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SEVENTEENTH ITEM ON THE AGENDA

Report of the Director-General

Fourth Supplementary Report: Outcome of the Meeting of Experts on Fair Recruitment (Geneva, 5–7 September 2016)

Purpose of the document

The document provides information on the tripartite Meeting of Experts on Fair Recruitment that took place in Geneva from 5 to 7 September 2016. It contains the outcome of the meeting, General Principles and Operational Guidelines on Fair Recruitment, in the appendix.

The Governing Body is invited to authorize the Director-General to publish and disseminate the general principles and operational guidelines and to take them into consideration when drawing up proposals for future work of the Office on these matters (see draft decision in paragraph 6).

Relevant strategic objective: All.

Policy implications: Subject to the approval by the Governing Body, the report and outcome of the Meeting will provide practical guidance for future Office work.

Legal implications: None.

Financial implications: None.

Follow-up action required: See the draft decision in paragraph 6.

Author unit: Conditions of Work and Equality Department (WORKQUALITY).

Related documents: GB.326/POL/2; GB.326/PV; GB.326/INS/14/Add.(Rev.); GB.327/INS/7

1. At its 326th Session (March 2016), the Governing Body decided to convene a tripartite Meeting of Experts to develop guidance on fair recruitment,¹ encompassing both cross-border and national recruitment. The Governing Body noted that the 2013 Tripartite Technical Meeting on Labour Migration requested 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 Fair recruitment is one of the pillars of the Fair Migration Agenda presented by the ILO Director-General to and endorsed by the International Labour Conference at its 103rd Session (2014), and is key for the protection of migrant workers.
2. The agenda of the Meeting approved by the Governing Body at its 326th Session was as follows:
 - Review, amend and adopt guidelines on fair recruitment based on a thorough analysis by the Office of related principles contained in international labour standards and universal human rights instruments.
 - Recommend ways to give practical effect to the guidelines in terms of their dissemination and practical application at the country level by constituents.³
3. The Meeting was seen as necessary to provide guidance which could assist in efforts to eliminate abusive and fraudulent recruitment practices. The international community has increasingly recognized that fair and ethical recruitment is critical to reducing labour migration costs and thus improving development outcomes for migrant workers and their families. This was recognized in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, an integral part of the 2030 Agenda for Sustainable Development. The cost of recruitment is also an indicator for target 10.7 of the Sustainable Development Goals (SDGs). The Meeting was expected to recommend ways to disseminate and give practical effect to such ILO guidance, including to inform national and multilateral responses and forums. The outcome of the Meeting was also meant to inform the general discussion on labour migration that has been placed on the agenda of the 106th Session (2017) of the International Labour Conference.
4. The tripartite Meeting of Experts took place in Geneva from 5 to 7 September 2016. It was composed of eight titular experts from each of the Government, Employers’ and Workers’ groups nominated after consultations. The meeting was chaired by an independent Chairperson, Mr Hans Cacadac (Philippines). The Vice-Chairpersons were Mr Paul MacKay (Employer expert from New Zealand) and Ms Shauna Lederer (Worker expert from the United States). The Chairperson of the Government group was Mr Luis Rodrigo Morales Vélez (Government adviser from Mexico). There were Government observers from 21 countries as well as representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) and from the following intergovernmental organizations and international non-governmental organizations: the Office of the United Nations High Commissioner for Human Rights (OHCHR), the

¹ See GB.326/PV, para. 364(b) and GB.326/POL/2, appendix.

² Conclusions of the Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013 (TTMLM/2013(14)), para. 5(iii), www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/meetingdocument/wcms_232352.pdf.

³ GB.326/POL/2, appendix, para. 9.

European Union (EU), the International Organization for Migration (IOM), and Migration Forum in Asia.

5. The Meeting focused on the negotiation of the draft principles and operational guidelines that were included in the background report prepared by the Office.⁴ The participants received clarification that the principles and guidelines were non-binding and aspirational in nature, and intended to be relevant to current and emerging trends in domestic and international recruitment. There was tripartite consensus on the need to adopt a set of definitions and general principles to serve as an overarching framework for the operational guidelines that would detail the specific responsibilities of the various actors involved in the recruitment process. Overall, Government, Employer and Worker experts concurred on the need to systematically address abuses in recruitment processes, protect the most vulnerable workers and ensure transparency and efficiency of such processes. In respect of the operational guidelines, Government experts expressed at times concern over the scope of their responsibilities and highlighted the challenges related to enforcement across jurisdictions. Worker experts stressed the importance that the operational guidelines apply to all workers, recruited within or outside a particular jurisdiction, and be sufficiently clear regarding the responsibilities of different concerned actors at all stages of the recruitment cycle in relation to the promotion and effective protection of workers' human rights, including fundamental principles and rights at work. Employer experts pointed to the need to ensure transparency in labour supply chains through the exercise of due diligence, while cautioning against holding employers accountable for abuses that were beyond their control. Consensus was nonetheless reached at the conclusion of the third day, and the meeting adopted a comprehensive set of General Principles and Operational Guidelines for Fair Recruitment. A detailed report of the meeting will be presented to the Governing Body for information at its 329th Session (March 2017).

Draft decision

6. The Governing Body:

- (a) *authorizes the Director-General to publish and disseminate the General Principles and Operational Guidelines for Fair Recruitment adopted by the Meeting of Experts on Fair Recruitment on 7 September 2016, and to draw upon them in follow-up to the United Nations General Assembly High-Level Meeting on Addressing Large Movements of Refugees and Migrants, held in New York on 19 September 2016;*
- (b) *requests the Director-General to take into consideration the General Principles and Operational Guidelines for Fair Recruitment when drawing up proposals for future work of the Office in this area.*

⁴ ILO: *Report for discussion at the Tripartite Meeting of Experts on Fair Recruitment Principles and Operational Guidelines*, Geneva, 2016. Available at: http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_508966/lang--en/index.htm.

Appendix

General principles and operational guidelines for fair recruitment ¹

I. Scope of the general principles and operational guidelines

The objective of these non-binding ILO general principles and operational guidelines for fair recruitment (hereafter “principles and guidelines”) is to inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment.

These principles and guidelines are derived from a number of sources. The primary sources are international labour standards and related ILO instruments. Other sources and good practices have also been consulted. All the sources are listed in the appendix to this document.

These 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. Implementation of these principles and guidelines at the national level should occur after consultation between the social partners and the government.

A distinction is drawn between **general principles** – which are intended to orient implementation at all levels – and **operational guidelines** – which address responsibilities of specific actors in the recruitment process and include possible interventions and policy tools.

II. Definitions and terms

For the purposes of these principles and guidelines:

- the term **due diligence** refers to an enterprise’s ongoing process which aims to identify, prevent, mitigate, and account for how it addresses the adverse human rights impacts of its own activities or which may be directly linked to its operations, products or services by its business relationships. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed;
- the term **employer** refers to a person or an entity that engages employees or workers, either directly or indirectly;
- the term **enterprise** refers to employers, labour recruiters other than public employment services, and other service providers involved in the recruitment process;

¹ The general principles and operational guidelines will be submitted to the 328th Session of the Governing Body (October–November 2016).

- the term **labour recruiter** refers to both public employment services and to private employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, whether for profit or non-profit, or operating within or outside legal and regulatory frameworks;
- 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;
- the term **recruitment** includes the advertising, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship; and
- the terms **recruitment fees** or **related costs** refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.

III. General principles

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

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

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

IV. Operational guidelines

These guidelines are organized to identify the responsibilities of governments, enterprises and public employment services.

A. *Responsibilities of governments*

This section applies to governments acting in their regulatory capacity.

Governments bear the ultimate responsibility for advancing 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, both nationals and migrants, during recruitment, gaps in laws and regulations should be closed, and their full enforcement pursued.

1. **Governments have an obligation to respect, protect and fulfil internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, in the recruitment process. This includes respect for, and protection of, the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.**
 - 1.1. This obligation applies with respect to all workers recruited into, within or from their territory and/or jurisdiction.
 - 1.2. Governments should consider ratifying and applying the relevant international instruments.
 - 1.3. Governments should respect the rights of workers and of employers to organize and to bargain collectively, including with regard to recruitment. They should create an environment conducive to the extension of collective bargaining coverage across sectors, and allowing workers, including migrant workers, to organize into workers' organizations to protect themselves from exploitation during, or resulting from, the recruitment process.

2. Governments should protect workers against human rights abuses in the recruitment process by employers, labour recruiters and other enterprises.

2.1. Governments should protect workers against human rights abuses in the recruitment process within their territory and/or jurisdiction by third parties, including by all kinds of labour recruiters and other 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 and mandating 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, regularly reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations.

3.1. 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 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 relevant legislation and regulations cover all aspects of the recruitment process, and that they apply to all workers, especially those in a vulnerable situation.

4.1. Governments should include, in legislation and regulations, coverage of all stages of the recruitment process, and of concerned parties, including in relation to advertisements, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable.

4.2. In consultation with organizations of workers and employers, and where appropriate with labour recruiters, governments should take measures to ensure compliance across the recruitment industry with the relevant laws and regulations. Such measures should include public registration, licensing or other regulatory systems. These systems should be effective, transparent and should allow workers and other interested parties to verify the legitimacy of recruitment agencies and placement offers.

4.3. The legislation should apply to the act of recruitment and not only to some categories of labour recruiters but 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.

4.4. Governments should also consider adopting mutual recognition agreements to facilitate recognition of foreign qualifications in order to address brain waste and de-skilling.

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- 5. Governments should effectively enforce relevant laws and regulations, and require all relevant actors in the recruitment process to operate in accordance with the law.**
- 5.1. Governments should work to ensure that there is an effective and sufficiently resourced labour inspectorate, and that it is empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters.
- 5.2. Governments should promote schemes aimed at ensuring that employers and recruiters are held accountable, individually or jointly, for the respect of workers' rights in the recruitment process. Such schemes could include shared responsibility initiatives, and other initiatives to promote fair recruitment practices.
- 6. Governments should take measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers.**
- 6.1. These measures should aim particularly at preventing fraudulent practices by labour recruiters, abuse of workers, debt bondage and other forms of economic coercion. Governments should also take measures to prevent and/or deter the solicitation and collection of illicit money from workers in exchange for offering them employment contracts.
- 6.2. Prospective employers, public or private, or their intermediaries, and not the workers, should bear the cost of recruitment. The full extent and nature of costs, for instance costs paid by employers to labour recruiters, should be transparent to those who pay them.
- 7. Governments should take steps to ensure that employment contracts are clear and transparent and are respected.**
- 7.1. Governments should take steps to ensure that written contracts of employment are provided to workers specifying the job to be performed, and the terms and conditions of employment including those derived from collective agreements. 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 sufficiently in advance of departure from their country of origin. These contracts should not be substituted and should be enforceable in the destination country. While respecting confidentiality and the protection of personal data, governments may consider the use of information technology to achieve the aforementioned objectives.
- 7.2. In the absence of a written contract, governments have the responsibility to ensure that recruited workers have all their rights respected in line with existing legislation and regulations.
- 8. Governments should take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.**
- 8.1. Governments should take steps to ensure the availability and operation of grievance 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 related to recruitment

occur within their territory and/or jurisdiction, those affected have access to effective remedies, which may include, but not necessarily be limited to, compensation. Pending the investigation or resolution of a grievance or dispute, whistle-blowers or complainants should be protected, and migrant workers should have timely and effective access to procedures. Governments should also take steps to ensure that mechanisms can be accessed across borders after a worker has returned to his or her country of origin.

- 8.2. To this end, governments should promote policies aimed at identifying and eliminating barriers to effective access to grievance and other dispute resolution mechanisms, such as complex administrative procedures, unreasonable costs, fear of discrimination or retaliation and dismissal and, in the case of migrant workers, fear of detention or deportation.

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

- 9.1. Governments should work to ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely, as appropriate, and are aware of and observe human rights obligations when fulfilling their respective mandates.

10. Governments should seek to ensure that recruitment responds to established labour market needs.

- 10.1. Governments should seek to assess labour market needs and ensure coherence between labour recruitment, migration, employment and other national policies, in recognition of the wide social and economic implications of labour recruitment and migration, and in order to promote decent work for all.

11. Governments should raise awareness of the need for fair recruitment in both the public and private sectors and ensure workers have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.

- 11.1. Awareness-raising efforts should be carried out through education and training directed at employers, workers, and recruiters, including on the need for human rights due diligence and good practices for recognizing, preventing and eliminating abusive and fraudulent recruitment practices. Some possible awareness-raising measures include:
- (a) development and maintenance of government websites that contain relevant information regarding fair recruitment policies, legislation, regulation, and processes;
 - (b) development, distribution and/or online publication of "how-to" guides on fair recruitment;
 - (c) public service announcements on radio and/or television;
 - (d) web seminars (webinars) or other outreach efforts;
 - (e) encouraging outreach to workers by employers, workers' organizations, compliant labour recruiters and civil society groups;

- (f) collaboration with the ILO and the most representative employers' and workers' organizations to provide education and training and/or conduct awareness-raising campaigns;
- (g) making labour market information publicly available so as to inform decision making by workers, employers and labour recruiters; and
- (h) pre-departure and post-arrival orientations.

In the case of recruitment of migrant workers, countries should consider providing training regarding workers' rights and fair recruitment for potential migrants.

- 11.2. These measures should help ensure that workers have access to free, comprehensive, understandable and accurate information including, but not limited to, admission requirements, living and employment conditions, rights and labour laws.

12. Governments should respect human rights and promote fair recruitment in conflict and crisis situations.

- 12.1. Governments should take steps to ensure that enterprises, agencies and international assistance programmes operating in conflict and crisis situations are not involved with human rights and recruitment abuses.

13. Governments should ensure that bilateral and/or multilateral agreements on labour migration 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, are concluded between countries of origin, transit and destination, as relevant, and are implemented effectively.

- 13.1. Bilateral and/or multilateral agreements should be rooted in international labour standards and other internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, and should contain specific mechanisms to ensure international coordination and cooperation, including on consular protection, and to close regulatory and enforcement gaps related to recruitment across common labour migration corridors. These agreements should be drafted, adopted, reviewed and implemented with the meaningful participation of the social partners and should include the establishment of oversight mechanisms, such as tripartite committees under bilateral and multilateral agreements. They should be made public and migrant workers should be informed of their provisions.
- 13.2. These agreements should be informed by reliable data and information gathered through monitoring and evaluation of recruitment practices and their labour market and social implications, including in countries of origin.

14. Governments should take steps to protect against recruitment abuses within their own workforces and supply chains, and in enterprises that are owned or controlled by the Government, or that receive substantial support and contracts from government agencies.

- 14.1. Governments should promote adherence to these principles and guidelines as employers and through commercial transactions with enterprises. Governments should exercise adequate oversight when they recruit workers or contract with enterprises that engage in recruitment practices. Governments should demonstrate fair

recruitment practices and promote awareness of, and respect for, fair recruitment principles by enterprises, including through their procurement activities.

B. Responsibilities of enterprises and public employment services

This section does not apply to governmental agencies when acting in a regulatory capacity.

Enterprises and public employment services bear special responsibility for preventing abusive or unfair recruitment.

15. Enterprises and public employment services should respect human rights when recruiting workers, including through human rights due diligence assessments of recruitment procedures, and should address adverse human rights impacts with which they are involved.

15.1. All enterprises and public employment services should respect human rights in their recruitment processes wherever they operate, independently of the abilities and/or willingness of States to fulfil their human rights obligations.

15.2. They should undertake due diligence regarding their recruitment activities.

15.3. When they are not practising direct recruitment, enterprises should engage workers only through compliant 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.

15.4. Enterprises and public employment services should respect internationally recognized human rights, including those expressed in international labour standards, in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation, in the recruitment process.

15.5. Enterprises and public employment services should not retaliate against or blacklist workers, in particular those who report recruitment abuses or fraudulent recruitment practices anywhere along their supply chain, and should provide special protections for whistle-blowers pending the investigation or resolution of a grievance or dispute.

16. Enterprises and public employment services should undertake recruitment to meet established labour market needs and never as a means to displace or diminish an existing workforce, lower wages or working conditions, or otherwise undermine decent work.

17. No recruitment fees or related costs should be charged to, or otherwise borne by, recruited workers and jobseekers.

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

17.2. Enterprises and public employment services should communicate this policy externally via guidelines and other means including contracts to all prospective and current business partners and relevant stakeholders. 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.

18. Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.

18.1. Enterprises and public employment services should not interfere with workers' 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.

19. Enterprises and public employment services should respect workers' confidentiality and ensure protection of data pertaining to them.

19.1. 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 which is not required to facilitate their deployment. This data should not be communicated to any third party without the prior written approval of the worker.

20. Enterprises may work to develop schemes that drive professional recruitment standards.

20.1. 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.

1. Labour recruiters

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

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

21.1. 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.

22. When labour recruiters recruit workers in one country for employment in another country, they should 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.

22.1. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries

of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.

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

23.1. Labour recruiters should respect workers' rights in line with 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.

24. Labour recruiters should take steps to ensure that the conditions of work and living conditions into which workers are recruited are those that they have been promised.

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

24.2. Labour recruiters 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.

25. Temporary employment agencies and user enterprises should agree on the allocation of responsibilities of the agency and of the user enterprise, and ensure that they are clearly allocated with a view to guaranteeing adequate protection to the workers concerned.

25.1. 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.

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

26.1. The terms and conditions of a worker's employment should be specified in an appropriate, verifiable, and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language 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.

26.2. Worker's informed consent to the terms of the contract should be obtained without deception or coercion.

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- 27. 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.**
- 27.1. 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.
- 28. Employers should provide all workers, whatever their employment status, with the protection provided for in labour law and international labour standards as concerns recruitment.**
- 28.1. 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.
- 29. Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected in the recruitment process.**
- 29.1. 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.
- 30. Employers should not resort to labour recruiters or to temporary work agencies to replace workers who are on strike.**
- 30.1. 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.
- 31. Employers should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin.**
- 31.1. 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.

Annex

Main sources for the general principles and operational guidelines for fair recruitment

1. 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 ILO instruments on migrant workers (Conventions Nos 97 and 143 and Recommendations Nos 86 and 151) 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 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. For ease of reference, for example, C97 indicates ILO Convention No. 97, and R203 indicates ILO Recommendation No. 203, and other references follow the same pattern. Full references are provided in the list of abbreviations below the list of sources.
5. The list of sources below is not meant to be exhaustive.

(Note that the subject lines have no normative value – purely to assist in referring to the proposed principles and guidelines.)

General principles	Sources
1. Respect for internationally recognized human rights and other relevant international labour standards	ILO Declaration on Fundamental Principles and Rights at Work; C29, P29, C87, C98, C100, C105, C111, C138, C182 and C181; MLC, 2006 (Art. III); Universal Declaration on Human Rights; UN core human rights instruments; UN Guiding Principles Foundational Principle A1; Dhaka Principles Pillar I; CIETT Principle 6; IRIS Code Core Principle A; Verité Code of Conduct Tool 1
2. Labour market needs and decent work	ILO Declaration on Fundamental Principles and Rights at Work; R204 (Para. 15(e))
3. Coverage of relevant legislation and policies related to all aspects of the recruitment process	C88, C181, P29 (Art. 2(c)(i)); Dhaka Principle 3; ILO Fair Recruitment Initiative
4. Promotion of efficiency, transparency and protection for workers in the recruitment process, such as mutual recognition of skills and qualifications	C88, C181, R157 (Para. 62), R169, C143 (Art.14(b))
5. Effective law enforcement	C81, C129, C150, C181; P29 and R203; C97 (Art. 3) and C143 (Arts 2–6); CIETT Principle 1

General principles	Sources
6. Recruitment across borders with respect for human rights	C88 (Art. 6(b)(ii)), C97, C143 and C181 (Art. 8); Dhaka Principles Core Principle A; CIETT Principle 1
7. Prohibition of charging fees and costs to workers	Inter alia, C97 (Art. 7(2) and Art. 4 of Annex I and Annex II); 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
8. Clear and transparent contracts	C97 (Annex I, Art. 5 and Annex II, Art. 6), C189 (Art. 8(1)); R86 (Annex, Para. 22); R188 (Para. 5); R203 (Para. 4(e)); Dhaka Principles 2 and 4; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
9. 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
10. Free, comprehensive and accurate information	C88, C97 (Arts 2 and 3), C181, C189 (Art. 7), R201, R86 (Para. 5), R151 (Paras 7(1) and 24) and R203 (Para. 4(e))
11. Identity documents, freedom of movement	C143 (Preamble, Art. 1 and 14(a)); C189 (Art. 9(c)); Dhaka Principle 4; IRIS Code Principle 2; Verité Code of Conduct Tool 1
12. Termination of employment and permission to change employer	C189 (Arts 7 and 8) and R188 (Para. 15)
13. Access to grievance and other dispute resolution mechanisms	C97 (Annex I, Art. 8 and Annex II, Art. 13); C143 (Arts 5, 6 and 9(2)); R151 (Paras 32–34); C181 (Arts 10 and 14); C189 (Art. 16); P29 (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
Operational guidelines	Sources
A. Responsibilities of governments	
1. Obligation to respect, protect, and apply human rights and other relevant international labour standards	ILO Declaration on Fundamental Principles and Rights at Work; C29, P29, C87, C98, C100, C105, C111, C138 and C182; C181; Universal Declaration on Human Rights; ICCPR and ICESCR; UN Guiding Principles Foundational Principle A2; Dhaka Principles Pillar I, Principle 6
2. Protect against human rights abuses by third parties	ILO MNE Declaration; UN Guiding Principles
3. Adopt, review and strengthen national laws and regulations, and national fair recruitment policy	P29 (Art. 1(2)); C181 (Art. 13), 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	P29 (Art. 2(c)(i)); Dhaka Principle 3; Inter alia, C97, C111, C143, C169, C181 (Art. 8), C189; R204; CEDAW, ICERD et al.
5. Enforce laws and regulations and ensure labour recruiters operate within the law	C81, C88, C97 (Art. 3 of Annex I and II), C129, C150 and C181 (Arts 3 and 14); P29 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 I, Art. 5 and Annex II, Art. 6), C189 (Art. 8(1)); R86 (Annex, Para. 22); R188 (Para. 5); Dhaka Principles 2 and 4; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1

Operational guidelines	Sources
8. Availability and operation of grievance and other dispute resolution mechanisms	C97 (Annex I, Art. 8 and Annex II, Art. 13); C143 (Arts 5, 6 and 9(2)); R151 (Paras 32–34); 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. Labour market needs and decent work	ILO Declaration on Fundamental Principles and Rights at Work; R204 (Para. 15(e))
11. Raising awareness of the need for fair recruitment, as well as free, comprehensive and accurate information	C97 (Arts 2 and 3); R203 (Para. 4)
12. Respect for human rights in crisis situations	C97 (Annex II, Art. 7); R86 (Annex); 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
13. Conclude and implement bilateral agreements and/or multilateral agreements consistent with internationally recognized human rights and other relevant international labour standards	ILO Declaration on Fundamental Principles and Rights at Work; C88 (Art. 6(b)(ii) and (iii)); C97 (Arts 3(2), 7(1) and 10)); C143 (Arts 4 and 15); C181 (Art. 8(2))
14. Protection against recruitment abuses within own workforce or supply chains	C94, International Labour Conference, 105th Session, 2016, Report IV, <i>Decent work in global supply chains</i>
B. Responsibilities of enterprises and public employment services	
15. Respect for human rights	ILO Declaration on Fundamental Principles and Rights at Work, C181 (Arts 3, 4, 11 and 12); C29 and P29, C87, C98, C100, C105, C111, C138, C182; ILO MNE Declaration (para. 8); UN Guiding Principles Foundational Principle A2; Dhaka Principles Pillar II
16. Labour market needs and decent work	ILO Declaration on Fundamental Principles and Rights at Work; R204 (Para. 15(e))
17. No recruitment fees or related costs for recruited workers and jobseekers	Inter alia, C97 (Art. 7; Art. 4 of Annexes I and II); 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
18. 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
19. Respect workers' confidentiality and ensure protection of data	C181 (Art. 6); R188 (Para. 12(1)); IRIS Code Principle 4
20. Development of schemes that drive professional recruitment standards	C181, CIETT Principles
1. Labour recruiters	
21. Labour recruiters should respect the applicable laws and fundamental principles and rights at work	ILO Declaration on Fundamental Principles and Rights at Work; C181 (Arts 3, 4, 11 and 12); C29 and P29, C87, C98, C100, C105, C111, C138, C182; CIETT Principle 2, Dhaka Principles Core Principle B

Operational guidelines	Sources
22. 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
23. Labour recruiters acting across borders should respect bilateral or multilateral migration agreements	C88, R83, C181 (Art. 8(2)); C189 (Art. 15(1))
24. 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
25. 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	
26. Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker	C97 (Annex I, Art. 5 and 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
27. Effective access to grievance and other dispute resolution mechanisms, and to remedies	C181 (Arts 10, 13 and 14); C189 (Art. 16); P29 (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
28. 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; R198
29. 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
30. 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</i> , fifth (revised) edition, 2006, paras 632 and 633; CIETT Principle 7; Dhaka Principle 6
31. 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

Abbreviations

International labour standards

(a) Conventions and Protocols

C29	Forced Labour Convention, 1930 (No. 29)
C81	Labour Inspection Convention, 1947 (No. 81)
C87	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
C88	Employment Service Convention, 1948 (No. 88)

C94	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
C97	Migration for Employment Convention (Revised), 1949 (No. 97)
C98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
C100	Equal Remuneration Convention, 1951 (No. 100)
C105	Abolition of Forced Labour Convention, 1957 (No. 105)
C111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
C129	Labour Inspection (Agriculture) Convention, 1969 (No. 129)
C138	Minimum Age Convention, 1973 (No. 138)
C143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
C150	Labour Administration Convention, 1978 (No. 150)
C181	Private Employment Agencies Convention, 1997 (No. 181)
C182	Worst Forms of Child Labour Convention, 1999 (No. 182)
C189	Domestic Workers Convention, 2011 (No. 189)
MLC, 2006	Maritime Labour Convention, 2006
P29	Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)

(b) Recommendations

R83	Employment Service Recommendation, 1948 (No. 83)
R86	Migration for Employment Recommendation (Revised), 1949 (No. 86)
R151	Migrant Workers Recommendation, 1975 (No. 151)
R157	Nursing Personnel Recommendation, 1977 (No. 157)
R169	Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)
R188	Private Employment Agencies Recommendation, 1997 (No. 188)
R201	Domestic Workers Recommendation, 2011
R203	Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
R204	Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)

International Labour Organization Declaration

ILO MNE Declaration	Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977 (as amended)
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United Nations core human rights instruments

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1979
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination, 1965
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966

Other sources

CIETT *	International Confederation of Private Employment Agencies (CIETT) Code of Conduct, 2015
Dhaka Principles	The Dhaka Principles for Migration with Dignity, 2012
IRIS Code	International Organization for Migration, International Recruitment Integrity System Code of Conduct
UN Guiding Principles	United Nations Guiding Principles on Business and Human Rights, 2011
Verité Code of Conduct	Verité Fair Hiring Toolkit, Sample Code of Conduct Provisions

* As of 21 September 2006, CIETT has been rebranded as the World Employment Confederation.