



► Promising practices for fair recruitment

March 2022

Madagascar alignment of labour code to newly ratified conventions

Key points

- Following ratification of key international labour standards concerning labour migration and fair recruitment, a process of comprehensive legislative reform to reopen safe and fair migration pathways for Malagasy workers is ongoing.
- Practical guides and resources were developed to support dissemination and operationalization of new legislation.
- An Inter-Ministerial Committee (first established in 2015 and revitalized in recent years) was established to serve as a coordination mechanism and to propose amendments to the labour law and other decrees.

Focus

FRI pillar: Improving laws, policies and enforcement to promote fair recruitment

Country: Madagascar

Responsible organization(s): Ministry of Labour, Employment, Public Service and Social Laws

About international labour standards (ILS)

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) setting out basic principles and rights at work. They are either Conventions (or Protocols), which are legally binding international treaties that may be ratified by member states, or Recommendations, which serve as non-binding guidelines to support implementation.¹ Conventions and Recommendations are discussed, negotiated

¹ ILO, Labour standards, available [here](#).

and adopted at the annual International Labour Conference.

Ratification creates a legal obligation to apply the Convention in national law and practice and to report on compliance to the ILO's supervisory mechanisms, including the Committee of Experts on the Application of Recommendations and Conventions (CEARC). In addition, complaint procedures can be initiated against countries for violations of a Convention that they have ratified.

Learn more: [Rules of the Game: An introduction to the standards-related work of the International Labour Organization \(Centenary edition 2019\)](#)

The labour migration and fair recruitment context in Madagascar

Madagascar is a net migration country, with historically France being a key country of destination for students and small groups of high-skilled labour migration. New migratory corridors have emerged in recent decades – with key destinations in the Arab States and neighboring countries of the Indian Ocean. Data based on exit permits issued to migrant workers from 2006-12 suggests key countries of destination are Lebanon, Mauritius, Kuwait, Seychelles, Jordan and Saudi Arabia. The majority of those migrating to the Arab States are women to work in domestic work.^{2 3}

Following concerning reports about abusive practices and trafficking in persons in countries in the Arab States, Madagascar responded with a ban on labour migration (through suspension of the

issuing of exit permits) to “high risk” countries in 2013.⁴ This ban was further strengthened by a 2019 Decree banning departures to countries where Madagascar has no diplomatic representation. Furthermore, a 2015 Decree invoked a nationwide ban on the operation of private employment agencies (PEAs) by revoking all licenses of PEAs.⁵ These effective bans had the impact of pushing workers into irregular migration channels and leaving workers who choose to migrate particularly vulnerable without access to services and assistance. To date (as of March 2022), these regulations are still in place, while labour migration to countries not considered “high risk” (for example, Mauritius) is taking place. Regarding regulation of PEAs and recruitment fees and costs, following the 2015 ban on licensing and operations of PEAs, unlicensed and informal brokers became more widespread (having existed prior to the ban as well). Despite prohibition on payment of fees and expenses by workers in the Labour Code, the practice is systemic.⁶

Having taken a prohibitive approach to regulation of labour migration in the past decade, in 2019 Madagascar sought a realignment, starting with ratification of key ILO instruments to set the basis for a comprehensive labour migration policy that protects workers' rights and ensures social dialogue.

Ratifications in 2019

In June 2019 Madagascar ratified six ILO Conventions, which entered into force on 11 June 2020:

1. The 2014 Protocol to the Forced Labour Convention, 1930 (No. 29)

² OIT (2021) Résumé de pays : le recrutement équitable à Madagascar

³ Accurate data on outflows of migrant workers remains challenging in Madagascar, especially in light of effective bans on migration. The data from 2006-2012 mentioned here is based only on issuance of exit visas for migrant workers, and does not cover migration in general. For further information and data see: OIT (2020) Examen des lois, politiques et pratiques concernant le recrutement des travailleurs migrants à Madagascar.

⁴ Décret 2013-594 du 6 août 2013.

⁵ Order No. 20.308/2015/MEETFP “repealing the authorizations of placement agencies”.

⁶ ILO (2021) Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa

2. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
3. The Labour Relations (Public Service) Convention, 1978 (No. 151)
4. The Collective Bargaining Convention, 1981 (No. 154)
5. The Private Employment Agencies Convention, 1997 (No. 181)
6. The Domestic Workers Convention, 2011 (No. 189)

The contribution of ratification of these Conventions towards shaping a better labour migration legal framework was specifically mentioned by the President at the time of deposit.⁷

Process of aligning national legislation with newly ratified Conventions

Following the ratifications, with technical advisory services from the ILO, Madagascar embarked on a process of comprehensive legal reform including amendments and modifications to the Labour Code. With regard to labour migration, efforts have been made to improve the exit visa application process for migrant workers to improve efficiency and transparency, and a new law on PEAs focused on strengthening regulation has been drafted. An administrative procedures manual on authorization to leave the country for migrant workers has also been developed. The new provisions mark the first step towards lifting of restrictions on labour migration.

An Inter-Ministerial Committee (first established in 2015 and revitalized in recent years) was established to serve as a coordination mechanism and to propose amendments to the labour law and other decrees. Tripartite consultations to discuss proposed

amendments and new texts were held in 2020 and 2021. The proposals will continue to be discussed by the competent technical bodies (including the National Labour Council) before submission process before Parliament.

Negotiations of bilateral labour agreements (BLAs)

Several BLAs and Memorandum of Understanding (MOUs) between Madagascar and Mauritius, Saudi Arabia, Kuwait and Lebanon are in the draft stages of development. The BLA development process typically includes rounds of negotiation and comments, and the formation of a joint committee composed of officials from both countries.

Translating new legislation into practical guidance for key stakeholders

An important part of dissemination and operationalization of new legislation was to develop practical guides and resources to be used by key stakeholders. To support these efforts, focal points on migration have been established in selected communities of origin – comprising a mix of employers, workers and local authorities. A [“Practical Guide”](#) for fair recruitment focal points outlining role of employers, workers and civil society organizations has been developed distributed to migration focal points and to SENAMAMA (domestic worker union) leaders.

Formation of the trade union of domestic workers in Madagascar – SENAMAMA

SENAMAMA was registered as a trade union in 2019. The union currently includes more than 2,000 members – many of whom are domestic workers

⁷ ILO, 12 June 2019, Madagascar takes a leading role in the “One for All” Centenary ratification campaign by ratifying six ILO Conventions

who have returned from working in the Arab States. The union has recently worked to develop its constitution, elect leaders and develop an action plan. The union has also participated in the national tripartite dialogues on revisions to the legal framework governing labour migration to ensure compliance with recently ratified ILS. For more information see: ILO (2022) Promising practices for Fair Recruitment: Establishment of the National Union of Malagasy Domestic Workers (SENAMAMA) (forthcoming).

The 'Better Regional Migration Management' project (September 2021 – May 2022)

BRMM is focused on laying the foundations for improving labour migration governance in East Africa by using evidence-based policies, enhancing migrant workers' qualifications and skills, and actively engaging social partners for improved development outcomes. The project is implemented in Ethiopia, Djibouti, South Sudan, Sudan, Somalia, Kenya, Uganda, Tanzania and Rwanda. The project covers 3 interrelated pillars of intervention: i) Established and strengthened foundations for enhanced labour market and migration information systems (LMMIS); ii) Better skills matching, recognition and development along specific migration corridors; and iii) Strengthened capacities of the social partners to engage in labour migration policy development and implementation. The project is funded by the UK Foreign, Commonwealth and Development Office.

Five years of the Fair Recruitment Initiative

- This promising practice is part of a series, and results from a stocktaking exercise undertaken five years after the launch of the Fair Recruitment Initiative (FRI).
- The FRI aims to ensure that recruitment practices nationally and across borders are grounded in labour standards, developed through social dialogue, ensure gender equality. Specifically, they:
 1. Are transparent and effectively regulated, monitored, and enforced;
 2. Protect all workers' rights, including fundamental principles and rights at work (FPRW), and prevent human trafficking and forced labour; and
 3. Efficiently inform and respond to employment policies and labour market needs, including for recovery and resilience.

Resources

ILO (2022) Promising practices for Fair Recruitment: Establishment of the National Union of Malagasy Domestic Workers (SENAMAMA) (forthcoming).

OIT (2021) [Guide pratique pour le recrutement équitable et une migration de travail régulière](#)

OIT (2021) [Résumé de pays : le recrutement équitable à Madagascar](#)

OIT (2020) [Examen des lois, politiques et pratiques concernant le recrutement des travailleurs migrants à Madagascar](#)

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