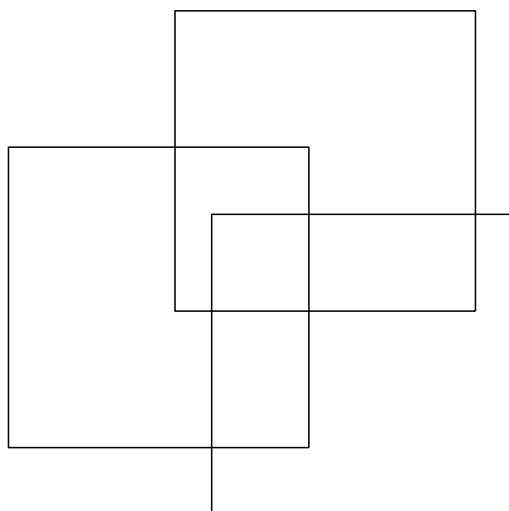




Final report*

**Tripartite Meeting of Experts on Defining
Recruitment Fees and Related Costs**
(Geneva, 14–16 November 2018)



Geneva, 2019

Governance
and Tripartism
Department

* In accordance with established procedures, this final report will be submitted to the 335th Session of the Governing Body of the ILO (March 2019) for its consideration.

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INTERNATIONAL LABOUR ORGANIZATION

Governance and Tripartism Department

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INTERNATIONAL LABOUR OFFICE, GENEVA

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Introduction

1. The Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs was held in Geneva from 14 to 16 November 2018.
2. The need to develop a definition on recruitment fees and related costs resulted from the Meeting of Experts on Fair Recruitment Principles and Operational Guidelines held in Geneva from 5 to 7 September 2016 during which the experts held lengthy debates on a possible definition of recruitment fees and related costs before concluding that “the subject was something that in the future the ILO might wish to make more precise.” (GB.329/INS/INF/2).
3. In October–November 2017, the 331st Session of the International Labour Organization (ILO) Governing Body agreed to convene a three-day “Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs” which would have as its objectives to:
 - (a) review, amend and adopt draft definitions on recruitment fees and related costs developed by the Office based on a global comparative study and thorough analysis by the Office of definitions of recruitment fees and costs; and
 - (b) recommend ways to disseminate and use the adopted definitions at the international and national levels by constituents.
4. The Meeting was attended by eight experts from Governments (accompanied by five advisers), eight experts nominated by the Employers’ group and eight experts nominated by the Workers’ group, as well as by seven Government observers from seven member States, six Employer and two Worker observers. There were six observers from three United Nations specialized agencies and other official international organizations; and seven observers from six non-governmental organizations.
5. The Officers of the Meeting were:

<i>Chairperson:</i>	Mr. Pietro Mona (independent representative of the Government of Switzerland)
<i>Employer Vice-Chairperson:</i>	Ms Annemarie Louise Muntz (Employer, Netherlands)
<i>Worker Vice-Chairperson:</i>	Ms Shannon Lederer (Worker, United States of America)
<i>Government Vice-Chairperson:</i>	Mr Iskandar Zalami (Government, United Arab Emirates)
6. The Secretary-General of the Meeting was Ms Manuela Tomei, Director, Conditions of Work and Equality Department (WORKQUALITY). The Deputy Secretary-Generals were Ms Beate Andrees, Chief, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) and Ms Michelle Leighton, Chief, Labour Migration Branch (MIGRANT). The coordinator of the Meeting was Ms Lisa Wong, Senior Specialist in Non-discrimination (FUNDAMENTALS).
7. A revised plan of work was presented in the opening session which included a proposal to shorten the first plenary session and to introduce the background report in the opening session in order to accommodate an additional session on the last day for a “discussion on ways to disseminate the use of the definition at the international and national levels by constituents”. The revised plan of work was adopted by the group of experts.

Opening session

8. The Secretary-General emphasized that recruitment processes, whether occurring within or across borders, always entailed costs. Nevertheless, the ILO constituents had argued, since its foundation, that asking workers to pay for such costs would inevitably lead to exploitation and abuses, the commodification of labour and the generation of inefficiencies in matching supply and demand in increasingly integrated labour markets. Evidence had further shown that the charging of recruitment fees to workers significantly increased their risks to experiencing forced labour, debt bondage and human trafficking. The costs faced by workers and employers at different stages of the recruitment process remained unclear, leading to a lack of transparency for all stakeholders and to inefficiencies in recruitment practices. The ILO had renewed its efforts to promote fair recruitment through the multi-stakeholder Fair Recruitment Initiative launched in 2014. This included the adoption of the *General principles and operational guidelines for fair recruitment* in 2016, which reiterated that recruitment fees and related costs should not be charged to workers or jobseekers, consonant with the Private Employment Agencies Convention, 1997 (No. 181), and the Protocol of 2014 to the Forced Labour Convention, 1930.
9. The Secretary-General noted that the experts who had drafted the principles recognized that there was no globally accepted “definition of fees and costs”, and had recommended that the subject was something that future work by the ILO might make more precise. In October–November 2017, the Governing Body requested the Office to conduct a global comparative study on the definitions of recruitment fees and related costs contained within national law and policy, bilateral labour agreements, and multi-stakeholder initiatives. The background report presented to the Meeting was a summary of the findings of that global study and contained a proposed definition for the consideration by the experts, which, if adopted would be read in conjunction with the *General principles and operational guidelines for fair recruitment*. She stressed that the definition negotiated by the experts, while remaining non-binding in nature, must be aspirational and practical at the same time.
10. The experts agreed to base their work on the proposed definition of recruitment fees and related costs contained in Appendix 1 of the background report.
11. An expert from the Office secretariat presented the report by the Office. She highlighted the commitment to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, made through Sustainable Development Goal (SDG) 8.8 and SDG 10.7, which required members to facilitate safe, orderly, regular and responsible migration and included a specific target on recruitment costs for workers. More recently objective 6 of the Global Compact for Safe, Orderly and Regular Migration, further reiterated UN member States’ commitments in this area. In relation to ILO standards, she noted that the principle that public placement services should be made available to workers free of charge was first introduced in 1919. Since then an array of international labour standards had addressed the issue of recruitment, both within and across borders in an increasingly progressive manner.
12. The background paper summarized the main findings of a global comparative study, based on five regional research papers which in total had mapped over 90 countries’ national laws/policies for recruitment within and across national borders, 18 bilateral labour agreements and 12 voluntary guidance documents from business, multinational enterprises, and civil society organizations. A significant number of countries and private sector initiatives had articulated a position on recruitment fees and related costs, with the prevailing stance of prohibiting recruitment fees for workers. Several regional differences were also identified. As regards related costs, the study had identified 28 related cost items to be paid either by the labour recruiter, the worker, or the employer. Various approaches had been taken to the allocation of these costs to different stakeholders in the recruitment process. The

private sector had also adopted important initiatives with the specific intent of promoting fair recruitment. The expert concluded by giving an overview of the scope and structure of the proposed definition contained in Appendix 1.

13. The Worker Vice-Chairperson acknowledged the outreach the Employers' group had made to open channels of dialogue prior to the Meeting. She also considered the Office's background report a very useful survey of the worldwide recruitment landscape and the draft definition a constructive starting point for the deliberations. She wished to open the debate by outlining matters everyone could agree upon. All shared the desire to end recruitment abuses leading to debt bondage and forced labour. All were committed to the *General principles and operational guidelines for fair recruitment*. All understood that the role of government was critical and that real progress could only be made with a more robust regulatory and enforcement system in place. There was also recognition that the definitions adopted by the Meeting were only a piece of a much larger agenda to be pursued before one would see meaningful change in the lives of workers.
14. The Workers' group was ready to play a constructive role in helping to define terms that were central to efforts to promote fair recruitment. The definition had to be inclusive and comprehensive.
15. It was important to have an inclusive definition and equal treatment for all workers. Not respecting the latter principle risked violating fundamental principles of ILO standards. While certain costs were specific to cross-border recruitment, a reduction of the scope of the definition to address only transnational recruitment would be problematic as it would leave major issues within national contexts unaddressed such as bonded labour and rampant exploitation in sectors such as agriculture; it would open the door for differential treatment that would constitute discrimination; and it would be impractical in the light of a globalized economy.
16. Comprehensiveness was required, if one were to meet the ultimate goal of the Meeting, namely to better protect workers, particularly those most vulnerable to forced and bonded labour. Across sectors and regions workers were routinely forced to pay myriad types of fees and costs. If the definition failed to reflect those realities and if holes in the definition were allowed, the Meeting's purpose would be defeated. Outcomes had to reflect both law and practice.
17. Numerous individuals and institutions were looking to this Meeting to help lend clarity and specificity to the terms of recruitment fees and costs. There was an opportunity to generate guidance that could help inform the work of governments, intergovernmental agencies, and advocates. The Meeting would fail the most vulnerable workers if it were unable to agree to a detailed and comprehensive list of fees and related costs, because business models would adapt to continue to exploit them. On the other hand, it could deliver a tool that would in fact reduce their risk of abuse and exploitation.
18. The Employer Vice-Chairperson stated that the Employers' group aspired for a world where no jobseeker would have to pay fees to find a job. She recalled that there were large numbers of private-led initiatives and commitments from the global Employers' community. For example, the global recruitment industry had long ago committed to a no fees Code of Conduct which was being enforced at the national level through private audits, certification systems and bipartite enforcement structures. Employers actively contributed to the International Recruitment Integrity System (IRIS) in collaboration with the International Organization for Migration (IOM).
19. Fraudulent practices and rogue players were well identified; however, on numerous occasions abusers were allowed to continue and grow their harmful business practices in their national environments. The enforcement system that lay outside of the employers'

competence was not working effectively, which was a cause of frustration for employers. A level playing field could only be created with an appropriate regulatory framework and an efficient enforcement structure that promoted good and punished bad behaviour. A balanced carrot-and-stick approach was required.

20. The Employer Vice-Chairperson explained that her group aimed at a definition that would serve to counter malicious cross-border recruitment which in turn led to forced and bonded labour. Too many vulnerable workers were falling between the cracks of the cross-border complexity; this was an area where the ILO constituency had a role to play. The definition should include: (i) a clear principled statement and prohibition of charging recruitment fees and costs to workers in line with the ILO *General principles and operational guidelines for fair recruitment*; (ii) the empowerment of national social partners to tailor national exceptions in the interest of specific categories of workers based on social dialogue according to Convention No. 181; and (iii) global monitoring by the ILO.
21. Within this normative framework, seven points would have to be taken into account: (1) The definition would have to be proportional, actionable, flexible, enforceable and credible. It would need to respect labour market realities and sophistication and resonate at the national level. (2) The guidance should support developing countries in allowing space for businesses to grow; additional burdens for SMEs and business start-ups were to be avoided. (3) Employers wished for guidance that enlarged governments' responsibility to create a level playing field. This should be done with a firm commitment to the rule of law and the ratification and implementation of Convention No. 181. (4) The ILO should help to navigate the complexities of cross-border recruitment. Guidance could identify costs to allocate among governments, jobseekers and employers in national tripartite collaboration. (5) The Employers sought guidance that would also decrease the costs of labour migration as such, regardless of how these costs were allocated between governments, workers and employers. (6) The focus should be on the recruitment process, and the responsibility of the social partners in negotiating labour conditions should be respected. (7) Fair guidance was sought that would allocate costs based on the shared interest of agreeing to an employment contract. For example, those applying for jobs far away should understand that travel costs were necessarily involved.
22. In concluding her statement, the Employer Vice-Chairperson raised three questions. First, the Employers' group wondered what barriers to the adoption and use of the *General principles and operational guidelines for fair recruitment* the Office had encountered which might assist the Meeting in drafting actionable guiding definitions. Second, there were apparent inconsistencies between the *General principles and operational guidelines for fair recruitment*, the draft definition, and Article 7 of Convention No. 181. The Employers noticed that Convention No. 181 allowed for exceptions at the national level in partnership with social partners, an issue not addressed in the draft definition. Convention No. 181 spoke of "fees and costs", as opposed to "fees and related costs". The question was how these various ILO instruments would interact and which instrument would take legal precedence. Third, the Employers' group wondered whether the Meeting was about the identification of fees or costs or about the allocation of them.
23. The expert from the Government of Mexico acknowledged that the report by the Office was clear, concise and contained information on fees and related costs that would be useful for the work of the experts. It spoke to the non-binding nature of the work, which provided the Meeting with the flexibility needed to attend to the concerns that would arise in the discussions on the definition. The analysis of 90 countries showed that the majority of the policies adopted did not distinguish between national or international recruitment, which was also consistent with the *General principles and operational guidelines for fair recruitment* on which the work of this Meeting was based. The topic of fair recruitment remained relevant and had been recognized within the Global Compact for Safe, Orderly and Regular Migration. He was prepared to find routes toward consensus and to adopt

appropriate wording in order to achieve a shared aim, which was the protection of workers, especially those most at risk to falling into situations of vulnerability.

24. The expert from the Government of the United Arab Emirates noted that the Office report had classified various fees and categories of related costs required to be paid at different stages of the recruitment processes, highlighting also the costs relevant to national and cross-border recruitment. This would facilitate the task of the experts to deliberate on who should be incurring a given fee or related costs, while keeping in mind ILO standards and the *General principles and operational guidelines for fair recruitment* adopted in 2016. The work of this Meeting ought not to be seen simply as definitional; the Meeting should aim to ensure clarity and transparency on the imposition of such fees and costs over the course of the recruitment process. He highlighted efforts of the United Arab Emirates to ensure such transparency, including through the adoption of a unified standard contract of employment, which indicated that recruitment costs should be borne by employers, and through the adoption of bilateral agreements with countries of origin. Furthermore, the United Arab Emirates was in the process of developing a standard unified agreement between private recruitment agencies in the United Arab Emirates and the country of origin. An itemized schedule of fees was attached to the agreement and would be customized in accordance with the policy and practice of the country of origin. He emphasized that the group of experts should come up with an actionable definition and concurred with the Employer Vice-Chairperson that there may need to be room for regional or sectorial differences, though that these exceptions must still be in line with the *General principles and operational guidelines for fair recruitment*.
25. The representative of the IOM underscored that global guidance on recruitment fees and related costs was urgently needed to ensure robust protection of migrant workers, including through a reduction in the cost of migration and the incidence of forced labour. The IOM was ready to support this process. The representative emphasized three areas of importance. First, the definitions should cover all workers, including internal and international migrant workers, those recruited through formal and informal channels, directly by employers, public placement or employment agencies, and those recruited through bilateral agreements or temporary work programmes. Second, the scope of the definitions should extend to all actors in the recruitment process, taking into full account the complexity of recruitment supply chains. All sectors of the economy should be covered. Third, discussion of the definition was taking place at a time of increased international attention to recruitment practices, lending further importance and relevance to the outcome. It preceded the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration which would address the issue of fair and ethical recruitment through the adoption of objective 6. The outcome of this Meeting would shape national policies, bilateral agreements, regional processes and multi-stakeholder initiatives.
26. The representative of the Alliance of Asian Associations of Overseas Employment Service Providers (OESPAA) pointed to the need for fees, but stressed that workers should not be required to pay them. In the Bangladesh–Middle East migration corridor, the principle of the employer covering recruitment fees was partially implemented, in particular in the domestic work sector. However, most male migrant workers were required to pay all recruitment fees and related costs. Government taxes and fees were an important part of the total recruitment costs borne by migrant workers. Close collaboration with all concerned parties was critical to ensuring that workers were protected from having to pay fees and related costs.
27. The representative of the Migrant Forum in Asia (MFA) underscored the need for reform in the area of recruitment fees and its central link to protecting workers' rights more broadly. The MFA had advocated for fair recruitment at key global and intergovernmental processes, as well as undertaking campaigns against worker-paid fees as the practice was unjust, exploitative and unsustainable. Such fees victimized in particular workers in low-paid occupations such as domestic work, though it also affected workers in the health and service

sector – many of which were female-dominated. The payment of recruitment fees was an important risk factor linked to bonded labour, forced labour and human trafficking. Eliminating recruitment fees was therefore critical to broader efforts aimed at eradicating these abuses. The absence of a definition of recruitment fees had created confusion and led to weak regulations. A definition of recruitment fees should be comprehensive, address recruitment within and across international borders, cover all stages of the recruitment process, and apply to all recruitment actors, so as to not leave space for abuses. The outcome of this Meeting would contribute to global, regional and national policy-making on labour migration, guide due diligence in supply chain assessment, and give trade unions a valuable tool to hold all actors accountable.

28. The representative of New York University, Stern Center for Business and Human Rights welcomed the proposed Office definition of recruitment fees, though suggested that it should be made explicit that recruitment costs occurred at several levels of the labour supply chain. Subagents were entitled to receiving recruitment fees in exchange for the services they provided. There were indeed legitimate business costs that should be borne by the employer at the end of the supply chain and these costs should be made explicit in the adopted definition.
29. The Secretary-General responded to the three questions raised by the Employer Vice-Chairperson. The *General principles and operational guidelines for fair recruitment* proved to be a critical tool to engage stakeholders in addressing fair recruitment and had triggered interest and discussion on related international labour standards more generally, in particular Convention No. 181. In terms of barriers, she noted that efforts to promote their use and application required sustainable resources. Concerning the inconsistencies in expression used between ILO standards and the *General principles and operational guidelines for fair recruitment*, she noted that the Guidelines were negotiated text that applied to a wide array of stakeholders, including private and public labour recruiters. Convention No. 181 had been one, though not the only, reference point for drafting the text. Indeed Convention No. 181 only covered private employment agencies. Moreover, Article 7 of this Convention refers to “fees and costs” that apply not only to recruitment-related activities but to a broader set of activities as defined in Article 1. Concerning the third question, the mapping of practices relating to recruitment fees revealed two broad approaches – prohibition and regulation. In order to determine which fees and related costs should not be borne by workers a comprehensive discussion of all such costs would help determine which costs should not be borne by workers.

Consideration of the draft definition of recruitment fees and related costs

Section I. Scope (paragraphs 1–4)

30. The Chairperson brought to the attention of the Meeting that an informal discussion between members of the Workers’ and Employers’ groups on the scope of the text had taken place, resulting in a revised text for “Section I.: Scope (paragraphs 1 to 4)”. While the revised text reflected some of the discussion, it did not reflect the final position of either of the two groups, nor that of the Government group which had not been part of the informal discussion.
31. The Employer Vice-Chairperson explained that the new proposed text had six paragraphs instead of four and that the informal discussions on paragraphs 5 and 6 had not yet been concluded.

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32. The Worker Vice-Chairperson wished to clarify that the informal discussion had mainly taken place to address concerns from the Employers' group, not from the Workers' side. The Workers' group as a whole had not had time to review the revised text so that the text was not a reflection of the official position of the Workers' group at that stage.
33. The experts agreed that the subsequent discussion was based on this new text, instead of the Office draft.
- “1. The proposed definition of recruitment fees and related costs is guided by international labour standards and should be read in conjunction with the ILO *General principles and operational guidelines for fair recruitment*.
 2. The *General principles and operational guidelines for fair recruitment* recognize the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or costs for their recruitment. It also recognizes the obligation for governments to protect workers and adopt, review, strengthen and enforce national laws and regulations and considers reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations.
 3. The proposed 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 faced by workers and enterprises.
 4. The proposed definition is intended to identify fees or costs in recruitment practices. This identification could support the development, monitoring and implementation of laws and policies aimed at eradicating abusive practices, and determining the allocation of legitimate costs in accordance with the *General principles and operational guidelines for fair recruitment*.
 5. It is acknowledged that workers who are recruited may find themselves in situations of forced and compulsory labour due to a range of factors, including fraudulent practices, a lack of appropriate regulations and/or enforcement. Furthermore, a lack of clarity and consistency of terminology and transparency on what recruitment costs constitute for workers and employers in different national contexts contribute to the persistent challenge.
 6. Definitions and terms from the guiding principle (text was to follow).”

Paragraph 1

34. The Employer Vice-Chairperson, with the intention of avoiding confusion for potential readers, had one amendment related to the language of paragraph 1. She suggested, after “international labour standards”, replacing “in conjunction” with “as one”, for the paragraph to read: “The proposed definition of recruitment fees and related costs is guided by international labour standards and should be read as one with the ILO *General principles and operational guidelines for fair recruitment*.”
35. The Worker Vice-Chairperson did not have any modification to paragraph 1 but requested clarifications on the amendment proposed by the Employers' group.
36. The expert from the Government of the United Arab Emirates stated that in his individual capacity, he could accept the amendment proposed by the Employers. In his role as Government Vice-Chairperson, he had no particular comments on paragraph 1.

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37. The Employer Vice-Chairperson responded by stating that the proposed amendment was a pure linguistic change to better reflect the relationship between the guidance under discussion and the *General principles and operational guidelines for fair recruitment*. The document under discussion contributed to concepts that were lacking (i.e. the definition of recruitment fees and related costs) in the 2016 *General principles and operational guidelines for fair recruitment*.
 38. The expert from the Government of Mexico also supported the proposed amendment by the Employers' group and expressed his trust that any linguistic problems in the Spanish version of the text would be aptly dealt with by the Office.
 39. The expert from the Government of Nigeria opposed the amendment put forth by the Employers' group. The wording "as one" suggested that the document under discussion should be integrated or edited into the *General principles and operational guidelines for fair recruitment* of 2016.
 40. The Worker Vice-Chairperson welcomed the comments of the Government experts. She asked the Office to elaborate on the implications that the proposed amendment might have on text that had been previously negotiated and adopted.
 41. In response to this comment, the Employer Vice-Chairperson clarified that although the Employers' group wished that there were only one text, the intention had not been to insert the 2018 document into the text of 2016. She requested the Office to provide guidance on language that would indicate that the definitions and the *General principles and operational guidelines for fair recruitment* should be read together.
 42. The Secretary-General recalled that the dissemination of the *General principles and operational guidelines for fair recruitment* adopted by the 2016 Tripartite Meeting of Experts had been authorized by the ILO's Governing Body. The Office wording of "in conjunction" implied that the document under discussion should be read together with the *General principles and operational guidelines for fair recruitment* because it provided further insights into a definition already contained in the *General principles and operational guidelines for fair recruitment*. The text under discussion could be read as a stand-alone piece and had value of its own but clearly would not exist without the needs expressed in the 2016 Tripartite Meetings of Experts. She also emphasized that if the present Tripartite Meeting of Experts would like the definition to be eventually inserted into the existing *General principles and operational guidelines for fair recruitment*, then this must be an explicit recommendation made by this Meeting which would have to be submitted to the Governing Body of the ILO for consideration. She concluded that the language to be used in paragraph 1 largely depended on the intentions of the participants in this Tripartite Meeting of Experts.
 43. The Employer Vice-Chairperson thanked the Office for the clarification and proposed to amend paragraph 1 to the following: "The proposed definition of recruitment fees and related costs is guided by international labour standards and should be read together with the ILO *General principles and operational guidelines for fair recruitment*".
 44. This amendment was positively received by all experts.

Paragraph 2

45. The Worker Vice-Chairperson amended the second sentence of new paragraph 2 to now read: "It also recognizes the obligation for governments to adopt, review, strengthen and enforce national laws and regulations that respect, protect, and fulfil workers' rights and promote fair recruitment, with the participation of ...". She indicated that this amendment

was proposed in order to mirror language from the *General principles and operational guidelines for fair recruitment*.

46. The Government Vice-Chairperson remarked that paragraph 2 was most problematic for his group which considered this text a selective citation from the *General principles and operational guidelines for fair recruitment*. It was unwarranted to state up front the sole responsibility of governments when instead the joint responsibility of all three partners should be underlined.
47. The experts from the Governments of Mexico and Nigeria fully endorsed this point in adding that paragraph 2 was also superfluous in light of the clarification in paragraph 1 that both texts should be read together. There was a risk of text overload.
48. The Employer Vice-Chairperson accepted the proposed amendment by the Workers' group but also wished to take into consideration the comments made by the Government members. Thus, she proposed two alternative courses of action: balancing paragraph 2 by including the responsibility of all tripartite actors or deleting this paragraph entirely.
49. The Worker Vice-Chairperson stated that their proposed amendment was to seek common ground with the Employers' group. The Workers agreed not to rehash the language and would not oppose the deletion. However, they would prefer keeping the first sentence of paragraph 2 which had been part of the Office draft and which appeared central to developing the definition.
50. The experts from the Governments of Nigeria, Mexico, United Kingdom and Morocco all saw added value in the first sentence of paragraph 2 and proposed to go back to the Office draft.
51. While the expert from the Government of the United Arab Emirates was initially more inclined to accept the amendment proposed by the Employer Vice-Chairperson, he accepted the retention of the sentence. It should be added to paragraph 1 and, in a slight amendment, be introduced by the words "As such".
52. Following interventions by the experts from the Governments of Sri Lanka and Mexico and the Chairperson, the Employer Vice-Chairperson retracted a further amendment that would have explicitly stated responsibilities by Employers, Workers and Governments. She agreed to the proposal made by the expert from the Government of the United Arab Emirates, provided one would refer to "related costs", not only "costs" in the sentence which was to be moved back to paragraph 1.
53. The Worker Vice-Chairperson welcomed this suggestion.
54. The Chairperson saw a consensus and declared paragraph 2 as deleted.

Paragraph 2 (formerly 3, paragraph 2 also in the Office draft)

55. Several amendments were proposed to this paragraph. The Employer Vice-Chairperson suggested that rather than "it should take into account", the text should read "it takes into account", and that the word "recruiters" be inserted between the terms "workers" and "enterprises".
56. The Worker Vice-Chairperson initially preferred to strike the phrase: "It should take into account" and substitute it with the words: "It is also informed by", which in her view would clarify that practice and experience on the ground complemented the report and that both law and practice were reflected. However, she agreed to go with the Employers' suggestion

to use the present tense, as the formulation: “It takes into account” appeared to strengthen the text.

57. The Government Vice-Chairperson stated that his group had no objection in principle to this paragraph but suggested to reformulate the last sentence as “It takes into account the practical realities and context-specific challenges that workers, recruiters and enterprises face.” The expert from the Government of the United Kingdom agreed and added that it might be better to refer to “context-specific conditions” rather than “context-specific challenges”.
58. The Employer Vice-Chairperson pointed out that the term “recruiters” in the sentence by the Government group should be replaced by “labour recruiters”, as the latter phrase had a broad meaning in the *General principles and operational guidelines for fair recruitment*, encompassing both public and private entities. This proposal was welcomed by all experts.
59. An extensive discussion followed concerning the terms “enterprises” and “employers” and their use and meaning in the context of the *General principles and operational guidelines for fair recruitment*, as several experts did not want to leave any actor aside, were worried that the public sector would not be covered or were concerned about consistency with the *General principles and operational guidelines for fair recruitment*. In a spirit of compromise and with a view to producing a text of best possible clarity for non-specialists, it was agreed to include both terms, for the last sentence of the paragraph to read: “It takes into account the practical realities and context-specific conditions that workers, labour recruiters, enterprises and employers face”.

Paragraph 3 (formerly 4, paragraph 3 also in the Office draft)

60. The Worker Vice-Chairperson proposed a number of amendments to the paragraph. The word “or” should be changed to “and”, to read “fees and related costs”, instead of “fees or related costs”. The phrase “abusive practices” should be replaced with the words “labour rights violations”, for the text to read “aimed at eradicating labour rights violations”. Finally, the word “legitimate” should be deleted, in recognition: (a) of the principle that there were no legitimate costs to be borne by workers; and (b) that many of the most egregious recruitment costs to workers were illicit, and these should not be excluded from the scope of the definition.
61. The Employer Vice-Chairperson suggested the insertion of the word “potential” before “fees” and wished to add the phrase “that lead to forced and compulsory labour” at the end of the first sentence which would then read “The proposed definition is intended to identify potential fees and costs in recruitment practices that lead to forced and compulsory labour”. She further proposed to add the concept of “enforcement” to the first half of the second sentence, for this part of the text to read “... support the development, monitoring, implementation and enforcement of laws and policies, ...”
62. The Government Vice-Chairperson seconded the change from “or” to “and” and proposed to replace the text after “aimed at” by the words “the protection of workers, the prohibition of charging recruitment fees to workers, and determining the allocation of related costs in accordance with the *General principles and operational guidelines for fair recruitment*.”
63. The expert from the Government of Mexico expressed his disagreement with the suggested amendment put forward by the Employer Vice-Chairperson. Not all recruitment costs necessarily led to forced and compulsory labour, and therefore the language should relate to recruitment costs in general, and not just to those costs leading to forced labour.

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64. The expert from the Government of Nigeria suggested reinserting the sentence “For the purpose of this definition the term ‘worker’ includes jobseekers” as in the Office draft and keeping both footnotes of the Office draft. He also recalled that the present discussion related only to the scope of the definition.
65. The Worker Vice-Chairperson indicated that the insertion of the word “potential” would narrow the scope of the definition. The task at hand, by contrast, was to define recruitment fees and related costs without any qualifiers.
66. The experts from the Governments of the United Arab Emirates, Canada, Mexico and Nigeria also rejected the use of the word “potential” as well as the alternative term of “possible” proposed by the expert from the Government of Morocco on grounds that recruitment fees and costs borne by workers were something very real, so that the inclusion of the word “potential” would be counterproductive when seeking a clear definition; the word “potential” came across almost as permissive.
67. The Employer Vice-Chairperson indicated that the question concerned primarily related costs rather than recruitment fees. There were some related costs that could be borne by workers in some circumstances but not in others. Travel costs constituted an example in this context.
68. The Chairperson suggested that the concern about related costs cited by the Employer Vice-Chairperson perhaps could be captured in a separate sentence. The terms “potential” or “possible” might be applied to related costs but not to recruitment fees.
69. The Worker Vice-Chairperson expressed the understanding that the concern of the Employers’ group related to the allocation of fees and costs, and stated that the word “allocation” was already included in the paragraph to address this concern. The text needed to be read in its totality. It was critical that the definition was consistent with the *General principles and operational guidelines for fair recruitment*. With the aim of building an aspirational document, she proposed as an additional small amendment to replace “could” with “should” in the text.
70. The Government Vice-Chairperson proposed an entirely rewritten paragraph 3, as follows:
- “The proposed definition is intended to identify and classify fees and related costs associated with labour recruitment. It is further intended to support the development, implementation and enforcement of laws and policies aimed at the protection of workers’ rights and prohibiting the charging of recruitment fees and related costs to workers by determining their allocation in accordance with the *General principles and operational guidelines for fair recruitment*. [Footnote 1: For the purpose of this definition the term “workers” includes jobseekers.]” The possibility to include the footnote in the body of the text was also mentioned.
71. The Employer Vice-Chairperson signalled that the Employers would be able to work on the basis of the proposed revised text put forward by the Government group, however subject to amendments. The amended text would read: “The proposed definition is intended to identify fees and related costs in recruitment practices. It is further intended to support the development, monitoring, implementation and enforcement of laws and policies aimed at the enhancement of efficient and equitable functioning of labour markets and at the protection of workers’ rights and prohibiting the charging of recruitment fees to workers by determining the allocation of related costs in accordance with the *General principles and operational guidelines for fair recruitment*.” The Employer Vice-Chairperson further proposed the deletion of both original footnotes in this paragraph and to deal with these references in a final paragraph on definitions of terms under the section “Scope”.

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72. The Worker Vice-Chairperson said they were able to accept some of the amendments put forward by both the Government group and the Employers' group. The Workers' group agreed with the two first amendments proposed by the Employers' group and needed more time to consult internally on the rest.
73. The expert from the Government of Canada objected to moving the words "related costs" after "allocation" on the ground that the *General principles and operational guidelines for fair recruitment* prohibited the charging of both fees and related costs to workers. This view was shared by the experts from the Governments of Mexico and the United Kingdom. The latter expert also questioned the rationale for the addition of "enhancement of efficient and equitable functioning of labour markets".
74. The expert from the Government of the United Arab Emirates stated that he favoured the deletion of the words "related costs" as he read the proposed amendment differently than the Canadian expert. Related costs would be discussed in the framework of their definition as their allocation could greatly vary and it had been brought to the attention of the discussion that some of the costs such as the payment for passports, for example, could be borne by workers in some countries.
75. The Employer Vice-Chairperson said that while it was clear that fees were not to be borne by workers, related costs still needed to be both defined and allocated. In accordance with principle 7 of the *General principles and operational guidelines for fair recruitment*, the allocation should not be to the worker, though costs could be allocated to employers, private recruitment agencies, or public employment services. She emphasized that while the Employers' group had no intention to make the text unreadable, they wished to underline that the definition was not aiming only at the protection of workers' rights but also at improving regulation.
76. The Worker Vice-Chairperson said that the Workers' position was to maintain the words "and related costs". Their understanding was that there would be tripartite discussions at national level on the further definition but they would not wish to signal any possible narrowing of the principles established in the *General principles and operational guidelines for fair recruitment*. She also proposed to refer to "the effective regulation of labour markets" rather than the "enhancement of efficient and equitable functioning of labour markets". The text would thus read: "The proposed definition is intended to identify fees and related costs in recruitment practices. It is further intended to support the development, monitoring, implementation and enforcement of laws and policies aimed at the effective regulation of labour markets and at the protection of workers' rights and prohibiting the charging of recruitment fees and costs to workers by determining their allocation in accordance with the *General principles and operational guidelines for fair recruitment*."
77. The expert from the Government of Mexico agreed that the regulation aspect was an important one. However, his preference was for deleting the subsequent half sentence "and prohibiting the charging of recruitment fees to workers by determining the allocation of related costs" in order to avoid redundancy between the text and the *General principles and operational guidelines for fair recruitment* and rather refer directly to them. The definitions of fees and related costs would come later on in the text.
78. The expert from the Government of Nigeria was in favour of a concise version of the paragraph that would focus on the protection of workers' rights. The paragraph could simply read: "The proposed definition is intended to identify fees and related costs in recruitment practices. It is further intended to support the development, monitoring, implementation and enforcement of laws and policies aimed at the effective regulation of labour markets and at the protection of workers' rights."

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- 79.** The Employer Vice-Chairperson welcomed the proposal made by the expert from the Government of Nigeria to reduce the text in the interest of brevity and readability. However, she expressed the concern that the text would end up being too brief when stopping at workers' rights. The definition the Meeting had been asked to determine should become part of regulations, and these ultimately would promote fair recruitment practices globally. Public and private recruitment agencies played an important role in the equitable and efficient functioning of labour markets, which should be recognized in relation to the protection of workers' rights. In this light, she proposed amending paragraph 3 to add after "laws and policies ..." the following text: "... aimed at the enhancement of labour markets by appropriately regulating private and public employment agencies" or to add a separate sentence with a reference to "private and public employment agencies which, when appropriately regulated, play an important role in the efficient and equitable functioning of labour markets".
- 80.** The Worker Vice-Chairperson accepted the proposal made by the expert from the Government of Nigeria to tighten the text and expressed her concern that the latest amendment by the Employers superseded the focus on protecting workers' rights and that the original motivation of the text was being lost.
- 81.** The expert from the Government of Portugal found that all actors would have a role to play. One should keep the reference to workers' rights and add the following sentence at the end of the paragraph: "It also contributes to the effective regulation of labour market intermediaries".
- 82.** The experts from the Governments of Mexico and Nigeria aligned themselves with this position while the expert from the Government of Morocco wished to add the concept of transparency to the notion of efficient and equitable labour markets.
- 83.** The expert from the Government of Canada proposed a structural change to paragraph 3, namely to put its content into bullet points. This was seen as a viable option by both the Worker and the Employer Vice-Chairpersons.
- 84.** The expert from the Government of the United Arab Emirates agreed in principle with the proposal made by his Canadian colleague but wished to call the Meeting's attention to further procedural aspects. He believed there to be consensus on all text up until "protection of workers' rights". After this phrase, he deemed it difficult to reach agreement, because the basis had not been agreed. It would be important to have a common understanding of what constituted recruitment fees and related costs, and on the latter, the difference between "recruitment" and "employment" costs. He highlighted that costs related to "employment" should not have been a part of the present discussion and that the overarching principle of the Meeting was that workers should not be subject to fees to access a job. He provided examples of different categories of costs which were not costs to access a job, and proposed the introduction of a clear segmentation of these costs to clarify the definition.
- 85.** The expert from the Government of Mexico emphasized that the Meeting should not lose track of its core purpose which was the protection of workers. Better regulation and a level playing field for recruiters were secondary. Placing all the elements in bullet points would imply the same priority level for all of them. The Worker Vice-Chairperson aligned herself with this point. The protection of workers was an international legal obligation whereas the other elements were not. The construction of the sentence should make clear that they did not carry the same weight or have the same impact.
- 86.** The Employer Vice-Chairperson underlined that an appropriately regulated labour market had a direct link to the protection of workers' rights. The Worker Vice-Chairperson agreed and stated that it was acceptable for the Workers to mention effective regulation in the text, if it was clear that it would serve the purpose of protecting workers' rights.

87. The Chairperson felt a growing consensus among the experts but underscored the need for a comprehensive text before adoption. He joined both the Worker and Employer Vice-Chairpersons in asking the Office to reflect the viewpoints expressed in a new text.

88. The Office proposed two possible text versions:

“The proposed definition is intended to identify fees and related costs in recruitment practices. It is further intended to support the development, monitoring, implementation and enforcement of laws and policies aimed at the:

- protection of workers’ rights;
- effective regulation of recruitment practices, notably of public and private employment agencies; and
- enhanced functioning and transparency of labour markets.”

Alternative:

“The proposed definition is intended to identify fees and related costs in recruitment practices. It is further intended to support the development, monitoring, implementation and enforcement of laws and policies aimed at: the protection of workers’ rights; the effective regulation of recruitment practices, notably of public and private employment agencies; and the enhanced functioning and transparency of labour markets.”

89. A lively discussion of this new text followed wherein the Worker Vice-Chairperson maintained that the different elements were not all equal in weight whereas the Employer Vice-Chairperson preferred text that would clarify their equal weight. The Employer Vice-Chairperson also indicated that the enhanced functioning of labour markets and their transparency were separate issues and that the question of allocation still needed to be addressed. From the Employers’ perspective this should be done at the national level in accordance with the social partners. The expert from the Government of the United Arab Emirates proposed to include a reference to a worker’s right not to be required to pay for access to employment which would set the stage for addressing allocations in the document without encumbering the definition.

90. Several experts voiced their agreement to work with either an integrated text or with bullet points. Various experts proposed grammatical changes and different shifts of text before the Chairperson suggested the creation of a working group to finalize this portion of the text. All the elements were there and everyone’s intentions were clear.

91. The Employer Vice-Chairperson presented the text agreed in the working group which read as follows:

“The proposed definition identifies fees and related costs in recruitment practices. It is intended to support the development, monitoring, implementation and enforcement of laws, policies and measures aimed at the protection of workers’ rights, including the right not to be required to pay for access to employment. It is also intended to deliver 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.”

92. The Government Vice-Chairperson revealed that the idea of combating non-compliance had come from the Government group. The intention was also to refer to section A.6.1 of the *General principles and operational guidelines for fair recruitment* in a footnote after the

word “non-compliance”. In addition, the Government experts wished to introduce a final amendment in replacing the word “deliver” with the words “support the delivery of”.

93. The Worker Vice-Chairperson was pleased to accept the text as presented, leading the Chairperson to declare the discussion of paragraph 3 as concluded.

Paragraph 4 (Office draft)

94. The Meeting agreed to work on paragraph 4 based on the Office draft.
95. The Employer Vice-Chairperson had amendments for better readability, grammar, and clarity. She asked that the words “range of factors, including” be inserted before “a lack of consistency”; that the term “those” be inserted before “workers”; and that a full stop be added after the term “context”. The term “furthermore” should then be added at the beginning of the next sentence. The amended text would read: “It is also recognized that costs for workers recruited internationally can be significantly higher than those for workers recruited nationally due to a range of factors, including a lack of consistency and transparency on what these costs constitute in different national contexts. Furthermore, workers who are recruited across borders may find themselves in situations of particular vulnerability.”
96. These amendments were supported by the experts from the Governments of the United Arab Emirates, Mexico and United Kingdom.
97. The Worker Vice-Chairperson had no objection, but asked that the final sentence of this paragraph which read: “For this reason, the proposed definition includes a section dedicated to costs associated with recruitment across international borders” be bracketed so it could be revisited on the basis of further discussions.
98. Following the adoption of “Subsection B.: Related costs” the Worker Vice-Chairperson proposed deletion of the bracketed text. The sentence was no longer relevant as only one list of related costs pertaining to international recruitment had been adopted.

New paragraph 5

99. The Chairperson reminded the Meeting that the Employers’ group had earlier suggested the insertion of a new paragraph 5 on definitions.
100. The Employer Vice-Chairperson explained that the intention was to make sure that the definitions of the *General principles and operational guidelines for fair recruitment* were adhered to in the definition of recruitment fees and related costs, in addition to including the Office-proposed text that the term “workers” would include jobseekers. The relevant footnote should also be kept.
101. The Worker Vice-Chairperson supported this amendment. She felt there was no need to rehash what had been agreed upon in 2016.
102. As there were no objections, the Chairperson declared a consensus.

Section II. Definitions of recruitment fees and related costs

- 103.** The Employer Vice-Chairperson proposed to add a plural to the word “definition”, as the Meeting was discussing two distinct definitions: that of recruitment fees and that of related costs.
- 104.** No objections were voiced from the Workers or the Governments and the amended title of Section II was adopted.¹

Paragraph 6 (paragraph 5 of the Office draft)

- 105.** In paragraph 6, the Employer Vice-Chairperson wished to delete “or all” before “fees” and add the words “and related costs such as” so that the text would read “These refer to any fees and related costs such as ...” because the terms used afterwards (charges, expenses, etc.) were merely examples of what might happen. She also wanted to add the term “placement” after the word “employment,” as per the *General principles and operational guidelines for fair recruitment*. In the last sentence, she asked that a full stop be added after the term “third party”. The next sentence would then start with: “Third parties include”; to be consistent in the language, she wished to add after the term “labour recruiters” the words “whether private or public”, therefore rendering the terms “staffing firms” redundant.
- 106.** Following an explanation by the Secretary-General that the term “benefit concessions” meant reductions to benefits owed to a worker, such as a wage reduction, the Employer Vice-Chairperson suggested to simply use the wording “deducted from wages and benefits” and delete the phrase “paid back in wages or benefit concessions”.
- 107.** The Worker Vice-Chairperson asked that the term “assessments”, preceded by a comma, be added after the word “expenses” and that the terms “or associated with” be added before “recruitment”. After the word “concessions”, the terms “required as hidden costs” should be inserted.
- 108.** In his capacity as Government Vice-Chairperson, the expert from the Government of the United Arab Emirates questioned the inclusion in this paragraph of specific related costs, and wondered why these could not be dealt with in a separate paragraph relating specifically to application. In his individual capacity, he added that this paragraph was the chapeau for what was to be elaborated further in the following subsections A and B. With this in mind, the last part of the first sentence, i.e. “... whether they are deducted from wages, paid back in wages or benefit concessions, required as hidden costs, remitted in connection with recruitment, or collected by an employer or a third party” was out of place here and could be deleted. A separate section could instead be created by the Office specifically dealing with application.
- 109.** The expert from the Government of Mexico made two comments on the original paragraph and proposed amendments. First, on benefits, fringe benefits should also be referred to, as these too figured in the employment relationship, and therefore the word “fringe” should be inserted in the first sentence prior to the word “benefits”. Second, concerning the proposed amendment by the Worker Vice-Chairperson relating to hidden costs, the insertion of hidden costs would be limiting and would raise the question of what constituted “hidden costs”. A cost specified in a contract, for example, could be considered hidden if the worker did not have access to that contract. The original wording, i.e., “... regardless of the manner, timing

¹ The use of the singular term “definition” was agreed by the experts upon suggestion of the Office, after the Meeting was concluded and as part of the editing process of the adopted text.

or location of their imposition or collection ...” was sufficiently broad to cover hidden costs, and the words “hidden costs” should be removed from the text.

110. The expert from the Government of Nigeria agreed that “hidden costs” was a subjective term. Such costs could perhaps be defined in a footnote or the reference to hidden costs could be deleted from the text. He recalled that the Meeting discussed a non-binding document so that one should not be overly specific. With a view to leaving open the possibility of additional costs emerging in the future, one should either delete the term “such as” or replace it with “such as but not limited to”.
111. The Worker Vice-Chairperson justified the inclusion of “hidden costs” in stressing the importance of definitions that were reflective of the realities faced by workers. Effectively ending abuses relating to recruitment fees and related costs required first explicitly naming these abuses. There were many “extra” contractual assessments, and addressing these was critical to the broader effort against related costs. If rogue actors were to be eliminated, specific language was needed allowing for their identification. In this context, section 6.1 of the *General principles and operational guidelines for fair recruitment* expressly stated “... 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.” There was a need to be relevant to the world of workers and to reflect the realities that they faced, and this included subjection to hidden costs.
112. The Employer Vice-Chairperson expressed support for the interventions of the experts from the Governments of Nigeria and the United Arab Emirates concerning the need to avoid too much specificity in this introductory paragraph. There was also a need to separate the discussion on application.
113. The Government Vice-Chairperson stressed the need to remain consistent with the mandate – the discussion should be limited to: (a) defining what recruitment fees and related costs were; and (b) identifying how they should be allocated in keeping with the *General principles and operational guidelines for fair recruitment*. Issues of “arbitrage” and how things were dealt with under the table were not relevant to the present deliberations.
114. The Chairperson expressed the importance of not becoming trapped between one alternative that involved “cramming” too much into this introductory paragraph, resulting in something that was unreadable, and a second alternative that involved too much “boiling down”, resulting in something that was devoid of meaning. There was indeed a need to find text that reflected reality, but at the same time an attempt to include all elements in this paragraph would impede progress.
115. The expert from the Government of Mexico expressed support for the intervention of the Chairperson. The original text did not deny reality, but instead contained wording that was sufficiently broad to reflect many realities. The inclusion of explicit reference to hidden costs would raise the question of why other costs were not explicitly mentioned too, e.g. the bribes that many workers were forced to pay.
116. The Worker Vice-Chairperson said that the Workers’ group would like to draw the experts’ attention to the fact that a definition on recruitment fees did exist in the *General principles and operational guidelines for fair recruitment*. It seemed counterproductive to retrace steps that had already been taken. She would propose that the initial thrust of paragraph 6 simply replicated verbatim the wording in the *General principles and operational guidelines for fair recruitment*, and one would then follow the suggestion of the expert from the Government of the United Arab Emirates to turn to the means.
117. Both the Employer Vice-Chairperson and the Government Vice-Chairperson supported this proposal. All experts agreed to bracket paragraph 6 and revisit it at a later stage.

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118. Following the adoption of subsection B on “Related costs”, the Chairperson recalled that paragraph 6 now reproduced the definition of “recruitment fees” and “related costs” as per the *General principles and operational guidelines for fair recruitment* and therefore read: “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.”

New paragraph 7

119. The Worker Vice-Chairperson introduced a new paragraph 7 which aimed at capturing the means through which recruitment fees and related costs might be collected from the worker. The insertion read “recruitment fees or related costs may be collected by an employer, their subsidiaries or affiliates, labour recruiters and other third parties providing related services. Fees or related costs may be collected directly or indirectly, such as through deduction from wages and benefits.”
120. The experts from the Governments of Portugal and Nigeria pointed out that the proposed sentence, if read separately from the report, could be understood as allowing the collection of fees from workers.
121. As a result of this observation, the Worker Vice-Chairperson proposed to replace “may be” with “should not be collected” after related costs. Likewise, “may be” should be replaced by “should not be” in the second sentence. The Workers’ group had meant to be descriptive of the practice, not to allow it.
122. The Employer Vice-Chairperson suggested the deletion of “or affiliates” as this term was not defined.
123. The Chairperson suggested the insertion of “from workers” after “should not be collected” as otherwise the sentence would seem to suggest that no fees or related costs could be collected from anyone.
124. Paragraph 7 was adopted as amended.

New paragraph 8

125. The expert from the Government of Portugal reintroduced a text that had originally been proposed as a footnote to paragraph 11, which read as “the recruitment fees and related costs considered under this definition should not lead to direct or indirect discrimination between workers who enjoy freedom of movement for the purpose of employment, within the framework of regional economic integration areas”.
126. The Worker Vice-Chairperson requested to replace “enjoy” with “have the right to freedom of movement”, which was accepted.
127. Following a discussion among the experts, it was agreed that the amended text should not be placed as a footnote but rather as a new paragraph 8 in “Section II.: Definitions of recruitment fees and related costs”.
128. The amended paragraph was adopted.

Subsection A: Recruitment fees

129. The title of subsection A was adopted.

Paragraph 9(a), (b) and (c)
(paragraph 6(a) and (b) of the Office draft)

- 130.** In paragraph 9(a), the Employer Vice-Chairperson proposed to use the word “sourcing” rather than “employing”. Sourcing and employing were two distinct concepts.
- 131.** The Worker Vice-Chairperson expressed concern at this amendment, which she said suggested a limitation of scope and had a commodifying tone to it. The Workers would therefore not accept it.
- 132.** The Employer Vice-Chairperson explained that the word “sourcing” would not limit the scope, but simply provided clarity. The term “sourcing” described the act of matching jobs to workers and providing them to third parties, which was not the same as employing them.
- 133.** The expert from the Government of Morocco suggested going back to the text of Convention No. 181.
- 134.** The Secretary-General explained that Article 1(a) of Convention No. 181 referred to two different types of agencies, one type involved brokering without employing, and the other type were agencies that employed 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 the execution of these tasks”.
- 135.** The Employer Vice-Chairperson suggested that cases in which private employment agencies employed a worker and then made them available to a third party was similar to cases of direct hire, especially with regard to direct recruitment services, and therefore suggested that the relevant text in paragraph 9(a) dealing with these cases be moved to paragraph 9(b). Direct and triangular hire by employers would therefore be dealt with in the same subparagraph. In the same sentence, “employing” could be replaced by “recruiting”, i.e. “... or in recruiting workers with a view to making them ...”.
- 136.** The Employer Vice-Chairperson then further suggested the division of recruitment fees into three categories to be reflected in three clauses of paragraph 9: the first (a) relating to payments for recruitment services offered by labour recruiters in matching offers of and applications for employment; the second (b) relating to direct hire; and the third (c) relating to recruiting workers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks.
- 137.** The Government Vice-Chairperson, in response to the suggested amendments by the Employer Vice-Chairperson, indicated that either the proposed amendment by the Employer Vice-Chairperson or the original formulation would work. The original formulation was a more “strictly functional” formulation, in that the original paragraph 9(a) dealt with cases involving recruiters while the original paragraph 9(b) dealt with cases of direct hire that bypassed recruiters.
- 138.** The Worker Vice-Chairperson, in the context of the text now in a new paragraph 9(c), expressed a preference for the wording “placing” rather than “assigning”. The Employer Vice-Chairperson stated that she could agree to such a modification.
- 139.** Following a request for clarification by the expert from the Government of Nigeria, the Chairperson explained that “indirect hire” would be covered in the revised paragraph 9(c), which dealt with cases of indirect hire through a third party.

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140. The Employer Vice-Chairperson stressed the importance of clarity around the point that charging recruitment fees to workers was never acceptable, regardless of the recruitment model utilized. However, there was a need to avoid going beyond the recruitment scope of the discussion by extending it to the employment relationship.
 141. The expert from the Government of Sri Lanka, referring to the original paragraph 9(b), suggested adding a reference to services, so that the revised sentence would read: “Payments made for services in the case of direct hire ...” The charges in the case of direct recruitment related to a service provided by the employer.
 142. The expert from the Government of Canada disagreed with the amendment made by the expert from the Government of Sri Lanka, arguing that in most cases seen in Canada charges made to workers in cases of direct recruitment did not in fact relate to services, and therefore specifying: “Payments made for services ...” would be too limited and potentially problematic.
 143. The expert from the Government of Nigeria considered that paragraph 9 was not the place to enter into a discussion on services.
 144. The expert from the Government of the United Arab Emirates stressed that the intent of this subparagraph was to make clear that even in cases of direct hire, workers should not be subjected to fees. The text should not send the message to an employer that they had provided a service to a worker (by hiring her or him) and therefore could demand a payment.
 145. The expert from the Government of Sri Lanka withdrew his amendment.
 146. The Employer Vice-Chairperson, referring to paragraph 9(b), expressed concern that the word “hire” was too broad, as it could also refer to, for example, cases of self-employment. An employer could hire a contractor, which technically involved the provision of a service rather than an employment relationship. There was a need to be careful with words. In paragraph 9(b), the word “hire” could be replaced by the word “recruitment”.
 147. The expert from the Government of Sri Lanka aligned himself with this view.
 148. The expert from the Government of the United Arab Emirates stressed that the objective was for text to make clear that all models of recruitment were subject to the same safeguards. An alternative would be to return to the original text, and then add language to reflect that safeguards should also be in place in the case of direct hiring.
 149. The Chairperson asked the room for agreement on revised paragraph 9(a), (b) and (c). There was agreement on paragraph 9(a). Paragraph 9(b), which now read as “payments made in the case of direct recruitment by employers” also met with agreement.
 150. In the context of paragraph 9(c), there was a lengthy discussion whether the use of the words “placing” or “assigning” was more appropriate, which were albeit the same terms in other languages, as pointed out by the expert from the Government of Mexico regarding the Spanish language. Several linguistic propositions were tried out and the experts discussed what distinguished the different situations under clauses (a), (b) and (c), recruitment for a specific contract for employment or involvement of three parties, before the Worker Vice-Chairperson suggested the deletion of “and assigning or placing those workers” so that the text read: “... payments made in the case of recruitment of workers with a view to employing them to perform work for a third party”.
 151. This deletion was accepted by the Employers’ and the Government groups.

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- 152.** Regarding paragraph 9, the Worker Vice-Chairperson further proposed that the text under the three bullet points might better flow if the text went from letter (a) to letter (c) to letter (b), so (c) would become (b) and vice-versa. This was welcomed by all other experts.

Paragraph 9(d)

- 153.** The Worker Vice-Chairperson also wished to add a new clause (d), which would read "... payments required for early termination of work". Often workers were not being charged fees upfront; they were charged deferred recruitment fees in the final stages of employment. In the *General principles and operational guidelines for fair recruitment*, there was a clear statement that workers should be free to terminate a contract. As such, migrant workers should not require permission to terminate an employment. However, workers were increasingly tied by provisions that required very steep penalties in case they tried to terminate their jobs earlier than initially agreed. These conditions were keeping workers in abusive conditions and preventing them from changing jobs, a situation seen in the healthcare industry for example.
- 154.** The Employer Vice-Chairperson indicated being sympathetic to the idea because there were abuses of workers. However, a first reaction would be to ask whether this situation was not actually a related cost, rather than a recruitment fee. As an example for the complexities involved, she cited the European soccer industry where highly paid soccer players were hired on a fixed-term contract and penalized if they broke the contract.
- 155.** The expert from the Government of Mexico agreed with the basis of the Workers' group proposal, but agreed more with the Employers' group, also going back to the background report presented to the Meeting by the Office. These costs seemed to fall under "related costs" and not under the fees themselves.
- 156.** The expert from the Government of the United Arab Emirates said that he was in agreement with the Workers' group arguments as to the fact that it was a despicable abuse of a worker if his or her ability to terminate a contract or to leave the country was limited. However, he was of the view that these abuses could be addressed through reforming contracts. Every employment contract must have a termination clause that provided for the freedom of a worker to terminate the contract.
- 157.** The Worker Vice-Chairperson explained that she had referred to fees which were explicitly designed to cover the costs of recruitment. Some came as common area maintenance charges, or CAM fees. These practices were common with staffing agencies, for example in the Philippines. She also cited a recent case that was settled in the United States where, if nurses decided that they no longer wanted to work for their company, the fees that they were required to pay amounted to as much as US\$150,000.
- 158.** The expert from the Government of Nigeria sympathized with this view, though highlighted that such cases were not very common and that they related to the employment contract rather than recruitment costs. If a worker wanted to leave earlier, some fees had to be paid to cover employers' investment in workers. Early termination required giving notice. Should this notice not be sufficient, a worker would have to pay. He did not support the Workers' amendment.
- 159.** The expert from the Government of the United Kingdom pointed to the situation of workers who were unable to escape employment without being charged. He considered that even if such fees were paid at a later stage in the process, they could still be considered as relating to the recruitment process. He also cautioned against conflating early termination clauses with notice regulations.

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160. The expert from the Government of Canada agreed with the expert from the Government of the United Kingdom and cited regulations from Alberta, Canada, prohibiting such worker payments. It could be discussed whether these payments would be included under recruitment fees or under related costs, but they should be included.
 161. While expressing their understanding of these costs, the Employer Vice-Chairperson reiterated that the Employers could not accept this additional clause (d) as they maintained that such costs were not part of recruitment fees.
 162. The Worker Vice-Chairperson suggested that the proposed text under clause (d) could refer to “payments required to recoup recruitment fees or related costs for early termination of work”.
 163. The expert from the Government of Portugal stated that this new proposal by the Workers’ group was preferable to their first formulation; however, overall she agreed with the Employers’ group. This view was also shared by the expert from the Government of Nigeria.
 164. The expert from the Government of Sri Lanka expressed the view that clauses (a), (b) and (c) already sufficiently covered all possible forms of recruitment fees.
 165. The expert from the Government of the United Arab Emirates recalled that when the original document was prepared by the Office, the text applied to fees regardless of the manner, timing or location. What was discussed now constituted what was commonly referred to as “kickback”, or withholding certain parts of wages. If a contract had such clauses, it should be considered null and void, as an illegal contract, because it put workers in a potential situation of bondage; agencies proposing such contracts should be prosecuted under the Penal Code. He agreed with the proposed spirit of the text under clause (d) but suggested not to tie the text to a situation of early termination of contract.
 166. The Worker Vice-Chairperson indicated the group’s acceptance of the suggestion made by the expert from the Government of the United Arab Emirates and proposed that the text read as follows: “... payments required to recover/recoup recruitment fees and related costs” and that “from workers” should be added while “early termination of workers” should be deleted.
 167. The Employer Vice-Chairperson expressed the concern that there was some degree of repetition in clause (d). She also suggested to delete “and related costs”, as it would be addressed somewhere else.
 168. The Worker Vice-Chairperson, after confirming with the Chairperson and the Employer Vice-Chairperson that “and related costs” would be dealt with elsewhere in the text, agreed to the Employer Vice-Chairperson’s amendment.
 169. Paragraph 9(d) was agreed upon as amended.

Paragraph 10 (paragraph 7 of the Office draft)

170. The Employer Vice-Chairperson introduced four amendments to paragraph 10 consisting of: the insertion of “which could include” before advertising; the deletion of “and” after advertising as “disseminating information” was a separate activity; deletion of “including in the case of migrant workers”; and deletion of “and return to the country of origin”.
171. The Worker Vice-Chairperson proposed to insert “recruitment, referral and placement” following the word “cover”. After “government clearances”, she suggested to insert “verifying credentials, recommending candidates”.

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172. The expert from the Government of the United Arab Emirates endorsed all amendments, in particular those which had been proposed by the Worker Vice-Chairperson.
173. The expert from the Government of Mexico expressed his support for all amendments proposed, and in addition suggested the deletion of “where applicable” that appeared at the end of the paragraph.
174. Upon request by the Employer Vice-Chairperson, the Worker Vice-Chairperson clarified that “verifying credentials” was a relevant inclusion as screening processes were often required to review credentials from another country or qualification system in order to determine a workers’ eligibility for employment. The expert from the Government of Canada suggested replacing “verifying credentials” with “confirming credentials” which had the same intent though a less stringent process attached to it. This amendment was supported by the Worker Vice-Chairperson.
175. The Employer Vice-Chairperson raised concern regarding inclusion of “recommending candidates” as it was common practice for companies to pay their own workers a fee if they attracted and recommended candidates to become their colleagues. She questioned whether these legitimate practices would be adversely affected by the amendment that had been introduced.
176. The expert from the Government of Canada did not think that the practice the Employers’ group was referring to would be affected; rather the insertion of “recommending candidates” would speak to the practice of workers being charged a fee in order to be recommended for a job to an employer by the recruitment agency. Nevertheless, the Worker Vice-Chairperson accepted the withdrawal of “recommending candidates”. She also accepted the deletion of “and the return to country of origin” and of “where applicable”. The latter amendment was also endorsed by the expert from the Government of the United Arab Emirates and eventually the Employer Vice-Chairperson.
177. Paragraph 10 was agreed upon as amended.

Subsection B. *Related costs*

New paragraph 11, clauses (i)–(v)

178. The Chairperson suggested that the discussion on “related costs” be guided by the outcomes of the group meetings. He invited the Worker Vice-Chairperson to present her group’s proposal for the chapeau, following which reactions of the other groups would be heard.
179. The Worker Vice-Chairperson, in response to having heard carefully the challenges faced by Employers’ and Government groups in interpreting “related costs” at the national level, stated that the task might be eased if the experts discussed only a list of costs related to the international recruitment process, with the understanding that most of the identified costs were also relevant to recruitment processes in national labour markets. As a result of this proposal, the chapeau to related costs would spell out a process through which the allocation of related costs could be made at the national level, in keeping with procedures proposed in related international labour standards. As the experts agreed that this text would be the basis of further discussion, it is reproduced in full below:

“Related costs are expenses integral to the recruitment processes within or across national borders. Taking into account that the widest set of costs are incurred for transnational recruitment, it lists related costs in that context. It allows some flexibility for the competent authority to determine limited exceptions, as provided for in the relevant international labour standards. These exceptions should be permitted only if:

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- (i) they are in the interest of the workers concerned;
 - (ii) are reasonable and justified;
 - (iii) are limited to certain categories of workers and specified types of services;
 - (iv) the corresponding fees and related costs concerned are disclosed and monitored; and
 - (v) are determined after consulting representative organizations of workers and employers.”

- 180.** The expert from the Government of Mexico recognized that the text was a positive way forward and introduced an amendment to insert “national regulations” after “relevant international standards” as some countries may not have ratified relevant international labour standards. He also noted that some countries may have national legislations that provided for some exceptions.
- 181.** The expert from the Government of the United Kingdom sought to clarify whether all the criteria would need to be satisfied in order to grant an exception, which the Worker Vice-Chairperson confirmed affirmatively.
- 182.** The Worker Vice-Chairperson suggested deleting “and fees” from new clause (iv) as it was not relevant for the section on related costs.
- 183.** The expert from the Government of the United Arab Emirates proposed the addition of “and placement or deployment” before “processes”. He also suggested to include “and” at the end of each one of the lines separating the new clauses (i)–(v).
- 184.** The expert from the Government of Nigeria, after clarifying with the Office that this list was the minimum and non-exhaustive, recommended to include wording to suggest that this was the minimum criteria. The Worker Vice-Chairperson agreed and put forward to insert “at minimum” following “permitted only if” to indicate that additional criteria could be added.
- 185.** The Employer Vice-Chairperson expressed appreciation for the revised and creative approach the Meeting had taken to this complex, difficult and important part of the work. She cautioned that while the group would be introducing some amendments to the text, they had to state upfront that they would not be able to agree to the text of the chapeau before having clarity on the list of related costs that was to follow. The Employer Vice-Chairperson then suggested first to delete the word “the” before “recruitment and placement” and to delete “or deployment process” as deployment was part of placement and need not be mentioned separately. She assumed that the related costs would be grouped in categories and therefore proposed a new sentence that read: “The categories of related costs take into account that the widest set of costs are incurred for transnational recruitment”, which would mean that “it lists related costs in that context” could be deleted. She proposed a new sentence which would read: “Depending on the recruitment process and the context, these cost categories should be further defined by the Government and social partners at the national level.” Turning back to the Worker Vice-Chairperson’s proposal, she stated that the “it” was not clear, should be struck, and be replaced by: “This mechanism allows”. She felt that from a legal point of view, the word “some” added little value and should also be struck, the sentence therefore continuing with “flexibility for the competent authority to determine”. The same argument could be used for the striking of “limited” before “exceptions to the cost categories”. Finally, she added that her group wished to delete clause (ii) “are reasonable and justified” as these words were not part of the source, that being ILO Convention No. 181, Article 7.2. Again in keeping with the language of Convention No. 181, she suggested adding “the most” before “representative organizations of”.

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- 186.** The Government Vice-Chairperson gave the floor to the expert from the Government of Canada to introduce the Government group's amendments to the text that had been proposed by the Workers' group. He explained that a number of changes had been made, including some rewording to emphasize that the categories of related costs that were to follow were primarily arising out of the international recruitment process. He therefore suggested the sentence should begin with: "While the related costs listed below may apply to both national and international recruitment, they are primarily incurred during international recruitment processes."
- 187.** The second amendment sought to clarify the ability of the national competent authority to make limited exceptions to the applicability of the identified related costs. The Government group therefore suggested to insert "it is recognized that" before "the competent" and to insert "national" before "authority". The remainder of the sentence would be replaced and read as "has flexibility to determine limited exceptions to their applicability consistent with relevant international labour standards or national regulations".
- 188.** The third amendment was a proposal to replace "these" with "such" and to delete "permitted only if" to be replaced by "considered subject to the following" in order to respect national sovereignty to determine these exceptions.
- 189.** In clause (i) it was not a matter of the costs being in the interest of the worker but rather that such costs could not be detrimental. He therefore suggested deleting "in" and replacing it with "not detrimental to" before "the interest of the workers concerned".
- 190.** With respect to clause (iv), the Government group questioned whether this was the place in the text to address the issue of full disclosure and informed consent. These concepts may warrant further discussion and attention in a separate section. The group also suggested deleting "and monitored" as the appropriate role of the government was enforcement, rather than monitoring.
- 191.** Finally, the experts from the Governments of Portugal and the United Kingdom inserted a footnote to the word "national" of line 4 which read: "Recruitment processes where workers enjoy freedom of movement for the purpose of employment within the framework of regional economic integration areas are deemed to fall under national recruitment."
- 192.** The Worker Vice-Chairperson suggested moving the words "national regulations". The sentence would therefore read "It would allow for flexibility for the competent authority to determine through national regulations, after consulting the most representative organizations of workers and employers, limited exceptions to the cost categories, as provided for in relevant international labour standards". If this amendment were to be accepted, the Workers' group would be amenable to also deleting clause (v) of the paragraph. They were also in a position to strike "reasonable and justified" as proposed by the Employer Vice-Chairperson.
- 193.** The expert from the Government of Nigeria expressed concern about the inclusion of the term "reasonable and justified". This term was very subjective, its meaning could vary from one country to another, and it had not been included in ILO Convention No. 181. The term "reasonable and justified" could therefore be excluded from the text. However, he disagreed with the deletion of clause (v) as it was a component of Article 7.2 of ILO Convention No. 181. To the latter point, the Chairperson clarified that the Worker Vice-Chairperson had not proposed to delete the idea, but rather to move it to the core part of the text of the chapeau.
- 194.** With several amendments to multiple parts of the text on the screen, the Chairperson proposed to start by having a discussion as to whether the list of related costs to follow would be referring to "categories" or "types" of costs, as suggested by the Employers' group.

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195. The expert from the Government of Nigeria suggested that the term “types of related costs” might be better than “categories of related costs”, in line with the discussion that will follow on the structure of costs.
 196. The expert from the Government of Mexico expressed agreement with the amendment introduced by the expert from the Government of Nigeria concerning the use of the term “types” rather than “categories”.
 197. The Employer Vice-Chairperson accepted reference to “types” rather than “categories”.
 198. The Worker Vice-Chairperson expressed a preference for a broader formulation along the lines of that put forward by the Government Vice-Chairperson, which would avoid this question altogether by instead using terms such as “identifying” or “outlining” related costs.
 199. The Employer Vice-Chairperson eventually expressed difficulty in agreeing or disagreeing with the language, as it depended on the direction of the discussion that would follow. The Employer’s group envisaged a process of categorizing or classifying different types of related costs; therefore it was crucial to have this language. However, the reference to “the types of” before “related costs” could be bracketed and returned to when the direction and results of the ensuing discussion were clearer.
 200. The Chairperson agreed with the bracketing and suggested concluding the discussion on this chapeau and moving to a more focused discussion on how to structure the costs, before coming back and adapting that specific part of the text. The full sentence, with brackets, would then read “While the [types of] related costs listed below may apply to both national and international recruitment, they are primarily incurred during international recruitment.”
 201. The Chairperson sought reaction from the room on the other amendment introduced by the Employers which had been to insert a new sentence reading: “Depending on the recruitment process and the context, these cost categories should be further defined by the governments and the social partners at the national level.”
 202. The expert from the Government of Mexico indicated the proposed amendment by the Employers was a new element not previously considered that could have some value. Perhaps this proposed amendment could be bracketed with a view towards finding a better place for it in the document, possibly at the end of the list. This amendment implied that the list of related costs would not be exhaustive.
 203. After further clarification was requested, the Employer Vice-Chairperson stated that the amendment was made to allow national governments and social partners flexibility in further defining these costs. The way the Employers viewed it, the discussion would end up with generic categories or types of costs, which could then be developed further in accordance with the national context. This amendment made sense based on what the Employers viewed as the likely outcome of the discussion on related costs.
 204. The Chairperson pointed to two things that could be addressed at the national level, namely: (1) exemptions; and (2) national specificities. Whatever the result of the discussion, a level of detail that applied to all 191 countries of the world would never be reached.
 205. The Worker Vice-Chairperson indicated that the logic behind the amendment was understood on a conceptual level, but that wording would be important, e.g. “further defined”, or “enhanced” or “elaborated”. Conceptually, it was clear that there could be additional components introduced at the national level.

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206. The expert from the United Arab Emirates also stressed the importance of word choice. “Further develop” would be better than “further define”, as the text should not leave the impression that governments were free to pick and choose at will, nor should the experts imply that they were abdicating their mandate to “define”. There was a need for the experts to define categories, or clusters or types of costs, though it would not be possible to cover everything falling under each.
 207. The Chairperson asked whether the experts could agree to move forward with a text that read “could further develop”.
 208. Following suggestions by the expert from the Government of Nigeria and the expert from the Government of Mexico, it was agreed to bracket: “Depending on the recruitment process and the context, these cost categories could be further developed by the governments and the social partners at national level.” The Chairperson stated that it was important that common understanding had been reached that categories, types, or clusters of related costs could be further developed by governments at national level.
 209. The Employer Vice-Chairperson suggested deleting the qualifier “limited” in the following sentence which read: “It is recognized that the competent national authority has flexibility to determine limited exceptions to their applicability consistent with relevant international labour standards or national regulations.” This word had no legal meaning or consequence, and was not present in Article 7.2 of Convention No. 181.
 210. The Worker Vice-Chairperson indicated that the exceptions should indeed be as limited as possible, and that this idea should therefore remain in the text.
 211. The expert from the Government of Canada indicated that the inclusion of the word “limited” did speak to intent, and that removing it would create the sense that there could be more exceptions going forward.
 212. The expert from the Government of Mexico indicated that the word “limited” was not needed as this was already implicit in the process. Articulating a list and national consultations on exceptions already suggested placing a limit on them. He asked the Workers to be flexible on this point.
 213. The expert from the Government of Morocco indicated that the word “limited” should be retained, and pointed to the need to work on the conditions under which exceptions could be granted.
 214. The Worker Vice-Chairperson expressed the general concern that the discussion on related cost was moving towards having broad categories rather than a detailed lists. In addition, now there was a move toward signalling no limits on possible exceptions. Taken together, this might not be the right message. The Workers’ group requested that this modest qualifier be retained for the time being and later revisited.
 215. The Chairperson said that there seemed to be a move toward deleting the word “limited”, but as there was no consensus, it was agreed to put the word in brackets, to be revisited once the list of related costs was complete.
 216. The expert member from the Government of the United Arab Emirates indicated that the ambiguity and difficulty of the discussion came from the fact that what was being limited or the items to which exceptions were to be granted to, was not clear. He suggested to bracket the entire paragraph until the list of related costs had been identified. The bracketing of the text was agreed and the experts returned to the chapeau once the discussion on the list of related cost was finalized. In order to manage the discussion, the Chairperson proposed working not with the text as a whole, but starting with the first two sentences.

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- 217.** The Employer Vice-Chairperson indicated that her group had no objection to the sentences as formulated, which was: “Related costs are expenses integral to recruitment and placement within or across national borders. While the [types of] related costs listed below may apply to both national and international recruitment, they are primarily incurred during the transnational recruitment process.”
- 218.** The expert from the Government of Canada suggested the use of the term “international” rather than “transnational” for the sake of consistency.
- 219.** The Worker Vice-Chairperson indicated that they had no objection to the first sentence, but suggested the following one to read: “Taking into account that the widest set of related costs are incurred for transnational recruitment, costs below may apply to both national and international recruitment.” There was some discussion on using the formulation of “taking into account” which resulted in the expert from the Government of the United Kingdom proposing to replace the two sentences with: “Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of relating cost are incurred for international recruitment. These costs are listed below and may apply to both national and international recruitment.” The two sentences were adopted as amended.
- 220.** The following sentence to be reviewed by experts currently read: “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.”
- 221.** The expert from the Government of Mexico indicated that in light of the text that now followed the chapeau, the first sentence under discussion here, beginning with: “Depending on the recruitment process” was no longer required.
- 222.** The Employer Vice-Chairperson stated that the sentence followed logically from those that preceded it. The chapeau paragraph first defined related costs, then clarified that they related primarily to international recruitment but nonetheless applied universally, while the next sentence indicated the possibility of further refinement at the national level. Therefore, the Employers’ group would prefer to retain the sentence, to which the Worker Vice-Chairperson expressed no objection.
- 223.** There was some discussion among the experts, initiated by the expert from the Government of Mexico, on whether the sentence fit better here or following the new paragraph 12 that had just been adopted. However broad consensus by the experts was to retain its current position in the chapeau. The sentence was therefore adopted.
- 224.** The Chairperson then moved the discussion to the third part of the same chapeau, which was a combination of several amendments and currently read: “It is recognized that the competent national authority has flexibility to determine [limited] exceptions to their applicability consistent with relevant international labour standards or national regulations, through national regulations after consulting the most representative organizations of workers and employers exceptions to the cost categories, as provided for in relevant international labour standards and national regulations. Such exceptions should be considered subject to the following: ...”.
- 225.** The Worker Vice-Chairperson affirmed that national regulations could not be equated with international labour standards and the text reading “... with relevant international labour standards or national regulations” would therefore need to be revised. The words “or national regulations” should be deleted after “labour standards” to correct the break in the sentence that had occurred as a result of the various amendments.

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- 226.** The Employer Vice-Chairperson noted that “national regulations” was not mentioned in Convention No. 181 and the Employers’ group therefore had no objection to the removal of these words. There was general consensus on retaining the sentence as amended.
- 227.** A long discussion was reopened on the bracket around the word “limited” before the word “exceptions”, with the Worker Vice-Chairperson restating her group’s preference to retain it. The Employer Vice-Chairperson indicated that there was no value in retaining it, and again pointed out that this word was not in Article 7.2 of Convention No. 181. The latter’s argument was supported by the expert from the Government of Mexico. The expert from the Government of Nigeria acknowledged that while the sentence would read well without the word “limited”, the sense of placing restrictions on the identification of exceptions would be removed. Eventually the Worker Vice-Chairperson expressed that they could be persuaded to stick to the Convention language.
- 228.** The expert from the Government of Nigeria suggested the addition of “but not limited to” following “be considered subject” so as not to limit the conditions that needed to be in place before an exception was granted. There was general consensus to adopt this amendment.
- 229.** The discussion moved to the four conditions that had been retained, namely: “(i) they are not detrimental to the interest of the workers concerned; (ii) they are reasonable and justified; (iii) they are limited to certain categories of workers and specified types of services; (iv) the corresponding related costs concerned are disclosed to the worker before the job is accepted”.
- 230.** The Employer Vice-Chairperson recalled that there had already been general agreement to delete clause (ii).
- 231.** The Worker Vice-Chairperson agreed with the deletion of clause (ii) but asked that the language of Convention No. 181 be used for clause (i) therefore returning to the formulation “they are in the interest of the worker concerned”. For clause (iv) she suggested to replace “will be” with “are” so as not to suggest that the related costs could be disclosed to the worker after they had been recruited.
- 232.** Clauses (i)–(iii) of paragraph 11 were adopted.

Paragraph 12 (paragraph 8 of the Office draft)

- 233.** In keeping with the general sentiment of the Meeting and the changes proposed by the Worker Vice-Chairperson in new paragraph 11, the experts agreed to work on one list of related costs applicable to international recruitment.
- 234.** The Worker Vice-Chairperson thanked the Office for the comprehensive list of related costs that had been provided and expressed that the Workers’ group supported all categories or items that had been enumerated. Given the revised approach taken by the experts there would be room for consolidation. She welcomed the opportunity to further develop some items, whether in the current structure or with further examples or illustrations. The idea of consolidating items was supported by the experts from the Governments of Mexico and the United Kingdom.
- 235.** The Employer Vice-Chairperson said they were also able to work with the Office document in terms of the categories or items proposed. However, the more the list was attempting to be descriptive, the less effective it would be, as the definition should allow scope for the categories to be further detailed in the national context. This sentiment was also shared by the experts from the Governments of Mexico and Nigeria.

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- 236.** The expert from the Government of the United Arab Emirates suggested to also discuss the allocation of costs through the development of a matrix that would inform not only the definition of the costs but also their allocation, in terms of who collected the fees and who should bear the costs, while keeping in line with the *General Principles and Operational Guidelines for fair recruitment*.
- 237.** The Worker Vice-Chairperson said that the Workers’ group was open to determining the process through which allocations could be undertaken at national level; however, they expressed the firm belief that the definition was not aimed at determining who was paying and to whom. Above all, the definition should not determine that there could be any costs that would be borne by workers as this would counter the principle agreed in the *General principles and operational guidelines for fair recruitment*.
- 238.** The expert from the Government of the United Arab Emirates said that the Workers’ group principled approach was respected, though he had thought it would be in their interest to flesh out the costs to be borne by workers, in order to see if they were consistent with the *General principles and operational guidelines for fair recruitment* or not. If the Workers’ group’s stand remained as it was, he suggested going back to the proposal made by the expert from the Government of Morocco, which was to consider only related costs that were not to be borne by the worker. The risk would be that other related costs could be hidden, and would not be reflected, and as such, it could be considered legitimate that workers would have to pay for them. With that in mind, he deferred the decision on this matter to the Workers’ group.
- 239.** The expert from the Government of Mexico expressed his understanding that the experts were defining a list of related costs that would not be paid by the worker, and that national governments could determine exceptions in line with the process identified in the chapeau. While there had been some support from the experts from the Governments of Morocco, the United Arab Emirates and Nigeria to order the related costs in accordance with the stages of the recruitment process, the expert from the Government of Mexico suggested moving forward with the Office list so as not to lose more time. Reordering could be done at a later stage, time permitting. The expert from the Government of the United Kingdom and the Employer Vice-Chairperson also supported this idea.
- 240.** The Employer Vice-Chairperson concurred with the principle that the experts were defining the related costs that would not be borne by the worker. However, she cautioned again that the experts should only define a generic set of categories or items without providing much additional detail. More specificity might lead to those fraudulent or rogue agencies finding further loopholes to charge workers.
- 241.** The Worker Vice-Chairperson emphasized that a generic list would serve little purpose or utility on the ground. If the proposal to have limited descriptions was carried further, the Workers’ group might propose to have more categories. Overall, the Workers’ group preferred to add some context within each of the categories identified. Upon request by the Chairperson, she illustrated the detail her group would like to see by providing amendments to the “medical cost” category.
- 242.** The expert from the Government of the United Kingdom introduced the idea of identifying principles or criteria that could be used to guide the drafting of the list. For example, where the costs were related to demonstrating a worker’s suitability to the job, it would make sense to allocate these costs to the employers. Secondly, any costs related to travel, where workers were not provided with any other options – for example if a worker was required to travel offshore using a specific method of transport – it was questionable whether a worker had to pay for these costs. The idea of developing a type of framework was also supported by the expert from the Governments of Canada, Mexico and Morocco as well as the Employer and Worker Vice-Chairpersons.

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243. In order to maintain the focus of the discussion, the Chairperson suggested that the experts from the Governments of Canada and the United Kingdom provide the Meeting with draft text for the framework. The Workers' group was asked to propose a consolidated list of related costs that the Meeting could consider following a break.
244. As a consequence, three sets of documents, results of group consultations, were distributed to the Meeting for consideration as reproduced below:

Proposed criteria by the experts of the Government of the United Kingdom and Canada to determine whether a costs should be considered a "recruitment-related cost":

- (a) actively initiated by the employer or agency and involves a third party agency;
- (b) required to secure access to employment- subsidiary considerations:
 - (i) required by who: e.g. agency, employer, source government, destination government;
 - (ii) nature of requirement (confirmation of eligibility, medical, security/criminal check, education/certification);
- (c) national or international (e.g. travel/relocation);
- (d) related to recruitment processes (e.g. employment deductions versus visa cost).

Similar proposed criteria from the Employers' group:

Elements such as, but not limited to [...]:

- (a) What gave rise to the cost?
 - Who initiated the recruitment (was there a promise of a job)?
 - Is the cost legally required?
 - Is it an inherent job requirement?
 - Is it mandated by the employer?
 - Is the cost necessary for the recruitment process? Was there an alternative purpose?
- (b) Level of vulnerability
 - Is there a cross-border element?
 - Skills, education and occupation level of the worker?
 - What is the relative wage level?
 - What sector is the job in?
 - What is the prior history of forced and compulsory labour in country of origin/destination, occupation group?
 - Are there grounds for potential discrimination including age, gender, disability, race, sexual orientation, faith?

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- (c) Is the cost reasonable?
- Has the cost been marked-up? Does the cost conform to market prices?
 - Was the cost a result of a fault (e.g. negligence or bad faith) by the worker?
 - Is the cost the lowest option available (travel class, expedited visa etc.)
- (d) What is the timing of the cost?
- Is it a voluntary action before the recruitment process has started?
 - Is the cost within the scope of the recruitment process? (e.g. looking for vacancies is not, neither is vocational certification)
 - Breach of contract – recovery: what was the reason for termination?

245. The Workers’ group proposal for a consolidated list of recruitment-related costs, applicable to both national and international recruitment was presented to the Meeting. The document with the proposed list is reproduced below (paragraph 247).

246. After a short consultation with the Vice-Chairpersons, the Chairperson informed the Meeting that a tripartite drafting committee would work on consolidating the text. This approach would allow the tripartite members to commence discussions with a common understanding of the proposed suggestions.

New paragraph 12

247. Following the meeting of the drafting committee, the proposed text was presented to the experts and it was agreed to use this text as a basis for discussion:

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

- (i) **Medical costs:** payments for required medical examinations, tests or vaccinations.
- (ii) **Insurance costs:** costs to insure the lives, health and safety of recruited workers, including through enrolment in migrant welfare funds.
- (iii) **Costs for skills and qualification tests:** costs to verify workers’ language proficiency and level of skills and qualifications, as well as for location-specific credentialing or licensure.
- (iv) **Costs for training and orientation:** expenses for language, skills and other required trainings, and pre-departure or post-arrival orientation of newly recruited workers, including on-site job orientation and training.
- (v) **Equipment costs:** costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively.
- (vi) **Travel costs:** expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for trainings, interviews, consular appointments, relocation, and return or repatriation with personal effects.

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- (vii) **Administrative costs:** application fees and fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.
 - (viii) **On the job accommodations:** costs required in the recruitment process for ongoing lodging, meal or local travel costs found to be above fair market value.
 - (ix) **Collateral obligations:** requirements to post collateral such as deeds, security deposits, properties, bonds, or other economic enticements to secure employment, complete a contract or return home by a specified date.
 - (x) **Hidden costs:** extra-contractual, undisclosed or illicit costs such as bribes, tributes or kickback payments required at any stage of the recruitment process by any actor in the recruitment chain.
 - (xi) **Breach or finders' fees:** payments required to recover recruitment-related costs upon early termination of work or to prevent workers from changing jobs.

Enumeration of related costs in this definition are generalized, not exhaustive, and should therefore serve as a floor. Other costs required as a condition of recruitment will also be prohibited.

These costs should be regulated in ways to respect the principle of equality of treatment for both national and migrant workers.”

- 248. The Employer Vice-Chairperson indicated her general agreement but suggested to bracket the words “among other conditions” until a discussion on the general chapeau to the definition had been concluded.
- 249. The expert from the Government of Mexico suggested that the last sentence should read: “the following costs should be considered” instead of “will be considered”.
- 250. The Worker Vice-Chairperson accepted the amendment, hoping that, with these additional qualifiers, a focused discussion on the list of related costs could finally take place. She trusted that the shared understanding of the experts was that when these conditions were present, the subsequent list of costs would be considered as recruitment-related costs.
- 251. The paragraph was agreed upon, while leaving the words “among other conditions” in brackets. At the end of the Meeting, following an intervention of the experts from the Governments of Mexico and Nigeria, who highlighted that the agreed new paragraph 13 referred to the list of related costs as “non-exhaustive”, the bracketed text was deleted. Upon suggestion of the Chairperson, the experts also agreed to insert the words “or placement” after “employment”, consistent with the *General principles and operational guidelines for fair recruitment*.

Clause (i) Medical costs

- 252. The Employer Vice-Chairperson indicated that her primary concern was to distinguish pre-employment, i.e. the recruitment costs from those related specifically to employment, for which a whole set of different rules would apply. Hence, she suggested to add “pre-employment” before “medical costs”. This proposal was now not acceptable to the Worker Vice-Chairperson who was concerned that this could have unanticipated implications in the future. The Chairperson said that it was his understanding, as expressed under new paragraph 12, that as long as the medical costs were linked only to the pre-employment process they would be classed as recruitment fees, even when described in the contract as

recurrent over time. The Employer Vice-Chairperson accepted this interpretation and eventually withdrew the amendment.

253. The Government Vice-Chairperson expressed the group’s general support for the list noting that the chapeau (new paragraph 12) provided clear terms of reference for its application in practice. He made two general remarks applicable to the whole list of costs. Firstly, he noted that the experts should ensure not to subsume costs that would not be recruitment-related under that category and warned against legitimizing illicit costs related to non-compliance by including them in a definition of “recruitment costs”. Secondly, he recommended the introduction of the notion of fairness in relation to the collection of recruitment-related costs, in particular government-mandated costs. Unscrupulous agencies would often present themselves as a one-stop-shop for providing all services and charge high costs for doing so. Safeguards could be introduced into the text to address these bad practices.

254. The expert from the Government of Mexico suggested the deletion of the word “required” as this was already mentioned in the chapeau. The suggestion was accepted by the experts and clause (i) agreed as amended.

Clause (ii) Insurance costs

255. The Employer Vice-Chairperson proposed the deletion of “recruited” before “workers”, which did not seem to add value; she also suggested to add “through” before “enrolment”, and “where applicable” at the end of the sentence. The Worker Vice-Chairperson agreed to the first amendment but, further supported by the expert from the Government of Canada, she suggested that the introduction of the sentence “where applicable” was superfluous as it would be excluded naturally where it was not applicable in the national context.

256. The expert from the Government of the United Arab Emirates requested clarification from the Worker Vice-Chairperson regarding “insurance costs”. He cited examples where workers would be mandated by the government of their home country to subscribe to various contributory schemes, such as welfare funds, and asked whether these would be seen by the Workers’ group as a recruitment cost, even if they were recurring costs. The Worker Vice-Chairperson indicated that where such contributions were requirements to be able to secure positions abroad they should be treated similarly to other requirements.

257. Following the clarifications, the Employer Vice-Chairperson indicated that it was now clear that welfare funds, when required as a condition to secure employment, should be included in the list of related costs. Similarly, costs related to life insurance or health insurance, would only qualify as recruitment costs if clearly part of the recruitment process. The Worker Vice-Chairperson confirmed that this was indeed the reading of the Workers’ group and that this was not to suggest that workers should never be responsible to insure themselves. As a consequence the Employer Vice-Chairperson agreed to withdraw the amendment and clause (ii) was agreed as amended.

Clause (iii) Costs for skills and qualification tests

258. Clause (iii) was adopted without amendments.²

Clause (iv) Costs for training and orientation

259. The Employer Vice-Chairperson suggested there was no need to go into too much details into what kind of training is provided. So she suggested the deletion of “language skills and

² The clause was slightly amended after the Meeting upon the suggestion of the Office, as part of the editorial process.

other”, as well as the addition of “including on-site job orientation” after “training”. She further suggested to remove the same – “including on-site job orientation and training” – from the end of the clause. When asked to clarify, she indicated that this raised a number of other questions such as: What was the level of proficiency? How to test it? In what cases? She added that without these deletions she would need to ask to include the word “mandatory” before language and skills training to make sure that it was really required by employers.

- 260.** The Worker Vice-Chairperson agreed on the general principle but noted language and skills training would be quite prevalent costs for workers and often determinants of their vulnerability to abuse. Hence she recommended retaining reference to such costs specifically. Language proficiency in many countries was a requirement to obtain visas and it should also be kept separate from vocational training, as these were very distinct types of training. On the other hand the Employer Vice-Chairperson reiterated that signalling out only the skills and language training aspects would miss out of many other training aspects and that the language should hence remain general.
- 261.** The expert from the Government of Mexico, further supported by the expert from the Government of Canada, was against the use of the word “mandatory” as this was already covered by the chapeau.
- 262.** The expert from the Government of Nigeria supported the view of leaving the reference to training as this term was broad in scope. The word “training” was encompassing of all types of training, including pre-departure or post-arrival. He suggested the alternative of “expenses for required training”. He further cautioned against narrowing down the definition by limiting it to language skills acquisition.
- 263.** While noting this was mentioned in general terms in the chapeau, the expert from the Government of the United Arab Emirates, further seconded by the expert from the Government of Mexico, accepted the idea of accentuating a particular recruitment-related cost if one of the group felt strongly about it, based on their experience of the reality on the ground.
- 264.** The expert from the Government of Morocco indicated his preference to be general and not to talk about trainings that yield degrees, and not professional training or apprenticeships. A discussion followed with regard to the use of the French expression *formation qualifiante à l'emploi* and the intention of the expert from the Government of Morocco to distinguish between general training and training that yields specific degrees to qualify for employment. He said that call centres, for example, charge the job-seekers for training that they see necessary for them to be employable to the specific job. The Meeting discussed whether the proposed word *qualifiante* would translate accurately in other languages, examining different English options such as “required”, “specific” or “upskilling” training. He further explained that the word *qualifiante* referred to training that qualified for a specific job and that it did not mean “specific” as such. This was usually short-term training, such as two-week training at a call centre that supported workers to do that specific job. However, a number of experts indicated this nuance would be difficult to be adequately translated into other languages. The expert clarified that Moroccan employers carry out pre-selection processes and improve employability through this upskilling process. The Chairperson provided an example of Switzerland’s unemployment programme, which aimed to raise skill levels to aid job access. He emphasized that such a scenario was not being discussed in clause (iv). Instead, the clause emphasized the need for training that allows an individual to effectively apply the skills, which he or she already possesses, to the workplace. He emphasized that clause (iv) was not trying to portray that an individual needed to be an expert in the field of the call centre, but rather the need to obtain training on how to use the call centre’s phones.

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- 265.** The expert from the Government of Mexico said that this amendment shifted the attention away from all-encompassing trainings. He said that the word “required” was already in the chapeau and “training” in the title of clause (iv) and therefore suggested deletion of both these words. He suggested to refer to the concepts of on-site job orientations, pre-departure or post-arrival orientations of newly recruited workers and the acquisition of language skills at the very end.
- 266.** The Worker Vice-Chairperson indicated the willingness to accept the Employers’ suggestion while requesting to put on record the clear understanding that language trainings were included in this broader formulation. She said that the group would however like to retain the word “required”. The wording would therefore read as “expenses for required trainings” followed by the other amendments made by the Employers.
- 267.** In light of the previous interventions, the expert from the Government of Morocco agreed to withdraw his amendment and clause (iv) was agreed as amended.

Clause (v) Equipment costs

- 268.** Following a request of clarification from the Employer Vice-Chairperson on the practical implications of the proposed cost item, the Worker Vice-Chairperson stated that, for example, a uniform should be provided to the worker upon recruitment and that no requirement should be instated for it to be a cost of the recruitment process. She provided an example from the United States in which a ski trainer, upon recruitment under the seasonal training program, would be provided with all the necessary equipment for him/her to perform his/her work. She emphasized that such an example could be transferred to aspects of dangerous work or other sectors. She further reiterated that costs for equipment should only be considered as recruitment costs if they were a precondition to access work.
- 269.** The example provided was not considered sufficiently clear to the Employer Vice-Chairperson, who highlighted that in this situation the individual had already been hired, while clause (v) referred to the required costs of the recruitment phase. With a view to provide a clarification, the Chairperson provided an example of a domestic worker, who before entering into an employment contract, could be requested by an employer or labour recruiter to cover costs of uniform, shoes, and equipment as a requirement to obtain the job. He highlighted that this example could also be applicable to the construction sector, where workers could be required to pay all the related costs up front. Such costs therefore become a precondition to enter into an employment contract.
- 270.** The expert from the Government of Mexico agreed, highlighting also the need to ensure occupational safety as an employers’ responsibility. This view was further supported by the expert from the Government of Nigeria. The expert from the Government of the United Arab Emirates further encouraged the experts to consider situations in which the workers were not informed about the costs of equipment and were instead required to pay for equipment upon arrival even if he/she had not consented previously. He concluded that clause (v) should not be diluted, but rather kept unchanged as such costs remain a valid recruitment cost, whether or not the worker was informed, misinformed or uninformed.
- 271.** The Employer Vice-Chairperson appreciated the explanation provided by the Workers’ group. After suggesting to include an exception in the chapeau clearly indicating that costs considered under clause (v) were related to the pre-employment phase only, she accepted to delete such clause if the report of proceedings reflected the experts’ common understanding of this. Clause (v) was agreed as amended. The Employer Vice-Chairperson expressed concern that it was unlikely that the users of the definition would be reading it alongside the report of this Meeting. The text needed to be clear by itself, without being dependant on a further reading of the report.

Clause (vi) Travel costs

- 272.** The Employer Vice-Chairperson emphasized that this clause was unequivocally linked to the pre-employment phase and that this intention should be made clear to those reading the document after its adoption. She recommended the deletion of “with personal effects”.
- 273.** The expert from the Government of Morocco suggested deletion of “interviews” and “consular appointments” from clause (vi). He mentioned that the background report clearly stated that travel costs during the job search period were usually borne by the jobseeker. In practice these were costs that could also be covered by the employers or by public employment services through the use of “mobility checks”. However, in many countries public employment services would not have the resources to do this and hence this would not be feasible.
- 274.** The Worker Vice-Chairperson accepted the amendment proposed by the Employers’ group with regard to the deletion of “with personal effects”. This was further supported by a number of Government experts (United Kingdom, Mexico) and subsequently agreed by the Meeting. She had concerns with the amendment proposed by the expert from the Government of Morocco, as these could become huge upfront investments for workers even before a formal offer of employment has been received. She stated that the exclusion of such core costs of the recruitment process could potentially create a precondition for abuse.
- 275.** The expert from the Government of the United Kingdom, further supported by the expert from the Government of Mexico and by the Employer Vice-Chairperson, stated that the chapeau clearly stated the requirements for a cost to be considered a related recruitment costs. He therefore considered it reasonable to include “interviews” and “consular appointments” within clause (vi). This point was further supported by the expert from the Government of Nigeria. He emphasized that the recruitment process could entail huge costs, which if pushed onto the worker, would hinder the worker’s access to employment. The expert from the Government of Portugal emphasized that the costs for interviews should be paid by the employer or the labour recruiter as they could be very expensive and thus burden workers.
- 276.** The expert from the Government of the United Arab Emirates explained that in some cases the government would be ready to pay such costs. Thus, he suggested that the discussions should not focus on who pays, but rather that such costs should not be borne by workers. With this in mind, he believed that the costs under clause (vi) should also include “consular appointments”. The chapeau would be diluted if the costs under clause (vi) did not apply to workers who travel to attain work offered by an employer or a labour recruiter, even if this was a result of a consular appointment. He agreed with the expert from the Government of Nigeria that such costs could be substantial.
- 277.** In light of the different interventions, the expert from the Government of Morocco, accepted the growing consensus, though he requested that his concern be put on record, and, in his view, reference to this wording should not lead to expectations that the public employment services would provide mobility checks to cover travel costs of candidates for the purpose of attending interviews.
- 278.** While clause (vi) was initially agreed, later in the discussions the experts decided to further amend it to include “lodging costs” in the headings as a result of the discussion on clause (viii) on the job accommodation (see paragraph 285 below), which was eventually deleted. The intention had been to capture the issue of accommodation in this clause while leaving the issue of costs “above fair market value” under the separate new section C, which ultimately included reference to “inflated” costs.

Clause (vii) Administrative costs

- 279.** The Employer Vice-Chairperson proposed to substitute “application fees and” with “application and service that are required for the sole purpose of fulfilling the recruitment process” with a view towards more clearly specifying what these costs consisted of. This amendment was accepted by the Worker Vice-Chairperson, though she noted some redundancy with prior text.
- 280.** The expert from the Government of Nigeria, supported by the expert from the Government of Sri Lanka, raised the issue of information technology (IT) costs incurred during recruitment and how these should be dealt with in the text. Workers sometimes had to pay to make online applications and it was unclear if such costs could be transferred to the employer. The expert underscored the need to think to the future when recruitment may be an entirely IT-run process.
- 281.** The Worker Vice-Chairperson indicated that the manner of cost collection (using IT or otherwise) would not change the fact that the costs should not be borne by the worker. The expert from the Government of the United Arab Emirates suggested that the question of IT-related costs was one that might be best taken up in national consultations. Another example was cited of the costs associated with the issuance of a birth certificate or passport, documents that were a common requirement for workers interested in working overseas. Employers in the United Arab Emirates had difficulty bearing these costs, as the possession of documentation such as a birth certificate or passport was a general requirement rather than one linked to the specific employer. It was perhaps the place of national or bilateral consultations to explore ways of reducing these types of costs.
- 282.** The Chairperson noted the potential of information technologies and digitalization to reduce recruitment costs and block chain technology was cited as one example in this context.
- 283.** Clause (vii) was agreed as amended.

Clause (viii) On the job accommodation

- 284.** The Employer Vice-Chairperson suggested deleting this clause because the term “on the job” implied this belonged to the employment sphere. There could be cases in which, during the recruitment process, a worker had a collateral obligation to pay a cost above market value, but this situation should be dealt with under the subparagraph dealing with collateral obligations. The position was further supported by the expert from the Government of Canada.
- 285.** The Worker Vice-Chairperson acknowledged that these costs were related to employment, but stressed that often workers had to agree to accommodation costs above fair market value at the time of their recruitment. It was the timing of their imposition and the cost inflation that made these recruitment-related costs. However, she was open to accept the suggestion of the Chairperson to separate the issue of charging above fair market value costs (or “fraudulent practices”) from that of lodging costs.
- 286.** The expert from the Government of Mexico pointed out that the issues of lodging and subsistence costs during recruitment were already dealt with in clause (vi) and suggested to include a specific reference to it in the heading so that it would read “travel and accommodation costs”. The issue of charging above fair market value costs should be dealt with separately as part of unjustified costs that should not be deemed recruitment-related costs. The Chairperson suggested to change it into “travel and lodging costs” for consistency of language.

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- 287.** The expert from the Government of Nigeria pointed out that not in all situations was there unfair market value for accommodations, and therefore suggested that this was an issue that could be taken up in national consultations. However, if reference to accommodation were to be inserted in the title for clause (vi), then additional language referring to fair market lodging costs should also be included in the text.
- 288.** The Employer Vice-Chairperson did not see the need for additional text in the body of the subparagraph as the intention was already clear. Clause (viii) was subsequently bracketed and eventually deleted after the Meeting reached a satisfactory agreement on issues related to housing costs above the market value in new section C.

Clauses (ix) Collateral obligations, (x) Hidden costs and (xi) Breach or finder's fees

- 289.** The expert from the Government of the United Kingdom, echoed by the expert from the Government of Canada, indicated that the final three subparagraphs dealt with costs that should not be borne by any actor in the recruitment process and that they should not be legitimized by including them in section B.
- 290.** The Worker Vice-Chairperson pointed out that while many of these cost items were “extra-contractual”, those dealt with under clause (xi) were actually part of many standard contracts.
- 291.** The Chairperson suggested that it could be appropriate to refer to breach of contract costs again under the section of related costs as the issue was previously mentioned in relation to fees only.
- 292.** The expert from the Government of the United Arab Emirates, warned against the inclusion of “illegitimate costs” under a list of costs, which while not to be paid by workers were not per se illegitimate. This was the case of costs for early termination of a contract. In such a case, the contract should be null and void, and a jurisdiction would not enforce it.
- 293.** While agreeing with the point raised by the expert of the Government of the United Arab Emirates, the Worker Vice-Chairperson reiterated that in many instances, for example in the United States and the United Kingdom, such costs were included in perfectly lawful contracts. She suggested that for this particular case, some ambiguity could be accepted for the time being. For the other situations, she fully agreed to the text under collateral obligations and hidden costs.
- 294.** The Chairperson noted that there was a growing consensus in working on collateral obligations and hidden costs in a separate manner. With regard to the issue of breach or finder's fees he asked the view of the Employers' group regarding the way to address this.
- 295.** The Employer Vice-Chairperson proposed new text and singled out the hidden costs, as these were non-compliant costs and did not fit well in the list of related costs.
- “(a) anti-bribery and corruption regulation should be complied with at all times in any stage of the recruitment process. Examples of possible extra-contractual, undisclosed or illicit costs include: bribes, tributes or kickback payments, and bonds, required by any actor in the recruitment chain.”
- 296.** The expert from the Government of Canada, reflecting on a discussion of the Government group, suggested that the following three areas should be further addressed in the document in a separate section: (a) collateral payments and anti-corruption/anti-bribery; (b) inflation of cost above market value; and (c) non-disclosure/information about costs. He agreed with the proposed language on anti-bribery and anti-corruption, collateral obligations, penalties, illicit costs. Regarding reasonableness, this referred to a case where an individual would end

up paying for non-related costs that were excessive, and over and above market value, for example on accommodation. Regarding full disclosure/informed consent, he highlighted the need to make sure that individuals were fully informed and consented upfront to any non-recruitment-related cost so as to avoid any surprise during the recruitment process.

297. He proposed to add to text suggested by the Employers two additional clauses (b) and (c) in a new section titled “application or interpretation guidance”. He further clarified that the intention of this section was to cover both fees and related costs and should hence be separated from section B. The text would read as follows:

“A. Subtitle

(See text above)

B. Reasonableness

Any non-recruitment fee that must be incurred by the workers must be charged at fair market value/the same rate a non-worker would pay for the goods or services.

C. Full disclosure and informed consent

Any non-recruitment fee should be disclosed to the worker prior to the fee being incurred and the worker should be given reasonable opportunity to decline the goods or service.”

298. The Worker Vice-Chairperson was open to this approach, but preferred to maintain these clauses within section B. She welcomed the reference to extortion, collaterals and security deposits mentioned as examples by the expert from the Government of Canada.

299. A discussion followed on whether these should still be considered as “related costs”, as per the Workers Group suggestion, or separately as suggested by a number of Government experts. The expert from the Government of Canada highlighted that the “related costs” section was intended to identify costs related to recruitment and not to be borne by workers, with the implicit expectation that they could be paid by other parties. Hence including bribery into this section would suggest this practice was acceptable if paid by others, which was clearly not the case. This point was supported by the Employer Vice-Chairperson who highlighted that some of them were hidden fees, while others were simply non-compliant malpractices. She suggested a separate heading titled: “Related practices to recruitment and enforcement of regulation”.

300. The Worker Vice-Chairperson indicated that she wished to ensure that the experts continued their work on “defining”, in this case by drafting a definition of “illegitimate fees”. She suggested a heading called “illegitimate recruitment costs”, or to build on that concept. Clauses (a) and (b) of the proposed text above would fit under such a section, whereas clause (c) would need reformulation.

301. The expert from the Government of the United Arab Emirates suggested to title this new section as “application”, and the three concepts of “legal compliance”, “reasonableness” and “informed consent” to follow in subsequent subheadings. The Employer Vice-Chairperson supported the proposal.

302. The Worker Vice-Chairperson indicated that the task was being shifted into discussing the issue of “application” which was not the mandate of the Meeting. The Meeting was not asked to shape or structure regulation but to inform them with an understanding of the identified costs. In general, she was more comfortable with the proposed text than with the headings.

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- 303.** The expert from the Government of the United Kingdom suggested that a new section C could be titled “Illegitimate, unreasonable and hidden costs” to reflect the three principles that were under discussion. Further to the proposal of the Employer Vice-Chairperson to replace “hidden” with “undisclosed” the proposal was agreed by the experts and the Meeting moved to discuss the clauses (a), (b) and (c) below.
- 304.** A discussion followed on the subheadings’ titles. The Worker Vice-Chairperson was not agreeable to the suggestion of titling clause (a) as “legal compliance” as this did not reflect the text below. She questioned the need to use titles for subheadings and proposed to reorder the text of clause (a) as follows:
- “Extra-contractual, undisclosed or illicit recruitment costs are never legitimate. Examples include bribes, tributes, extortion or kickback payments, bonds and collaterals required by any actors in the recruitment chain. Anti-bribery and anti-corruption regulations should be complied with at all times in any stages of the recruitment process.”
- 305.** The Meeting agreed with not using “subtitles” and discussed the above text as reordered by the Worker Vice-Chairperson.
- 306.** The Employer Vice-Chairperson had no objection to reordering but wanted the word “recruitment” to be taken out. She explained that these were illicit costs but not recruitment costs as such. The Worker Vice-Chairperson agreed to delete the term in the first sentence but not in relation to “actors in the recruitment chain”, which was agreed by all parties.
- 307.** With regard to proposed clause (b) related to the concept of “reasonableness”, the Worker Vice-Chairperson suggested to follow the same structure of clause (a) and to start the sentence with: “Fees charged to workers above fair market value or at different rates than a non-worker would pay for the goods or service can never be legitimate.”
- 308.** The Secretary-General intervened to point out that the suggested formulation could be read as suggesting that fees were allowed if charged at market value. There was a need to find a formulation that clearly indicated that the fees referred to in this paragraph would not be recruitment fees but fees for any other goods or services, e.g. “non-recruitment-related fees”.
- 309.** The expert from the Government of Canada wanted to give an example of how such fees could apply in his country. A worker admitted under the temporary workers scheme in Canada had the ability to apply for permanent residency. This was not part of the recruitment process and the employer was not automatically involved in sponsoring it. Some agencies, however, inflated costs to access the programme as a way to gain additional compensation over and above the recruitment costs, sometimes with a complicit employer.
- 310.** The Employer Vice-Chairperson raised doubts about the reorganization of the text which now was less coherent. She was also hesitant about the introduction of fair market value terminology, which could have implication on compliance with anti-trust/competition laws. It would also raise questions as to who would define such value. She asked the Office whether such language had been already used in other instances.
- 311.** The Secretary-General referred to the Workers’ Housing Recommendation, 1961 (No. 115), which indicated that a worker should not pay “more than a reasonable proportion of his or her income” for housing. Similar wording was also used by the Domestic Workers Convention, 2011 (No. 189), with reference to in-kind payment of wages which should not exceed a certain proportion of wages. In this case, deduction of wages for the rent of an apartment should not be disproportionate to the worker’s earnings.
- 312.** The Employer Vice-Chairperson noted that the examples provided by the Office were not specific to the point under discussion as they related to the proportionality to wages but not

to the issue of judging market value and more particularly “fair market values”, a terminology that she would not recommend to use. Finally, she put forward a suggestion to replace the terms “any non-recruitment fees” with “any payments related to the recruitment process”.

- 313.** The expert from the Government of Canada suggested an alternative wording as: “any payment or compensation to an employer or employment agency for unrelated costs”.
- 314.** The Worker Vice-Chairperson stated that the first paragraph (proposed clause (a)) already contained the word “undisclosed” and suggested that other concepts could be included, e.g. “inflated”, to refer to the issue of fair market value, between “undisclosed” and “illicit”. This would allow deletion of the following two paragraphs. The word “inflated” captured the essence of paragraph 2 and the word “undisclosed” captured the essence of paragraph 3. This would leave section C with only one paragraph instead of the three proposed clauses (a), (b) and (c).
- 315.** Agreeing with this proposal, the Employer Vice-Chairperson requested reordering the paragraph to start with “anti-bribery and anti-corruption legislation should be adhered to at all times”. The proposed restructuring though was seen by the Worker Vice-Chairperson as putting the emphasis away from the task of defining recruitment fees and their related costs.
- 316.** The expert from the Government of the United Kingdom made the suggestion to restructure the paragraph by moving the anti-bribery related sentence just after the first, and subsequently end the paragraph with the list of examples of illegitimate costs. Consensus was reached following these changes and consequently the Meeting agreed on deletion of the proposed clauses (viii), (ix) and (x) of the proposed list of related costs above.

Clause (xi) Breach or finder’s fees

- 317.** The expert from the Government of the United Arab Emirates, further supported by the Worker Vice-Chairperson, proposed to stop at “recover recruitment-related costs”.
- 318.** The Employer Vice-Chairperson proposed to delete this clause entirely, as it related to the employment relationship and did not belong to the recruitment process. She indicated that this situation would either be the one of a breach of a fixed-term contract, which pertained to the employment sphere and entailed a perfectly legal cost for the worker to pay, or it would be something that would be covered under the new section C. Additionally, she requested clarification on the meaning of “finder’s fee”.
- 319.** The Worker Vice-Chairperson indicated that this was a point that was agreed on the previous day to be readdressed under the section of related costs. With regard to the meaning of “finder’s fees”, she noted that the suggested deletion by the expert from the Government of the United Arab Emirates, while not objectionable in principle, had the consequence of losing part of the explanation of what such “finder’s fees” would represent.
- 320.** The expert from the Government of the United Kingdom proposed rewording the bold title to speak more about the recovery of the related cost and bring it in line with the spirit of the subsequent text.
- 321.** The expert from the Government of Canada suggested the issues of timing and illegitimate costs was perhaps already covered in sections A and C respectively.
- 322.** The Worker Vice-Chairperson reiterated that, in many labour markets, these were considered legal and lawful contracts and hence resisted to put them in a section on illegitimate costs. She explained that these were recruitment-related but not illegitimate per se in many national contexts. She reiterated that these were costs such as travel costs and

other upfront recruitment costs, which were often enumerated in perfectly legal contracts as costs to be paid back by the workers in case of breach of contract. She insisted on the existence of a direct correlation with recruitment costs.

- 323.** The Employer Vice-Chairperson specified that these would be recruitment fees unlawfully passed onto the worker, not related costs. Further, a breach of contract would be considered under employment law and would therefore be out of the scope of the discussion.
- 324.** The expert from the Government of the United Arab Emirates suggested that there were two separate issues at stake: on the one hand, the existence of a legitimate termination clause, which might include notice or compensation, and on the other hand, the issue which the Workers' group seemed to be referring to, e.g. an attempt to encroach upon the freedom of a worker to get out of a contract by imposing insurmountable costs. In this case though, this situation would fall under section C, eventually by adding relevant language.
- 325.** The Worker Vice-Chairperson indicated that her group could concede to move onto the next point, with the stipulation that this was a grossly distorted practice happening within legal contracts and an active barrier for workers to return home. She asked to put on record that the issue was not addressed fully the previous day, as it had been understood that it would be addressed under the section on related costs. There had not been a willingness on the part of the other groups to follow through. She regretted that the spirit of good faith was not carried forward in this case.
- 326.** The Chairperson suggested that the discussion could continue by going back to the proposed section C in line with the suggestion made by the expert from the Government of the United Arab Emirates to check whether "recoup/recover of contractual breaches" could be included there.
- 327.** The Worker Vice-Chairperson welcomed the proposal and suggested the inclusion of "unlawful breach fees" as examples of illegitimate costs under section C.
- 328.** The expert from the Government of Canada noted that countries may not have laws in place that would make these practices unlawful. He recognized the concern expressed by the Workers' group but indicated that the text addressed it satisfactorily in his views. Despite this, he was open to examining section C again to seek a compromise.
- 329.** The Worker Vice-Chairperson proposed the addition of "cost recover fees" after "extra-contractual, undisclosed, inflated or illicit costs" and follow with "are never legitimate".
- 330.** The Employer Vice-Chairperson warned against formulating things where the meaning was not clear. She urged the Chairperson to take the view that these concerns had already been covered and that adding text here would not help the process of defining recruitment fees and related costs.
- 331.** With a view to finding a compromise, the Chairperson suggested the use of "illicit breach fees". After consulting the group, the Employer Vice-Chairperson offered the alternative terminology of "illicit cost recovery fees", as a testimony of the group's good faith and constructive spirit. This was welcomed by the Worker Vice-Chairperson. Clause (xi) "breach or finder's fees" was consequently deleted and section C amended to include reference to "illicit breach fees" among the examples of illegitimate costs.

Paragraph 13

- 332.** The Employer Vice-Chairperson suggested to add "non-prescriptive" before "non-exhaustive". She further suggested that the sentence "other costs required as a condition of recruitment will also be prohibited" could be deleted.

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333. The Worker Vice-Chairperson preferred not to have language on “non-prescription” as this concept had already been articulated extensively. With regard to the deletion of the second sentence she asked for a clarification on the reason for such proposal. It captured the idea, many times repeated during the Meeting, that the definition should also take into account future evolution of the reality.
334. The expert from the Government of Mexico, further supported by the expert from the Government of the United Kingdom, suggested that the word “will” could be replaced with “should”, to ensure the purpose of being non-prescriptive.
335. The Employer Vice-Chairperson suggested the deletion of “and should therefore serve as a floor”. This could be acceptable to the Worker Vice-Chairperson if the terms “non-prescriptive” could also be deleted. Further supported by the expert from the Government of the United Kingdom, the Worker Vice-Chairperson preferred the retention of the sentence “other costs required as a condition of recruitment will also be prohibited”, indicating that this would not be a harmful precision.
336. The expert from the Government of Mexico also saw no harm in recognizing future development and in putting emphasis on certain aspects. He therefore requested flexibility from the Employers’ side on retaining the proposed text.
337. The Employer Vice-Chairperson suggested the following rephrasing: “Other related costs required as a condition of recruitment should also be considered.” Noting that this could lead to misinterpretation, the Chairperson suggested to conclude the sentence with “considered for prohibition”. This proposal was seen by the Worker Vice-Chairperson as going in the opposite direction of the spirit of the Meeting, e.g. the prohibition of recruitment fees and costs for workers.
338. The expert from the Government of the United Kingdom suggested replacing “should” with “could” before “be prohibited”, with a view to accommodating the Employers’ group’s perspectives. This proposal was agreeable to the Employers’ group and the paragraph was agreed as amended.
339. The Meeting discussed briefly a suggestion by the expert from the Government of Mexico to re-order the list in alphabetical order, chronological order of the recruitment process or eventually by impact with respect to the cost to workers. However, the experts concluded that this was not essential given the time constraints and it could have been difficult to do.

Discussion on ways to disseminate the use the definitions at the international and national levels by constituents

340. The Employer Vice-Chairperson presented a text outlining proposed means through which effective dissemination of the definitions of recruitment fees and related costs could occur. These actions included: support to national tripartite dialogue to discuss, develop, monitor, implement and enforce regulation of labour recruiters, in accordance with ILO standards and guidelines; dissemination of the definitions in a single publication with the *General principles and operational guidelines for fair recruitment*; making the publication available free of charge; forging partnerships with other UN agencies; and collaborating with social partners to identify priority regions and national contexts. Secondly, the Employer Vice-Chairperson requested that the *ILO Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement, 2007*, be reviewed as it was outdated in light of the adoption of the *General principles and operational guidelines for fair recruitment* and the definitions on recruitment fees and related costs. The third component was on capacity-building.

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341. The Secretary-General clarified that the first objective of the Meeting was to adopt definitions, and the second was to discuss ways to disseminate them. The ILO Governing Body, in March 2019, would have to see the adopted definitions and to authorize their dissemination and use. This present discussion by the experts was intended to provide insight and guidance to the Office and constituents on the strategies to use and disseminate the adopted definitions. The outcome of the discussion could be to have a summary of the discussion in the report of proceedings, while another option could be to have as an annex the text that was based on the proposal by the Employers as amended by the experts.
342. The expert from the Government of Nigeria suggested that the group not move forward with the negotiation of additional text.
343. The Worker Vice-Chairperson appreciated the text provided by the Employer Vice-Chairperson. She stated that a discussion was possible and should appear in the written record, but had a preference to not include the proposed text as an annex to the text as proper consultation within the tripartite groups had not been held. This view was echoed by the expert from the Government of Mexico, who thanked the Employers' group and agreed to have a general discussion and see this reflected in the proceedings, but not to proceed to negotiate additional text nor include the document as an annex to the report.
344. Accepting the previous views, the Employer Vice-Chairperson, further supported by the Worker Vice-Chairperson, emphasized the need to always disseminate the agreed definitions together with the *General principles and operational guidelines for fair recruitment*, as these would provide the context for understanding them better.
345. The Chairperson mentioned that as part of dissemination, the adopted definitions would be translated into the official ILO languages and published online.
346. The Employer Vice-Chairperson further emphasized that the adopted definitions should also be disseminated to other institutions and through global processes (for example the IOM, the Global Compact for Safe, Orderly and Regular Migration, IRIS and the World Bank).
347. The Chairperson also mentioned the refurbished UN Migration Network, which could be used as a channel for dissemination. He clarified that the adopted definitions, while they could not be referenced in the Global Compact for Safe, Orderly and Regular Migration, could still be part of the follow up discussions, forums and platforms.
348. With regard specifically to the proposed revision of the *ILO Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement*, included as a point in the dissemination document proposed by the Employers' group, the Worker Vice-Chairperson suggested this required further discussion. Given the limited time and opportunity, she believed that it would be more appropriate for the Office to develop an implementation plan in a more considered way and submit this to the Governing Body. Furthermore, she stated the need to disseminate the adopted definitions in a way that was easily comprehensible by workers as they also had an informative purpose.

Closing Remarks

349. The expert from the Government of Mexico extended his thanks to the Chairperson for his hard work and constructive and positive support to achieve timely results. He also thanked the Office for a well-prepared Meeting and background document that served the purpose of governments. He recognized the work and contribution of the social partners and acknowledged that the outcome was supported through the use of constructive, open and frank dialogue.

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- 350.** The expert from the Government of Morocco thanked everyone for the constructive dialogue. However, he suggested that the Office include representatives of the public employment services in future discussions of a similar nature.
- 351.** The Worker Vice-Chairperson sent a strong message of gratitude to everyone. She felt that the adopted definitions were something that everyone could feel good about. She could already think of concrete examples where the adopted definitions would act as a tool to inform the actions of both governments and workers.
- 352.** The Employer Vice-Chairperson felt the same sentiments and gratitude. She thanked the Chairperson as well as the Office for preparing a credible, actionable and flexible text. She emphasized the fact that employers did not support the abuses undertaken by illegitimate recruiters. Therefore, she thanked the Government and Workers' groups for their help and support, as well as their dedication to work towards a common goal. She stated that the experts had fulfilled their assignment and made a contribution to the big puzzle that needed to be solved.
- 353.** The Secretary-General stated that the Office would prepare a draft report of the discussions for the experts to review. The definitions of recruitment fees and related costs would be reviewed by the Office to ensure accuracy and consistency, and sent to the experts for their final review. The report and the definitions would then be presented to the Governing Body at its next session in March 2019. She took the opportunity to emphasize that the discussions at the present Tripartite Meeting of Experts had been a clear illustration of tripartism at its best. Even though the discussions were not always easy or apparent, there was a genuine desire and commitment to listen to one another and find a middle ground, which resulted in a constructive outcome.
- 354.** The Chairperson thanked the experts for their contributions and stated that the discussion surely showed tripartism at its best.