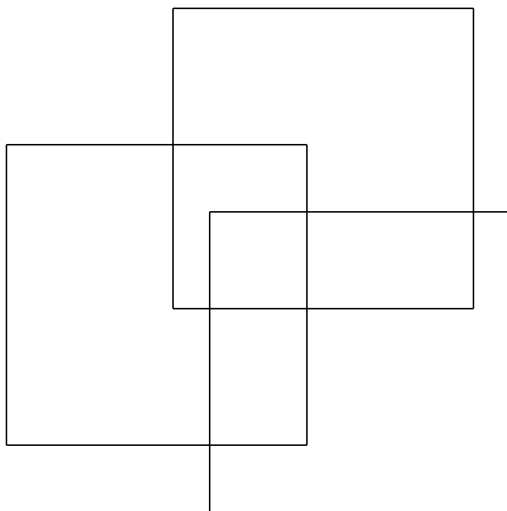




Tripartite Meeting of Experts on Fair Recruitment Principles and Operational Guidelines

**Report for discussion at the Tripartite Meeting of Experts on Fair
Recruitment Principles and Operational Guidelines**
(Geneva, 5–7 September 2016)



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INTERNATIONAL LABOUR ORGANIZATION

Conditions of Work and Equality Department

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Geneva, 2016

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Introduction and international legal and policy context on labour recruitment

A. Introduction

1. Concerns have been raised about the growing role in recruitment of unscrupulous employment agencies, informal labour intermediaries and others operating outside the legal and regulatory framework. These recruiting agents prey especially, but not exclusively, on low-skilled workers. Reported abuses involve deception about the nature and conditions of work; retention of passports and other identity documents; deposits and illegal wage deductions; collection of fees and related costs from workers; and debt bondage linked to repayment of recruitment fees. For migrant workers these may be coupled with threats if workers want to leave their employers, and fears of subsequent expulsion from a country. A combination of these abuses can amount to trafficking in persons and forced labour, and they are often linked to other serious infringements of fundamental rights at work. Despite the existence of international standards relating to recruitment, national laws and their enforcement often fall far short of protecting the rights of workers to fair recruitment. Moreover, few bilateral or regional agreements are in place for fair and effective recruitment processes that can ensure human rights, including labour rights, or the protection of migrant workers.
2. These facts have given rise to the Fair Recruitment Initiative. The Initiative is embedded in the Fair Migration Agenda proposed by the ILO Director-General to the International Labour Conference in 2014, which includes fair recruitment as one of its main pillars.¹ Under this Initiative, special attention is being given to the development of ILO guidelines on fair recruitment. The guidelines are intended to assist member States, social partners, labour recruiters and other key 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 guidelines will also serve as a series of benchmarks for the activities and projects developed in the framework of the ILO Fair Recruitment Initiative.
3. The need to develop principles and guidelines results from the conclusions of the 2013 ILO Tripartite Technical Meeting on Labour Migration which urged the Office “to develop guidance to promote recruitment practices that respect the principles enshrined in international labour standards, including the Private Employment Agencies Convention, 1997 (No. 181), and identify, document, and promote the exchange of good practices on reducing the financial and human costs of migration”.² In March 2016, the Governing Body decided to convene a three-day tripartite meeting of experts to develop guidance on fair recruitment.³ A proposed

¹ ILO: Report of the ILO Director-General to the International Labour Conference, *Fair migration: Setting an ILO agenda* (Geneva, 2014), paras 121–125, http://www.ilo.org/wcmsp5/groups/public/--ed_norm/---relconf/documents/meetingdocument/wcms_242879.pdf.

² Conclusions of the Tripartite Technical Meeting on Labour Migration (Geneva, 4–8 November 2013), para. 5(iii), http://www.ilo.org/wcmsp5/groups/public/--ed_protect/---protrav/---migrant/documents/meetingdocument/wcms_232352.pdf.

³ GB.326/POL/2, para. 37.

set of draft principles and guidelines, based on a broad consultation within the Office, has been prepared in a separate document as a basis for discussion by the tripartite meeting of experts.

4. Although stimulated by the need for guidelines in the context of labour migration, the draft principles and guidelines approach fair recruitment globally, and refer both to the context of labour migration and to the broader range of employment and work, both domestically and internationally. The draft principles and guidelines are meant to serve as a central means for addressing these growing abuses, as well as those affecting all workers, including in supply chains, whether national or global. The principles and guidelines are therefore drafted to cover all workers, wherever they work (as per the Constitutional mandate of the ILO), including migrant workers, refugees or other foreign born workers who are in or entering the labour market. In cases in which there are additional issues faced only by migrant workers, guidance intended specifically to strengthen protection of migrant workers is also highlighted.
5. There is no international definition of the term “fair recruitment”, but it can generally be understood to mean recruitment carried out within the law, in line with international labour standards, and with respect for human rights, without discrimination and protecting workers from abusive situations. These draft principles and guidelines are intended to help flesh out this concept.
6. Recruitment is usually the first act in establishing an employment relationship.⁴ For the purposes of these draft principles and guidelines, recruitment includes the selection, transport, placement into employment and – for migrant workers – return to the country of origin of workers if needed. Both jobseekers and those who establish an employment relationship are covered.
7. There is a consensus in general terms, at least at the international level, on how recruitment should be conducted, though some national practices are still at variance. Recruitment should be “fair”, and should be based on human rights including international labour standards, in accordance with the law – with the proviso that the law needs to comply with human rights standards, including those relating to the world of work. Segments of the population in a particularly vulnerable situation, including migrant workers, domestic workers, workers in the informal economy and others, should be provided with augmented protection against abuses. Women and young workers among these groups face additional disadvantages in the recruitment process and in the world of work in general.
8. Nevertheless, there are many obstacles in the way of guaranteeing fair recruitment. These include lack of clear guidance at the international level and in the legislation in many countries. There are also many abuses practised, both by unscrupulous labour recruiters and by individual employers. Many workers are still unaware of their rights. A major obstacle in the way of fair recruitment is also the changing landscape of employment relationships, and the opportunities this creates for evasion of workers’ rights. No consolidated and internationally agreed upon set of guidelines applicable to all relevant actors yet exists.
9. Workers are vulnerable to abusive recruitment especially when they are seeking jobs in an environment of high unemployment, when there is intense competition for jobs, domestically or abroad, and when they are not protected by clear laws and effective enforcement. Situations of vulnerability are compounded when workers find themselves in crisis situations as a result of wars or disasters, where a shortage of decent jobs and weakened state structures may make it even easier for unscrupulous labour recruiters to take advantage of their situation.

⁴ This includes all forms of working relationships, whether or not they fall under the usual understanding of employment as defined in national law. See in particular the Employment Relationship Recommendation, 2006 (No. 198).

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10. These problems are even more severe when governments have not laid down clear requirements in law and regulations for fair recruitment, or when they lack the capacity or the will to enforce the law. They may not have faced up to the changes in recent years in the world of work, or may not have been able to cope with the changing volume and nature of the labour market or the increasingly unregulated nature of migration for employment. They may, indeed, privilege the desire for remittances from migrant workers abroad over the rights of the workers themselves. Whatever the reasons, coherent government action, including across borders, and responsible conduct by employers and recruiters are essential if there is to be fair recruitment.
 11. Governments should not assume that absence of effective regulation concerning the rights of workers in any way enables businesses to operate more efficiently and on a level playing field. On the contrary, a lack of appropriate government regulation and oversight often creates commercial uncertainties, and adds to the costs of doing business, particularly where governments turn a blind eye to bribery and corruption around labour migration in connection with the recruitment process. Overly complex legislation and regulation can also impede the implementation of rights, and can even prevent a “fair” labour recruiter from obtaining a licence or operating in compliance with the legal requirements.
 12. Some of the most visible abuses in recruitment are practised against workers, who travel in increasing numbers to seek a better life in other countries, or in other parts of their own countries. As the 2008 ILO Declaration on Social Justice for a Fair Globalization notes, “the movement of persons, especially working women and men” is one of the characteristics “reshaping the world of work in profound ways”.⁵
 13. The proposed principles and guidelines therefore also include specific guidance on the recruitment of migrant workers, linked to the ILO’s findings that 150 million, including more than 66 million women, of the estimated 232 million international migrants in 2013 were migrant workers, a figure that has continued to grow since that date.⁶ In some ways the attention focused on migrant workers has highlighted the concerns that arise with fair recruitment for all workers, as so much work has been done in this area.
 14. As recognized in the 2030 Agenda for Sustainable Development, the developmental impact of labour migration is unquestionable.⁷ In 2015, migrants sent approximately US\$601 billion in remittances back home, with developing countries receiving US\$441 billion,⁸ and there are other impacts such as skills transfer and filling skills gaps. While some cross-border recruitment is facilitated by social and informal networks, private employment agencies and other labour recruiters play an increasing role in matching labour demand and supply across borders. The role of public employment services in cross-border placement mainly takes place within the framework of bilateral agreements that incorporate arrangements for temporary

⁵ ILO: Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008, Preamble, recital 1.

⁶ See: *ILO Global estimates on migrant workers. Results and Methodology*, International Labour Office, Geneva, 2015, http://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_436140/lang--en/index.htm. In 2015, the number of international migrants worldwide reached 244 million. See: UN, DESA, Population Division, *International Migration Report 2015: Highlights (ST/ESA(SER.A/375))*, UN, New York, 2016, p. 5.

⁷ UN: General Assembly, 70th Session, resolution 70/1: Transforming our world: the 2030 Agenda for Sustainable Development, adopted on 25 September 2015, UN document A/RES/70/1 (21 October 2015), Declaration, para. 29.

⁸ World Bank: *Migration and Remittances Factbook 2016*, 3rd edition, Washington, D.C., December 2015, p. v.

worker programmes. The global growth in the private employment agency industry has accelerated since the mid-1990s and today there are over 140,000 private recruitment agencies worldwide.⁹ As a result, the intermediation landscape today is complex, owing to the fragmented global governance system of labour migration and the large number of actors involved: from private employment agencies to the multiple levels of subagents, to whom work is passed by the main agencies. The revenues generated by the industry come from fees charged for temporary staffing, search-and-placement and corporate training services.

15. Public and private employment agencies, when appropriately regulated, play an important role in the efficient and equitable functioning of labour markets by matching available jobs with suitably qualified workers. However, unscrupulous recruiters take significant resources away from migrants and other workers, through the charging of recruitment fees and broader economic exploitation. The UN Special Rapporteur on the human rights of migrants has noted that unfair recruiters commonly exploit migrants, directly or indirectly, at every stage of the migratory process.¹⁰ Recent reports have highlighted the increasing role of unauthorized and unregulated or informal labour recruiters and private employment agencies operating in the informal economy, outside of the legal and regulatory framework.¹¹
16. The abuses practised in recruitment have also been linked with deficits in decent work, poor labour migration governance, weak inspection and enforcement regimes, and the inadequate application of fundamental principles and rights at work. ILO standards and supervisory processes have highlighted repeatedly the kinds of abuses that can occur in the recruitment process, including discrimination and the imposition of very poor or unacceptable conditions of work.¹²
17. As well as exploiting and abusing workers, particularly migrant workers, unfair recruitment also often places workers in roles that do not suit their skills and needs, as it is based on a model of narrow and short-term profit maximization. Matching the right workers with specific labour needs is vital to the efficient and equitable functioning of both the migration process and labour markets in countries of destination, as well as creating invaluable skills assets for countries and communities of origin when workers return home. Women, especially women migrants, may be particularly affected by this practice, as reflected in the higher proportion of women in atypical employment, and in insecure low paid jobs. Job opportunities for migrant women are still limited and in general reflect gender segregation in the national labour market.

B. An essential part of sustainable development

18. When the ILO launched the Fair Recruitment Initiative,¹³ it did so aware of the fact that productive employment and decent work, which includes fair recruitment, are essential for

⁹ ILO: *Fair Migration, Setting an ILO Agenda*, Report I(B) (Geneva 2014), para. 85.

¹⁰ Report of the Special Rapporteur on the human rights of migrants to the UN General Assembly, 11 August 2015, document A/70/310, p. 6.

¹¹ ILO: *The cost of coercion, Global Report under the Follow-up of the Declaration on Fundamental Principles and Rights at Work* (Geneva 2009).

¹² See, for example, the Committee of Experts' General Survey concerning the Employment Instruments, Report III (Part 1B), ILC, 99th Session (2010), especially paras 354–358.

¹³ For more information, see: <http://www.ilo.org/fairrecruitment>.

sustainable economic, social and environmental development. ¹⁴ The 2030 Agenda ¹⁵ sets the basic parameters for future development in its paragraphs 3 and 4:

3. We resolve, between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources. We resolve also to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities.

4. As we embark on this great collective journey, we pledge that no one will be left behind. Recognizing that the dignity of the human person is fundamental, we wish to see the Goals and targets met for all nations and peoples and for all segments of society. And we will endeavour to reach the furthest behind first.

19. The 2030 Agenda includes Goal 8 on decent work and economic growth. This subject has become a generally accepted part of the discussions on the international development agenda in recent years. In recognition of this changing awareness, the 2030 Agenda includes targets that are intimately linked to fair recruitment as an indispensable means of creating decent work and promoting sustainable development:

- 8.5 – By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.
- 8.6 – By 2020, substantially reduce the proportion of youth not in employment, education or training.
- 8.7 – Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.
- 8.8 – Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

20. In addition, Goal 10 of the 2030 Agenda is to “Reduce inequality in and among countries”, with two targets also focusing on migration for work:

- 10.7 – Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. ¹⁶

¹⁴ See, for example, UNDP, *Rethinking Work for Human Development*, 2015, which concludes that “the Decent Work Agenda and the human development framework are mutually reinforcing.”

¹⁵ UN: General Assembly, 70th Session, resolution 70/1: Transforming our world: the 2030 Agenda for Sustainable Development, adopted on 25 September 2015, UN document A/RES/70/1 (21 October 2015).

¹⁶ One of the proposed indicators to measure this target relates to recruitment, i.e. “Recruitment cost borne by employee as a percentage of yearly income earned in country of destination”. See UN Economic and Social Council, Statistical Commission, 47th Session, Report of the Inter-agency and

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- 10.c – By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.
21. Addressing abusive and fraudulent recruitment practices is increasingly being recognized by the international community as an important element of reducing labour migration costs and thus improving development outcomes for migrant workers and their families, as indeed recognized in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, which is an integral part of the 2030 Agenda. In the Addis Ababa Action Agenda, UN Member States committed to increase cooperation on reducing labour migration costs, including lowering the costs of recruitment.¹⁷ The ILO is working with the World Bank under the auspices of the Global Knowledge Partnership on Migration and Development (KNOMAD) to assess a range of labour migration costs, including recruitment costs, but also costs accrued at destination, such as the extent to which migrant workers are compensated due to time lost to occupational injuries.¹⁸
 22. Adopting principles and guidelines will provide governments, employers, labour recruiters and the social partners the tools they need to help reduce the inequality and lack of respect for human rights, particularly labour rights that contribute to abuses in the recruitment process and adversely affect sustainable development outcomes.

C. Available guidance and gaps

23. The main reason for proposing the adoption of principles and guidelines is the absence of comprehensive guidance on fair recruitment that covers all workers and all economic sectors and that addresses all relevant actors, namely governments, employers, various categories of labour recruiters and social partners. There is a good deal of existing guidance that applies to specific situations, however, and the draft principles and guidelines prepared as a basis for discussion at the tripartite meeting draw freely on these sources.
24. The main sources for these proposals are, of course, international labour standards. These include the fundamental human rights instruments that are at the basis of the Declaration on Fundamental Principles and Rights at Work, concerning freedom of association and collective bargaining, forced labour, child labour and discrimination. The ILO's main governance standards (on employment policy, tripartite consultation and labour inspection) are taken closely into account. Some ILO instruments, especially those adopted most recently, contain specific guidance on fair recruitment, but this is legally limited to the coverage of those instruments (for example, domestic workers, seafarers, or private employment agencies). Finally, there are the instruments on employment services and those on migrant workers that are vital to this process. These are closely linked to the universal human rights instruments adopted by the United Nations.
25. There are also several other principal sources of inspiration. At the international level, a number of documents have been consulted in preparing the draft principles and guidelines. These include the ILO Declaration on Fundamental Principles and Rights at Work (1998), the

Expert Group on Sustainable Development Goal Indicators (document E/CN.3/2016/2/Rev.1), 19 Feb. 2016, para. 10.7.1.

¹⁷ UN: Third International Conference on Financing for Development, Addis Ababa, 13–16 July 2015, Outcome document of the Third International Conference on Financing for Development: Addis Ababa Action Agenda, A/CONF.227/L.1 (15 July), para. 111.

¹⁸ See the KNOMAD website at: <http://www.knomad.org/thematic-working-groups/low-skilled-labor-migration>.

Declaration on Social Justice for a Fair Globalization (2008), the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977, as amended) and the Multilateral Framework on Labour Migration (2006). The United Nations Guiding Principles on Business and Human Rights have been taken into account in assembling the present document. At the regional level, labour recruitment has also been at the heart of some regional processes on the governance of labour migration, such as the Colombo Process and the Abu Dhabi Dialogue and declarations coming out of those processes have been consulted.¹⁹

26. The draft principles and guidelines have also drawn on non-governmental sources and guidelines, most of which refer to international recruitment of migrant workers, such as the 2012 Dhaka Principles for Migration with Dignity, developed by the International Institute for Human Rights and Business, the International Confederation of Private Employment Agencies (CIETT) Code of Conduct (2015), the Verité Code of Conduct and others.
27. A comprehensive set of sources, including international standards and other guidance, are found in Appendix I.
28. There are, however, gaps in the applicable standards both at the national and international levels with respect to recruitment. At the national level, one of the problems encountered is the fact that in many cases labour legislation does not cover the entire workforce or economy. As has become well known, much labour legislation does not apply to parts of the working population: workers in agriculture and domestic workers and those in the informal economy are often omitted, but also others such as workers in export processing zones. Special standards may have been adopted for categories of workers such as seafarers, containing requirements that would be appropriate for other workers but that are legally applicable only to those specifically covered by the legislation. In addition, increasing numbers of workers are in what has been termed “non-standard forms of employment”, and their situations do not necessarily conform to the situations that most ILO and national labour standards have been designed to address.
29. Gaps in the legislation at the national level are compounded by inadequate and incomplete enforcement, including a frequent inability or unwillingness to assign liability to those responsible for abuses. This is often due to limitations on resources, but is also the product of lack of political will, or even corruption, in many cases. A large number of abuses practised against workers in recruitment could be resolved by improved measures of governance. Better legislation and enforcement mechanisms are fundamental to preventing unfair competition from fraudulent private employment agencies and unregulated recruiters.
30. As concerns migrant workers, the main gap is in incomplete coverage or partial or inconsistent protection. Countries of origin, destination and transit may have very different laws and widely variant enforcement mechanisms. Bilateral agreements between countries of origin and of destination are vital to the protection of migrant workers, but they are not always adopted, they vary widely, and many do not provide adequately for effective implementing measures, or these measures are not put into practical effect. Multilateral and regional agreements also do not always cover all the relevant issues.
31. The basic problem is similar with regard to international standards. No international labour standards provide comprehensive coverage for principles of fair recruitment for all workers, applying to all the actors in the recruitment process. Many standards, especially those adopted in the earlier days of the ILO, were sectoral in coverage. There are ILO standards applicable specifically to more than a dozen occupational categories (for example, domestic workers,

¹⁹ Dhaka Declaration of Colombo Process Member Countries, 21 April 2011, point 1.v; Third Ministerial Consultation of the Abu Dhabi Dialogue, The Kuwait Declaration, 27 November 2014, point 5.

workers on plantations, seafarers, fishers, dockworkers, homeworkers, and others) or specific actors in the labour market (public employment agencies, private employment agencies, labour inspection generally and in agriculture, etc.). These address problems specific to a given occupation or sector, but they have been adopted at different times and, in spite of efforts to ensure consistency and to revise or abrogate older standards, sometimes take approaches that are different from sector to sector and occupation to occupation. For the purposes of the draft principles and guidelines, this means that some provisions that have been used as a basis for them appear in Conventions and some in Recommendations or Declarations, some were adopted with respect to migrant workers, and some with respect to seafarers or others. Some standards address public and private employment agencies, and others deal with other forms of contractual arrangements, including those involving multiple parties. Thus, while principles relating to fair recruitment may be drawn from any of these instruments, some of them may not apply to a specific situation because they are found in instruments with limited coverage. None of them provide general coverage except the fundamental human rights instruments, and even they provide general guidance rather than specific provisions on fair recruitment.

32. There is also some uncertainty on the charging of fees and costs linked to recruitment. While the general principle that workers should not be charged fees and costs is increasingly widely accepted, there is not always agreement on exactly what fees and costs should be allowed or prohibited. National practice differs, and some countries allow fees and costs that others do not. The international standards that have been adopted on this subject have evolved over time, or have been adopted to apply to specific situations, and some of them contain exceptions to the general prohibition on fees and costs. The discussion of the principles and guidelines cannot resolve all the outstanding questions. It should therefore be taken into account that the adoption of a guiding principle on this subject is intended to point to the direction that should be taken. This is one of the gaps in international standards that remains to be filled.

D. Best practices for recruitment

33. With the great variety of recruitment models now practised, it is difficult to suggest any one model for recruitment that favours fair and equitable recruitment more than others. The proposed principles and guidelines are intended to promote the best practices and to eliminate abuses from the process. Some general points may be made in this regard, however.
34. First, recruitment is most likely to be fair when it is conducted in accordance with internationally recognized human rights, including those contained in international labour standards. This in turn means that governments need to translate these international standards into effective laws and regulations, and to implement them vigorously. Where international labour migration is concerned, the conclusion of bilateral and multilateral agreements regulating this migration, particularly in corridors where labour migration is most frequent, is essential.
35. As indicated in these proposed principles and guidelines, all the parties concerned have their roles to play. Employers should ensure that they respect the laws and the human rights of the workers they recruit, and that they work with reputable labour recruiters when they do not recruit workers directly themselves. They should also ensure that anyone working for them under any contractual arrangement have the rights due to all workers.
36. Labour recruiters are also called upon to exercise good judgement in the recruitment tools they use, and in the choice of partners with which they work.
37. Finally, the role of the social partners, in all the countries concerned in the case of international labour migration, is essential. If employers' and workers' organizations work conscientiously to ensure that recruitment is fair and equitable, the workers concerned are more likely to find that their rights are respected. More specifically, employers' and workers' organizations

should provide training to and raise awareness among their constituent members with a view to promoting fair recruitment at all stages of the process. They should also consider including conditions of fair recruitment in collective bargaining and related social dialogue. Workers' organizations can play an important monitoring and oversight role in respect of those workers going through the recruitment process to ensure that certain principles, such as the prohibition of the payment of fees and other related costs by workers, are respected and that complaint and dispute resolution mechanisms function properly. Employers' organizations should cooperate closely with the labour administration, including labour inspection, to help ensure that recruitment is fair and conducted within the law. Finally, both workers' and employers' organizations should advocate for fair recruitment when participating in tripartite labour advisory boards and other national mechanisms. The ILO should play a significant role in providing capacity building and technical assistance to its constituents in promoting fair recruitment.

E. Scope of the proposed general principles and operational guidelines

- 38.** The proposed principles and guidelines are intended to cover recruitment of all workers. They cover recruitment of workers within national borders and recruitment of workers moving across international borders (migrant workers), as well as recruitment through temporary work agencies. While much of the guidance already produced by various organizations, including the ILO, relates to the recruitment of migrant workers, the proposed principles and guidelines are intended to apply to all recruitment, so where appropriate this has been adapted accordingly.
- 39.** Recruitment occurs in three main ways, and similar but different points are made applying to each under the general heading "Responsibilities of Business" in the proposed principles and guidelines:
- (a) Direct recruitment of a worker by an employer.
 - (b) Recruitment through labour recruiters, including both public employment services and private employment agents of different kinds, including various intermediaries and those operating inside and outside the law.
 - (c) Assignment of workers by private employment agencies to user enterprises as temporary workers.²⁰
- 40.** Recruitment may be regulated through national laws and collective agreements, or through bilateral or multilateral agreements on migration. It may also be only partially regulated, or wholly unregulated. Where appropriate, specific points are made with regard to some situations, especially as concerns migrant workers whose situation can be very different from those seeking work within a country.
- 41.** The proposed principles and guidelines focus on the process and immediate consequences of recruitment. They are intended to cover all phases of the recruitment process, including selection, transportation, placement into employment and – for migrant workers or where applicable refugees – return to the country of origin if needed or wanted. They do not discuss

²⁰ Recruitment through these temporary work agencies is not engagement of workers directly by employers, but involves employers as user enterprises. It is included here because many of the problems encountered are similar to those of other recruitment, and because it is covered by the Private Employment Agencies Convention, 1997 (No. 181).

conditions of work and treatment of workers, except as this may be influenced by the recruitment process.

- 42.** These proposals rely on the strength of the ILO's tripartite approach, to incorporate the views and approaches of the ILO's constituents of employers' and workers' organizations and of governments and to enlist their collaboration in implementing them.
- 43.** The objective is that the principles and guidelines will inform the current and future work of the ILO and of other organizations and of national legislatures and policy-makers on promoting and ensuring fair recruitment.

Appendix I

Main sources for proposed principles and guidelines

1. As indicated in the body of the paper, these proposed principles and guidelines draw on many sources. At present there is no consolidated guidance on fair recruitment, although many guidelines exist that are intended for particular segments of the working population, for businesses operating in particular spheres, or for other purposes. Some are contained in binding standards – in particular international labour Conventions – some in non-binding standards such as ILO Recommendations and Declarations, and some in the findings of international treaty supervisory bodies or guidance issued in various forms. Some are included in guidance adopted by non-governmental organizations.
2. In a number of cases requirements or guidelines intended for specific purposes have been found to be capable of general application. For instance, the Private Employment Agencies Convention, 1997 (No. 181) or the migrant workers Conventions (Nos 97 and 143), contain requirements on fair recruitment that are very useful for expressing guidance with a wider coverage. Other examples will be found below.
3. In most cases the way in which the principle is expressed in these draft guidelines is not worded as it is in the source from which it is drawn, or the proposed expression of a principle in the present guidelines is based on several expressions of the principle from different sources, but has been reworded for the purposes of these guidelines.
4. The table that follows indicates the main source or sources from which each proposed principle or guideline is drawn. Other sources may also be relevant. C97 indicates ILO Convention No. 97, and R203 indicates ILO Recommendation No. 203, and other references follow the same pattern. See Appendix II for full references.
5. **(Note that the subject lines have no normative value – purely to assist in referring to the proposed principles and guidelines.)**

Proposed general principles	Sources
1 – Respect for internationally recognized human rights	ILO C29, C87, C98, C100, C105, C111, C138 and C182; Universal Declaration on Human Rights; UN core human rights treaties; UN Guiding Principles on Business and Human Rights Foundational Principle A1; Dhaka Principles Pillar I; IRIS Code Core Principle A; HEUNI Principles point 1
2 – Respect for fundamental workers' rights	ILO Declaration on Fundamental Principles and Rights at Work; C29, Protocol to C29, C87, C98, C100, C105, C111, C138, C182, Maritime Labour Convention, 2006 (MLC, 2006), Art. III; C181, Arts 4, 11 and 12; CIETT Principle 6; IRIS Code Core Principle A; Verité Code of Conduct Tool 1
3 – Coverage of relevant legislation related to all aspects of the recruitment process	Protocol to C29, Art. 2(c)(i); Dhaka Principle 3; ILO Fair Recruitment Initiative
4 – Effective law enforcement	C81, C129, C150, C181; Protocol to C29 and R203; CIETT Principle 1
5 – Recruitment across borders with respect for human rights	C88 (Art. 6b(ii)), C97, C143 and C181 (Art. 8); Dhaka Principles Core Principle A; CIETT Principle 1
6 – Prohibition of charging fees and costs to workers	Inter alia, C97; MLC, 2006, Regulation 1.4(1), and Standard A1.4(5); C181, Art. 7; C88, Art. 1; R203; IRIS Code Principle 1; CIETT Principle 3; Verité Code of Conduct Tool 1
7 – Clear and transparent contracts	C97 (Annex II, Art. 6), C189, Art. 8(1); R86, Annex, Art. 22; R188, Para. 5; Dhaka Principles 2 and 4; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
8 – Migrants agree freely without coercion to terms and conditions of employment	R188, Para. 5; Dhaka Principle 2; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
9 – Identity documents, freedom of movement	C189, Art. 9(c); Dhaka Principle 4; IRIS Code Principle 2; Verité Code of Conduct Tool 1

Proposed general principles	Sources
10 – Access to complaints and other dispute resolution mechanisms	C97, Annex II, Art. 13; C181, Arts 10 and 14; C189, Art. 16; Protocol to C29, Art. 4; MLC, 2006, Standard A1.4(7); R203, Para. 8(c); Dhaka Principles Pillar III, Principle 9; CIETT Principle 10; IRIS Code Principle 5; Verité Code of Conduct Tool 1
Proposed operational guidelines	Sources
A. Responsibilities of governments	
1 – Obligation to respect, protect, and apply human rights, especially freedom of association and collective bargaining	ILO Fundamental human rights instruments and others; ILO Declaration on Fundamental Principles and Rights at Work; C87 and C98; C181, Art. 4; Universal Declaration on Human Rights; International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; UN Guiding Principles Foundational Principle A2; Dhaka Principles, Pillar I, Principle 6
2 – Protect against human rights abuses by third parties	ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; Guiding Principles on Business and Human Rights, United Nations, 2011
3 – Adopt, review and strengthen national laws and regulations, and national fair recruitment policy	Protocol to C29, Art. 1(2); R203; R204, Paras 1(a), 4(h), 9; UN Guiding Principles Foundational Principle 2 and Operational Principle 3(a); Dhaka Principles Pillar I
4 – Ensure that all relevant legislation and regulations cover all aspects of the recruitment process, and that it applies to workers in a vulnerable situation	Protocol to C29, Art. 2(c)(i); Dhaka Principles 3; Inter alia, C97, C111, C143, C169, C181 (Art. 8), C189; R204; UN CEDAW, CERD, et al.
5 – Enforce laws and regulations and ensure labour recruiters operate within the law	C81, C88, C129, C150 and C181 (Arts 3 and 14); Protocol to C29 and R203; CIETT Principle 1; UN Guiding Principles Operational Principle 3(a)
6 – Prohibition of charging fees and costs to workers	Inter alia, C97; MLC, 2006, Regulation 1.4(1), and Standard A1.4(5); C181, Art. 7; C88, Art. 1; R203; IRIS Code Principle 1; CIETT Principle 3; Verité Code of Conduct Tool 1
7 – Ensure that employment contracts are concluded and respected, and are clear and transparent	C97 (Annex II, Art. 6), C189, Art. 8(1); R86, Annex, Art. 22; R188, Para. 5; Dhaka Principles 2 and 4; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
8 – Availability and operation of complaint and other dispute resolution mechanisms	C181, Arts 10 and 14, C189, Art. 16; MLC, 2006, Standard A1.4(7); R203, Para. 8(c); Dhaka Principles Pillar III, Principle 9; CIETT Principle 10; IRIS Code Principle 5; Verité Code of Conduct Tool 1
9 – Cooperation among relevant government agencies, workers' and employers' organizations, and representatives of all labour recruiters	C181 Art. 13 and R188 (Part III); R203, Para. 13(a); UN Guiding Principles Foundational Principle 8
10 – Raising awareness of the need for fair recruitment	R203, Para. 4
11 – Respect for human rights in crisis situations	International Labour Conference, 105th Session, 2016, <i>Report of the Committee on Employment and Decent Work for the Transition to Peace</i> ; and UN Guiding Principles Foundational Principle 7
12 – Adequate penalties and effective enforcement for irregular, clandestine or abusive migration	C81, C129, C150 and C181, Art. 14; Protocol to C29 and R203; UN Guiding Principles Operational Principle 3(a); CIETT Principle 1
13 – Monitor, evaluate and regulate recruitment in countries of origin, destination and transit	C97, C189; R86
14 – Conclude and implement bilateral agreements and/or multilateral agreements consistent with international labour standards and other internationally recognized human rights	C88, Art. 6(b)(ii) and (iii), C97, Art. 10; C181, Art. 8(2)

B. Responsibilities of business

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| 15 – Business enterprises should respect human rights | ILO MNE Declaration, Para. 8; UN Guiding Principles Foundational Principle A2; Dhaka Principles Pillar II |
| 16 – No recruitment fees or related costs for recruited workers and jobseekers | Inter alia, C97; MLC, 2006, Regulation 1.4(1) and Standard A1.4(5); C181, Art. 7 and C88, Art. 1; R203; IRIS Code Principle 1; CIETT Principle 3; Verité Code of Conduct Tool 1 |
| 17 – Passports, identity documents, contracts should not be retained by business enterprises | C189, Art. 9(c); Dhaka Principle 4; IRIS Code Principle 2; Verité Code of Conduct Tool 1 |
| 18 – Respect workers' confidentiality and ensure protection of data | C181, Art. 6; R188, Para. 12(1); IRIS Code Principle 4 |

1. Labour recruiters

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| 19 – Labour recruiters should respect the applicable laws and fundamental principles and rights at work | C181, Arts 3, 4, 11 and 12; C29, C87, C98, C100, C105, C111, C138, C182; CIETT Principle 2, Dhaka Principles Core Principle B; ILO Declaration on Fundamental Principles and Rights at Work |
| 20 – Labour recruiters should comply with the law in the country of origin, the country of transit and the country of destination | C181, Arts 3 and 8; ILO Declaration on Fundamental Principles and Rights at Work; MLC, 2006, Art. III, CIETT Principles 1 and 6; IRIS Code Core Principle A; Verité Code of Conduct Tool 1; Dhaka Principles Core Principle B |
| 21 – Labour recruiters acting across borders should respect bilateral or multilateral migration agreements | C181, Art. 8(2); C189, Art. 15(1) |
| 22 – Labour recruiters should ensure that the conditions of work and life are those that recruited workers have been promised | C189, Arts 7 and 8; R188, Para. 5; CIETT Code of Conduct, Principle 3 |
| 23 – Temporary employment agencies should ensure that responsibilities of the agency and of the user enterprise are clearly allocated with a view to guaranteeing adequate protection to the workers concerned | C181, Arts 11(g) and 12; C97 and C143 and UN Convention on Migrant Workers; R188, Para. 8(a); Dhaka Principles Core Principle B |

2. Employers

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| 24 – Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker | C97, Annex II, Art. 6, C189, Art. 8(1); R86, Annex, Art. 22; R188, Para. 5; Dhaka Principles 2 and 4 and Appendix 2; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1 |
| 25 – Effective access to complaints and other dispute resolution mechanisms, and to remedies | C181, Arts 10, 13 and 14; C189, Art. 16; Protocol to C29, Art. 4; MLC, 2006, Standard A1.4(7); R203, Para. 8(c); Dhaka Principles Pillar III, Principle 9; CIETT Principle 10; IRIS Code Principle 5; Verité Code of Conduct Tool 1 |
| 26 – Employers should provide all workers, whatever their employment status, with the protection provided for in labour law and international labour standards | Declaration of Fundamental Principles and Rights at Work; IRIS Code of Conduct, Core Principle A |
| 27 – Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected | C87, C98, and C181, Arts 4, 11 and 12; Dhaka Principle 6 |
| 28 – Employers should not have recourse to labour recruiters or to temporary work agencies to replace workers who are on strike | C87 and C98 and the Declaration on Fundamental Principles and Rights at Work; C181, Art. 4; R188, Para. 6; <i>Digest of Decisions and principles of the Freedom of Association Committee, fifth (revised) edition</i> , 2006, Paras 632 and 633; CIETT Charter, point 3; CIETT Code of Conduct, Principle 7; Dhaka Principle 6 |
| 29 – Employers should ensure that migrant workers have a legally recognized employment relationship with an identifiable and legitimate employer | C97, Annex II, Art. 6; C181, Arts 11 and 12; C189, Art. 8(2); R188, Para. 5 |
| 30 – Employers should respect the freedom of migrant workers to change employment or to return to their countries of origin | C29; C189, Art. 8(4); R188, Para. 15; Dhaka Principle 10 |
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Appendix II

Bibliography and sources

1. *International labour standards*¹

(a) Fundamental principles and rights at work

These are the instruments that express the core values of the ILO and of international labour law. They are referred to in the Declaration on Fundamental Principles and Rights at Work, which provides that the principles that are the subjects of the ILO fundamental Conventions must be respected, promoted and realized by all ILO member States even if the instruments have not been ratified.²

Freedom of association and collective bargaining

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Freedom from forced labour

- Forced Labour Convention, 1930 (No. 29) (and its Protocol of 2014) and Recommendation, 2014 (No. 203)
- Abolition of Forced Labour Convention, 1957 (No. 105)

Freedom from child labour

- Minimum Age Convention, 1973 (No. 138) and Recommendation, 1973 (No. 146)
- Worst Forms of Child Labour Convention, 1999 (No. 182) and Recommendation, 1999 (No. 190)

Freedom from discrimination

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation, 1958 (No. 111)

(b) Priority governance instruments

- Labour Inspection Convention, 1947 (No. 81)
- Employment Policy Convention, 1964 (No. 122)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

¹ When the Conventions concerned have been ratified, they are legally binding on States, which are required to implement them by means of law, regulations or practice. Where they have not been ratified, or when principles rely on them but go beyond the legal scope of the Convention concerned, they have the same legal force as ILO Recommendations – that is, they are not binding but should be taken into account at the national level as important guidance for policy and legislation even if they are not applied to the letter.

² None of these Conventions is the only expression in ILO standards of the values it expresses, and all are supplemented by other more detailed instruments on aspects of the main subject. There are accompanying Recommendations for most of them that develop further the principles laid down in them.

(c) Employment services instruments

This refers in particular to:

- Employment Service Convention, 1948 (No. 88) and Recommendation, 1948 (No. 83)
- Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)
- Private Employment Agencies Convention, 1997 (No. 181) and Recommendation, 1997 (No. 188)

(d) ILO migrant workers Conventions

A number of ILO standards have dealt with aspects of the recruitment of migrant workers, but the principal instruments are:

- Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation, 1949 (No. 86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Recommendation, 1975 (No. 151)

(e) Other international labour standards

Almost all ILO standards are relevant to fair recruitment, as they mainly speak either of labour administration and governance, or conditions of work after recruitment. Among recent instruments that contain explicit provisions on recruitment are:

- Maritime Labour Convention, 2006³
- Domestic Workers Convention, 2011 (No. 189) and Recommendation, 2011 (No. 201)
- Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

2. Other ILO documentation, including but not limited to:

1. ILO Constitution (1919, as amended)
2. Declaration on Fundamental Principles and Rights at Work (1998)
3. ILO Declaration on Social Justice for a Fair Globalization (2008)
4. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977, as amended)
5. ILO Multilateral Framework on Labour Migration (2006)
6. Guides, working papers and other material generated around the Fair Recruitment Initiative⁴
7. Conclusions of the Tripartite Technical Meeting on Labour Migration (November 2013)
8. ILO, Regional Offices for Asia and the Pacific and for the Arab States, Issues paper on fair recruitment in international migration between Asia and the Gulf Cooperation Council Countries, 2015
9. International Labour Conference, 105th Session, 2016, Report IV, *Decent work in global supply chains*

³ This Convention contains very detailed regulations and standards (1.4) on the recruitment and placement of seafarers and can be used as inspiration for other sectors.

⁴ See: <http://www.ilo.org/fairrecruitment>.

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10. International Labour Conference, 105th Session, 2016, Reports V(1) and (2), *Employment and decent work for peace and resilience: Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71)*

3. Other international human rights instruments

ILO standards are part of the framework of international human rights instruments. Even in cases in which they were adopted earlier than other human rights instruments, they express an aspect of international human rights focused on workers and the workplace. These other international human rights instruments include:

- (a) Universal Declaration on Human Rights (1948)
- (b) International Covenant on Economic, Social and Cultural Rights (1966)
- (c) International Covenant on Civil and Political Rights (1966)
- (d) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- (e) United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking in Persons Protocol), supplementing the United Nations Convention against Transnational Organized Crime (2000)
- (f) Convention (1951) and Protocol (1967) relating to the Status of Refugees
- (g) Regional human rights instruments, in particular:
 - (i) European Convention on Human Rights (1950), and its Protocols
 - (ii) Charter of Fundamental Rights of the European Union (2000)
 - (iii) American Convention of Human Rights (1969)
 - (iv) African Charter on Human and Peoples' Rights (1981)
 - (v) ASEAN Human Rights Declaration (2012)
 - (vi) ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)

4. Relevant guidelines produced by other organizations, including:

- UN Guiding Principles on Business and Human Rights (2011)
- European Union directives on temporary recruitment agencies, regular and irregular migration, seasonal workers and employer sanctions

5. Other documentation and guidelines, including:

- The Dhaka Principles for Migration with Dignity (2012)
- Recommendations in the Report of the Special Rapporteur on the human rights of migrants to the UN General Assembly, 11 August 2015, document A/70/310⁵
- International Organization for Migration, International Recruitment Integrity System (IRIS), Code of Conduct
- International Confederation of Private Employment Agencies (CIETT), Code of Conduct (2015)

⁵ Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/310.

6. Guidance from national law and practice examined by ILO supervision

ILO supervisory bodies regularly examine the application of the related instruments, including compliance with the standards, and note both good practices and gaps in implementation. In recent years questions of recruitment have also formed a major part of General Surveys on Employment Instruments (2010) and Migrant Workers (2016),⁶ among others.

⁶ *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IB), International Labour Conference, 99th Session, 2010, International Labour Office, Geneva; *Promoting Fair Migration*, General Survey concerning the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IB), International Labour Conference, 105th Session, 2016, International Labour Office, Geneva, Chapter 4.

Draft general principles and operational guidelines for fair recruitment

1. Scope of the proposed general principles and operational guidelines

The objective of these ILO principles and guidelines is to inform the current and future work of the ILO and of other organizations, of national legislatures, and of the social partners on promoting and ensuring fair recruitment.

The principles that should be respected in order to guarantee fair recruitment are expressed in a number of different instruments adopted by various organizations. The primary sources for these principles and guidelines are ILO standards and related ILO instruments.¹ Secondary sources and good practice have also been consulted. In all these cases, the sources on which these principles and guidelines are based are listed in an appendix attached to the background document.

These proposed principles and guidelines are intended to cover the recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy.

A distinction is drawn between **general principles** – which are intended to orient implementation at all levels – and **operational guidelines** – which are directed at specific actors at all levels of the recruitment process.

2. Definitions and terms used for the purposes of these principles and guidelines

Business enterprise: The term “business enterprise” encompasses employers and labour recruiters.

Due diligence: This term is not precisely defined in international law, apart from the references to it in the United Nations’ Guiding Principles on Business and Human Rights. For the purposes of these principles and guidelines, it may be understood to include assessing actual and potential human rights impacts of business activities, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.

Fees and costs: While these terms are also not yet defined precisely in international law, the references to them in various international documents and in the supervisory work of the ILO mean that they may be understood, for the purposes of these principles and guidelines, to cover any payments that workers and jobseekers are required to make to secure employment, and any additional costs they may be required to incur for such items as medical examinations, passport fees and so on, before they may enter the recruitment process.²

¹ These sources are sometimes quoted directly or are adapted for more general application.

² This is a subject that future work by the ILO might make more precise.

Labour recruiter: The term “labour recruiter” can refer to both public employment services and to private employment agencies and all other labour recruiters that offer labour recruitment and placement services. Private labour recruiters can take many forms, including formal (for example, registered under commercial or other law) or informal, operating outside the legal and regulatory framework (not registered, such as informal subagents), profit-seeking (for example, fee-charging agencies) or non-profit (for example, trade union hiring halls).

Migrant worker: The term “migrant worker” means a person who migrates or has migrated to a country of which he or she is not a national with a view to being employed otherwise than on his or her own account. This definition is based on the definitions of “migrant for employment” and “migrant worker” in ILO Conventions Nos 97 and 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.³

I. General principles

- 1. Recruitment should take place in a way that respects, protects and applies internationally recognized human rights, including those expressed in international labour standards and fundamental freedoms.**
- 2. In particular, recruitment should be carried out with respect for the protection of the right of freedom of association and collective bargaining, and prevention of forced labour, child labour and discrimination.**
- 3. Appropriate legislation and policies on employment and recruitment should cover all workers and all recruiters, both public and private, and should apply to all employers.**
- 4. Legislation on employment and recruitment activities should be effectively enforced, and the role of the labour inspectorate should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking.**
- 5. Recruitment across international borders should respect the law of countries of origin, transit and destination, and international standards on human rights, including labour rights, and these laws and standards should be effectively implemented.**
- 6. No recruitment fees or related costs should be charged to workers or jobseekers, and the costs should be borne by the employer.**
- 7. Employment contracts should be concluded and respected, and should be clear and transparent. They should detail terms and conditions of employment and should inform the workers of the requirements and tasks of the job for which they are being recruited. Contracts should be available in the language of the worker or in a language the worker can understand. In the case of migrant workers, the written contracts should be provided before departure.**
- 8. Workers should agree voluntarily and without coercion to the terms and conditions of employment.**
- 9. Freedom of movement of workers should be respected. Workers’ identity documents should not be confiscated or retained. Workers should be able to terminate their**

³ See Article 11(1) in both ILO Conventions Nos 97 and 143, and Article 2(1) in the UN Convention.

employment in case of abuse or in accordance with the terms of their contract, and should be able to change employers or to return freely to their country of origin.

- 10. Workers should have access to free or affordable complaints and other dispute resolution mechanisms in cases of abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided.**

II. Operational guidelines

These guidelines are organized to identify the responsibilities of governments and of business, which includes both employers and labour recruiters.

A. Responsibilities of governments

Governments bear the greatest responsibility in ensuring fair recruitment, both when acting as employers and when they are regulating recruitment and providing job matching and placement services through public employment services. To reduce abuses practised against workers during recruitment, both nationals and migrants, the gaps in laws and regulations should be closed, and their full enforcement pursued.

- 1. Governments have an obligation to respect, protect and apply human rights, including labour rights, and fundamental freedoms in the recruitment process. Governments should, in particular, respect and protect the right to freedom of association and collective bargaining.**

Governments should consider ratifying and applying the relevant international instruments. This applies to all situations in which workers are recruited, including both national workers and migrant workers living and working in their territory, being recruited to work in their territory and transiting through their territory.

Governments should respect the rights of workers and of employers to organize and to bargain collectively. They should encourage employers and workers to maximize collective bargaining coverage of recruitment across all employment sectors and situations, and support trade unions in their efforts to organize workers, including migrant workers, to protect them from exploitation during or resulting from the recruitment process.

- 2. Governments should protect against human rights abuses by third parties, including labour recruiters and other business enterprises.**

Governments should protect against human rights abuses within their territory or jurisdiction by third parties, including all kinds of labour recruiters and other business enterprises, including employers, private employment agencies providing services consisting of employing workers with a view to making them available to a third party (temporary employment agencies), and other contractual arrangements involving multiple parties. This requires taking appropriate steps to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication, and exercising due diligence to ensure that human rights are respected.

- 3. Governments should adopt, review and, where necessary, strengthen national laws and regulations, and should consider establishing and regularly reviewing national fair recruitment commitment and policy, with the participation of employers' and workers' organizations.**

This applies in particular to labour, migration and criminal laws and other regulatory measures relating to recruitment, in line with international standards to address the entire spectrum of recruitment practices, including fraudulent and abusive practices that may lead

to trafficking in persons and other forms of exploitation. Governments should consider setting out a clear policy expressing the expectation that all business enterprises domiciled or operating in their territory or jurisdiction respect human rights, including workers' rights, and the law on recruitment throughout their operations, including in supply chains. They should involve employers' and workers' organizations in setting and regularly reviewing the relevant legislation, regulations and policy.

4. Governments should ensure that all relevant legislation and regulations cover all aspects of the recruitment process, and that it applies to workers in a vulnerable situation.

Governments should ensure the coverage in legislation and regulations of all stages of the recruitment process, and by all concerned parties, including in advertisements, interviews, selection, conclusion of employment contracts or contracts and agreements with labour recruiters, and treatment of workers once recruited.

For migrant workers, this also includes transportation, placement into employment and return to their country of origin if needed or desired.

The legislation should apply to the act of recruitment, and not only to some categories of labour recruiters, and therefore also to all recruiters operating outside any specific regulatory framework. The legislation and regulations on recruitment should not apply only to the formal economy, but to recruitment for all kinds of work.

5. Governments should ensure enforcement of the relevant laws and regulations, and require all labour recruiters to operate in accordance with the law.

Governments should ensure that there is a sufficient number of labour inspectors, and that they are empowered and trained to investigate and intervene at all stages of the recruitment process, for all workers and all business enterprises, and to monitor and evaluate the operations of all labour recruiters. It may be appropriate to require registration and licensing of labour recruiters to ensure that they are covered.

The labour inspection services and other concerned national authorities, including police and immigration authorities, should work together for this purpose, while ensuring that the labour rights of workers, and particularly those of migrant workers in an irregular situation, are not adversely affected by such cooperation.

6. Governments should prohibit and prevent the payment of fees and related costs by recruited workers.

The charging of recruitment fees and related costs to workers, including jobseekers, should be prohibited, and this prohibition should be enforced. Prospective employers, and not the workers, should bear the costs of recruitment.

7. Governments should ensure that employment contracts are concluded and respected, and are clear and transparent.

Governments should ensure that written contracts of employment are provided to workers specifying the job to be performed, the conditions of work and the remuneration. The contract (or an authoritative copy) should be in the language of the worker or in a language the worker can understand, and the necessary information should be provided in a clear and comprehensive way in order to allow the worker to express his or her free and informed consent. For migrant workers these contracts should be provided before leaving their country of origin.

8. Governments should ensure that workers have access to complaint and other dispute resolution mechanisms, and to appropriate and effective remedies.

Governments should ensure the availability and operation of complaint and other dispute resolution mechanisms that are accessible in practice, rapid and affordable. They should take appropriate steps to ensure, through judicial, administrative, legislative or other means, that when abuses occur within their territory and/or jurisdiction those affected have access to effective remedies, which may not be limited to compensation. For migrant workers, governments should ensure that the mechanisms can be accessed across borders after a worker has returned to his or her country of origin.

9. Governments should ensure cooperation among relevant government agencies, workers' and employers' organizations, and representatives of all recruiters.

Governments should ensure that ministries and departments, agencies and other public institutions that shape business practices (which should include, at a minimum ministries responsible for labour and employment, interior/home affairs (including law enforcement), justice, foreign affairs, and education and training) cooperate closely, as appropriate, and are aware of and observe human rights obligations when fulfilling their respective mandates.

10. Governments should raise awareness of the need for fair recruitment in both the public and private sectors.

Awareness-raising efforts should be carried out through education and training, and collaboration with the ILO, and include the need for human rights due diligence and good practices on how to eliminate abusive and fraudulent recruitment practices.

11. Governments should support respect for human rights and fair recruitment in conflict and crisis situations.

Governments should take steps to ensure that business enterprises, agencies and international assistance programmes operating in conflict and crisis situations are not involved with human rights abuses, including by:

- (a) engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) ensuring that current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in human rights abuses; and
- (d) providing migrants and displaced persons in a crisis situation with protection and, when necessary, facilitating their repatriation.

Refugees, asylum seekers and other displaced persons should be especially protected from fundamental human rights violations when they work, including violations of the right to freedom of association and collective bargaining, and to freedom from forced labour, child labour and discrimination.

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- 12. Governments should ensure that anyone who promotes or benefits from irregular, clandestine or abusive migration or the unauthorized employment of migrant workers is subject to effective enforcement and adequate penalties.**

Governments should ensure that impunity is not allowed to develop or to be continued.

- 13. For international migration, governments should monitor and evaluate and, where appropriate, regulate recruitment in countries of origin and of destination, and in countries of transit.**

Governments should take steps to protect workers during their recruitment and when they are employed abroad, and provide migrant workers and their families with reliable and accurate information and assistance, including adequate and free services where needed, to understand their situation and cope with any problems encountered as a result of their recruitment and concerning their conditions of employment.

Governments should further monitor the recruitment process in countries of origin, transit and destination, including through complaint and dispute resolution mechanisms and the prohibition of the payment of fees and related costs by recruited workers. They should consider the establishment of oversight mechanisms, such as joint committees under bilateral and multilateral agreements.

- 14. Governments should ensure that bilateral and/or multilateral agreements on labour migration, including recruitment of migrant workers, consistent with international labour standards and other internationally recognized human rights, are concluded between countries of origin, transit and destination, and that they are implemented effectively.**

Bilateral and/or multilateral agreements should be rooted in international labour standards and other internationally recognized human rights, and should contain specific mechanisms to ensure international coordination and cooperation and to close regulatory and enforcement gaps across common labour migration corridors. These agreements should be drafted, adopted, reviewed and implemented with the meaningful participation of the social partners. They should be made public and migrant workers should be informed of their provisions.

Strategic partnerships between the public and private sectors should also be promoted through these agreements, and good practices exchanged within common labour migration corridors when applicable, so as to ensure that labour recruiters violating relevant laws are sanctioned, including, where appropriate, for the offence of trafficking in persons.

B. Responsibilities of business enterprises

Business bears special responsibility for preventing abusive or unfair recruitment, and some business enterprises play an important role in protecting against abuses in recruitment. Business enterprises include employers and labour recruiters.

- 15. Business enterprises should respect human rights when recruiting workers, including through human rights due diligence assessments for recruitment procedures, and should address adverse human rights impacts with which they are involved.**

All business enterprises should respect human rights wherever they operate, independently of States' abilities and/or willingness to fulfil their human rights obligations.

They should undertake human rights impact assessments of actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed. These assessments should include audits and corrective actions to prevent or mitigate relevant potential or actual human rights impacts identified, and tracking and communicating impacts, and should cover, inter alia, the implementation of the guidance included in these principles and guidelines.

When they are not practising direct recruitment, business enterprises should engage workers only through licensed labour recruiters, including public employment services and private recruitment agencies. 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 these principles and guidelines. The enterprise should have in place a procedure for evaluating other parties involved in the recruitment process.

16. No recruitment fees or related costs should be charged to recruited workers and jobseekers.

Workers and jobseekers should not be charged any fees or related costs by the business enterprise or by its business partners for recruitment or placement, nor should workers have to pay for additional costs related to recruitment.

Business enterprises should determine whether private employment agencies and other labour recruiters charge recruitment fees to workers or impose other related costs on them and should not engage workers through agencies and other labour recruiters known to charge recruitment fees or related costs to workers.

Business enterprises should communicate this policy externally to all prospective and actual business partners and to relevant stakeholders. Policies and guidelines should be included in contracts with business partners and in supplier handbooks.

17. Business enterprises should not retain passports, contracts or other identity documents of workers.

Business enterprises should ensure that workers have free and complete access to their own passports, identity documents and residency papers, including their employment contracts, paying careful attention to the situation of migrant workers.

18. Business enterprises should respect workers' confidentiality and ensure protection of data pertaining to them.

Business enterprises should not record, in files or registers, personal data which is not required to judge the aptitude of workers, including migrant workers, for jobs for which they are being or could be considered, or required to facilitate their deployment. This data should not be communicated to any third party without the prior written approval of the worker.

1. *Labour recruiters*

A distinction is made in the guidelines between labour recruiters serving as intermediaries to place workers in employment, including those involved in multiple layers of the recruitment process, and so-called temporary work agencies employing workers and placing them at the disposal of user enterprises.

19. Labour recruiters should respect the applicable laws and fundamental principles and rights at work.

Labour recruiters should have in place policies and processes, including due diligence, to ensure that their recruitment activities are conducted in a manner that treats workers with dignity and respect, free from harassment or any form of coercion or degrading or inhuman treatment. Labour recruiters should not restrict the movement of, nor abuse or allow abuse of, workers who are under their protection.

20. When labour recruiters recruit workers in one country for employment in another country they should respect human rights, including labour rights, 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.

Labour recruiters should comply not only with the law in the country in which they are based, but also with the law in other jurisdictions.

21. Labour recruiters acting across borders should respect bilateral or multilateral migration agreements between the countries concerned which promote human rights, including workers' rights.

Labour recruiters should respect bilateral or multilateral agreements under which recruitment is carried out, especially in cases where the law does not provide adequate protection in one or the other jurisdiction.

22. Labour recruiters should ensure that the conditions of work and life into which recruited workers are inserted are those that they have been promised when they were recruited.

Labour recruiters should ensure that workers are not deceived with respect to their working and living conditions.

23. Temporary employment agencies should ensure that responsibilities of the agency and of the user enterprise are clearly allocated with a view to guaranteeing adequate protection to the workers concerned.

The user enterprise and the temporary employment agency should determine, in accordance with the law, which of them is responsible for the various aspects of the employment relationship, and ensure that the workers concerned are aware of those respective responsibilities. In all cases, either the user enterprise or the temporary employment agency should exercise those responsibilities.

2. Employers

There are different kinds of employers involved in recruitment and each should be responsible according to the circumstances.

24. Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker.

When this concerns migrant workers in particular, they should ensure that these contracts are in the language of the worker or in a language the worker can understand, and that they are concluded and provided to the worker before departure from the country of origin.

25. Employers should provide or facilitate effective access to complaint and other dispute resolution mechanisms, and to remedies.

Access to complaint and other dispute resolution mechanisms for workers should be available to those who may have suffered abusive treatment, and in cases where abuse is found to have occurred, employers should provide or facilitate effective access to appropriate remedies, both judicial and non-judicial.

26. 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.

27. Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected.

The process of recruitment should ensure that workers, in particular migrant workers, are not required to renounce their rights to join and form trade unions and to bargain collectively.

28. Employers should not have recourse 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 may affect the free exercise of trade union rights.

29. Employers should ensure that migrant workers have a legally recognized employment relationship with an identifiable and legitimate employer in the country where the work is performed.

Employers should conclude a written contract with the worker in the language of the worker or in a language the worker can understand, with all terms and conditions explained clearly, and the worker's consent should be obtained without coercion.

30. Employers should respect the freedom of migrant workers to change employment or to return to their countries of origin.

Employers should not deny permission for the worker to change employment, or to leave the country if the worker so desires, taking into account any contractual obligations that may apply.