



International  
Labour  
Organization

Fair  
Recruitment  
Initiative

# ► Frequently Asked Questions on Fair Recruitment



## ▶ **Frequently Asked Questions on Fair Recruitment**

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## ► Introduction

In 2014, the ILO launched the global Fair Recruitment Initiative (FRI) as part of the ILO Director General's call for a Fair Migration Agenda, and in response to raised concerns about reported abuses of migrant workers and the growing role of unscrupulous employment agencies, informal labour intermediaries and other operators acting outside the legal and regulatory framework that prey especially on low-skilled workers. Reported abuses included deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; and threats if workers want to leave their employers coupled with fears of subsequent expulsion from a country. It was recognized that a combination of these abuses can amount to human trafficking and forced labour. The aims of the FRI-initiative were hence to (i) help prevent human trafficking and forced labour, (ii) protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment process, and (iii) reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination.

The 2021-2025 FRI Strategy (Phase II) will continue to be grounded in relevant international labour standards (ILS), global guidance, and social dialogue between governance institutions and actors of the labour market – i.e. those who directly experience the challenges and opportunities of implementing fair recruitment practices. The FRI has combined global policy dialogue, knowledge and data generation with on-the-ground interventions where tools are tested, implemented, and expertise created.

Its vision is to ensure that recruitment practices nationally and across borders are grounded in labour standards, are developed through social dialogue, and ensure gender equality. Specifically, they:

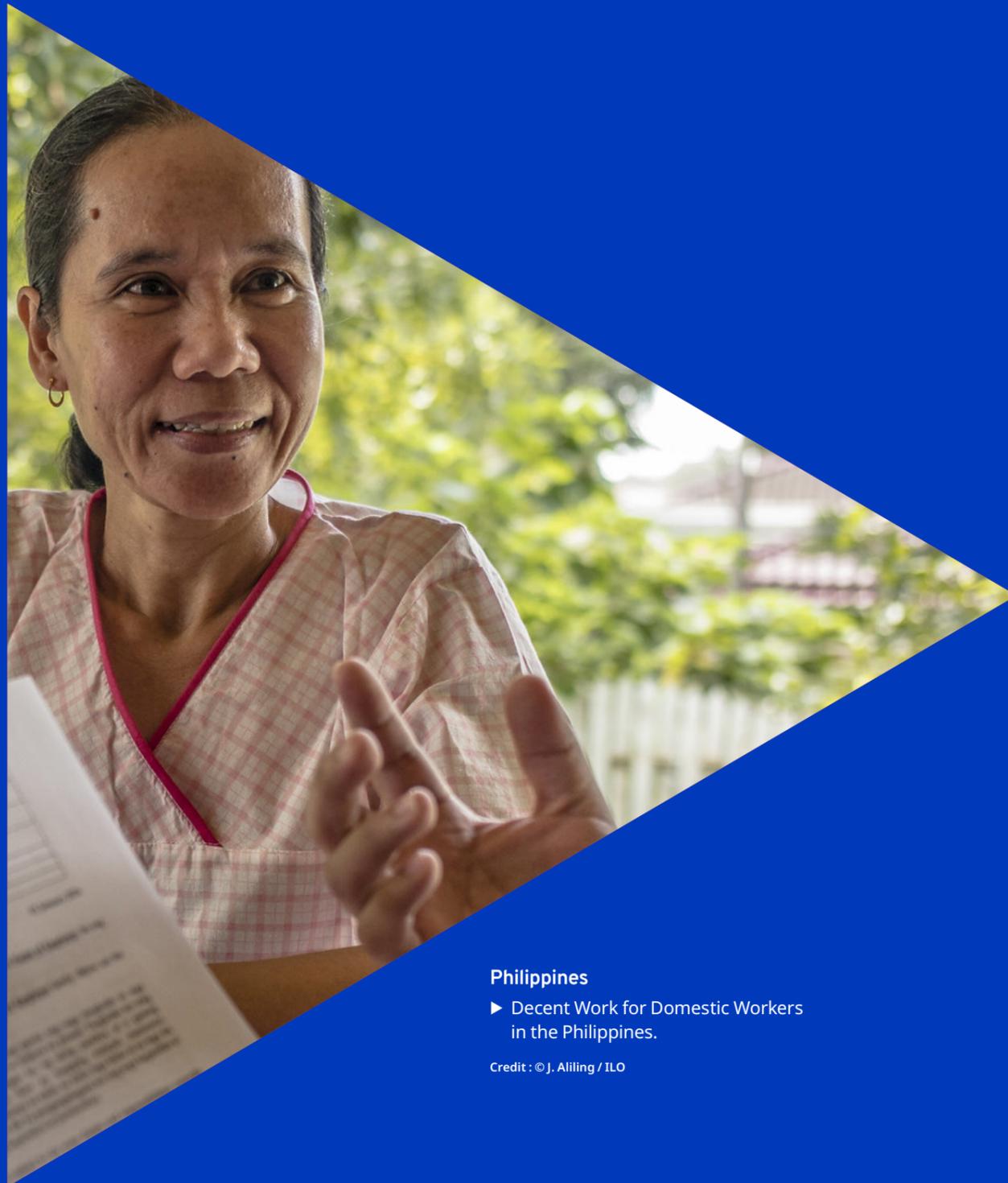
1. are transparent and effectively regulated, monitored, and enforced;
2. protect all workers' rights, including fundamental principles and rights at work (FPRW), and prevent human trafficking and forced labour;
3. efficiently inform and respond to employment policies and labour market needs, including for recovery and resilience.

The ILO Forced Labour Protocol (P029) was also adopted in 2014. The Protocol recognizes the importance of "protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process in order to prevent forced labour". The accompanying Recommendation (No. 203) prescribes specific remedial measures that include (a) ensuring that recruitment fees or costs are not charged directly or indirectly to workers, (b) requiring transparent and written contracts that clearly explain terms of employment and conditions of work, in a language understood by the worker, (c) establishing adequate and accessible complaint mechanisms, (d) imposing adequate penalties, (e) implementing mechanisms for the effective regulation and monitoring of (recruitment) services, and (f) providing support to businesses to identify, prevent and mitigate the risks of forced labour in their operations or in products, services or operations to which they may be directly linked.

A centerpiece of the FRI was the development and adoption, in 2016, of the ILO General Principles and Operational Guidelines for Fair Recruitment (GPOG), complemented by the definition of recruitment fees and costs (adopted in 2018). These two documents together constitute the most up-to-date, internationally agreed guidance in the area of recruitment. They are grounded on international labour standards, were adopted through a process of tripartite social dialogue, and are informed by extensive research. Their importance was underscored in the UN global compact for safe, orderly and regular migration (GCM), which was adopted in 2019, and they have been referenced since in a range of migration policies across the world.

The ILO has developed this series of Frequently Asked Questions (FAQs) on common fair recruitment challenges to respond to questions commonly received by constituents. The FAQs are designed to provide user-friendly answers to technical questions related to the implementation of fair recruitment in practice.

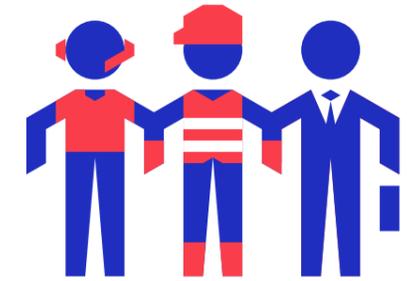
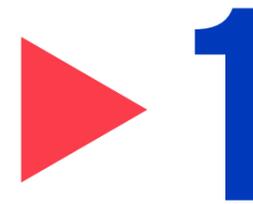




### Philippines

- Decent Work for Domestic Workers in the Philippines.

Credit : © J. Aliling / ILO



## ► What can be considered fair and unfair recruitment?

Fair recruitment can be understood to mean “Recruitment carried out within the law, in line with international labour standards, and with respect for human rights, without discrimination and protecting workers from abusive situations”. Fair recruitment applies to recruitment both within and across national borders.

The ILO General Principles and Operational Guidelines for Fair Recruitment (GPOG) lays out the international community’s **shared understanding and vision of how recruitment** should work in practice. The GPOG and Definition support states and social partners to realize fair recruitment through development, implementation and enforcement of laws and policies.

But how can an understanding of unfair recruitment support efforts towards this vision as well? A clearer understanding of unfair practices supports states and constituents in developing policies and frameworks to ensure fair recruitment.

The various **forms of unfairness in recruitment** are not independent of each other and may overlap. A specific recruitment process may involve more than one form of unfairness.

- Deceptive recruitment refers to recruitment in which the worker is deliberately caused to believe something that is not true. For example, the worker may be deceived about the nature of the job, the location or the employer, conditions of employment, among others.

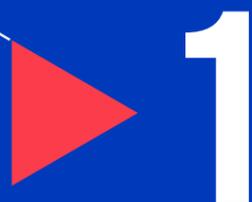
- Coercive recruitment refers to recruitment imposed on the worker under the threat of penalty and to which the worker does not agree voluntarily. For example, threats or infliction of violence, debt bondage, threats of denunciation to authorities, among others.

- Abusive recruitment refers to recruitment in which the position of vulnerability of the worker is abused. This vulnerability may be related to family situation, irregular status, lack of education (incl. language), lack of information, among others.

- Discriminatory recruitment refers to recruitment in which equality of opportunity and treatment in recruitment is nullified or impaired – it covers both direct and indirect discrimination.

- Corrupt recruitment refers to recruitment in which the recruiter or a third party influencing the recruitment acts dishonestly in return for money or personal gain.

- Fake recruitment refers to recruitment in which the private employment agency (PEA) or the advertised job do not exist, or in which the job exists but what is claimed to be the recruitment process is actually unrelated to the job.



► **Worker fee-charging** during recruitment refers to recruitment in which recruitment fees and related costs are borne by the worker.<sup>1</sup>

Unfairness in recruitment is often associated with exacerbated vulnerability and decent work deficits in employment.

### Further reading

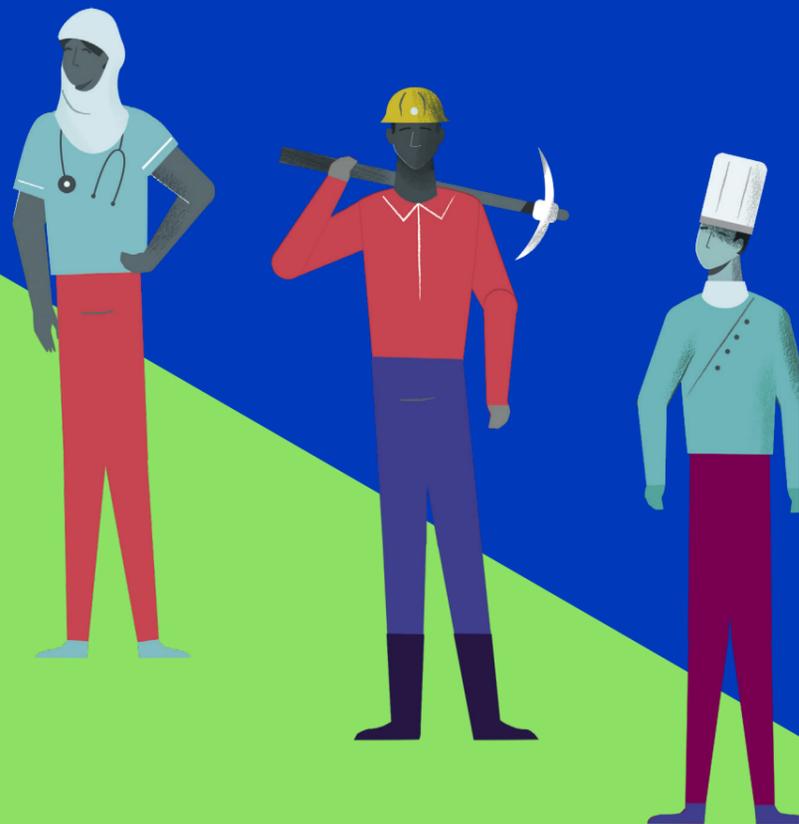
ILO (2021) [Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa](#)

ILO/Igor Bosc (2021) [The Work in Freedom Handbook A critical glossary of terms relating to freedom and unfreedom in the world of work](#)

ILO (2012) [ILO indicators of Forced Labour](#)

ILO (2009) [Operational indicators of trafficking in human beings](#)

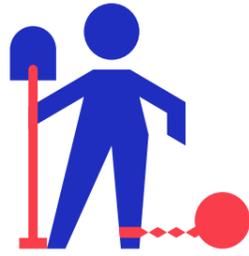
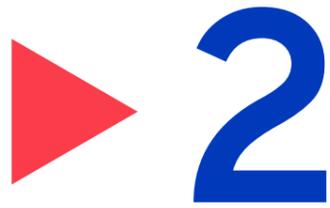
<sup>1</sup> The definitions of deceptive, coercive and abusive recruitment were first articulated in ILO (2009) "Operational indicators of trafficking in human beings: Results from a Delphi survey" implemented by the ILO and the European Commission, and updated and expanded in ILO (2021) "Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa".



Philippines

► Painting a wall in Muntinlupa City.

Credit: © Bobot Go / ILO



## ► How can unfair recruitment lead to labour exploitation or forced labour?

**Labour exploitation exists along a spectrum** – situations of poor working conditions may exist at one end of the spectrum, and grow in severity to exploitative practices that may amount to criminal acts of forced labour or human trafficking.

**Forced labour** is defined by the ILO Forced Labour Convention, 1930 (No. 29). It covers a wide variety of coercive labour practices where work is extracted from individuals under the threat of penalty. Those subject to forced labour are not free to leave their work and do not offer their labour voluntarily. The ILO has developed [indicators of forced labour](#) which may be used to ascertain when a situation amounts to forced labour.

ILO research indicates that **24.9 million people are in forced labour**.

Forced labour can take many different forms. Victims are often tricked into jobs where they are paid little or nothing and then cannot leave because they have been manipulated into debt or had their identity documents confiscated. Poverty, illiteracy, discrimination and migration are some of the factors that make workers more vulnerable to forced labour.

**Recruitment** is usually the first act in establishing an employment relationship, and the experiences of the worker during the recruitment stage can establish their working conditions and migration outcomes. **Many elements that make workers vulnerable to exploitation occur in the recruitment phase.** For example, deception about the nature and conditions of the work, payment of recruitment fees and related costs which can result in debt bondage, and confiscation of passports and identity documents. Many of these unfair practices correspond to the [ILO indicators of forced labour](#).

**Debt bondage** exists when a person is being forced to work to repay a debt and not being able to leave, or being forced to work and not being able to leave because of a debt. The debts may be manipulated by employers or recruiting agents. Just over half the men and women in forced labour exploitation worldwide are held in debt bondage. The figure rises to more than 70 per cent of the total for adults forced to work in agriculture, domestic work, or manufacturing.

Establishing fair recruitment practices is a critical component for elimination of labour exploitation and forced labour.

### Learn more

[Watch the video “lured by a job, trapped in forced labour”](#)

[Visit the ILO infostory “deceptive recruitment and coercion”](#)

[See “Questions and answers on forced labour”](#)

[ILO \(2017\) Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#)

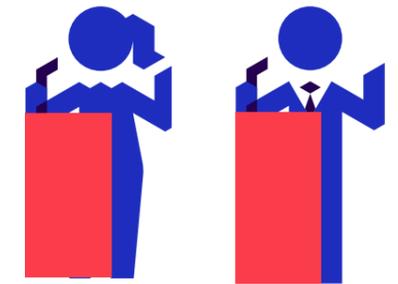
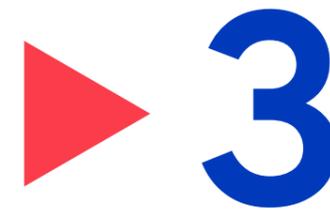




#### Saudi Arabia

- ▶ Foreign laborers work on a construction site.

Credit : © ILO/Apex Image



### ▶ How can governments eliminate the paying of recruitment fees and related costs by workers?

International standards are clear: **workers (including jobseekers) shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment** – as per Article 7 of the Private Employment Agencies Convention, 1997 (No. 181). Prospective employers, public or private, or their intermediaries or subagents, and not the workers, should bear the cost of recruitment. Governments should develop legislation and regulations that eliminate fee-paying by workers and ensure that policies are effectively monitored and enforced. A wide range of governments are already moving in this direction.

The ILO has conducted a **global comparative review** of how recruitment fees and related costs are prohibited or regulated in legislation or policies, which found that 59 countries explicitly prohibit the charging of recruitment fees to workers. Governments can view these policies and legislations [in this ILO database](#). A Tripartite Meeting of Experts (including representatives from government, workers' organizations and employers' organizations) negotiated the first **internationally agreed definition of recruitment fees and costs**, subsequently adopted by the ILO's Governing Body. These three tools provide a comprehensive basis for governments to develop and implement legislation.

**In addition to legislation, monitoring and enforcement, governments can work to create an "enabling environment"**. Trade unions, the private sector (including employers' organizations, private employment agencies (PEAs) and their associations, buyers, brands) and other stakeholders can work together to build momentum towards elimination of worker-paid fees. Trade unions can inform and empower workers to understand their rights, to report recruitment abuses, and to provide support in legal cases leading to repayment of recruitment fees. Governments can also engage in public information and advocacy campaigns and help to change the culture and expectations of fee-paying by workers.

**If governments choose to regulate** worker-paid recruitment fees and costs as an incremental step prior to moving toward prohibition, they must **ensure that this decision is taken in consultation with employers' and workers' organizations, that costs are in the interest of workers and made clear and transparent** to all parties, and that documentation such as receipts is provided (as per Article 7(2) of C181).

Governments and all stakeholders should also work to **reduce the overall costs of migration**, of which recruitment constitutes a considerable proportion.



**ILO and the World Bank are collaborating on implementation of SDG Target Indicator 10.7.1** on “Recruitment cost borne by employee as a proportion of monthly income earned in country of destination”. The ILO and the World Bank have developed a methodology for measuring the indicator. [Guidelines](#) for measuring the indicator have been developed, as have an [operations manual](#) (which includes the model questionnaire). Together, the ILO and World Bank have been supporting countries to pilot the data collection, which has been undertaken in a number of countries and labour migration corridors.

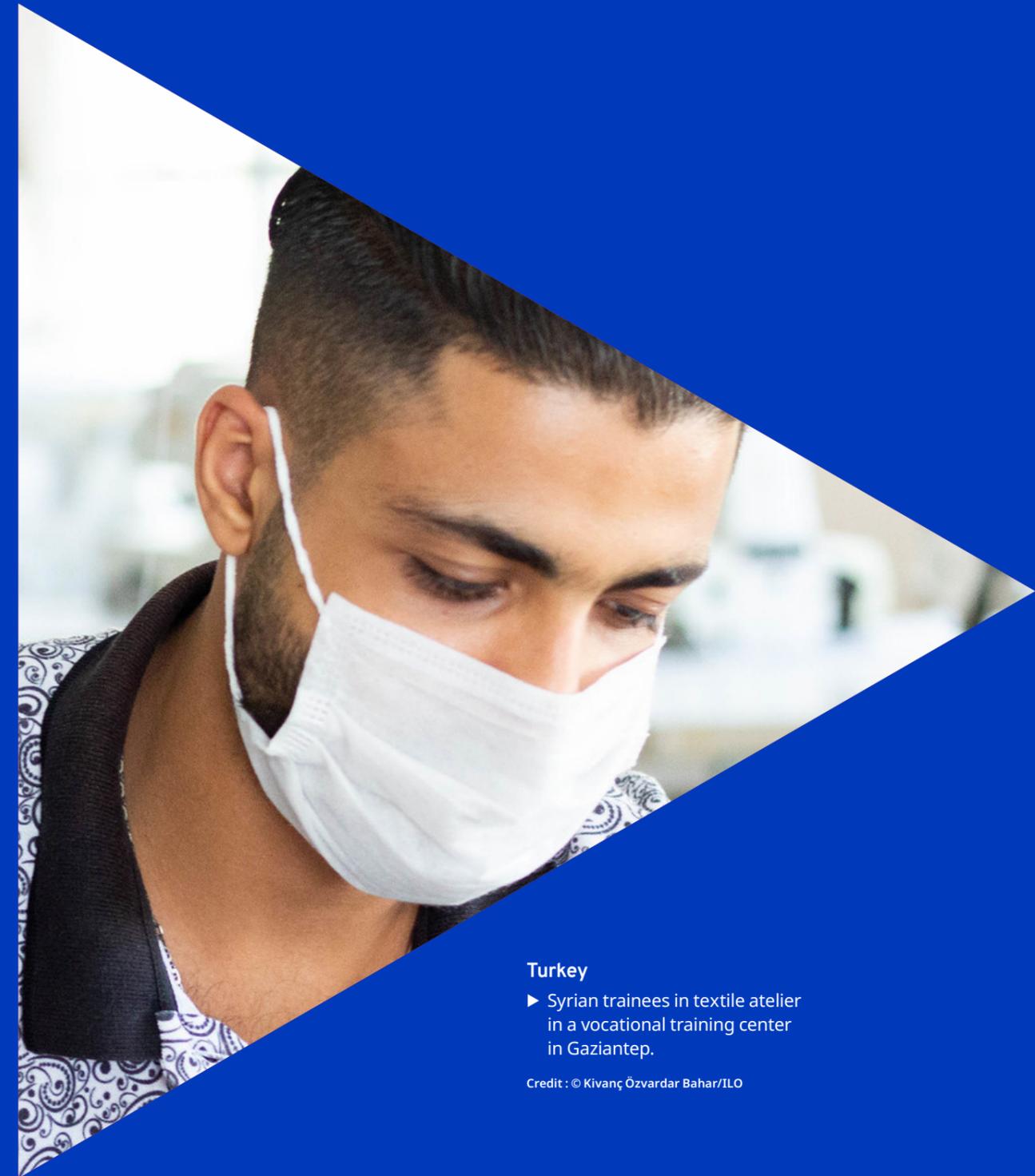
### Learn more

ILO (2020) [Global Study on Recruitment Fees and Related Costs](#)

[ILO Global database: Definition of fees and related costs in national laws and policies](#)

[See examples of how governments, private sector and multi-stakeholder initiatives have developed legislation and policies on recruitment fees and costs](#)

[See good practice on zero recruitment fee policy for migrant workers in Jordan](#)

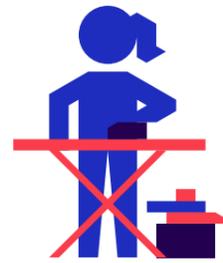
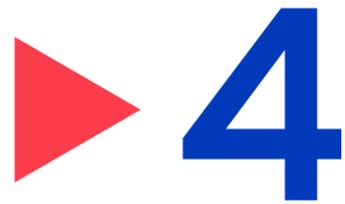


#### Turkey

► Syrian trainees in textile atelier in a vocational training center in Gaziantep.

Credit : © Kivanç Özvardar Bahar/ILO





## ► What can companies do in the context where payment of recruitment fees and related costs by the worker are legal in the country of origin/destination?

International labour standards are clear: **workers (including jobseekers) shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.** This standard is articulated in ILO C181. Prospective employers, public or private, or their intermediaries, and not the workers, should bear the cost of recruitment.

**However many national legislatures have chosen to regulate, rather than prohibit worker payment of recruitment fees and related costs.** Recruitment fees and related costs may be regulated through a general statement, a capping of fees, or a detailed list of what should not be charged to workers and what can be charged to employers, workers and recruiters.<sup>1</sup> If asked to pay, workers need to understand what they are being charged for in detail, and why a fee is being charged.

The ILO definition of recruitment fees and related costs recognizes that governments have the **flexibility to make exceptions to the principle the workers must not pay recruitment fees and related costs.** However, it notes that these exceptions must be: in the interest of the worker concerned; limited to certain categories of workers or types of services; and that the related costs must be disclosed to the worker before the job is accepted. All three conditions should be met. The

ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has considered that these exemptions, as stated in art. 7(2) of Convention No 181, need to be subject to:

- **Consultation.** Prior to the authorization of the exceptions to charge fees or costs, the most representative organizations of employers and workers have to be consulted. This ensures that the social partners can express their views and share their experiences and concerns regarding the use of this provision.
- **Transparency.** Member States are required to create an appropriate legal framework indicating that the authorization is limited to certain categories of workers, or specific types of services, and that it constitutes an explicit exception. Additionally, it is necessary for the fees and costs to be disclosed. This not only includes the actual service fees, but also other expenses related to recruitment, such as visa fees.
- **Reporting.** Member States that have ratified Convention No. 181, have the reporting obligation to provide to the Office with information and give the reasons for making use of the exceptions.

The above suggests that whether the “costs are in the interest of the worker” must be determined after consultation with representative workers’ and employers’ organizations, and that there should be a legal framework clearly defining what these exceptionally charged costs should be and to whom they apply. The reasons for making use of these exceptions should be communicated. However, while **companies** must comply with the national laws in place in the country of operation, they may decide **to institute a zero-fee policy for workers despite national legislation that legalizes payment of recruitment fees and related costs.** Companies can refer to the [GPOG and Definition](#) when developing their policy. Companies should clarify that the policy applies to their operations and supply chain and use due diligence processes to apply and continually improve their policy.

If a company identifies worker payment of recruitment fees and related costs in violation of their company policy, they must institute

processes for **remedy** for example through reimbursement of fees and costs paid by workers, engaging with recruitment agencies to prevent a reoccurrence, or terminating the engagement with the recruitment agency.

**To drive industry-wide reform and create a level-playing field,** companies can actively engage in dialogue and advocacy within their industry (for example through participation in industry associations or development of codes of conduct), or within their countries of operation, through engagement in social dialogue and relevant networks and policy dialogues. Within these forums they can advocate for the benefits of non-payment of fees by workers, and advocate for ratification of [the Private Employment Agencies Convention, 1997 \(No. 181\)](#) and ensuing changes in national legislation to bring it in line with international labour standards and the [GPOG and Definition](#).

The **Leadership Group for Responsible Recruitment** is a collaboration between leading companies and expert organizations to drive positive change in the way migrant workers are recruited. The Leadership Group operates as a company-led collective advocacy platform harnessing the leverage of major international brands to promote responsible recruitment practices amongst business, the recruitment industry, and government. All corporate members of the Leadership Group are publicly committed to the Employer Pays Principle and its implementation throughout their supply chains. It was developed as an initiative of the Institute for Human Rights and Business (IHRB) and launched in 2016. [Learn more.](#)

### Learn more

[See the ILO Helpdesk for Business on International Labour Standards](#)

[See the ILO Global Business Network on Forced Labour’s \(GBNFL\) ‘Due diligence toolkit for fair recruitment’](#)

[Read the ILO Training Toolkit on Establishing Fair Recruitment Processes: Module 5: Business and private sector engagement for promoting fair recruitment](#)

[Promising practices for fair recruitment: Commitment to fair recruitment and due diligence in the sugar and palm oil industry of Guatemala](#)

[Promoting fair recruitment and employment: A guidance tool for hotels in Qatar](#)

[ILO-IOE Guidance Tool for Construction Companies in the Middle East](#)

AHIFORES (2020) [Caja de Herramientas para implementar la contratación equitativa en el sector agrícola en México](#)

<sup>1</sup> ILO (2020) Global Study on Recruitment Fees and Related Costs

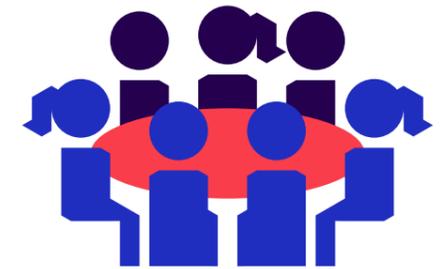


**Jordan**

► Egyptian workers make up a large part of the construction work force in Amman.

Credit : © Jared J. Kohler/ILO

► 5



► The ILO definition of recruitment fees and related costs covers the category of “administrative expenses” – what does it imply in practice?

The ILO Definition of recruitment fees and related costs provides the most comprehensive and up to date internationally agreed definition on what these fees and costs constitute. In the category of “related costs”, the ILO Definition details the following:

**“Administrative costs:** application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers’ employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.”

The Definition is also clear about situations in which a cost can be considered part of a recruitment process, that is: **“When initiated by an employer, labour recruiter or an agent**

**acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process...”**

The costs include: medical costs, insurance costs, costs for skills and qualification tests, costs for training and orientation, equipment costs, travel and lodging costs and administrative costs. See the [GPOG and Definition](#) for a detailed explanation.

However [ILO’s global review](#) found that “administrative costs” were a category of costs that were among those least likely to be articulated in national legislation. The broad nature of the term “administrative costs” means that a large number of costed items could be added here – with potential for large expense for the worker. It is essential that States clearly define what constitutes administrative costs within their national legislation – and draw on the [GPOG and Definition](#).

**Learn more**

Forthcoming FAIR-II report on intermediaries and costs to Nepali migrant workers

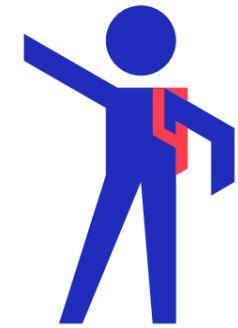
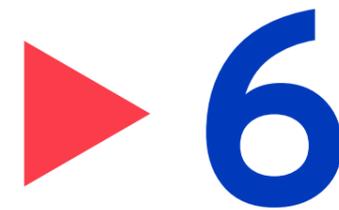
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Jordan

► Jordan garment industry.

Credit : © Guillaume Megevand/ILO



## ► COVID-19 has made recruitment of migrant workers more logistically complex and expensive. Who is responsible for paying the additional costs?

New costs including those related to testing, personal protective equipment (PPE), vaccination, vaccination certification and quarantine have emerged with the onset of the COVID-19 pandemic. **ILO research (see “learn more” below) has found a lack of certainty over which party in the recruitment chain would be responsible for paying any additional costs.**

However ILO guidance on this matter is clear: medical costs (including tests or vaccinations), equipment costs (including safety gear), and travel and lodging costs (within or across national borders in the recruitment process, including for return or repatriation), are considered related to the recruitment process, “when initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process”.

**Through a process of social dialogue, countries of origin and destination should identify the responsible party to cover emerging costs.** Thereafter, governments must put in place

guidelines and protocols to ensure that COVID-19 related recruitment costs are not passed onto migrant workers – these guidelines must be communicated to all parties.

Where it has been discovered that workers have paid recruitment-related fees and related costs, there must be a grievance mechanism in place for **remedy.**

A good practice to note is the achievements of the Mexico recruitment agency CIERTO during the COVID-19 pandemic. CIERTO adapted practices to ensure safe and fair recruitment – including by ensuring that recruited workers had health coverage in the country of destination and origin (at the time of return), paid sick leave days, and free COVID-19 testing of all workers if one worker presented symptoms. To ensure protection by all partners throughout the recruitment process, CIETRO established commissions to overview occupational safety and health (OSH) and fair recruitment practices and set up an assistance hotline. For more information, [see here.](#)

### Learn more

ILO (2021) [Locked down and in limbo: The global impact of COVID-19 on migrant worker rights and recruitment](#)

ILO (2020) [Ensuring fair recruitment during the COVID-19 pandemic](#)



- 7. What is the role of the labour inspectorate in enforcing fair recruitment? How can the labour inspectorate contribute to support actions towards fair recruitment? What good practices exist?



## ► What is the role of the labour inspectorate in enforcing fair recruitment? How can the labour inspectorate contribute to support actions towards fair recruitment? What good practices exist?

**There are two critical elements for ensuring fair recruitment: Regulation and monitoring and enforcement.** It is within the monitoring and enforcement component that labour inspectorates and related administrative authorities have a critical role to play.

Their role is clearly defined in ILS, including the [Private Employment Agencies Convention, 1997 \(No. 181\) \(C181\)](#), Article 14 which states that “Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.”

The [GPOG](#) General Principle 5 states that “Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. **The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted.**” GPOG Operational Guideline 5.1 states that “... Governments should work to **ensure that there is an effective and sufficiently resourced labour inspectorate, and that it is empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises**, and to monitor and evaluate the operations of all labour recruiters.”

**Labour inspectorates and related administrative authorities can play a critical enforcement**

**role**, through inspection of private recruitment and placement agencies against their licensing and registration requirements, detection of abusive recruitment practices and placement agencies, processing of complaints and application of sanctions in both countries of origin and destination of migrant workers.

However labour inspectors around the world face a number of challenges in realizing this important role. They can be summarized as: **The legislative gap**, a lack of clear and detailed mandate for labour inspectors to inspect private recruitment agencies. The legislative gap exists at the national level and as a jurisdictional matter; **the knowledge gap**, a lack of knowledge and understanding of the extent of exploitation during recruitment, and a lack of reliable data; and **the capacity gap**, a lack of specialised tools and training programmes on inspection of recruitment.

In response, ILO research<sup>1</sup> highlights areas where labour inspectors can take a leading role: licensing, registration and monitoring of recruitment practices in countries of origin and destination, and inspection of workplaces in countries of destination, with a focus on how the worker was recruited. The ILO has also documented five case studies of how labour inspectors can take action on fair recruitment, see [here](#).

<sup>1</sup> ILO (2022) Labour inspection and monitoring of recruitment of migrant workers (forthcoming)



### Asia-Pacific

- Filipino nurses are ready to face any challenges.

Credit : © ILO/J. Reyes

7

## Learn more

ILO (2022) [Labour inspection and monitoring of recruitment of migrant workers](#)

ILO (2021) [Promising practices for fair recruitment: Tunisia – Formation of a new body of inspectors for the recruitment industry](#)

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### ► New guidance on labour inspection

In March 2022 the ILO Governing Body approved a [set of guidelines on general principles of labour inspection](#). The guidelines relate to the organization, structure, competences and operation of labour inspectorates and are an important milestone for the improvement of labour inspections. This in turn will have a positive impact on the application of International Labour Standards. They complement and aim to assist ILO Member States implement the provisions of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), with the end goal of progressively advancing respect for labour rights in the context of the contemporary world of work. The guidelines were developed following discussions at a [tripartite meeting of experts](#) held in December 2021.



Jordan

► Jordan garment industry.

Credit : © Guillaume Megevand/ILO



## ► Recruitment agencies in my country advertise few jobs that are of interest to women or promote their equal opportunities. How can we address this?

Many economies, societies and cultures hold gender stereotypes and traditional assumptions regarding women's aspirations and capabilities – particularly related to employment and the world of work, and jobs “suitable” to women.

Equality of opportunity and treatment in access to employment is critical. The [Private Employment Agencies Convention, 1997 \(No. 181\) \(C181\)](#) recognizes this and states that “**In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of...sex...**” (Article 5)

**Governments have a duty to ensure non-discrimination throughout the recruitment cycle**, and should go beyond passive approaches and be proactive and gender-responsive to actively ensure equal labour migration and recruitment opportunities for men and women.

Ensuring equality of opportunity and treatment in access to employment in international recruitment may start with the **bilateral labour migration agreement (BLA)** process. Governments in

countries of origin can take a gender-responsive approach when concluding BLAs with countries of destination for example by ensuring that the jobs on offer will be equally available to men and women. If research and data identifies challenges to this, they should consider diversification of countries of destination, sectors and skill levels, in order to cater to all potential migrant workers. A further and broader consideration would be ensuring equal access for men and women to skills development and recognition.

In addition to ensuring non-discrimination, governments can also take proactive measures to promote jobs for women through a multifaceted approach that addresses the job offers themselves (avoiding visuals with stereotypes, ensuring the use of neutral language in job offers or widening the offers to men and women); and regarding the modes of dissemination (pro-actively disseminating job offers to women, setting up targeted campaigns for women, among others).

**Governments must also ensure equality and non-discrimination in laws and regulations**

**Elimination of discrimination in respect of employment and occupation** is a fundamental principle and right at work and articulated further in the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

### ► Understanding gender-responsiveness.

Gender-responsive actions are those that put in place measures that deliberately consider the differentiated needs of women and men – in this context – in relation to migration and access to employment. This may include differentiated action targeting men and women to address gaps in essential areas such as access to reliable information, socio-economic assets, decision making power, support networks and services etc.

**for departing migrants.** Many countries have imposed protectionist bans or restrictions on migration on the basis of gender, age, marital or maternity status.<sup>1</sup> These bans and restrictions have been found to distort labour market functioning, push women into irregular labour migration channels, and create barriers to support and assistance for women who do migrate despite the ban. A number of international legal instruments explicitly discourage restrictions on women's labour migration.<sup>2</sup> CEDAW General recommendation No. 26 on women migrant workers, 2008, includes specific reference to recruitment and calls for improving recruitment practices, development of awareness and education programmes and delivery of pre-departure information and training, among others.

The ILO 2016 General Survey concerning the migrant worker instruments also made comments on this matter (Paragraph 543):

“While aware that these measures to address structural abuse against women migrants are well intended, the Committee considers that imposing a ban on women migrating for employment runs counter to the principle of equality and restricts

women's rights instead of protecting them. The Committee considers that measures such as investing in decent work opportunities at home and strengthening the protection of the rights of women migrants, including through international cooperation, may allow women who choose to migrate to do so safely and in an informed manner.”

**Governments should also work to sensitize and train actors involved in recruitment** – including PEAs, training centres, trade unions and service providers on – non-discrimination and equality of opportunity when advertising and recruiting workers.

**Addressing stereotypes leading to gender inequalities in the labour market of both countries of origin and destination is a crucial step in the context of an overall strategy to promote equal opportunities and fair recruitment for both men and women. Specifically, a further step is to work to challenge societal expectations and attitudes about women's work and about “suitability” of migration for women.**

<sup>1</sup> Maternity protection measures should focus on the needs of expectant and nursing mothers, not target women generally. Maternity protection is required to prevent harm to their or their infants' health, and ensure adequate time to give birth, recover and nurse. Maternity protection also encompasses protection that workers do not lose their job simply because of pregnancy or maternity leave. [The ILO Maternity Protection Convention, 2000 \(No. 183\)](#) provides guidance in this area.

<sup>2</sup> For example, the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) includes a mandate for States to repeal sex-specific bans and discriminatory restrictions on women's migration (CEDAW, General Recommendation 26), as does the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC), 1990 (see Committee on Migrant Workers, General Comment 1 on Migrant Domestic Workers).

## Learn more

ILO (2017) [Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries](#)

ILO (2020) [Female labour migration from Pakistan: A situation analysis](#)

ILO (2020) [Central American migrant women in Mexico: Informality in recruitment and employment](#)

ILO (2016) [Regulating International Labour Recruitment in the Domestic Work Sector: A Review of key issues, challenges and opportunities](#)

ILO (2016) [Gender sensitivity in labour migration agreements and MOUs](#)

[ILO \(2016\) Promoting fair migration: General Survey concerning the migrant workers instruments](#)

[CEDAW \(2008\) General recommendation No. 26 on women migrant workers](#)

[International Covenant on Civil and Political Rights \(CCPR\) General Comment No. 27: Article 12 \(Freedom of Movement\), 1999](#), refers to the principle of proportionality in reference to 'protection' and human rights and freedoms. "Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected... The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law."



### Thailand

► Sai Sai, a migrant worker from Shan State, Myanmar working in Chiang Mai.

Credit : © ILO/Chaline Thirasupa

# ► 9



## ► What are intermediaries and subagents in the context of fair recruitment? Are subagents covered by ILO instruments?

**Intermediaries and subagents are actors that are sub-contracted by or work in partnership with the lead or principal recruitment agency.** Intermediaries or subagents are often trusted community members, family members and/or returned migrant workers and often the first contact with potential migrant workers in the local communities of origin.

**The ILO GPOG and Definition cover all forms of recruitment,** “whether directly by employers or through intermediaries.” The GPOG defines a labour recruiter as both public employment services (PES), private employment agencies (PEAs) and all other intermediaries or subagents that offer labour recruitment and placement services.

**Depending on the national legislative context, they may operate legally or illegally, or in a grey space.**

**When appropriately regulated, in certain contexts, intermediaries can provide vital information and services to workers.** In particular, they may support the linking of workers with PES or PEAs, and help workers to navigate the

bureaucracy within the recruitment process. This may be particularly pertinent in remote communities and communities of low literacy and access to digital or administrative services.

**A key challenge is transparency** in the process – with multiple layers of intermediaries and a lack of transparency or accountability, there are increased opportunities for exploitation and abuse – including charging of recruitment fees and related costs to workers. [ILO research](#) has found that a lack of decent work opportunities increases the need for layers of labour intermediation.

Governments should clarify the role of intermediaries or subagents in legislation and ensure adequate monitoring and enforcement. Bans on intermediaries may be difficult to enforce – and rather drive the practice underground. If migrant workers are relying on intermediaries because the recruitment process is complex or centralized in capital cities or online, governments should work to simplify processes and democratize access to information and services.

### Learn more

ILO (2021) [The Work in Freedom Handbook: A critical glossary of terms relating to freedom and unfreedom in the world of work](#)

ILO (2020) [Recruitment agency business practices and role of intermediaries in the foreign employment industry in Pakistan](#)

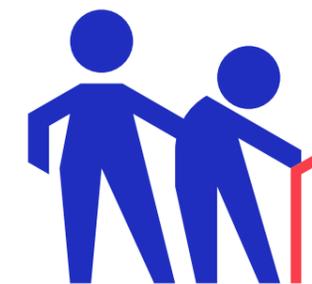
ILO (2020) [Improving recruitment agency business practices in Sri Lanka](#)

[Migrant Forum in Asia \(2018\) Documentaries on the role of subagents in Bangladesh, India and Nepal. Available.](#)



- 10. How do fair recruitment principles apply to temporary employment agencies? What are good practices to ensure transparency and accountability when using the services of temporary employment agencies?

► 10



► **How do fair recruitment principles apply to temporary employment agencies? What are good practices to ensure transparency and accountability when using the services of temporary employment agencies?**

Temporary agency employment refers to when a worker is paid by one company – the temporary work agency– but performs work for another company – the “user enterprise”. There is usually no employment relationship between the worker and the “user enterprise”. **Temporary agency work and other “non standard forms of work” are on the rise – particularly amongst women, young people and migrants.** The use of temporary employment agencies is prevalent in certain sectors and contexts.

**While temporary agency work arrangements can provide advantages for workers and enterprises** – for example by increasing access to the labour market and providing flexibility – **they may also be associated with greater insecurities for workers** and longer-term productivity losses for enterprises. Well-designed and regulated systems are needed to plug regulatory gaps, strengthen collective bargaining, strengthen social protection and institute policies that support job creation and accommodate workers’ needs.<sup>1</sup>

The ILO GPOG provides guidance on ensuring fair recruitment in relation to temporary employment agencies. Operational Guideline 25.1 states “The user enterprise and the temporary employment agency should **determine, in accordance with**

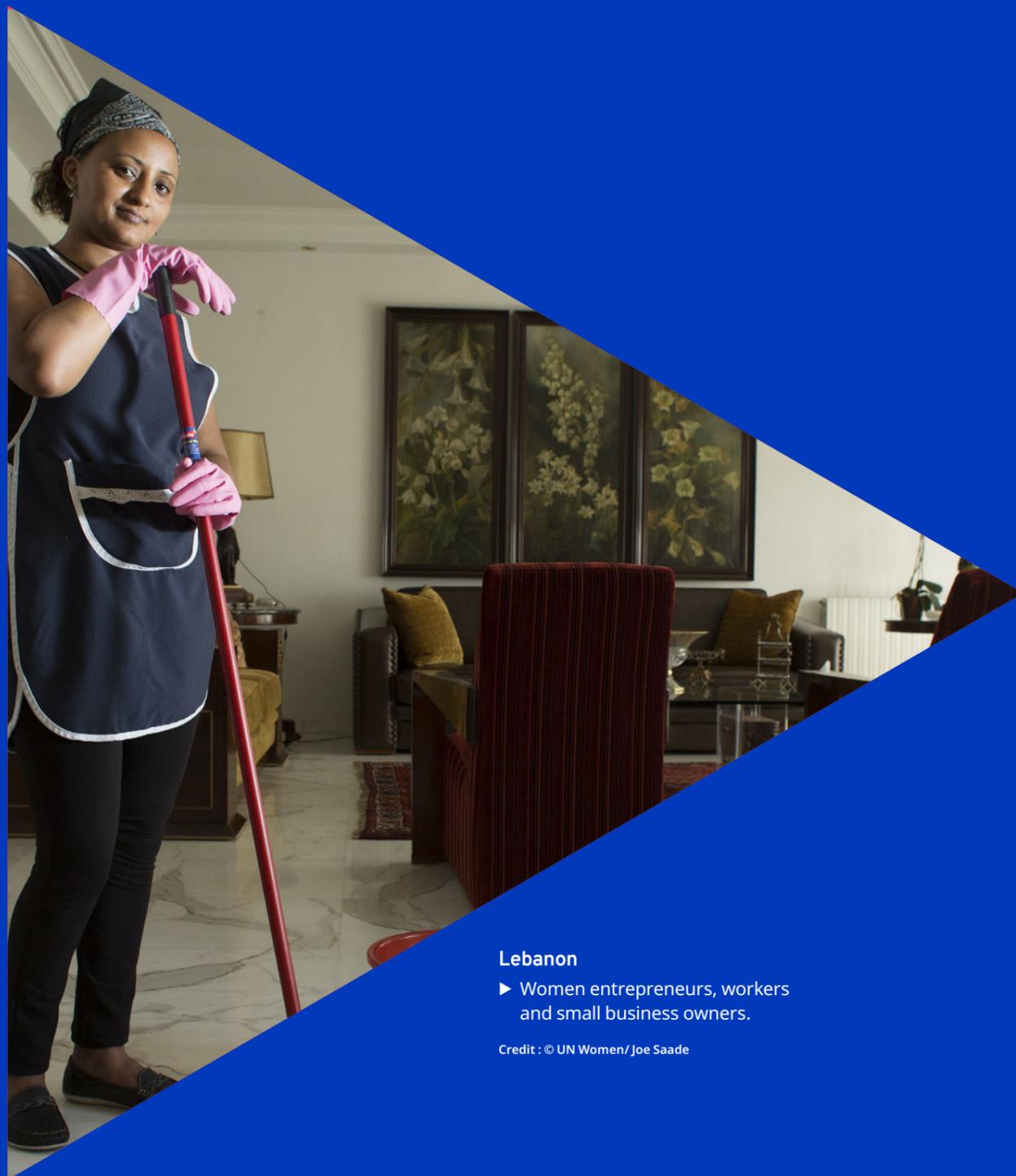
**the law, which of them is responsible for the various aspects of the employment relationship,** and ensure that the workers concerned are aware of those respective responsibilities. In all cases, either the user enterprise or the temporary employment agency should exercise those responsibilities.”

Furthermore, C181, Article 12 states that ratifying states must “...determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises...”

Given the specific challenges of ensuring fair recruitment and decent work for workers employed by temporary work agencies, several actors have sought to introduce specific legislation to regulate their practices:

- **The European Union Directive on Temporary Agency Work (2008/104/EC)** aims to guarantee a minimum level of protection to temporary workers by recognizing temporary work agencies as employers. The Directive also prohibits temporary work agencies from charging recruitment fees to workers.

<sup>1</sup> ILO (2016) Non-standard employment around the world: Understanding challenges, shaping prospects



**Lebanon**

- Women entrepreneurs, workers and small business owners.

Credit : © UN Women/ Joe Saade

► 10

► In the United Kingdom, the **Gangmasters (Licensing) Act 2004** created a compulsory licensing system for labour providers and employment agencies in specified sectors – including agriculture, horticulture, shellfish gathering and any associated processing and packaging. The Act also instituted the Gangmasters and Licensing Abuse Authority (GLAA) which is tasked with issuing licences, ensuring compliance through inspections, and investigating violations under the Act. Since 2017, the GLAA has extended investigative powers across the wider labour market aimed at protecting (migrant) workers from exploitation.

► The World Employment Confederation has adopted a **WEC Code of Conduct**. The Code contains the principles that ethical, quality and professional private employment services should deploy in the provision of their services. The principles respect for laws, respect for free-of-charge provision of services to job seekers, respect for transparency, health and safety, and the principle of non-discrimination, and respect for access to remedy, among others. WEC members are committed to adhere to the Code, and to establishing a Code on the national level, in line with the global WEC Code. Read the Code [here](#).

### Learn more

ILO (2022) Labour inspection and monitoring of recruitment of migrant workers: Case study: Gangmasters and Labour Abuse Authority (GLAA), UK, elaborated in: ILO (2022) [Labour inspection and monitoring of recruitment of migrant workers](#)

ILO InfoStory: [The rising tide of non-standard forms of employment](#)



# ► 11



## ► How do fair recruitment principles apply to the return phase of the migration cycle? What are the responsibilities of the relevant parties?

For the majority of migrant workers worldwide – in particular migrant workers on temporary employment contracts – return home is an inevitable part of the migration cycle. The scope of the concept of fair recruitment covers the **full recruitment and migration cycle**, including for migrant workers, return to the country of origin. The ILO Definition is clear that return and repatriation travel and lodging costs are recruitment costs, and therefore are not to be paid by the worker.

**However, there is a historical trend for responsible stakeholders to focus on the earlier stages of the migration cycle, with far less attention paid to return and reintegration.** For example, an ILO review of bilateral labour agreements (BLAs) in 2015 found that a limited number of agreements (only 19 per cent) covered the complete migration cycle (pre-departure, working abroad, and return and re-integration).<sup>1</sup>

Costs of return travel and transport are more commonly addressed. [ILO's global review of recruitment fees and related costs](#) found that “travel and transport, cost of return, as well as country of destination requirements are frequently detailed as costs not to be charged to the workers.” Within national laws and policies, 17 out of 26 policies mentioned return international air travel, while 3 of the 26 policies indicated that workers should pay said costs. One policy mentioned return allowances. Within BLAs and MOUs,

9 out of 18 mentioned returning international air travel.

**How and why do migrant workers return?** Migrant workers may return at the end of their contract period – or may face deportation or other forms of forced return, for example within the context of large-scale job losses due to COVID-19 or other crises with an adverse economic impact, or as a result of deportation campaigns of workers in irregular situations.

In order to facilitate safe and orderly return migration, protect the rights of returning workers, and meet development outcomes, States need to plan and prepare policies for return and reintegration of workers. These policies should take account of the differentiated needs of different groups of migrant women, in particular women among them.

One means to achieve this is through **strengthening of labour migration governance mechanisms (such as bilateral agreements), to ensure the inclusion of clauses that emphasise the rights of migrant workers during the return phase** – including responsibilities of relevant parties. These agreements should contain “force majeure” clauses to ensure that situations such as a pandemic are covered.

Depending on the situation in which the worker is returning (for example, planned return or unplanned return in the case of a political,

<sup>1</sup> ILO (2015) Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review



### Nepal

► Dolakha district, Charikot – earthquake affected area. Ms Pratjma Pouzel.

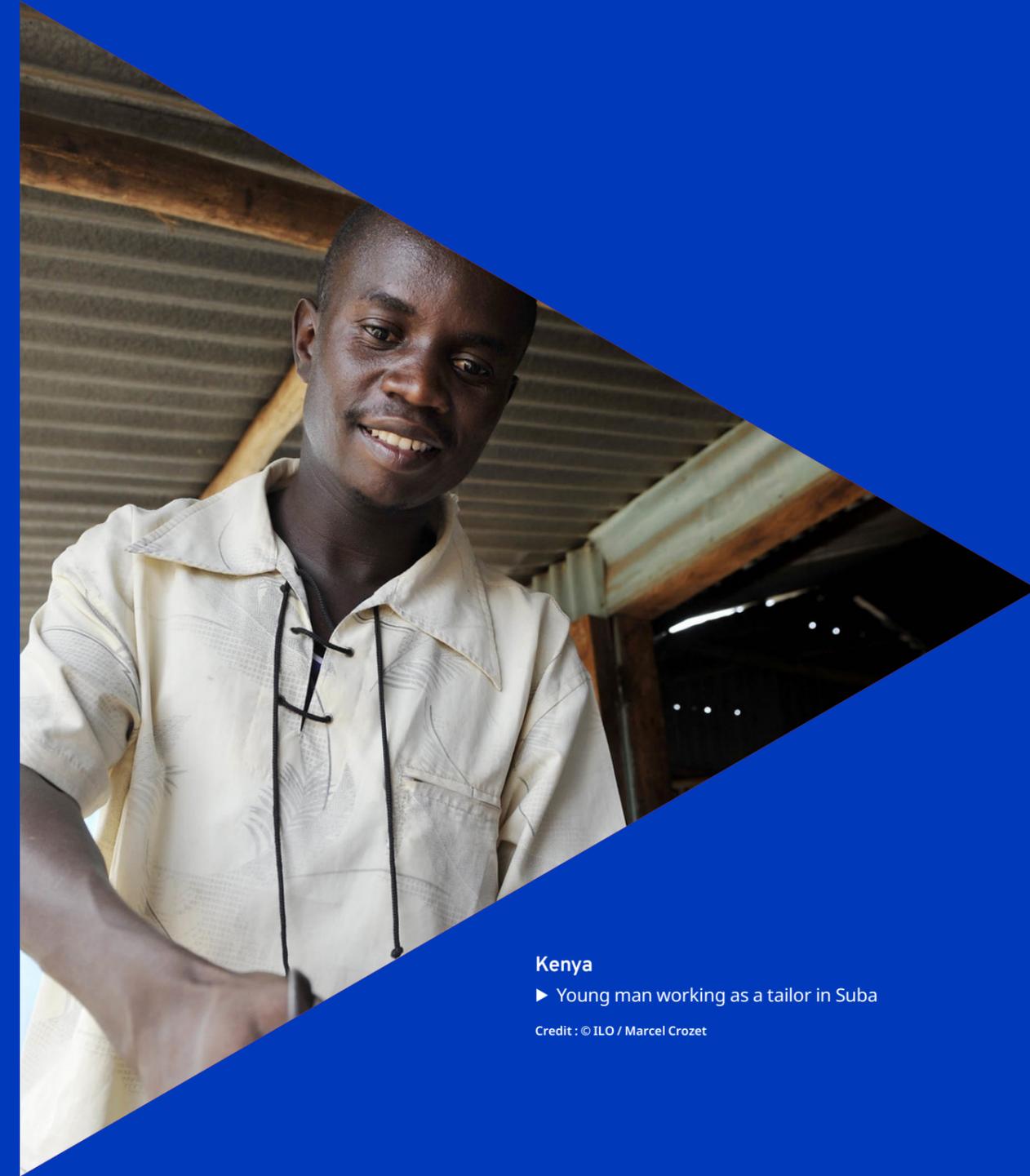
Credit : © Marcel Crozet / (c)M.CROZET

economic or health crisis), they may require a number of **return and reintegration support services** to meet their immediate and more long-term needs. For example: cash grants; recognition of skills and training, and support to reenter the labour market; business development services and training and microfinancing; medical,

psychosocial, legal or financial services (including for example recouping lost wages). These reintegration services must take into account the differentiated circumstances and needs for men and women returning migrant workers.

### Further reading

ILO (2019) [Effective return and reintegration of migrant workers with special focus on ASEAN Member States](#)



Kenya

► Young man working as a tailor in Suba

Credit: © ILO / Marcel Crozet



# ► 12



## ► How do fair recruitment principles apply to displaced persons?

**Fragility, conflict and disaster are the main drivers of forced displacement.** Unresolved conflicts and on-going fragility in many countries, together with a lack of solutions over the years has led to protracted displacement for increasing numbers of refugees and internally displaced persons (IDPs). At the end of 2019, there were 79.5 million people forcibly displaced worldwide.<sup>1</sup>

**Displacement is disruptive to peoples' employment and livelihood prospects.** A range of factors, such as the socio-economic conditions of the host country, legislation and policies around the protection of refugees and the right to work, as well as other practical issues mediate people's capacity to **access the labour market and decent jobs.**

In host countries, migrant and refugee workers are susceptible to decent work deficits, as they

are often concentrated in low-skilled informal employment or under-regulated sectors, characterized by precarious conditions.<sup>2</sup> **The ILO's work in this area in recent years has focused on ensuring access to decent work and livelihoods for both refugees and host communities.**

In response to the global refugee crisis, increasing attention is being paid to **how access to the labour market for refugees can be promoted and facilitated through more targeted recruitment.** GPOG principle 12 and 12.1 focus on this issue. GP 12: "Governments should respect human rights and promote fair recruitment in conflict and crisis situations." And 12.1: "Governments should take steps to ensure that enterprises, agencies and international assistance programmes operating in conflict and crisis situations are not involved with human rights and recruitment abuses."

ILO work in this area is grounded in the [ILO Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market \(2016\)](#), together with the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) – providing a comprehensive rights-based framework for action.

<sup>1</sup> ILO: Labour migration areas of work: Crisis migration. See [here](#).

<sup>2</sup> ILO: Labour migration areas of work: Crisis migration. See [here](#).

As some governments and the private sector are pursuing scaling-up complementary pathways for refugees, including through labour mobility schemes, the integration of the GPOG in such schemes would prove to be an important protection safeguard.

### Further reading

ILO (2016) [Guiding principles on the access of refugees and other forcibly displaced persons to the labour market](#)

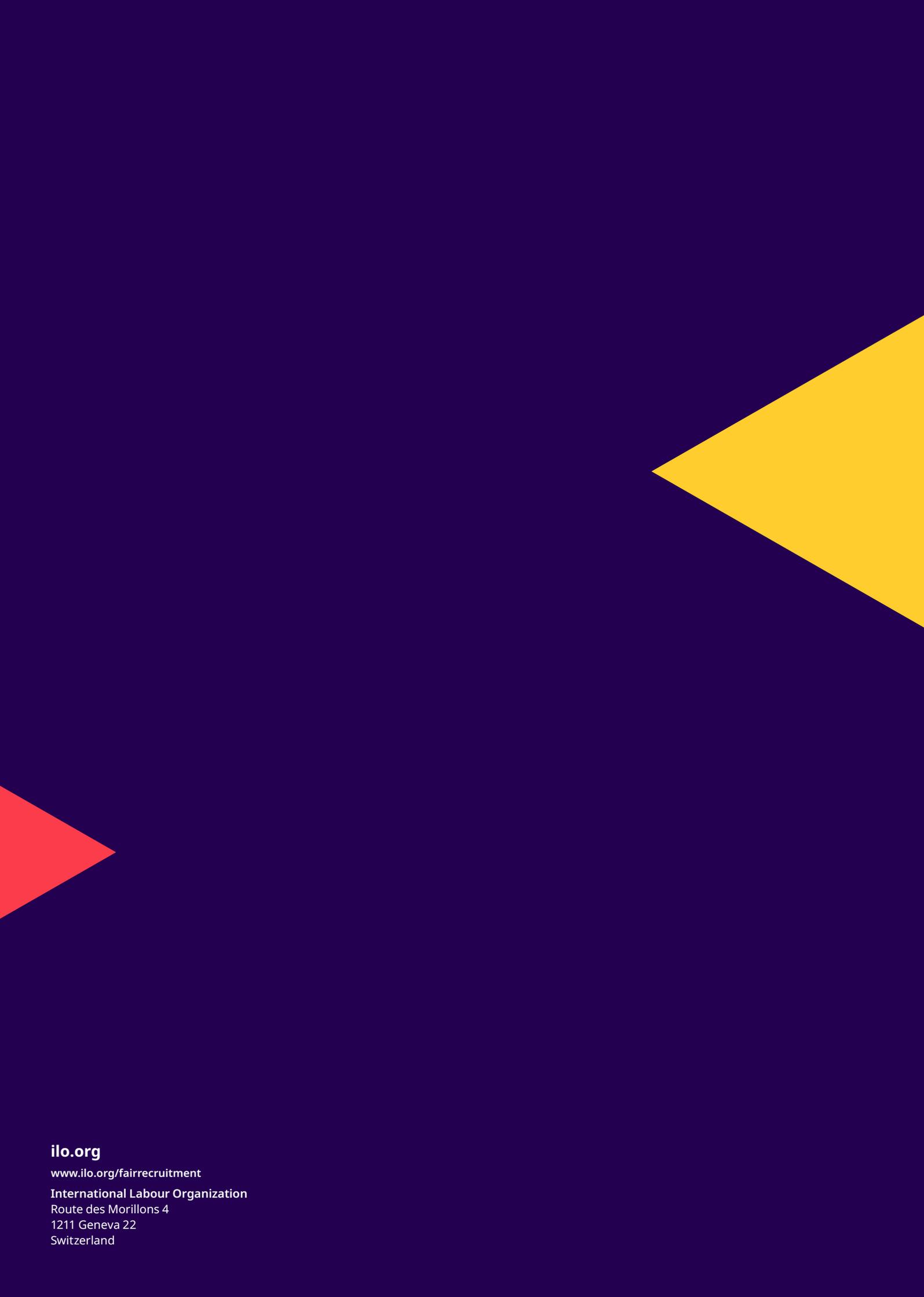
[Brochure: Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#)

ILO (2021) [Employment and decent work in the Humanitarian-Development-Peace Nexus](#)

ILO (2020) [Employment and decent work in refugee and other forced displacement contexts: Compendium of ILO's lessons learned, emerging good practices and policy guidance](#)

## ► Fair Recruitment Initiative





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[www.ilo.org/fairrecruitment](http://www.ilo.org/fairrecruitment)

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