages Member States to “establish and periodically review conditions to promote cooperation between the public employment service and

private employment agencies” (Article 13(1)) with the view to creating conditions that enable efficient matching of labour demand and supply, while also providing an avenue for ensuring the protection of jobseekers and workers, especially against abusive practices.

The Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), enabled ratifying States to indicate whether they aimed at “the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies” or at “the regulation of fee-charging employment agencies including agencies conducted with a view to profit” (Article 2).

The Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and its accompanying Recommendation (R035) emphasize the importance of combating abusive and fraudulent recruitment of workers as a critical part of the effort to prevent forced labour. The non-binding General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs (ILO, 2019) are intended to guide the activities of all stakeholders involved in recruitment. They set out the specific obligations of governments, enterprises and recruiters.

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, commits Member States to respect and promote principles and rights on freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. It makes it clear that these rights are universal, and that they apply to all people in all States - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers.

## Definition of forced labour

- According to the ILO Forced Labour Convention, 1930 (No. 29), forced or compulsory labour is “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”.

### Definition of recruitment fees and related costs

- The definition of recruitment fees and related costs is guided by international labour standards and should be read together with the ILO General Principles and Operational Guidelines for Fair Recruitment. As such, it recognizes the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.
- The definition identifies fees and related costs in recruitment practices. It is intended to support the development, monitoring implementation and enforcement of laws, policies and measures aimed at the protection of workers’ rights, including that workers should not to be required to pay for access to employment. It is also intended to support the delivery of effective regulation of recruitment practices, notably of public and private employment agencies, to combat non-compliance, to provide transparency of recruitment practices and enhance the functioning of labour markets.
- Recruitment fees include: a. payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment; b. payments made in the case of recruitment of workers with a view to employing them to perform work for a third party; c. payments made in the case of direct recruitment by the employer; or d. payments required to recover recruitment fees from workers.
- When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process: i. Medical costs: payments for medical examinations, tests or vaccinations; ii. Insurance costs: costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds; iii. Costs for skills and qualification tests: costs to verify workers’ language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing; iv. Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers; v. Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively; vi. Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation; vii. Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers’ employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.
- The recruitment fees and related costs considered under this definition should not lead to direct or indirect discrimination between workers who have the right to freedom of movement for the purpose of employment, within the framework of regional economic integration areas.<sup>3</sup>

Source: ILO (2019).

<sup>3</sup> This section is based on the work of the Responsible Business Alliance (RBA). For more information, see RBA (2020). Practical guide to due diligence on recruitment fees in international supply chains. Available at: <http://www.responsiblebusiness.org/media/docs/RBAPracticalGuideNoFees.pdf>

### **Quality national legislation and enforcement mechanisms**

The existence of quality legislation that prohibits and adequately punishes unfair recruitment, trafficking and forced labour is an essential component for fair recruitment. Employer and business membership organizations (EBMOs) should review whether their governments have ratified the key international standards promoting fair recruitment and also those prohibiting forced labour and trafficking (e.g. ILO Convention on Private Employment Agencies, 1997 (No. 181), ILO Convention No. 29 and the UN Protocol on trafficking) and engage and lobby with the government for national legislation in compliance with these standards. It is not uncommon for national laws to have been passed which only have a limited practical impact, and through limited social dialogue, because they do not properly cover all forms of forced labour or partially address recruitment issues by unscrupulous recruiters.

However, without effective enforcement mechanisms, even the most clearly defined recruitment-related legislation may do little in the way of establishing fair recruitment practices or progress in the eradication of forced labour when it is not properly enforced. A general lack of enforcement by the authorities can contribute to unethical behaviour by private employment agencies that operate legally and can encourage the operations of illegal recruiters. Furthermore, lack of financial and technical capacity and funding for enforcement activities hampers effective regulation of the industry.

Regulatory frameworks can also face challenges, such as corruption, in tackling illegal recruitment involving informal or unlicensed brokers. Where social dialogue structures are underdeveloped, this may further prevent the authorities from engaging in oversight of all areas of the labour market in which recruiters operate.

### **Differences between legislation in the country of origin and the country of destination**

Difference in legislation between countries of origin and destination can be challenging for businesses. Governments have the responsibility to ensure that recruited workers have all their rights respected in line with existing legislation and regulations. Countries of destination's governments should ensure that bilateral and/or multilateral agreements on labour migration are implemented effectively and include mechanisms for oversight of recruitment of migrant workers, are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards. When no bilateral or multilateral agreements are available, recruitment across international borders should respect the internationally recognized human rights including the fundamental principles and rights at work, and relevant international labour standards as well as any applicable national laws, regulations, and applicable collective agreements of the countries of origin, transit and destination.



### Approaches to regulating international recruitment by the government in the country of origin

Governments of some origin countries have demonstrated creativity and persistence in their efforts to regulate recruitment intermediaries. From Bangladesh to Ethiopia, Cambodia to Indonesia, common approaches include: registration and/or licensing systems that in order for a recruiter to enter the recruitment market require them to demonstrate: a certain level of annual income; the numbers of workers placed abroad annually; personal qualifications; deposit of a bond; a ban on charging recruitment fees and related costs to workers, or no more than a set limit; and denial of permission for a migrant worker to depart the country unless they can show a contract with their future employer that complies with required terms. A few origin countries seek to channel recruitment through the government. Others, such as the Philippines, have created entire agencies devoted to the registration, licensing and oversight of private recruitment agencies, and to monitoring and redressing the problems that migrants encounter in the recruitment process.

To learn more on how to apply fair recruitment practices in your business, see: Verité (n.d.). Fair Hiring Toolkit. Available at: <https://www.verite.org/help-wanted/>

## 2. Complexity of recruitment procedures and lack of transparency

The recruitment procedures are complex, especially when occurring across international borders. The complexity of the procedures and the lack of transparency can hinder fair recruitment and constitute serious challenges for businesses wishing to respect fair recruitment processes.

Labour recruitment is difficult to regulate because of the structure of the industry. The abundance of actors and instances in the recruitment process makes it hard to navigate for both the workers and the employers. In industries where subcontractors flourish, low barriers to entry, minimal capital requirements and a complex labour supply chain made up of subagents who are untouched by regulation create complex challenges for enterprises. The employer–recruiter contracting relationship sits in the middle of a complex network of subcontracting arrangements.

While some large companies recruit through internal human resource departments, low-wage workers in legal temporary labour migration programmes are more commonly hired through independent recruitment entities. The industry is made up of a web of moneylenders, notaries, brokers, and subagents in remote villages (some of whom are migrants themselves, recruiting for their own employer); recruitment firms in key cities of migrant origin countries and their counterparts in destination countries; and the multi-national agencies that manage most high-skilled recruitment. On arrival, some agencies hand the migrants over to their employer. Others function as staffing companies, leasing workers out to firms in the destination country while remaining the migrants' employer

of record (ILO, 2020a). The abuses perpetrated by unscrupulous labour recruiters—and others in the migration industry—are notorious. Whatever the limits set by law, recruitment fees and related costs are often much higher than the average annual income in the migrant's origin country, giving rise to a sub-industry of moneylenders offering loans at usurious rates. False promises are commonplace, ranging from misrepresentations about working conditions to outright lies about the existence of a job. In the worst cases— particularly, but not only, if the recruitment firm has ties to organized crime—it will use surveillance, threats and ultimately violence to control the workers it transports across borders. These violations, and the failure of mainstream efforts to control them, are doubly problematic. In the most immediate sense, they harm migrants directly. The debt that recruited workers have incurred to meet recruiters' demands for payment, their knowledge that their relationship with the recruiter will determine their access to work the following year, and their fear of the recruiter's power over their families at home combine to incentivize them to work without complaint no matter what they encounter on the job. In this sense recruitment abuse and employment exploitation are two sides of a coin: the debt and fear created by recruitment abuses are a principal reason why migrants put up with exploitation on the job. These coercive factors are compounded by immigration laws that tie most labour migration visas and work permits to a single employer, so a worker who is fired loses their right to remain in the country (ILO, 2020a).

### **Lack of transparency**

The work of unscrupulous recruiters can be difficult to unveil. Therefore, enterprises can deal with recruiters that seem to be ethical, but in reality, are not. This is why due diligence processes are important and will be explored later in this module. Global labour recruiters operate in a world that is half-light and half-shadow. Once an employer decides to recruit migrant workers from abroad for all or part of its workforce, recruiters offer functions that are useful to both the employer and the migrant. These include identifying, interviewing, and processing visa documents of potential workers, matching them with jobs abroad and helping them travel to their destination. These positive contributions to labour mobility can sometimes be eclipsed by the abuses that arise in the recruitment industry. Unscrupulous recruiters charge fees for every possible service related to migration, discriminate on the basis of gender and age, make false promises about the job on offer in the destination country to increase the amount that migrants are willing to pay, or lend money at usurious rates to cover these outsized expenses. This behaviour represents a business model in the industry that creates unfair competition to recruiters that comply with the law and can have a negative impact on the working conditions. The criminal end of the market is occupied by fraudulent actors who charge migrants for access to non-existent jobs, and organized criminals who may smuggle migrants to locations where they are forced to work without pay and prevented from escape by threat of violence (ILO, 2015a). Furthermore, the lack of transparency in the recruitment process can hide many unfair practices, including trafficking, forced labour, debt bondage, and more. For example, businesses can be affected by human trafficking in a number of important ways. Businesses may be implicated in human trafficking if their premises, products or services, for example, are used by traffickers for the purpose of trafficking – e.g. in the transport, tourism or hospitality

sectors. Businesses can also be indirectly linked to trafficking through the actions of their suppliers or business partners, including sub-contractors, labour brokers or private employment agencies. In this way, companies can be implicated if they source goods or use services that are produced or provided by trafficking victims. In both cases, although the link may not be intended or even known, a clear violation of human rights has occurred if exploitation is involved, including forced labour or forms of sexual exploitation, or if deception, threats or the use of force have been used (ILO, 2010).

### Debt bondage

Debt bondage is another way many workers end up in a situation of forced labour. Debt bondage exists when labourers (sometimes with their families) are forced to work in order to pay off their own debts or those they have inherited. Providing wages or other compensation to a worker does not necessarily indicate that the labour is not forced or compulsory.

Source: [ILO](#)

### 3. Illegal recruitment fees and related costs in the recruitment process and the high deployment model

The core income of many employment agencies around the world is derived from the service fee paid by the employer and potentially the recruitment fee paid by the worker for each deployment. The more deployments they conclude, the more income they generate. This means that regardless of the source of the income, recruitment firms are reliant on:

- Maintaining a steady turnover of new recruits;
- Ensuring swift and efficient deployment; and
- Generating sufficient overseas contracts with clients so that they can place their recruits in employment.

Arguably a model that is based on the volume of people who migrate creates a financial incentive for recruitment firms to mobilize as many people into migrating as possible, and is one of the main reasons why unethical and exploitative behaviour exists. With volume driving the business, recruiters lack an incentive to invest in fair recruitment practices that would make the rights of migrant workers central to their business. Illegal recruitment fees significantly increase the risk to workers of experiencing forced labour and debt bondage. The ILO found that the costs of coercion were approximately US\$21 billion, with the total amount of underpaid wages estimated to be US\$19.6 billion, with the remaining US\$1.4 billion attributed to illegal recruitment fees (ILO, 2014).

In certain national contexts where recruitment fees have not been banned, strong resistance remains from private employment agencies to the complete abolition of recruitment fees charged to workers. Some argue that a zero-recruitment fee is not commercially viable for many employment agencies. The underlying assumption is that



with zero recruitment fees, the costs to employers would rise and undermine the continuity of private employment agencies' business relationships with their clients. Their ability to compete in the sector is contingent on employers being willing to pay the additional costs involved. Beyond the argument for the commercial necessity of recruitment fees, some recruiters also believe that they are necessary to ensure that workers fulfil their contracts without absconding.

Moreover, governments face difficulties in restricting the amount of fees that can be charged to workers. Receipts that are submitted to the authorities may be falsified to hide the true amount they actually request from potential migrant workers. In other countries, recruiters are not even required to submit receipts, so unless a complaint is lodged, the authorities are not able to monitor what amounts have been charged by private employment agencies (PEAs).

Responsible businesses pay the recruitment fees required by labour recruiters. By implementing effective due diligence processes, private actors can ensure that the recruitments fee and related costs are not paid by workers.

### **The hidden cost of corruption**

Very often and wrongly the cost of recruitment process includes payments of bribes by and to various stakeholders, resulting from the intense competition among labour recruiters operating in a limited labour market. With the view to securing recruitment quotas, labour recruiters sometimes offer to cover employers' travel expenses for skills testing and selection of recruits in the country of origin (ILO, 2020a). Luxury accommodation and entertainment are often part of the offer. The funds for the kickback payments and employer travel expenses are built into the charges that agencies foist upon the low-skilled migrant workers as part of the "recruitment costs". The extent of the kickback and other payments to personnel of the employing company will also be factors in the amounts that migrant workers pay. Worker payments may be used to pay various local officials in origin and destination countries to process paperwork more quickly or to prevent deliberate delays (ILO, 2020a). There are kickback payments to "a range of government officials in both origin and destination countries to fraudulently approve a host of applications or facilitate discretionary decisions including, but not limited to, foreign worker quotas, demand set attestations, visas, medical certificates and work permits" (Freedom Fund and Verité, 2016).





## D. MAIN PRACTICES OF FAIR RECRUITERS

One additional challenge for businesses is identifying fair recruiters.

According to the General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs, labour recruiters should respect the applicable laws and fundamental principles and rights at work. Labour recruiters should comply with the law in the country of origin, the country of transit and the country of destination according to C181 (Arts 3 and 8); the ILO Declaration on Fundamental Principles and Rights at Work; the MLC, 2006 (Art. III); the CIETT Principles 1 and 6; IRIS Code Core Principle A; Verité Code of Conduct Tool 1; Dhaka Principles Core Principle B 23. Additionally, Labour recruiters acting across borders should respect bilateral or multilateral migration agreements according to C88, R83, C181 (Art. 8(2)); C189 (Art. 15(1)). By doing so, fair recruiters show their will to implement fair practices. However, the legal framework might not always be sufficient to ensure fair recruitment practices.

### Obligations of labour recruiters

According to the General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs, labour recruiters must:

- respect the applicable laws and fundamental principles and rights at work;
- respect human rights, including fundamental principles and rights at work, in compliance with international law and the law in the country of origin, the country of transit and the country of destination, and with international labour standards;
- respect bilateral or multilateral migration agreements between the countries concerned which promote human rights, including workers' rights;
- take steps to ensure that the conditions of work and living conditions into which workers are recruited are those that they have been promised.

The Guidelines are available at: [https://www.ilo.org/global/topics/fair-recruitment/WCMS\\_536755/lang--en/index.htm](https://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm)

Other means for fair recruitment comprise a focus on quality deployments, the absence of recruitment fees and voluntary regulations.

To know more on crossborder labour recruitment, see: Verité and ManpowerGroup (n.d.). *An ethical framework for crossborder labor recruitment: an industry/stakeholder collaboration to reduce the risks of forced labor and human trafficking*. Available at: [https://www.verite.org/wp-content/uploads/2016/12/ethical\\_framework\\_paper.pdf](https://www.verite.org/wp-content/uploads/2016/12/ethical_framework_paper.pdf)

## 1. Focus on quality deployments

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In many ways, fair labour recruiters operate similarly to other agencies and rely (in part) on the volume of their deployments. However, contrary to their unethical counterparts, they focus on the quality of deployments for the workers as well as employers. By selecting fair and ethical businesses as partners, they ensure the well-being of the workers they recruit. Fair labour recruiters aim at a better matching between workers and jobs and are therefore able to sustain long-term client relationships with overseas employers. As a precautionary measure, they may avoid certain sectors altogether that are notorious for the abuse of their workers and insufficient due diligence and monitoring mechanisms to protect them during their periods of employment.

## 2. No recruitment fees

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Another important characteristic that sets fair recruiters apart from unethical ones, is that they do not collect recruitment fees and related costs from workers. By operating in this way, they are best able to source the right candidate for the job vacancy. By taking the ability to pay out of the equation, fair recruiters can identify candidates based solely on their work experience and qualifications and thus provide more competent workers for employers. Their competitive advantage is the pool of qualified candidates that they can identify, and thus their ability to provide a better core service to the employers or foreign placement agencies that they work with.

Fair labour recruiters with zero-recruitment fee are able to identify more cooperative and responsible employers and thus provide better employment opportunities for workers. By refusing to work with employers or foreign placement agencies that insist on burdening the workers with recruitment costs, fair labour recruiters are essentially selecting employers who share a sense of social responsibility and who also prioritize the qualifications of workers. The selection of employers who support the zero-recruitment fee policy of fair recruiters is a preliminary part of due diligence for enterprises. Finally, by consolidating well-suited employer–worker relationships, recruiters may be able to reduce the risk of early termination of contracts.

In sum, while the volume of deployments still has an impact on the overall profitability of fair recruiters, their business model focuses more on higher-value deployments of more skilled and professional workers and to higher-value destinations.

### 3. Voluntary initiatives

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Voluntary initiatives are measures adopted by an industry, business association, employment agencies, an individual company or a multi-stakeholder initiative involving various actors, including civil society organisations in order to address unfair recruitment and forced labour (ILO, 2015a). In recent years, an array of voluntary private sector initiatives has emerged to improve working conditions in international labour migration. These initiatives are diverse in terms of their format, governance and monitoring frameworks, and the specific recruitment-related issues they address.

Code of conducts are voluntary initiatives that can drive ethical practices in employment agencies and enterprises. For example, in Cambodia, a Code of conduct for Cambodian private employment agencies was adopted in 2020, outlining the principles that must be upheld by private employment agencies in order to effectively and ethically manage recruitment, training and deployment of migrant workers within other countries' labour markets (ILO, 2020b). In Asia, the Viet Nam Association of Manpower and Supply, for example, urges its members to collect fees in accordance with law and policy; to provide complete information to workers on all fees; and to provide receipts. The Myanmar Overseas Employment Agencies Federation (MOEAF) has similar provisions in its own Code of Conduct. In response to a survey for this study, the MOEAF said that it was of the opinion that recruitment costs should include the costs of advertising jobs for new workers, the cost of organizing job fairs for overseas jobs, and the agency's staffing costs. The Sri Lanka Bureau of Foreign Employment has prepared a Code of Ethical Conduct for Licensed Foreign Employment Agencies/ Licensees that all licensed agencies are obligated to comply with (ILO, 2020a).

Many multi-stakeholders code of conducts or voluntary regulation mechanisms are also available, such as IRIS.

### The IRIS standard: A multi-stakeholder voluntary initiative

The International Recruitment Integrity System (IRIS) is a voluntary values-based accreditation and monitoring process for international labour recruitment that is being developed by the International Organization for Migration (IOM) in order to increase the integrity and transparency of the international recruitment industry and maximize the gains of labour migration. The IRIS responds to an international call for innovative yet complementary approaches to existing frameworks and activities for international labour recruitment.

The IRIS initiative involves four components:

1. IRIS aims to create a **public–private alliance** of governments, employers, recruiters and other partners committed to ethical recruitment.
2. IRIS will develop a **voluntary accreditation system** so that its members can be recognized as bona fide fair recruiters and distinguish themselves from unscrupulous intermediaries. Accreditation will be based on adherence to common principles for fair recruitment and a code of conduct that will include:
  - Adherence to the “employer pays” policy, whereby migrant workers are not charged recruitment fees;
  - No retention of workers’ passports or identity documents;
  - A requirement for transparency in members’ labour recruitment chains.
3. Job seekers will have better information regarding ethical recruitment through an **information portal and publicly available roster** of accredited IRIS members internationally.
4. IRIS will administer a **complaints and referral mechanism** to assist victims of unethical or illegal recruiters to file grievances with the appropriate authorities.

### Self-regulation mechanisms

Leading private employment agencies and their associations have developed mechanisms of self-regulation at the national level that promote good business practice and reinforce their status as key players in the labour market. Self-regulation is seen as complementary to the efforts of national government legislators and law enforcement agencies to protect workers’ rights, and to balance the interests of the PEAs in facilitating employment. Regulation, according to these associations, is seen as ensuring that their members offer their services in the interests of their clients while supporting overall national development goals and improving the functioning of the labour market. However, self-regulation mechanisms should not serve as tools to restrain competition and create unnecessary burdens for the agencies.

### The Code of Conduct of the World Employment Confederation

Examples of voluntary compliance schemes include, amongst other, the Code of Conduct of the World Employment Confederation. The aim of the World Employment Confederation's Code of Conduct is to set out the acceptable standards of professional practices to which the employment industry is committed and expected to operate. It has been conceived as an instrument to differentiate the bona fide, ethical employment industry from rogue traders. It lays out ten guiding principles for an ethical business with compliance and complaints mechanism, providing a sound framework about responsibilities at the different levels, and outlining a clearer procedural path for complaints (WEC, n.d.). It requires members to respect all relevant legislation and laws; the principle of providing services free of charge to workers; the principles of transparency, diversity, respect for workers' rights including health & safety, and confidentiality. Also, the World Employment Confederation follows and adheres to a range of international standards, including the UN principles on Business on Human Rights, the UN Global Compact, and the ILO Declaration on Fundamental Principles and Rights at Work. The national federations' members of the World Employment Confederation confirm these principles in their national codes of conduct or code of ethics. (WEC, n.d.).

Private employment services play an essential role in improving the functioning of the labour market. By sourcing candidates and job vacancies, matching supply and demand of labour and designing workforce solutions, they act as a stepping stone to employment, increase labour market participation and diversity, turn available work into job opportunities and further the inclusiveness within the workplace. Being aware of this important economic and social role, the private employment services industry has adopted, for many years, self-regulation mechanisms that complement statutory regulation in place. As the trade association representing private employment services at the global level, the World Employment Confederation has been playing a leading role in continuously improving the industry's quality standards and strengthening self-regulation principles (WEC, n.d.).



## TOPIC 2: THE PRIVATE SECTOR AND FAIR RECRUITMENT IN PRACTICE

### A. WHAT CAN THE PRIVATE SECTOR DO TO PROMOTE FAIR RECRUITMENT?

Every actor in the world of work has its share of responsibility to combat unfair recruitment and forced labour. Governments have a crucial role to play, but new initiatives have been developed in cases in which governments were unwilling or unable to take action to combat abuses, or where complex problems require multi-stakeholder action. While national authorities are responsible for combating trafficking in persons within their jurisdictions, employers who seek to avoid the moral, legal and reputational risks of actual or perceived involvement in forced labour can also help to address recruitment and forced labour abuses.

With the approval of the UN “Protect, Respect and Remedy” Framework and the endorsement of the UN Guiding Principles on Business and Human Rights, the updates of the [ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy \(MNE Declaration\)](#) and [the OECD Guidelines for Multinational Enterprises](#), there is now broad international consensus on the complementary — but distinct — responsibilities of business in ensuring fundamental labour rights in the operations of businesses and enterprises. The corporate responsibility and business conduct to respect human rights mean acting with due diligence to avoid infringing on the rights of others and addressing harms that do occur. On the one hand, governments have the duty to adopt, implement, and enforce national laws and regulations, and to ensure that the fundamental principles and rights at work that ratified international labour Conventions protect are applied to all workers (ILO, 2018). On the other hand, businesses have a responsibility to respect human and labour rights in their operations and supply chains and to comply with national law wherever they do business. Business enterprises should carry out human rights due diligence in order to identify, prevent, mitigate, and account for how they address their adverse human rights impacts (ILO, 2018).

#### 1. Business participation in social dialogue

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Employer and business membership organizations (EBMOs) are entities that promote the collective interests of business, across sectors, irrespective of enterprise size. The core business of representative EOs is to advocate, on behalf of the business community, for policy and regulatory change that will ensure an economic environment conducive to enterprise creation and development (ILO, 2013a). A national level EOs will concentrate on lobbying government on a full range of economic and social policy issues that impact on members, such as employers’ contributions to social security schemes, taxation or

labour legislation. They will therefore influence public policies and government plans (ILO, 2013a). Through social dialogue, EOs and businesses can aim at improving regulatory frameworks conducive to labour mobility, while reducing exploitative recruitment practices in international labour migration. Businesses are frequent and important users of migration systems. Their experience with the practical workings of immigration policies, as well as knowledge of emerging market and staffing trends, can supply important information to governments and international organisations and enhance migration governance. Thus, the participation of the private sector in social dialogue is essential to the development of well-regulated migration systems (IOE, n.d.(a)).

In line with the autonomy of social partners, the social partners should jointly promote decent work and fundamental principles and rights at work for all workers, including in domestic and global supply chains (ILO, 2018). True social dialogue with the full participation of employers' and workers' representatives is essential to the development and implementation of effective policies to eliminate human trafficking and forced labour in the recruitment process (ILO, 2018). In this context, the role of social partners is essential in the development of national policies as well as to monitor and eliminate forced labour as well as worker-paid recruitment fees and related costs as well as forced labour.

It is not uncommon for governments to pass a law promoting fair recruitment or against forced labour and then consider they have complied with their obligations without devoting any resources to ensuring that this law is properly understood and enforced. This is because action against forced labour and trafficking is rarely a political priority for governments. Those affected are normally marginalised or powerless, and their exploitation usually takes place in under-regulated sectors of the economy where it can be easily ignored. Through social dialogue, EBMOs and workers' organizations can work conjointly to hold governments accountable. For example, by using the ILO procedures regarding the enforcement of C029, employers' and workers' organizations can put pressure on governments to eliminate forced labour. Criticism from the ILO for failing to fulfil obligations under Convention No. 29 can provide the impetus required for a government to take the necessary action needed to eradicate forced labour in their country (ITUC, 2009).

### **The International Organisation of Employers (IOE)**

The IOE is the sole representative of business in social and employment policy debates taking place in the ILO, across the UN, G20 and other emerging forums. Their vision is, through social dialogue, to create a sustainable economic environment around the world, in collaboration with their members and partners, that promotes free enterprise and is fair and beneficial to both business and society. This includes fair recruitment practices (IOE, n.d. (b))<sup>4</sup>.

<sup>4</sup> <https://www.ioe-emp.org/>

## 2. Self-regulation mechanisms and risk assessments

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### Self-regulation mechanisms and internal policies

Having a clear and transparent internal policy, setting out the measures taken to engage in fair recruitment, prevent forced labour and trafficking is the first step to implement fair practices. By clarifying that the policy applies to all enterprises involved in a company's supply chains is necessary for due diligence. Such policy can contain elements guiding the recruitment rules such as not charging recruitment fees to workers, ensuring that all workers have written contracts, in a language that they can easily understand, specifying their rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour. A policy ensuring due diligence processes is also key for processes implementing fair recruitment practices.

Corporate social responsibility (CSR) and responsible business conduct are commonly used as the broader terms for enterprises' and smaller companies' voluntarily self-regulating social, environmental, or economic issues (ILO, 2018). Self-regulation mechanisms can promote good business practices and reinforce status as ethical key players in the labour market, in combatting forced labour and unfair recruitment. Self-regulation is seen as complementary to the efforts of national government legislators and law enforcement agencies to protect workers' rights, and to balance the interests of the employers and businesses in facilitating employment. Amongst self-regulation mechanisms are due diligence and social compliance audits, which will be explore below.

Many ILO's standards and principles are addressing forced labour and the role of enterprises. The [ILO Helpdesk for Business on International Labour Standards](#) is available for businesses to address such issues. The [Handbook for Employers & Business: Special Action Programme to Combat Forced Labour](#) is also a crucial document for employers and businesses in order to tackle forced labour.

Additionally, other initiatives, such as the [UN Global Compact](#), can provide guidance on how to align business strategies and operations with the Ten Principles on human rights, labour, environment and anti-corruption and take strategic actions to advance broader societal goals, such as the UN Sustainable Development Goals, with an emphasis on collaboration and innovation. Initiatives such as the UN Global Compact's Ten Principles are a good starting point to develop and implement self-regulation mechanisms and risks assessment within a business's policies and strategies.



## The UN Global Compact

The UN Global Compact aims to mobilize a global movement of sustainable companies and stakeholders to create a world where human rights are upheld. Therefore, to make this happen, the UN Global Compact supports companies to do business responsibly by aligning their strategies and operations with the Ten Principles on human rights, labour, environment and anti-corruption, and take strategic actions to advance broader societal goals, such as the UN Sustainable Development Goals, with an emphasis on collaboration and innovation.

### UN Global Compact's 10 Principles

#### *Human Rights*

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

#### *Labour*

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

#### *Environment*

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

#### *Anti-Corruption*

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Consult the UN Global Compact: <https://www.unglobalcompact.org/what-is-gc/mission/principles>

Furthermore, the [UN Guiding Principles on Business and Human Rights](#) and the ILO's [General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs](#) provide the overarching framework for companies to start addressing risks to human rights and recruitment, in addition to their broader and more conventional business risk assessments. For example, some companies have begun to integrate risk assessments specifically related to forced labour and trafficking in the context of complex business relationships, and to examine these risks through the prism of recruitment.

To learn more on businesses' actions in fair recruitment, see: IHRB (n.d.). Six Steps to Responsible Recruitment. Available at: <https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment>

### Risk assessments

Risk assessments are part of a larger set of initiatives that businesses can take in order to tackle unfair recruitment and forced labour. Amongst these, social dialogue, self-regulation mechanisms such as due diligence and social compliance audits are effective tools to address some of the main issues emerging from the recurrent problems associated with forced labour and unfair recruitment. Identifying the areas where there is risk of unfair recruitment practices and forced labour, and take appropriate remedial measures by monitoring carefully the agencies that provide contract labour, especially across borders and blacklisting those known to have used abusive practices and forced labour are examples of self-regulation mechanisms.

#### What are risks and risk assessments within the context of recruitment?

- **Risks** are events that might get in the way of a desired goal or objective.
- **Risks to fair recruitment** are events that might get in the way of meeting fair recruitment standards.
- **Risk assessments** help a company to align management actions, employee commitment and actions, and organizational resources (time, money, materials and people) with company objectives.

## B. FAIR RECRUITMENT AND DUE DILIGENCE

Enterprises should respect human rights when recruiting workers, wherever they operate and independently of the abilities and/or willingness of States to fulfil their human rights obligations. Enterprises should employ **DUE DILIGENCE** assessments of recruitment procedures and should address adverse human rights impacts with which they are involved.

Companies, regardless of their size or location, have a responsibility to respect human rights, including labour rights, meaning that they should avoid infringing on the rights of others. This responsibility could be respected by carrying out human rights and fair recruitment due diligence to identify, prevent and mitigate actual and potential adverse impacts and account for how enterprises address their impacts on human rights. This due diligence should address adverse human rights impacts that business enterprises may cause or contribute to through their own activities, or which may be directly linked to

their operations, products or services as a result of their business relationships (including through their participation in global supply chains). The third core principle of the “Protect, Respect and Remedy” Framework for business and human rights is to ensure that victims enjoy access to effective judicial and non-judicial remedies and to appropriate grievance and dispute settlement mechanisms (ILO, 2015b).

## 1. What is due diligence?

### Definition of due diligence

An enterprise’s ongoing process aiming to identify, prevent, mitigate and account for how it addresses the human rights impacts of its own activities, including through recruitment or those impacts that may be directly linked to its operations, products or services due to its business relationships.

Enterprises and their suppliers have a responsibility to take concrete steps to eliminate unjust recruitment practices and forced labour through their hiring practices. Enterprises may be enabling forced labour inadvertently through their own recruitment processes. Due diligence for fair recruitment practices is therefore essential.

According to the [UN Guiding Principles on Business and Human Rights](#) (2011), in order to meet their responsibility to respect human rights, including fair recruitment practices, business enterprises can implement policies and processes appropriate to their size and circumstances, including:

- A policy commitment to meet their responsibility to respect human rights and fair recruitment,
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights during recruitment and their operations,
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute through recruitment and their operations.

According to the OECD (2018), due diligence is preventative and involves multiple processes and objectives to identify human rights adverse impacts, prevent and mitigate them, track implementation and results and communicate on how human rights adverse impacts are addressed with respect to the enterprises’ own operations, their supply chains, the recruitment processes and other business relationships.

## 2. What does it mean in practical terms for businesses?

The exercise of **DUE DILIGENCE** aims for employers, labour contractors and subcontractors to promote the compliance of the standards of fair recruitment, and to prevent the services of recruiters who engage in abusive conduct and aiming that the enterprise’s operation is free

from forced labour. Due diligence is applicable to all types of businesses in the recruitment process and in some cases, it can be an integral part of regulation and enforcement. Due diligence processes can be applied by any types of businesses, regardless of size. When enterprises are not practising direct recruitment, they should engage workers only through compliant labour recruiters, including public employment services and fair private employment agencies that fully comply with the legal standards. Where it is not feasible to verify directly the conduct of all the parties involved in recruitment, there should, at a minimum, be a contractual obligation requiring labour recruiters to work with third parties operating in accordance with legal requirements, and the [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#) (2018).

### **General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs: The responsibilities of employers to ensure fair recruitment practices**

- Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker.
- 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.
- Employment contracts 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 which the worker can understand and 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.
- Worker's informed consent to the terms of the contract should be obtained without deception or coercion.
- Employers should provide or facilitate effective access to grievance and other dispute resolution mechanisms in cases of alleged abuses in the recruitment process, and to appropriate remedies.
- Access to grievance and other dispute resolution mechanisms for workers should be available to those who may have suffered abusive treatment in the recruitment process, and in cases where abuse is found to have occurred, employers should provide or facilitate effective access to appropriate remedies. They should not interfere with or restrict workers' efforts to attain appropriate remedies either judicial or non-judicial.
- Employers should provide all workers, whatever their employment status, with the protection provided for in labour law and international labour standards as concerns recruitment.

- Workers may be recruited and employed under different kinds of relationships with the employer, but employers should ensure that these principles and guidelines apply to all workers recruited in all situations.
- Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected in the recruitment process.
- Employers should ensure that their recruitment processes do not require jobseekers and/or workers, in particular migrant workers, to renounce their rights to join and form workers' organizations and to bargain collectively.
- Employers should not resort to labour recruiters or to temporary work agencies to replace workers who are on strike.
- Recourse to the use of labour drawn from outside the undertaking to replace workers on strike entails a risk of derogation from the right to strike, which constitutes a serious violation of freedom of association.
- Employers should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin.
- Employers' permission should not be required for migrant workers to terminate or change employment, or to leave the country if the worker so desires, taking into account any contractual obligations that may apply.

### Due diligence: a dynamic process

Due diligence is dynamic. Due diligence processes are not static, but ongoing, responsive and changing. Due diligence includes feedback loops so that the enterprise can learn from what worked and what did not work. It does not shift responsibilities, is informed by engagement with stakeholders and involves ongoing communication (OECD, 2018). For due diligence purposes, an enterprise, whatever the size, should have in place a procedure for evaluating other parties involved in the recruitment process in order to respect human rights and prevent forced labour. The [UN Guiding Principles on Business and Human Rights](#) (UNGP) make clear the corporate responsibility to respect human rights and fair recruitment. The process of human rights due diligence, Principle 17 of the UNGP, recommends:

- Build understanding of human rights international and national laws and principles as well as the human rights situations within the business' environments;
- Assess and map potential and actual human rights impacts;
- Integrate and act on the findings within the practices of the business;
- Monitor the responses;
- Communicate on how the impacts are addressed;
- Move towards ongoing due diligence. This process needs to be ongoing, given that human rights risks like forced labour and slavery inevitably change over time.

**The UN global compact and Verité identified the following steps to detect and prevent unfair recruitment practices, such as forced labour and recruitment fees and related costs:**

- **Strengthen company policies** to explicitly prohibit fee-charging to workers and set out clear protections for migrants, recognizing the vulnerabilities they face in recruitment, migration, employment and repatriation. These policies should also apply to suppliers, sub-contractors and business partners, including recruitment agencies.
- **Conduct human rights risk assessments** that include the issues of fees, debt bondage and forced labour. Require suppliers to undergo compliance assessments before establishing business relationships and ensure that supply chain due diligence and monitoring address fee-charging. Train compliance staff to better detect related abuses.
- **Inform all business partners of company expectations** related to recruitment and hiring, recruitment agencies and migrant workers. Conduct awareness raising and training throughout the supply chain, prioritising at-risk suppliers in countries where workers are most vulnerable.
- **Promote direct hire of workers** across the supply chain to ensure greater transparency and accountability for recruitment, hiring and other human resource functions. Where recruitment agencies are used, engage only those that are reputable, licensed by the competent authority and adhere to the highest ethical standards. Take proactive steps to screen agencies before hiring them and establish procedures for managing and monitoring them afterwards.
- **Provide anonymous, confidential opportunities for workers** to confirm whether or not they have been charged fees at any point during recruitment, migration and job placement.

Source : UN Global Compact (2015). <https://www.unglobalcompact.org/library/3671>

In order for due diligence processes to be tailored for fair recruitment, companies, whatever the size, should:<sup>5</sup>

- Embed responsible business conduct into policies and management systems: embedding “No-fees” requirements. Companies of all size should adopt a clear policy on non-payment of recruitment fees by workers that can be communicated internally and to all business partners recruiting and employing workers.
- Identify and assess adverse impacts in operations, supply chains and business relationships: in due diligence processes related to fair recruitment, it is necessary to identify where migrants are being hired in supply chains, how they have been recruited and the costs they are likely to have incurred. Monitoring and auditing, based on an initial risk assessment are necessary for companies to target workplaces, labour and recruitment agents where the risks of workers paying recruitment fees are highest.
- Provide for or cooperate in remediation when appropriate: the elimination of fee-charging and exploitative actors from the recruitment process is the ultimate aim, but

<sup>5</sup> This section is based on the work of the Responsible Business Alliance (RBA). For more information, see RBA (2020). Practical guide to due diligence on recruitment fees in international supply chains. Available at: <http://www.responsiblebusiness.org/media/docs/RBAPracticalGuideNoFees.pdf>

where a worker is found to have paid recruitment fees and/or other related costs, the worker must be reimbursed as soon as possible.

- Cease, prevent or mitigate adverse impacts: moving to no-fees recruitment requires a consistent communication about a no-fees policy with suppliers by all company staff who engage with them. Engagement with suppliers should include making the case for no-fees recruitment so they understand the commercial and policy reasons for the change. Implementing a no-fees policy also involves engaging with intermediaries in the entire recruitment chain including labour agents, employment agencies and sub-agents.
- Track implementation and results: when measures have been implemented to deliver remediation and to enhance prevention with suppliers, recruiters and other stakeholders, the next step is to track the progress of these actions, including monitoring changes in recruitment practices to ensure that the risk of future fee payments is minimized; verifying that repayments have been completed in accordance with repayment plans; and conducting ongoing monitoring to make sure that any additional costs of recruitment incurred by employers are not being passed on to workers.

### Elements of due diligence in fair recruitment processes

1. Developing an internal policy to apply due diligence processes
2. Determining the risks of human rights violation in the recruitment processes
3. Responding to these risks by taking action and addressing the risks
4. Monitoring the situation
5. Remediating to any other risks emerging from the recruitment process.

### Due diligence toolkit for fair recruitment

A toolkit on due diligence for fair recruitment for businesses and employers is available here!

Consult it to increase your knowledge and technical capacities regarding applying due diligence processes in your business environment.

You can consult it here: <https://flbusiness.network/>

According to the ILO's [General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs](#), “enterprises may work to develop schemes that drive professional recruitment standards. These schemes should be subject to regular monitoring and evaluation. Industry-led initiatives should complement and be consistent with government enforcement activities and regulations covering the recruitment process.” Therefore, social compliance audits to ensure fair recruitment and decent work can be a useful step in the right direction for a business to be part of the solutions in addressing forced labour.

**Limits of social compliance audits**

However, social compliance audits have their limits. For example, because the path of social audits is typically built around a product supply chain rather than a 'labour supply chain', audits tend to exclude some of the most vulnerable workers within the supply chains. While audits tend to look only at workers on the books, the most exploited workers tend to be employed through complex labour-subcontracting arrangements (Lebaron and Lister, 2015).

**3. Voluntary compliance schemes**

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Joining and applying voluntary compliance schemes is helpful to ensure thorough due diligence process for fair recruitment. Voluntary compliance schemes all have in common a process of checking for conformity against standards. They vary in their formality, the parties involved in their operation (including public authorities) and the roles played by those parties, the consequences of their results, and other features (ILO, 2013b).

**4. Access to effective remedy**

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According to the UN Guiding Principles on Business and Human Rights, "States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy."

Remedy means restoring the situation of a migrant worker whose rights have been based or impacted during the recruitment process to situation they would have been in had the impact not occurred. However, prevention is the best course of action to prevent negative impacts from recruitment processes. Remediation is what is done to "make things right" with migrant workers that have been negatively impacted during the recruitment process (soon available at: <https://filbusiness.network/>)

Effective grievance mechanisms play an important role in the corporate responsibility to respect human rights and fair recruitment. Therefore, company-level mechanisms should also operate through dialogue and engagement rather than the company itself acting as adjudicator of its own actions (OHCHR, n.d.).

Even where institutions operate fairly, adverse human rights impacts may still result from a company's activities and victims must be able to seek remedy. As established in the UN Guiding Principles on Business and Human Rights (2011): "To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted."



### Obstacle to remedy for migrant workers

Nonetheless, migrant workers often face difficulties in gaining remedy. Many migrant workers are met with challenges in accessing national courts or labour tribunals, or non-judicial grievance mechanisms such as publicly funded mediation services. At company level, migrant workers often do not have access or have trouble accessing grievance mechanisms. This is because there is often a lack of awareness among migrant workers of their right to lodge complaints regarding their working conditions. They also might be deliberately misinformed or denied access to worker representatives who could advise them on how to access grievance mechanisms, both judicial and non-judicial (soon available at: <https://flbusiness.network/>). Cultural and language barriers may also play a role in a lack of access to remedy. Migrant workers may not feel as empowered to communicate in a different language or they may not exactly know how to behave confidently in a different cultural context. In some cases, migrant workers may fear discrimination, intimidation or any other forms of retaliation such as losing their jobs for lodging complaints. Women migrants may face additional obstacles (soon available at: <https://flbusiness.network/>).

### What businesses can do to provide effective access to grievance mechanisms

There are two ways for businesses to offer effective access to grievance mechanisms to migrant workers (soon available at: <https://flbusiness.network/>):

#### 1. Mapping and working with external remediation processes.

State-led remediation processes or processes from third-party institutions may provide alternative channels for migrant workers to raise complaints.

#### 2. Establishing effective operation grievance mechanisms.

As part of the due diligence process, a company should establish an operational company-level grievance mechanism for migrant workers in order for them to lodge a complaint without fear of retaliation. The specific design of such a process is up to the company itself. However, it is important that the mechanism is effective in providing remedy and include the following characteristics:

#### Effectiveness criteria for non-judicial grievance mechanisms

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

**Operational-level mechanisms should also be:**

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances.

Source: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

To know more about remediating worker paid recruitment fees, see: Institute for Human Rights and Business (2017). *Responsible Recruitment: Remediating Worker-Paid Recruitment Fees*. Available at: <https://www.ihrb.org/focus-areas/migrant-workers/remediating-worker-paid-recruitment-fees>

### 3. Due diligence and fair recruitment practices in supply chains

Covering virtually all sectors of the economy, labour recruiters have great potential for promoting overseas employment opportunities. Nevertheless, challenges still persist when it comes to ensuring fair recruitment practices, protection of migrant workers' rights and their protection from abusive migration practices in supply chains.

#### What are supply chains?

"A broad range of terms exist [...] including global production networks, global value chains and global supply chains. All of these terms focus on the same basic issues of cross-border production and trade, but with slightly different perspectives.

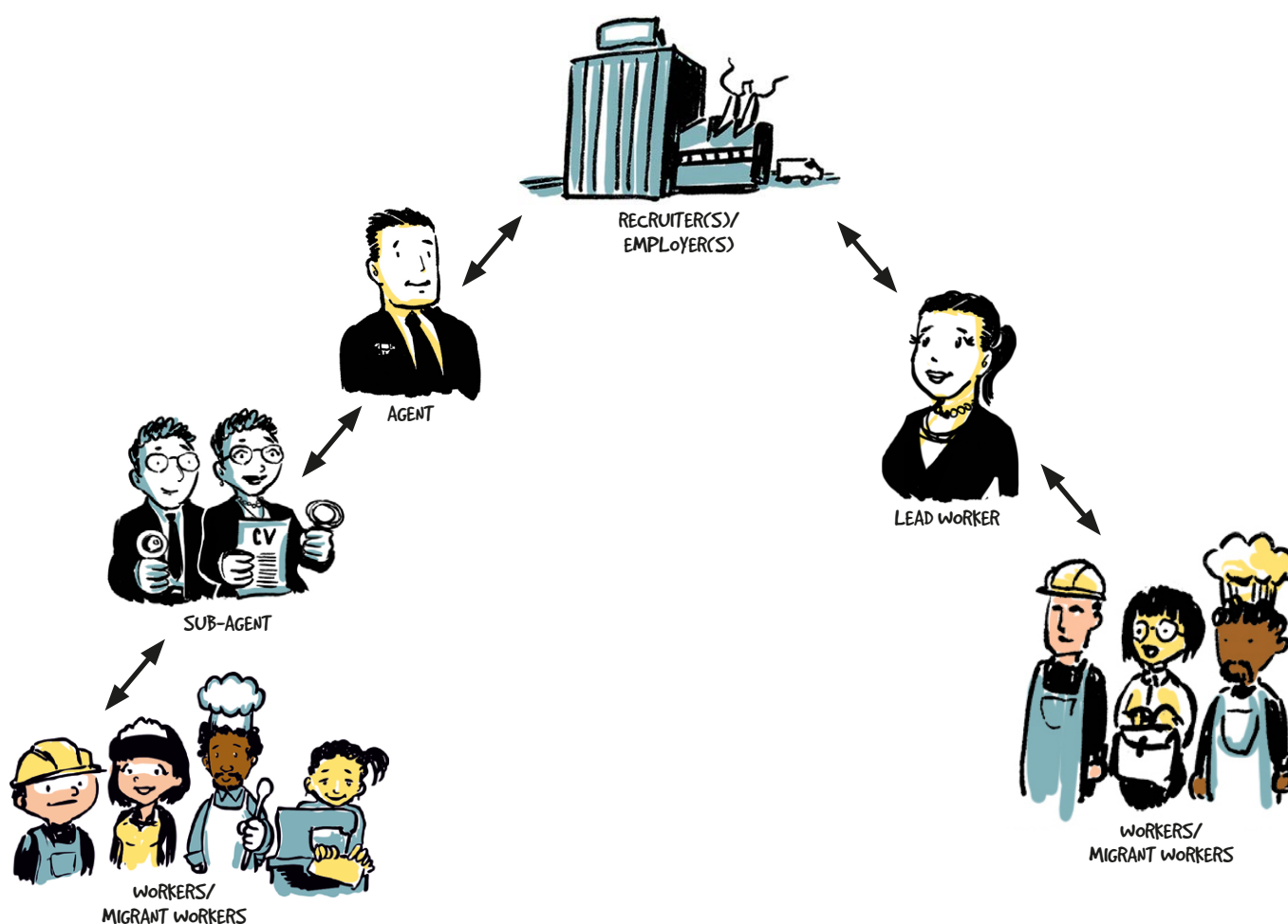
[...] the term "global supply chains" refers to goods and services that cross international borders for consumption or as inputs for further production." (Alliance 8.7, 2019).

Employers, including SMEs or MNEs, must comply with the laws and regulations of the countries in which they operate. Some businesses should also respect any contractual obligations entailing compliance with the codes of conduct of their business partners. The responsibility to respect human rights requires business enterprises of any size, including multinational enterprises, to avoid causing or contributing to adverse human rights impacts

through their own activities through the supply chain, and to seek to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services by its business relationships.<sup>6</sup>

Fair recruitment must be implemented along a business's supply chain. Therefore, due diligence processes should also include contractors and sub-contractors, through means such as inspections and inquiries about the personnel they use from manpower outsourcing agencies in destination countries - and should be held legally responsible for non-fair and unethical practices. Manpower outsourcing agencies in turn need to carry out due diligence on organizations that hire migrant workers from them (ILO, 2016). The ILO fair recruitment guidelines state that, "it is necessary to ensure that the responsibilities of the temporary employment agency and of the user enterprise are clearly defined, for the protection of the workers, of the employment agency and of the user enterprise."

To know more on how to protect workers' human rights in supply chains, consult the responsible sourcing tool at: <https://www.responsiblesourcingtool.org/>



<sup>6</sup> United Nations Guiding Principles on Business and Human Rights, principle 13 and as described in the OECD Guidelines for Multinational Enterprises.

#### 4. Private compliance initiatives (PCIs)

As part of their responsibility to respect human rights, companies have increasingly accepted responsibility for compliance, including in their supply chains. Many have established voluntary monitoring mechanisms to promote compliance by all entities that comprise their business enterprises, as well as by their business partners, with the commitments of those enterprises. They were first established in labour-intensive productive sectors in countries, particularly in the developing world, that lacked effective labour law compliance mechanisms that could provide assurances to reputation-sensitive global enterprises.

All PCIs must, first and foremost, establish standards against which enterprise performance can be measured. These are often based on the standards invoked by the ILO Declaration on Fundamental Principles and Rights at Work and, moreover, usually require business enterprises and their suppliers to comply with national laws (ILO, 2015b).

#### Types of PCI

**Self-assessment (management systems):** to entrench the commitments made in their policies and activities, companies establish management and control systems to ensure that business entities can achieve their objectives, including compliance with public or private (as well as national or international) workplace norms. When acting as a buyer, a company may require its suppliers to carry out a self-assessment and provide assurances that they are complying with legal standards and fair recruitment processes. This can be carried out by an individual company on its own or by participating in a sectorial initiative that is relevant to the business entity in question.

**Auditing – Internal and external:** This requires the collection, analysis, and reporting of data on compliance indicators to ensure that established standards are being met. Auditing initiatives use verifiable data to ascertain whether or not compliance has been achieved. International buyers can require their suppliers to undergo an external audit to verify their compliance in fair recruitment standards.

**Due diligence and impact assessments:** As required under the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprise, due diligence is a system of management. In that regard, companies are now assessing how their operations affect the human rights of their stakeholders, including workers and their representative organizations (ILO, 2015b).

### C. ILO PILOT INTERVENTIONS TO CREATE FAIR RECRUITMENT CORRIDORS

This Integrated Programme on Fair Recruitment (FAIR) is a project launched by the ILO in 2015 to contribute to the promotion of fair recruitment practices globally and across specific migration corridors. It aims to reduce deceptive and coercive practices during the recruitment process and violations of fundamental principles and rights at work (as well as other human and labour rights), through increased safe migration options, effective regulation of public and private employment agencies, and holding unscrupulous actors accountable for violations.

**The project has the following three objectives:**

- Establishing fair recruitment corridors to prevent exploitation of migrant workers;
- Providing migrant workers with access to reliable information and services;
- Disseminating global and national knowledge to the media about recruitment and engagement.

**The Jordan Case Study (ILO, 2019)**

In collaboration with Better World Jordan, the FAIR project is currently implementing a pilot intervention model for the elimination of deceptive and coercive recruitment practices in the apparel industry in Jordan, thus reducing the vulnerability of migrant workers to forced labour. The aim of this pilot intervention is to foster fair recruitment practices between Nepal and Jordan and to demonstrate that fair recruitment is possible and benefits both employers and workers.

**Project outcomes:**

1. Collaborating with the Governments of Nepal and Jordan to promote principles of fair recruitment;
2. Engaging with local stakeholders in the pre-departure phase to **DEVELOP AN APPAREL SKILLS TRAINING PROGRAMME IN NEPAL** in response to the growing demand of Jordanian factories;
3. **COLLABORATING WITH PRIVATE EMPLOYMENT AGENCIES THAT HAVE A DEMONSTRATED MODEL OF FAIR RECRUITMENT**, to explore replication of those models to recruitment in the garment industry;
4. **DEVELOPING AWARENESS-RAISING SESSIONS FOR FACTORIES IN JORDAN'S APPAREL INDUSTRY** on the benefits of adopting a fair recruitment model;
5. **ENHANCING THE CAPACITY OF THE TRADE UNIONS** so as to improve the organizing of migrant workers.

**Interim achievements:**

Despite a number of challenges in relation to establishing initial contact and building trust with prospective jobseekers at the local level – as well as to challenging the status quo in order to move towards a fair recruitment mode – as of March 2017 over 160 workers have been recruited in accordance with the ILO's General Principles and Operational Guidelines for Fair Recruitment. The goal is to increase the number of fairly recruited workers each month. Throughout the project the ILO maintains regular contact with workers, engages with their supervisors, and conducts quarterly learning sessions with participating factories. The engagement of additional employment agencies that have expressed interest in moving to a fair recruitment model is a welcome development. Notably, the governments of Nepal and Jordan signed a bilateral labour agreement in October 2017 that covers matters such as working hours, insurance, rights and recruitment provisions.

## Results of the Impact Assessment

The impact evaluation confirms that a programme of fair recruitment that includes screening, the elimination of recruitment fees and pre-departure training on pay, hours and working conditions is feasible and produces better outcomes for workers and, potentially, for factories than conventional practices.

The assessment has recorded the following as the positive impact of fair recruitment against the conventional recruitment model:

- Fair Recruitment increases workers' voice and well-being (through better understanding of the terms of their contracts and more control over working conditions);
- Zero recruitment fees benefit workers and employers;
- Fair Recruitment fosters an improved working environment;
- Fair Recruitment positively impacts performance at work.

While commonly emphasized in the human trafficking literature, control of official documents is not a significant factor for Jordan. All interviewed migrants had control of their official documents unless documents were taken for the purpose of securing work and residency permits.

However, the elimination of recruitment fees contributed significantly to the improved outcomes for migrants, indicating that recruitment fees in and of themselves are a factor whether or not they contribute to debt. Fees may contribute to a sunk cost fallacy. Once fees are paid, migrants may feel that they must migrate because of the financial investment made.

Pay deception is also significant for workers' wellbeing. In global labour markets, factories who control access to jobs have significant leverage over prospective employees. Recruitment fees are one mechanism for exploiting that power and extracting rents from workers.

Fair recruitment improved contract understanding, reduced contract deception, reduced recruitment fees and screened for the qualities in migrants that improve firm performance. These elements of fair recruitment proved to have an array of positive benefits for migrants and these benefits translated into improved firm performance as measured by reaching the production target, days absent, days late and thoughts of quitting.

Interestingly, exploitative behaviours such as collecting recruitment fees and deceiving workers about the contract are associated with poorer firm performance across many dimensions. Migrants who do not pay fees and understand the terms of their contract before making the decision to migrate are more likely to reach the production target and less likely to be late to work or think about quitting. Further, the screening conducted by the fair recruiter increased the probability that a migrant would have the traits associated with higher productivity and reduced thoughts of quitting.

There is also some evidence that fair recruitment developed resilience in migrants and actually had a positive impact on the overall work environment. Fairly recruited workers are more able to voice complaints or suggestions, less likely to engage in conflict and less likely to be sexually harassed.

## TOPIC 3: SUPPORT TO THE PRIVATE SECTOR AND INITIATIVES BY THE PRIVATE SECTOR TO IMPLEMENT FAIR RECRUITMENT PRACTICES

Many initiatives are currently ongoing to support the private sectors to be active actors in fair recruitment, including in the elimination of forced labour. In this section, multi-stakeholders' initiatives as well as employer-led initiative to combat forced labour and implement fair recruitment processes are presented. Furthermore, other relevant tools, guidelines, codes and associations are provided in order to support private actors to take measures to promote fair recruitment. One of particular interest is the ILO Global Business Network on Forced Labour (GBNFL), supported by REFRAME. You can learn about these two initiatives, and many more, below.

REFRAME, the ILO Global Business Network on Forced Labour (GBNFL) and its linkages to fair recruitment

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REFRAME is aligned with the four-pronged approach of the Fair Recruitment Initiative:

- Enhancing global knowledge on national and international recruitment practices;
- Improving laws, policies and enforcement to promote fair recruitment;
- Promoting fair business practices;
- Empowering and protecting workers.

REFRAME further promotes the ILO's General principles and operational guidelines for fair recruitment and help put them into practice across specific migration corridors. The Principles and Guidelines are intended to assist member States, partner governments and social partners, labour recruiters, employers and other relevant stakeholders to develop effective labour recruitment policies in compliance with internationally recognized human rights and labour standards, support the transition from informal towards formal recruitment practices, eliminate fraudulent and criminal practices, improve protection and access to remedies for victims of abuses, and support preventive measures such as human rights due diligence by both the public and private sectors.

The ILO Global Business Network on Forced Labour (GBNFL) is supported by [REFRAME](#), the global action to improve the recruitment framework of labour migration project. REFRAME contributes to taking forward the ILO's Fair Recruitment Initiative and is a global multi-stakeholder's Fair Recruitment Initiative to prevent human trafficking and forced labour; protect the rights of workers, including migrant workers, from abusive and fraudulent



recruitment and placement processes; and to reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination.

The ILO's GBNFL brings together businesses of all sizes and sectors, and their networks, from around the globe to eradicate forced labour. Operating across all sectors, and geographies, ILO GBNFL members and partners work to engage smaller enterprises, develop resources and tools, and devise local solutions that help shape national frameworks to create lasting change in combatting forced labour and trafficking, including through fair recruitment. <https://flbusiness.network/>

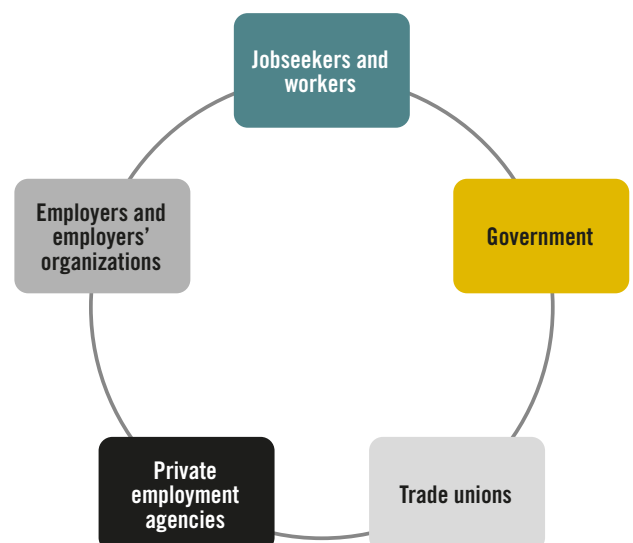
## A. ENSURING FAIR RECRUITMENT THROUGH MULTI-STAKEHOLDER ENDEAVOURS

Many actors are involved in recruitment, and it can be a complex procedure to implement fair recruitment with many stakeholders. Therefore, multi-stakeholders' initiatives are useful to make sure that every actor in the recruitment process is involved and promoting and implementing fair recruitment processes.

Multi-stakeholder initiatives offer an inclusive model as they involve various stakeholders and thus provide a long-term solution to addressing risks to contemporary forms of slavery. Those multi-stakeholder platforms that are genuinely premised on social partnership and involve trade unions have the additional benefit that they can ensure collaboration across a number of initiatives including public-policy advocacy and grievance resolution (UN, 2015).

The following stakeholders are crucial to create a fair environment for recruitment processes and can be included in multi-stakeholders' initiatives:

- **GOVERNMENT:** Designing, implementing and enforcing necessary policy reforms to promote fair recruitment and cultural change in the private recruitment industry;
- **PRIVATE EMPLOYMENT AGENCIES:** Reward fair recruitment practices, lower entry barriers for new fair labour recruiters, sanction illegal recruiters and encourage due diligence by employers;
- **EMPLOYERS:** Encourage effective due diligence of employers' labour recruitment, rewarding fair practices and sanctioning illegal recruitment;
- **JOBSEEKERS/WORKERS:** Change the expectations of jobseekers/workers, raise awareness of the practicalities and commercial realities of seeking a job overseas, and provide accessible and transparent information on recruitment options and rights during recruitment;
- **TRADE UNIONS:** Act as a watchdog regarding unfair recruitment practices and contribute to better transparency in recruitment processes.





## 1. Examples of multi-stakeholders' initiatives

### UN Global Compact and Verité

The UN Global Compact (n.d.) is a “voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support UN goals”.<sup>7</sup> With Verité, the two organizations issued a policy brief on international labour migration and recruitment fees including definitions and guidelines on how businesses can take action against exploitative employment practices. <https://www.unglobalcompact.org/what-is-gc>

### IRIS

The International Recruitment Integrity System (IRIS) is a voluntary values-based accreditation and monitoring process for international labour recruitment that is being developed by the International Organization for Migration (IOM) in order to increase the integrity and transparency of the international recruitment industry and maximize the gains of labour migration. The IRIS responds to an international call for innovative yet complementary approaches to existing frameworks and activities for international labour recruitment. <https://iris.iom.int/>

### Issara

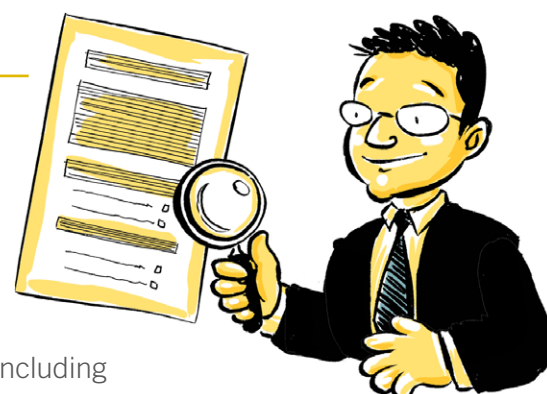
An example of good practice is the multi-stakeholder public-private platform Project Issara initiated by Anti-Slavery International to tackle modern slavery in South-East Asia, with an initial focus on forced labour in the export-oriented industries of Thailand that affect global supply chains. You can consult the project here: <https://www.endslaverynow.org/issara-institute-project-issara>

## B. RECRUITER-LED AND EMPLOYER-LED INITIATIVES TO PREVENT AND COMBAT ABUSES IN RECRUITMENT

### 1. Recruiter-led initiatives:

#### World Employment Confederation

The membership of World Employment Confederation (WEC) (rebranded from the International Confederation of Private Employment Agencies (CIETT) in 2016) consists of private recruitment and employment agencies globally. The group represents employment industry members from 50 countries, including seven of the largest labour recruitment companies in the industry: The Adecco Group; Gi Group; Kelly Services; ManpowerGroup; Randstad; Recruit Global Staffing; and Trenkwalder.



<sup>7</sup> As of May 2018, UN Global Compact had 9,500-plus members.

The WEC has committed itself to the prevention of human trafficking, and first adopted a Code of Conduct on 27 November 2006. Guiding Principle No. 3 of the WEC's current Code is "Respect for free-of-charge provision of services to jobseekers", and it states: "Private employment services shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement" (WEC 2017a, 3). Using the Code of Conduct as a baseline, the WEC (2017b) has produced an overview of the quality and compliance instruments of their members on the national level. <https://wecglobal.org/>

The WEC has a Compendium of voluntary initiatives promoting ethical recruitment practices that can be accessed here: [https://wecglobal.org/uploads/2019/07/WEC\\_Compendium-Practices-Ethical-Recruitment.pdf](https://wecglobal.org/uploads/2019/07/WEC_Compendium-Practices-Ethical-Recruitment.pdf)

### **The Association of Labour Providers**

The Association of Labour Providers (ALP) is a specialist trade association composed of labour providers in the United Kingdom with the stated goal to promote "responsible recruitment and good practice for organizations that supply the workforce to the food processing, agricultural and wider consumer goods supply chain" (Clearview 2017, 10). The ALP's practical guide on "Eliminating Recruitment and Employment Fees Charged to Workers in Supply Chains" (ALP 2017) provides a breakdown of nearly 40 fees and related costs that employers must cover in the recruitment of workers, and aims to ensure that workers do not shoulder the costs of getting a job. The ALP's vision is to eliminate recruitment and placement fees charged to workers in order to ensure that companies are slavery-free, in recognition of the connection between fees and debt bondage and forced labour. The ALP also argues that while abolishing recruitment fees has a strong moral case, there is also a strong business case for the "employer pays principle" (Clearview 2017).

## **2. Employer-led initiatives**

### **Consumer Goods Forum**

An organization bringing together consumer goods retailers and manufacturers globally, the Consumer Goods Forum (CGF) provides a platform for the world's retailers and manufacturers to collaborate alongside other key stakeholders to secure consumer trust and drive positive change, including greater efficiency. Identifying three of the most problematic yet often common employment practices across the world that could lead to cases of forced labour, the CGF produced their Priority Industry Principles to help eliminate forced labour. The most relevant principle for this report is: "No worker should pay for a job"; with the other two principles being: "Every worker should have freedom of movement" and "No worker should be indebted or coerced to work" (CGF 2018).



### Responsible Business Alliance<sup>8</sup>

The Responsible Business Alliance (RBA) is a non-profit coalition comprised of electronics, retail, auto and toy companies committed to supporting the rights and well-being of workers and communities worldwide affected by the global electronics supply chain. RBA members commit to and are held accountable to a common code of conduct and utilize a range of training and assessment tools to support improvement in the social, environmental and ethical responsibility of their supply chains. In 2015, the RBA (then called the EICC) updated its Code of Conduct to include language that workers are not to pay recruitment fees, and in the event that a worker does pay such fees, they are to be reimbursed. The RBA has subsequently expanded their language on the subject through the “RBA Trafficked and Forced Labor – Definition of Fees” (RBA 2020), which stipulates that workers should not be required to pay fees for their employment, whether these workers are temporary, migrant student, contract or direct employees. Workers should not be required to pay application, recruiting, hiring, placement or processing fees at any time and should not be required to pay any fees once they have been made an offer. The definition includes a more detailed list of costs in relation to international recruitment: pre-departure fees and costs, documentation and permits, transportation and lodging, arrival and on-boarding, and other legal requirements.

## C. OTHER RELEVANT TOOLS, GUIDELINES AND ASSOCIATIONS

### Human rights due diligence info portal

The Human Rights Due Diligence Info Portal supports companies in setting up and improving their human rights due diligence processes. <https://mr-sorgfalt.de/de/>

### The MNE Declaration

The MNE Declaration is the only ILO instrument that provides direct guidance to enterprises (multinational and national) on social policy and inclusive, responsible and sustainable workplace practices. <https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm>

### Combating forced labour: A handbook for employers and business

This handbook provides guidance material and tools for employers and business to strengthen their capacity to address the risk of forced labour and human trafficking in their own operations and in global supply chains. [https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_101171/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm)

<sup>8</sup> Formerly the Electronic Industry Citizenship Coalition (EICC). See [www.responsiblebusiness.org](http://www.responsiblebusiness.org).

### **ILO Helpdesk for Business on International Labour Standards**

The ILO Helpdesk for Business provides information on a wide range of labour topics, all derived from the ILO MNE Declaration. Check out available ILO resources and tools as well as Questions and Answers (Q&As) and useful links. <https://www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm>

### **Verité**

Verité is a global, independent non-profit organization that has established benchmarks of good industry practice that include, among others, the Sample Benchmarks of Good Practice in Recruitment and Hiring (Verité 2011). Under the sample benchmarks a company should have a written policy declaring that: workers shall not pay any amount to secure a job; the company's job advertisements should have a statement on non-charging of fees; and the company should only engage with brokers, agents and subagents who do not charge fees to jobseekers. Verité maintains a website pooling resources and good practices on responsible recruitment (<http://www.responsiblerecruitment.org/>).

### **The Institute for Human Rights and Business and the Leadership Group for Responsible Recruitment<sup>9</sup>**

The Institute for Human Rights and Business (IHRB) is a think tank with the mission to shape policy, advance practice and strengthen accountability on human rights for business. The IHRB convenes a group of major companies and experts under the Leadership Group for Responsible Recruitment to address recruitment practices, including the payment of recruitment fees by workers (IHRB 2016b). While agreeing that labour intermediaries can help connect workers and employers and should be compensated for their services, the initiative says that, in practice, workers are forced to shoulder the cost of their own recruitment, which makes them increasingly vulnerable to exploitation. The IHRB has been publicly committed to the “employer pays principle” and its implementation throughout supply chains to ensure they are slavery free. The IHRB (2016a, 1) defines recruitment fees as “travel, visa and administrative costs, and other various forms of unspecified ‘fees’ and ‘service charges’”. These fees may be treated as “loans with high rates of compound interest”. The IHRB also authored the Dhaka Principles, which call for no fees to be charged to migrant workers. <https://www.ihrb.org/> <https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment>

<sup>9</sup> The Leadership Group includes Marks & Spencer, Tesco, Walmart, Hewlett Packard, IKEA and Coca Cola.

### The Alliance to End Slavery and Trafficking

The Alliance to End Slavery and Trafficking (ATEST) is a U.S. based coalition that advocates for solutions to prevent and end all forms of human trafficking and modern slavery around the world.

We advocate for lasting solutions to prevent labour and sex trafficking, hold perpetrators accountable, ensure justice for victims and empower survivors with tools for recovery. Our collective experience implementing programs at home and abroad provides our coalition an unparalleled breadth and depth of expertise. They provide many resources and tools useful for businesses and companies. <https://endslaveryandtrafficking.org/who-we-are/>

### The Open Working Group on Labour Migration and Recruitment

Coordinated by Migrant Forum in Asia, the Open Working Group on Labour Migration and Recruitment is a network of 109 civil society organizations organized through a global online platform that aggregates information on campaigns and initiatives, events, news, policies and international conventions on labour migration and recruitment. The Open Working Group has developed a policy brief on recruitment and a Recruitment Reform Campaign Glossary that presents a definition for recruitment fees. While taking elements from the definition of Recruitment Fees from the 2016 ILO General Principles and Operational Guidelines on Fair Recruitment, the Open Working Group's definition also presents 23 elements that would constitute a recruitment fee payment. These elements include labour broker services, pre-departure and post-arrival skills training, advertising, certification of applications, visas and any fees to facilitate visa applications, government mandated fees, levies, insurances; photographs and identity documents; documentation services; medical examinations and vaccinations; transport and subsistence costs; bribes or tributes; security deposits and bonds; contract breach fees; notary or legal fees; insurances; and worker welfare funds (Open Working Group on Labour Migration & Recruitment 2016)

Know the chain: <https://knowthechain.org/>



# TEST YOUR KNOWLEDGE



## QUIZ:

- 1) The [2014 Recommendations of Supplementary Measures for the Effective Suppression of Forced Labour](#), calls out the corporate responsibility of “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”.
  - a. True
  - b. False
- 2) By implementing fair recruitment and conducting due diligence, businesses can foresee and manage risks and mitigate or prevent them from materializing.
  - a. True
  - b. False
- 3) The international authority systematically enforcing standards for labour migration is:
  - a. The IOM
  - b. The World Bank
  - c. The ILO
  - d. There is no international authority systematically enforcing standards for labour migration
- 4) If a company has its own grievance mechanism, migrant workers are no longer allowed to submit a complaint to an external remediation mechanism.
  - a. True
  - b. False
- 5) Migrant workers are often unaware of their rights to make complaints to a company and of the grievance channels available to them.
  - a. True
  - b. False
- 6) Due diligence is only for multinationals, small enterprises do not have to bother with it.
  - a. True
  - b. False

- 7) Effective grievance mechanisms are the responsibility of the State.
  - a. Yes, but businesses also have a role to play: company-level mechanisms should also operate through dialogue and engagement rather than the company itself acting as adjudicator of its own actions.
  - b. Yes, businesses do not have any role to play in this process.
  - c. No, this is the responsibility of international organizations.
- 8) A business is responsible for:
  - a. Its own fair recruitment process
  - b. Has a responsibility for the subcontractor's recruitment process
  - c. Has a responsibility for the recruitment in all its supply chain.
- 9) While the volume of deployments still has an impact on the overall profitability of fair recruiters, their business model focuses more on higher-value deployments of more skilled and professional workers, and deployments to higher-value destinations.
  - a. True
  - b. False
- 10) Which of the following is TRUE? Fair labour recruiters:
  - a. Operate similarly to other agencies and rely only on the volume of their deployments;
  - b. Aim for a better match between workers and jobs, and are therefore able to sustain long-term client relationships with overseas employers;
  - c. Have their competitive advantage in the pool of qualified candidates.

**Correct answers:**

(1) a; (2) a; (3) d; (4) b; (5) a; (6) b; (7) a; (8) c; (9) a; (10) b and c.





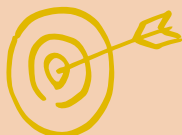
# TRAINING ACTIVITIES

## TRAINING ACTIVITY 1

### SCENARIO EXAMPLE – DEALING WITH PROBLEMS AND GRIEVANCE



### OBJECTIVES:



- Understand a company's responsibilities in providing remedy to its workers.
- Identify the essential elements of an effective company-level grievance mechanism.
- Understand the complexities of providing remedy targeting the repayment of recruitment fees and related cost.

### INSTRUCTIONS FOR THE TRAINER



### Participants will work in groups (4 to 5 people)

Ask the groups to read the very short presentation of the case. Propose them the three scenarios (see below) and ask them to reflect in group about it and to select one.

The groups will present their conclusions in the plenary session. The facilitator is encouraged to ask additional questions on challenges to the choices they presented. They also have to explain why they didn't select the others. The facilitators should correct any wrong information and complements are needed.

### TIPS



- Form each group composed of approximately 4–5 members, as fewer members may not allow for a fruitful exchange of ideas and more may mean that some participants do not actively participate in the brainstorming session.
- Encourage participants to focus the discussion on identifying solutions and remedies and good practices.
- If participants are stuck with a specific scenario, encourage them to move to the next one and come back on it later.

### MATERIALS



- Copies of the Multinational Clothing Company case for each participant (you can also project it on a slide on a screen)
- 3 sticky notes with each possible scenario
- Writing material

### TIME



- 20 minutes preparation time
- 5 minutes per group for presentations
- 10 minutes for Q&A



## ANNEX 1: CASE STUDY - CLoTHING cOMPANY "A"

You are the CEO of the clothing company "F@SHION". You are told that several migrant workers hired are unhappy with their working condition. They say that the wages they were offered did not correspond to the compensation promised by the labour recruiter.

### WHAT DO YOU DO?

**SCENARIO A:** I tell them that they can bring their case to a labour court if they want.

**SCENARIO B:** I talk to them and try to come up with a solution that works for everyone.

**SCENARIO C:** I do nothing, it's not my responsibility but the one from the labour recruiter.

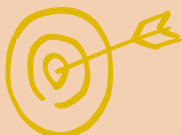
Note for the Trainer as conclusion of the exercise: As part of a due diligence process, a company should seek to provide remedy to migrant workers whose rights have been abused or impacted during the recruitment process. Both working with external remediation processes and providing remedy through operational level grievance mechanisms are part of a company's responsibility in this.

## TRAINING ACTIVITY 2

### CASE STUDY – DUE DILIGENCE



### OBJECTIVES:



- Identify various forms of abuse that may occur during the recruitment process.
- Become familiar with due diligence assessments of recruitment procedures.
- Identify the importance of due diligence in promoting fair recruitment in a supply chain framework.

### INSTRUCTIONS FOR THE TRAINER



**Participants will work in four or five different groups.**

- First, distribute to each group the Case Study – “Company Employer B” (Annex 2).
- Give participants time to read the case study (35 min). The goal is for them to assess due diligence practices.
- Ask participants to discuss the various stages of the supply chain, emphasizing those where abuses (risks) are more likely to happen, and explaining how and why these risks should be addressed.
- Then ask participants to draft their due diligence assessments on the whiteboards for presentation to the other groups. (20 min)
- Finally, highlight the main conclusions, enlarging on how due diligence practice can promote fair recruitment in the supply chain. (5 min)

### TIPS



- Encourage participants to explain the actors' responsibilities at every stage of the labour supply chain, and the risks that employees (migrant workers) might encounter during the recruitment process.
- Highlight the stages where risks are more likely to occur and encourage discussion of ways of incentivizing actors to prevent such risks from being committed.
- Identify the stages of the recruitment supply chain where due diligence strategies to prevent abuses will have more impact.

### MATERIALS



- Case of study
- Whiteboards

### TIME



- 35 minutes for reading and drafting labour supply-chain stories.
- 20 minutes for presenting the global chains in plenary session (five minutes per group) a final 5 minutes for Q&A and conclusions.

## ANNEX 2: COMPANY B – CASE STUDY

Company B is part of a multinational group of companies operating in Asia. After one year of positive economic performance, the Asian-based facility decided to expand and increase its production volumes. In order to do so, the company agreed to hire 1,500 national and migrant workers, including directly recruited staff and contract workers hired via a local labour supplier (most of the migrant workers coming from two neighboring countries in South Asia).

The local labour supplier uses a private recruitment agency to recruit, hire and manage the migrant workers on site, while functioning as a labor supplier offering labour outsourcing services to the company.

Furthermore, the private recruitment agency operating in the destination country works with several well-established recruitment agencies in the countries of origin, which supply skilled and low-skilled workers to countries in Asia, and in the Middle East. In addition, all of these private recruitment agencies (in the destination and origin countries) are well known for maintaining long-term partnerships.

On the one hand, company B performed a certain amount of due diligence on the agencies

involved by checking licenses and verifying the legal status of the agencies in both destination and origin countries. This was done by checking the lists of licensed agencies at the respective embassies.

On the other hand, the destination country agents decided to leave it to their source country partners to define their recruitment processes and therefore did not bother to check the on-the-ground recruitment practices. The employer covers some recruitment fees and costs, but most of the recruitment fees are charged to the migrant workers.

The company also has the following on-site contractors:

On-site Contractors	Nationality of Workers
Cleaning Services	Migrant workers from South Asia – Country 1
Security Services	Migrant workers from South Asia – Country 2
Canteen	Migrant workers from Southeast Asia

Finally, the on-site contractors also hire their own labor suppliers, who in turn work with recruitment agencies in destination countries. The cleaning services agency, for example, has a total of 1,200 workers, of whom only 16 are assigned to this company, eight for each shift, and is currently supplying cleaners to other manufacturing companies and retail stores.

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- ① Why fair recruitment matters
- ② The legal and normative framework for fair recruitment
- ③ Public employment services and private employment agencies in a changing recruitment landscape
- ④ Monitoring and enforcement of recruitment regulations
- ⑤ Business and private sector engagement for promoting fair recruitment

# Training Toolkit on Establishing Fair Recruitment Processes