



NATIONAL
LAWS



GOVERNMENTS



RECRUITERS



2

THE LEGAL AND NORMATIVE FRAMEWORK FOR FAIR RECRUITMENT



International Labour Organization



International Training Centre

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First published 2018
Second published 2021

The project is financed by the EU

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Training Toolkit on Establishing Fair Recruitment Processes – Module 2: The legal and normative framework for fair recruitment

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Design and layout by the International Training Centre of the ILO, Turin – Italy

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GENERAL OBJECTIVES



- Become familiar with the core binding legal instruments related to fair recruitment
- Understand how the theme of fair recruitment is addressed across international labour standards
- Be introduced to the key elements of the normative framework on fair recruitment, including the ILO's General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs
- Understand the responsibilities of key stakeholders and actors in promoting fair recruitment and preventing abuses in recruitment



INTRODUCTION

Fair recruitment provisions span a multitude of key international documents, including legal treaties and normative instruments. The core legally binding treaties related to fair recruitment set forth the responsibilities of States in ensuring fair recruitment, and capitalize on the link between the cross-cutting theme of recruitment and such areas of international law as forced labour, migrant workers' rights, employment policy, as well as conventions focusing on specific employment sectors.

The normative framework for fair recruitment is contained in several ILO Conventions, particularly conventions addressing employment services, forced labour, migration for employment and sectoral conventions, e.g. on domestic work and fishing. The General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs, supplements legally binding treaties by unpacking the specific roles and responsibilities of the various actors implicated in the promotion of fair recruitment. The GPOG and the Definition emphasize the multi-stakeholder approach to implementing fair recruitment processes.

The normative framework for fair recruitment, consisting principally of the General Principles and Operational Guidelines for Fair Recruitment, supplements legally binding treaties by unpacking the specific roles and responsibilities of the various actors implicated in the promotion of fair recruitment. This 2016 ILO instrument capitalizes on the multi-stakeholder approach to achieving fair recruitment processes.

Module 2 of this toolkit is structured as follows:

- **TOPIC 1** will cover the key core binding instruments containing specific provisions on fair recruitment;
- **TOPIC 2** will address the non-binding normative framework, and particularly the General Principles and Operational Guidelines for Fair Recruitment and Definition of recruitment fees and related costs, while highlighting the main roles and responsibilities of each of the key actors involved.



TOPIC 1: CORE BINDING LEGAL INSTRUMENTS RELATED TO FAIR RECRUITMENT



Fair recruitment provisions figure in a number of legal instruments on forced labour, migrant workers and employment, and instruments addressing individual sectors and industries.

The following section highlights the key conventions that deal with the prevention of abuses in recruitment and the promotion of fair recruitment practices. Member States are under a legal **OBLIGATION TO RESPECT, PROTECT AND FULFIL** the provisions of these binding instruments.

A. INTERNATIONAL LABOUR STANDARDS ON FORCED LABOUR

For many governments around the world, the elimination of **FORCED LABOUR** remains an important challenge for the 21st century. Not only is forced labour a serious violation of a fundamental human right, it is a leading cause of poverty and a hindrance to economic development. Forced labour can result from internal or cross-border migration, which renders some workers particularly vulnerable to deceptive recruitment and coercive labour practices. It also affects people in their home areas, born or manipulated into a status of bondage or servitude. Human trafficking can also be regarded as forced labour; the only exceptions are cases of trafficking for organ removal, forced marriage or adoption, unless these practices also result in forced labour.

Protocol of 2014 to the Forced Labour Convention, 1930 – P029

Entry into force: 9 November 2016

The Protocol of 2014 to the Forced Labour Convention, supported by Recommendation No. 203, aims to advance prevention, protection and compensation measures, as well as to intensify efforts to eliminate all forms of forced labour, including trafficking in persons. Its purpose is to address gaps in the implementation of the Forced Labour Convention of 1930.

The Protocol notes that an increasing number of workers are in forced or compulsory labour in the private economy, that certain sectors of the economy are particularly vulnerable, and that certain groups of workers are at higher risk of becoming victims of forced or compulsory labour, especially migrants.



Recognizing the link between exploitative recruitment and forced labour, Article 2 of the Protocol on Forced Labour details the measures that can be taken to prevent the latter, which include protecting persons from abusive and fraudulent practices during the recruitment and placement process.

Article 2

The measures to be taken for the prevention of forced or compulsory labour shall include:

- (a) educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced or compulsory labour;
- (b) educating and informing employers, in order to prevent their becoming involved in forced or compulsory labour practices;
- (c) undertaking efforts to ensure that:
 - (i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and
 - (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;
- (d) protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;
- (e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour; and
- (f) addressing the root causes and factors that heighten the risks of forced or compulsory labour.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)

Entry into force: 25 December 2003

The Trafficking Protocol is the first international instrument to define trafficking in a comprehensive manner. Article 3 defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” The Protocol expresses the first international consensus on the definition of trafficking, which is the first step toward a concerted international effort to combat the practice.

By including recruitment in the scope of acts that can constitute trafficking, the Protocol acknowledges the manner in which traffickers take advantage of mobility, crises and economic and social disadvantages in procuring their victims.

The Trafficking Protocol has three main purposes: to **PREVENT AND COMBAT** trafficking in persons, paying particular attention to women and children; to **PROTECT AND ASSIST VICTIMS OF TRAFFICKING**, with full respect for their human rights; and to **PROMOTE COOPERATION BETWEEN STATES** in meeting those objectives.

In addition to providing a unified definition of trafficking, the Protocol provides comprehensive law-enforcement measures to combat trafficking in persons. These include the obligation to criminalize trafficking, attempted trafficking and other associated acts. The document calls for better training of law-enforcement officials to enable them to identify potential trafficking victims and the organized criminal methods used to traffic individuals. It also requires cooperation between law-enforcement and immigration officials of State Parties in mapping and identifying transportation routes, fraudulent documents and potential traffickers. Articles 11 and 12 mandate strengthened border control measures, such as checking travel documents, boarding vehicles for inspection and improving the quality of travel documents to reduce fraud.

B. INTERNATIONAL LABOUR STANDARDS ON MIGRANT WORKERS

The growing pace of economic globalization has vastly increased the numbers of migrant workers. Unemployment and poverty are prompting many workers in developing countries to seek work elsewhere, while developed countries are experiencing a growing demand for labour, especially of an unskilled kind. As a result, millions of workers and their families are travelling to other countries to find work. Migrant workers contribute to the economies of their host countries, and the remittances they send home help to boost the economies of their countries of origin. Yet, at the same time, **MIGRANT WORKERS OFTEN ENJOY LITTLE SOCIAL PROTECTION, FACE INEQUALITIES IN THE LABOUR MARKET AND ARE ESPECIALLY VULNERABLE TO EXPLOITATION AND HUMAN TRAFFICKING**, including in the recruitment process. International legal standards on migration provide tools for countries of both origin and destination to manage migration flows and ensure adequate protection for this vulnerable category of workers.

Migration for Employment Convention (Revised) – C097
Entry into force: 22 January 1952

MIGRANT FOR EMPLOYMENT: a person who migrates from one country to another with a view to being employed otherwise than on his or her own account. This term includes any person regularly admitted as a migrant for employment.



The Convention does not apply to:

- frontier workers;
- short-term entry of members of the liberal professions and artistes;
- seafarers.

The Convention stipulates that each Member State must ensure adequate services to assist migrants for employment. It must take appropriate steps to provide accurate information and combat misleading propaganda in relation to emigration and immigration. It must take measures to facilitate the departure, travel and reception of migrants for employment. Moreover, it must ensure that the services provided to migrants for employment by its public employment agencies are free of charge.

The authorities of States between which flows of migrants are sufficiently large must, whenever necessary or desirable, enter into agreements to regulate matters of common concern arising in connection with the application of the Convention.

Migration for Employment Convention (Supplementary Provisions) – C143

Entry into force: 9 December 1978

The purpose of the Migration for Employment Convention (Supplementary Provisions) is twofold: it is intended to combat migration in abusive conditions and to promote equality of opportunity and treatment for migrant workers. Both objectives are relevant to the establishment of fair recruitment processes, in view of the heightened risk of human trafficking associated with abuses in recruitment.

By signing up to the treaty, a Member State undertakes to respect the basic human rights of all migrant workers. It must systematically seek to determine whether there are illegally employed migrant workers on its territory, and whether any migrants for employment departing from, passing through or arriving on its territory are subjected to conditions violating international instruments or national laws and regulations. It must take the necessary measures to prevent and eliminate these abuses, including prosecuting the authors of manpower trafficking, regardless of the country from which they operate.

Following consultation with representative organizations of employers and workers, a State must adopt legal and regulatory provisions for detecting the illegal employment of migrant workers and for punishing persons who:

- Illegally employ migrant workers;
- Organize movements of migrants for employment involving abuses;
- Knowingly provide assistance to such movements.

General Recommendation on Women Migrant Workers – R026 (CEDAW)

Approved on 5 November 2008

General Recommendation No. 26 on Women Migrant Workers supplements the Convention for the Elimination of All Forms of Discrimination against Women by addressing the specific vulnerabilities of women migrant workers. It is one of a series of recommendations issued by the Committee on the Elimination of Discrimination Against Women on issues affecting women to which it believes States parties should devote more attention.



The scope of the General Recommendation is limited to addressing the situations of migrant women who, as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never become eligible for permanent residence or citizenship in their country of employment, unlike professional migrant workers. The General Recommendation applies to: (a) women migrant workers who migrate independently; (b) women migrant workers who join their spouses or other members of their families, who are also workers; and (c) undocumented women migrant workers who may fall into either of the above categories.

Recognizing that women migrant workers risk facing abuse at all stages of migration, General Recommendation No. 26 applies to countries of origin, transit and destination. It therefore encourages bilateral and regional cooperation through the conclusion of agreements and memoranda of understanding. Several of the recommended measures are specifically concerned with establishing fair recruitment processes for migrant women.

As part of their responsibility for ensuring fair recruitment processes, countries of origin should deliver or facilitate pre-departure information and training to raise prospective migrant workers' awareness of the following topics: recommended contents of labour contracts, legal rights and entitlements in the country of employment, potential methods of exploitation, and complaints procedures. It is recommended that recruitment agencies participate in such training courses. Additionally, countries of origin are expected to regulate and monitor recruitment agencies to ensure that these respect the rights of all women migrant workers.

The responsibilities of countries of transit in ensuring the fair recruitment of migrant women include training, monitoring and supervising border police and immigration officers in respect of gender-sensitivity and non-discriminatory practices, as well as protecting women migrants against violations that take place under their jurisdiction.

Finally, countries of destination are responsible for ensuring that labour contracts for women are legally valid, and that women migrant workers have access to remedies when their rights are violated.

C. INTERNATIONAL LABOUR STANDARDS RELATED TO EMPLOYMENT POLICY AND PROMOTION

The goals of decent living standards, social and economic integration, personal fulfilment and social development are closely intertwined with access to decent employment. Employment services (both public and private) play a key role in creating employment. International labour standards in the area of employment policy and promotion set out the goal of full, productive, and freely chosen employment and put forward strategies for attaining it. The recruitment process is an integral part of facilitating access to decent work.

Private Employment Agencies Convention – C181

Entry into force: 10 May 2000

PRIVATE EMPLOYMENT AGENCY: any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- Services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- Services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person which assigns their tasks and supervises their execution;
- Other services relating to job seeking, determined by the competent authority after consulting the most representative employers' and workers' organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

Convention N. 181 is based on both **RECOGNITION OF THE ROLE WHICH PRIVATE EMPLOYMENT AGENCIES PLAY IN A WELL-FUNCTIONING LABOUR MARKET** and **THE NEED TO PROTECT WORKERS AGAINST THE RISKS OF ABUSE**. Each State Party to the Convention must determine the conditions governing the operation of private employment agencies. It must ensure that they treat workers without discrimination in respect of race, colour, sex, religion, political opinion, national extraction or social origin. Moreover, it must adopt all necessary measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed on its territory by private employment agencies. It must take measures to ensure that child labour is not used or supplied by private employment agencies. Finally, each State Party must ensure that adequate procedures are in place to address and investigate complaints and alleged abuses and fraudulent practices committed by private employment agencies.

Private employment agencies, for their part, must respect workers' privacy in relation to the processing of their data, and must not charge any fees or costs to workers, subject to certain limited exceptions. Moreover, the Convention provides for cooperation between private and public employment services, sets forth general principles for protecting jobseekers against unethical or inappropriate practices, and affords protection to workers employed under subcontracting arrangements, as well as workers recruited from abroad. The provisions of this instrument are also applicable to temporary employment agencies.

Employment Service Convention – C088

Entry into force: 10 August 1950

The Employment Service Convention is an instrument with interim status providing guidance on the organization of **PUBLIC EMPLOYMENT SERVICES**. Article 6 of the Convention details the measures to be taken by employment services in order to ensure effective recruitment and placement.

Article 6

The employment service shall be so organised as to **ENSURE EFFECTIVE RECRUITMENT AND PLACEMENT**, and for this purpose shall:

- (a) assist workers to find suitable employment and assist employers to find suitable workers, and more particularly shall, in accordance with rules framed on a national basis--
 - (i) register applicants for employment, take note of their occupational qualifications, experience and desires, interview them for employment, evaluate if necessary their physical and vocational capacity, and assist them where appropriate to obtain vocational guidance or vocational training or retraining,
 - (ii) obtain from employers **PRECISE INFORMATION ON VACANCIES** notified by them to the service and the requirements to be met by the workers whom they are seeking,
 - (iii) refer to available employment applicants with suitable skills and physical capacity,
 - (iv) refer applicants and vacancies from one employment office to another, in cases in which the applicants cannot be suitably placed or the vacancies suitably filled by the original office or in which other circumstances warrant such action;
- (b) take appropriate measures to--
 - (i) **FACILITATE OCCUPATIONAL** mobility with a view to adjusting the supply of labour to employment opportunities in the various occupations,
 - (ii) **FACILITATE GEOGRAPHICAL MOBILITY** with a view to assisting the movement of workers to areas with suitable employment opportunities,
 - (iii) facilitate temporary transfers of workers from one area to another as a means of meeting temporary local maladjustments in the supply of or the demand for workers,
 - (iv) facilitate any movement of workers from one country to another which may have been approved by the governments concerned;
- (c) collect and analyse, in co-operation where appropriate with other authorities and with management and trade unions, the **FULLEST AVAILABLE INFORMATION ON THE SITUATION OF THE EMPLOYMENT MARKET AND ITS PROBABLE EVOLUTION**, both in the country as a whole and in the different industries, occupations and areas, and make such information available systematically and promptly to the public authorities, the employers' and workers' organisations concerned, and the general public;
- (d) co-operate in the administration of unemployment insurance and assistance and of other measures for the relief of the unemployed; and
- (e) assist, as necessary, other public and private bodies in social and economic planning calculated to ensure a favourable employment situation.

D. SECTOR-SPECIFIC LEGAL INSTRUMENTS

International labour standards in most cases have universal value and apply to all workers and all enterprises. Some standards cover specific industries, such as seafaring, and there are a number of standards dealing with work-related issues in very specific sectors of economic activity (plantations, hotels, restaurants) or concerning specific groups of workers (nursing personnel, homeworkers). Specific guidance on recruitment-related issues can be found in such sectoral instruments.



Domestic Workers Convention – C189

Entry into force: 5 September 2013

Domestic workers comprise a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers. They work for private households, often without clear terms of employment, unregistered in any book, and excluded from the scope of labour legislation. Currently there are at least 67 million domestic workers worldwide, not including child domestic workers and this number is increasing steadily in developed and developing countries.

In adopting Convention No. 189 and Recommendation No. 201, the International Labour Conference asserted that domestic workers, like other workers, have the right to decent working and living conditions. Given the specific nature of domestic work and the context in which it takes place, namely household premises other than those of the worker, it was considered desirable to **COMPLEMENT EXISTING ILO INSTRUMENTS WITH SPECIFIC STANDARDS TO ENABLE DOMESTIC WORKERS** to enjoy their rights fully.

As concerns the recruitment of domestic workers, the Convention requires Member States to take measures to ensure that domestic workers are informed of their terms and conditions of employment. The Convention lists specific matters on which information must be provided, such as usual workplace, remuneration, normal hours of work, and periods of daily and weekly rest. This information must be communicated to the domestic worker in an appropriate, verifiable and easily understandable manner, preferably in the form of a written contract. In the case of live-in domestic workers, Member States are required to take measures to ensure that domestic workers are free to reach an agreement with their employers or potential employers on whether or not to reside in the household.

The Convention covers all domestic workers, including migrant domestic workers. Nonetheless, because of the specific vulnerabilities of migrant domestic workers, it contains provisions that specifically concern them or are especially relevant to the needs and risks they face. In particular, additional protection is provided by requiring that migrant workers receive a job offer or written contract before crossing national borders.

Member States are obliged to regulate the activities of private employment agencies by ensuring that complaints mechanisms are available to domestic workers and by adopting measures to adequately protect them from abuse. The Convention emphasizes that States must take measures to ensure that fees charged by agencies are not deducted from the wages of domestic workers.

Maritime Labour Convention – C186

Entry into force: 20 August 2013

The Maritime Labour Convention 2006 sets out in one place seafarers' rights to decent conditions of work, covering almost every aspect of their working and living conditions. It was designed to be applicable globally, easy to understand, readily updatable and uniformly enforced. The Convention contains a comprehensive set of basic maritime labour principles and rights, as well as ILO fundamental rights, and spells out in one place and clear language seafarers' basic employment rights.

With regard to recruitment and placement, the Convention sets out detailed conditions for fair employment contracts, which should be clear and legally enforceable, and should incorporate collective bargaining agreements where applicable. It also stipulates that States should inspect labour agencies supplying maritime workers to ensure that they apply the terms of the Convention. It explicitly recognizes the private organizations ("recognized organizations") that often carry out inspection and certification functions in the shipping sector on behalf of national maritime administrations. The Convention sets out mandatory standards with respect to the expertise and independence that these organizations must have before a government can authorize them to carry out labour inspection and certification on its behalf.

TOPIC 2: NON-BINDING NORMATIVE FRAMEWORK ON FAIR RECRUITMENT

The General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs



The General Principles and Operational Guidelines for Fair Recruitment were adopted in 2016 by a tripartite meeting of experts. The objective of these **NON-BINDING ILO GENERAL PRINCIPLES AND OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT** is to inform the current and future work of the ILO and other organizations, national legislatures and social partners in promoting and ensuring fair recruitment. The principles and guidelines are derived from a number of sources, in particular **INTERNATIONAL LABOUR STANDARDS AND RELATED ILO INSTRUMENTS**.

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 employment agencies, and **COVER ALL SECTORS OF THE ECONOMY**. It is intended that these principles and guidelines be implemented at the national level after consultation between the social partners and the government.

A. GENERAL PRINCIPLES FOR FAIR RECRUITMENT

A distinction is drawn between **GENERAL PRINCIPLES**, which are intended to orient implementation at all levels, and **OPERATIONAL GUIDELINES**, which address the responsibilities of specific actors in the recruitment process and include possible interventions and policy tools. Below are the **13 GENERAL PRINCIPLES** for fair recruitment:

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.

B. OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT

1. Operational guidelines for governments

According to the General Principles and Operation Guidelines for Fair Recruitment, **GOVERNMENTS** bear the primary duty for advancing fair recruitment practices, both as regulators and as public employment service providers. The first part of the Guidelines applies to governments acting in their regulatory capacity.



GOVERNMENTS

What are the responsibilities of governments according to the principles and guidelines?

First of all, governments are obligated to realize the human rights of all workers under international law, including their labour rights. They should create an environment that encourages workers, including migrant workers, to bargain collectively and to form workers' organizations. Protecting the human rights of workers also means that governments should prevent and eliminate forced labour, child labour and discrimination in the workplace. This entails protecting workers against abuses committed by employers, recruiters and other enterprises.

In order to do so, it is crucial that governments strengthen national laws and regulations related to fair recruitment and, even more importantly, involve the social partners in meaningful social dialogue with a view to their adoption. For such laws to be effective, they need to cover all aspects of the recruitment process and apply to all workers, especially those in vulnerable situations.

But it is not enough to pass laws regarding fair recruitment; governments must also ensure that they are effectively enforced. This is where labour inspection comes in: to hold entities involved in abusive practices accountable for their actions. In overseeing workers' recruitment conditions and the practices of third parties, governments should pay particular attention to the following points:

- No recruitment fees or related costs should be imposed on workers and jobseekers.
- Employment contracts should be clear, transparent and respected.
- Workers should be able to present their grievances and obtain effective remedies, without fearing retaliation.

- Cooperation between all relevant government agencies, workers' and employers' organizations, and representatives of recruiters should be encouraged.
- Recruitment should respond to established labour market needs in order to promote decent work for all.

The Guidelines also underline the role of governments in raising awareness regarding fair recruitment in both the public and private sectors, and ensuring that workers have free and full information on the conditions of their recruitment and employment. This can be achieved by training and educating employers, recruiters and workers on the need for due diligence in protecting human rights and preventing fraudulent recruitment practices.

Governments also have a duty to ensure that bilateral and multilateral agreements with other States on labour migration are in line with internationally recognized human rights. Finally, governments should promote adherence to these Principles and Guidelines among their own workforces and supply chains, and in enterprises that are owned or controlled by them.

2. Operational guidelines for employers

EMPLOYERS are defined as persons or entities that engage employees or workers, either directly or indirectly. When it comes to their responsibilities for ensuring fair recruitment, the following provisions apply:

- Employers have a duty to ensure that workers receive written employment contracts that are clear, transparent and easily comprehensible. Workers should not be coerced or deceived into signing them and there should be measures in place to prevent contract substitution. Contract substitution is a practice whereby the terms of employment the worker has agreed to are replaced, usually upon arrival in the country of destination.
- In cases of alleged abuse in the recruitment process, employers should provide or facilitate access to dispute-resolution mechanisms and appropriate remedies.
- Employers should ensure that workers retain their right to freedom of association and collective bargaining.
- Along the same lines, employers should not replace workers who are on strike. This is considered a serious violation of freedom of association.
- Employers must also respect the freedom of workers to terminate or change their employment or to return to their countries of origin.
- Finally, employers must ensure that the principles and guidelines are applied to all workers, regardless of the way in which they are recruited or employed.



Though these requirements are not exclusively or specifically addressed to them, employers must also:

- Respect human rights.
- Engage workers through compliant labour recruiters.
- Refrain from retaliating against or blacklist workers when they report abuses or fraudulent recruitment practices.
- Hire workers in order to meet labour market needs, and not as a means of displacing or undercutting an existing workforce.
- Refrain from charging any fees or costs to workers.
- Refrain from retaining workers' passports and other identity documents.
- Respect workers' confidentiality and not disclose any personal data to third parties without the worker's consent.
- Consider establishing schemes to promote professional recruitment standards within their industries.

3. Operational guidelines for recruiters

The General Principles and Operational Guidelines for Fair Recruitment define **LABOUR RECRUITERS** as public employment services, private employment agencies and all other intermediaries or sub-agents that offer labour recruitment and placement services. A distinction is made between recruiters, who act as intermediaries, and employment agencies, which employ workers and then place them at the disposal of user enterprises.

Below are the core responsibilities of recruiters according to the Guidelines:

- Like all other actors involved in the recruitment process, recruiters must respect human and labour rights and applicable legislation. They should treat workers with dignity and respect and should not abuse, or allow abuse of, workers who are under their protection.
- Recruiters should abide by applicable bilateral and multilateral agreements between countries.
- They should take steps to ensure that the working and living conditions into which workers are recruited are those that they have been promised.
- In the case of employment agencies and user enterprises, these two actors should clearly define and allocate their respective responsibilities and inform workers about them.

Though these are not exclusively or specifically addressed to them, recruiters are also subject to the following principles and guidelines:

- They should ensure that workers receive written employment contracts that are clear, transparent and easily comprehensible. Workers should not be coerced or deceived into signing them



and there should be measures in place to prevent contract substitution. Contract substitution is a practice whereby the terms of employment the worker has agreed to are replaced, usually upon arrival in the country of destination.

- Recruiters must respect the freedom of workers to terminate or change their employment or to return to their countries of origin.
- They should not retaliate against or blacklist workers when they report abuses or fraudulent recruitment practices.
- Workers should be recruited in order to meet labour market needs, and not as a means of displacing or undercutting an existing workforce.
- Recruiters should not charge any fees or costs to workers.
- They should not retain workers' passports and other identity documents.
- They should respect workers' confidentiality and not disclose any personal data to third parties without the worker's consent.
- Recruiters may consider establishing schemes to guide professional recruitment standards.

C. RESPONSIBILITIES OF OTHER ACTORS IN PROMOTING FAIR RECRUITMENT

1. The role of workers' organizations

While the General Principles and Operational Guidelines for Fair Recruitment centre on the responsibilities of governments, employers, and recruiters, these are not the only actors involved in promoting fair recruitment practices. Being the primary advocates of workers' rights and interests, workers' organizations also play a crucial role, as educators, monitors and policy-influencers. What specific role can workers' organizations play in promoting fair recruitment?

- They can raise awareness and provide training for their members. For example, they can train workers to recognize and deal with recruitment abuses, or inform them about living and working conditions in destination countries. It is particularly important that workers' organizations step in to fill the gap in education and training in cases where government efforts are inadequate.
- They may include conditions of fair recruitment in collective bargaining agreements and related social dialogue. Social dialogue is a vital aspect of ensuring fair recruitment, particularly when it comes to advising governments on legislation and policy.
- They play an important monitoring and oversight role. In conjunction with the labour administration system, they can observe whether basic recruitment principles are respected and check that complaint and dispute resolution mechanisms function properly.

- They can advocate for the inclusion of fair recruitment in the mandates of tripartite labour advisory boards and other such national mechanisms. Recruitment should be on the agenda of all major decision-making bodies dealing with labour issues.

Workers' organizations face a number of restrictions when carrying out their work. For example, organizing migrant workers can be a challenge in countries where freedom of association is constrained. Moreover, where the participation of unions in policy discussions is the exception rather than the rule, workers' interests have been poorly reflected in recruitment legislation and practice.

In an effort to assist its constituents in dealing with such challenges, the ILO carries out capacity-building activities and provides technical assistance. Through the Fair Recruitment Initiative, launched in 2014, the ILO supports the compilation of examples of good practice, in particular social-dialogue mechanisms that have been effective in addressing unfair recruitment practices. It assists trade unions in their efforts to organize migrant workers and protect their rights. Finally, it supports cooperation between trade unions and civil society actors on recruitment issues, and encourages them to undertake joint campaigns.

2. The role of employers' associations

Like workers' organizations, **EMPLOYERS' ORGANIZATIONS AND ASSOCIATIONS** have an important role in encouraging their members and other actors to respect fair recruitment principles. Among other responsibilities, they may:

- Raise awareness among their members and provide training concerning fair recruitment, emphasizing that being associated with abusive practices can be extremely damaging to an employer's reputation and performance.
- Consider including recruitment issues in social dialogue or collective-bargaining processes.
- Cooperate with the labour administration system, including labour inspectors, in monitoring the application of fair recruitment principles.
- Advocate for fair recruitment when participating in tripartite labour advisory boards and other national mechanisms.
- Help members include fair recruitment principles in their codes of conduct.



3. The role of the media

The media are often the general public's first point of contact with information on abuses in recruitment processes. In view of the sensitive nature of news coverage related to fair recruitment, it is crucial that the media abide by the **FIVE PRINCIPLES** of ethical journalism when reporting on recruitment issues: truth and accuracy, independence, fairness and impartiality, humanity, and accountability.



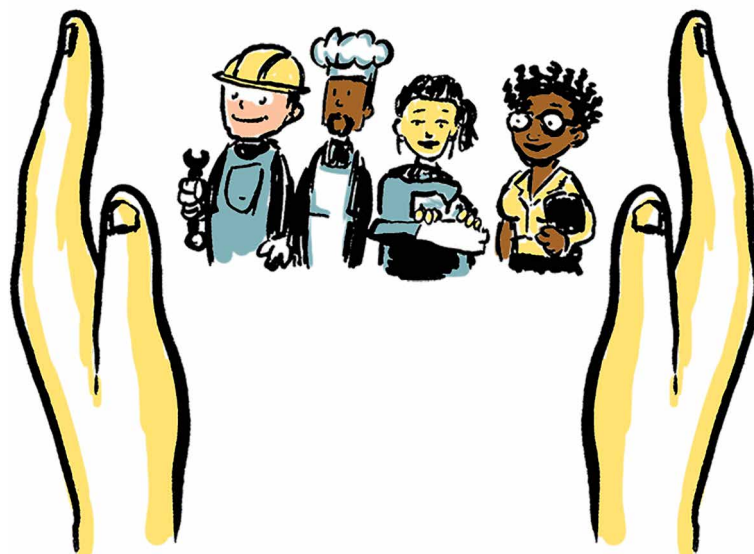
TRUTH AND ACCURACY: Journalists cannot always guarantee 'truth', but getting the facts right is the cardinal principle of journalism. Journalists should always strive for accuracy, give all the relevant facts and ensure that they have been checked.

INDEPENDENCE: Journalists must be independent voices; they should not act, formally or informally, on behalf of special interests whether political, corporate or cultural. They should declare to their editors – or the audience – any of their political affiliations, financial arrangements or other personal information that might constitute a conflict of interest.

FAIRNESS AND IMPARTIALITY: Most stories have at least two sides. While there is no obligation to present every side in every piece, stories should be balanced and add context. Objectivity is not always possible, and may not always be desirable (in the face, for example, of brutality or inhumanity), but impartial reporting builds trust and confidence.

HUMANITY: Journalists should do no harm. What they publish or broadcast may be hurtful, but they should be aware of the impact of their words and images on the lives of others.

ACCOUNTABILITY: A sure sign of professionalism and responsible journalism is the ability to hold oneself accountable. When journalists commit errors they must correct them and their expressions of regret must be sincere rather than cynical. They listen to the concerns of their audience. They may not change what readers write or say but they will always provide remedies when they are unfair.



4. The Definition of recruitment fees and related costs

In 2018, the Definition of recruitment fees and related costs was adopted by a Tripartite Meeting of Experts, held in Geneva, and is to be read in conjunction with the General Principles and Operational Guidelines for Fair Recruitment.

The Definition is intended to support the development, monitoring, implementation and enforcement of laws, policies and measures aimed at the protection of workers' rights. In addition, it supports the delivery of effective regulation of recruitment practices, notably of public and private employment agencies, to combat non-compliance, provide transparency of recruitment practices, and enhance the functioning of labour markets.

The Definition is based on the findings of the ILO's global comparative research which analysed different member States' national laws and policies and international voluntary codes and guidance on recruitment fees and related costs. It takes into account the practical realities and context-specific conditions that workers, labour recruiters, enterprises and employers face

The Definition also recognises that the competent authority has the flexibility to determine exceptions to their applicability, consistent with relevant international labour standards, through national regulations, and after consulting the most representative organisations of workers and employers

Most importantly, the Definition recognises the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment; nor should they be collected directly or indirectly, such as through deductions from wages and benefits.

The Definition consists of three components:

a. Recruitment Fees:

Recruitment fees include:

- payments for recruitment services offered by labour recruiters (public or private);
- payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
- payments made in the case of direct recruitment by the employer; payments required to recover recruitment fees from workers.

These fees may be one-time or recurring and cover recruiting, referral and placement services.

b. Related Costs:

Related costs are expenses integral to recruitment and placement within or across national borders. Depending on the recruitment process and the context, these cost categories could be further developed by the governments and the social partners at the national level.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process:

- Medical costs: payments for medical examinations, tests or vaccinations;
- Insurance costs: costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds;
- Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing;
- Costs for training and orientation: expenses for required training, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
- Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively;
- Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation;
- Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalising workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

c. Illegitimate, Unreasonable, and Undisclosed Costs:

Extra-contractual, undisclosed, inflated or illicit costs are never legitimate. Anti-bribery and anti-corruption regulation should be complied with at all times and at any stage of the recruitment process. Examples of such illegitimate costs include bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain.

KEY LEARNING POINTS



Fair recruitment provisions figure in various legally binding instruments on forced labour, migrant workers and employment, as well as in sector-specific documents.

- In recognition of the **LINK BETWEEN RECRUITMENT AND FORCED LABOUR**, labour standards in the area of forced labour highlight measures that must be undertaken by States to prevent abusive and fraudulent practices as early as the recruitment phase.
- **MIGRANT WORKERS** are acknowledged as being especially vulnerable to exploitation and human trafficking, including in the recruitment process. International labour standards on migration highlight the role of States in ensuring that migrants have access to accurate information regarding employment conditions, in preventing false propaganda, and in combatting migration under abusive and exploitative conditions.
- **EMPLOYMENT AGENCIES (BOTH PUBLIC AND PRIVATE)** contribute to the efficient functioning of the labour market. However, there is also a recognized need to protect workers from abuses they may commit. International labour standards on employment policy underline the role of States in regulating the operation of private employment agencies and setting up organized employment services to ensure the satisfactory recruitment and placement of workers.
- Although international labour standards have universal value and apply to all workers and enterprises, additional guidance is occasionally required for specific industries or groups of workers, to adequately reflect the conditions under which they are recruited and employed. International labour instruments on domestic workers and seafarers define the responsibilities of States as concerns the recruitment and placement of workers in these sectors.

Issued in 2016, the ILO **GENERAL PRINCIPLES AND OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT** consolidate the guidance drawn from international labour standards and related instruments. They cover the recruitment of all workers, including migrant workers, whether they are recruited directly by employers or through intermediaries. They apply to recruitment within and across national borders, as well as recruitment through temporary employment agencies, and cover all sectors of the economy.

In 2018, the ILO added the Definition of recruitment fees and related costs to the General Principles and Operational Guidelines for Fair Recruitment. The definition recognizes that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.

The **GENERAL PRINCIPLES** are intended to orient implementation at all levels, while the **OPERATIONAL GUIDELINES** address the responsibilities of specific actors in the recruitment process and include possible interventions and policy tools. Implementation of these principles and guidelines at the national level should be preceded by **TRIPARTITE SOCIAL DIALOGUE** among the social partners.

The operational guidelines for fair recruitment attribute specific responsibilities to governments, employers and labour recruiters.

These are not, however, the only actors involved in promoting fair recruitment processes. Being the primary advocates of workers' rights and interests, **WORKERS' ORGANIZATIONS** also play a crucial role as educators, monitors and policy-influencers. **EMPLOYERS' ORGANIZATIONS AND ASSOCIATIONS** have an important role to play in encouraging their members and other actors to respect fair recruitment principles. Finally, as the general public's first point of contact with information on abuses in recruitment processes, **THE MEDIA** must also undertake to report responsibly on fair recruitment, bearing in mind the five principles of ethical journalism: truth and accuracy, independence, fairness and impartiality, humanity and accountability.

TEST YOUR KNOWLEDGE



- 1) Which of the following are binding legal instruments relating to fair recruitment?
 - a. Migration for Employment Convention (Supplementary Provisions) – C143 (ILO)
 - b. General Principles and Operational Guidelines for Fair Recruitment
 - c. Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) (OHCHR)
 - d. Domestic Workers Convention – C189 (ILO)
- 2) Migrant workers are less at risk of becoming victims of forced or compulsory labour than national workers.
 - a. True
 - b. False
- 3) The General Principles and Operational Guidelines for Fair Recruitment impose responsibilities on all of the following actors, except:
 - a. Governments
 - b. Labour recruiters
 - c. Worker's organizations
 - d. Enterprises
- 4) Worker's organizations have no role to play in establishing fair recruitment practices.
 - a. True
 - b. False
- 5) The General Principles and Operational Guidelines for Fair Recruitment are intended to cover the recruitment of _____.
 - a. Temporary Workers
 - b. National workers
 - c. Migrant workers
 - d. All workers
- 6) Domestic workers comprise a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers.
 - a. True
 - b. False

- 7) Among the following provisions, which are the two objectives stipulated by the Migration for Employment Convention (Supplementary Provisions):
 - a. Combat migration in abusive conditions
 - b. Promote equality of opportunity and treatment for migrant workers
 - c. Guarantee employment opportunities for migrant workers
 - d. Prevent and combat trafficking in persons
- 8) The Protocol on Trafficking does not include recruitment within the scope of acts that can constitute trafficking.
 - a. True
 - b. False
- 9) The implementation of the General Principles and Operational Guidelines for Fair Recruitment at the national level should be preceded by consultation between the social partners and the government.
 - a. True
 - b. False
- 10) Which of the following sentences is FALSE?
 - a. The growing pace of economic globalization has vastly increased the numbers of migrant workers.
 - b. Migrant workers often enjoy little social protection, face inequalities in the labour market and are especially vulnerable to exploitation and human trafficking.
 - c. Migrant workers contribute only to the economies of their countries of origin.
 - d. International legal standards on migration provide tools for countries of both origin and destination to manage migration flows and ensure adequate protection for this vulnerable category of workers.
- 11) The General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs recognises that recruitment agencies can demand fees for recruitment purposes to any worker seeking their services.
 - a. True
 - b. False

Correct answers:

1) a, c, d; 2) b; 3) c; 4) d; 5) d; 6) a, b; 7) a, b; 8) b; 9) a; 10) c; 11) b.



TRAINING ACTIVITIES

TRAINING ACTIVITY 1 – GENERAL PRINCIPLES FOR FAIR RECRUITMENT

MATRIX EXERCISE



OBJECTIVES:



- Identify the roles and responsibilities of the different actors in the normative framework for fair recruitment;
- Understand the complementarity between the actors, and how they can work together to ensure a fair recruitment process;
- Highlight the applicability of the general principles to all actors involved in fair recruitment.

INSTRUCTIONS FOR THE TRAINER



Divide the participants into groups of four or five, ensuring that the groups are as heterogeneous as possible (in terms of expertise, institutional background and country).

Distribute a copy of the matrix table to each group and explain the rules of the matrix exercise using the instructions below:

1. *Following a short discussion in your group, please fill out the matrix distributed to you, indicating which actor(s) have a role to play where each principle is concerned. (Note: You may select more than one actor for each general principle).*
2. *In the appropriate column of the matrix, make a note of any concrete actions that may be taken by an actor in relation to each of the principles for which you feel they have a role to play.*
3. *Next, in the plenary, write down on your sticky notes which actors have a role to play for each principle. Plot this on the larger matrix on the wall, which will be used to compare each group's selections.*

Facilitators should correct any wrong information and complete it as necessary.

TIPS



- Ensure that each group is composed of approximately 4 or 5 members, as fewer members may not make for a fruitful exchange of ideas and more may mean that some participants do not actively participate in the brainstorming session.
- Encourage the sharing of ideas among group members, as there is more than one possible correct answer.

MATERIALS



- One small matrix copy for each group
- One single large matrix for the classroom wall (to be used for the feedback session)
- Sticky notes for each group (to be used for the feedback session)

TIME



- 20 minutes of preparation time
- 20 minutes of collective feedback (covering each of the general principles and corresponding group selections)
- 10 minutes for Q&A

TRAINING ACTIVITY 2 - OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT

MATCHING EXERCISE



OBJECTIVES:



- Identify the roles and responsibilities of the different actors according to the normative framework for fair recruitment;
- Shed light on the complementarity between the actors, and how they can work together to ensure a fair recruitment process;
- Highlight the overlapping roles of various actors in establishing fair recruitment;
- Highlight the role of workers' organizations, despite the fact that they are not included in the General Principles and Operational Guidelines for Fair Recruitment.

INSTRUCTIONS FOR THE TRAINER



Divide the participants into groups of four or five, ensuring that the groups are as heterogeneous as possible (in terms of expertise, institutional background and country).

Instruct them as follows:

1. *You have received nine cards, each concerned with a different operational guideline, as well as a number of smaller cards featuring the four possible actors who may be responsible for implementing the guidelines.*
2. *Which of the four actors is responsible for implementing the operational guidelines in question? Match each operational guideline with one actor, by writing the name of the actor on the operational guideline card.*
3. *In the plenary feedback session, display your results by placing the actors' names on the wall under each of the corresponding operational guidelines.*

Highlight the matching nature of the exercise.

At the end of the preparation time, go through each of the operational guidelines, observing each group's selection and the extent to which they vary.

Facilitators should correct any wrong information and complete it as necessary.

TIPS



- Ensure that participants do not refer to the General Principles and Operational Guidelines for Fair Recruitment while undertaking this exercise. The preliminary objective is to test preconceived notions about the roles of different actors involved in fair recruitment.
- Ensure that each group is composed of approximately 4 or 5 members, as fewer members may not make for a fruitful exchange of ideas and more may mean that some participants do not actively participate in the brainstorming session.
- Encourage the sharing of ideas among group members, as there is no single correct answer. Certain operational guidelines may apply to more than one actor.

- After the groups have presented their selections and been provided with feedback, invite them to refer back to the General Principles and Operational Guidelines for Fair Recruitment, and to identify recurring provisions in each actor's set of operational guidelines.
- The operational guidelines used in this exercise were selected because they do not immediately bring to mind a specific actor (they are not immediately associated with a government or recruiter, for instance), but rather allow for a certain degree of reflection and back-and-forth discussion. As a facilitator, you may choose to select other operational guidelines or a different number of operational guidelines to use in the exercise, depending on the desired learning outcomes.
- The inclusion of the "Workers' organizations" card is a red herring. In reality, workers' organizations are not formally included in the Operational Guidelines for Fair Recruitment. They nevertheless have an important role to play.

MATERIALS

- Nine cards bearing individual operational guidelines.
- Cards bearing the names of the different actors.

TIME

- 20 minutes of preparation time
- 20 minutes of collective feedback (covering each of the operational guidelines and corresponding group selections)
- 10 minutes for Q&A

RESOURCES

Guide to International Labour Standards

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_246944.pdf

General principles and operational guidelines for fair recruitment and Definition of Recruitment Fees and Related Costs https://www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang--en/index.htm

Findings from the global comparative study on the Definition of Recruitment Fees and Related Costs https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_646693.pdf

General Recommendation on Women Migrant Workers – R026

http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

Convention 189 and Recommendation 201 on Decent Work for Domestic Workers

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168266.pdf

Protocol of 2014 to the Forced Labour Convention, 1930 – P029

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

Migration for Employment Convention (Revised) – C097

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C097:NO

Migration for Employment Convention (Supplementary Provisions) – C143

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C143:NO

Private Employment Agencies Convention – C181

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326

Protocol to Prevent, Suppress and Punish Human Trafficking in Persons – Palermo Protocol

<https://www.ohchr.org/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

Employment Service Convention – C088

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100>
ILO CODE:C088

Domestic Workers Convention – C189

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100>
ILO CODE:C189

Maritime Labour Convention – C186

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100>
ILO CODE:C186

Ethical Journalism Network: The Five Principles of Ethical Journalism

<https://ethicaljournalismnetwork.org/who-we-are/5-principles-of-journalism>

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

Training Toolkit on Establishing Fair Recruitment Processes