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FOR INFORMATION

Report of the Meeting of Experts on Fair Recruitment
(Geneva, 5–7 September 2016)

Summary: This document contains the final report of the Meeting of Experts on Fair Recruitment that took place in Geneva from 5 to 7 September 2016.

Author unit: Conditions of Work and Equality Department (WORKQUALITY).

Related documents: GB.328/INS/17/4.

This document will be made available in printed form during the GB session only, in order to minimize the environmental impact of the ILO's activities and processes, contribute to climate neutrality and improve efficiency. All GB documents are available on the Internet at www.ilo.org.

1. The 2013 ILO tripartite Technical Meeting on Labour Migration requested the Office "to develop guidance to promote recruitment practices that respect the principles enshrined in international labour standards, including the Private Employment Agencies Convention, 1997 (No. 181), and identify, document, and promote the exchange of good practices on reducing the financial and human costs of migration". [1]

2. At its 326th Session (March 2016), the Governing Body decided to convene a tripartite meeting of experts to develop guidance on fair recruitment, [2] encompassing both cross-border and national recruitment.

3. The tripartite Meeting of Experts on Fair Recruitment was held in Geneva from 5 to 7 September 2016 and its conclusions submitted to the Governing Body at its 328th Session (October–November 2016). [3]

4. On the basis of the outcome of the Meeting, the Governing Body:

(a) authorized the Director-General to publish and disseminate the *General principles and operational guidelines for fair recruitment* adopted by the Meeting of Experts on Fair Recruitment on 7 September 2016, and to draw upon them in follow-up to the United Nations General Assembly High-Level Meeting on Addressing Large Movements of Refugees and Migrants, held in New York on 19 September 2016;

(b) requested the Director-General to take into consideration the *General principles and operational guidelines for fair recruitment* when drawing up proposals for future work of the Office in this area.

5. As announced in paragraph 5 of document GB.328/INS/17/4, the detailed report of the Meeting can be found in the appendix to this document.

[1] Conclusions of the Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013 (TTMLM/2013(14)), para. 5(iii), www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/meetingdocument/wcms_232352.pdf.

[2] See GB.326/PV, para. 364(b), and GB.326/POL/2, appendix.

[3] GB.328/INS/17/4.

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Introduction

1. The tripartite Meeting of Experts on Fair Recruitment Principles and Operational Guidelines was held in Geneva from 5 to 7 September 2016.

2. The need to develop principles and guidelines results from the conclusions of the 2013 ILO Tripartite Technical Meeting on Labour Migration which urged the Office "to develop guidance to promote recruitment practices that respect the principles enshrined in international labour standards, including the Private Employment Agencies Convention, 1997 (No. 181), and identify, document and promote the exchange of good practices on reducing the financial and human costs of migration".

3. In March 2016, the Governing Body decided to convene a three-day tripartite Meeting of Experts to develop guidance on fair recruitment for all workers, covering the full recruitment process both within and outside national boundaries.

4. The Meeting was attended by eight experts from Governments, eight experts nominated by the Employers' group and eight experts nominated by the Workers' group, as well as by 21 Government, six Employer and ten Worker observers. There were five observers from intergovernmental organizations and international non-governmental organizations.

5. The Officers of the Meeting were:

Chairperson:	Mr Hans Cacdac, independent representative of the Government of the Philippines
Employer Vice-Chairperson:	Mr Paul Mackay (Employer, New Zealand)
Worker Vice-Chairperson:	Ms Shannon Lederer (Worker, United States)

6. The Secretary-General of the Meeting was Ms Manuela Tomei, Director, Conditions of Work and Equality Department (WORKQUALITY). The Deputy Secretary-Generals were Ms Michelle Leighton, Chief, Labour Migration Branch (MIGRANT) and Ms Beate Andrees, Chief, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS). The coordinators of the Meeting were Ms Paola Pinoargote and Ms Séverine Bozzer.

Opening session

7. The Secretary-General introduced the two objectives of the Meeting as stated by the Governing Body:

(a) first "to review, amend and adopt guidelines on fair recruitment based on thorough analysis by the Office of related principles contained in international labour standards and universal human rights instruments"; and

(b) to "recommend ways to give practical effect to the guidelines in terms of their dissemination and practical application at country level by constituents".

8. She noted that the general principles and operational guidelines gave consolidated guidance on fair recruitment for all workers, covering the full recruitment process both within and outside national boundaries at all stages, including return. She highlighted that they were based on human rights instruments, international labour standards and ILO Conventions that cover a range of migrant worker situations including domestic workers and seafarers. She

stressed the non-binding and aspirational nature of the principles and guidelines. The outcome of the Meeting would inform a number of important discussions and processes, such as: the general discussion on labour migration to be held at the International Labour Conference (ILC) in June 2017; the follow-up to the United Nations General Assembly High-level Summit for Refugees and Migrants held in September 2016 in New York; and the implementation of Sustainable Development Goals (SDGs) in the 2030 Agenda for Sustainable Development (2030 Agenda), particularly SDG target 10.7 on orderly and safe migration and SDG target 8.7 to eradicate forced labour and end modern slavery.

9. The Worker Vice-Chairperson highlighted the widespread abuses that were present in the recruitment process and noted glaring gaps in protection for the global recruitment of migrant workers. She stressed that the ILO, as the lead UN agency on labour migration globally, with its normative framework, case resolution mechanisms and tripartite structure, was the best place to discuss these issues. Noting in particular the rampant recruitment abuses for irregular migrant workers and those in non-standard forms of employment, she welcomed the inclusion of "no fees" provisions in the principles and the need to strengthen labour law enforcement mechanisms that held employers accountable for their recruitment practices. The Worker Vice-Chairperson underscored the need to: (a) empower migrant workers to exercise their rights to collective bargaining and freedom of association; (b) provide migrant workers with specific and accurate information; and (c) create an open and transparent process for registration of recruitment agencies. Noting that voluntary certification was not working, and rather opened the door for employers to avoid responsibility for abusive practices in the recruitment process, she emphasized that fair recruitment needed to respond to real labour market shortages and be based on the principle of equality of treatment for all workers. In conclusion, the Worker Vice-Chairperson highlighted the importance of the Meeting to advance and elevate the global discourse on labour recruitment. The principles and guidelines should raise the bar for labour recruitment standards and demonstrate that fair recruitment is an integral part of building a global labour migration framework that lifts all boats and helps to raise the standards for all workers.

10. The Employer Vice-Chairperson pointed out that employers and workers had a lot in common with regard to the objectives of the Meeting. Noting that recruitment is the first entry point in the labour migration process for many persons including the most vulnerable, he emphasized that by ensuring transparency in their labour supply chains and recruiting workers in accordance with fair recruitment principles, employers could mitigate the risk of unforeseen links to forced labour, child labour or human trafficking. Ending such abuses was important for its own sake, but in addition, there were sound business reasons for employers to adhere to fair recruitment principles and practices. First, there are legal reasons. The Employer Vice-Chairperson provided the example of legislative initiatives in the United States bearing on recruitment at both the state and federal levels. It was the Employers' group view that such initiatives would proliferate. Second, adhering to fair recruitment principles and practices would help mitigate the risk of negative exposure and reputational damage. Third, the Employer Vice-Chairperson emphasized that fair recruitment brings with it market incentives and advantages, such as helping to ensure competency-based hiring and proper skills matching. This in turn increases retention rates and decreases the need for ongoing recruitment of replacement workers. Finally, workers recruited through fair and transparent means who are provided fair wages and working conditions are more productive. In short, by committing to fair recruitment principles, companies can demonstrate compliance with legislation governing the recruitment and employment of foreign workers, demonstrate due diligence in the prevention of forced labour and labour trafficking in supply chains, thus mitigating reputational risk, and take steps that support their competitiveness and productivity.

11. The expert from the Government of the United States expressed her appreciation for participating in this timely and important Meeting in her personal capacity. She noted that

while public and private employment agencies can play an important role in matching qualified workers with available jobs, the potential benefits of such pairings swiftly disappear when workers are subjected to exploitation through fraudulent or abusive recruitment practices. She highlighted that the United States has safeguards in place to help combat fraudulent and unscrupulous recruitment practices in federal supply chains and other circumstances. She emphasized that a set of sound, concrete non-binding guidelines that can inform and assist governments, employers' and workers' organizations, and other actors to address the many complex issues involved in deterring unscrupulous recruitment could make a real difference in the lives of workers around the world.

12. The expert from the Government of Australia indicated that the Australian Government supported the development of principles and guidelines that can be widely applied by policy-makers, adopted at the enterprise level and supported by workers' organizations as advancing the interests of their members. She specified that Australia's domestic legislation and policies promote fair recruitment through a national workplace relations system that covers all workers including temporary visa holders, which includes a strong safety net of minimum terms and conditions of employment, protections against unfair and unlawful termination of employment, and model occupational safety and health laws. Recruitment agencies in Australia are expected to provide statutory training to foreign workers, which would include language training and ensuring access to general information. Australia implemented in 2015 a five-year National Action Plan on Human Trafficking and Slavery. This framework is supported by the Government's International Strategy to Combat Human Trafficking and Slavery announced in March 2016. Australia has been working in partnership with other South-East Asian countries to support more effective cooperation throughout the region to combat human trafficking and slavery. As an example, she highlighted the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime which produced the Bali Declaration that includes provisions to criminalize human trafficking through deepening law enforcement cooperation and the protection of victims. The Bali Declaration also recognizes the need to work with the private sector through the promotion of non-abusive practices in supply chains. Building on this recognition, the establishment of a "Bali Process Business Forum" has been considered in consultations with a variety of stakeholders to unite business leaders to commit to the prevention of human trafficking.

13. The expert from the Government of Switzerland observed that the Meeting was very timely in light of the important role that recruitment plays in labour migration governance and matching workers with jobs in a global labour market. Cross-border recruitment practices represent both opportunities and threats for progress in this area, and the focus ought to be on the former to move forward constructively. The Meeting would also inform processes such as: the implementation of the 2030 Agenda, and in particular the Addis Ababa Action Agenda (of the Third International Conference on Financing for Development); the priorities of the Global Forum on Migration and Development (GFMD) and the GFMD Business Mechanism, chaired by the International Organisation of Employers and the World Economic Forum's Global Agenda Council on Migration; and the UN Summit for Refugees and Migrants, scheduled to take place in New York two weeks later (19 September). Finally, he indicated that Switzerland promotes fair recruitment through projects with the ILO, such as the Integrated Programme on Fair Recruitment (FAIR), and with the International Organization of Migration (IOM) on establishing a voluntary accreditation system for labour recruiters, the International Recruitment Integrity System (IRIS), which is an important initiative that complements the robust regulatory architecture relating to recruitment.

14. The expert from the Government of Morocco underlined that fair recruitment was a fundamental building block to social justice and peace. It was also an efficient way to address unfair competition and ensure equality in terms of access to jobs and costs for implicated parties. Morocco is both a source and destination country. In this context, it was important

for Morocco to regularize the situation in order that foreign workers are on an equal footing with citizens. The ILO has provided technical assistance to Morocco in the development of a national employment strategy to reinforce all policies and strategies pertinent to the promotion and implementation of fair recruitment. An example of this support was the guide for labour inspectors on fair recruitment.

15. The expert from the Government of Mexico stated that in all situations equal treatment should be ensured and that the instances where foreign workers were paid less than nationals were unacceptable. The interventions of labour inspectors were effective measures in this regard. Labour inspectors should take into account the context of irregular labour that foreign workers may find themselves in. For foreign workers, access to information on fair recruitment should be made available in their country of origin and of destination. This may be best executed through bilateral agreements between both countries. Nonetheless, private employment agencies should be supervised and mechanisms facilitating anonymous complaints established. All efforts should avoid increasing bureaucratic processes. In the Central American context, Mexico was host to many migrant workers and has signed an agreement with Guatemala concerning national employment services that highlight the importance of rights. In 2016, Mexico signed an agreement with other Central American countries on the same issue and continues to work closely with the United States to protect the rights of Mexican citizens working there.

16. The expert from the Government of Poland thanked the ILO for preparing the draft General principles and operational guidelines for fair recruitment recognizing that the guarantee of fair recruitment – especially within the context of international mobility – is crucial for the proper functioning of global, national and local labour markets. He noted that very few recommendations contained in the draft principles and guidelines might be recognized as not implemented in Poland, at least in terms of existing legislation and institutions. The expert indicated that his country might provide additional value to the Meeting, since it is both a sending and receiving country.

17. The expert from the Government of Zambia acknowledged the effort that went into the draft guidelines. He highlighted the global nature of the issue and how timely this discussion was, as Zambia receives large numbers of migrant workers from abroad but has encountered difficulties in the implementation of fair recruitment initiatives.

18. The observer from the European Union (EU) expressed gratitude to the ILO for discussing the topic of fair recruitment, since low-skilled workers in particular are vulnerable and can be victims of unscrupulous employment agencies, informal labour intermediaries and other operators acting outside the legal and regulatory framework. She added that retention of passports, deposits and illegal wage deductions, debt bondage linked to repayment of recruitment fees, and threats if they want to leave their employers, are some examples of frequent abuses that can amount to human trafficking and forced labour. She mentioned that reducing the costs of labour migration and promoting ethical recruitment policies and practices in countries of origin and destination is on the agenda of UN meetings on refugees and migrants. She stated that specific provisions at national level are important since, in general in the case of third country nationals, EU law regulates only some aspects of recruitment and does not systematically cover all Member States. EU mechanisms to access the labour market are differentiated according to categories of migrant workers and length of stay, and specific rules apply in particular to seasonal workers and highly skilled workers. As an example she mentioned that EU legislation on seasonal workers provides the right to change employers during the maximum duration of stay to avoid abuses and provide flexibility, and that the right to change employer is further granted to all migrant workers after five years of legal residence. She further mentioned that the EU Legislation on Temporary Agency Work applies to the supply of “agency workers” to user enterprises, whether private or public sector enterprises, and provides that temporary workers should not

be charged any recruitment fees. Legislation on written statements obliges employers to inform all workers in writing about the conditions applicable to their employment relationship. She underlined that, once recruited, migrant workers benefit in general from the same working conditions as nationals.

19. The observer from the International Confederation of Private Employment Services (CIETT) [1] indicated that CIETT represents responsible and ethical recruitment agencies in over 50 countries, as well as eight big multinational companies. CIETT members abide by the principles of the CIETT code of conduct, which, among other things, prohibits fee charging to jobseekers and applies the "employers pay principle". He stressed that it is very important that jobseekers should not pay for the cost of their recruitment because it could lead to a series of problems and abuses, including debt bondage, human trafficking and forced labour. He emphasized that while all stakeholders need to work together to improve the current situation, governments have a key role to play in setting the ground rules on who can be licensed and who can operate as a respectful and legitimate recruitment business. There was a need, therefore, to establish appropriate regulation on the employment and recruitment industry, creating a framework that is modelled on ILO Convention No. 181 on private employment agencies.

20. The observer from Public Services International (PSI) highlighted a case that could be considered good practice involving a bilateral agreement between Germany and the Philippines to ensure a transparent recruitment process of workers from the latter to the former. She explained that the agreement included provisions to ensure full access to information, including information provided by trade unions and contacts to trade unions, the right to social protection and social security arrangements, and full access to workers' rights including the right to join trade unions. The agreement went beyond the recruitment of temporary workers and included a pathway to citizenship. The agreement highlighted the active participation of trade unions in the process.

21. The observer from the IOM stated that the IOM firmly supports the objectives of the Meeting to provide much-needed guidance on fair recruitment based on international labour standards and universal human rights instruments. She indicated that stronger regulation and enforcement across borders is required to provide migrant workers with adequate protection and access to remedy, and to enhance the benefits of labour mobility, which is facilitated by a multitude of public and private entities. As such, it is imperative to mobilize stakeholders such as employers and brands to commit to rights-based business practices and to drive the demand for fair recruitment services. When operating transparently, labour recruiters can facilitate affordable and safe labour mobility to the benefit of migrant workers. This understanding underpins the creation of IRIS, a multi-stakeholder initiative spearheading a rights-based standard and certification system for the recruitment industry. The ILO *General principles and operational guidelines for fair recruitment* will support the policy framework of IRIS. That the proposed fair recruitment guidelines and principles represent a consolidation of frameworks by various stakeholders establishes a foundation for the much-needed international and inter-agency coordination and dissemination of best practices. Finally, IOM would like to see further clarification on the definition of recruitment fees and costs as guidance on this issue would remove ambiguity and help stakeholders better operationalize fair recruitment.

[1] The International Confederation of Private Employment Services (CIETT) is now referred to as the World Employment Confederation (WEC).

Consideration of the draft ILO General principles and operational guidelines for fair recruitment [2]

22. The experts examined the proposed text in eight drafting sessions, paragraph by paragraph.

Part I. Scope of the general principles and operational guidelines

Paragraph 1

23. The expert from the Government of the United States suggested adding "non-binding" before the phrase ILO principles and guidelines. The proposal was accepted with the Workers' group emphasizing that they wanted the document to be as strong as possible.

Paragraph 2

24. The expert from the Government of Switzerland raised concerns about the paragraph creating some confusion regarding the hierarchy of sources and suggested that either the paragraph be deleted or that it be reformulated to focus more on scope rather than on sources. Similar concerns were raised by the experts from Mexico and the United State while the Employers and the Workers stressed the importance of citing sources with particular emphasis on ILO sources.

25. The paragraph was accepted as amended reflecting the concerns raised by the expert from the Government of Switzerland and giving priority to ILO sources as primary sources.

Paragraph 3

26. The Employer Vice-Chairperson suggested an additional sentence at the end of the paragraph to read: "Implementation of these principles and guidelines at the national level should occur after consultation with the social partners and the Government." The proposal was supported by the Workers' group.

27. The expert from the Government of Mexico suggested adding to the first sentence after guidelines "should apply in accordance with the context and reality of each country". The Employers' group, with the support of the Workers' group, highlighted the aspirational goal of these principles arguing that this language would leave it to the discretion of each country to do the minimum. The expert from the Government of Mexico, citing the non-binding nature of the principles, withdrew her proposal.

28. The third paragraph was agreed upon as amended.

Paragraph 4

29. The expert from the Government of the United Arab Emirates proposed an amendment that the guidelines should include possible interventions that various actors might consider for the purpose of upholding the general principles. The Employer and Worker Vice-Chairpersons supported the spirit of the amendment, with the Worker Vice-Chairperson stressing that the responsibility of the states should not be diminished. The

[2] The final version can be found in the appendix.

paragraph was agreed upon as amended based on language proposed by the expert from the Government of the United States.

Part II. Definitions and terms

30. The proposed text included definitions for five terms: **business enterprise, due diligence, fees and costs, labour recruiter and migrant worker**. After much discussion, the experts agreed to retain seven definitions, having deleted one (**business enterprise**) and added definitions for **employer, enterprise** and **recruitment**.

31. The appropriateness of including the term **business enterprise** in the definitions was debated. The Employer Vice-Chairperson indicated that the terms **business** and **employers** were different concepts in that businesses produce goods and services while employers are people who take decisions and have a relationship with workers. He proposed replacing the definition with definitions for **employers** and **labour recruiters**. The Worker Vice-Chairperson highlighted the importance of including definitions of **labour intermediaries** and **labour agencies** and expressed concern about the collapsing of definitions and terms. After discussion, it was agreed that the definition of the term **business enterprise** would be revisited later in the Meeting's deliberations to determine if a definition was still necessary. Subsequently, the experts agreed to delete the term from the definitions, as the concepts related to fair recruitment were contained in other definitions, and to include a definition of **enterprise** instead (see paragraph 34 below).

32. With regard to the term **due diligence**, the Worker Vice-Chairperson proposed to amend the suggested Office definition with text taken from the UN *Guiding Principles on Business and Human Rights.* While there was broad consensus to rely on the UN *Guiding Principles* as a basis for the definition, concerns were expressed that the Workers' group proposal might be too detailed for the purposes of the guidelines and principles. In order to clearly identify the use of the definitions agreed to in the section, the expert from Australia proposed to add a chapeau at the beginning of the definitions section stating that "for the purposes of these principles and guidelines". The proposal was agreed upon.

33. At the request of the Chairperson, the Secretary-General of the Meeting highlighted that the UN *Guiding Principles* contained two definitions of due diligence: one in Guiding Principle 15(b) and the other in Principle 17. She confirmed that the language proposed by the Worker Vice-Chairperson and subsequently amended by the experts was consistent with Principle 17, which was the preference of the Workers' group. The definition of **due diligence**, as amended, was agreed upon.

34. With regard to the term **employer**, the Employer Vice-Chairperson proposed a definition as follows: "A legal entity that engages employees or workers, either directly or indirectly." The Secretary-General of the Meeting clarified that the ILO has no definition for the term "employer" and proposed the deletion of the word "legal" from the definition so as not to exclude informal employers involved in the recruitment process. She also proposed the addition of the word "person" to reduce any confusion with the terms business and institution, a concern raised by the Employer Vice-Chairperson. The definition of **employer** was agreed upon as amended.

35. In the context of the discussion of the term business enterprise, it was agreed to delay a decision on the appropriateness of a definition for the term **enterprise**. Subsequently, a definition was offered by the Secretary-General of the Meeting and was agreed upon with the clarification that public employment services were excluded.

36. With regard to the term **labour recruiter**, the Worker Vice-Chairperson proposed the addition after "all other labour recruiters" of "and intermediaries and sub-agents" and the deletion of the word "entities" in the proposed text to capture that labour recruiters can be individuals. She also proposed the addition of the following words to reflect that labour recruiters can take many forms: "operating within or outside the regulatory framework". Other experts proposed minor revisions including an amendment offered by the expert from the Government of Mexico to delete references to sources contained in the second sentence of the proposed Office text and the definition of **labour recruiter** was agreed upon as amended.

37. After the Worker and the Employer Vice-Chairpersons supported the definition suggested by the Office for **migrant worker**, the expert from the Government of Mexico proposed to replace the definition with the one included in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The proposal did not receive the support of other experts and the definition suggested by the Office was agreed upon, except for the explicit reference to sources, as per the suggestion of the expert from the Government of Mexico.

38. The Worker Vice-Chairperson, supported by the Employer Vice-Chairperson, proposed to add a definition for **recruitment** as follows: "The term recruitment includes the selection, transport and placement into employment and, for migrant workers, return to the country of origin if desired by the worker. Both jobseekers and those in an employment relationship are covered." The experts from the Governments of Mexico and the United Arab Emirates, and the Employers' group suggested minor changes and a definition of **recruitment** was accepted.

39. With regard to the terms **recruitment fees or related costs**, the Worker Vice-Chairperson proposed several amendments to the proposed definition to more clearly describe what is meant by fees and costs, "to cover any payments, legal or illegal, that workers and jobseekers are required to make to secure and maintain employment, regardless of the manner, timing or location on their imposition or collection. These include any costs workers may be required to incur for such items as medical and other examinations, passport and visa fees, training and transportation costs and so on, before and during the recruitment process, as well as any before they may enter the recruitment process."

40. The Employer Vice-Chairperson expressed concern that the definition was quite broad and may go beyond recruitment into the area of actual employment conditions.

41. A lengthy discussion transpired about the degree of detail necessary in the definition, as experts recognized that there is no globally accepted "definition of fees and costs", with some experts (United Arab Emirates and Switzerland) expressing the view that the nature of fees and costs should be elaborated in the guiding principles and operational guidelines more appropriately.

42. A number of the Government experts (Switzerland, Australia and United Arab Emirates) preferred the proposed Office definition with the addition of language proposed by the expert from the Government of the United States to cover some of the elements expressed in the Workers' group proposal. Specifically, the experts agreed to include at the end of the definition the phrase, "regardless of the manner, timing or location of their imposition or collection". The definition was agreed upon as amended.

43. The Employer Vice-Chairperson questioned whether there is a need to distinguish between legal and illegal payments. This concern was expressed by other experts (United Arab Emirates and United States) who indicated that to avoid confusion, the matter should be dealt with separately.

44. The experts agreed to bracket the footnote indicating that fees and related costs is a subject that future work by the ILO might make more precise until after the discussion on operational guidelines. It was subsequently agreed to remove the footnote, but to include in the report of the Meeting the notion that the subject was something that in the future the ILO might wish to make more precise.

Part III. General principles

45. The experts considered ten draft general principles proposed by the Office. Through their deliberations, the experts considered a number of amendments, which resulted in agreement on a final set of 13 General Principles included in the appendix to this report. The main structural modifications adopted can be summarized as follows:

(a) merging draft general principle 1 and 2 into the new General Principle 1;

(b) inserting a new General Principle 2, on recruitment responsiveness to labour market needs, and not as a means to lower working conditions of existing workforce;

(c) inserting a new General Principle 4 on recognition of skills and qualifications;

(d) inserting a new General Principle 10 on access to information proposed by the Workers' group;

(e) splitting draft general principle 9 into two separate principles, one on freedom of movement within and from a country (new General Principle 11) and one on freedom to terminate employment without an employer's permission (new General Principle 12).

General Principle 1 (draft principles 1 and 2 merged)

46. The Employer Vice-Chairperson suggested merging Principles 1 and 2, as the latter simply qualified the former, while adding particular reference to the ILO Declaration of Fundamental Principles and Rights at Work.

47. The Workers Vice-Chairperson supported the suggestion, but proposed retaining specific mention of the four categories of rights covered by the Declaration since the General Principles will be accessible and used by a variety of actors not necessarily familiar with the content of the Declaration.

48. While some Government experts (United States, Morocco and Australia) expressed concerned that this may be redundant, the importance of those not familiar with the Declaration to fully understand what was meant by fundamental principles and rights at work was recognized and the Workers' group proposal was accepted. The language was brought in line with the standards that were referenced.

49. The experts approved the merged principles as "General Principle 1".

General Principle 2 (new)

50. The Worker Vice-Chairperson suggested a new General Principle 2 as follows: "Recruitment should respond to established labour market needs and not serve as a means to displace or diminish an existing workforce or lower standard wages or working conditions

or replace permanent employment." She indicated that this text drew from the ILO multilateral framework on labour migration.

51. The proposal for a new principle was received positively with the exception of the reference to the language around "replace permanent employment". This notion was introduced, according to the Worker Vice-Chairperson, to avoid any mistaken impression that recruitment could be used to promote temporary migration and create a workforce that "turns", eroding the quality of work.

52. The expert from the Government of Mexico expressed apprehension at the possibility of migrant workers being removed when economic cycles change.

53. This Workers' group proposal was of concern to the Employer Vice-Chairperson who indicated that for a variety of reasons business had to retain the legitimate prerogative of managing the nature and structure of the workforce.

54. The expert from the Government of Australia agreed with the concern, pointing to the fact that there could be necessary and acceptable circumstances when there was a need to replace permanent employment.

55. With a view to reconciling the different perspectives the Worker Vice-Chairperson suggested instead to refer to the fact that recruitment should also not "otherwise undermine decent work", which was accepted and the principle was agreed upon as amended.

General Principle 3 (draft general principle 3)

56. Following a suggestion by the expert from the Government of Morocco to delete the words "both public and private", General Principle 3 was agreed upon as amended.

General Principle 4 (new)

57. With a view to capturing the aspirational goal of skills portability, the Employer Vice-Chairperson proposed an amendment aimed at including the notion of skills recognition as part of the recruitment process. He suggested adding the sentence: "Protocols should be developed to enable a comparison and evaluation of skills in countries."

58. A reference to skills recognition and certification was well received. Whether to include it in a new general principle or in the operational guidelines was debated with a number of Government experts (Australia, Switzerland and United States) preferring the latter.

59. Highlighting the aspirational nature of the issue, the Worker and Employer Vice-Chairpersons concurred that this issue was sufficiently important to remain at the level of a principle, though there could indeed be more guidance on the nature of this principle in the operational guidelines.

60. The expert from the Government of the United Arab Emirates agreed on the importance of the issue, stressing that to the extent that recruitment malpractices relied on lack of transparency or mismatching of skills, certification and recognition of skills might reduce abuses. He argued this was an issue of empowerment, as a skilled worker would be a more empowered worker and in a better position to resist malpractice during recruitment processes, and therefore suggested that fair recruitment is enhanced by mutual recognition of skills and certification between jurisdictions.

61. The expert from the Government of Mexico proposed to insert the “evaluation” of skills in addition to their “recognition”.

62. The expert from the Government of the United States stressed that skills certification might differ between jurisdictions in the same country and suggested that the discussions on skills should be more strictly related to recruitment, and particularly fraudulent recruitment.

63. Subsequently, the expert from the Government of Mexico shared a text on behalf of the entire Government group aimed at addressing concerns over recognition of workers’ qualification and skills. The proposed text read: “Recruitment should take into account policies and practices that promote efficiency and transparency in the process such as the mutual recognition of skills and qualifications.”

64. The Worker Vice-Chairperson further proposed to insert, “to ensure that workers are recruited into jobs that correspond to their skills and qualifications”.

65. The reference to limiting recruitment to skills matching purposes was seen as too narrow a focus by the Employer Vice-Chairperson. He stressed that a worker seeking a job outside of his or her area of expertise should be entitled to do so.

66. The expert from the Government of the United Arab Emirates worried that the notion of protection was being lost. He argued that the principle under consideration should not be limited to efficiency and skills matching and that skills recognition should be used to leverage protection of workers against abuses. He proposed adding language on protection and unlawful practices that led to the placement of workers in the wrong job. The discussion of skills in this context was not aimed at producing better labour market outcomes, but at protecting workers.

67. The expert from the Government of the United State suggested to add reference to protection, transparency and efficiency and the principle was agreed upon, as amended.

General Principle 5 (draft general principle 4)

68. The discussion focused on two main issues: (a) the role of labour inspection; and (b) registration and licensing systems. The discussion stemmed from proposed amendments by the Worker Vice-Chairperson as follows:

(a) starting with the word “regulations” in lieu of “legislation”;

(b) adding after “be clear and transparent”, “and include a standardized registration and licensing systems”;

(c) adding after “regulations should be effectively enforced”, the sentence “including by a strengthened labour inspectorate and other dispute resolution systems” and proposed deleting the rest of that sentence;

(d) adding “human” before “trafficking”.

69. The Employer Vice-Chairperson raised two concerns with respect to the suggested formulation. First, it was not clear for what, and upon whom, a registration and licensing systems would apply. Second, he stressed that a strengthened labour inspectorate was but one of many possible solutions to effective enforcement. He proposed that this be included among other options in the operational guidelines.

70. The expert from the Government of the United States joined by the expert from the Government of Australia agreed with the Employer Vice-Chairperson that the proposed amendments belonged more in the operational guidelines as these were examples of how regulations could be made more effective. She suggested using "regulation of" instead of "legislation on", as the latter was a broader term. She also supported adding the word "human" before "trafficking".

71. The Chairperson presented a clarification from the Office on the preferred use of the words "trafficking in persons" in line with the ILO Protocol to Convention No. 29.

72. The Worker Vice-Chairperson emphasized the aspirational nature of the principles and insisted that fair and regulated recruitment systems could not exist without licensing those who operated in them. She saw this as central to creating a fair governance system for recruitment. She referred to similar language in the Maritime Labour Convention, 2006, Standard A1.4 on Recruitment and placement and to the Forced Labour Protocol. She also expressed preference for using the words "strengthened" instead of "highlighted" with regard to labour inspectorate and licensing systems.

73. The Employer Vice-Chairperson, recognized the language in the Maritime Labour Convention, 2006, but still considered that labour inspection was one of several options for achieving effective enforcement. He preferred the word "enhanced" rather than "strengthened" as the latter simply suggested that there should be more labour inspectors, which was too limiting for a principle. While accepting that there were a number of standards that highlighted the importance of the use of standardized registration and certification systems, he reiterated that the goal was to ensure that the regulatory aspects of recruitment be effectively and transparently enforced. Labour inspection and certifications systems were enabling features of that principle, and therefore should be included among a list of realistic options in the operational guidelines.

74. The Worker Vice-Chairperson suggested splitting the first sentence into a sentence on transparency and effective enforcement of recruitment regulation and a second sentence on the need to highlight the role of labour inspection and certification systems.

75. Following clarification from the Office aimed at bringing the language in line with the wording of Convention No. 181 concerning the terms "standardized registration and licensing systems", the experts agreed to retain this as a general principle and to list both the role of labour inspection and registration and licensing systems as measure that "should be highlighted". The principle was agreed upon as amended.

General Principle 6 (draft general principle 5)

76. With a view to addressing the challenges dealing with uneven, sometimes contradictory, laws across borders, the Worker Vice-Chairperson suggested adding a reference to collective agreements to supplement the responsibility to respect laws of countries of origin, transit and destination. She further suggested adding, "whichever provides for the higher standard of protection". The purpose of her proposal was to avoid acceptance of the lowest denominator between different legal instruments across borders. She noted that collective agreements must be part and parcel of an ILO framework on fair recruitment, expressing concern that individual contracts could be used to undermine agreements negotiated collectively. Often collective agreements represented one of the few opportunities that migrant workers had to access protection and justice and hence were of particular relevance to the discussion.

77. While recognizing the importance of collective agreements, the Employer Vice-Chairperson noted that there were a wide range of agreements governing employment relationship

agreements, all equally valid. Collective agreements were not the only instrument and isolating them from other agreements would limit the scope of the principle itself. He also pointed out the challenges of enforcement when recruitment involved different jurisdictions. With regard to the proposal to "apply the provisions with the higher standard of protection", he stressed the complexity of jurisdictional relationships between agreements, laws and regulations. He indicated that the workers' proposal implied the existence of a hierarchy between collective agreements and other types of agreements between two parties, while these had equal legal status. He concluded by proposing to substitute "collective agreements" with "employment agreements".

78. The views of the Employer Vice-Chairperson were supported by a number of the Government experts (Mexico, United Arab Emirates and United States). The expert from the Government of the United Arab Emirates added a concern related to the ability to enforce the principle of the "higher standard of protection", as an employment contract is only enforceable in the jurisdiction where the contract was consummated and only under the law of that jurisdiction. Including such a notion would pose challenging jurisdictional and enforcement problems.

79. In light of the concerns, the Worker Vice-Chairperson agreed to withdraw the amendment on "whichever provides the higher standards of protection".

80. The Employer Vice-Chairperson suggested using "applicable employment agreements" instead of "collective agreements" with a view to recognizing the relevance of different types of agreements. The alternative would be to include a long list of different types of agreements.

81. The Worker Vice-Chairperson argued that the term "employment agreements" was not an acceptable substitute for "collective agreements", among others reasons because employment agreements are covered under applicable laws and regulations while collective agreements had self-enforcing mechanisms. Collective agreements were fundamental tools for elevating the protection of migrant workers, and hence the protection of these agreements needed to be expressly stated in the principle. With a view to distinguishing between individual and collective types of agreements, she suggested "employment contracts and collective agreements".

82. The Employer Vice-Chairperson reiterated his objection to creating a distinction between collective agreements and other forms of employment agreements which have equal legal value. He suggested the following reformulation: "… recruitment across international borders should respect the applicable laws, regulations and agreements including collective agreements". He thought this phrase captured the need to recognize collective agreements without offending the equality of agreements in general.

83. The expert from the Government of the United States noted that collective agreements were the only agreements that had been specifically referenced in the text and thus had already been given special attention. She also noted that the Government experts were not clear about what was meant by "collective agreement". They were unsure as to whether this referred to collective bargaining agreements and thus suggested that "collective bargaining agreements" be mentioned instead.

84. Subsequently, compromise text on collective agreements was proposed by the Office. The principle was agreed upon as amended.

General Principle 7 (draft general principle 6)

85. The discussion centred on whether or not employers should be responsible for paying all recruitment costs.

86. While accepting that workers should never pay, the Employer Vice-Chairperson argued that the cost of recruitment should not be made the sole responsibility of employers as it was possible that costs could be spread more broadly and involve, for example, firms engaged in transporting or accommodating workers, or even governments that might want to invest in recruitment processes. According to him, the most important concept to be covered by the principle was that no recruitment cost should be imposed on workers.

87. The Worker Vice-Chairperson indicated that the fundamental underpinning of recruitment was that it was done for the benefit of the employer, so the employer should bear the cost. The elimination of the sentence related to the responsibility of employers to cover the costs would leave a highly problematic ambiguity.

88. The expert from the Government of the United Arab Emirates agreed on the need to be specific that this should remain the responsibility of employers.

89. The expert from the Government of Australia agreed generally with the principle, but suggested the inclusion of an exception clause because a large number of countries, including Australia, allow payment of recruitment fees for specific categories of workers, such as actors. She proposed adding the following language on exceptions at the end of the current text: "Exceptions may be authorized by the competent authority following consultations with representative organizations of employers and workers and for which a compelling reason can be demonstrated."

90. The expert from the Government of Switzerland seconded the amendment, providing examples where the Swiss Government took responsibility for paying for job placement costs in the public interest.

91. The expert from the Government of United States supported the amendment proposed by the expert from the Government of Australia and shared some of the concerns expressed by the expert from the Government of Switzerland. She suggested the following text might address the latter's concern: "… borne by the employer or another third party".

92. The Worker Vice-Chairperson, stressing the importance of maintaining the aspirational nature of the principle, proposed returning to the original suggestion made by the Employer Vice-Chairperson, with the caveat that the exceptions were dealt with in the guidelines along with the issue of "who should bear the costs".

93. With a view to strengthening the principle and addressing hidden recruitment fees that were collected from workers in the form of housing and food payments, the expert from the Government of the United States suggested adding the phrase, "charged to, or otherwise borne by, workers or jobseekers".

94. The Worker Vice-Chairperson, with the support of the Employer Vice-Chairperson, agreed to deal with exceptions in the operational guidelines and to delete, at the principle level, reference to who would sustain the costs.

95. The principle was agreed upon as amended.

General Principle 8 (draft general principle 7)

96. The experts agreed that this principle aimed at ensuring that the conditions of employment were clear to the worker, verifiable and effectively enforceable, and that contract substitution be effectively addressed. With regard to migrant workers, there was consensus that labour contracts should be in a language understood by the worker and received by the worker sufficiently before departure from the country of origin to allow informed decision-making.

97. The Employer Vice-Chairperson indicated that while it was desirable that contracts be written in the language of the workers, achieving this was challenging. He proposed adding the words "in verifiable form" after the words "employment contracts".

98. The expert from the Government of the United States suggested the deletion of the first sentence up to "clear and transparent" and proposed revision to the second sentence as such: "The terms and conditions of a workers' employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts, in accordance with national laws, regulations and 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." She also suggested adding after "departure from the country of origin" the clause "and should be subject to measures to prevent contract substitution".

99. For consistency, the Employer Vice-Chairperson suggested putting "collective agreements" in brackets in line with the discussion under General Principle 6.

100. The Worker Vice-Chairperson suggested adding after "contract substitution" the clause, "and should be enforceable in the country of destination" and to delete the rest.

101. The expert from the Government of Switzerland pointed out that contract substitution could also happen in the country of origin.

102. The Worker Vice-Chairperson suggested ending the sentence at "enforceable" without any mention to countries of origin or destination.

103. The principle was agreed upon as amended, once the bracketed sentence on collective bargaining agreements was resolved in relation to General Principle 6.

General Principle 9 (draft general principle 8)

104. The Worker Vice-Chairperson offered an amendment to the proposed text as follows: "Workers should agree voluntarily and without coercion to the terms and conditions of recruitment and employment." She also proposed to add a second sentence as follows: "Workers should have access to accurate and comprehensive information regarding their rights and conditions of recruitment, residence and employment abroad".

105. The Employer Vice-Chairperson supported the amendments, suggesting splitting the two sentences into different paragraphs as they dealt with different issues, which was supported by the Worker Vice-Chairperson.

106. The expert from the Government of the United States proposed amending the first sentence as follows: "Workers' agreement should be voluntary and without deception or coercion."

107. The Worker Vice-Chairperson proposed to replace "without" with "free" to stress the freedom of workers in recruitment processes.

108. The first sentence was agreed upon, as amended, as General Principle 9.

General Principle 10 (new)

109. The Worker Vice-Chairperson proposed to insert "comprehensive and accurate information".

110. The expert from the Government of the United Arab Emirates questioned whether the provision of information on terms and conditions of employment was already addressed.

111. The Worker Vice-Chairperson, supported by the Employer Vice-Chairperson, suggested that the information on the terms and conditions of the contract was too narrow and specific to the job. It did not encompass the type of information needed to take an informed decision about relocating and accepting a job offer. A worker's willingness to take a job could be affected by other considerations than just terms and conditions of employment.

112. The expert from the Government of the United States questioned whether it was necessary to add information on "residence" as this would not be applicable for national workers. She proposed to amend the text as follows: "… conditions of recruitment and employment, and where appropriate of residence".

113. The expert from the Government of the United Arab Emirates agreed with the importance of providing to workers information on the general environment and conditions for their employment and proposed adding specific wording in the guidelines on pre-departure and post-arrival induction for workers.

114. The Employer Vice-Chairperson highlighted that the principle was about the voluntary nature of consent and drew attention to the risk of diluting this idea with additional wording on access to information. However, he supported the proposal to develop separately in the document the notion of access to pre-departure and post-arrival information. He emphasized that this obligation should go beyond access to information on terms and condition of recruitment and employment.

115. The Worker Vice-Chairperson supported the deletion of "residence" and agree with the proposal to separate the language on access to information with the possibility of adding more details under the operational guidelines. The principle was agreed upon as amended.

General Principle 11 (draft general principle 9) and General Principle 12 (new)

116. The Worker Vice-Chairperson, with the subsequent support of the Employer Vice-Chairperson, proposed inserting after "identity documents" the words "and contracts". She also proposed amending the next sentence to replace "able" with "free" in order to stress the spirit of the guidelines on the protection of workers' freedom in recruitment processes. Additionally she proposed an amendment to replace "change employer" with "change of employment".

117. The expert from the Government of the United States proposed adding at the end of the sentence, "without permission of the employer" and inserting "destroy" between "confiscated" and "detained". With a view to avoiding the impression that irregular migration be encouraged, she suggested the substitution of the reference to "freedom of movement" with "freedom to move within a country or to leave a country".

118. The discussion that followed revealed the need to separate the principle into two separate principles to address two distinct issues: (a) workers' freedom to move and leave a country and retain their identity documents and contracts; and (b) the rights of workers to terminate their contract and return to their countries of origin without permission from employers or recruiters.

119. The expert from the Government of the United Arab Emirates agreed with the first set of amendments, arguing that opting out of a contract or an employment relationship should not be contingent on any particular condition, or conditional to the occurrence of abuse. However, he expressed strong reservation about the sentence referring to "workers should be free to terminate their employment, change employers or return to their country of origin". In his view, this would infringe on the sovereign right of States to formulate their own immigration policies and to decide on conditions of residency of foreign nationals in their territory. The United Arab Emirates had introduced regulations according to which, upon termination of a contract, and even prior to the termination of a contract, foreign workers became eligible to apply for a permit to work for another employer. He suggested, therefore, including language suggesting that workers who wanted to terminate their contracts would be eligible to obtain a work permit to transfer to another employer.

120. The expert from the Government of the United Arab Emirates proposed, with support from the Government experts from Australia and the United States, the addition of the phrase, "subject to the regulation of the host country" after "the freedom to change employer".

121. The Employer Vice-Chairperson noted that, while workers should have the right to terminate employment, this should still be subject to certain reasonable contractual obligations, including a period of notice. Claim of abuse could otherwise be used as an excuse to leave a job without obligation.

122. The Worker Vice-Chairperson stated that the freedom to choose employment was a fundamental human right, and therefore it was important that this right be clearly recognized. The notion that workers should not be tied to a particular job and employer was a core principle of fair recruitment and should be plainly stated. She also noted that often migrant workers' contracts have very high fees for termination. With a view to finding acceptable wording, she suggested the following sentence: "Migrant workers should not require the employers' or recruiters' permission to change jobs."

123. The expert from the Government of the United Arab Emirates identified two issues to be addressed separately. First was the issue of the right of workers to terminate their employment and second was the issue of the right of workers to move freely from one employer to another. He emphasized his support for the first, which could be governed by the terms of a labour contract, as spelled out in a termination clause. Regarding the second issue, he emphasized that his objection did not aim at restricting workers mobility, but reiterated that he could not support an instrument, even aspirational, that did not recognize a Government's sole right to formulate rules of residency. Hence he suggested qualifying the second principle by adding, "subject to the legislation or regulations of the host country". With regard to the reference to "reasonable notice" proposed by the Employers' group, he argued that this was ambiguous and suggested instead: "… subject to the terms of the contract, workers should be free to terminate their employment and return to their country of origin". He suggested separating the notion of mobility to a later sentence, by either deleting it or by qualifying it as proposed.

124. This proposal was supported by the Government experts from Australia and the United States. The expert from the Government of Australia illustrated a scenario in which workers may not wish to leave their employment if the situation was rectified.

125. The expert from the Government of Switzerland suggest that "changing job" would already include the idea of termination of employment and hence suggested both terms were not required.

126. The Worker Vice-Chairperson stressed the importance of retaining both terms. For the Workers' group, "changing job" indicated staying in the same national context, whereas "terminating employment" would imply a sense of returning to the worker's country of origin.

127. The experts agreed on the text of General Principles 11 and 12, as amended.

General Principle 13 (new)

128. With a view to strengthening the language on access to complaint mechanisms, the Employer Vice-Chairperson suggested that workers should have "easy access".

129. The Worker Vice-Chairperson suggested that access should be granted to workers "irrespective of their presence or legal status in the State", which is in line with the Forced Labour Protocol.

130. The expert from the Government of the United States suggested adding "alleged" before "abuse", otherwise abuse would need to be proven. She also proposed that "where abuse has occurred" should be added after "remedies should be provided", and that "complaints and other dispute resolution mechanisms" should be replaced with "grievance mechanisms".

131. The expert from the Government of the United Arab Emirates asked for clarification on the reference to the "presence" of the worker in the territory and whether this sentence referred to migrant workers only.

132. The Worker Vice-Chairperson, supported by the Employer Vice-Chairperson, explained that the term "presence" referred to the situation when a worker had returned to the country of origin, to ensure that grievance mechanisms could be enacted by workers remotely. She also suggested bringing "and other dispute resolution mechanisms" back into the text.

133. The expert from the Government of the United States suggested that if "grievance mechanisms" were kept, "easy" should be removed, as different forms of these mechanisms were not necessarily, in practice, easy. The Employer Vice-Chairperson, supported by the Worker Vice-Chairperson, expressed a preference to keep "easy", as even juridical disputes could be made easy to file through the effective use of new technologies.

134. Following a proposal from the expert from the Government of Mexico and a slight reformulation from the Office, the text read "affordable grievances and other dispute resolution mechanisms". The principle was agreed upon as amended.

Part IV. Operational guidelines

Prefatory sentence

135. The Employer Vice-Chairperson suggested that the guidelines should also cover responsibilities of workers and other entities involved in recruitment, such as transport companies. He also proposed deleting reference to "business" in light of the discussion on definitions.

136. The experts decided to consider that issue after the discussions on the guidelines were completed.

137. While recognizing the value of the guidelines addressing the responsibilities of workers' organizations, it was agreed subsequently not to include a section on these responsibilities, as there was insufficient time to develop and agree upon them. This may be the subject of future ILO work.

138. The prefatory sentence was agreed upon as amended.

Section A. Responsibilities of governments

Introduction

139. The Worker Vice-Chairperson proposed the substitution of "greatest responsibility" with "ultimate responsibility". The expert from the Government of the United States suggested substitution of the term "ensuring fair recruitment" with "advancing fair recruitment", arguing that governments can take measures, but cannot ensure outcomes. The introduction was agreed upon as amended.

Operational Guideline 1 (draft operational guideline 1)

140. Following a request from the Employer Vice-Chairperson for clarification on the relationship between the general principles and the operational guidelines, the Secretary-General of the Meeting explained that the proposed Office text for the operational guidelines did not correspond exactly with the proposed Office text for the general principles, as the intention of the guidelines was to spell out specifically the responsibilities of different actors in giving practical implementation to the principles. Also, the proposed Office text for the guidelines endeavoured to go beyond fundamental rights and capture the relevant standards governments had ratified.

141. The expert from the Government of Morocco supported this approach, suggesting that the experts should focus on concrete measures and actions each party should take to implement each principle.

142. The expert from the Government of the United States suggested that the use of already agreed language would simplify the discussion and the text should be brought into alignment with the wording of General Principle 1. She proposed replacing "respect and protect" with the expression, "this includes respect for and protection of …".

143. Operational Guideline 1 was agreed upon as amended.

Subparagraph 1.1

144. The experts agreed to split the two original subparagraphs into three subparagraphs, focusing on: (1.1) scope of application of the guideline; (1.2) ratification of relevant instruments; and (1.3) respect for the right to organize and bargain collectively.

145. With regard to the scope of application, the Worker Vice-Chairperson offered an amendment aimed at extending, as much as possible, the coverage of the guideline to all workers at all stages of the recruitment process. Throughout the discussion, she reiterated the importance of full coverage for workers in all situations and stages of recruitment (for example, recruitment to work in their territory or abroad, transiting workers and also those not yet

recruited). With this objective in mind, the Worker Vice-Chairperson suggested adding "or abroad" after "in their territory" to include all categories of workers.

146. The expert from the Government of the United States expressed concerns about the ability of governments to protect human rights of workers outside their jurisdiction.

147. The expert from the Government of Australia suggested the use of the term "responsibility" rather than "obligations" in light of the non-binding nature of the guidelines. She also suggested the inclusion of the word "jurisdiction" in addition to "territory" quoting the UN *Guiding Principles*. The expert from the Government of Mexico endorsed the second proposal.

148. The Worker Vice-Chairperson, with support from the Employer Vice-Chairperson, stressed that while business had responsibilities, governments had obligations to promote and protect rights. She also pointed to the fact that the word "obligation" was used in the UN *Guiding Principles* as well as in Operational Guideline 1, and is in line with the ILO Declaration of Fundamental Principles and Rights at Work. She supported the inclusion of the term "jurisdiction".

149. While recognizing a government's obligation to protect the human rights of workers in transit, the expert from the Government of Mexico noted that violations of the human rights of workers in transit were not necessarily related to their recruitment process.

150. The expert from the Government of Morocco suggested that, if transit was to be specifically mentioned, then governments should have a responsibility but not an obligation as this would be difficult to enforce. He also stressed that the focus of the Meeting was on fair recruitment, not on human rights protection in general. Human rights were a parameter of fair recruitment, but not the centre of the discussion.

151. The expert from the Government of Switzerland saw transit as part of the recruitment cycle and hence to be covered by the guidelines, but agreed that governments had a narrower responsibility for workers in transit.

152. The Worker Vice-Chairperson stressed that many countries had already taken proactive measures to protect workers in transit and that examples were provided in the report prepared by the Office for this Meeting. With a view to ensuring coverage of workers in transit and addressing the concerns raised by some of the Government experts, she proposed the following language: "… all workers recruited into, within or from their territory of jurisdiction".

153. Subparagraph 1.1 was agreed upon as amended.

Subparagraph 1.2

154. Subparagraph 1.2 was agreed upon without modification.

Subparagraph 1.3

155. After the Employer and Worker Vice-Chairpersons accepted the proposed Office text for subparagraph 1.3, a lengthy discussion occurred on the issue of the degree to which governments should have a responsibility to proactively promote the freedom of association and collective bargaining rights of workers involved in the recruitment process.

156. The expert from the Government of the United States considered that the phrase "maximize collective bargaining coverage of recruitment" was unclear and suggested it be changed to:

"The Government should respect the rights of workers including with regard to recruitment. This should include the rights of migrant workers to organize to protect themselves from exploitation."

157. The Worker Vice-Chairperson suggested the following alternative formulation in line with Convention No. 98: "Encourage employers and workers to increase collective bargaining coverage across sectors and support trade unions in their efforts to organize workers, including migrant workers."

158. While acknowledging the principle of freedom of association, the expert from the Government of Australia expressed concern at the notion that governments should support trade unions in their efforts to organize migrant workers, not necessarily seeing this as the role of government.

159. With regard to freedom of association, the expert from the Government of Morocco argued that an active government role would be seen as government inference in trade unions' internal affairs. In addition, he pointed at country situations with a multiplicity of unions, which would make active government support particularly challenging.

160. With a view to addressing some of the concerns expressed, the expert from the Government of the United States suggested, "not interfering with the efforts of employers and workers to increase collective bargaining across sectors".

161. The Worker Vice-Chairperson emphasized that governments had a proactive responsibility to create an enabling environment. She insisted that the right to bargain collectively and to organize into a union was central to the discussion on recruitment, since only through an organized workforce that could bargain collectively could workers effectively be protected in the recruitment process. Many examples could be cited, including migrant workers in Jordan whose union negotiated through a sector-wide collective bargaining process, a number of protections related to their recruitment processes. Collective bargaining could also help fill gaps in laws and regulations. She proposed an alternative, positive formulation: "Create an enabling environment in which employers and workers can increase collective bargaining coverage across sectors as well as for trade unions to organize workers, including migrant workers, to protect them from exploitation during or resulting from the recruitment process".

162. The Employer Vice-Chairperson agreed with the positive phrasing, which was consistent with both the idea of Convention No. 87, which was more passive in simply saying that workers have a right to set up organizations and governments should not interfere, and the more positive obligation with respect to collective bargaining contained in Convention No. 98.

163. The expert from the Government of Australia, supported by the Government experts from Mexico and Switzerland, preferred the formulation "not interfere with" over "create an enabling environment". She considered the proposed language too proactive and overly committed governments.

164. The expert from the Government of Morocco made a distinction between collective bargaining and the organization of workers, suggesting governments could actively take steps with regard to the first but not as easily with regard to the second, where a non-interference clause would be more appropriate.

165. In response to a request from the Worker Vice-Chairperson, the Secretary-General of the Meeting clarified that Convention No. 98 (Article 4) required that the law "promotes the full development and utilization of machinery for voluntary negotiation between employers or

employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

166. The Chairperson suggested the use of the word "promote" instead of "create" an enabling environment, stressing that this would be the result of a tripartite effort and not solely the responsibility of the government.

167. The expert from the Government of Australia proposed the replacement of the word "increase" later in the paragraph with "allowing" collective bargaining. In her view this was really about engaging in collective bargaining, not about extending it. She also proposed the phrase "workers to be organized" to replace "trade unions to organize workers".

168. The expert from the Government of United States, while agreeing on the use of the word "create", preferred to reference the right of "workers, including migrant workers, to organize in trade unions or otherwise" rather than the wording "for trade unions to organize workers". The change was suggested with a view to recognizing the right of workers to organize, including in forms other than trade unions. Responding to the Worker Vice-Chairperson's contention that the disagreement was questioning fundamental notions enshrined in ILO core Conventions, she clarified that her intention was in no way to avoid reference to trade unions as the primary way in which workers organized themselves, but simply to acknowledge the existence of other forms of workers' organizations. She then proposed the formulation, "to establish workers' organizations including trade unions".

169. The Worker Vice-Chairperson agreed to "workers' organizations" without referencing the term "trade unions". She also requested that the term "workers' organizations" should be referred to when considering the phrase "employers and workers can extend collective bargaining coverage" since, individually, workers could not bargain for something. The final phrase would therefore read as follows: "… can extend collective bargaining coverage across sectors and for workers, including migrant workers, to organize into workers' organizations".

170. Subparagraph 1.3 was agreed upon as amended. The Worker Vice-Chairperson expressed concern that the language represented a step back from core ILO Conventions, which, unlike these guidelines and principles, were binding.

171. Subsequently, at the end of the Meeting, the Chairperson, on behalf of the Officers of the Meeting, offered revised language that did not alter the substance of what had been agreed to previously, but made it more consistent with formulations contained in core ILO Conventions.

172. The Government experts from Australia and the United States expressed concern about the manner in which the revised language was presented at the very end of the Meeting and questioned whether the substance of the previously agreed upon text had been changed.

173. After the Chairperson expressed his regret about any misunderstandings concerning the manner in which the revised language was proposed and his reassurances that the intent was to make it more consistent with language contained in core ILO Conventions without changing the meaning of the previously agreed upon text, the Officers' proposal was accepted.

Operational Guideline 2 (draft operational guideline 2)

174. The guideline was adopted with the following amendments:

(a) addition of "in the recruitment process" after "abuses", as suggested by the expert from the Government of the United States;

(b) addition of the word "workers" after "governments should protect"; deletion of "other third parties" and addition of "by labour recruiters, employers and business enterprises", as proposed by the Employer Vice-Chairperson;

(c) the term "business enterprise" was substituted with "enterprise" at the end of the Meeting in line with the final agreement on definitions.

Subparagraph 2.1

175. Subparagraph 2.1 was agreed upon with the following amendments:

(a) addition of the words "and mandating" before "due diligence" as proposed by the Worker Vice-Chairperson;

(b) addition of the word "workers" after "protect" and "in the recruitment process" to align the language with the guideline;

(c) addition of the words "within their territory and/or their jurisdiction", as proposed by the expert from the Government of the United States.

Operational Guideline 3 (draft operational guideline 3)

176. The guideline was agreed upon with the amendment proposed by the expert from the Government of Mexico to include the words "and evaluating" after "regularly reviewing" and the use of the plural form for "commitment(s) and policy(ies)", proposed by the expert from the Government of the United States.

Subparagraph 3.1

177. The subparagraph was agreed upon without amendment.

Operational Guideline 4 (draft operational guideline 4)

178. The guideline was agreed upon with the following amendments:

(a) deletion of the word "all" before "relevant legislation", as suggested by the expert from the Government of the United States;

(b) addition of the word "all" before "workers", and "especially those" before "in a vulnerable situation", as proposed by the expert from the Government of Mexico.

Subparagraph 4.1

179. A lengthy discussion followed on the registration and licensing of labour recruiters, the importance of governments working in partnership with the industry to achieve fair recruitment, and the role of industry-led certification schemes. At the end of the Meeting, the experts decided to:

(a) merge and amend draft subparagraphs 4.1 and 4.2 to align the language with the agreed upon definition of “recruitment”;

(b) add a subparagraph on compliance with relevant laws, including registration and licensing and verification of the legitimacy of recruitment agencies;

(c) add a subparagraph on skills recognition.

180. With regard to subparagraph 4.1, the expert from the Government of the United States suggested amending the first sentence to read: “Governments should include in legislations and regulations coverage of all stages of the recruitment process, and of concerned parties”.

181. The Worker Vice-Chairperson suggested that the Office align the language with the agreed definition of recruitment. Later in the discussion she also suggested that draft subparagraph 4.2 be deleted and merged into the first subparagraph. Subparagraph 4.1 was agreed upon as amended.

Subparagraph 4.2

182. The experts engaged in a lengthy discussion on a new subparagraph 4.2 which originated from the proposal of the expert from the Government of the United States to move up to this guideline the following subparagraph, originally included under Operational Guideline 5: “It may be appropriate to require registration and licensing of labour recruiters to ensure that they are covered. Penalties for non-compliance should be sufficiently high to deter future abuses.” Her rationale for this was that this would provide a concrete example of measures to advance fair recruitment that could be addressed in legislation or regulations.

183. The Worker Vice-Chairperson suggested amendments to read as follows: “Governments should regulate recruitment though a public registration, licensing or certification system that offers workers sufficient and reliable information to make informed employment decisions and verify the legitimacy of recruitment agencies and employment or placement offers.”

184. The Employer Vice-Chairperson queried whether the sentence belonged better under Operational Guideline 5 because it was part of the enforcement and regulatory discussion. He proposed adding to it the following sentence: “Governments should also consider working in partnership with a national recruitment federation to encourage industry-led certification and accreditation schemes that drive professional standards and enable jobseekers and employers to identify compliant recruitment providers. Industry-led initiatives should complement government enforcement activities and regulation covering the recruitment process”. He also suggested replacing “Governments should regulate” with “Governments should consider regulating” to reflect the fact that both public licensing and industry-led certification were appropriate and equally effective options by which the system could be regulated.

185. The Worker Vice-Chairperson indicated that since the guideline dealt with government responsibilities, the use of “should” was more appropriate.

186. The expert from the Government of the United States suggested aligning the language with the Forced Labour Protocol that presented licensing and registration as part of a series of options that governments could take, and hence suggested to substitute “Governments should register” with “Governments should take measures such as regulating recruitment”.

187. The Employer Vice-Chairperson proposed the following compromise formulation: “Governments should, in consultation with relevant organizations or labour recruiters,

employers and workers, take measures such as regulating recruitment through registration, licensing or other regulatory systems that offer workers sufficient and reliable information to make informed employment decisions and verify legitimacy of recruitment agencies and employment or place offers. Such systems should be proportional and objective, not discriminatory and not aimed at inhibiting the development of a compliant recruitment industry."

188. The Worker Vice-Chairperson proposed the addition of "organizations of workers and employers" after "relevant" and the deletion of "labour recruiters", as labour recruiters fall under the category of employers. She stressed that the public nature of a registry was critical to the meaning of the rest of the paragraph concerning informed decision-making by migrant workers and thus proposed to keep "public" before "recruitment".

189. The Employer Vice-Chairperson explained that deliberate mention of labour recruiters was necessary as they were the ones ultimately impacted by the suggested regulations. It was important governments understood the need to involve them. To this aim, he suggested to add "as well as labour recruiters" after reference to organizations of workers and employers. He also suggested to insert "or other" before registries to widen the scope of "public registries".

190. The Worker Vice-Chairperson with the support of the Employer Vice-Chairperson proposed to deal with private registries in the section of the guidelines concerning the responsibilities of enterprises. She also proposed an amendment to the last sentence to read as follows: "Such systems should be objective, not discriminatory, and aimed at promoting a compliant recruitment industry." The experts decided to bracket the text and return to it at the end of the Meeting. Consequently a new Operational Guideline 20 was agreed upon by the experts (see paragraphs 356–366 below).

191. The Employer Vice-Chairperson stressed that the language he had proposed came out of industry agreements. He noted a subtle difference between his proposal and the text as just amended, in that the latter seemed not to recognize that the majority of recruitment was compliant. He added that the idea was that regulating systems should not hinder the ability of compliant recruiters, while addressing the issue of those who were non-compliant. He stressed the importance of keeping the language consistent with language in existing agreements.

192. The expert from the Government of the United Arab Emirates queried whether the language reduced the objective of regulating the recruitment industry to two narrow goals of licensing and public registering, while the purpose of regulation was much broader.

193. The Worker Vice-Chairperson said the key purpose of registration and licensing systems was to prevent abuses and to make sure that recruitment happened within the regulatory framework. To reflect this, she suggested adding the words "which allows workers to verify" after the word "systems" and deleting the text up to the words "the legitimacy of recruitment agencies and employment and placement offers". She noted that the ILO mandate was to protect workers, not to promote industry, and with these amendments the subparagraph reflected this tone and spirit.

194. The expert from the Government of the United States suggested including "and other relevant organizations" after "labour recruiters" to recognize the existence of other forms of organizations besides workers' and employers' organizations.

195. The expert from the Government of Australia raised concerns about the complexity and confusing structure of the subparagraph.

196. After a lengthy debate and noting a general agreement on the substance of the subparagraph under discussion, the Worker Vice-Chairperson suggested tasking the Office with proposing appropriate text.

197. At the end of the Meeting, new subparagraph 4.2, based on the proposed text by the Office, was agreed upon as amended.

Subparagraph 4.3

198. The proposed Office text for subparagraph 4.3 was agreed upon with a minor amendment.

Subparagraph 4.4

199. The Worker Vice-Chairperson, with the consent of the Employer Vice-Chairperson, proposed an additional subparagraph 4.4 on skills recognition that read as follows: "Governments should also strive to adopt mutual recognition agreements to facilitate recognition of foreign qualifications and to address brain waste and de-skilling."

200. The expert from the Government of the United States suggested substituting "strive to adopt" with "consider adopting" to allow more flexibility for countries that do not even have a national skills qualification system and would hence find it difficult to adopt mutual agreements across countries.

201. The subparagraph was agreed upon as amended.

Operational Guideline 5 (draft operational guideline 5)

202. The guideline was accepted with the following amendments:

(a) replace the words "ensure enforcement" with the words "effectively enforce", as suggested by the expert from the Government of the United States;

(b) replace the words "labour recruiters" with "relevant actors in the recruitment process" as proposed by the expert from the Government of Mexico.

Subparagraph 5.1

203. With regard to subparagraph 5.1, the Worker Vice-Chairperson proposed to delete "a sufficient number of labour inspectors" and replace it with "sufficiently resourced labour inspectorates".

204. The expert from the Government of the United States suggested adding "work to ensure" after "Governments should", and to replace "sufficiently resourced" with "an effective labour inspectorate". She explained that being sufficiently resourced was not enough to ensure effective enforcement.

205. The Worker Vice-Chairperson proposed to add "an effective and" before "sufficiently resourced".

206. Subparagraph 5.1 was agreed upon as amended.

Subparagraph 5.2

207. After a discussion on the need to ensure separation between labour inspection services and the police or immigration authorities, the experts agreed to delete draft subparagraph 5.2, as its content was considered to be already covered under Operational Guideline 9.

208. A new subparagraph 5.2 was proposed by the expert from the Government of Mexico, as follows: "Governments should promote schemes of shared responsibility between employers and recruiters in order to ensure that they respect labour rights in the recruitment process and during the whole labour relationship."

209. The Employer Vice-Chairperson questioned the meaning of "shared responsibility" between employers and recruiters and expressed concern that this would not be an achievable outcome. In addition, he argued that employers should not be held responsible for the behaviour of recruiters, as it was beyond their control.

210. The Worker Vice-Chairperson welcomed the amendment and suggested to replace "shared responsibility" with "joint liability" to address the concern raised by the Employer Vice-Chairperson. She stressed the fact that recruiters acted on behalf of employers and hence the notion of joint liability was of particular importance.

211. The Employer Vice-Chairperson stressed that the lack of clarity about the responsibilities of employers and recruiters was the main issue and made the following proposal: "Governments should ensure that employers and labour recruiters are clear about their roles and responsibilities and understand their obligations in order to ensure respect for labour rights." He added that holding the employers accountable or liable for the violations of labour recruiters would conflict with the common business principle of good faith and that the Employers' group could not agree to this.

212. The expert from the Government of the United Arab Emirates acknowledged the Employers' concerns about joint liability, but highlighted the absence in the discussion of reference to the possible collusion between recruiters and employers. He proposed a modification of the first sentence as follows: "Governments should cooperate to hold recruiters and employers accountable for violations of recruitment regulations."

213. The Worker Vice-Chairperson expressed concern that the Workers' group could not see the issue of shared responsibility reflected in the paragraph any longer. She stressed that the text should be consistent with other International Labour Conference discussions on shared responsibility. With a view to advancing the discussion, she suggested bracketing the text as amended by the expert from the Government of the United Arab Emirates and to return to it later.

214. At the end of the Meeting, the expert from the Government of Mexico presented text as follows: "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 others' initiatives to promote fair recruitment practices."

215. Subparagraph 5.2 was agreed upon as amended.

Operational Guideline 6 (draft operational guideline 6)

216. While the Worker and Employer Vice-Chairpersons agreed that the aspirational and non-binding nature of the guidelines justified the adoption of a clear message concerning no fees nor costs for workers, some Government experts (Switzerland, United States and

Australia) suggested less constraining wording since charging fees and costs was practiced in many countries.

217. Following a suggestion from the expert from the Government of Switzerland, modified by the Government experts of the United State and Australia, amendments were introduced to read: “Governments should take measures to prohibit and prevent the payment of fees and related costs by recruited workers.”

218. The Worker Vice-Chairperson suggested that the wording of this guideline as amended was in fact weakening the adopted principle and urged the experts not to re-open the same discussion of the previous day.

219. Recalling that the experts had agreed to discuss an eventual “exception clause” on fees and costs at the level of the operational guideline, the Chairperson proposed to bracket the guideline until the discussion on the explanatory subparagraphs was completed.

220. Following this discussion, the Secretary-General of the Meeting proposed compromise text as follows: “Governments should take measures to eliminate the charging of recruitment fees and related costs to workers.”

221. The guideline was agreed upon as amended.

Subparagraph 6.1

222. The expert from the Government of Australia suggested to add a new paragraph as follows: “Exceptions may be authorized by the competent authority following consultations with the most representative organizations of employers and workers.”

223. The Worker Vice-Chairperson opposed the amendment arguing that this exception clause was broader even than what was included in Convention No. 181.

224. The Employer Vice-Chairperson suggested the following text to be added at the beginning of the sentence as a way to limit the scope of the exception clause, and yet respect the aspirational nature of the document: “For the purposes of achieving an overall prohibition on fees being imposed on workers”.

225. In response to a request from the Worker Vice-Chairperson, the Secretary-General of the Meeting explained that Convention No. 181 provided for the charging of fees under very tight circumstances and bearing in mind the interest of the worker. She added that the discussion at the ILO had progressed and was more and more aiming at eliminating fee charging to workers, as reflected in the wording of Recommendation No. 203 accompanying the Protocol on Forced Labour.

226. Following further discussion, the Secretary-General of the Meeting proposed compromise text for subparagraph 6.1 as follows: “These measures should aim particularly at preventing fraudulent practices by labour recruiters, abuse of workers, debt bondage and other forms of economic coercion.” She indicated that with this suggested text a specific exception clause would not be needed and the guideline would be more aligned with the most recent ILO discussions, in particular with regard to Recommendation No. 203 and the Protocol of 2014 to the Forced Labour Convention.

227. The expert from the Government of the United Arab Emirates stressed that no fees should be charged to workers, which was captured in the text of the guideline. However, he considered that the explanatory sentence suggested by the Secretary-General of the Meeting did not focus on legal or legitimate fees, but rather on the collection of illicit payments. In

his view, this was a separate issue, worthy of distinct treatment. He therefore proposed to substitute the Secretary-General's text with the following sentence: "Governments should also take measures to prevent and deter the solicitation and/or collection of illicit money from workers in exchange for offering them employment contracts." In his view, this text would address separately two important points: (a) that no fees ought to be borne by workers; and (b) that measures should be put in place to prevent and deter the practice of soliciting or collecting money illicitly from workers for the purpose of securing their employment.

228. The expert from the Government of Morocco supported the proposal of the expert from the Government of the United Arab Emirates.

229. The expert from the Government of Switzerland supported the proposal, but proposed that the suggested sentence be added to, and not substituted for, the sentence proposed by the Secretary-General of the Meeting, as it explained in more depth the collection of illicit money. It was agreed to keep both sentences.

230. Responding to a proposed deletion of the word "particularly" by the expert from the Government of the United Arab Emirates, the Worker Vice-Chairperson stressed that, while the reasons spelled out in the sentence for not charging fees to workers were the most pressing and compelling, they were not meant to be an exclusive list. Therefore, she proposed to maintain the word "particularly".

231. The experts agreed on subparagraph 6.1 as amended.

Subparagraph 6.2

232. The Employer Vice-Chairperson suggested the addition of a new sentence as follows: "The full extent and nature of legitimate costs and fees, for instance those paid by employers to labour recruiters, should be transparent to those who pay them." He explained that the reason for this amendment was that, to the extent that costs do exist, these costs should not be hidden from anyone who pays them.

233. The Worker Vice-Chairperson questioned the use of the word "legitimate" related to the issue of recruitment costs and fees, as it opened up a discussion on what was "legitimate".

234. The Employer Vice-Chairperson agreed to remove the adjective "legitimate" and suggested to add "Governments should ensure that" before "the full extent".

235. The Worker Vice-Chairperson asked for the inclusion of a sentence that would precede the text proposed by the Employer Vice-Chairperson as follows: "Perspective employers or their intermediaries and not the workers should bear the costs of recruitment." She also suggested to add "public and private" after "prospective employers" with a view to recognizing that governments also might be employers and hence bear the costs of recruitment.

236. The expert from the Government of Switzerland mentioned that governments might cover costs directly or indirectly linked to recruitment or job placement even when they do not act as employers for public interest reasons. This notion should not be excluded.

237. Subparagraph 6.2 was agreed upon as amended.

Proposed new subparagraph

238. The Worker Vice-Chairperson referred to the text of an amendment that was submitted in writing to the experts for their consideration as follows: "Governments' prohibition of fees and related costs should include (but are not limited to), in whole or in part, any charges,

deductions, assessments or other financial obligations associated with the recruitment process, regardless of the manner, location or timing of their imposition or collection for medical and other examinations, passport and visa or other administrative fees, training, labour broker fees, insurance, accommodation and transportation costs, as well as fees that impede the freedom of movement. Any arrangements which prevent, or have the effect of preventing jobseekers from accepting employment with an employer after their placement with a labour recruiter should be prohibited. Labour recruiters should only be permitted to charge the employer reasonable fees in these cases." The purpose of this amendment was to follow-up the suggestion made during the discussion on the definition of recruitment fees and related costs that further elaboration should be considered during the discussion of the operational guidelines.

239. The Employer Vice-Chairperson noted that the long list proposed by the Worker Vice-Chairperson gave the employers considerable difficulty. He argued that certain costs, such as visa costs, are not necessarily a responsibility of employers, and as such can be reasonably expected to be paid by the worker.

240. The Worker Vice-Chairperson suggested a shortening of the text to address the concern of the Employers' group, but at the same time recognizing that the ambiguity around these issues hinders the effort to protect workers. She proposed to refer to charges "such as" medical examination, etc. She noted that this text was already presented in the definition session and was proposed to be placed under the operational guidelines.

241. The text of the amendment was bracketed and reconsidered at the end of the Meeting, when the Worker Vice-Chairperson agreed to withdraw the amendment, noting that she preferred withdrawal than seeing the amendment reduced to a level where it would not serve any useful purpose. She noted that the discussion clearly signalled a need to delve into this issue much more and asked the ILO to find an opportunity soon to have a more detailed discussion on the subject.

242. The proposed subparagraph was withdrawn.

Operational Guideline 7 (draft operational guideline 7)

243. The guideline was accepted with an amendment proposed by the expert from the Government of the United States as follows: "… take steps to ensure that employment contracts are clear and transparent and are respected". The suggested deletion of the term "concluded" referred to the fact that not all employment contracts are written.

Subparagraph 7.1

244. The Worker Vice-Chairperson, with the agreement of the Employer Vice-Chairperson, proposed including a reference to applicable collective agreements with a view to bringing the text into line with already agreed upon language. She also proposed to replace the final part of the text after "should be provided" with the following: "… sufficiently in advance of departure from their country of origin. The origin country contract should not be substituted and should be enforceable in the destination country".

245. The expert from the Government of the United States suggested including "take steps to" to align with the text of the guideline. In addition, she proposed including "terms and conditions of employment" and removing "and the remuneration".

246. The expert from the Government of the United Arab Emirates proposed a new paragraph as follows: "Governments may consider the use of information technology for the purpose of ensuring that migrant workers' contracts are transparent, are based on informed consent and

are immune to substitution." He argued that the use of technology could be a way of ensuring informed consent and hence worth mentioning as a possible measure to be adopted by governments.

247. At the suggestion of the Worker Vice-Chairperson, the subparagraph was amended to include reference to the issue of respect for confidentiality and the protection of personal data, and made more concise to address a concern on repetitiveness raised by the expert from the Government of Switzerland.

248. Following a suggestion made by the expert from the Government of the United States to replace the words "the origin country" with "these contracts", the expert from the Government of Australia asked for clarification on where the accountability would lie for the enforcement of employment contracts at destination. She was not sure who would be accountable for enforcement in the country of destination.

249. The expert from the Government of the United Arab Emirates explained that for a contract to be enforceable in his country it would need to be signed there. Common practice would be to send an employment offer modelled on a standard employment contract to a worker in his or her country of origin, which is signed and registered with the appropriate ministry once that worker arrives in the United Arab Emirates. He agreed that there could be legal issues related to the enforcement of a contract signed in one jurisdiction and applicable in another jurisdiction.

250. Subparagraph 7.1 was agreed upon as amended.

Subparagraph 7.2

251. The expert from the Government of Morocco wondered whether another subparagraph may be needed that mentioned governments' responsibility to protect workers given practical realities on the ground, which at times meant that commitments were made to workers verbally. He proposed: "In the absence of a written contract, governments have the responsibility to ensure that recruited workers have all their rights respected in line with a written contract."

252. New subparagraph 7.2 was agreed upon as amended.

Operational Guideline 8 (draft operational guideline 8)

253. The guideline was accepted with the following amendments aiming at clarifying and aligning the language with General Principle 13:

(a) addition of: "without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence of legal status in the State", as suggested by the Worker Vice-Chairperson;

(b) addition of the words "take steps to" before "ensure", as proposed by the expert from the Government of the United States;

(c) addition of the words "to address alleged abuses and fraudulent practices in recruitment without fear of retaliatory measures and to appropriate and effective remedies where abuses have occurred", as suggested by the expert from the Government of the United States.

Subparagraph 8.1 and new subparagraph 8.2

254. The experts reviewed written amendments to subparagraph 8.1 submitted by the Workers' group as follows:

(a) replace the last sentence of subparagraph 8.1 with the sentence: "Pending a complaint or dispute, whistle-blowers should be protected, migrant workers should be granted residence and governments should ensure that the mechanisms can be accessed across borders after a worker has returned to his or her country of origin";

(b) add two new subparagraphs after 8.1 that read:

"(i) In order for complaints mechanisms to be effective for all workers, they must also protect irregular migrants from fines and other administrative sanctions, prosecution for immigration-related offences, arrest, detention and deportation.

(ii) Governments should hold labour recruiters and employers jointly liable for violations of workers' rights to guarantee effective remedies such as compensation of workers in cases of abuse."

255. The Worker Vice-Chairperson explained that the spirit of the first amendment was to ensure that mechanisms were available to provide an opportunity to stay in the country while pursuing complaints. She argued that without an effective way for migrant workers to stay in the country, they could face retaliatory measures for lodging a complaint.

256. On behalf of the Government experts, the expert from the Government of Mexico presented a new subparagraph to be added after subparagraph 8.1 as follows: "In this sense, governments should promote policies aimed at identifying and eliminating barriers to effective access to complaint and other dispute resolution mechanisms including barriers such as complex and administrative procedures, fear of discrimination and dismissal and, in the case of migrant workers, fear of deportation." The key point was that governments' had a responsibility to identify and eliminate barriers for effective access to dispute resolution mechanisms.

257. The Worker Vice-Chairperson noted that the amendment was consistent with the workers' amendments. She requested that in the case of migrant workers, "detention" be added before "deportation". Given the broad formulation of the amendment, the Workers' group wanted to add "unreasonable costs" to "administrative barriers", because if the costs were too high then workers might not be able to access services.

258. With regard to subparagraph 8.1, the expert from the Government of the United States offered several clarifying amendments. When talking about "the steps to ensure" she proposed to add "when abuses related to recruitment occur", after "remedies may include," it was proposed to add, "but not necessarily limited to".

259. The Worker Vice-Chairperson noted that an important aspect of the Workers' group amendment had been lost and proposed after the word "protected" to add a comma and delete "for" while adding "should be granted residence" after migrant workers.

260. The Employer Vice-Chairperson stressed that granting residency could mean many things. It could mean that governments should not deport migrants while their claims were being investigated or it could mean that migrant workers would be allowed to permanently stay in the country because they had raised a complaint and were waiting for it to be resolved. He proposed to add: "Migrant workers should not be deported while complaints are being resolved."

261. In response, the Worker Vice-Chairperson suggested the following rewording: "Pending the investigation or resolution of a complaint or dispute, whistle-blowers should be protected and migrant workers should have leave to remain in the country. Governments should take steps or measures to ensure that the mechanisms can be accessed across borders after a worker is returned to his country of origin."

262. The expert from the Government of the United Arab Emirates noted that permission to remain in the country was often tied to employment. He proposed to replace "should be allowed to seek and obtain alternative employment" instead of "leave to remain" as this would not require governments to provide residency in the absence of employment.

263. The expert from the Government of Switzerland suggested "effective access to procedures" might work as an alternative to capture the need to allow migrant workers to stay to resolve disputes. He stressed that while migrant workers should not be deported for lodging a complaint, caution should be taken not to open the way for potential abuse as a worker could come to the end of their stay and lodge an unfounded complaint so as to be able to remain in the country.

264. The expert from the Government of Australia proposed that "complainant" replace "whistle-blower". She also suggested adding a step in the process to gaining the right to stay in a country rather than automatically granting the right to stay once a complaint is lodged; a mechanism that could be abused.

265. The experts agreed to retain the use of both "whistle-blower" (in line with terminology used during the International Labour Conference discussion on supply chains) and "complainant".

266. Responding to a concern of the expert from the Government of the United Arab Emirates on the relevance of the discussion to the issue of fair recruitment, the Worker Vice-Chairperson stressed that the question was how to make fair recruitment guidelines enforceable so they were meaningful and moved beyond voluntary codes. Recognizing, however, that the concept of protection against deportation had already been addressed in the amendment proposed by the expert from the Government of Mexico, she accepted replacing her proposal with the language suggested by the expert from the Government of Switzerland.

267. The Employer Vice-Chairperson suggested adding "timely" access to procedures, since for migrant workers time was of the essence.

268. With reference to the last amendment proposed by the Workers' group (point (ii) above), noting that the amendment referred to the matter of joint liability under Operational Guideline 5, it was agreed at the end of the Meeting not to accept it.

269. Subparagraphs 8.1 and 8.2 were agreed upon as amended.

Operational Guideline 9 (draft operational guideline 9)

270. The guideline was approved with the deletion of the word "all" before "recruiters" as suggested by the Worker Vice-Chairperson and the replacement of the word "ensure" with the word "promote" as suggested by the expert from the Government of the United States.

Subparagraph 9.1

271. The Worker Vice-Chairperson, with the support of the Employer Vice-Chairperson, proposed replacing the word "shape" with the word "oversee".

272. The expert from the Government of the United States suggested replacing “should ensure” with “work to ensure”.

273. The expert from the Government of the United Arab Emirates suggested the deletion of the words in parenthesis, which were too proscriptive.

274. The subparagraph was agreed upon as amended.

Operational Guideline 10 (new)

275. The experts considered a written proposal of the Workers’ group to add a new operational guideline that read: “Governments should ensure that recruitment responds to established labour market needs.”

276. The Worker Vice-Chairperson noted that while this notion was included at the level of principle, it was not addressed at the level of the guidelines.

277. Operational Guideline 10 was approved with an amendment proposed by the expert from the Government of the United State to substitute “ensure” with “seek to ensure” (appendix, paragraph 10 of section IV).

Subparagraph 10.1

278. The experts considered the written proposal offered by the Workers’ group for a new subparagraph 10.1, which read as follows: “Governments should 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 and full, productive and freely chosen employment. Before authorizing the recruitment and introduction of migrants for employment, the competent authority of the territory of immigration shall ascertain whether there is a genuine need in the labour market.”

279. The Employer Vice-Chairperson said the text should read “competent immigration authority of the territory”.

280. The expert from the Government of the United States preferred a shorter paragraph and suggested the use of “competent authority”, which was the correct wording in the US context rather than “immigration authority”. She asked to replace the word “territory” with “country of destination”.

281. The expert from the Government of Australia raised a procedural issue on the length of the amendment and the fact that the experts were not given the chance to see it beforehand. She asked to remove the text “in order to promote decent work for all and full, productive and freely chosen employment”, as that was covered by labour market needs, and suggested deleting the last sentence.

282. The expert from the Government of Poland agreed that the last sentence went too far and limited labour mobility.

283. The Worker Vice-Chairperson accepted the suggested deletions, but proposed to add in the first sentence the phrase, “… seek to assess labour market needs and” before the word “ensure”, and “and in order to promote decent work for all” after “migration”.

284. The subparagraph was agreed upon as amended.

Operational Guideline 11 (draft operational guideline 10)

285. The experts discussed a revised text as presented in writing by the expert from the Government of the United States on behalf of the Government group, as follows: “Awareness-raising efforts should be carried out through education and training directed at employers, workers, and recruiters, including regarding the need for human rights due diligence, and good practices for recognizing and preventing/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, regulations, 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 and civil society groups;

(f) in the case of recruitment of migrant workers, countries should consider providing training regarding workers’ rights and fair recruitment for potential migrants;

(g) collaboration with the ILO to provide education and training and/or conduct awareness-raising campaigns; and

(h) making labour market information publicly available so as to inform decision-making by workers, employers and recruiters.”

286. The Employer Vice-Chairperson proposed to add to bullet point “(e)” mention of “compliant labour recruiters” before “civil society groups”. He also proposed to add “… and the most representative workers and employers organizations” to bullet point “(g)”.

287. The Worker Vice-Chairperson proposed the addition of another bullet point on pre-departure and post-arrival orientation and to add “webinars” to bullet point “(d)”. She also presented a written amendment introducing the following new paragraph after the bullet points: “These measures should help ensure that workers have access to comprehensive and accurate information including, but not limited to, admission requirements, living and employment conditions, rights and labour laws. Information should be provided to migrant workers free of charge, and in a language they are able to understand.”

288. Some Government experts (Switzerland and Australia) pointed to the fact that the suggested text implied that information had to be made available in a multitude of languages, which might not be practical.

289. With a view to retaining the concept that information should be free, widely available and understandable to migrant workers, the Worker Vice-Chairperson proposed that the Office recommend some text.

290. The Secretary-General of the Meeting proposed the following: “Information should be available publicly in languages most often used by migrants to the country concerned.”

291. The expert from the Government of Switzerland proposed the deletion of the second sentence and a full stop after “labour laws”.

292. The Worker Vice-Chairperson agreed to delete the second sentence, pointing out that "comprehensive" had a different meaning than "comprehendible".

293. With regard to the guideline, the Employer Vice-Chairperson suggested adding "understandable" between "comprehensive" and "accurate" to address the concerns expressed by the Worker Vice-Chairperson and supported the deletion of the second sentence.

294. The guideline and the associated subparagraphs 11.1 and 11.2 were agreed upon as amended.

Operational Guideline 12 (draft operational guideline 11)

295. After consultation with the Officers, the Chairperson announced that discussion of this guideline would take place at a later stage.

296. At the end of the Meeting, the Worker Vice-Chairperson regretted that compromise language could not be reached and saw this as an important omission from the guidelines. She stressed that the Workers' group considered that the context of crisis and conflict related directly to fair recruitment in two ways: (a) forcibly displaced persons and refugees face an extremely heightened vulnerability to unethical recruitment, forced labour and trafficking, all of which was essential to address; and (b) because recruited workers might find themselves in a crises situation and in need of protection. She noted that there was a very important role for the ILO to play in both of those contexts and highlighted the need for a clear understanding of the linkages between these issues.

297. The Worker Vice-Chairperson informed the Meeting that, after extensive consultations among the experts, only the operational guideline text, and nothing beneath it, could be agreed upon. She hence proposed that only the guideline be accepted.

298. The expert from the Government of Mexico further explained the reasons why she could not agree to the proposed subparagraphs, which were only loosely related to the issue of recruitment, but could agree on the guideline text in order to signal that this was an important issue.

299. The expert from the Government of the United States indicated that she shared the same perspective as the expert from the Government of Mexico. She proposed two amendments to the text of the guideline: to delete the word "support" before "respect human rights" and to add the word "promote" before "fair recruitment".

300. In order to identify simply those actors who have a role to play without specifying what type of measures should be taken, the Secretary-General of the Meeting proposed retaining the first sentence of the Office subparagraph up to the words "human rights abuses".

301. The Worker Vice-Chairperson suggested to add "and recruitment" before "abuses".

302. The guideline and its associated subparagraph were agreed upon as amended.

Draft operational guideline 12 (deleted)

303. The Worker Vice-Chairperson drew attention to the fact that the entire section was redundant with Operational Guideline 5 and suggested to delete it.

304. The experts agreed to delete this guideline, therefore, along with its associated subparagraphs.

Draft operational guideline 13 (deleted)

305. The Worker Vice-Chairperson proposed editing the text to avoid repetition and to include "regulate" between "should" and "monitor" and to delete "and, where appropriate, regulate". She also suggested deleting the subsequent paragraphs.

306. The expert from the Government of the United Arab Emirates raised a question of definition regarding the use of the word "evaluate" in this context.

307. The Office clarified that evaluation meant analysing the impact of recruitment which had a different meaning than "monitoring" which relates to tracking. The word "evaluate" was referenced in relevant ILO instruments.

308. The Employer Vice-Chairperson and the Worker Vice-Chairperson agreed with the explanation proposed by the Office that some countries might have an interest in learning from experiences in other countries.

309. The expert from the Government of Australia stressed that it was not possible to regulate recruitment in origin, destination and transit countries because a government can only regulate in its jurisdiction.

310. The Worker Vice-Chairperson proposed to add the following paragraph: "Governments should regulate recruitment taking into account skills shortages in developing countries. Appropriate steps should be taken to prevent depletion of existing workforces."

311. The Employer Vice-Chairperson could not support the proposed amendment and suggested rephrasing or deletion.

312. After consultations with the Officers, the Chairperson informed the experts that the Office had a proposal to delete Operational Guideline 13 and include the relevant text under Operational Guideline 14, which was accepted.

Operational Guideline 13 (draft operational guideline 14)

313. The Secretary-General of the Meeting offered the following text for this guideline: "Governments should ensure that bilateral and/or multilateral agreements on labour migration, which include mechanisms for oversight of recruitment of migrant workers, are consistent with international labour standards and other internationally recognized human rights and are concluded between countries of origin, transit and destination, as relevant, and that they are implemented effectively". This sentence was subsequently corrected to eliminate the word "which" after "labour migration", to address a grammatical error which did not reflect the intention of the Meeting.

314. The proposed text for the associated subparagraphs read as follows:

(a) Bilateral and/or multilateral agreements should be rooted in international labour standards and other internationally recognized human rights, and should contain specific mechanisms to ensure international coordination and cooperation and to close regulatory and enforcement gaps across common labour migration corridors. These agreements should be drafted, adopted, reviewed and implemented with the meaningful participation of the social partners and include the establishment of oversight mechanisms, such as joint committees, under bilateral and multilateral agreements. They should be made public and migrant workers should be informed of their provisions.

(b) These agreements should be based upon reliable data and information from the monitoring and evaluation of recruitment practices and their labour market implications.

(c) Strategic partnerships between the public and private sectors should also be promoted through these agreements, and good practices exchanged within common labour migration corridors when applicable, so as to ensure that labour recruiters violating relevant laws are sanctioned, including, where appropriate, for the offence of trafficking in persons.

315. The expert from the Government of Switzerland suggested including wording to ensure the protection of citizens abroad through consular protection, which he considered to be a crucial aspect.

316. The Employer Vice-Chairperson suggested including after "joint committees" the following wording: "… involving public and private sector participants in the recruitment process industry".

317. The Worker Vice-Chairperson preferred the replacement of the word "joint" with "tripartite" right before "committees". She also proposed to add the words "gathered through" after "reliable data and information".

318. The expert from the Government of the United States suggested inserting after "enforcement gaps" the phrase "related to recruitment".

319. The expert from the Government of Australia suggested adding the wording "under bilateral and multilateral agreements" after "tripartite committees".

320. After confirming the agreement of the experts on the modifications made to subparagraphs "(a)" and "(b)", the Chairperson moved the discussion to point "(c)".

321. The experts agreed to delete it at the suggestion of the expert from the Government of the United States.

322. The operational guideline and the related subparagraphs were agreed upon as amended.

Operational Guideline 14 (new)

323. The experts accepted a proposal for a new operational guideline submitted in writing by the Workers' group.

Subparagraph 14.1

324. The Meeting examined the text of the subparagraph, submitted in writing by the Workers' group as follows: "Governments should promote adherence to fair recruitment guidelines as employers and through commercial transactions with business enterprises. States should exercise adequate oversight in order to meet their international obligations when they recruit workers or contract with, or legislate for, business enterprises that engage in recruitment practices. Governments conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. States should demonstrate fair recruitment practices and promote awareness of, and respect for, fair recruitment principles by enterprises, including through the terms of contracts."

325. The expert from the Government of the United States proposed deleting "in order to meet their initial obligations" as well as "or legislate for" in the next sentence. She also proposed

to say: "Governments should demonstrate fair recruitment practices … including through their procurement activities" and to delete "the terms of contracts".

326. The experts accepted the proposed subparagraph as amended.

Section B. Responsibilities of enterprises and public employment services

Introduction

327. The discussion focused on the definition of **business enterprise** as this would define the scope of application.

328. Based on informal consultations with a number of experts, the Employer Vice-Chairperson proposed the following definition: "Business enterprises encompassed employment, labour recruiters and any other entity involved in the recruitment process."

329. Following a suggestion by the Worker Vice-Chairperson to substitute "entity" with "service providers", discussion moved around whether public entities would also be part of this definition and hence if they would be covered by the guidelines under section B.

330. The expert from the Government of the United States questioned whether public employment services should remain in the definition as this would have meant that the whole section would also be applicable to governments.

331. In this context, the Office proposed to delete the word "business" and limit the definition to "enterprises".

332. With regard to the scope of application concerning Government entities, the Employer Vice-Chairperson stressed that section A focused on governments' responsibilities in their capacity as regulators, not when they provide public employment services.

333. To address these concerns, the Secretary-General of the Meeting suggested that the heading of the section B could explicitly refer to responsibilities of enterprises "and public employment services". After the text was bracketed and further reconsidered at the end of the Meeting, she also proposed adding the sentence "this section does not apply to governmental agencies when in a regulatory capacity" at the beginning of the introductory sentence.

334. The experts agreed with the proposal and the Office was tasked with bringing the definition, the introduction to section B and any other relevant section of the text in line with this agreement, distinguishing public employment services from enterprises, except where otherwise indicated.

Operational Guideline 15 (draft operational guideline 15)

335. The guideline was accepted without amendments (appendix, paragraph 15 of section IV).

Subparagraph 15.1

336. Subparagraph 15.1 was approved with the addition of the words "in their recruitment process" and the deletion of the second sentence, since its content was already covered in the definition of **due diligence**.

Subparagraph 15.2

337. Subparagraph 15.2 was approved as amended.

Subparagraph 15.3

338. Subparagraph 15.3 was agreed upon with the substitution of the word “licensed” with “compliant” before “labour recruiters”, as suggested by the Employer Vice-Chairperson.

Subparagraphs 15.4 and 15.5

339. The Worker Vice-Chairperson suggested the addition of the following sentence at the beginning of the next subparagraph: “Indirect recruitment reduces transparency and increases the risk of human rights violations. Business enterprises should only resort to indirect recruitment when justified …”. The Employer Vice-Chairperson indicated that his group could not support the proposal.

340. The Worker Vice-Chairperson proposed the insertion of the following subparagraphs:

“(a) Enterprises should undertake recruitment to meet established labour market needs and never as a means to displace or diminish an existing workforce or lower wages or working conditions or otherwise undermine decent work. They should work jointly with workers’ organizations to extend collective bargaining coverage.

(b) Enterprises should respect internationally recognized human rights, including those expressed in international labour standards, 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, in the recruitment process.

(c) Enterprises should not retaliate against or blacklist workers, in particular those who report recruitment abuses or fraudulent recruitment practices anywhere along their supply chain and should provide special protections for whistle-blowers.”

341. The reason for proposing subparagraph (a) was the desire to see labour rights, and not just human rights in general, prominently addressed.

342. The Employer Vice-Chairperson could not accept the last sentence of subparagraph (a).

343. The expert from the Government of Australia suggested that subparagraph (a) was redundant as it was already covered in other parts of the text. In response, the Worker Vice-Chairperson explained that she proposed to include this subparagraph to ensure consistency in the application of the principles to the different actors involved in recruitment, not only governments.

344. The Chairperson noted that the whole subparagraph referred to labour market needs and did not seem to belong under this operational guideline. The experts agreed to move this paragraph elsewhere.

345. Subsequently, in response to a proposal put forth by the Worker Vice-Chairperson, the experts decided to make this subparagraph become new Operational Guideline 16.

346. Subparagraph (b) was agreed upon after the Office was tasked to bring the language into line with the text of Guiding Principle 1.

347. Subparagraph (c) was agreed upon after the text was brought into line with the language used in Operational Guideline 8.

Operational Guideline 16 (new)

348. As indicated in paragraph 345 above, the experts agreed on a new Operational Guideline 16 without any explanatory subparagraph.

Operational Guideline 17 (draft operational guideline 16)

349. The experts approved Operational Guideline 17 without amendment.

Subparagraphs 17.1 to 17.3

350. Subparagraph 17.1 was agreed upon with the addition of the term "recruitment" before "cost", as suggested by the Employer Vice-Chairperson.

351. Subparagraph 17.2 was agreed upon with the addition of the sentence: "Enterprises should communicate this policy externally via guidelines and other means, including contracts, to all perspective and current business partners and relevant stakeholders."

352. Subparagraph 17.3 was deleted, with parts of its text moved up to subparagraph 17.2.

Operational Guideline 18 and subparagraph 18.1

353. The guideline was agreed upon with an amendment proposed by the expert from the Government of the United States to replace "not ensure" with the words "should not interfere with".

354. Subparagraph 18.1 was approved without amendment.

Operational Guideline 19 (draft operational guideline 18) and subparagraph 19.1

355. The guideline and the associated subparagraph were approved without amendment.

Operational Guideline 20 (new) and subparagraph 20.1

356. The guideline and the associated subparagraph were discussed at the end of the Meeting in relation to bracketed text under Operational Guideline 4 (see paragraph 190 above).

357. The bracketed text proposed by the Employer Vice-Chairperson was as follows: "Governments should also consider working in partnership with a national recruitment federation to encourage industry-led certification and accreditation schemes that drive professional standards and enable jobseekers and employers to identify compliant recruitment providers. Industry-led initiatives should complement government enforcement activities and regulation covering the recruitment process". The experts had agreed that this text did not belong in the section devoted to responsibilities of governments.

358. After agreeing that the new guideline should be placed in the section on responsibilities of enterprises and public employment services, the Employer Vice-Chairperson suggested a rephrasing of the first few words, as follows: "Enterprises including national recruitment

federations should work in partnership with governments to encourage industry-led certification …"

359. Responding to a request from the expert from the Government of the United States to clarify how industry-led certification and accreditation schemes enabled the identification of compliant recruitment providers, the Employer Vice-Chairperson indicated that the existence of accredited or licensed schemes consistent with government regulations and standards would be a good indication that an organization could be trusted. To clarify further, he suggested the addition of "complement and be consistent with government enforcement activities".

360. The Worker Vice-Chairperson suggested to delete the word "certification", as certification and licensing was included among government responsibilities in the previous section. While recognizing the Government's role in certification, the Employer Vice-Chairperson highlighted that some industries had their own certification processes that were consistent with government standards.

361. In response to a request for clarification from the expert from the Government of Australia, the Employer Vice-Chairperson added that industry-led schemes, compliant with government requirements and driven by self-interest, could ease and speed the process forward, and support government registration processes. He suggested replacing "encourage" with "develop".

362. The Worker Vice-Chairperson expressed concerns about the implications of the text relative to licensing systems. She proposed, with the support of the Employer Vice-Chairperson, the following: "… industry-wide schemes to drive professional standards". Subsequently, she suggested the text might raise confusion between Government responsibility for identifying and licensing compliant labour recruiters and the role of industry-led initiatives.

363. The Employer Vice-Chairperson reiterated that he had not proposed that governments gave away their sovereign right to regulate even when the initiative was coming from somewhere else. Of importance was the ability of an industry to get involved in processes that drove professional standards and the ability of the industry to be able to be involved in schemes that were in partnership with governments.

364. The Worker Vice-Chairperson suggested the following language: "Enterprises may work to develop schemes that drive professional standards."

365. Responding to the Chairperson who asked if the experts agreed on the use of "may" instead of "should", the Employer Vice-Chairperson concurred, as this was about enabling industries to implement schemes if they wished to do so. He noted that this was the only place in the entire document recognizing that industries might get involved in the development of professional standards.

366. The experts agreed to Operational Guideline 20 and its accompanying subparagraph, as amended.

1. Labour recruiters

Introduction

367. It was agreed to replace the proposed term "so-called temporary work agencies" with "employment agencies", which was considered to be an "umbrella term" sufficiently broad

to cover different types of agencies in line with Convention No. 181, Article 1, as cited by one of the Deputy Secretary-Generals of the Meeting.

Operational Guideline 21 (draft operational guideline 19)

368. The guideline (appendix, paragraph 21 of section IV.B) and its associated subparagraph were agreed upon without amendment.

Operational Guideline 22 (draft operational guideline 20)

369. The guideline (appendix, paragraph 22 of section IV.B) and its associated subparagraph were approved without amendment with the understanding that the Office would ensure that the language was consistent with similar text elsewhere, particularly Guiding Principle 6, as highlighted by the expert from the Government of the United States.

Operational Guideline 23 (draft operational guideline 21)

370. The guideline was approved without amendment. The associated subparagraph was agreed upon with an amendment proposed by the expert from the Government of the United States to add “workers’ rights in line with” before “bilateral or multilateral agreements”.

Operational Guideline 24 (draft operational guideline 22)

371. The guideline was agreed upon with an amendment of the Employer Vice-Chairperson, as modified by the Worker Vice-Chairperson, to add “take steps to” before “labour recruiters should”.

Subparagraphs 24.1 and 24.2

372. The expert from the Government of the United States proposed to move up to this guideline a sentence from draft operational guideline 29 that read: “Labour recruiters should ensure that migrant workers have a legally recognized employment relationship with an identifiable and legitimate employer in the country where the work is performed.” The rationale for the move was that the text related to the responsibility of labour recruiters, not employers.

373. The first subparagraph was approved without amendments and the second subparagraph was agreed upon as amended.

Operational Guideline 25 (draft operational guideline 23)

374. The guideline was approved, as amended by the Employer Vice-Chairperson, to read: “Temporary employment agencies and user enterprises should agree on the allocation of responsibilities of the agency and the user enterprise, and ensure that they are clearly allocated with a view to guaranteeing adequate protection to the workers concerned.”

375. The subparagraph was agreed upon without amendments.

2. Employers

376. The proposed Office text for the introductory sentence was approved without amendment.

Operational Guideline 26 (draft operational guideline 24)

377. The guideline was agreed upon without amendment and the corresponding subparagraph accepted with the provision that the language be made consistent with Guiding Principle 8.

Operational Guideline 27 (draft operational guideline 25)

378. Following an amendment proposed by the expert from the Government of the United States to replace the word “complaints” with “grievances” in line with other principles, and to add after “dispute resolution mechanisms” the phrase “in cases of alleged abuses in the recruitment process, and to appropriate remedies”, the guideline was approved.

Subparagraph 27.1

379. Corresponding language was agreed to in the associated subparagraph. In addition, the expert from the Government of the United States proposed to delete the phrase “judicial and non-judicial” and replace it with a separate sentence as follows: “They should not interfere with or restrict workers’ efforts to attain appropriate remedies, either judicial or non-judicial.”

380. The subparagraph was agreed upon as amended.

Operational Guideline 28 (draft operational guideline 26)

381. The guideline and its associated subparagraph were approved without amendment.

Operational Guideline 29 (draft operational guideline 27)

382. The guideline was agreed upon without amendment.

Subparagraph 29.1

383. The expert from the Government of the United States proposed replacing the first part of the subparagraph with the following: “Employers should ensure that their recruitment processes do not require jobseekers and/or workers to renounce to their rights to join and form workers’ organizations and to bargain collectively.”

384. The subparagraph was approved as amended.

Operational Guideline 30 (draft operational guideline 28)

385. After some concern expressed by the expert from the Government of Australia regarding its relevance, the guideline was agreed upon with a minor amendment proposed by the expert from the Government of the United States to replace the phrase “employers should not have recourse to” with the phrase “employers should not resort to …”

386. The associated subparagraph was approved with an amendment from the Worker Vice-Chairperson to replace the sentence “which may affect the free exercise of trade union rights” with the sentence “which constitute a serious violation of freedom of association”.

Draft operational guideline 29 (deleted)

387. The guideline was deleted, as it was agreed that its substance was already captured in other principles. Some of its text moved to Operational Guideline 24.

Operational Guideline 31

388. The guideline was agreed upon with the addition of the words “or change” as proposed by the Worker Vice-Chairperson and with the understanding that the Office would ensure that the language was consistent with General Principle 12.

389. The associated subparagraph was approved with the corresponding change.

Closing remarks

390. The Chairperson presented the completed guiding principles and operational guidelines as they were discussed and agreed upon. They were adopted in their entirety by the Meeting of Experts.

391. The Secretary-General of the Meeting indicated that the guiding principles and operational guidelines would be reviewed by the Office to ensure accuracy and consistency, and sent to the experts for their final review. They would then be presented to the Governing Body at its next session in November. Once completed, a draft report of the meeting would be sent to the experts for their review and then presented to the Governing Body for information at its March 2017 session.

The Chairperson thanked the experts for their contributions and diligence, especially given that the need to complete the work had required lengthy evening sessions lasting into the early hours of the morning.

Annex

General principles and operational guidelines for fair recruitment [1]

I. Scope of the general principles and operational guidelines

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. Implementation of these principles and guidelines at the national level should occur after consultation between the social partners and the government.

A distinction is drawn between **general principles** – which are intended to orient implementation at all levels – and **operational guidelines** – which address responsibilities of specific actors in the recruitment process and include possible interventions and policy tools.

II. Definitions and terms

For the purposes of these principles and guidelines:

– the term **due diligence** refers to an enterprise's ongoing process which aims to identify, prevent, mitigate, and account for how it addresses the adverse human rights impacts of its own activities or which may be directly linked to its operations, products or services by its business relationships. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed;

– the term **employer** refers to a person or an entity that engages employees or workers, either directly or indirectly;

[1] The Governing Body of the International Labour Office, meeting at its 328th Session (Geneva, 26 October–9 November 2016), authorized the Director-General to publish and disseminate the *General principles and operational guidelines for fair recruitment* adopted by the Meeting of Experts on Fair Recruitment (Geneva, 5–7 September 2016).

- the term **enterprise** refers to employers, labour recruiters other than public employment services, and other service providers involved in the recruitment process;
- the term **labour recruiter** refers to both public employment services and to private employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, whether for profit or non-profit, or operating within or outside legal and regulatory frameworks;
- the term **migrant worker** means a person who migrates or has migrated to a country of which he or she is not a national with a view to being employed otherwise than on his or her own account;
- the term **recruitment** includes the advertising, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship; and
- the terms **recruitment fees** or **related costs** refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.

III. General principles

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.

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.

IV. Operational guidelines

These guidelines are organized to identify the responsibilities of governments, enterprises and public employment services.

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.

B. Responsibilities of enterprises and public employment services

This section does not apply to governmental agencies when acting in a regulatory capacity.

Enterprises and public employment services bear special responsibility for preventing abusive or unfair recruitment.

15. Enterprises and public employment services should respect human rights when recruiting workers, including through human rights due diligence assessments of recruitment procedures, and should address adverse human rights impacts with which they are involved.

15.1. All enterprises and public employment services should respect human rights in their recruitment processes wherever they operate, independently of the abilities and/or willingness of States to fulfil their human rights obligations.

15.2. They should undertake due diligence regarding their recruitment activities.

15.3. When they are not practising direct recruitment, enterprises should engage workers only through compliant labour recruiters, including public employment services and private recruitment agencies. Where it is not feasible to verify directly the conduct of all the parties involved in recruitment, there should, at a minimum, be a contractual obligation requiring labour recruiters to work with third parties operating in accordance with legal requirements, and these principles and guidelines. The enterprise should have in place a procedure for evaluating other parties involved in the recruitment process.

15.4. Enterprises and public employment services should respect internationally recognized human rights, including those expressed in international labour standards, 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, in the recruitment process.

15.5. Enterprises and public employment services should not retaliate against or blacklist workers, in particular those who report recruitment abuses or fraudulent recruitment practices anywhere along their supply chain, and should provide special protections for whistle-blowers pending the investigation or resolution of a grievance or dispute.

16. Enterprises and public employment services should undertake recruitment to meet established labour market needs and never as a means to displace or diminish an existing workforce, lower wages or working conditions, or otherwise undermine decent work.

17. No recruitment fees or related costs should be charged to, or otherwise borne by, recruited workers and jobseekers.

17.1. Workers and jobseekers should not be charged any fees or related recruitment costs by an enterprise, its business partners or public employment services for recruitment or placement, nor should workers have to pay for additional costs related to recruitment.

17.2. Enterprises and public employment services should communicate this policy externally via guidelines and other means including contracts to all prospective and current business partners and relevant stakeholders. Enterprises should determine whether private employment agencies and other labour recruiters charge recruitment fees to workers or

impose other related costs on them, and should not engage workers through agencies and other labour recruiters known to charge recruitment fees or related costs to workers.

18. Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.

18.1. Enterprises and public employment services should not interfere with workers' free and complete access to their own passports, identity documents and residency papers, including their employment contracts, paying careful attention to the situation of migrant workers.

19. Enterprises and public employment services should respect workers' confidentiality and ensure protection of data pertaining to them.

19.1. Enterprises should not record, in files or registers, personal data which is not required to judge the aptitude of workers, including migrant workers, for jobs for which they are being or could be considered, or which is not required to facilitate their deployment. This data should not be communicated to any third party without the prior written approval of the worker.

20. Enterprises may work to develop schemes that drive professional recruitment standards.

20.1. These schemes should be subject to regular monitoring and evaluation. Industry-led initiatives should complement and be consistent with government enforcement activities and regulations covering the recruitment process.

1. Labour recruiters

A distinction is made in these guidelines between labour recruiters serving as intermediaries to place workers in employment, including those involved in multiple layers of the recruitment process, and employment agencies employing workers and placing them at the disposal of user enterprises.

21. Labour recruiters should respect the applicable laws and fundamental principles and rights at work.

21.1. Labour recruiters should have in place policies and processes, including due diligence, to ensure that their recruitment activities are conducted in a manner that treats workers with dignity and respect, free from harassment or any form of coercion or degrading or inhuman treatment. Labour recruiters should not restrict the movement of, nor abuse or allow abuse of, workers who are under their protection.

22. When labour recruiters recruit workers in one country for employment in another country, they should respect human rights, including fundamental principles and rights at work, in compliance with international law and the law in the country of origin, the country of transit and the country of destination, and with international labour standards.

22.1. 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.

23. Labour recruiters acting across borders should respect bilateral or multilateral migration agreements between the countries concerned which promote human rights, including workers' rights.

23.1. Labour recruiters should respect workers' rights in line with bilateral or multilateral agreements under which recruitment is carried out, especially in cases where the law does not provide adequate protection in one or the other jurisdiction.

24. Labour recruiters should take steps to ensure that the conditions of work and living conditions into which workers are recruited are those that they have been promised.

24.1. Labour recruiters should ensure that workers are not deceived with respect to their working and living conditions.

24.2. Labour recruiters should ensure that migrant workers have a legally recognized employment relationship with an identifiable and legitimate employer in the country where the work is performed.

25. Temporary employment agencies and user enterprises should agree on the allocation of responsibilities of the agency and of the user enterprise, and ensure that they are clearly allocated with a view to guaranteeing adequate protection to the workers concerned.

25.1. 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.

2. Employers

There are different kinds of employers involved in recruitment and each should be responsible according to the circumstances.

26. Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker.

26.1. 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 which the worker can understand, and 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.

26.2. Worker's informed consent to the terms of the contract should be obtained without deception or coercion.

27. Employers should provide or facilitate effective access to grievance and other dispute resolution mechanisms in cases of alleged abuses in the recruitment process, and to appropriate remedies.

27.1. Access to grievance and other dispute resolution mechanisms for workers should be available to those who may have suffered abusive treatment in the recruitment process, and in cases where abuse is found to have occurred, employers should provide or facilitate effective access to appropriate remedies. They should not interfere with or restrict workers' efforts to attain appropriate remedies either judicial or non-judicial.

28. Employers should provide all workers, whatever their employment status, with the protection provided for in labour law and international labour standards as concerns recruitment.

28.1. Workers may be recruited and employed under different kinds of relationships with the employer, but employers should ensure that these principles and guidelines apply to all workers recruited in all situations.

29. Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected in the recruitment process.

29.1. Employers should ensure that their recruitment processes do not require jobseekers and/or workers, in particular migrant workers, to renounce their rights to join and form workers' organizations and to bargain collectively.

30. Employers should not resort to labour recruiters or to temporary work agencies to replace workers who are on strike.

30.1. Recourse to the use of labour drawn from outside the undertaking to replace workers on strike entails a risk of derogation from the right to strike, which constitutes a serious violation of freedom of association.

31. Employers should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin.

31.1. Employers' permission should not be required for migrant workers to terminate or change employment, or to leave the country if the worker so desires, taking into account any contractual obligations that may apply.

Annex

Main sources for the general principles and operational guidelines for fair recruitment

1. At present there is no consolidated guidance on fair recruitment, although many guidelines exist that are intended for particular segments of the working population, for businesses operating in particular spheres, or for other purposes. Some are contained in binding standards – in particular international labour Conventions – some in non-binding standards such as ILO Recommendations and Declarations, and some in the findings of international treaty supervisory bodies or guidance issued in various forms. Some are included in guidance adopted by non-governmental organizations.

2. In a number of cases, requirements or guidelines intended for specific purposes have been found to be capable of general application. For instance, the Private Employment Agencies Convention, 1997 (No. 181), or the ILO instruments on migrant workers (Conventions Nos 97 and 143 and Recommendations Nos 86 and 151) contain requirements on fair recruitment that are very useful for expressing guidance with a wider coverage. Other examples will be found below.

3. In most cases the way in which the principle is expressed in these guidelines is not worded as it is in the source from which it is drawn, or the proposed expression of a principle in the present guidelines is based on several expressions of the principle from different sources, but has been reworded for the purposes of these guidelines.

4. The table that follows indicates the main source or sources from which each proposed principle or guideline is drawn. Other sources may also be relevant. For ease of reference, for example, C97 indicates ILO Convention No. 97, and R203 indicates ILO Recommendation No. 203, and other references follow the same pattern. Full references are provided in the list of abbreviations below the list of sources.

5. The list of sources below is not meant to be exhaustive.

(Note that the subject lines have no normative value – purely to assist in referring to the proposed principles and guidelines.)

	General principles	Sources
1.	Respect for internationally recognized human rights and other relevant international labour standards	ILO Declaration on Fundamental Principles and Rights at Work; C29, P29, C87, C98, C100, C105, C111, C138, C182 and C181; MLC, 2006 (Art. III); Universal Declaration on Human Rights; UN core human rights instruments; UN Guiding Principles Foundational Principle A1; Dhaka Principles Pillar I; CIETT Principle 6; IRIS Code Core Principle A; Verité Code of Conduct Tool 1
2.	Labour market needs and decent work	ILO Declaration on Fundamental Principles and Rights at Work; R204 (Para. 15(e))
3.	Coverage of relevant legislation and policies related to all aspects of the recruitment process	C88, C181, P29 (Art. 2(c)(i)); Dhaka Principle 3; ILO Fair Recruitment Initiative
4.	Promotion of efficiency, transparency and protection for workers in the recruitment process, such as mutual recognition of skills and qualifications	C88, C181, R157 (Para. 62), R169, C143 (Art.14(b))
5.	Effective law enforcement	C81, C129, C150, C181; P29 and R203; C97 (Art. 3) and C143 (Arts 2-6); CIETT Principle 1
6.	Recruitment across borders with respect for human rights	C88 (Art. 6(b)(ii)), C97, C143 and C181 (Art. 8); Dhaka Principles Core Principle A; CIETT Principle 1

General principles		Sources
7.	Prohibition of charging fees and costs to workers	Inter alia, C97 (Art. 7(2) and Art. 4 of Annex I and Annex II); MLC, 2006 (Regulation 1.4(1) and Standard A1.4(5)); C181, (Art. 7); C88 (Art. 1); R203; IRIS Code Principle 1; CIETT Principle 3; Verité Code of Conduct Tool 1
8.	Clear and transparent contracts	C97 (Annex I, Art. 5 and Annex II, Art. 6), C189 (Art. 8(1)); R86 (Annex, Para. 22); R188 (Para. 5); R203 (Para. 4(e)); Dhaka Principles 2 and 4; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
9.	Migrants agree freely without coercion to terms and conditions of employment	R188 (Para. 5); Dhaka Principle 2; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
10.	Free, comprehensive and accurate information	C88, C97 (Arts. 2 and 3), C181, C189 (Art. 7), R201, R86 (Para. 5), R151 (Paras 7(1) and 24) and R203 (Para. 4(e))
11.	Identity documents, freedom of movement	C143 (Preamble, Art. 1 and 14(a)); C189 (Art. 9(c)); Dhaka Principle 4; IRIS Code Principle 2; Verité Code of Conduct Tool 1
12.	Termination of employment and permission to change employer	C189 (Arts 7 and 8) and R188 (Para. 15)
13.	Access to grievance and other dispute resolution mechanisms	C97 (Annex I, Art. 8 and Annex II, Art. 13); C143 (Arts. 5, 6 and 9(2)); R151 (Paras 32–34); C181 (Arts 10 and 14); C189 (Art. 16); P29 (Art. 4); MLC, 2006 (Standard A1.4(7)); R203 (Para. 8(c)); Dhaka Principles Pillar III, Principle 9; CIETT Principle 10; IRIS Code Principle 5; Verité Code of Conduct Tool 1

Operational guidelines		Sources
A.	**Responsibilities of governments**	
1.	Obligation to respect, protect, and apply human rights and other relevant international labour standards	ILO Declaration on Fundamental Principles and Rights at Work; C29, P29, C87, C98, C100, C105, C111, C138 and C182; C181; Universal Declaration on Human Rights; ICCPR and ICESCR; UN Guiding Principles Foundational Principle A2; Dhaka Principles, Pillar I, Principle 6
2.	Protect against human rights abuses by third parties	ILO MNE Declaration; UN Guiding Principles
3.	Adopt, review and strengthen national laws and regulations, and national fair recruitment policy	P29 (Art. 1(2)); C181 (Art. 13), R203; R204 (Paras 1(a), 4(h), 9); UN Guiding Principles Foundational Principle 2 and Operational Principle 3(a); Dhaka Principles Pillar I
4.	Ensure that all relevant legislation and regulations cover all aspects of the recruitment process, and that it applies to workers in a vulnerable situation	P29 (Art. 2(c)(i)); Dhaka Principle 3; Inter alia, C97, C111, C143, C169, C181 (Art. 8), C189; R204; CEDAW, ICERD et al.
5.	Enforce laws and regulations and ensure labour recruiters operate within the law	C81, C88, C97 (Art. 3 of Annex I and II), C129, C150 and C181 (Arts 3 and 14); P29 and R203; CIETT Principle 1; UN Guiding Principles Operational Principle 3(a)
6.	Prohibition of charging fees and costs to workers	Inter alia, C97; MLC, 2006 (Regulation 1.4(1) and Standard A1.4(5)); C181 (Art. 7); C88 (Art. 1); R203; IRIS Code Principle 1; CIETT Principle 3; Verité Code of Conduct Tool 1
7.	Ensure that employment contracts are concluded and respected, and are clear and transparent	C97 (Annex I, Art. 5 and Annex II, Art. 6), C189 (Art. 8(1)); R86 (Annex, Para. 22); R188 (Para. 5); Dhaka Principles 2 and 4; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1

Operational guidelines		Sources
8.	Availability and operation of grievance and other dispute resolution mechanisms	C97 (Annex I, Art. 8 and Annex II, Art. 13); C143 (Arts 5, 6 and 9(2)); R151 (Paras 32–34); C181 (Arts 10 and 14), C189 (Art. 16); MLC, 2006 (Standard A1.4(7)); R203 (Para. 8(c)); Dhaka Principles Pillar III, Principle 9; CIETT Principle 10; IRIS Code Principle 5; Verité Code of Conduct Tool 1
9.	Cooperation among relevant government agencies, workers' and employers' organizations, and representatives of all labour recruiters	C181 (Art. 13) and R188 (Part III); R203 (Para. 13(a)); UN Guiding Principles Foundational Principle 8
10.	Labour market needs and decent work	ILO Declaration on Fundamental Principles and Rights at Work; R204 (Para. 15(e))
11.	Raising awareness of the need for fair recruitment, as well as free, comprehensive and accurate information	C97 (Arts 2 and 3); R203 (Para. 4)
12.	Respect for human rights in crisis situations	C97 (Annex II, Art. 7); R86 (Annex); International Labour Conference, 105th Session, 2016, *Report of the Committee on Employment and Decent Work for the Transition to Peace*; and UN Guiding Principles Foundational Principle 7
13.	Conclude and implement bilateral agreements and/or multilateral agreements consistent with internationally recognized human rights and other relevant international labour standards	ILO Declaration on Fundamental Principles and Rights at Work; C88 (Art. 6(b)(ii) and (iii)); C97 (Arts 3(2), 7(1) and 10); C143 (Arts 4 and15); C181 (Art. 8(2))
14.	Protection against recruitment abuses within own workforce or supply chains	C94, International Labour Conference, 105th Session, 2016, Report IV, *Decent work in global supply chains*
B.	**Responsibilities of enterprises and public employment services**	
15.	Respect for respect human rights	ILO Declaration on Fundamental Principles and Rights at Work, C181 (Arts 3, 4, 11 and 12); C29 and P29, C87, C98, C100, C105, C111, C138, C182; ILO MNE Declaration (para. 8); UN Guiding Principles Foundational Principle A2; Dhaka Principles Pillar II
16.	Labour market needs and decent work	ILO Declaration on Fundamental Principles and Rights at Work; R204 (Para. 15(e))
17.	No recruitment fees or related costs for recruited workers and jobseekers	Inter alia, C97 (Art. 7; Art. 4 of Annexes I and II); MLC, 2006 (Regulation 1.4(1) and Standard A1.4(5)); C181 (Art. 7) and C88 (Art. 1); R203; IRIS Code Principle 1; CIETT Principle 3; Verité Code of Conduct Tool 1
18.	Passports, identity documents, contracts should not be retained by business enterprises	C189 (Art. 9(c)); Dhaka Principle 4; IRIS Code Principle 2; Verité Code of Conduct Tool 1
19.	Respect workers' confidentiality and ensure protection of data	C181 (Art. 6); R188 (Para. 12(1)); IRIS Code Principle 4
20.	Development of schemes that drive professional recruitment standards	C181, CIETT Principles
1.	**Labour recruiters**	
21.	Labour recruiters should respect the applicable laws and fundamental principles and rights at work	ILO Declaration on Fundamental Principles and Rights at Work; C181 (Arts 3, 4, 11 and 12); C29 and P29, C87, C98, C100, C105, C111, C138, C182; CIETT Principle 2, Dhaka Principles Core Principle B

	Operational guidelines	Sources
22.	Labour recruiters should comply with the law in the country of origin, the country of transit and the country of destination	C181 (Arts 3 and 8); ILO Declaration on Fundamental Principles and Rights at Work; MLC, 2006 (Art. III); CIETT Principles 1 and 6; IRIS Code Core Principle A; Verité Code of Conduct Tool 1; Dhaka Principles Core Principle B
23.	Labour recruiters acting across borders should respect bilateral or multilateral migration agreements	C88, R83, C181 (Art. 8(2)); C189 (Art. 15(1))
24.	Labour recruiters should ensure that the conditions of work and life are those that recruited workers have been promised	C189 (Arts 7 and 8); R188 (Para. 5); CIETT Code of Conduct Principle 3
25.	Temporary employment agencies should ensure that responsibilities of the agency and of the user enterprise are clearly allocated with a view to guaranteeing adequate protection to the workers concerned	C181 (Arts 11(g) and 12); C97 and C143 and UN Convention on Migrant Workers; R188 (Para. 8(a)); Dhaka Principles Core Principle B
2.	**Employers**	
26.	Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker	C97 (Annex I, Art. 5 and Annex II, Art. 6); C189 (Art. 8(1)); R86 (Annex, Art. 22); R188 (Para. 5); Dhaka Principles 2 and 4 and Appendix 2; CIETT Principle 4; IRIS Code Principle 3; Verité Code of Conduct Tool 1
27.	Effective access to grievance and other dispute resolution mechanisms, and to remedies	C181 (Arts 10, 13 and 14); C189 (Art. 16); P29 (Art. 4); MLC, 2006 (Standard A1.4(7)); R203 (Para. 8(c)); Dhaka Principles Pillar III, Principle 9; CIETT Principle 10; IRIS Code Principle 5; Verité Code of Conduct Tool 1
28.	Employers should provide all workers, whatever their employment status, with the protection provided for in labour law and international labour standards	Declaration of Fundamental Principles and Rights at Work; IRIS Code of Conduct, Core Principle A; R198
29.	Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected	C87, C98 and C181 (Arts 4, 11 and 12); Dhaka Principle 6
30.	Employers should not have recourse to labour recruiters or to temporary work agencies to replace workers who are on strike	C87 and C98 and the Declaration on Fundamental Principles and Rights at Work; C181 (Art. 4); R188 (Para. 6)*; Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, paras 632 and 633; CIETT Principle 7; Dhaka Principle 6
31.	Employers should respect the freedom of migrant workers to change employment or to return to their countries of origin	C29; C189 (Art. 8(4)); R188 (Para. 15); Dhaka Principle 10

Abbreviations

International labour standards

(a) Conventions and Protocols

C29 Forced Labour Convention, 1930 (No. 29)

C81 Labour Inspection Convention, 1947 (No. 81)

C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

C88 Employment Service Convention, 1948 (No. 88)

C94	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
C97	Migration for Employment Convention (Revised), 1949 (No. 97)
C98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
C100	Equal Remuneration Convention, 1951 (No. 100)
C105	Abolition of Forced Labour Convention, 1957 (No. 105)
C111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
C129	Labour Inspection (Agriculture) Convention, 1969 (No. 129)
C138	Minimum Age Convention, 1973 (No. 138)
C143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
C150	Labour Administration Convention, 1978 (No. 150)
C181	Private Employment Agencies Convention, 1997 (No. 181)
C182	Worst Forms of Child Labour Convention, 1999 (No. 182)
C189	Domestic Workers Convention, 2011 (No. 189)
MLC, 2006	Maritime Labour Convention, 2006
P29	Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)

(b) Recommendations

R83	Employment Service Recommendation, 1948 (No. 83)
R86	Migration for Employment Recommendation (Revised), 1949 (No. 86)
R151	Migrant Workers Recommendation, 1975 (No. 151)
R157	Nursing Personnel Recommendation, 1977 (No. 157)
R169	Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)
R188	Private Employment Agencies Recommendation, 1997 (No. 188)
R201	Domestic Workers Recommendation, 2011
R203	Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
R204	Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)

International Labour Organization Declaration

ILO MNE Declaration	Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977 (as amended)

United Nations Core Human Rights Instruments

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1979
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination, 1965
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966

Other sources

CIETT *	International Confederation of Private Employment Agencies (CIETT) Code of Conduct, 2015
Dhaka Principles	The Dhaka Principles for Migration with Dignity, 2012
IRIS Code	International Organization for Migration, International Recruitment Integrity System Code of Conduct
UN Guiding Principles	United Nations Guiding Principles on Business and Human Rights, 2011
Verité Code of Conduct	Verité Fair Hiring Toolkit, Sample Code of Conduct Provisions

* As of 21 September 2006, CIETT has been rebranded as The World Employment Confederation.

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