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Fair recruitment in El Salvador, Guatemala, Honduras and Mexico: Assessing progress and addressing gaps



**Fair recruitment in
El Salvador, Guatemala,
Honduras and Mexico:
Assessing progress and
addressing gaps**

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Fair recruitment in El Salvador, Guatemala, Honduras and Mexico: Assessing progress and addressing gaps

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► Introduction

This technical note is part of the second phase of the Fair Recruitment Initiative of the International Labour Organization (ILO) and responds specifically to pillars 1 and 2 related to the improvement, exchange and dissemination of global knowledge on employment processes, recruitment, and improving laws, policies and oversight to promote fair recruitment, respectively.

The technical note systematizes through the analysis of existing documents, regional advances and good practices in legislation and in national and cross-border recruitment practices, as well as the challenges that persist to make fair recruitment a reality as a universal practice, extended and adopted by governments and businesses for the protection of national and migrant workers.

The analysis includes Mexico, El Salvador, Guatemala and Honduras since in these countries the dynamics of labour migration and human mobility have not only increased in number, but also increasingly entail a series of complex challenges related to security, protection of human rights, the prevention of fraud and abuse, the building of cross-border mobility management capacities, and the need to update the rules and regulations of employment agencies that are key actors in the labour markets. This also requires the participation and involvement of governments, businesses, migrant workers and host communities.

The challenges of human mobility and labour migration in the region are of considerable relevance and magnitude, not only in terms of both regular and documented migration flows and irregular and undocumented migration, but also due to the variety of forms that this takes and the regulatory frameworks and existing capacities to address it.

To address these regional challenges, the Los Angeles Declaration on Migration and Protection endorsed during the Summit of the Americas held in June 2022 in California, United States, promotes regional and hemispheric collaboration and coordination. The Declaration includes measures to strengthen the institutions that manage migration, the exchange of best practices, the expansion of regular channels for migration, and the promotion of decent work opportunities and the protection of migrants.

At country level, Mexico, El Salvador, Guatemala and Honduras have also made significant progress, while the United States Government published Guidance on Fair Recruitment Practices for Temporary Migrant Workers ¹ based on the ILO general principles and operational guidelines for fair recruitment.

In this context, the technical note highlights progress made and provides recommendations to address regional challenges and in the countries.

¹ United States, Department of State, Agency for International Development and Department of Labor (USDOS, USAID and USDOL), *Guidance on Fair Recruitment Practices for Temporary Migrant Workers*, June 2022.

Section one compiles and reviews the cases, good practices and efforts recently implemented by governments, business organizations and civil society with the support of the ILO in each of the countries analysed, to drive, promote and advance the principles of fair recruitment in various sectors and regions both locally and internationally.

Sections two and three analyse the fair recruitment responsibilities for employers, governments, and recruiters who participate in each of the stages of the recruitment cycle; and on detail the advances and gaps in the regulatory and policy frameworks. It also describes the surveillance actions in terms of fair recruitment for the region as a whole and for each of the countries, and identifies the main challenges and strengths in this regard.

Finally, the note offers some recommendations based on good practices to advance the regulatory and policy strengthening agenda for the region.

The note has been prepared by Javier Omar Rodríguez Alarcón, external ILO consultant, under the supervision of Noortje Denkers, ILO Labour Migration specialist in the ILO Office in San José, Costa Rica and the contributions of Maria Gallotti and Fabiola Mieres, ILO Labour Migration Specialists in the ILO Office in Geneva, HQ, and the participation and contributions of and Ana María Méndez Chicas, ILO Labour Migration expert in Guatemala, and the external ILO consultant Adriana Hidalgo.

 The technical note systematizes through the analysis of existing documents, regional advances and good practices in legislation and in national and cross-border recruitment practices.



1

► **International Regulatory Framework:**

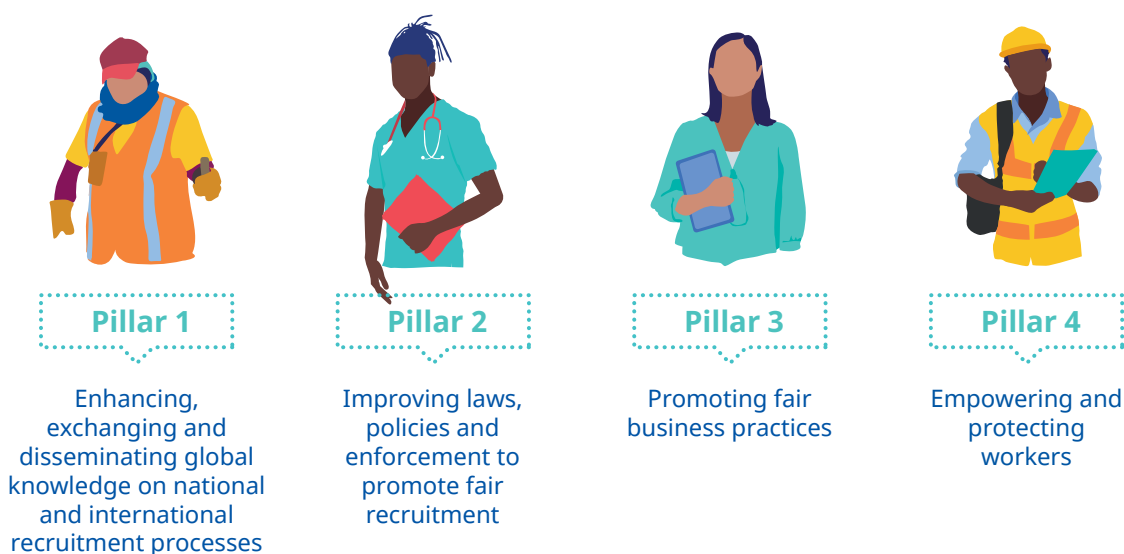
ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs

For the ILO the recruitment of national or foreign workers **has to be grounded in labour standards, developed through social dialogue, and ensure gender equality**. Fair recruitment practices are considered those that “are transparent and are effectively regulated, monitored and enforced; protect the rights of all workers, including fundamental principles and rights at work, and prevent human trafficking and forced labour; inspire and respond effectively to employment policies and labour market needs, including in terms of recovery and resilience”.²

In 2014, the ILO launched the Fair Recruitment Initiative as part of the Organization’s Fair Migration Agenda, drawing on international labour standards, ILO’s General principles and operational guidelines for fair recruitment, and ongoing tripartite dialogue efforts with institutions and social actors involved in the labour market.

The initiative complements and contributes positively to existing multilateral migration governance instruments and agreements, especially in its labour aspects, and prominently the objective 6 of the Global Compact for Safe, Orderly and Regular Migration: “Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work”.³

The Initiative for Fair Recruitment has four fundamental pillars.



² ILO, «Fair Recruitment Initiative».

³ United Nations General Assembly, Resolution 73/195, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195 (2019).

The following instruments provide strategic directions for the promotion and enforcement of fair recruitment:

1. ILO General principles and operational guidelines for fair recruitment, adopted in 2016

This set of thirteen principles provides guidelines to ensure that the protection of the rights of workers follows international standards and national laws applies to all workers. In addition, the guidelines aim to ensure that their recruitment responds to the needs of the labour market in an environment of freedom and security, informed consent, a work environment free of coercion, threats or deception, surveillance and effective enforcement of labour regulations through inspection, and access to grievance, remedy and justice mechanisms for workers.

2. ILO Definition of the recruitment fees and the related costs ⁴

This refers to the principle of not charging, deducting or recovering, directly or indirectly, in whole or in part, from workers any expense, commission or fee related to the processes for their recruitment by employers or recruiters, and applies for all workers, in all sectors, regardless of whether they are national or international. ⁵ This definition was adopted after

the Meeting of Experts on Defining Recruitment Fees and Related Costs ⁶ in 2018 and constitutes a central aspect for fair recruitment and must be read and understood within the framework of the General principles and guidelines.

It should be noted that the definition of recruitment fees also contemplates related costs, which include all those costs that are “expenses integral to the recruitment and placement process within and across borders, taking into account that the widest set of related recruitment costs were incurred for international recruitment” (ILO 2019a).

The related costs are particularly relevant when it comes to migrant or cross-border workers. This is because these are the costs —mainly related to acquisition, fulfilment or accreditation of requirements by the worker and documentation needed prior to travel to the destination country or when they return to their country of origin— where there is greater ambiguity and risk of abusive, improper, illegal or non-transparent fees, despite the fact that the national regulations in the countries (with the exception of Honduras, as will be seen later) prohibit employers or recruiters to charge workers.

4 The ILO defines recruitment fees or related costs as “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” (ILO 2019b).

5 Government of Guatemala, *Guía práctica para personas trabajadoras guatemaltecas del programa de trabajo temporal hacia Canadá* (Guidelines for Guatemalan workers of the Temporary Work Program in Canada).

6 ILO, *Second Supplementary Report: Report of the Meeting of Experts on Defining Recruitment Fees and Related Costs*, GB.335/INS/14/2, 2019.

► Relevant provisions for fair recruitment in international labour standards

The fair recruitment framework integrates relevant international labour standards: the Employment Service Convention, 1948 (No. 88), the Employment Agencies Convention, Private Employment Convention, 1997 (No. 181) and the Migration for Employment Convention (Revised), 1949 (No. 97).

From Convention No. 181 relevant articles are Article 3 on the regulation of private employment agencies, Article 7 about the prohibition of fees for private employment agencies from the workers they recruit and place and Article 8 regarding the protection that Member States must guarantee so that migrant workers recruited by private employment agencies are not subject to abuse or fraud.

From Convention No. 97 the provisions that are relevant are the prevention of erroneous propaganda on immigration matters, equal and non-discriminatory treatment for migrant workers and the guarantee of free services provided by public employment services for migrant workers.

Other relevant Conventions are:

- Forced Labour Convention, 1930 (No. 29)
- Labour Inspection Convention, 1947 (No. 81)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)



The Fair Recruitment Initiative integrates the efforts of the international community and social agents to offer a roadmap for governments, employment agencies, employers and the workers to dignify, make transparent, facilitate and guarantee the protection of human and labour rights throughout the cycle: recruitment, hiring, transfer, development of work and return according to the laws, regulations and procedures of the countries of origin, transit and destination, and that apply free of charge to all workers in all sectors, as well as recruiters and employers.

There are thirteen general fair recruitment principles with a series of responsibilities and duties for governments, businesses, employment services, recruiters and employers:

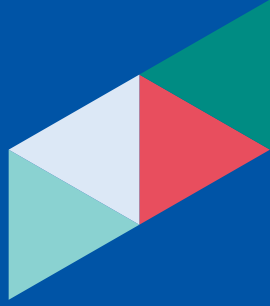
1. Respect for human and labour rights.
2. Response to the needs of the labour market and promoting decent work.
3. Recruiting laws and policies that apply to all workers, recruiters and employers.
4. Efficiency, transparency and protection of workers.
5. Effective regulation and inspection of the recruitment, registration and licensing of employment agencies.
6. Respect for laws, regulations and contracts applicable to recruitment in countries of origin and destination.
7. No charge of recruitment fees or related costs to workers or jobseekers.
8. Clear working conditions and written contracts that are easy for workers to understand.
9. Employment contracts accepted voluntarily, free of deception or coercion.
10. Access of workers to free, complete and accurate information on their rights and working conditions.
11. Free movement of the worker and no retention of identity documents or contracts.
12. Freedom to terminate employment relationship and change employer or return to their countries.
13. Free access to effective grievance mechanisms and remedy.

 The Fair Recruitment Initiative integrates the efforts of the international community and social agents to offer a roadmap for governments, employment agencies, employers and the workers.



2

- **Dynamics of labour migration and mobility in El Salvador, Guatemala, Honduras and Mexico**



According to the latest ILO global estimates on migrant workers, there were 169 million migrant workers in the world in 2019, representing nearly two-thirds (62 per cent) of the 272 million international migrants. The majority (about 78 per cent) are of working age (15-64 years old) and just over half (51.9 per cent) are men (of all age groups).

Studies by the United Nations Department of Economic and Social Affairs estimate that 1.3 per cent of the population of the Central American region (2.3 million people) migrated in 2020 (UNDESA 2020).

In the last decades, the migration flow from El Salvador, Guatemala and Honduras to Mexico as a destination or transit country has become one of the main migration corridors in Latin America and the Caribbean. In this corridor, human mobility between or through the four countries responds to different causes such as search for better employment opportunities, forced displacement (natural disasters, inter-community conflicts, situations of violence or conflicts), returnees or deportees from countries of transit or destination.

There are four types of flows. The first, migration to North America, mainly to the United States in search of work; the second group are intraregional migrants, mainly with Mexico, Belize, Costa Rica and Panama as destinations; the third corresponds to migrants from countries in the Caribbean, South America and Asia and Africa in transit through the countries of the region trying to reach the United States, and the fourth group includes returnees from the United States towards the region.⁷

In recent years, however, the corridor from Central America to North America has been characterized not only by irregular migratory flows with undocumented displaced persons or returnees, but also by documented, fluid, and constant labour mobility, marked by the complementarity between supply and demand of work. This translates into more than 3.8 million people who migrate temporarily and permanently from the countries of Northern Central America⁸ in search of better employment opportunities, income and working conditions to Mexico, Canada and, mainly, to the United States, as well as intra-regionally.



7 Migration data portal, “[Migration data in Central America](#)”.

8 This figure includes the total number of migrants from El Salvador, Guatemala and Honduras, of which 52.5 per cent were women. ILO, *Employment and Migration Northern countries of Central America 2021*. Fact sheet, December of 2021.



In Mexico, Canada, and the United States, an increasing number of businesses and employers are turning to temporary or permanent foreign labour to meet the needs of labour not available locally in various sectors.

In addition, in Mexico, Canada, and the United States, an increasing number of businesses and employers are turning to temporary or permanent foreign labour to meet the needs of labour not available locally in various sectors, such as agriculture, services and construction.

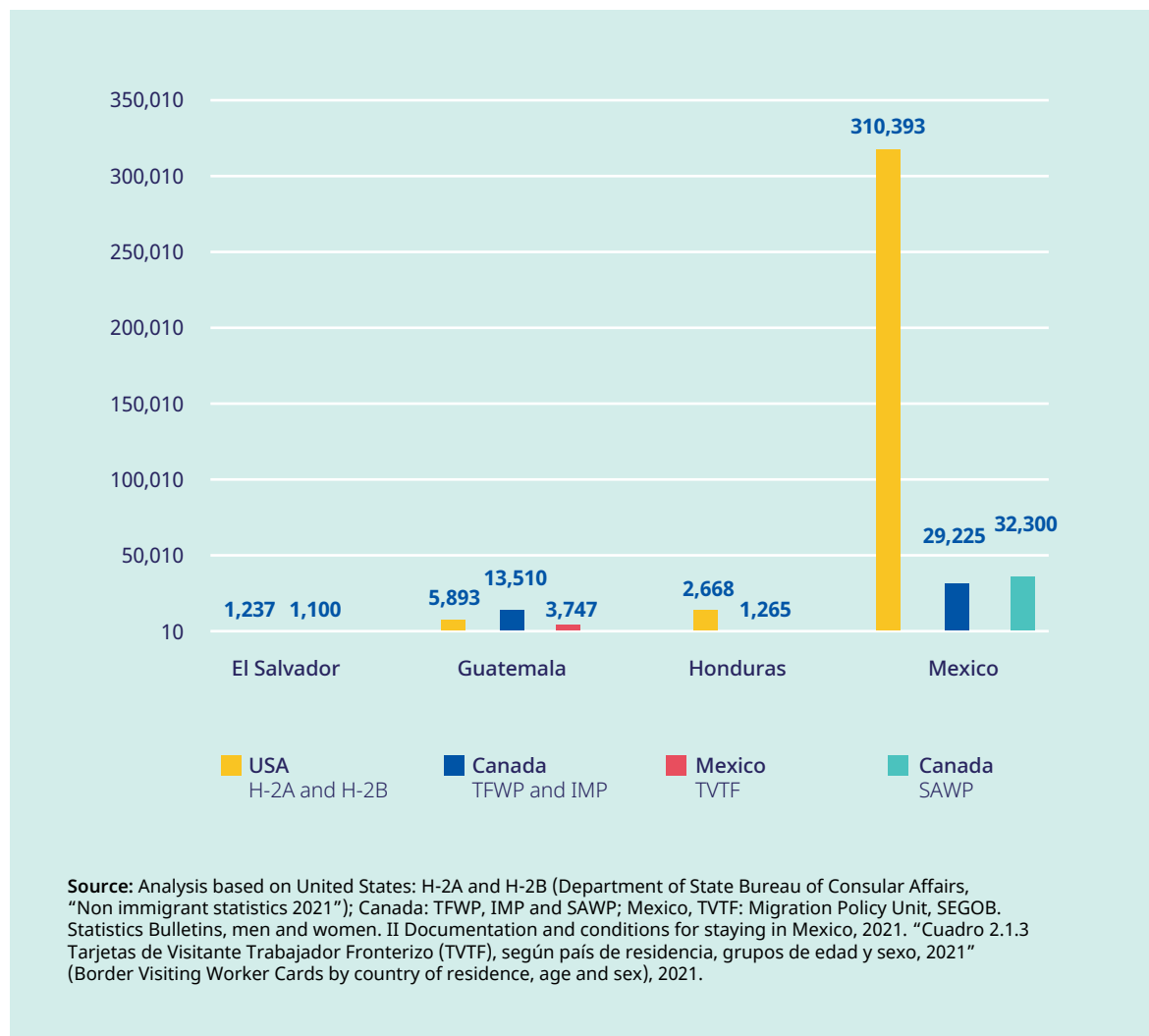
As a result of this, a variety of labour mobility mechanisms can be distinguished that seek to align with the objectives of ensuring safe, orderly, regular, and temporary labour migration. Examples of these are bilateral agreements between governments such as the Mexico-Canada Seasonal Agricultural Worker Program (SAWP) and temporary work visa programs under a unilateral approach such as the H-2 visas from the United States,⁹ the Border Worker Visitor Cards (TVTF, Tarjetas de Visitante Trabajador Fronterizo) from Mexico or the temporary foreign worker and international migration programs from Canada. All these forms of labour migration governance,¹⁰ bring together employers, governments, formal and informal private recruiters, as well as public employment services, which in some cases interact in a coordinated manner or in others coexist inadvertently.

⁹ Citizens of 85 countries are eligible for H-2A visas for temporary jobs in agriculture, while citizens of 86 countries are eligible for H-2B visas for temporary non-agricultural jobs; these last visas have a limit of 66,000 per year. Federal Register /Vol. 86, No. 215 / Wednesday, November 10, 2021 /Notices.

¹⁰ Migration governance must be understood as the conjunction of actions at different levels, including regulatory or normative actions, such as public policies that address the causes and effects of migration within a framework of respect for and protection of human rights, and in involving state and non-state actors, including employers and worker organizations, to ensure safe, orderly and regular migration. Inter-Parliamentary Union (IPU). 2015. *Migration, Human Rights and Governance. Handbook for Parliamentarians*.

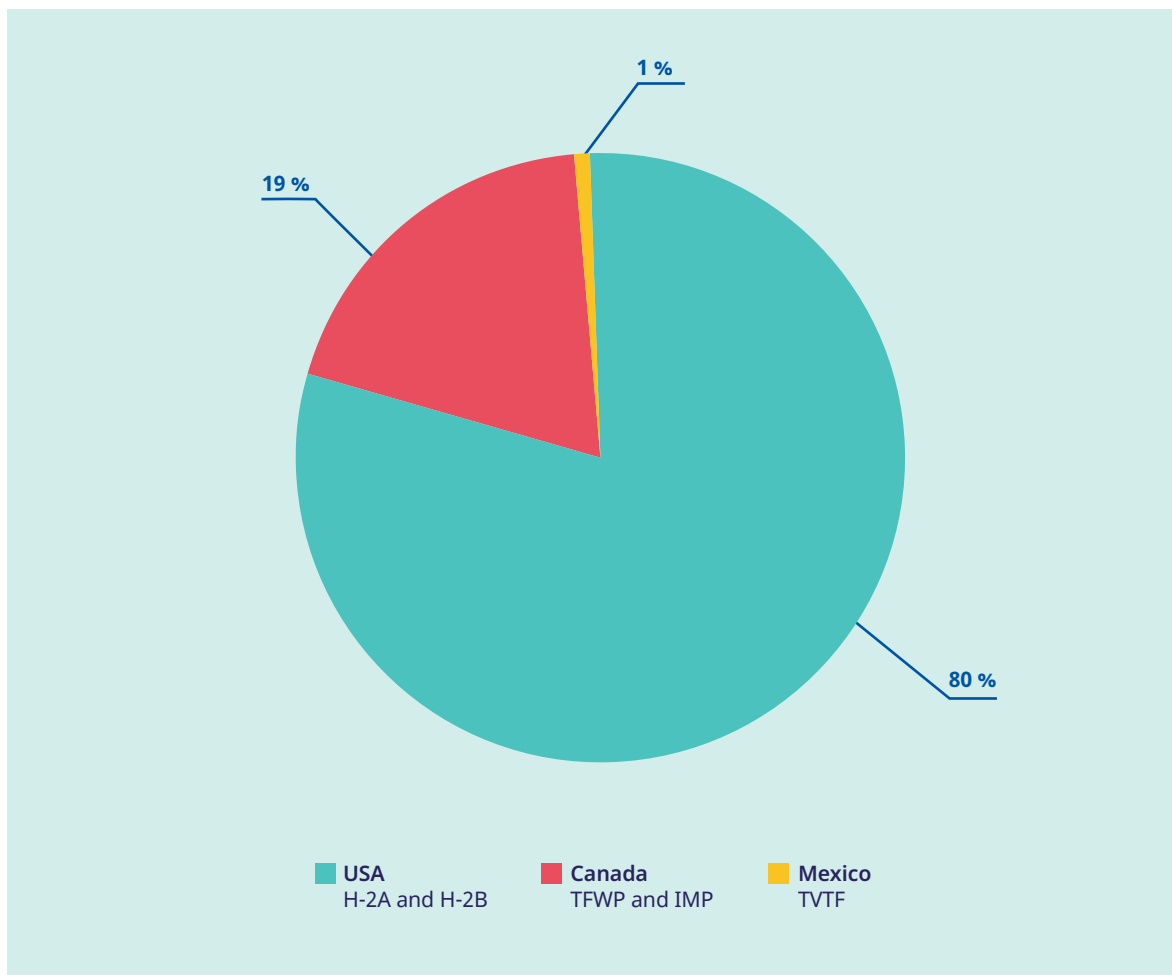
The following figure shows the official data on temporary work authorizations for migrants from the four countries, granted in 2021 by the United States, Canada, and Mexico, countries that constitute the main destination countries in the region.

► **Figure 1. Temporary work permits in the United States of America, Canada and Mexico by country of origin and program, 2021**



In total, the destination countries granted more than 400,000 work permits through the four programs that concentrate the majority of temporary migrant workers in the region: agricultural work permits or visas (H-2A) and temporary non-agricultural work. H-2B visas from the United States account for 80 per cent of work permits, while temporary foreign worker programs, including SAWP, and Canada's international migration program account for 19 per cent, and TVTF from Mexico issued to Guatemalan workers for the remaining 1 per cent.

► **Figure 2. Distribution of temporary work permits issued by type of permit or visa and by destination country, 2021**



These regulated labour mobility programs and mechanisms are very different from unrecorded or undocumented flows. For example, between January and August 2022, there were more than 856,000 non-admissions, apprehensions, and expulsions of Guatemalan and Honduran nationals at the United States' Southwest border of Mexican (IOM 2022). In the same year, the Mexican immigration authorities returned 102,000 Salvadorans, Guatemalans, and Hondurans in an irregular migratory situation.¹¹

ILO global estimates on migrant workers indicate that of the 169 million migrant workers in the world a quarter (25.6 per cent) are in the Americas, equivalent to more than 43 million workers. Of these, almost six million are located in Latin America and the Caribbean and the rest (87 per cent of migrant workers in the region) in the United States and Canada.

These figures highlight the challenges associated with the magnitude and dynamics of mobility in the region, which involves several stages of the recruitment process:¹²



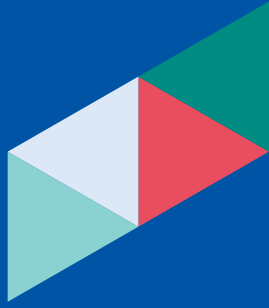
In these stages, multiple authorities and governmental actors from countries of origin and destination countries, non-governmental actors (private employment agencies, employers and their intermediaries and recruiters) and workers play a role.

¹¹ Migration Policy Unit, SEGOB. Statistics Bulletins. III Foreigners presented and returned, 2022. Chart 3.1.1 Events of persons in irregular migration situation in Mexico, according to continent and country of nationality, 2022.

¹² These stages have been identified in ILO, *A global comparative study on defining recruitment fees and related costs: Interregional research on law, policy and practice*, 2020.

3

- ▶ **Progress in the promotion of fair recruitment in the region**



Faced with the challenges of cross-border mobility of migrant workers in the region, the ILO, in collaboration with governments, employers' organizations, workers' organizations and other national and international entities, has promoted and implemented initiatives, tools and good practices that seek that the recruitment and hiring processes of migrant workers adhere to and respond to the principles and guidelines for fair recruitment. It is particularly important to strengthen information, ensure transparency, security, inclusion and equity in these processes for the benefit of workers and employers, in order to ensure that labour migration and recruitment are carried out in accordance with the labour and immigration laws of the countries of origin and destination.

There are several experiences in the region that contribute to advancing and promoting fair recruitment.

► 3.1 Advisory Committee of the ILO Fair Recruitment Initiative (FRI)

The Fair Recruitment Initiative, launched in 2014, aims to ensure that national and international recruitment practices are grounded in international labour standards and social dialogue, and ensure gender equality.

Building on the work carried out in previous years, the ILO launched a new FRI strategy for 2021-2025, and established an Advisory Committee to guide its implementation.

The tripartite Advisory Committee brings together the social partners (the International Trade Union Confederation and the International Organisation of Employers) and representatives of the Governments of Bangladesh, Italy, Kenya, Mexico, Qatar and Tunisia, as well as the Swiss Agency for Development and Cooperation (SDC) due to their expertise, interest and commitment to advancing the fair recruitment agenda.

On its first meeting, held on 20 January 2022, the Advisory Committee agreed on a joint chairmanship led by the Governments of Italy and Mexico for 2022-2023. They established the following priorities: labour inspection and enforcement, access to justice, innovation and digitalisation, business engagement, workers' empowerment and the role of the media.



► 3.2 Guidance on Fair Recruitment Practices for Temporary Migrant Workers (United States of America)

The Government of the United States of America, as the main destination for migrant workers in the region, issued in June 2022 Guidance on the fair recruitment of temporary migrant workers¹³, issued by the Department of Labor, the Department of State and the United States Agency for International Development. The Guidance seeks to support governments, recruiters, and employers of temporary migrant workers to achieve fair recruitment of workers bound for employment in the United States under the H-2 visa programs.

The Guidance includes recommendations to employers and governments of countries of origin regarding the enforcement of the principles for fair recruitment: the need to have clear, transparent, and enforceable regulations on recruitment, with regulation of registration and licensing of recruiters, inspection mechanisms and sanctions for fraudulent practices, the prohibition of discrimination and access to remedy for workers.

¹³ USDOS, USAID and USDOL, *Guidance on Fair Recruitment Practices for Temporary Migrant Workers*.

The Guidance on Fair Recruitment Practices for Temporary Migrant Workers makes a major contribution to **Principle 6 of the ILO General principles and operational guidelines for fair recruitment: “Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented”.**

The Guidance therefore contributes to providing direction on the rules governing recruitment procedures under H-2 visas, particularly the obligations of employers regarding the use of recruiters and working conditions. In addition, it provides references and suggestions about the participation of retailers to ensure fair recruitment throughout the entire supply chain.

The Guidance supports USAID’s coordination efforts with the Ministries of Labour of El Salvador, Guatemala, and Honduras to improve their recruitment practices and thus capitalize on the expansion of H-2 temporary work visas, as well as the Walmart supermarket chain in the enforcement of the company’s responsible recruiting commitments. *

* The White House, “Fact Sheet: The Los Angeles Declaration on Migration and Protection U.S. Government and Foreign Partner Deliverables”, June 10, 2022; and USAID, “Administrator Samantha Power at the Summit of the Americas Fair Recruitment and H-2 Visa Side Event”, June 9 2022.



► 3.3 Initiatives in Guatemala

3.3.1 Temporary Work Program

The Guatemalan Temporary Work Program, launched in 2021, is led by the Ministry of Labour and Social Welfare (Mintrab, for its acronym in Spanish), and its purpose is to link temporary migrant workers with decent employment and fair recruitment, and to reduce the use of irregular channels and the practices of undue recruitment charges, fraud, human trafficking, migrant smuggling, labour exploitation, and other forms that violate human dignity.

The program has five strategic objectives with specific goals and indicators for the year 2023; among them, the creation of a registration system for recruitment agencies (completed in 2022). The program is governed by a series of guiding principles: fair recruitment; transparency and free labour intermediation by the Mintrab, the supervision of private recruiters, the comprehensive protection of the rights of migrants and the protection of their personal data, a gender perspective, and access to justice.

Under this program, the Mintrab executes actions to promote the recruitment and hiring of Guatemalan workers abroad in a safe, orderly and regular manner,¹⁴ among others, through the implementation of the Agreement between the United States of America and the Republic of Guatemala concerning temporary agricultural and non-agricultural worker programs.¹⁵



¹⁴ Guatemala, Ministry of Labour and Social Welfare, *Programa de Trabajo Temporal: Plan de acción* (Temporary Work Program: Action Plan), 2021.

¹⁵ Available at https://www.mintrabajo.gob.gt/images/Servicios/DGE/movilidadlaboral/Acuerdo_entre_Guatemala_y_los_Estados_Unidos_de_Am%C3%A9rica_sobre_programas_de_trabajadores_agr%C3%ADcolas_y_no_agr%C3%ADcolas_temporales_versi%C3%B3n_en_espa%C3%B1ol.pdf.

3.3.2 Practical guidelines for Guatemalan workers of the temporary work program in Canada

The guidelines ¹⁶ provide program information, conditions, and clauses that contracts must include, rights and obligations, support contacts, general information about what it means to live in Canada or how to prepare for and deal with health and COVID issues. In addition, it includes information about the General principles and operational guidelines for fair recruitment, such as not charging fees for recruitment and hiring, and offers information on the Guatemalan consulates in Canada to access the protection of the consular network.

The Practical Guidelines for Guatemalan workers of the temporary work program in Canada effectively contribute to the implementation of **Principle 10 of the ILO General principles and operational guidelines for fair recruitment: “Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment”**.

3.3.3 Guidelines on labour rights of Guatemalan workers abroad in temporary work programs in Mexico, the United States and Canada

The Guatemalan Human Rights Attorney-General, with ILO support, developed a **guide on the labour rights of Guatemalan workers abroad**, ¹⁷ with special emphasis on the main destination countries of Guatemalan temporary workers: Canada, the United States and Mexico. The guidelines include information and resources on responsible institutions in Guatemala, the United States, Canada and Mexico for the protection of human and labour rights of migrant workers, as well as recommendations to identify fraud and false job offers and procedures for filing complaints about abuses, as well as contact details of civic and community organizations that support temporary migrant workers in destination countries.

¹⁶ Government of Guatemala, *Guía práctica para personas trabajadoras guatemaltecas del programa de trabajo temporal hacia Canadá* (Practical Guidelines for Guatemalan Workers of the Temporary Work Program in Canada), 2021.

¹⁷ Procuraduría de los Derechos Humanos de Guatemala, *Derechos laborales de personas trabajadoras guatemaltecas en el extranjero: Programas de trabajo temporal en México, Estados Unidos y Canadá*, (Labour rights of Guatemalan workers abroad: Temporary work programmes in Mexico, the United States and Canada), 2022.

3.3.4 Code of conduct for recruitment agencies for migrant workers

Four employment agencies in Guatemala developed a code of conduct based on the ILO general principles and operational guidelines for fair recruitment and with the technical assistance of the ILO and the support of the REFRAME project of the European Union.¹⁸ This code commits the agencies to the observance of the law, to provide free services for Guatemalan workers seeking employment abroad, to guarantee transparency of the contractual conditions, to respect the rights of the workers and their integrity and security, to promote non-discrimination, inclusion and a gender perspective, and to provide access for workers to grievance mechanisms and dispute resolution.

The Code of Conduct is an unprecedented effort by industry leaders in Guatemala to establish standards of conduct and a reference for private employment agencies dedicated to placing Guatemalan workers abroad adhering to the principles of fair recruitment. With its adoption, it potentially benefits nearly 10,000 users of the four signatory recruiting companies.



¹⁸ Amigo Laboral, ComuGuate, Conexión Laboral and MOCI, *Código de conducta: Agencias de reclutamiento de personas trabajadoras migrantes*, 2021.

3.3.5 Palm Growers' Association of Guatemala (GREPALMA)

The Palm Growers' Association of Guatemala (GREPALMA), which represents small, medium and large producers of palm oil, adopted in 2020 a human rights policy to manage risks in the value chain through due diligence and the promotion of dialogue with different actors of the industry.

These efforts are complemented and strengthened through a **Virtual Resource Business Centre on Due Diligence and Fair Recruitment of the Palm Growers' Association of Guatemala** (*Centro de Recursos Virtuales, Debida Diligencia Empresarial y Contratación Equitativa de la Gremial de Palmicultores de Guatemala*):¹⁹ a tool that supports the implementation of the **Policy of Respect for Human Rights of GREPALMA and its members** (*Política de Respeto a los Derechos Humanos de GREPALMA y sus Socios*)²⁰ and promotes respect for human rights in all operations of the palm growers' association, creating and strengthening capacities throughout the value chain.

In 2021, as part of these processes, GREPALMA launched a **Guide on Human Rights Risk Management in the Palm Oil Agribusiness** (*Guía orientativa sobre la gestión de riesgos en Derechos Humanos en la Agroindustria de Aceite de Palma*).²¹ The guidelines orient the association and the different actors involved in the industry on human rights, fair recruitment, and due diligence. This includes identification, prevention, mitigation, and response to real and potential risks due to regulatory breaches and human rights violations considering the different stages of the process of planting and transformation of the palm in the value chain. The document considers a matrix of possible non-compliance situations, as well as the grievance mechanisms.

The actions of GREPALMA and specifically the Virtual Resource Centre and the **Guide on Human Rights Risk Management in the Palm Oil Agribusiness** (*Guía orientativa sobre la gestión de riesgos en Derechos Humanos en la Agroindustria de Aceite de Palma*) contribute decisively to materializing **Principle 1 of the ILO General principles and operational guidelines for fair recruitment: "Respect for the human and labour rights of workers"**.

The potential impact of these measures is high given that in 2021 the industry generated 30,102 direct jobs and 150,600 indirect jobs (2 per cent of the country's employment) and its production is equivalent to 1.8 per cent of the national GDP.

¹⁹ <https://grepalma.contratacionequitativa.org/>.

²⁰ <https://www.grepalma.org/wp-content/uploads/2020/08/Politica-de-Respeto-a-los-Derechos-Humanos-de-GREPALMA-y-sus-Socios.pdf>.

²¹ Available at <https://www.grepalma.org/wp-content/uploads/2021/08/Guia-orientativa-sobre-la-gestios-de-riesgos-de-DDHH-en-palmicultura.pdf>.

► 3.4 Initiatives in Mexico

3.4.1 Resource Centre for Migrant Workers in Tijuana

In 2019, the Inter-institutional group on labour migration and fair recruitment of Baja California was created in the city of Tijuana, with the participation of state and federal authorities, ILO representatives, civil society, and the private sector to strengthen and improve the access to services for migrant workers. As part of their action plan multiple actions for the orientation, support and inclusion of migrant workers and asylum-seekers and refugees in the labour market, have been implemented, among these job fairs aimed at the migrant population.²²

On June 3, 2022, through a collaboration between the National Union of Farm Workers and the Food Industry (*Unión Nacional de Trabajadores del Campo y la Industria Alimentaria*) “Mexico Transforming the XXI Century” (*México Transformando el Siglo XXI*), affiliated with the Revolutionary Confederation of Workers and Peasants (Confederación Revolucionaria de Obreros y Campesinos, CROC) and with ILO support a Migrant Workers Resource Centre (*Centro de Recursos para Trabajadores Migrantes*) was inaugurated in Tijuana, Baja California.²³ This space is operated by the trade union’s staff and provides direct services to migrants, asylum seekers, refugees and their families, on labour issues and access to justice. Its objective is to promote access to formal employment, facilitate access to labour justice and other services to combat possible recruitment abuses.

The actions of the Tijuana Migrant Workers Resource Centre strongly contribute to materializing **Principle 13 of the ILO General principles and operational guidelines for fair recruitment: “Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred”.**

According to the Migrant Workers Resource Centre, between March and October 2022, the Centre has provided advice and care to more than 300 migrants of twelve nationalities on immigration and labour issues. *

22 Canchola, M. *Las ferias de empleo en Baja California para personas en situación de movilidad humana* (Job fairs in Baja California for people in human mobility), 2020.

23 ILO, “CROC y OIT inauguran el Centro de Recursos para Trabajadores Migrantes en Tijuana, Baja California” (ILO, CROC and ILO inaugurate the Resource Centre for Migrant Workers in Tijuana, Baja California).

3.4.2 AHIFORES: International Fruit and Vegetable Alliance for the Promotion of Social Responsibility

The United States-Mexico-Canada Agreement (USMCA) Responsible Agricultural Company Recognition (DEAR T-MEC, *Distintivo Empresa Agrícola Responsable – Tratado entre México, Estados Unidos y Canadá*) of the International Fruit and Vegetable Alliance for the Promotion of Social Responsibility (AHIFORES, *Alianza Hortofrutícola Internacional para el Fomento de la Responsabilidad Social*) was created with the assistance of ILO and the National Agricultural Council (*Consejo Nacional Agropecuario*). The recognition promotes compliance with labour regulations in Mexico and international human rights standards, including fundamental principles and rights at work of workers in Mexican farms.

This recognition is made up of four instruments that allow producers and companies to carry out a self-assessment and identify their level of compliance with the central issues of the Treaty between Mexico, the United States and Canada (T-MEC) in the labour environment. The DEAR T-MEC standard evaluates four areas: freedom of association and the right to collective bargaining, elimination of forced labour, abolition of child labour, and elimination of discrimination.

One of the main contributions of the Responsible Agricultural Company Recognition is the approach of respect and (self) compliance with human and labour rights—in line with the principles of fair recruitment—by employers in a sector that recruits highly vulnerable workers such as migrant farmworkers.

One of the achievements of AHIFORES is the transition of the DEAR T-MEC Recognition towards a full certification scheme (CEAR) audited by independent organizations and accredited by the Mexican Accreditation Entity (EMA). Thus, companies that comply with the guidelines of the new CEAR will be certified as responsible companies adhering to the requirements of the T-MEC in terms of compliance with labour obligations, fair recruitment, combating and preventing child labour and forced labour.*

Since its launch, 105 companies have registered on the DEAR Information System platform, which allows them to carry out a self-diagnosis prior to the certification process.**

* AHIFORES, *Estándar DEAR (Empresa Agrícola Responsable) T-MEC*, 2020.

** AHIFORES, *Informe de actividades del periodo 2018-2021*.



3.4.3 Practical recommendations for employers and recruiters in Mexico to ensure equitable recruitment of migrant workers during the pandemic

These practical recommendations ²⁴ are aimed at businesses and recruiters, as well as migrant workers. Those recommendations intend to promote safe, reliable, risk-free and abuse-free recruitment processes so that migrant workers—who are often required for essential sectors— can travel, live and work safely and healthily during a health crisis.

3.4.4 Migrant Integration Centers

Migrant Integration Centers (CIM) are a national strategy of the Government of Mexico (coordinated by the Secretariat of Labour and Social Welfare) to assist migrants in the country.

CIM staff members are organised in seven committees: reception, health, storage, general services, education, psychosocial support and labour intermediation, and provide free accommodation, health, education, psychosocial support, food and labour intermediation services.

To date, there are three CIMs: in Tijuana (Baja California), Ciudad Juárez (Chihuahua) and Matamoros (Tamaulipas), which have attended to around 28,600 migrants.

²⁴ Available at https://www.ilo.org/global/topics/labour-migration/publications/WCMS_763784/lang--es/index.htm.

3.4.5 CIERTO

CIERTO is a farmworker recruiting organization that has been in operation since 2016. It recruits, trains, and places workers from Mexico and Guatemala on farms in North America. Their mission is to “build the world’s most transparent, secure and cost effective H2 recruitment solution bringing good jobs at good wages to workers, and a reliable, sustainable workforce to employers”.²⁵

The ILO provided technical assistance to create its recruitment model, following ILO’s General principles and operational guidelines for fair recruitment, and complying with labour legislation in the respective countries, interacting with all stakeholders, with independent monitoring processes in the communities of origin to make sure that the jobs offered are real and do not charge illegal fees.

For example, CIERTO only publishes vacancies already signed with the companies and with the details of the contracts already determined: number of workers, type of product to be harvested, working and climatic conditions. CIERTO publicizes vacancies through civil society organizations and local partners to avoid possible fraud, and it seeks to apply a gender-inclusive approach; all this, to guarantee a recruitment process based on best practices.

In 2020, CIERTO recruited 1,614 workers following the principles of fair recruitment. For example, none of them were charged for recruitment or management of immigration procedures, nor were documents or salaries withheld. In addition, there are no records that the workers recruited that year through CIERTO contracted COVID-19, which shows the good implementation of health and safety protocols at work.

CIERTO’s work seeks to grant employers of workers with the required profiles and qualifications, and workers a reliable and satisfying job that allows them to improve their skills.

²⁵ See <https://www.ciertoglobal.org/>.

The good practices undertaken by governments, businesses, trade unions, employers, and recruiters —some of which, such as the job fairs held in Tijuana, have been the result of the coordination of various governmental and non-governmental actors— testify to the great efforts of the region to build capacities, raise awareness and implement measures aimed at regulating, aligning, strengthening and professionalizing fair recruitment processes —especially in sectors such as agriculture— and aimed at vulnerable workers —such as migrants and asylum seekers and refugees.

These actions are framed within a labour migration governance framework that brings together binding international standards such as ILO Conventions No. 97, No. 143 and No. 181, as well as non-binding ones such as the ILO's Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach (2007) and the General principles and operational guidelines for fair recruitment (2017).

► 3.5 The Inter-Union Committee for the Defence of Migrant Workers in Honduras

The Inter-Union Committee for the Defence of Migrant Workers in Honduras and its actions are based on the ILO Regional Strategy on Labour Migration. The Inter-Union Committee is composed of three trade union centres: the General Workers' Central (CGT), the United Confederation of Honduran Workers (CUTH) and the Honduran Workers' Central (CTH). The work plan has four pillars, and one of them specifically refers to the promotion and defence of migrant workers' rights through access to justice and fair recruitment.



The Government of El Salvador works closely with its consulates in destination countries to guarantee the labour rights of Salvadoran workers abroad.

► 3.6 Labour Migration Programme of El Salvador

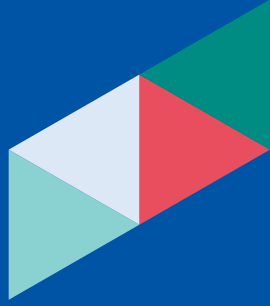
In 2019, the Government of El Salvador launched the Labour Migration Programme. Initially, the Programme was coordinated with the Government of the United States to recruit Salvadoran workers for the agricultural sector, and later expanded with the Governments of Canada and Italy to also receive workers in sectors such as construction and tourism.

The Ministry of Labour and Social Security has an electronic register of employers within the Public Employment System and an online registration system for workers that facilitates the recruitment and hiring process, as the interview, pre-selection, hiring and visa management is done through the platform. The Government of El Salvador works closely with its consulates in destination countries to guarantee the labour rights of Salvadoran workers abroad.



4

- ▶ **Fair recruitment and shared responsibilities**



Fair recruitment requires coordination between the actors involved in the entire recruitment chain: governments (Ministries of Labour and public employment services), private employment agencies, employers, workers, recruiters and intermediaries. Each party has roles and responsibilities in fair recruitment.

► 4.1. Government responsibilities

Governments have the primary responsibility for protecting and ensuring that human rights and labour rights of workers are respected during all stages of the recruitment process, whether they occur within national borders or cross-border. In the case of cross-border recruitment, the responsibility does not end when the worker leaves the country of origin's jurisdiction, but rather becomes a shared responsibility with the authorities of the destination countries.

In their role as regulators, the governments must adopt effective measures to ensure that employers, public and private employment agencies, recruiters or intermediaries do not directly charge recruitment fees to workers or deduct the costs related to their recruitment from their salaries. In the four countries, the situation is as follows:

- El Salvador is developing regulations for private employment agencies in order to regulate aspects such as the prohibition of recruitment fees for workers by private recruiters.
- Guatemala has adopted new regulations in 2022 that prohibit recruiters from charging or recruiting fees to workers.
- In Honduras, existing regulations allow employment agencies to charge workers for their services once they have been placed, as long as certain percentages are not exceeded.
- Mexico expressly prohibits the charging of recruitment fees to workers in its regulations for employment agencies.

Regardless of the existence of specific updated regulations, Governments have the responsibility to monitor and enforce other related laws and regulations through their labour inspection and other oversight and incentive mechanisms.

With regard to workers, the role of governments is key to facilitating their access to free, complete, accurate information and guidance in accessible language on employment opportunities, contracts, working conditions and everything around recruitment—including their labour rights—in addition to ensuring that recruiters and employers respect the contracts, and working conditions. A relevant example on how to achieve this are the Practical Guidelines for Guatemalan workers of the temporary work program in Canada (*Guía práctica para personas trabajadoras guatemaltecas del programa de trabajo temporal hacia Canadá*).



The governments of destination countries —such as Canada and the United States— also have an important role in providing free orientation and information addressed to temporary migrant workers. For example, the services provided by Employment and Social Development in Canada (ESDC) includes a web page in Spanish with information about labour rights.²⁶ The USDOS produced written and audio-visual promotional material in several languages²⁷ aimed at migrant workers to inform them about their rights and the official places where they can go if they require assistance. The labour and foreign authorities of the migrants' countries of origin can use this information in Spanish to share it in advance with potential migrant workers through employment services, the private employment agencies they supervise and the services that issue passports, their embassies, and consulates.

Similarly, governments must make efforts to ensure that workers can access, free of charge, easily and efficiently, grievance mechanisms to raise concerns about possible non-compliance, abuse, or deception, as well as access to justice, conflict resolution and remediation. Currently, there are few existing grievance mechanisms in the four countries, and those that exist operate in the consulates, mainly in Canada, the United States and Mexico.

Governments of countries of origin and destination also play a strategic role in relation to cross-border recruitment in the planning and analysis of labour market conditions to ensure complementarity between employers' needs and the availability of local and foreign workers. This way, it is ensured that cross-border recruitment and the international mobility of workers respond to the needs of the labour market, thus avoiding distortions, displacement of workers or other collateral effects in the labour markets of the destination countries.

 Governments must make efforts to ensure that workers can access, free of charge, easily and efficiently, grievance mechanisms to raise concerns about possible non-compliance, abuse, or deception.

²⁶ Available at <https://www.canada.ca/en/employment-social-development/services/foreign-workers/protected-rights-es.html>.

²⁷ Available at <https://www.youtube.com/watch?v=4vEI7PbkWEg>.

As will be discussed further on, the labour laws of the four countries establish provisions—in different degrees—to avoid distortions or effects on their labour markets due to the possible departure of workers in specific sectors. The governments of the United States and Canada, as destination countries, require their employers to have a labour certification (United States) or a Labour Market Impact Assessment (Canada) as requirements for authorization to recruit temporary foreign workers in order to ensure that there are no adverse effects of displacement of local workers or distortions in wages.

In addition, the responsibility of governments is to foster permanent dialogue and promote cooperation and coordination between their public employment services, employers' organizations, trade unions, workers' organizations, recruiters and employment agencies.

Finally, the Governments of El Salvador, Guatemala, Honduras and Mexico also have the responsibility to continue promoting the principles of fair recruitment of migrant workers in the framework of the negotiated and non-negotiated temporary labour migration programs with the United States and Canada, guaranteeing supervision, evaluation, and follow-up mechanisms to enforce international labour standards that contribute to a safe, orderly, and regular migration.

► 4.2. Responsibilities of business and employers

Employers, as recipients of the migrant labour force, benefit from the efforts made by the governments of the countries of origin and destination countries to properly manage cross-border labour mobility, and those made by public and private employment agencies that operate responsibly and adhere to the legal framework to recruit and place migrant workers with the required skills. There are still some challenges in this respect, as some businesses experience uncertainty about deadlines of recruitment procedures, or lack information about the management of mobility programs, experience failures in information systems, and the effect of changing immigration regulations in the destination countries.²⁸

28 OIT, *Migración laboral temporal: La experiencia de la comunidad empresarial*, 2022.

In Mexico, recruitment for United States H-2 visas is mostly done by private recruiters. Mexico is also a destination country, and Mexican employers who wish to recruit in Guatemala often resort to unregistered private recruiters or direct recruitment by personal referrals since the governments have not yet adopted a fair recruitment mechanism between the two countries.

Fair recruitment makes a very strong case for business models. In fact, business executives and Human Resources managers have specific responsibilities that contribute to the adoption and consolidation of fair recruitment as a strategic component and healthy business practice.

- The first responsibility of businesses and employers is to respect and observe the human rights of jobseekers during the recruitment processes, including respect for the privacy of their data.
- Businesses are also responsible for undertaking their own initiatives to develop professional recruitment systems and procedures, adhering to ILO's general principles and operational guidelines for fair recruitment.
- In addition, business and employers have the obligation to ensure that their staff, the agents or intermediaries they hire to carry out the recruitment, charge or deduct fees or related costs from jobseekers or —once hired—, selection or recruitment.
- Similarly, businesses and employers must ensure that their staff or recruiters do not confiscate or withhold travel documents (such as passports), other identity documents or personal effects as a way of guaranteeing their permanence or compliance with the contract or with another purpose or argument.

In the event that staff, employment agencies, or recruiters do not respect these principles, employers have the responsibility to demand that any type of payment or document withheld be clarified, corrected, or returned, and to facilitate and assist the workers in accessing ways to denounce and notify the authorities about these events.

► 4.3. Responsibilities of private employment agencies and recruiters

Private employment agencies and recruiters are the link between workers and employers through the recruitment, selection, and placement services they provide. Private agencies therefore play a fundamental role in the functioning of the labour market; they complement the actions of the public employment services and often collaborate with them with reports and exchange of information on their worker placement actions, including of migrant workers.

Recruitment through intermediaries and sub-recruiting is regulated in the labour laws of the four countries. Recruiting through intermediaries refers to hiring workers for an employee, while sub-recruiting responds to work or services that a company performs for another company with its own workers maintaining the direction and responsibilities over the workers, the beneficiary being jointly and severally responsible for the employer's obligations.

- In El Salvador, article 4 of the Labour Code defines an intermediary as whoever recruits or intervenes in the recruitment of another or others to provide services to an employer and establishes the joint and several liability of employers regarding the management of contracts, and the delivery of the works or services by the intermediary. Article 5 defines the contractor and the subcontractor and indicates that they respond jointly and severally for the obligations resulting from the provision of the services of the latter's workers, employed in the work required by the contractor.



- In Guatemala, article 5 of the Labour Code stipulates the joint and several obligations of the employer with respect to the recruitment carried out by intermediaries on his behalf.
- In Mexico, the Federal Labour Law in its article 12 prohibits the sub-recruiting of personnel but indicates that the recruiting activity carried out by employment agencies will not be considered employers but intermediaries.
- In Honduras, article 7 of the Labour Code defines and establishes the obligations of intermediaries, contractors and employment agencies, making a clear distinction between these figures: intermediary is that person (natural or legal) who recruits workers for the execution of works for the benefit of an employer who will be jointly and severally responsible with the intermediary for the labour obligations that result from the management of the contract, and the employment agency is defined as that person (natural or legal) that exclusively carries out the task of connecting, that is, it does not exercise recruiting functions.

One of the most important responsibilities of private employment agencies —whether they are for profit or not— is to ensure the veracity, seriousness and fidelity of job offers from employers and that the conditions offered to workers —among them, the transfer, lodging and benefits— are genuine and are complied with, in addition to adjusting to the labour rights embodied in the regulations of the countries of origin and destination of migrant workers.

In this sense, it is worth highlighting the initiative for the code of conduct of the Guatemalan employment agencies which is based on the principles of fair recruitment and sets an important precedent in Guatemala and in the region on the responsibility of employment agencies to respect and protect human rights, observe international labour standards and the hiring and recruitment laws of countries of origin and destination.

The agencies also have the responsibility of providing the workers who use their services with guidance on their rights, contractual conditions, travel and accommodation, and assistance and mediation in case of non-compliance with working conditions.

In the services of recruitment, selection and placement of workers, another responsibility of the agencies is their respectful participation and adherence to the rules determined by the governments of the countries of origin and destination under binational agreements or mechanisms.

► 4.4. Responsibilities of workers' organizations

Workers' organizations also play a significant role in fair recruitment because they have direct contact with migrant workers and are therefore able to guide and represent them in the defence and protection of their labour rights such as freedom of association. The aforementioned case of the Resource Centre for Migrant Workers in Tijuana, Mexico, is one of the most outstanding examples of the above. The centre is largely supported by the Revolutionary Confederation of Workers and Farmers (CROC), and provides first-hand advice to migrant workers on collective and individual rights.

The unionization of temporary migrant workers in the countries of destination still faces challenges: from legal limitations²⁹ to restrictions linked to the circular and temporary nature of contracts and working hours, which reduces the possibility of participating and organizing collectively, especially in seasonal agriculture.

In short

Governments, public employment services, employers and businesses, private employment agencies and recruiters: all have a shared responsibility to protect and respect the human rights of workers, and remedy any violations.

In addition, these same actors must ensure that recruitment fees are not charged to workers, prevent travel or identity documents from being withheld or confiscated and, in general, observe and comply with the regulations of the countries of origin and destination regarding recruitment.

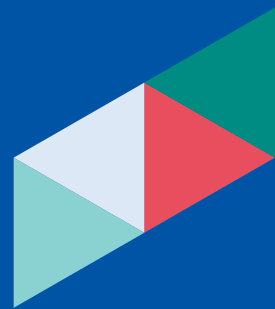
Governments of the countries of origin and destination are jointly responsible for creating and strengthening institutional capacities to regulate and facilitate the functions of recruiting and hiring workers, exchanging information, monitoring compliance with regulations, facilitating grievance mechanisms, justice and remedy before non-compliance, and fraud, and violations of the rights of workers.

Finally, all actors have a responsibility to coordinate efforts to materialize the principles of fair recruitment and improve its results for workers and employers.

²⁹ For example, the express exclusion of temporary agricultural workers with H-2A visas from the National Labor Relations Act in the United States of America; situation that is repeated with the Labour Relations Act of the province of Ontario, Canada.

5

- ▶ **Gaps in fair recruitment in law and practice in El Salvador, Guatemala, Honduras and Mexico**



The fair recruitment agenda shows significant progress, and good practices have been consolidated in El Salvador, Guatemala, Honduras and Mexico. However, there are still spaces and opportunities for improvement and gaps to be filled to make fair recruitment a reality in the region. The most significant regional gaps for fair recruitment are analysed below:

► 5.1. Legal aspects

5.1.1. Definition of recruitment fees and related costs

The labour laws of El Salvador, Guatemala, Honduras and Mexico do not make much reference to recruitment fees and in none of these cases is there a clear reference to fees in the definitions section. This is one of the main gaps in the region, not due to the absence of regulation, but due to the vagueness, ambiguity or insufficiency in the scope and precision of the definitions on what constitutes or not a recruiting fee or related cost. This is, in most cases, due to outdated regulations. In the best of cases, recruitment fees and related costs are inferred from the prohibitions or regulations on charging recruitment agencies or from the obligations established for employers in various regulations.

In the United States the Immigration and Nationality Act, which regulates the admission of foreigners, including temporary workers with H-2 visas, states that employers subject to these programs must contractually and in writing prohibit representatives or recruiters from soliciting or receiving any payment or compensation from the workers they recruit on their behalf.

In Canada, the various provincial laws that regulate the recruitment of foreign workers prohibit employment agencies from charging them recruitment fees.

Therefore, the governments of the four countries that are subject of this analysis must ensure compliance with the provisions in the negotiation or implementation of bilateral programs for temporary workers destined for Canada and the United States or in the execution of recruitment activities by public employment agencies and private employment agencies under their supervision.

5.1.2. Recruitment Regulation that applies to all workers of all sectors

Regarding the recruitment and hiring of national workers to work abroad, the labour codes of Honduras and Guatemala establish exceptions to the protection provisions for categories of skilled, technical, and professional workers. In both cases, special regulations have been developed for workers recruited for foreign commercial vessels. El Salvador, on the other hand, is still developing regulations for private employment agencies that recruit and place Salvadoran workers abroad.

5.1.3. Recruitment should respond to the needs of the labour market and not serve as a means to displace workers or reduce working conditions

Guatemala and Honduras include in their respective labour codes and employment agency regulations provisions on the need to analyse the effects of recruitment on the economy or the local labour force, establishing restrictions or limits when adverse effects on the domestic labour market are identified. In Mexico, the Migration Law stipulates the obligation to obtain a favourable opinion from the Ministry of Labour and Social Welfare to issue work permits for foreigners in the country, but this does not apply to the recruitment of Mexican workers abroad.

5.1.4. Prohibition of recruitment fees and related costs: clarity and transparency in authorized deductions

El Salvador and Mexico establish in their respective laws or labour codes the principle of free recruitment of workers referring exclusively to public employment services. Guatemala and Mexico, for their part, in their employment agency regulations establish express prohibitions for recruiters to charge workers for the recruitment services provided. In Mexico, the Recruitment Agencies Regulation (*Reglamento de Agencias de Colocación de Trabajadores*)³⁰ categorically and broadly prohibits charging any amount for any reason or concept to jobseekers (article 5) and agreeing directly or indirectly with the employers to whom they provide the service, that their fees are deducted partially or totally from the salary of the workers placed (article 10(ii)).

In Honduras, it is not prohibited, but maximum limits proportional to the monthly salary of workers and for a defined period are regulated.

³⁰ Available at <https://www.diputados.gob.mx/LeyesBiblio/regla/n261.pdf>.

The Regulation for the registration of recruiters of Guatemalan workers for the provision of services or execution of works outside the territory of the Republic de Guatemala (Government Resolution 50-2022, February 24, 2022) (*Reglamento para el registro de reclutadores de personas trabajadoras guatemaltecas para la prestación de servicios o ejecución de obras fuera del territorio de la República de Guatemala*) expressly prohibits the collection of fees of any kind from workers or jobseekers (article 11(b): Make or allow, directly or indirectly, any charge to workers, whether in money, personal and real property, services or kind, directly or indirectly, including costs for dissemination and advertising of their job applications, the cost of information, training courses or any concept related to recruitment or placement.

In all four countries, the legislation and rules or regulations governing the recruitment or hiring of workers to provide services abroad mention the prohibition of travel and repatriation costs, and in some cases accommodation and food costs, but practically all regulations, with the exception of Guatemala, omit other costs such as dissemination, work authorizations, border crossing costs or training, among others.

In conclusion, despite the fact that in most cases private employment agencies are expressly prohibited from charging recruitment fees or the principle of free recruitment of workers prevails in the region there are still considerable gaps in the prohibition of recruitment fees. More specifically, regarding related costs, there is ambiguity in the rules and procedures, which lends itself to a lax interpretation and leaves the door open to improper or simulated charges to recover costs associated with recruitment that employers should assume.

5.1.5. Non-discrimination

With the exception of El Salvador (their regulation on private employment agencies is in the development stage), the regulations of Guatemala, Honduras and Mexico contain express provisions that promote equal opportunities and prohibit recruiters from discriminating against workers for any reason: religious, sex, age or ethnic origin, among others, and advertise vacancies that promote or contain any type of discrimination.



5.1.6. Transparency and fidelity of the job vacancies advertised

On paper, the regulations of Guatemala, Honduras and Mexico contemplate clear provisions —prohibitions and obligations— for employment agencies regarding the use and characteristics of job vacancies advertised: they are prohibited from disseminating false, non-existent job offers or imprecise in terms of working conditions. In Mexico and Honduras, agencies are also required to publish their registration numbers or operating authorization when using mass media to advertise or disseminate job vacancies.

The detection and verification of the authenticity and proper use of job advertisements requires efforts that go beyond the regulation of employment agencies. They require effective inspection measures, an updated regulation on the use of communication and broadcast media as vehicles for advertising job postings,³¹ educating jobseekers to detect false advertisements,³² exchange of information so that in the countries of origin there is a better understanding of how the following work: work permit authorizations in the destination countries for employers and the characteristics of specific positions work in destination countries and, finally, coordination with authorities responsible for prosecuting crimes to file complaints when false advertisements are detected.

In this sense, although the four countries collaborate with the Governments of the United States and Canada through mechanisms for direct recruitment by employment authorities, such as those of El Salvador and Guatemala, significant gaps persist in measures and actions to detect and monitor false vacancy advertisements.³³

31 For example, in 2014 the Ministry of the Interior of Mexico issued Guidelines for the Surveillance and Monitoring of Classified Ads (*Lineamientos para la vigilancia y monitoreo de los anuncios clasificados*) in order to establish the procedure to watch and monitor classified ads in print media whose content encourages or promotes the commission of any of the crimes related to human trafficking. Available at https://dof.gob.mx/nota_detalle.php?codigo=5340103&fecha=10/04/2014#gsc.tab=0.

32 For example, the Government of Canada publishes guidelines used by the Immigration, Refugees and Citizenship Canada (IRCC) staff to evaluate the authenticity of job offers associated with applications for work permits for foreigners; this information could be useful for governments of countries of origin to guide legitimate employment agencies and workers.

33 For example, the Job Bank is a website of the National Employment Service of the Government of Canada through the Department of Employment and Social Development. In this electronic job bank, the Canadian government makes directly available to job seekers and foreign workers, the consultation of various legitimate temporary employment opportunities from Canadian employers who have obtained the Labour Market Impact Assessment necessary to recruit and hire foreign temporary workers. Initial information is available in Spanish. In this way, the Government of Canada contributes to making legitimate offers transparent to which foreign workers can directly access and to avoiding fraud and scams of non-existent vacancy announcements in Canada.

5.1.7. Prohibition of recruiting for illegal, hazardous, or insalubrious jobs and those below the legal minimum working age

All four countries have in their labour laws or regulations related to the recruitment of workers or employment agencies, prohibitions for recruitment in hazardous or insalubrious conditions, for illegal activities or applicants under the legal minimum working age.

- In El Salvador, article 74 of the Law on Organization and Functions of the Labour and Social Welfare Sector (Decree No. 682) (*Ley de Organización y Funciones del Sector Trabajo y Previsión Social de El Salvador*) states that the Ministry of Labour may grant permits for the recruitment of Salvadoran workers outside the country as long as they are older than eighteen years.
- In Guatemala, article 35 of the Labour Code (reformed by Decree 1441-1961) establishes the prohibition of authorizing contracts for Guatemalan workers abroad if they are harmful to the dignity of the workers or when the workers are minors. In addition, article 11 of the Regulations for the registration of recruiters issued in 2022 prohibits the recruitment of minors and for illegal activities or vacancies that threaten the health or integrity of the applicants.
- Honduras explicitly prohibits in its Regulations for the Operation of Private Employment Agencies and Related Services (article 19 of Agreement No. STSS-141-2015, later amended by Agreement No. STSS-155-2017) for agencies to offer vacancies that involve illegal, hazardous or risky activities; while the Regulation for the recruitment and hiring of Honduran workers abroad (Agreement No. STSS-252-08) establishes in its article 21 that authorization for international displacement may be denied in the event that the General Directorate of Employment deems that the recruitment does not meet the security conditions or could put the integrity of the worker at risk. In addition, article 3 of the Regulations for the Operation of Private Employment Agencies and Related Services establishes the principle of abolishing child labour, so agencies are prohibited from recruiting jobseekers whose ages are below the minimum age.
- The Federal Labour Law of Mexico (article 29) prohibits the recruitment of minors under eighteen years of age to provide services abroad. The current regulation of employment agencies in Mexico does not specify the prohibition of recruiting for jobs with health risks or illegal activities, although article 10 (amendment published in the Official Gazette of the Federation on May 21, 2014) prohibits employment agencies to offer jobs that are not dignified or decent, a meaning that entails implicit qualities of legality, safety and health.

In addition, it should be noted that in the case of child labour and its relation to fair recruitment, the four countries have ratified the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

In conclusion, although in this area the different regulations contemplate the minimum age and the labour conditions for applicants, there are still areas of opportunity to make more explicit in the regulations and in active surveillance, the prohibition and prevention of recruitment for vacancies abroad for illegal activities or activities that involve risks or that represent a danger to the health or integrity of workers, advertised or promoted by employment agencies. This could include clear and strict guidelines regarding vacancy announcements, their content and the type of vacancies not allowed.

5.1.8. Contracts in writing, accessible and clear for workers

One of the most effective ways to make fair recruitment a reality is by ensuring contracts that are clear, accessible, complete, accurate and easy to understand for workers in general, and migrant workers in particular.

- Mexico and Guatemala establish the obligation to have written contracts validated or registered before the labour authorities when their nationals are recruited outside their jurisdictions.
- In El Salvador, the same article 74 of the Law on Organization and Functions of the Labour and Social Welfare Sector (Decree No. 682) (*Ley de Organización y Funciones del Sector Trabajo y Previsión Social de El Salvador*) establishes that the labour authority will authorize the execution of employment contracts for Salvadorans to work abroad.
- The Regulation for the recruitment and hiring of Honduran workers abroad establishes the obligation of recruiters to provide workers with the employment contracts they enter into with the foreign employer in writing and in Spanish.

Despite the fact that the regulations of the four countries establish obligations in one way or another for employment agencies and employers to have written contracts and provide them to workers during the recruitment process abroad, and that they must also be reviewed, authorized by and/or registered with the labour authority, compliance with these provisions is limited in practice. It should also be taken into account that a lot of the recruitment for jobs abroad is carried out by private agencies not registered with the authorities, that rarely follow these procedures.³⁴

However, it is worth noting the practice of having standard contracts or uniform contract models for all workers, as occurs in the Mexico-Canada Temporary Agricultural Workers Program and in the model clauses required by the United States Department of Labor from employers of foreign workers on H-2B visas.

 One of the most effective ways to make fair recruitment a reality is by ensuring contracts that are clear, accessible, complete, accurate and easy to understand for workers in general, and migrant workers in particular.

³⁴ It is worth noting, however, instruments that can be useful for these purposes if they are adapted and made available to recruiters, employers and workers, such as the Electronic Registration System for Individual Work Contracts in Guatemala, launched in 2019 through the Ministerial Agreement 124-2019, which allows the remote registration of contracts, which can be consulted at <https://tramites.gob.gt/servicio/1915/>. This system is an important step to ensure that employment contracts are made in writing, and that they are immediately available and accessible to the authority and workers, however, the system does not imply monitoring compliance or changes in said contracts.

5.1.9. Retention of identity documents and personal effects, and freedom of movement and for the termination of the employment relationship

Regarding the principle of non-confiscation or retention of identity and travel documents by recruiters or employment agencies, the regulations of Guatemala and Mexico are clear: they prohibit employment agencies from retaining the identity documents of workers. These provisions are not properly developed, on the other hand, for Honduras and El Salvador.

The principle of freedom of movement and freedom to terminate the employment relationship by workers are contemplated in the legislation on work and residence authorizations in destination countries. In the United States and Canada, they are clear and prohibit employers from impeding the freedom of movement of workers and the termination of the employment relationship or the change of employer by the worker, except for compliance with requirements related to the duration of the temporary work permit, the processing and authorization of a new application, the type of occupation for which the permit was granted, and provided that the new employers are adhering to and comply with the regulations of the visa or work permit programs for foreign temporary workers.

For example, due to the COVID-19 pandemic, in the United States the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) issued in August 2020 a decision that allows all employers with a valid temporary labour certification to hire foreign workers already in the United States and with a current H-2A permit. At the same time, DHS expanded the provision that allows workers with H-2A visas to change employers and start working before USCIS approves their employers' new H-2A petition. In October 2022, the decision was updated extending its validity until December 2023.³⁵

In any case, the authorities of the countries of origin may establish obligations for employment agencies to corroborate through due diligence processes that the employers for whom they recruit workers abroad do not have a history of labour rights violations and human rights of workers, and that the job offers are legitimate and the employment conditions offered are adequate. This, in turn, requires agencies to be aware of the laws of the destination countries they are recruiting for and the vacancies for which they are recruiting. Hence the importance of registration and certification systems for employment agencies. The countries analysed in this document present considerable progress, but also large gaps to be filled.

³⁵ The Daily Journal of the US Government, "[Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due To the COVID-19 National Emergency: Partial Extension of Certain Flexibilities](#)", August 20, 2020.

5.1.10. Information on workers' rights and obligations

The fourth pillar of the ILO's Fair Recruitment Initiative is based on the empowerment and protection of workers. One of the most effective ways to achieve the objectives and targets linked to this pillar is to ensure that jobseekers and those recruited and selected through recruitment processes—to work in their own countries or abroad—are aware of both and duly informed about their rights and duties.

However, this item is one of the main challenges and deficits that the countries that are the subject of this note generally face in order to achieve fair recruitment when it comes to workers recruited and placed abroad.

The Directorates or Employment Offices carry out the work of orientation and induction on labour rights when they participate directly as recruiters. On the other hand, this is not guaranteed when employment agencies or unregistered private intermediaries recruit workers or candidates, which makes their identification difficult.

In Honduras, for example, the respective regulation places on the employment agencies dedicated to recruiting to work abroad, the obligation to provide guidance and information to workers on the rights and duties of the position.³⁶

In practice, there are limitations on the authorities' ability to verify whether the agencies fulfil this function and, therefore, that the workers receive this information. One way to fill this deficit is to deploy information campaigns of a general nature through the media available to the authorities themselves, such as their institutional portals,³⁷ regardless of whether the workers are recruited through the public employment services participating in bilateral mechanisms or by recruiters.

A good practice—although it only covers the private employment agencies that comply with the obligation to register—is the requirement established in article 35 of the regulation of private employment agencies in Honduras, by which employment agencies must attend an induction on labour regulations of the National Employment Service and the Department of Regulation of Private Employment Agents (DRAEP).

³⁶ Article 8 of the Regulations for the Recruitment and Hiring of Honduran Workers Abroad.

³⁷ See, for example, a statement from the Guatemalan Ministry of Labour: <https://www.mintrabajo.gob.gt/index.php/noticias/443-programa-de-trabajo-temporal-un-servicio-gratuito>.

5.1.11. Decent, truthful, and voluntarily accepted working conditions by the workers

In order for fair recruitment to occur in practice and effectively contribute to combating the commission of fraud or illegal acts such as human trafficking or other forms of labour exploitation such as forced labour, workers must know and voluntarily accept the working conditions offered by employers abroad, without coercion or conditions of any kind.

- El Salvador, for example, does not authorize the departure of workers to provide their services abroad, unless the Ministry of Labour and Social Welfare reviews the conditions stipulated in the employment contract and authorizes them. Even so, this does not necessarily equate to a voluntary acceptance of the person, that is, full knowledge of the conditions and the free and informed consent of the worker are required.
- The Guatemalan Labour Code prohibits recruiting people to work abroad without authorization from the Ministry of Labour and Social Welfare, and in the regulations for private employment agencies that recruit workers abroad, any act that constitutes deception for workers is prohibited. Once again, however, the informed consent and voluntary acceptance of the worker is not stipulated as a requirement for their recruitment.
- In Honduras, the regulation of employment agencies determines that in order to authorize the international displacement of workers, the conditions of the employment contract must be in accordance with the provisions of the fundamental ILO conventions, and requires that the contracts include the signatures of the worker and employer.
- In Mexico, article 9Bis of the Regulation of Private Employment Agencies (reform published in the Official Gazette of the Federation on May 21, 2014) obliges them to inform workers about the general living and working conditions to which they will be subjected. In any case, it does not establish —as in other cases— the informed consent of the worker of the contractual conditions. In general, this is a notable gap in all four countries.

 Workers must know and voluntarily accept the working conditions offered by employers abroad, without coercion or conditions of any kind in order for fair recruitment to occur.

5.1.12. Conditions of transfer and accommodation

El Salvador, Guatemala, and Mexico establish in their laws or labour codes the fundamental requirement that foreign employers of Mexican workers and/or employment agencies assume the costs of transporting the worker from their place of origin to the workplace of employment, and where appropriate, repatriation costs. This is fully in line with provisions of destination countries such as Canada and the United States, which also require the employer to bear such costs.

The Law for the Promotion of Temporary Work Abroad (Decree No. 31-2022) of Guatemala is noteworthy as a good practice to make the registration of private employment agencies more attractive with the exemption of payment of airport taxes for the transfer of temporary workers from Guatemala abroad.

Guatemala and Mexico specify accommodation conditions for workers in their labour laws (article 34 of the Guatemalan Labour Code and article 28 of the Mexican Federal Labour Law) and the Regulations for Private Employment Agencies in Mexico obliges to ensure the allocation of accommodation.

In El Salvador and Honduras, the provision of accommodation is not specified in the laws or regulations. Bilateral agreements and mobility schemes managed with the governments of destination countries, however, stipulate the conditions and obligations of employers in this matter. In Canada (Temporary Foreign Worker Program) and the United States (H-2A), for example, the labour standards under which temporary foreign worker programs operate, require employers to offer or provide free housing (in the United States for workers with H-2A visas) or provide accommodation at a reasonable cost through limited wage deductions (in Canada in the SAWP program).³⁸



38 Canadian Government, “[Hire a temporary foreign worker through the Agricultural Stream: Program requirements](#)”.

5.1.13. Training and recognition of skills and qualifications

One of the principles of fair recruitment states: “Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications”.

In the analysis of these considerations, it should not be overlooked that many of the occupations for which temporary work permits are granted to foreign workers are low-skilled, which is why in many cases there are no formal mechanisms for the recognition of skills. For example, in the case of agricultural workers, Canadian employers must train them in the use of pesticides and safety equipment for their implementation,³⁹ and they do not receive any kind of recognition or certificate.

In sectors such as construction, for which H-2B visas are issued, it is possible and of interest to recognize and accredit skills. However, very rarely do the regulations and practices of the countries of origin promote it or consider requirements in this regard.

Typically, the processes of accreditation or recognition of competences occur before the transfer if they are requirements of the position established by the employers or derived from regulations of the countries of destination, standards, or industry regulations.

Guatemala, for example, through a new regulatory and programmatic framework is promoting the engagement and recruiting of Guatemalan merchant mariners by foreign cruise and merchant marine companies. For this, the Naval Academy, the General Directorate of Employment, and other government institutions with the support of USAID are promoting the training and accreditation of the necessary skills for young Guatemalans to obtain the certificates recognized by the international cruise tourism industry to access temporary jobs mainly with American companies.

In Mexico, for the labour mobility pilot program for the recruitment of nursing personnel in Germany, the German Federal Employment Agency finances training to learn the language for jobseekers who have fulfilled other technical and professional requirements. This mobility mechanism, promoted by the German Government in coordination with the labour authorities of several Latin American countries such as Mexico, Guatemala, and Colombia, nevertheless faces challenges such as the recognition of titles and the duration of the training between 8 and 10 months).⁴⁰

39 See <https://www.canada.ca/en/employment-social-development/services/foreign-workers/protected-rights.html>.

40 These requirements that, although they guarantee adequate matchmaking and job placement, also result in a reduced number of candidates with the possibility of covering the profile and taking advantage of said mobility opportunities in well-paid jobs. See STPS Mexico statement: <https://www.gob.mx/stps/prensa/mexico-y-alemania-ratifican-convenio-para-la-vinculacion-de-profesionales-de-la-salud-y-turismo-con-empleadores?idiom=es>.

5.1.14. Freedom of association

Freedom of association is an inherent aspect of fair recruitment. Nonetheless, it is perhaps one of the largest regulatory gaps in both the four source countries analysed and the main destination countries.⁴¹ Likewise, there are gaps in the mechanisms and programs of temporary foreign work, since in the regulations of the recruitment and temporary labour migration processes, the promotion of the exercise of this right is assumed in a generic and implicit way for migrant workers.

One of the main reasons is the temporary nature of the jobs and the intermittent presence of workers. This makes it difficult for them to exercise that right. Indeed, even in longstanding programs such as the Canada-Mexico Seasonal Agricultural Workers Program, in which about 70 per cent return each year to their employers or to the same provinces, unionization hardly occurs. This situation does not justify that the freedom of association of migrant workers is not explicitly included in their regulations as a right of the workers or an obligation of employment agencies and recruiters to respect this right.

► 5.2. Gaps in institutional implementation capacities

The gaps identified in the previous section mainly refer to gaps or updates in the regulatory framework of El Salvador, Guatemala, Honduras and Mexico. In this part, the implementation gaps related to the implementation of the provisions and institutional capacities for the effective monitoring and exercise of fair recruitment are analysed.

⁴¹ For example, as detailed above, the National Labor Relations Act of the United States, the main norm that governs collective bargaining mechanisms in that country, excludes agricultural workers from its provisions, while more explicitly, other norms such as the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) excludes foreign workers hired under the H-2A visa mechanism from coverage, notwithstanding other protective regulations such as the Fair Labour Standards Act, which governs wages and hours of work, if they consider them.

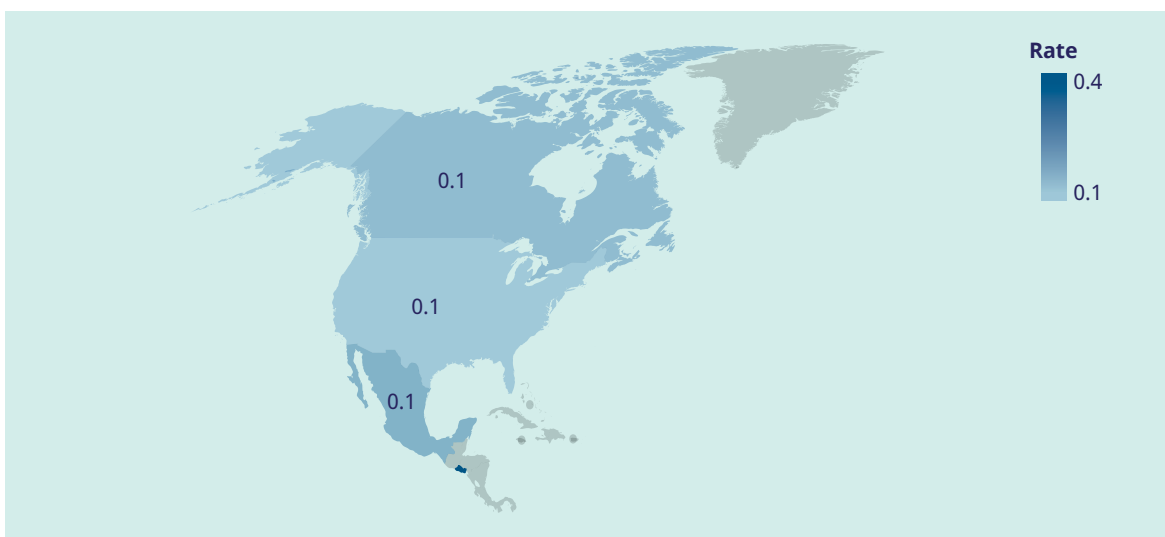
5.2.1. Labour Inspection

One of the responsibilities of governments is to ensure the effective implementation of legislation and standards that protect labour rights. However, the labour inspectorate faces practical restrictions for supervision. Both the destination countries and those of origin have coverage challenges and personnel limitations taking into account the employed population, geographical distances and the proportion of establishments that they can supervise.

As can be seen in figure 3, there are hardly any differences between countries of origin and destination in the number of inspectors with respect to the employed population. In Mexico, the number of inspectors has remained stable at around 900.⁴² In Guatemala, in 2019 there were 226 inspectors.⁴³ In 2012, there were nearly 120 in Honduras⁴⁴ and 283 in El Salvador.⁴⁵

Despite the fact that the regulations of Guatemala and Mexico attribute to the labour inspection the supervision of private employment agencies (for example, with periodic reporting), the numbers of inspectors and inspections are insufficient.

► **Figure 3. Rate of inspectors for every 100,000 persons employed, most recent year available**



Fuente: ILOSTAT. Data for the United States is the latest data available in ILOSTAT for 2012, and is divided into the Wage and Hour Division and the Occupational Safety and Health Administration, each with a rate of 0.1 per 100,000 people. The data for Mexico, Canada and El Salvador correspond to the year 2018. El Salvador has a rate of 0.4 per inspector per 100,000 employed.

42 ILO, *Tendencias de la inspección del trabajo frente a la formalización: experiencias de América Latina y el Caribe* (Labour inspection trends in the face of formalization: experiences in Latin America and the Caribbean), 2015.

43 Annual Report on the Work of the General Labour Inspection Services 2019. Ministry of Labour and Social Welfare. Guatemalan Government.

44 ILO, Diagnosis of the situation of labour inspection in Honduras, Technical Memorandum (Disgnóstico de la situación de la inspección del trabajo en Honduras, Memorando técnico), 2012.

45 ILO, "Stability and permanence of inspectors in El Salvador" (Estabilidad y permanencia de los inspectores en El Salvador), 24 February 2012.

- The regulations of Guatemala, Honduras and Mexico contemplate ordinary and extraordinary inspections of private employment agencies scheduled periodically or derived from the detection of non-compliance or complaints.
- In Guatemala, the office responsible for the registration of agencies must submit a monthly report to the General Labour Inspectorate on the registered agencies to include them in the operational inspection plan.
- In Mexico, the Regulation of Private Employment Agencies establishes the ordinary inspection once the employment agency is registered with the authority.

Failure to comply with the obligations of employment agencies —detected by the authorities in all four countries without exception— entails sanctions, from fines, suspension of licenses or operating permits to the definitive revocation of their registration and operating permits. This is in line with the provisions of the ILO Private Employment Agencies Convention (No. 181), that in Article 8 prescribes the adoption of “laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses”.

The low number of agencies that register and the lack of inspection staff —in addition to the multitude of tasks they perform— make agency supervision impractical and ineffective. This is evidenced by the absence of records on inspected and sanctioned recruitment agencies in the four countries, in addition to the fact that the lists of the records of private employment agencies in Guatemala, Honduras and Mexico lack a field or section to specify whether they have been suspended or sanctioned.

It should be noted that the lack of specific protocols on the inspection of employment agencies is also a major obstacle to verifying that they comply with the prohibitions and obligations with respect to jobseekers. Without these protocols, the inspection can only be limited to compliance with the reports of the agencies (Guatemala and Mexico) or compliance with the labour obligations of the agencies with their own personnel, which is also necessary but insufficient.

In this sense, there are few regulations that use collaborative practices between the Government and agencies: for example, in Honduras, agencies attend training and induction on labour standards as a requirement for their registration and obtaining an authorization certificate.⁴⁶

Furthermore, self-regulation standards for agencies are not encouraged: for example, requiring them to have codes of conduct that resemble the principles of fair recruitment as a requirement for their registration.

There are also highly relevant initiatives implemented by industry and employers in the region, which, with the support of the ILO and the International Organization for Migration (IOM), USAID and other agencies, have developed manuals, standards, and guides for declaration of compliance. An example is the *Business Diagnostic Guide for Mexico and Honduras*, prepared with the support of the ILO Bureau for Employers' Activities (ACTEMP), including a section on fair recruitment.⁴⁷

46 For example, see the course that the Honduran Secretary of Labour makes available to employment agencies: <http://www.trabajo.gob.hn/cursos-de-induccion-de-agencia-de-empleo-privadas/>.

47 Available at <https://guiacerempleadores.org/completa/diagnostico/>.

5.2.2. Consular protection

Although the surveillance and enforcement of labour legislation and the regulations of private employment agencies correspond to the countries of origin —where enforcement is scarce—, given that the labour relationship occurs in the jurisdiction of the country of destination, these have to ensure the surveillance and enforcement of their own labour standards by employers.

In any case, bilateral agreements promote collaboration between authorities of the countries of origin and destination through the exchange of information and the participation of consular authorities of the countries of origin in the countries of destination, as occurs in the Consular Association Program between the United States Department of Labor and the consular authorities of various countries, including the countries that are the subject of this document.

In addition, in order to offer an additional support network and protection to workers, coordination between the labour authorities in charge of monitoring and applying the processes for recruiting workers by employment agencies and the foreign affairs authorities or the state departments and their consular representations in destination countries is essential.

The laws and regulations of Guatemala, Honduras and Mexico regarding private employment agencies consider this coordination through the exchange of information on the international movements of recruited workers, workplaces and complaints of bad recruitment practices or breach of contractual obligations or violation of labour rights.

- In Guatemala, article 34 of the Labour Code provides that the recruiter or company must deliver two copies of the contract to the Ministry of Labour and Social Welfare and that the latter must send them to the corresponding embassy or consulate, from where they will send monthly reports on compliance. In addition, the Regulation for the registration of recruiters of Guatemalan workers for the provision of services or execution of works outside the territory of the Republic of Guatemala obliges them to inform the Ministry of Labour about any complaint or report of violations of their labour rights to coordinate the corresponding verifications.

 The agreements or bilateral agreements promote collaboration between authorities of the countries of origin and destination through the exchange of information and the participation of consular authorities of the countries of origin in the countries of destination.

- In Honduras, the regulation for the recruitment and hiring of Honduran workers abroad establishes that the labour authority will share information about the selected workers and their workplaces with the labour authorities of the destination country to collaborate in monitoring protection of their labour rights. In addition, it provides that the labour authorities will inform their counterparts in destination countries and employers through diplomatic channels of any irregularity or abuse committed by employment agencies or recruiting agents in Honduras. Honduras is currently, with ILO support, in the process of updating this regulation.
- In Mexico, the regulation establishes the responsibility of private employment agencies to inform recruited candidates about their right to request consular protection and the location of the corresponding Mexican embassies or consulates in the country of destination.

Despite the relevance of these provisions, consulates face personnel and coverage limitations⁴⁸ to monitor and visit workers and workplaces. It is essential to correct gaps in surveillance and supervision of recruiting and working conditions, ensuring that the workers themselves are aware of their labour rights in the countries of destination and which consular authorities to turn to in case of abuse, disputes, or non-compliance.

The United States Department of Labor, through the **Consular Partnership Program**, coordinates with countries of origin—including El Salvador, Guatemala, Honduras and Mexico—to ensure the protection of temporary foreign workers: for example, they provide training, counselling, guidance, and awareness-raising on safety, health, and working conditions standards—with the involvement of the Wage and Hour Division (WHD) and the Occupational Safety and Health Administration (OSHA)—, organize visits to employers and work centres that employ temporary migrant workers and produce informative printed materials in Spanish for workers.

⁴⁸ In the United States, Mexico has fifty consular offices or diplomatic representation (see <https://www.gob.mx/sre/documentos/red-consular-de-mexico-en-los-estados-unidos-de-america>), El Salvador has 28 (see <https://rree.gob.sv/embajadas-consulados-y-misiones-permanentes-de-la-republica-de-el-salvador/>), Guatemala has 23 (see https://www.minex.gob.gt/Visor_Pagina.aspx?PaginaID=1200) and Honduras has 14 (see <https://conmigho.hn/oficinas-consulares-de-honduras-en-el-mundo/>). In Canada, Mexico has 6 diplomatic offices, embassy and consulates, El Salvador has 5, and Guatemala and Honduras 2 each. In Mexico, Guatemala has 12 diplomatic or consular offices.

5.2.3. Grievance mechanisms, access to justice and effective remedy for workers

Having information and the capacity to report abuses and file complaints with the labour authorities of the countries of destination or to go to their own consular authorities is essential, since migrant workers are especially vulnerable to abuses due to lack of knowledge and fear of reprisals such as layoff or cancellation of future employment opportunities.

- Although the regulations of Guatemala and Mexico oblige the agencies themselves to notify the authorities about the possible commission of infractions and abuses and to inform workers about consular assistance and protection, in general, employment agencies hardly provide grievance mechanisms and dispute resolution.
- In Honduras, the regulations stipulate the joint and several liability of employment agencies in case of labour breaches by employers. However, it does not establish an effective preventive mediation mechanism that involves them. Countries opt instead to establish helplines through diplomatic and consular representations in destination countries.
- Some diplomatic representations, such as those of Mexico in the United States, have provided some mechanisms so that migrant workers can submit complaints and claims about labour abuses or poor working conditions.

Since 2009, the Mexican consular network in the United States celebrates the **“Labour Rights Week”** during the last days of August on Labour Day in the United States. The 51 consular representations participate, in addition to representatives of the consulates of El Salvador, Guatemala, Honduras and other Latin American countries, labour authorities of the United States and Mexico, unions and non-governmental organizations of the United States. The purpose is to inform about the labour rights of migrant workers and the grievance mechanisms, visit workplaces and address specific cases of abuse that require consular protection.

In some cases, the authorities of the countries of origin are aware of the complaints when they present them directly to their diplomatic representations. These, in turn, can be the channel for the formal filing of complaints before the official institutions of the destination countries.

In other cases, the authorities find out about them when the workers return. For example, the National Employment Service of Mexico carries out an informative survey called the Worker’s Return Report to the workers participating in the Mexico-Canada Temporary Agricultural Workers Program: it collects information on the work stay, working conditions and, if it is the case, on complaints for mistreatment or poor employment conditions. This information is shared with the Mexican consulates in Canada to investigate, clarify and prevent their repetition, and in proven cases of systematic abuse, this information becomes an instrument for the authorities of both countries to review the permanence in the program of employers with bad labour practices.

These institutional mechanisms depend to a large extent on the willingness and decision of the worker to report complaints. There are no other accessible mechanisms that involve employment agencies and intermediaries. Therefore, it is necessary that regulation and practice include the joint responsibility of employment agencies to intervene and remedy abuses and bad practices, as contemplated in the Honduran regulation.

A common instrument in various regulations are guarantee deposits: prudential amounts (Guatemala) or bonds (Mexico) as a requirement to authorize the operation of employment agencies or employment contracts abroad managed by recruiters or employers. In case of fraud or non-compliance, the governments of the countries of origin can compensate repatriation costs and salary compensation or other labour non-compliance.

In practice, their processing is complex and not very enforceable, since in many cases, in addition to not constituting an effective means of remediation, they inhibit the registration and formalization of employment agencies and recruiters.

Access to justice mechanisms for jobseekers, users of private employment agencies, and for migrant workers is one of the biggest gaps in the region, especially when it comes to fraud, which is the responsibility of authorities or spheres outside the workplace.

The main destination countries also offer institutional mechanisms for work permit applicants to file complaints and reports of work visa fraud⁴⁹ and labour abuses.⁵⁰ There are no statistical data on complaints filed or how many of them are dealt with. Additionally, it is very likely that neither the officials in the countries of origin in charge of regulating the recruitment of workers, nor the agencies, are aware of these tools or inform workers or applicants for work permits abroad about them.

On the other hand, the way in which temporary workers are recruited (this decision rests with employers) coupled with the temporary and circular nature of these mechanisms is likely to discourage workers from filing complaints or initiating litigation against employers or recruiters who jeopardize their permanence or the possibility of obtaining employment in the future.

49 The United States Citizenship and Immigration Services makes an anonymous electronic form available to anyone to report employment fraud related to the application or processing of work visas: <https://www.uscis.gov/es/report-fraud/uscis-tip-form>.

50 Employment and Social Development Canada (ESDC) has an anonymous electronic form available in Spanish through which workers or any other person can report abuse or malpractice by employers of these workers in Canada: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/report-abuse-es/tool.html>.

5.2.4. Gender perspective

Another of the gaps that occurs in practice in the countries regarding the recruitment and selection of workers is the scarcity of equal opportunities for women to be placed in jobs abroad. This also happens in those mechanisms where the governments themselves act as recruiters or perform the function of intermediaries. An example of the above are the very low proportions of women admitted from these countries in the H-2A, H-2B visa programs,⁵¹ as well as in the Mexico-Canada Seasonal Agricultural Workers Program, in which women represented barely 2 per cent of the workers placed in the program in 2021, in addition to the fact that in almost all cases the average duration of the contracts for women was less than that of men.⁵²

Few or no initiatives, procedures and provisions refer to assistance, facilitation, or guidance to female migrant workers, both in the countries of origin and in those of destination. The improvement of access for women to participate in these programs is something that should be further explored.



51 See Resstack, R and O'Donnell, M. *Work Visas to the US: How Do We Make Sure Women from the Northern Triangle Don't Get Left Behind?* Centre for Global Development, July 2021. <https://www.cgdev.org/blog/work-visas-us-how-do-we-make-sure-women-northern-triangle-dont-get-left-behind>.

52 Calculations based on Migration Policy Unit of the SEGOB. "Bulletins of Temporary Labour Mobility of Mexicans and Mexicans abroad". Tables 1.7 by marital status and sex, 2021 and Table 1.8 by Canadian province of destination, sex and average length of stay, 2021. https://portales.segob.gob.mx/es/PoliticaMigratoria/Cuadros_PTAT?Anual=2021&Secc=1.

► 5.3. Relevant country-specific gaps

Some of the main gaps in each country in fair recruitment in both regulation and enforcement are described below. The appendix summarizes the main gaps by theme and by country.



El Salvador

The development of institutional capacities and a regulatory framework to regulate private employment agencies is the main gap in fair recruitment in El Salvador.

This regulation can build on regional experiences, the ILO Principles and guidelines for fair recruitment and minimum aspects such as an efficient mechanism for authorization, licensing and registration of private employment agencies dedicated to the recruitment of Salvadoran workers abroad and the prohibition of fees or costs related to recruitment.

In addition, it is necessary to develop standards and systems to prevent fraud in false job advertisements abroad, disseminate informative and guidance materials on authorized agencies, official mechanisms, and channels with legitimate employment opportunities, and detect and report potential scams of fraudulent recruitment.

Equally crucial is to improve the coordination between the responsible authorities, mainly between the Ministry of Labour and Social Welfare and the Foreign Ministry to complement their work and exchange information and learning.

Likewise, an adequate management of the expectations of the applicant population regarding the eligibility criteria (occupational and migratory requirements) and the contractual and employment conditions is required to improve the selection and have more transparent recruitment processes.

It is also essential to professionalize the role of the personnel in charge of the recruiting processes and their supervision: they must know the requirements, standards, and procedures in the countries of destination, mainly the United States and Canada, in order to guide the workers and the employment agencies on rights and duties within the framework of fair recruitment.



Guatemala

Guatemala's progress in updating the regulatory framework for managing job offers abroad is significant. The challenge is its effective enforcement and increase in the registration rates of private employment agencies dedicated to recruiting Guatemalan workers abroad.

This also implies consolidating management capacities for the Labour Mobility Department, as the unit responsible for registering and supervising employment agencies, as well as managing labour migration.

Given that private employment agencies account for a significant percentage of the recruitment and placement of Guatemalan workers abroad, a balance is necessary between the recruitment functions carried out by the General Directorate of Employment and their regulatory function in order to ensure their capacities to identify, serve and supervise these agencies, as well as the identification and settlement of vacancies, the recruitment and placement of Guatemalan workers.

Improving the quality of the links between public and private employment agencies, based on the principle of labour market necessity, is another challenge in terms of fair recruitment for Guatemala. To this end, capacities related to labour market analysis, agency engagement, and detection of employment opportunities for which applicants with the required qualifications and competencies are available and that satisfy employers in the countries of destination have to be built and, especially, for the most vulnerable job seekers and workers themselves, including women.





Honduras

Honduras has very comprehensive regulations on employment agencies. One of its main successes is having a regulation on employment agencies for internal recruitment and another especially designed to regulate recruitment and hiring for jobs abroad, which is currently being updated with ILO support. The main challenge to materializing fair recruitment in Honduras relates to enforcement and supervision capacities and the existence of appropriate procedures to enforce the regulations governing private employment agencies and recruitment processes.

Private employment agencies are reluctant to register, considering the high costs and the strict requirements. Thus, it is important to review incentives and flexibility to increase the participation and self-compliance of these agencies adhering to the requirements, a process included in the current revision of the regulations.

One of the main gaps in Honduras occurs with respect to the fundamental principle of fair recruitment that prohibits the charging of fees and related costs to job applicants and workers. The regulation authorizes recruitment fees and regulates the percentage ceilings on the salaries received and that depend on the duration of the contracts. This aspect deserves review and analysis of alternatives to ensure that agencies have incentives to register and comply with the regulations, but without charging fees to the workers.

Another relevant gap in the country is the ability to promote and protect the labour rights of applicants and migrants. On the one hand, employment agencies must comply with their obligation to inform the authorities about the workers placed, and on the other, it is necessary to strengthen the capacity of the Honduran authorities to identify and follow up on possible abuses and make effective, in coordination with consular authorities, the principle of joint and several liability of agencies for abuses committed by employers.

The foregoing, in turn, requires—as in other countries—developing capacities so that workers abroad or upon their return, have access to effective grievance and remediation mechanisms. It should be noted that the Honduran regulations do not contemplate as a requirement for agencies, the deposit of bonds or prudential amounts. It only requires them to participate in induction and orientation talks on labour standards and rights to inform job applicants.



Mexico

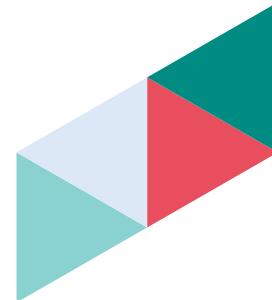
Mexico has strong institutional capacities, including a comprehensive, though not entirely up-to-date, regulatory framework. However, the country still faces some challenges to close the gaps in the protection of migrant workers not only as a country of origin, but also as a destination country.

It is therefore imperative to update the regulatory framework to address issues such as an effective registry of private employment agencies that recruit Mexican workers abroad, incentives for the registration of agencies and the more effective exchange of information, deregulation or regulatory improvement on bonds or guarantee deposits, as well as the use of more far-reaching and effective means of education and information for Mexican workers with H-2 visas who are in the United States. The ILO is currently supporting the Secretariat of Labor and Social Welfare in the review and updating of the regulations for private recruitment agencies.

In addition, the country needs to improve its surveillance capacities in quantity and quality with specific inspection protocols for employment agencies and voluntary self-declaration methods in the absence of inspectors, in addition to updating the regulation of classified job advertisements in the media and social networks.

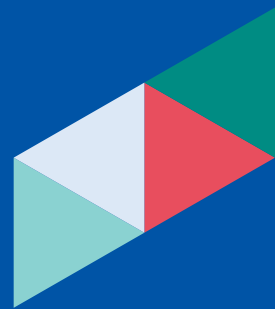
It is necessary to make better use of the existing capacities in the management of international labour mobility mechanisms through its employment service and to transfer practices and knowledge (such as the worker return report, now in electronic format) in the management and regulation of private employment agencies that recruit abroad.

The biggest gap in Mexico is the management of the assistance offered to foreign temporary workers (for example, in the modality of border worker visitor in the agricultural areas of the southeast of the country) and the enforcement of the principles of fair recruitment as a destination country, developing relevant protection regulation and for the regulation of recruiters and employers.



6

► Conclusions and recommendations



The review of the situation of fair recruitment in El Salvador, Guatemala, Honduras and Mexico, both in terms of the incorporation of fair recruitment principles and guidelines in the regulations and procedures that govern the recruitment and hiring of migrant workers by public and private employment agencies as well as the capacity to enforce their compliance and enforcement, results in a mixed picture of progress and challenges in the four countries.

The most relevant gaps and common areas of opportunity for the four countries are the following:

- Updating the rules governing the operation of private employment agencies and strengthening capacities for their identification, registration, and supervision.
- Clear, comprehensible, up-to-date and complete definition of recruitment fees and related costs in the regulations on private employment agencies and the recruitment of migrant workers.
- Institutional inspection capacities to prevent and sanction bad practices, abuses, and fraud in recruitment and hiring (especially the charging of recruitment fees to workers) and in the dissemination of announcements of employment opportunities abroad.
- The coordination and exchange of information between agencies and Ministries of Labour, Foreign Affairs, and migration agencies.
- The understanding of the labour and migratory norms that govern the recruiting and the use of the institutional mechanisms of official protection in the destination countries.
- The ability to disseminate widely, inform, and educate job seekers regarding the obligations of agencies, recruiters, and employers, and employment rights.
- Accessible and understandable model contracts for workers and effective enforcement of the principle of informed consent to employment conditions.
- Accessible and effective mechanisms for denouncing, filing complaints and reporting abuses available to migrant workers in destination countries.
- Effective access to justice and remediation for migrant workers against labour abuses.
- Discrimination and disadvantage in access to employment opportunities and temporary work permits abroad for women.
- Social dialogue and participation of migrant workers' organizations, trade unions and human rights organizations in fair recruitment processes.
- Recognition and certification of skills, abilities, and experience of migrant workers.
- Ensuring employers' organizations and workers' organizations participation in the development of regulatory frameworks and their implementation, including bilateral agreements and labour mobility schemes.
- Disseminate good practices implemented by employers' and workers' organizations.



Despite these gaps, it is essential to recognize that in the four countries and in the destination countries—mainly the United States and Canada— and their respective authorities, there is a renewed and genuine interest in advancing collectively as a region in strengthening the capacities to materialize fair recruitment for migrant workers, and for a better functioning and complementarity of labour markets.

Deepening cooperation in terms of information, education and understanding of the recruitment authorization processes of temporary foreign workers for vacancies in the United States and Canada, and in the mechanisms for monitoring compliance with labour rights in those countries is an essential point to level and raise the performance standards of the authorities and private employment agencies to close the gaps in fair recruitment.

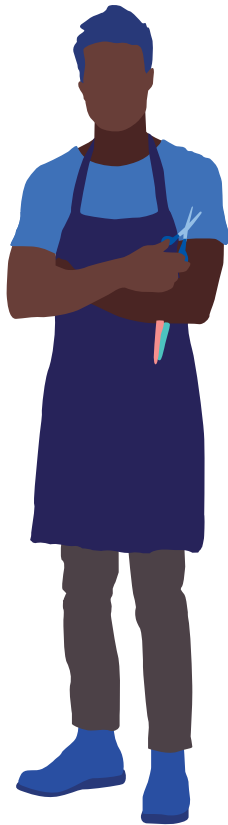
Outlined below are a series of recommendations applicable to the four countries to advance the agenda of strengthening the fair recruitment of migrant workers and to build institutional capacities for the governance and regulation of private employment agencies.

1. Work in parallel on the clear definition of recruitment fees and related costs and on mechanisms to effectively prohibit for employment agencies, intermediaries and employers to charge these fees and costs from workers. At the same time, seek measures to reduce the costs of migration for applicants, candidates, and employers (for example, by reducing the costs of issuing passports—as Mexico does for SAWP workers— or by sharing their payment) and adopt incentives for registration (such as the recent Law for the Promotion of Temporary Work Abroad in Guatemala).
2. Improve coordination and information sharing between labour (including public employment services), foreign relations and migration agencies and authorities in countries of origin in order to capture information on recruitment, vacancies, destination, and employers of migrant workers at different times—such as during passport processing, departure and return at airports, and arrival in destination countries— through consular authorities. This would improve the traceability and protection of migrant workers and the detection of the forms of recruitment and hiring. In this sense, the exchange of good practices such as the Costa Rican Migratory Labour Traceability System (SITLAM, *Sistema de Trazabilidad Laboral Migratoria*) for countryside migrant workers through the digital application is essential.

 There is a renewed and genuine interest in advancing collectively as a region in strengthening the capacities to materialize fair recruitment for migrant workers.

3. Develop specific protocols for divisions or inspection offices related to employment agencies, which are efficient, collaborative, and contribute to building capacities in responsible and ethical agencies to encourage registration, ensure its quality and guarantee repatriation and remedy for workers.
4. Encourage employment agencies to share information about their activities, not only through regulatory compliance mechanisms, but using self-reporting mechanisms, with incentives such as return of value-added analysis by Labour Ministries to employment agencies that comply with sending this information, and promoting the construction of a recruitment ecosystem under the principles of fair recruitment that responds to the needs of the labour market.
5. Explore viable alternatives to guarantee deposits and bonds (since they inhibit the registration of employment agencies): market mechanisms such as recruiting travel and repatriation insurance in favour of workers with adequate amounts and broad coverage as Guatemala has stipulated to international employers in its Law for the Promotion of Guatemalan Merchant Marine Labour Abroad.
6. Capitalize on the electronic windows for registration and notices of job vacancies abroad (employment exchanges) of the Ministries of Labour and Foreign Relations to inform and educate on the detection of false offers and fraudulent agencies, and disseminate official recruitment channels (including registered private employment agencies), model employment contracts abroad, requirements, labour rights and grievance mechanisms in destination countries.
7. Promote collaboration schemes with employment agencies establishing self-regulation and self-enforcement standards, including free training courses from the authorities based on the principles of fair recruitment and national regulations to professionalize private employment agencies.
8. Establish public recognition mechanisms for employment agencies that comply with the regulations and adhere to the principles of fair recruitment, which generate incentives for regulatory self-compliance through public recommendation and prioritize their procedures before the authorities of the countries of destination and the users of its services.
9. Take advantage of the experience of returning migrant workers and involve them in the development of regulations and protection and operational-level grievance mechanisms, such as the report on the return of workers from the Mexico-Canada Temporary Agricultural Workers Program of the National Employment Service.

10. Improve coordination with consular authorities and foreign ministries through training and exchange of experiences on labour rights and protection and grievance mechanisms in destination countries; and identify the instruments available to the countries of destination for complaints and train the staff of the consular offices, the Ministries of Labour and their employment services, and the employment agencies themselves on these tools.
11. Strengthen telephone help-lines for complaints and to help migrant workers and develop new anonymous, free and friendly digital systems to report bad practices for workers.
12. Promote the training and professionalization of the officials of the Ministries of Labour —especially those responsible for supervising employment agencies— and consular authorities with practical courses on the enforcement of the principles and guidelines for fair recruitment, and in the identification and knowledge of information resources in the destination countries that allow the identification of vacancies, employers and recruiters.



13. Work with human rights organizations, prosecutors, private employment agencies, employers, and law enforcement authorities in destination countries to ensure effective grievance mechanisms, access to justice, and redress for workers who have suffered abuse.
14. Study and promote with the destination countries mechanisms that favour the change of employer and the protection of vulnerable workers or those who have suffered abuses, such as the Open Work Permit mechanism for vulnerable workers in Canada.
15. Promote fair recruitment mechanisms with a gender perspective for women seeking employment abroad in order to eliminate direct and indirect discrimination practices in official labour mobility mechanisms.
16. Monitor temporary labour migration not only in terms of quantitative indicators such as number of job placements, work permits or the amount of remittances, but also through qualitative decent work indicators taking into account the experience of workers who participate in these programs.
17. Work on the exchange and cooperation between organizations or agencies for training and recognition of skills and qualifications in countries of origin and destination, as well as with employers in destination countries to promote the updating of skills and the recognition of qualifications and experience at low cost to strengthen the employability of migrant workers in the long term.

18. Take advantage of existing regional and multilateral mechanisms —such as the Regional Conference on Migration or the Comprehensive Regional Protection and Solutions Framework (MIRPS)— and Regional Conference on Migration (RCM) to promote the exchange of information and good practices between the four countries and the main countries of destination.
19. Involve and take advantage of the capacities, experience, and legitimacy of workers' organizations to strengthen the dissemination, orientation, and monitoring of the labour rights of migrant workers both in the countries of origin and in those of destination, following the example of the Centre Resource Centre for Migrant Workers of Tijuana, Mexico.
20. Carry out interventions for labour reintegration and the development of productive initiatives of migrant workers when they return to their countries of origin.
21. Replicate good practices such as the creation of Virtual Training Resources by employers' organizations and promote exchanges between them.

► **Appendix**

Summary of the gaps in the enforcement of the General principles and operational guidelines for fair recruitment in El Salvador, Guatemala, Honduras and Mexico

The following table summarizes the main findings of the gap analysis in the enforcement of the general principles and operational guidelines for fair recruitment in El Salvador, Guatemala, Honduras and Mexico.

Three broad categories of common gaps in fair recruitment emerge from the analysis:

1. Gaps related to the **regulatory framework for recruitment** due to incomplete regulations, obsolete standards, or inapplicable regulations. For example, the absence of a detailed regulatory framework for recruitment in El Salvador, the regulatory framework of Mexico with provisions that are incomplete or that require updating, and a regulation that is not fully applied in Honduras and is being updated.
2. Gaps related to the **enforcement of the principles and guidelines for fair recruitment** due to limited institutional capacities or systems for which the authorities do not have a regulatory framework that grants them all the necessary powers, for example, inspections of recruitment agencies and repatriation guarantee deposits. Given that, the number of inspectors in all countries is insufficient for the various functions of labour inspection and that there is a lack of specific protocols to carry out controls on recruitment, most of the inspection provisions in the regulations are ineffective. Mandatory bonds required of recruiters or employers in El Salvador, Guatemala, Honduras and Mexico to guarantee the repatriation costs of workers victims of fraud or breach of contract are also not enforceable due to complex rules, lack of specific procedures, or required amounts that discourage formal recruitment.
3. Gaps related to the **jurisdictional limitations and inadequate coordination and collaboration with employers and the authorities of destination countries**. For example, the promotion and enforcement of fundamental principles and rights at work (such as freedom of association and the right to collective bargaining and health and safety at work), the recognition of acquired skills and qualifications at work, and access to claims, mechanisms, and resources for conflict resolution. This is due to challenges in worker traceability, language barriers, and a lack of understanding, information, and guidance on destination country legislation, justice mechanisms, and resources available to workers.



Legal gaps Principle/Guideline for fair recruitment	 El Salvador
Recruitment is carried out in a way that protects fundamental labour rights	✓ The recruitment of minors for work abroad is not allowed (Art. 74, Law on Organization and Functions of the Labour and Social Welfare Sector).
	✗ There is no mention of unsafe or hazardous work or forced labour.
Definition of recruitment fees and related costs	✗ There is no precise or detailed definition in this regard, including those defined in the ILO guidelines.
Employment and recruitment laws and policies apply to all workers, recruiters and employers in all economic sectors	✗ There is no regulation or law that regulates the activity of private employment agencies.
Prohibition of recruitment fees and related costs	✗ The Law on Organization and Functions of the Labour and Social Welfare Sector (<i>Ley de Organización y Funciones del Sector Trabajo y Previsión Social de El Salvador</i>) only specifies the free recruitment of workers through the National Department of Employment.



Guatemala



Honduras



Mexico

✓ Employment agencies are prohibited from advertising or offering job vacancies abroad that involve illegal work, pose risks to the life, health or well-being of workers or that contravene child labour regulations (Art. 11, Regulation for the register of recruiters).	✓ Recruiting people under 18 years of age, collaborating in human trafficking and promoting work abroad that is unsafe or poses risks is prohibited (Regulation for the recruitment and hiring of Honduran workers abroad).	✓ Recruiting people under 18 years of age to work abroad is prohibited (Federal Labour Law). ✗ Recruiters are prohibited from offering jobs abroad that do not meet the characteristics of decent work (Regulation of Private Employment Agencies).
✗ There is no precise or detailed definition in this regard, including those defined in the ILO guidelines.	✗ There is no precise or detailed definition in this regard, including those defined in the ILO guidelines.	✗ There is no precise or detailed definition in this regard, including those defined in the ILO guidelines.
✗ Exceptions for skilled workers (professionals and technicians) in the Labour Code.	✗ Exceptions for skilled workers in the Labour Code.	✓ There are no exceptions in the Federal Labour Law.
✗ Separate regulations for the international recruitment of maritime workers.	✗ Exceptions for qualified and maritime workers in the recruitment regulation.	✓ There are no exceptions in the recruiting regulation.
✓ The Regulation for the registration of recruiters prohibits recruiters from charging or recovering recruitment fees or costs related to workers. However, there are no definitions, so recruiters can charge costs and indicate that they are not a "fee."	✗ There is no prohibition of recruitment fees. Percentages or ceilings of the rates that recruiters can charge are regulated.	✓ Prohibition of charging recruitment fees or costs related to workers in the Regulation of Private Employment Agencies. However, there are no definitions, so recruiters can charge costs and indicate that they are not a "fee."

Legal gaps Principle/Guideline for fair recruitment	 El Salvador
Recruitment is carried out in a way that protects fundamental labour rights	✓ The recruitment of workers abroad is allowed under the condition that the national economy is not negatively affected (Art. 74, Law on Organization and Functions of the Labour and Social Welfare Sector). ✓ Regulation of employment agencies is being prepared.
Equal treatment and non-discrimination	✗ Not mentioned in the Law on Organization and Functions of the Labour and Social Welfare Sector.



Guatemala



Honduras



Mexico



The labour mobility of workers considered necessary for the economy is restricted (Art. 34, Labour Code).



The Ministry of Labour and Social Security must analyse the effects of migration on the national economy (Labour Code).



The employment services for job applicants will consider the demand for labour (Art. 123, Political Constitution).



The Regulation for the registration of recruiters only specifies that recruiters must observe Art. 34 of the Labour Code.



The Regulation for the recruitment and hiring of Honduran workers abroad prohibits the displacement of workers abroad when there is a qualified risk of generating national occupational shortages. However, there is no mechanism to determine this.



The regulation of recruitment does not refer to the needs of the labour market.



The Labour Code prohibits contracts for Guatemalan workers abroad if working conditions are inferior to those prevailing for workers in the country of destination.



The Regulation for the recruitment and hiring of Honduran workers abroad prohibits recruiters from participating in discriminatory practices.



The Federal Labour Law requires intermediaries to verify that the labour conditions of the job offer abroad do not imply discrimination.



The Recruiter Registration Regulation prohibits recruiters from posting job offers that may restrict equal opportunities.



Recruiters are prohibited from participating in activities that imply discrimination (Art. 6, Regulation of Private Employment Agencies).

Legal gaps Principle/Guideline for fair recruitment	 El Salvador
Transparency and fidelity in advertising job opportunities	✗ No regulation in effect.
Written contracts accessible and in a language understandable to workers	✦ The Ministry of Labour and Social Welfare must submit contracts between employers and foreign workers for authorization.
Free, complete and accurate access to information on the rights of workers	✗ No regulation in effect.
Voluntary and informed consent of workers on working conditions	✗ No regulation in effect.



Guatemala



Honduras



Mexico

✓ The Regulation for the registration of recruiters prohibits them from offering false or non-existent jobs.	✓ The Regulations for the recruitment and hiring of Honduran workers prohibit the deliberate promotion of false job opportunities abroad. Recruiters must obtain a labour certification that they do not have a history of labour or criminal violations.	✓ The advertising of false or non-existent job offers is prohibited (Regulation of Private Employment Agencies).
✓ Contracts with foreign employers must be signed and a copy provided to the worker (Labour Code).	✓ The Regulations for the recruitment and hiring of Honduran workers abroad obliges them to provide workers with written copies of the contracts in Spanish.	✓ The Federal Labour Law establishes that the working conditions must be established in writing.
✗ There is no reference in the regulation of recruiters.		✗ There is no reference in the employment agency regulations to the delivery of written contracts to workers.
✗ No regulation in effect.	✓ The Regulations for the recruitment and hiring of Honduran workers abroad oblige recruiters to provide information on the rights and functions of workers.	✓ The Regulation of Private Employment Agencies stipulates the duty of recruiters to provide workers with information on their right to request consular assistance and on general working and living conditions.
✗ No regulation in effect.	✗ No regulation in effect.	✗ No regulation in effect.

Legal gaps Principle/Guideline for fair recruitment	 El Salvador
Travel and accommodation costs	 The Law on Organization and Functions of the Labour and Social Welfare Sector stipulates that transportation costs to and from the permanent residence of workers must be covered by the employer.
	 There is no housing provision.
No retention of identity and travel documents	 No regulation in effect.
Training and recognition of skills	 No regulation in effect.
Freedom of association and collective bargaining *	 No regulation in effect.

* In this case, although the exercise of collective rights at work corresponds to the standards of the countries of destination, none of the regulations makes reference to the obligation of recruiters to inform workers about their collective rights explicitly or to prohibit actions during recruitment that imply interfering with the exercise of said rights by workers.



Guatemala



Honduras



Mexico



The Labour Code stipulates that the recruiter or his client company must cover the travel costs of the worker to and from his permanent residence, and the contracts must indicate the way in which housing will be provided to the workers.



The Labour Code stipulates that employers must provide travel costs when the workplace is more than 2 km away from the workers' permanent residence.



The Federal Labour Law establishes that the contracts of workers hired by employers abroad must stipulate the obligation of employers to pay repatriation costs and the conditions under which housing will be provided.



There is no housing provision.



The Regulation of Private Employment Agencies stipulates that recruiters must take steps to ensure that transportation and housing are provided to workers free of charge.



The Regulation for the registration of recruiters prohibits them from retaining personal documents of workers.



No regulation in effect.



The Regulation of Private Employment Agencies prohibits the retention of workers' personal documents.



No regulation in effect.



No regulation in effect.



No regulation in effect.



No regulation in effect.



No regulation in effect.



No regulation in effect.

Gaps in fair recruitment by country



El Salvador

Recruitment must be carried out in a manner that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards.	✓	The Government-administered Labour Migration Program seeks to guarantee human rights and comply with international labour standards. However, this is not always the case in private employment agencies that operate outside of government supervision.
Recruitment must respond to the established needs of the labour market.	✗	The existence of impact evaluations in the national labour market is not known.
Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.	✗	There is no detailed regulation to regulate private recruitment.
Recruitment must take into account policies and practices that promote efficiency, transparency and the protection of workers in the process, such as mutual recognition of skills and qualifications.	✗	Private recruiters enjoy discretion in the exchange of information and transparency. There are no skills recognition mechanisms available.
Regulation of employment and recruitment activities should be clear and transparent and effectively enforced.	✗	There is no regulation or registration of private employment agencies.
Recruitment across international borders must respect the laws, regulations, employment contracts and applicable national collective agreements of the countries of origin, transit and destination.	✓	Government recruitment under the labour migration program to the United States and Canada complies with national and international legislation. Scarce government scrutiny of recruitment agencies.
No recruitment fees or related costs should be charged to or otherwise borne by workers or job applicants.	✓	Free recruitment and placement provided by the General Directorate of Employment. Private employment agencies may charge recruitment fees due to a lack of regulation and oversight.



El Salvador

The terms and conditions of employment of a worker should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts.	✓	Written contracts provided to workers exclusively through the Government Labour Migration Program to the United States and Canada. The language barrier and the shortage of personnel prevent the translation of documents.
Workers' agreements to the terms and conditions of recruitment and employment must be voluntary and free from deception or coercion.	✗	Lack of mechanisms to monitor and enforce workers' voluntary and informed consent to contracts when recruited by private employment agencies.
Workers should have access to free, comprehensive and accurate services, information about your rights and the conditions of your recruitment and employment.	✓	Ability to provide free and complete information to workers restricted to workers recruited by the Government and placed under the Labour Migration Program.
Freedom of workers to move within a country or to leave a country should be respected.	✓	
Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.	✓	There are practical barriers to monitoring and surveying workers upon their return, and during contracts (for example, if workers change employers).
Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.	✓	Grievance mechanisms and assistance available to workers placed under the Government-administered Labour Migration Program, through the network of consulates in the United States and Canada and the Ministry of Foreign Affairs. Memorandum of Understanding and other bilateral instruments signed for the enforcement of workers' rights with agencies of the United States Department of Labor.



Guatemala

Recruitment must be carried out in a manner that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards.



Regulations on recruitment and practical guidelines on recruitment and placement to ensure the protection of workers and review private recruitment.

Recruitment must respond to the established needs of the labour market.



The Labour Code requires that employment contracts abroad be authorized by the Ministry of Labour and Social Welfare; when there are adverse effects for the national labour force, these will not be authorized.

Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.



The recently issued legislation on recruiting agents is implemented from 2022, the recruitment of maritime workers is governed by a specific regulation.

Recruitment must take into account policies and practices that promote efficiency, transparency and the protection of workers in the process, such as mutual recognition of skills and qualifications.



Government promoted transparency and some registered private agencies, but 95 per cent of recruitment is done by private recruiters, mostly with no knowledge or training on fair recruitment. There are no mechanisms for the recognition of qualifications or certification of skills of temporary migrant workers.

Regulation of employment and recruitment activities should be clear and transparent and effectively enforced.



There is a clear and detailed regulation on recruitment. However, its enforcement faces challenges regarding resources. Low inspection capacity to enforce regulation.

Recruitment across international borders must respect the laws, regulations, employment contracts and applicable national collective agreements of the countries of origin, transit and destination.



Recruitment carried out by the Government always seeks to guarantee respect for national laws and the legislation of the country of destination, but the supervision of compliance with private recruitment is limited in origin and destination.

No recruitment fees or related costs should be charged to or otherwise borne by workers or job applicants.



The regulation stipulates the prohibition of charging recruitment fees to workers by private recruiters. Even so, workers continue to report that recruiters charge fees.



Guatemala

The terms and conditions of employment of a worker should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts.



The Labour Migration Department of the Ministry of Labour and Social Welfare guarantees the translation and revision of employment contracts. However, this is only done for those recruited through government mechanisms.

Workers' agreements to the terms and conditions of recruitment and employment must be voluntary and free from deception or coercion.



Practical constraints, such as the literacy of workers and the high volume of workers placed by private intermediaries without registration, make it difficult to verify workers' consent to contracts and conditions of work.

Workers should have access to free, comprehensive and accurate services, information about your rights and the conditions of your recruitment and employment.



The Government of Guatemala, with the support of the ILO and other international organizations, has prepared, distributed and promoted guides on the rights of temporary migrant workers. The Labour Mobility Department of the Ministry of Labour and Social Welfare offers orientation talks prior to the departure of workers recruited through government mechanisms. Four major private recruiters have produced a code of conduct for the industry, which addresses the rights of workers to receive free and accurate information and guidance on working abroad.

Freedom of workers to move within a country or to leave a country should be respected.



Difficulty monitoring and surveying workers abroad by consulates or diplomatic missions (due to geographic dispersion of workplaces) and upon return (as most are not placed through managed labour migration mechanisms by the Government).

Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.



Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.



Availability of grievance and dispute resolution mechanisms available primarily to those recruited and placed through government mechanisms. Material limitations to track and locate workers at destination.



Honduras

Recruitment must be carried out in a manner that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards.		Existing government regulation on recruitment provides for the protection of workers' rights, non-discrimination and safe working conditions for workers, but it has many enforcement challenges.
Recruitment must respond to the established needs of the labour market.		There is no evaluation of the effects of migration on the labour market.
Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.		Detailed but not always applicable regulation on private recruitment and placement due to the low number of private recruitment agencies willing to register and obtain certification. There is no code of ethics for private recruiters.
Recruitment must take into account policies and practices that promote efficiency, transparency and the protection of workers in the process, such as mutual recognition of skills and qualifications.		There are no mechanisms for mutual recognition or certification of competencies with destination countries.
Regulation of employment and recruitment activities should be clear and transparent and effectively enforced.		Ability to enforce regulation constrained by lack of resources, low registration rates, and atomization of private recruitment agencies.
Recruitment across international borders must respect the laws, regulations, employment contracts and applicable national collective agreements of the countries of origin, transit and destination.		Recruitment through the United States Government-administered Temporary Work Abroad Program (PTTE-its acronym in Spanish) ensures compliance with national and international regulations.
No recruitment fees or related costs should be charged to or otherwise borne by workers or job applicants.		Private recruiters may charge recruiting fees. Free recruitment within the framework of the PPTE administered by the Government.



Honduras

The terms and conditions of employment of a worker should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts.



The General Directorate of Employment reviews the contracts of workers placed through the PTTE administered by the Government. The authorization for the posting of workers requires written work contracts reviewed by the Ministry of Labour and Social Security.

Workers' agreements to the terms and conditions of recruitment and employment must be voluntary and free from deception or coercion.



The General Directorate of Employment reviews and authorizes the contracts on behalf of the workers. However, its scope is limited to those who participate in the PTTE.

Workers should have access to free, comprehensive and accurate services, information about your rights and the conditions of your recruitment and employment.



Recruitment regulations require private recruiters to provide information to workers, but the physical means to verify the veracity of this information are limited.

Freedom of workers to move within a country or to leave a country should be respected.



Barriers for labour authorities and consulates to monitor working conditions, enforcement of rights abroad and upon return due to limited resources and geographical dispersion of workplaces.

Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.



Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.



The regulation of private employment agencies stipulates that recruiters must provide information to workers about consular rights and assistance. In most cases, this obligation cannot be verified. The Government offers pre-departure talks to workers participating in the PTTE administered by the Government itself.



Mexico

Recruitment must be carried out in a manner that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards.		Government recruitment activities comply with human rights and international labour standards. However, the majority of workers are recruited through private employment agencies that are not registered with the Government and that do not in all cases respect or follow human rights and international labour standards.
Recruitment must respond to the established needs of the labour market.		There is no evaluation of the effects of migration on the labour market.
Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.		Legislation and regulation on recruitment is detailed, but it is not up to date and has multiple gaps with respect to fair recruitment.
Recruitment must take into account policies and practices that promote efficiency, transparency and the protection of workers in the process, such as mutual recognition of skills and qualifications.		Most private recruiters do not share information. There are some pilot initiatives on skills recognition and training with destination countries (Germany) through inter-government initiatives.
Regulation of employment and recruitment activities should be clear and transparent and effectively enforced.		Limited enforcement of regulation of private employment agencies due to low registration rate and atomization of recruitment agencies.
Recruitment across international borders must respect the laws, regulations, employment contracts and applicable national collective agreements of the countries of origin, transit and destination.		Government-administered labour mobility mechanisms try to comply with the regulations of the countries of origin and destination, but the coverage represents less than 10 per cent of workers placed abroad, while private recruiters concentrate 90 per cent.
No recruitment fees or related costs should be charged to or otherwise borne by workers or job applicants.		Recruitment fees are prohibited by regulation, but many private, unregistered recruiters charge fees to workers.



Mexico

The terms and conditions of employment of a worker should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts.	✓	The regulation requires written contracts, but barriers such as low literacy rates and language make it difficult to enforce the regulation.
Workers' agreements to the terms and conditions of recruitment and employment must be voluntary and free from deception or coercion.	✗	There are barriers to monitoring worker consent to working conditions and contracts outside of government-run labour mobility mechanisms.
Workers should have access to free, comprehensive and accurate services, information about your rights and the conditions of your recruitment and employment.	✓	The public employment service provides information to workers in the pre-departure stage for those placed under labour mobility schemes abroad. It is not possible to verify whether unregistered private employment agencies inform workers of their rights.
Freedom of workers to move within a country or to leave a country should be respected.	✓	Traceability of workers is not practical due to the large number of workers in the United States and Canada placed through private recruiters and the dispersion of work places. Their return is only supervised for workers placed by the public employment service.
Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.	✓	The network of Mexican consular offices in the United States and Canada works closely with United States and Canadian authorities to detect cases of abuse and provide workers with reporting and grievance mechanisms. Private employment agencies do not participate. The Public Employment Service tracks and examines the workers it placed upon their return.
Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.	✓	Mandatory bonds for recruiters and employers to pay for repatriation are impractical and complex to implement.

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