

FAIR AND ETHICAL RECRUITMENT



Migrant Forum in Asia
www.mfasia.org

This document serves as an advocacy document that Migrant Forum in Asia (MFA) and other civil society can utilize in calling for a fair and ethical recruitment. It includes the definition, common issues, international standards and principles, and a call for fair and ethical recruitment.

What is Fair and Ethical Recruitment?

Fair,¹ ethical,² or responsible recruitment can be understood as hiring workers lawfully in a fair and transparent manner that respects the dignity and human rights of all workers, including migrants and that is free of discrimination and abuse.

Common Issues due to lack of Fair and Ethical Recruitment

1. High recruitment fees and related costs
2. Lack of access to redress and access to justice for migrant workers
3. Lack of awareness and information and transparency that is available and disseminated to migrant workers regarding policies, programs, and terms of employment for them in the countries of origin and destination
4. There is a skills mismatch which leads to migrant workers doing jobs unrelated to their skills and that are not stipulated in their contracts
5. There is limited mobility of migrant workers in countries of destination including the right to association, representation, collective bargaining, and other forms of discrimination
6. Violence, abuse, and exploitation against migrant domestic workers continue
7. Retention of passports and other personal belongings
8. Different forms of discrimination including gender-based and on wage
9. Contract substitution
10. Language and cultural barriers in countries of destination
11. Lack of capacity of embassies and consular offices in countries of destination

Structural challenges that disallow fair and ethical recruitment

- a. Weak enforcement of policies
- b. Intermediaries or sub-agents, including those that are unregulated and informal, are not regulated and abuse migrant workers
- c. There is an imbalance of supply and demand for migrant workers
- d. Corruption along the many stages of the administrative processing of international recruitment

Fair and Ethical Recruitment: Key Principles and Practices

- a. Compliance to rule of law
- b. Respect the rights of workers
- c. Ethical and professional conduct by labour recruiters
- d. Zero recruitment fee and related costs for workers (employer pays principle)
- e. Transparency of employment terms and conditions
- f. Non-discrimination
- g. Freedom of movement
- h. Remedy and redress should be accessible, affordable, and efficient

¹ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf

² <https://iris.iom.int/sites/iris/files/documents/IRIS%20Standard%20Report%20.pdf>

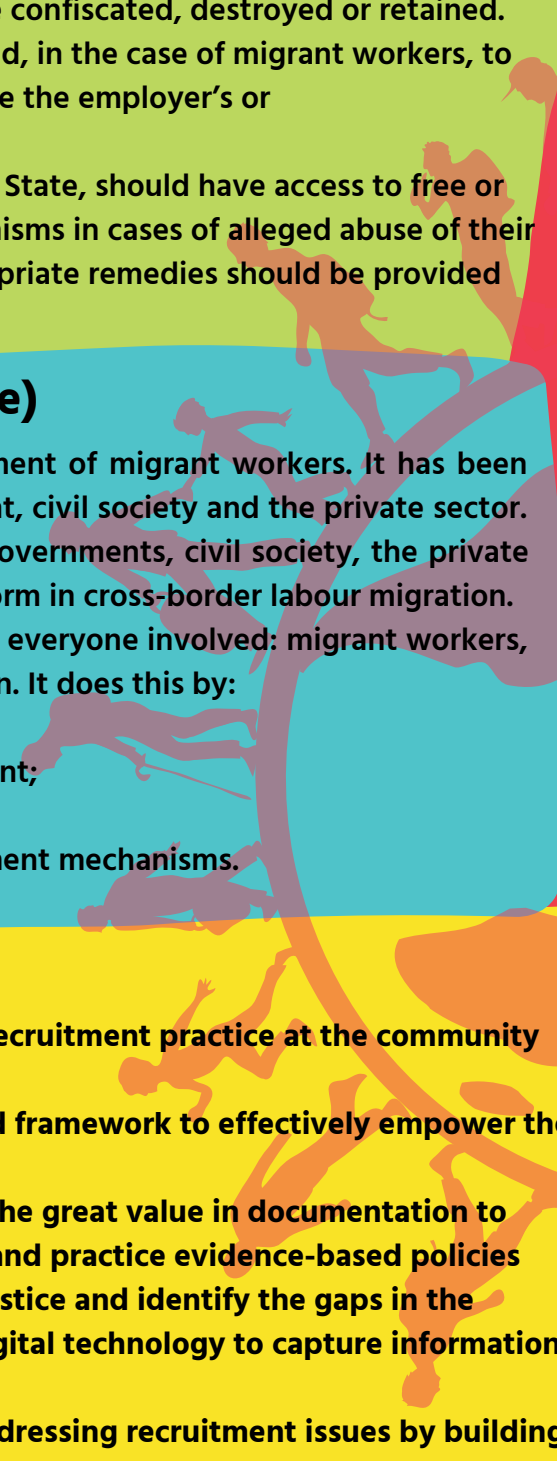
ILO General principles and operational guidelines for fair recruitment

The objective of these non-binding ILO general principles and operational guidelines for fair recruitment (hereafter “principles and guidelines”) is to inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment.

These principles and guidelines are derived from a number of sources. The primary sources are international labour standards and related ILO instruments. Other sources and good practices have also been consulted. All the sources are listed in the appendix to this document. These principles and guidelines are intended to cover the recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy.

ILO General principles on fair recruitment

- 1. Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.**
- 2. Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.**
- 3. Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.**
- 4. Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.**
- 5. Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.**
- 6. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.**
- 7. No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.**
- 8. The terms and conditions of a worker’s employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.**
- 9. Workers’ agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.**

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10. Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
 11. Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.
 12. Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.
 - 13 Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

IOM's IRIS Ethical Recruitment (initiative)

1. IRIS is IOM's flagship initiative to promote ethical recruitment of migrant workers. It has been created by IOM and a coalition of partners from government, civil society and the private sector. IRIS is a global multi-stakeholder initiative that supports governments, civil society, the private sector and recruiters to establish ethical recruitment as a norm in cross-border labour migration.
2. The goal of IRIS is to make international recruitment fair for everyone involved: migrant workers, employers, recruiters and countries of origin and destination. It does this by:
 - a. Promoting respect for the rights of migrant workers;
 - b. Enhancing transparency and accountability in recruitment;
 - c. Advancing the Employer Pays Principle; and
 - d. Strengthening public policies, regulations and enforcement mechanisms.

Calling for Fair and Ethical Recruitment

1. A successful migration story starts with fair and ethical recruitment practice at the community level
2. Our responses or services must manifest the rights-based framework to effectively empower the workers and the community
3. Member States, UN agencies, and civil society must see the great value in documentation to recognize the lived realities of workers in order to draft and practice evidence-based policies
4. We must not leave behind the importance of access to justice and identify the gaps in the migration sector or governance by utilizing the use of digital technology to capture information effectively and swiftly
5. Continue and strengthen the multilateral approach in addressing recruitment issues by building alliance with different stakeholders and actors at the local, national, regional, and international level including corridors. This includes engaging with regional consultative processes (RCPs), inter-governmental processes (IGPs), the Sustainable Development Goals (SDGs), the Global Compact for Safe, Orderly, and Regular Migration (GCM), and the Global Forum on Migration and Development (GFMD), and the United Nations Network on Migration (UNNM), as well as other initiatives by other stakeholders such as civil society and the private sector
6. All bilateral agreements (BLAs) should abide by the guidelines of fair and ethical recruitment principles and standards
7. There should be media mobilisation for fair and ethical recruitment which includes education and sensitisation of terminologies