

## A. Responsibilities of governments

This section applies to governments acting in their regulatory capacity.

Governments bear the ultimate responsibility for advancing fair recruitment, both when acting as employers and when they are regulating recruitment and providing job matching and placement services through public employment services. To reduce abuses practised against workers, both nationals and migrants, during recruitment, gaps in laws and regulations should be closed, and their full enforcement pursued.

1. **Governments have an obligation to respect, protect and fulfil internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, in the recruitment process. This includes respect for, and protection of, the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.**
  - 1.1. This obligation applies with respect to all workers recruited into, within or from their territory and/or jurisdiction.
  - 1.2. Governments should consider ratifying and applying the relevant international instruments.
  - 1.3. Governments should respect the rights of workers and of employers to organize and to bargain collectively, including with regard to recruitment. They should create an environment conducive to the extension of collective bargaining coverage across sectors, and allowing workers, including migrant workers, to organize into workers' organizations to protect themselves from exploitation during, or resulting from, the recruitment process.
2. **Governments should protect workers against human rights abuses in the recruitment process by employers, labour recruiters and other enterprises.**
  - 2.1. Governments should protect workers against human rights abuses in the recruitment process within their territory and/or jurisdiction by third parties, including by all kinds of labour recruiters and other enterprises, including employers, private employment agencies providing services consisting of employing workers with a view to making them available to a third party (temporary employment agencies), and other contractual arrangements involving multiple parties. This requires taking appropriate steps to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication, and exercising and mandating due diligence to ensure that human rights are respected.
3. **Governments should adopt, review and, where necessary, strengthen national laws and regulations, and should consider establishing, regularly reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations.**
  - 3.1. This applies in particular to labour, migration and criminal laws and other regulatory measures relating to recruitment, in line with international standards, to address the entire spectrum of recruitment practices, including fraudulent and abusive practices that may lead to trafficking in persons and other forms of exploitation. Governments should consider setting out a clear policy expressing the expectation that all enterprises domiciled or operating in their territory or jurisdiction respect human rights, including workers' rights, and the law on recruitment throughout their operations, including in supply chains. They should involve employers' and workers' organizations in setting and regularly reviewing the relevant legislation, regulations and policy.
4. **Governments should ensure that relevant legislation and regulations cover all aspects of the recruitment process, and that they apply to all workers, especially those in a vulnerable situation.**
  - 4.1. Governments should include, in legislation and regulations, coverage of all stages of the recruitment process, and of concerned parties, including in relation to advertisements, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable.

- 4.2. In consultation with organizations of workers and employers, and where appropriate with labour recruiters, governments should take measures to ensure compliance across the recruitment industry with the relevant laws and regulations. Such measures should include public registration, licensing or other regulatory systems. These systems should be effective, transparent and should allow workers and other interested parties to verify the legitimacy of recruitment agencies and placement offers.
  - 4.3. The legislation should apply to the act of recruitment and not only to some categories of labour recruiters but also to all recruiters operating outside any specific regulatory framework. The legislation and regulations on recruitment should not apply only to the formal economy, but to recruitment for all kinds of work.
  - 4.4. Governments should also consider adopting mutual recognition agreements to facilitate recognition of foreign qualifications in order to address brain waste and de-skilling.
5. **Governments should effectively enforce relevant laws and regulations, and require all relevant actors in the recruitment process to operate in accordance with the law.**
  - 5.1. 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.
  - 5.2. Governments should promote schemes aimed at ensuring that employers and recruiters are held accountable, individually or jointly, for the respect of workers' rights in the recruitment process. Such schemes could include shared responsibility initiatives, and other initiatives to promote fair recruitment practices.
6. **Governments should take measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers.**
  - 6.1. These measures should aim particularly at preventing fraudulent practices by labour recruiters, abuse of workers, debt bondage and other forms of economic coercion. Governments should also take measures to prevent and/or deter the solicitation and collection of illicit money from workers in exchange for offering them employment contracts.
  - 6.2. Prospective employers, public or private, or their intermediaries, and not the workers, should bear the cost of recruitment. The full extent and nature of costs, for instance costs paid by employers to labour recruiters, should be transparent to those who pay them.
7. **Governments should take steps to ensure that employment contracts are clear and transparent and are respected.**
  - 7.1. Governments should take steps to ensure that written contracts of employment are provided to workers specifying the job to be performed, and the terms and conditions of employment including those derived from collective agreements. The contract (or an authoritative copy) should be in the language of the worker or in a language the worker can understand, and the necessary information should be provided in a clear and comprehensive way in order to allow the worker to express his or her free and informed consent. For migrant workers, these contracts should be provided sufficiently in advance of departure from their country of origin. These contracts should not be substituted and should be enforceable in the destination country. While respecting confidentiality and the protection of personal data, governments may consider the use of information technology to achieve the aforementioned objectives.
  - 7.2. In the absence of a written contract, governments have the responsibility to ensure that recruited workers have all their rights respected in line with existing legislation and regulations.
8. **Governments should take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.**
  - 8.1. Governments should take steps to ensure the availability and operation of grievance and other dispute resolution mechanisms that are accessible in practice, rapid and affordable. They should take appropriate steps to ensure, through judicial, administrative, legislative or other means, that when abuses related to recruitment occur within their territory and/or

jurisdiction, those affected have access to effective remedies, which may include, but not necessarily be limited to, compensation. Pending the investigation or resolution of a grievance or dispute, whistle-blowers or complainants should be protected, and migrant workers should have timely and effective access to procedures. Governments should also take steps to ensure that mechanisms can be accessed across borders after a worker has returned to his or her country of origin.

- 8.2. To this end, governments should promote policies aimed at identifying and eliminating barriers to effective access to grievance and other dispute resolution mechanisms, such as complex administrative procedures, unreasonable costs, fear of discrimination or retaliation and dismissal and, in the case of migrant workers, fear of detention or deportation.

9. **Governments should promote cooperation among relevant government agencies, workers' and employers' organizations, and representatives of recruiters.**

- 9.1. Governments should work to ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely, as appropriate, and are aware of and observe human rights obligations when fulfilling their respective mandates.

10. **Governments should seek to ensure that recruitment responds to established labour market needs.**

- 10.1. Governments should seek to assess labour market needs and ensure coherence between labour recruitment, migration, employment and other national policies, in recognition of the wide social and economic implications of labour recruitment and migration, and in order to promote decent work for all.

11. **Governments should raise awareness of the need for fair recruitment in both the public and private sectors and ensure workers have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.**

- 11.1. Awareness-raising efforts should be carried out through education and training directed at employers, workers, and recruiters, including on the need for human rights due diligence and good practices for recognizing, preventing and eliminating abusive and fraudulent recruitment practices. Some possible awareness-raising measures include:

- (a) development and maintenance of government websites that contain relevant information regarding fair recruitment policies, legislation, regulation, and processes;
- (b) development, distribution and/or online publication of "how-to" guides on fair recruitment;
- (c) public service announcements on radio and/or television;
- (d) web seminars (webinars) or other outreach efforts;
- (e) encouraging outreach to workers by employers, workers' organizations, compliant labour recruiters and civil society groups;
- (f) collaboration with the ILO and the most representative employers' and workers' organizations to provide education and training and/or conduct awareness-raising campaigns;
- (g) making labour market information publicly available so as to inform decision making by workers, employers and labour recruiters; and
- (h) pre-departure and post-arrival orientations.

In the case of recruitment of migrant workers, countries should consider providing training regarding workers' rights and fair recruitment for potential migrants.

- 11.2. These measures should help ensure that workers have access to free, comprehensive, understandable and accurate information including, but not limited to, admission requirements, living and employment conditions, rights and labour laws.



12. **Governments should respect human rights and promote fair recruitment in conflict and crisis situations.**
  - 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.
13. **Governments should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers, are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, are concluded between countries of origin, transit and destination, as relevant, and are implemented effectively.**
  - 13.1. Bilateral and/or multilateral agreements should be rooted in international labour standards and other internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, and should contain specific mechanisms to ensure international coordination and cooperation, including on consular protection, and to close regulatory and enforcement gaps related to recruitment across common labour migration corridors. These agreements should be drafted, adopted, reviewed and implemented with the meaningful participation of the social partners and should include the establishment of oversight mechanisms, such as tripartite committees under bilateral and multilateral agreements. They should be made public and migrant workers should be informed of their provisions.
  - 13.2. These agreements should be informed by reliable data and information gathered through monitoring and evaluation of recruitment practices and their labour market and social implications, including in countries of origin.
14. **Governments should take steps to protect against recruitment abuses within their own workforces and supply chains, and in enterprises that are owned or controlled by the Government, or that receive substantial support and contracts from government agencies.**
  - 14.1. Governments should promote adherence to these principles and guidelines as employers and through commercial transactions with enterprises. Governments should exercise adequate oversight when they recruit workers or contract with enterprises that engage in recruitment practices. Governments should demonstrate fair recruitment practices and promote awareness of, and respect for, fair recruitment principles by enterprises, including through their procurement activities.