

Guidelines
for labour recruiters
on ethical recruitment, decent work
and access to remedy
for migrant domestic
workers

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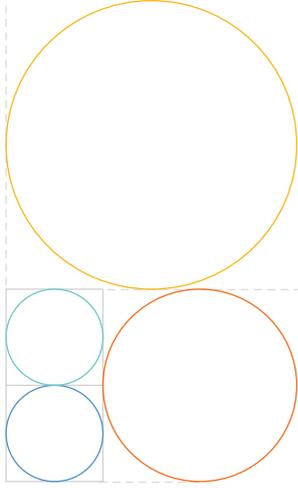
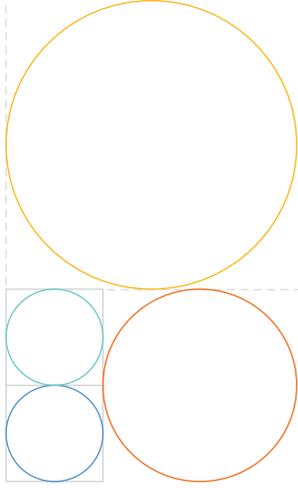


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TERMINOLOGY

(recruitment) business partners: entities with which a company has some form of direct and formal engagement for the purpose of recruitment activities.¹

coercion: compulsion, whether legitimate or not, by physical force or threat thereof. Coercion may also be economic in nature, where one uses his or her control over a particular resource to influence the behaviour of another.²

country of destination: the destination for a person or a group of persons, irrespective of whether they migrate regularly or irregularly.³

country of origin: a country of nationality or of former habitual residence of a person or group of persons who have migrated abroad, irrespective of whether they migrate regularly or irregularly.

data protection: the systematic application of a set of institutional, technical and physical safeguards that preserve the right to privacy with respect to the collection, storage, use and disclosure of personal data.

debt bondage: the status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.⁴

decent work: work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.⁵

discrimination: any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁶

domestic work: work performed in or for a household or households.⁷ For the purpose of this document, domestic work includes duties such as cleaning, cooking, caring for children, the elderly, people with disability, gardening and driving.

domestic worker: any person engaged in domestic work within an employment relationship.⁸ For the purpose of this document, a domestic worker can be employed by a private household, business enterprise or employment agency (e.g. cleaning services).

1 [International Recruitment Integrity System \(IRIS\) Standard](#), (2017).

2 Ibid.

3 IOM, [Glossary on Migration](#) (Geneva, 2019). Unless otherwise noted, definitions given in this section are drawn from this *Glossary*.

4 Adapted from the United Nations [Supplementary Convention on the Abolition of Slavery, the Slave Trade and Abolition of Practices Similar to Slavery](#) (266 UNTS 3, adopted 30 April 1956, entered into force 30 April 1957), art. 1(a).

5 International Labour Organization (ILO), [Decent work](#).

6 Human Rights Committee, [HRI/GEN/1/ Rev.1, 26](#), general comment no. 18: non-discrimination (10 November 1989), para. 7.

7 ILO, [C189 – Domestic Workers Convention, 2011 \(No. 189\)](#).

8 Ibid.

due diligence: an ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.⁹

exploitation: the act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit.

employment agent/agency: any natural or legal person who provides services consisting of hiring or engaging migrant workers to make them available to a third party (see "end-user employer" below) that assigns tasks and supervises the execution of these tasks.¹⁰

employer: a person or an entity that engages employees or workers, either directly or indirectly.¹¹

end-user employer: also referred to as a "user enterprise"; a business enterprise that contracts the services of an employment agency, which in turn provides the services of an agency worker. The end-user employer usually supervises the work and it is normally performed on its premises; however, the end-user employer is not party to the employer–employee contract, or responsible for payment of wages directly to the worker.¹²

enterprise: employers, labour recruiters other than public employment services, and other service providers involved in the recruitment process.¹³

forced labour: work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.¹⁴

(right to) freedom of movement: in human rights law, a human right comprising three basic elements: freedom of movement within the territory of a country and to choose one's residence; the right to leave any country; and the right to return to one's own country.¹⁵

grievance: a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.¹⁶

grievance mechanism: any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.¹⁷

identity document: an official piece of documentation issued by the competent authority of a government designed to prove the identity of the person carrying it.

informed consent: any free, voluntary and informed decision that is expressed or implied and which is given for a specified purpose.¹⁸

internal migrant: any person who is moving or has moved within a State for the purpose of establishing temporary or permanent residence or because of displacement.

international migrant: any person who is outside a State of which that person is a citizen or national, or, in the case of a stateless person, the State of that person's birth or habitual residence. The term includes migrants who intend to move permanently or temporarily, and those who move in a regular or documented manner as well as migrants in irregular situations.

labour migration: movement of persons from one State to another, or within their own country of residence, for the purpose of employment.

9 United Nations Guiding Principles Reporting Framework, *summarizing the United Nations Guiding Principles on Business and Human Rights*.

10 IRIS Standard.

11 ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs* (Geneva, 2019).

12 IRIS Standard.

13 ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*.

14 ILO, CO29 – Forced Labour Convention (39 UNTS 55, 1930), art. 2(1).

15 United Nations, *Universal Declaration of Human Rights* (UNGA Res 217(A), adopted 10 December 1948), art. 13.

16 United Nations, *Guiding Principles on Business and Human Rights* (2011).

17 Ibid.

18 IRIS Standard.

labour recruiter: any natural or legal person who performs a licensed recruitment function, including recruitment agents and employment agents. For the purpose of the IRIS Certification Scheme the term labour recruiter refers to private recruitment agencies that offer labour recruitment services.¹⁹

migrant worker: a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which that person is not a national.²⁰

migration: the movement of persons away from their place of usual residence, either across an international border or within a State.

pre-departure orientation programmes: courses designed to help prospective migrants, including refugees, acquire the knowledge, skills and attitudes needed to facilitate their integration into the country of destination. They also address expectations and provide a safe and nonthreatening environment in which to answer migrants' questions and address concerns.

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.²¹

recruitment fees and costs: 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.²²

remedy: the (legal) processes aimed at redressing the violation of a right, as well as the substantive outcome of such a process.

remittances: private international monetary transfers that migrants make, individually or collectively.

return: in a general sense, the act or process of going back or being taken back to the point of departure. This could be within the territorial boundaries of a country, or between a country of destination or transit and a country of origin, as in the case of migrant workers, refugees or asylum seekers.

servitude: state of a person deprived of liberty and subservient to another, forced to live on the other's property and with an impossibility of changing their status.

slavery: the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.²³

sub-agent: informal and unlicensed individual agents who, working in usually loose partnerships with labour recruiters, are often the first point of contact for individuals seeking foreign employment. Sub-agents charge fees for their services, which distinguishes them from other individuals within "social networks" that facilitate migration without charging fees. For the purpose of IRIS Scheme sub-agent refers to both formal and informal intermediary who may participate in recruitment of the migrant worker from country of origin.²⁴

subcontractor: a person or business (operating as a registered entity) which has a contract (as an "independent contractor and not an employee") with a contractor (labour recruiter) to provide some portion of the work or services on a project which the contractor has agreed to perform. The subcontractor is paid by the contractor for the services provided.²⁵

trafficking in persons (human trafficking): the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁶

19 IRIS Standard.

20 United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (2220 UNTS 3, adopted 18 December 1990, entered into force 1 July 2003), art. 2(1).

21 ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*.

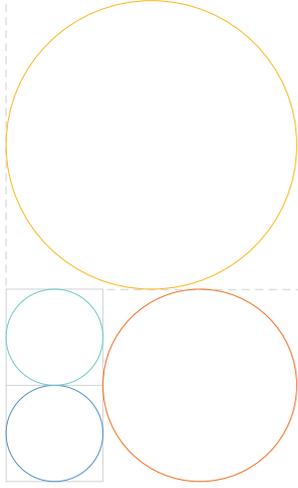
22 Ibid. Refer to Annex A for a full breakdown of fees and costs.

23 United Nations, *Slavery Convention* (212 UNTS 17, 1926), art. 1.

24 IRIS Standard.

25 Ibid.

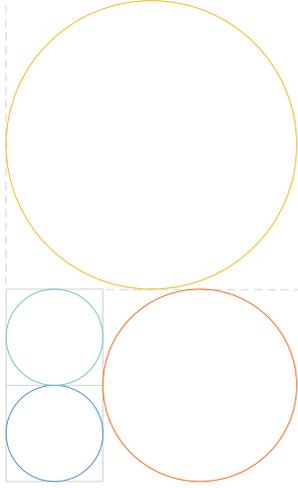
26 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2237 UNTS 319, 2000), art. 3(a).



PREFACE

The objective of these Guidelines is to inform labour recruiters on best practices for promoting, facilitating and ensuring the ethical recruitment of migrant domestic workers. The Guidelines are derived from the International Recruitment Integrity System (IRIS) Standard, developed by the International Organization for Migration (IOM) through extensive multi-stakeholder consultation process. The Guidelines follow the seven IRIS principles, offering specific guidance and best practices tailored for the migrant domestic workers recruitment industry.

The Guidelines are developed under the regional project Asia Region: Promoting Ethical Recruitment and Decent Work Among Private Sector Partners by Strengthening Company Policies to Protect Domestic Workers, which looks specifically into migrant domestic workers in Hong Kong Special Administrative Region (SAR), China coming from Bangladesh, Indonesia and the Philippines. These Guidelines – following the IRIS principles – could extend the international standard for recruitment for migrant domestic workers' labour recruiters beyond the Hong Kong SAR, China migration corridor; indeed, they could be referenced by labour recruiters globally.



INTRODUCTION

Migrant domestic workers play a valuable role in society. They provide essential care for children, people with disability and the elderly, and enable millions of people – primarily women – to remain in or return to the workforce. In doing so, they contribute billions of dollars both directly and indirectly to the local economy and contribute to the development of their own countries through the transfer of remittances.

While many migrant domestic workers have positive migration and employment experiences, they can be vulnerable to exploitation and, in extreme cases, forced labour. The very nature of the work means that domestic workers, the majority of whom are women, are often physically isolated from their support networks, with many working and living in private households without clear terms and conditions of employment. To complicate matters further, migrant domestic workers are often excluded from protections in national labour laws, while many employers – private households – lack a sophisticated understanding of their responsibilities as employers.

The vulnerability of migrant domestic workers is further exacerbated by the prevalent international recruitment model, which is fragmented, non-transparent and operates largely under the assumption that it is the worker's responsibility to bear many, if not all, of the recruitment fees and costs. This model exposes migrant domestic workers to high levels of personal debt, which in turn reduces their bargaining power when their employment terms and conditions are not respected. This model can also result in poor job matching between workers and employers as the work pool is reduced to those who can afford to migrate as compared to a situation of competency-based hiring. Finally, when things go wrong for migrant domestic workers, it is often difficult for them to access remedy, especially when they have returned to their country of origin.

The challenges facing migrant domestic workers are significant and cannot be addressed by any one stakeholder in isolation. Rather, a cohesive and collaborative effort is needed on the part of governments, civil society and the private sector. This approach parallels the discussions surrounding the United Nations [Sustainable Development Goals](#) (SDGs) and the IOM [Global Compact for Safe, Orderly and Regular Migration](#), both of which recognize the importance of engaging the private sector to bring about positive change. When it comes to migrant domestic workers, labour recruiters have a particularly important role to play as they not only facilitate a worker's recruitment from one country to another, but they also have direct contact with the workers and their families as well as employers, government officials and other business partners (such as training and medical providers) that are involved in the recruitment process.

Scope

- This document is designed to provide concrete, operational guidance to labour recruiters in promoting ethical recruitment, decent work and access to remedy for migrant domestic workers.
- The guidelines provide an interpretation of how the [IRIS Standard](#)²⁷ on ethical recruitment applies to the recruitment of migrant domestic workers.
- The aim is to highlight good practices for labour recruiters to consider and replicate as a means to strengthen their business practices and uphold the human and labour rights of migrant domestic workers.

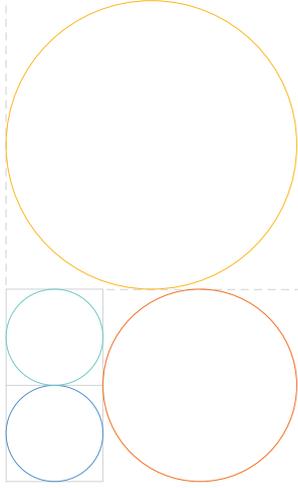
²⁷ The IRIS is a global multi-stakeholder initiative that is designed to promote ethical international recruitment. The IRIS Standard defines, and sets an operational benchmark for, ethical recruitment.

- The guidelines are also designed to serve as a reference tool for private²⁸ labour recruiters that are interested in pursuing IRIS certification.
- While the guidelines are designed for labour recruiters that facilitate the recruitment of migrant domestic workers, they can also be used as a reference tool for government officials, employers (both enterprises and family households) and civil society stakeholders that are linked to the recruitment process.
- The guidelines have been developed by the IOM Sub-Office in Hong Kong SAR, China. The guidelines are designed to be global in nature but draw on several examples from the Hong Kong SAR, China context.

Structure of guidelines

- Chapter 1 provides a brief overview of migration and domestic work, including the risks facing migrant domestic workers.
- Chapter 2 outlines the responsibility of labour recruiters to promote ethical recruitment, decent work and access to remedy for migrant domestic workers, based on a review of existing international standards, guidelines and codes of conduct.
- Chapter 3 sets forth operational guidelines for labour recruiters on ethical recruitment, decent work and access to remedy for migrant domestic workers, based on the IRIS Standard.

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28 The IRIS certification scheme is only available to private labour recruiters.



CHAPTER 1.

Overview of migration and domestic work, including the risks facing migrant domestic workers

There are more people moving within and between countries than at any other time in recorded history. While the majority of such people move within their country of birth, there continues to be a steady increase in the number of people moving between countries in search of better employment, education and livelihood opportunities, as well as more stable and peaceful environments. The latest estimates from the IOM *World Migration Report 2020* put the total number of international migrants at 272 million, or 3.5 per cent of the world's population. Of this number, nearly two thirds – 164 million – are international labour migrants, and of those a slightly higher proportion are men than women.²⁹

While the international community, civil society and individual States are getting better at collecting and analysing data on migrants and migration trends, there are still many gaps and inconsistencies in data sets. This is especially the case for data on migrant domestic workers, where the collection of data is made even more difficult by the fact that many migrant domestic workers are employed in the informal economy.

Noting the limitations of data, a key report from the International Labour Organization (ILO) in 2016 estimates that there are 67.1 million domestic workers globally, of which 11.5 million are international migrants.³⁰ The majority of migrant domestic workers (around 8.5 million) are women, with South-East Asia and the Pacific hosting the largest number of migrant domestic workers (24%), followed by Europe (22.1%) and the Arab States (19%).

Recognizing that there are regional differences, the demand for home-based paid care and domestic work can be linked to several factors:

1. An increase in the number of women entering the job market, and the resulting shift from single- to dual-wage-earning families.
2. Ageing populations combined with increased life expectancy and lower fertility rates.
3. Tight fiscal policies, limited budgets and weakened public care services, as well as government delegation of care services to families.
4. Labour gaps and shortages, including a reluctance from local workers to undertake domestic work.³¹

There is no doubt that migrant domestic workers make a valuable contribution to society. For example, it is estimated that in Hong Kong SAR, China, the population of 385,000 migrant domestic workers contributed USD 12.6 billion – or 3.6 per cent of GDP – to the Hong Kong SAR, China economy in 2018.³² This contribution included migrant domestic workers' direct contribution, such as absolute value (USD 1 billion), and indirect contribution, such as the real value of "paid" domestic work (USD 9.2 billion) as well as the value of freed-up time for Hong Kong residents (USD 2.6 billion). Furthermore, it is estimated that over 110,000 mothers in Hong Kong SAR, China were able to rejoin the workforce as a result of employing migrant domestic workers. While it is more difficult to measure, there is also evidence to suggest that migrant domestic workers contribute to overall family well-being and even improve children's education outcomes, especially English language skills, as migrant domestic workers give parents more time to supervise their children's school homework.³³

It is not just the countries of destination that benefit from migrant domestic workers. For countries of origin, migrant

29 IOM, *World Migration Report 2020*; ILO, *ILO Global Estimates on International Migrant Workers: Results and Methodology* (Geneva, 2018).

30 ILO, *Decent Work for Migrant Domestic Workers: Moving the Agenda Forward* (Geneva, 2016).

31 Ibid.

32 Experian, *The value of care: key contributions of migrant domestic workers to economic growth and family well-being in Asia* (2019).

33 Ibid.

domestic workers help alleviate national unemployment or underemployment and contribute to development through remittances and the transfer of skills. For example, in Hong Kong SAR, China, the majority of migrant domestic workers come from the Philippines (55%) and Indonesia (43%). In 2018, it is estimated that Philippine migrant domestic workers in Hong Kong SAR, China, Singapore and Malaysia sent a total of USD 1.1 billion in remittances.³⁴ For migrant domestic workers – the majority of whom are women – migration provides an opportunity to raise their income level, gain new skills and improve living conditions for themselves, as well as for their family and community.

While many migrant domestic workers have positive migration experiences, it is a sad reality that migrants can be more vulnerable to exploitation. In 2017, IOM, the ILO and the Walk Free Foundation released the most recent global estimates on “modern slavery”, which is an umbrella term used to capture a range of exploitative practices including human trafficking and forced labour. The estimates found that around 40 million people were victims of modern slavery globally. This included 25 million people who were victims of forced labour, with the majority being exploited in the private economy. Within this group, more than half (57.6%) of victims were women and almost one in four victims were domestic workers. While victims often experienced multiple forms of coercion, personal debt was used to forcibly obtain labour from 70 per cent of victims working in domestic work, agriculture and construction.³⁵

There are several factors that make migrant domestic workers more vulnerable to exploitation. These include:

- The very nature of domestic work, in which workers are often working and living in private households. This can lead to migrant domestic workers being isolated as they often do not speak the local language, may not have local support networks and may be unfamiliar with the laws and local customs of the country of destination. This isolation can also prevent workers from participating in the labour movement or joining trade unions.
- Employment arrangements without clear terms and conditions of employment.
- Private households that lack a sophisticated understanding of their responsibilities as employers.
- A lack of protection from labour laws, including restrictions on labour inspection systems. This contributes to migrant domestic workers working higher than average hours for lower than average pay, with little or no access to remedy.
- A lack of social protections, including access to healthcare and pension schemes.
- Unequal power relationships with employers and the gendered nature of domestic work. Migrant domestic workers who are working and living in private households can be at an increased risk of violence and harassment.
- Visas that tie migrant domestic workers to a specific employer. This not only limits workers’ freedom to leave an unhealthy employment relationship, but also their capacity to report abuse, for fear of deportation.
- Gender-based restrictions and travel bans that can prevent migrant workers from accessing regular and safe migration channels.³⁶

In addition to these factors, the vulnerability of migrant domestic workers to exploitation is further exacerbated by the prevalent international recruitment model. Evidence shows domestic workers are more likely to be impacted by costly and complex regular migration procedures, as well as by additional “red tape” in countries of origin for aspiring migrant domestic workers to migrate. While these factors often incentivize irregular migration of migrant domestic workers,³⁷ it is important to note that, even when migrating through regular channels, international migrant workers can experience human rights and labour violations at all stages of the migration cycle (recruitment, deployment, employment, return or onward migration). That said, in most cases, the exploitation of migrant domestic workers begins at the recruitment stage, when workers are charged recruitment fees and related costs, misled about the job on offer, and/or have their passports and other identity documents confiscated as a way to bind the worker to a labour recruiter or their employer.

The issue of recruitment fees and related costs – and in particular which party should be responsible for bearing these costs – has been the subject of increased scrutiny and debate between governments, civil society and the

34 Ibid.

35 ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, 2017).

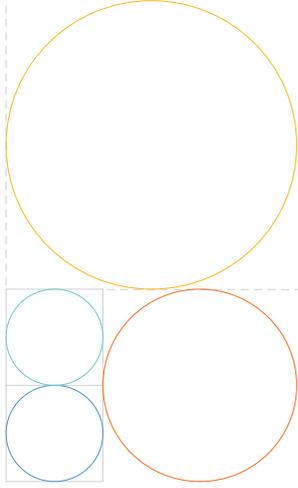
36 See United Nations Women, *Policy brief #1, Making international labour migration governance gender-responsive for women migrant workers from South Asia* (2018); and ILO, *Domestic work policy brief 9, Making decent work a reality for migrant domestic workers* (n.d.).

37 ILO and United Nations Women, *Protected or Put in Harm’s Way? Bans and Restrictions on Women’s Labour Migration in ASEAN Countries* (Bangkok, 2017).

private sector. To date, the prevalent international recruitment model has been based on the assumption that it is the workers' responsibility to cover many, if not all, recruitment fees and related costs. This model can push migrant workers into precarious situations, including in extreme cases, situations of forced labour, human trafficking or modern slavery. In many cases, migrant workers have no choice but to take out loans – often with high interest rates – to cover these fees and costs. In practice, this can lead to workers not receiving a wage (or full wage) for many months or even years. It is important to note that workers often pay much more than the true cost of recruitment. This is because workers often have little bargaining power and can find themselves at the mercy of unscrupulous labour recruiters and/or other intermediaries.³⁸ Furthermore, it can be difficult for workers to leave exploitative situations when they carry a high level of personal debt from the recruitment process.

It is important to note that when things do go wrong in the recruitment or employment process, it is very difficult for migrant domestic workers to access remedy. This can be linked to the lack of effective grievance mechanisms in place on the part of recruiters and employers, as well as the barriers already mentioned above that prevent migrant domestic workers from accessing decent work. Furthermore, gaps and inconsistencies between and within countries' policies and regulations that govern labour migration increase the risks faced by migrant domestic workers and undermine those mechanisms that are in place (however limited) that seek to remedy human rights and labour violations.

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38 This could include, but is not limited to, sub-agents, training institutions, and/or medical facilities.



CHAPTER 2.

The responsibility of labour recruiters to promote ethical recruitment, decent work and access to remedy to migrant domestic workers

The United Nations *Guiding Principles on Business and Human Rights* (UNGP) were released in 2011 following more than three years of in-depth consultations with governments, the private sector and civil society on what role the business community should play in relation to human rights.³⁹ The UNGP established the Protect, Respect and Remedy framework, which set out how:

- States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. This includes seeking to prevent and mitigate adverse human rights impacts that are directly linked to their operations by their business relationships, even if they have not contributed to those impacts.
- Victims should have greater access to effective remedy, both judicial and non-judicial. Within this context, business should have processes in place that enable the remediation of any adverse human rights impacts they cause, or to which they contribute.

It is important to note that the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. That said, the scale and manner in which enterprises meet their responsibility may vary according to these factors and the severity of the enterprise's adverse human rights impacts.⁴⁰

The UNGP have been well received by governments, civil society and business and are now reflected in a variety of international standards, principles and frameworks. This includes in revisions to the *OECD Guidelines for Multinational Enterprises* and the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, both of which provide guidance on responsible business conduct and are supported by governments.

While the UNGP, OECD Guidelines and ILO Declaration are general in nature, there are multiple international principles, guidelines and standards that focus on the recruitment industry and the role of business in respecting human rights. The ILO General Principles and Operational Guidelines for Fair Recruitment are derived from a number of sources – primarily international labour standards and related ILO instruments, including the Domestic Workers Convention, 2011 (C189) and Domestic Workers Recommendation, 2011 (R201) – and are intended to apply to the recruitment of all workers, including migrant domestic workers, whether directly by employers or through intermediaries. These ILO principles and guidelines clearly outline the responsibility of governments, enterprises and public employment services, labour recruiters and employers in respect to recruitment. There is a strong focus on abiding by national laws and international standards in respect to human rights, as well as conducting human rights due diligence and providing remedy. The ILO principles and guidelines also include the internationally recognized definition of recruitment fees and related costs.⁴¹

39 The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work.

40 United Nations, *Guiding Principles on Business and Human Rights* (2011).

41 ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*.

The International Recruitment Integrity System (IRIS) is a global initiative designed to promote ethical international recruitment. It was created by IOM and a coalition of stakeholders from government, civil society and the private sector. At the core of IRIS is the IRIS Standard – a global standard that defines and sets an operational benchmark for ethical international recruitment.⁴² The IRIS Standard consists of seven core principles for ethical recruitment, which includes facilitating decent work and access to remedy for migrant workers. While the IRIS principles of ethical recruitment can inform government policies and regulations as well as brands and suppliers' codes of conduct, the IRIS Standard itself focuses on the responsibility of labour recruiters in facilitating ethical recruitment. As such, the IRIS Standard is supported by a voluntary certification scheme for labour recruiters. The IRIS Standard was developed in consultation with a wide range of stakeholders. It is based on existing international human rights instruments, relevant ILO instruments, the UNGP, as well as related codes of conduct and best practices from the recruitment industry, including the World Employment Confederation (WEC) Code of Conduct.⁴³

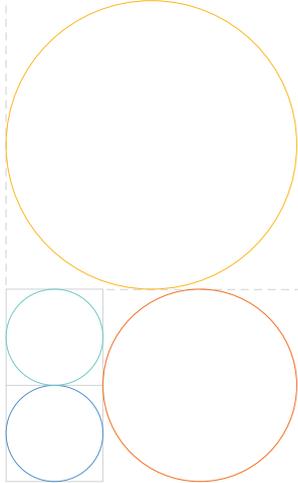
The WEC describes itself as the voice of the recruitment and employment industry at the global level. It brings together 49 national federations and six corporations covering a wide range of human resources services, including agency work, direct recruitment, career management, recruitment process outsourcing and managed service provision. Members of the WEC are committed to the WEC Code of Conduct. This Code contains the principles that ethical, quality and professional private employment services should deploy in the provision of their services. The principles include a ban on fee charging to jobseekers and workers, the appropriate use of personal data, and dedication to compliance, social dialogue remedy, health and safety at work and non-discrimination of workers and jobseekers.

In addition to these global principles, standards and codes of conduct, recruitment associations within and between countries are developing their own codes of conduct to govern the recruitment of migrant domestic workers. For example, in June 2019, the Association of Hong Kong Manpower Agencies (AHKMA) and the Society of Hong Kong-Accredited Recruiters of the Philippines (SHARP) signed a code of conduct to govern the hiring of Philippine domestic workers in Hong Kong SAR, China.⁴⁴ While there are some limitations with the code of conduct (e.g. it still allows some costs to be charged to migrant workers), it demonstrates that labour recruiters are recognizing that they have a part to play in facilitating ethical recruitment, decent work and access to remedy for migrant domestic workers.

42 IRIS, [IRIS Standard](#).

43 World Employment Confederation, [Code of Conduct](#).

44 *The Sun Hong Kong*, [Full text of Hong Kong recruiters' Code of Conduct](#), 4 June 2019.



CHAPTER 3.

Operational guidelines for labour recruiters on ethical recruitment, decent work and access to remedy for migrant domestic workers

While the previous chapter focused on the responsibility of labour recruiters to promote ethical recruitment, decent work and access to remedy for migrant domestic workers, this chapter provides labour recruiters with practical guidance on how this can be achieved. This chapter uses the IRIS Standard as its basis and includes specific guidance on how the IRIS Standard's seven principles and related criteria can be interpreted in relation to migrant domestic workers.



IRIS General Principle A:

Respect for Laws, and Fundamental Principles and Rights at Work

- Labour recruiters should comply with all applicable laws in their countries of operation.
- Labour recruiters should comply with international standards on prohibition of forced labour.
- Labour recruiters should not recruit migrant domestic workers under the age of 18, or under the legal age limit if that is higher, as it is in some countries.
- Labour recruiters should not discriminate against jobseekers based on whether they are a member of a trade union or because of their age, sex, gender,⁴⁵ sexual orientation, religious beliefs, race or any other status in accordance with the law.



Guidance

Labour recruiters should comply with all applicable laws, regulations, multilateral and bilateral agreements on labour migration and policies related to the recruitment of migrant domestic workers in all countries where they operate. It is the labour recruiter's responsibility to do their due diligence – or homework – to determine what laws they need to follow in their country and any other jurisdiction where they operate. It is important to note that when there is a discrepancy between an international standard and the national law, the labour recruiter should endeavour to apply the higher standard, provided they are still complying with the law. For example, some governments allow labour recruiters to charge recruitments fees and costs to workers up to certain limit (e.g. one month's wages). In this instance, labour recruiters can choose to apply the higher standard (the IRIS Standard) and not charge any recruitment fees and costs to workers. In doing so, labour recruiters are still complying with the law, since while it allows them to charge workers up to a certain limit, it does not compel them to do so.

⁴⁵ While the terms "sex" and "gender" are often used interchangeably, they have different meanings. Determining a person's sex is done for statistical purposes and relates to a biological concept; for example, it is often used to desegregate data to determine the number of male and female migrants who have benefited from IOM programmes or services, or the breakdown of male and female IOM staff members. Gender is a social construct and refers to the way a person feels, presents and is recognized within the community. A person's gender may be reflected in outward social markers, including their name, outward appearance, mannerisms and dress.

Labour recruiters should have policies and procedures in place that prohibit forced labour and child labour. This means that labour recruiters should be familiar with the ILO [Indicators of Forced Labour](#) that outline the most common signs or clues of possible forced labour. For migrant domestic workers, these could include but are not limited to isolation, restriction of movement, retention of identity documents, debt bondage and abusive working and living conditions. As a general rule, labour recruiters must not recruit workers who are under the age of 18, or under the legal age limit if it is higher, as it is in some countries. For example, the Philippines Government has set a minimum age limit of 23 years for all Philippine migrant domestic workers. This means that labour recruiters in Hong Kong SAR, China cannot recruit domestic workers from the Philippines who are under the age of 23, even though national law does not reflect this age limit. Labour recruiters should have procedures in place to verify the applicant's age, such as checking the applicant's birth certificate and passport.

Labour recruiters should not discriminate against job applicants based on whether they are a member of a trade union, or because of their sex, age, sexual orientation, religious beliefs, race, etc. With this in mind, it is important to recognize that there are some issues that are outside the control of labour recruiters. For example, it is not uncommon for labour recruiters to receive job orders that imply, either directly or indirectly, that only women of a certain age range will be considered. Similarly, labour recruiters can receive job orders for countries that are known to place restrictions on trade union membership. In these circumstances, labour recruiters can still respond to these job orders provided that they (the labour recruiters) are not discriminating against jobseekers based on their own biases, and that they have provided the applicant/jobseeker with all the information upfront about the job offer and destination country. For example, the labour recruiter should not prevent a jobseeker who is a member of a trade union from applying for a position in a country where trade union membership is restricted. However, it is the labour recruiter's responsibility to explain to the jobseeker the restrictions placed on trade union members in the country and what this may mean in practice for the jobseeker.

Where possible, labour recruiters are encouraged to discuss job orders that contain specific hiring requirements with employers to determine if these requirements are essential or if other applicants can be considered. For example, an employer may be open to hiring a man as a domestic worker if the right applicant can be found by the labour recruiter. In this scenario, the labour recruiter would need to explain to male candidates what the job would involve, as well as highlighting any potential challenges (such as stigma concerning men as domestic workers in the country). The candidate could then make an informed decision about whether or not to proceed with accepting the position.



USEFUL RESOURCES

- [ILO Declaration on Fundamental Principles and Rights at Work](#)
- [ILO Domestic Workers Convention, 2011 \(C189\)](#)
- [ILO Indicators of Forced Labour](#)



IRIS General Principle B: Respect for Ethical and Professional Conduct

- Labour recruiters should organize and run their business in a professional and consistent manner, in which migrant domestic workers are treated with dignity and respect.
- Labour recruiters' policies, procedures and practices should be consistent with the IRIS principles of ethical recruitment.
- Labour recruiters should perform ongoing due diligence on employers and end-user employers to ensure they are abiding by applicable laws and labour standards.
- Labour recruiters should perform ongoing due diligence on recruitment business partners and subcontractors to ensure they are abiding by applicable laws and ethical recruitment principles.



Guidance

It is important to note that this principle cannot be understood in isolation, but rather in the context of all the IRIS principles. This principle focuses predominately on how labour recruiters organize and run their business in order to meet their objectives, including complying with the IRIS principles. Labour recruiters are encouraged to develop and maintain formal management systems that allow them to manage risks and allocate resources in order to plan, implement, monitor and improve each business practice.

A management system is the way an organization manages the different, interrelated parts of its business in order to meet its objectives. For the purpose of this document, a simple management systems framework consists of five elements: (1) policies, procedures and processes; (2) communication and information management; (3) skills and training; (4) monitoring or measuring; and (5) governance, incentives and continuous improvement.

Labour recruiters should use this framework to ensure each of their business practices meet the requirement of the IRIS principles. To begin with, labour recruiters should develop policies, procedures and processes that address each of the guidelines in the text boxes (such as complying with applicable laws, not charging workers recruitment fees and related costs, and ensuring workers have unrestricted access to their passports).

Labour recruiters should run their business in a manner that treats migrant domestic workers with dignity and respect, free from harassment or any form of coercion or degrading or inhuman treatment. Prior to sending a migrant domestic worker to a household, the labour recruiter should do their due diligence on the family household (the employer). This should include communicating with the family to determine their requirements, as well as setting realistic expectations regarding what is acceptable under applicable laws and labour standards. Where possible, the labour recruiter should seek feedback from previous domestic workers from the household. As a matter of good practice, the labour recruiter should also scan media reports for any negative reporting on the family, as well as check with relevant civil society organizations and third party sources such as government records or recruitment associations for any information on the family that may indicate prior wrongdoing.

When a migrant domestic worker is placed in a household, the labour recruiter should monitor the ongoing well-being of the worker. This may involve house visits (if appropriate) or at the very least ongoing communication with the migrant domestic worker. In doing this, labour recruiters should have policies and procedures in place that set out how they will regularly communicate and check in with workers. This



USEFUL RESOURCES

- [IRIS Introductory Training for Labour Recruiters](#), which provides more information on the requirements of the IRIS Standard as well as management systems
- [International Organization for Standardization \(ISO\) Management System Standards](#)
- [IOM and United Nations Women, Gender-responsive self-assessment tool for recruitment agencies](#)

includes what steps and actions they will take if they do not receive a response from a worker. It is also important for the labour recruiter to have a service agreement in place with the employer that clearly sets out their business arrangement, and includes provisions allowing the labour recruiter to regularly check the well-being of the migrant domestic worker and confirm that all agreed terms and conditions are being met. Furthermore, it is important for the labour recruiter to track any complaints received about employers and to consider creating an internal list of employers of concern, to help the labour recruiter identify employers regarding whom additional caution will need to be exercised when placing future workers.

This includes checking that business partners – e.g. training or medical providers, employment agencies – and subcontractors are legitimate businesses that comply with all applicable laws and have no adverse court decisions against them. When possible, the labour recruiter should have a service agreement in place with their business partners that clearly sets out their business arrangement, and includes provisions that prohibit charging recruitment fees and related costs to migrant domestic workers, as well as prohibiting subcontracting without the labour recruiter’s knowledge. The labour recruiter should regularly monitor its business partners to confirm that they are abiding with applicable laws and the conditions of the service agreement.



IRIS Principle 1:

Prohibition of Recruitment Fees and Related Costs to Migrant Domestic Workers

- Labour recruiters should not charge migrant domestic workers, directly or indirectly, in whole or in part, any recruitment fees or related costs for services related to recruitment for temporary or permanent job placement or employment.
- Recruitment fees and related costs should not be borne by migrant workers.



Guidance

Labour recruiters should have a clear policy in place that prohibits the charging of recruitment fees and related costs to jobseekers. This policy should be reflected in company procedures (or work instructions) and staff should be trained accordingly.

Labour recruiters should inform jobseekers during the recruitment process that they will not be charged recruitment fees and costs. They can do this through a variety of sources, including websites, job advertisements and correspondence with jobseekers (email, WhatsApp, etc.).

It is also the labour recruiter’s responsibility to check that employers and/or business partners are not charging migrant domestic workers recruitment fees or related costs. Service agreements with employers and business partners should include provisions prohibiting fee charging.

In the event that a migrant domestic worker has been charged recruitment fees and costs, the labour recruiter should ensure the worker is reimbursed as soon as possible. The labour recruiter should also have procedures in place for addressing staff non-compliance with their policy, as well as possible sanctions for their clients or business partners if they have been found to breach the provisions of their service agreements.

Labour recruiters should follow the ILO definition of recruitment fees and related costs, which is at Annex A. The charging of recruitment-related fees provides a good example of a situation in which, even if permitted by national law, labour recruiters that apply ethical standards will choose not to charge fees.



USEFUL RESOURCES

- [ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs](#)

IRIS Principle 2: Respect for Freedom of Movement

- Migrant domestic workers should have access to their passports, as well as other identity documents or work permits, during all stages of the recruitment process.
- Labour recruiters should not withhold bank books, bank cards, deeds to real or personal property of the migrant workers or their family members at any time, as these are unnecessary while processing the recruitment.
- Employment contracts and service agreements between the labour recruiter and migrant workers do not limit their freedom of movement.

Guidance

There are times within the recruitment process when the labour recruiter will need to hold onto a migrant domestic worker's passport, such as to organize a work visa or process documents. However, this does not mean that the labour recruiter can hold onto the migrant domestic worker's passport indefinitely or as a way to prevent the migrant domestic worker from accepting a job through another labour recruiter. When a labour recruiter takes a migrant domestic worker's passport, it should be explained to the migrant domestic worker why the passport has been taken and when it will be returned. This discussion should be supported by some sort of record or written log that details where the passport and why, and that the migrant domestic worker has agreed – in writing – to the passport being taken for this specific purpose. As a matter of good practice, labour recruiters should also provide migrant domestic workers with a receipt that acknowledges that they have taken the worker's passport, the reason why and when it will be returned.

Labour recruiters should also ensure that migrant domestic workers have unrestricted access to their passports when they start working in the country of destination. It is the labour recruiter's responsibility to work with the employer (household) to ensure this is the case. The labour recruiter should ensure that there are no clauses within a migrant domestic worker's employment contract, or agreement with the labour recruiter, that prevent the worker from leaving their job. The employment contract should include clear provisions for early termination which are consistent with applicable laws and labour standards. This includes setting reasonable notice periods for early termination and detailing what compensation will apply for the worker or employer, if either party chooses to terminate without providing reasonable notice. For matters concerning serious breaches of the employment contract or relevant laws than no notice period is required. Similarly, employers should waive notice periods when workers are seeking early termination for compassionate reasons, such as a family member's death or serious illness.

The labour recruiter should also ensure that the employer's working and living conditions do not restrict a migrant worker's freedom of movement, especially during rest hours. For live-in migrant domestic workers, this should include checking that workers can leave and return to the residence at any time during their free time. In other words, they are not locked in the house – even for their own perceived safety. Other conditions that may be seen as impeding a workers' freedom of movement include a curfew imposed by the employer, mandating at what time a worker needs to return to the home and/or turn off their lights. Furthermore, the migrant domestic worker should be entitled to spend their allocated free time where, how and with whom they please. That said, there are some rare situations where a worker's freedom of movement may be limited. This includes some specific employment settings, such as military or security bases, which place restrictions on where workers can go, even during their free time. For these types of settings, it is the labour recruiter's responsibility to inform workers about these restrictions before they sign the employment contract and deploy to the worksite in the country of destination. Similarly, in times of national emergency, governments may temporarily restrict the movement of people, including migrant workers. When this occurs, it is the migrant worker's responsibility to abide by all relevant laws, rather than the labour recruiter or employer's responsibility to ensure that the worker is doing so. To name a current example, migrant

domestic workers who travel to work in Hong Kong SAR, China and enter during periods with mandatory quarantine measures for all incoming travellers to prevent the spread of COVID-19, must abide by this requirement. The labour recruiter should ensure that both the employer and worker are prepared to meet this requirement and confirm the accommodation for the worker, whether at the employers' residence or in other accommodation for the 14-day compulsory quarantine. These measures should be communicated clearly to and agreed upon by the worker before deployment. While it is ultimately the responsibility of the worker to respect this requirement, it is good if the labour recruiter can check in with the worker and employer during this period to make sure that everyone is managing well.

An additional good practice and recommendation from the [ASEAN Forum on Migrant Labour \(AFML\)](#), is to recognize access to mobile phones as an essential item for workers, particularly domestic workers who can be isolated in private homes. Workers should have access to and reasonable usage of communication devices. Labour recruiters can remind employers to consider assisting workers through access to Wi-Fi in order that they be able to use Skype, FaceTime, WhatsApp or other low- or no-cost means of contacting family and friends at home and in communities of destination.

IRIS Principle 3: **Respect for Transparency of Terms and Conditions of Employment**

- Labour recruiters should have written agreements with migrant domestic workers to provide recruitment services.
- Labour recruiters should have service agreements in place with employers (household). Labour recruiters should provide migrant domestic workers with written employment contracts that are straightforward and in a language understood by the worker.
- Labour recruiters should provide employment contracts to migrant domestic workers prior to their deployment.
- The employment contract should be agreed and signed by migrant domestic workers without any coercion.
- Labour recruiters should verify that the terms and conditions of employment are the same as originally offered by the employer and comply with applicable law and practice.
- Labour recruiters should ensure that employment contracts that have been signed by the migrant domestic workers are not substituted for other employment contracts, unless for contracts with better living and working conditions and agreed upon with the workers.
- Labour recruiters should ensure that migrant domestic workers receive pre-departure orientation (PDO) training.

Guidance

As a matter of good practice, labour recruiters should have written agreements with migrant domestic workers to provide recruitment services. While these agreements do not need to be detailed, they should clearly state that the worker will not be charged any recruitment fees or related costs and that their employment contract will not be substituted for alternative contracts with worse conditions. Labour recruiters should also include information about the grievance mechanisms that will be available to workers, even after they have started their employment in the country of destination.

Labour recruiters should have service agreements in place with all their employers, including private household employers. At a minimum, the service agreement should: outline the business relationship and include provisions about not charging recruitment fees and related costs to workers; prohibit any subcontracting without the labour recruiter's knowledge, and; allow the labour recruiter to monitor the ongoing well-being of the migrant domestic worker to confirm that all agreed terms and conditions are being met.

Labour recruiters should provide migrant domestic workers with a written employment contract – in consultation with the employer – prior to their deployment. The employment contract should be straightforward and easy to understand, and in a language understood by the worker. The employment contract should include the position of the worker, job description, job site, commencement and duration of contract, details of transportation to and from the country of destination, details of accommodation, meals provided under the contract, union or other legal dues payable by the worker (if applicable), name and address of the employer, wages and frequency of pay, working hours and days of rest, overtime rates, vacation, other leave entitlements, all lawful deductions from pay, benefits of employment and conditions of termination in accordance with applicable law.

As a matter of good practice, labour recruiters should ensure that the job description is as detailed as possible, such as outlining the household duties to be performed, the number and gender of people residing in the home, the type of accommodation provided, and any care for children, people with disability, the elderly or pets that is required. Furthermore, labour recruiters should ensure that the employment contract is not misleading in anyway, such as containing blank sheets of paper for workers to sign or references to other documents. For example, if the employer wants to refer to another document, such as their code of conduct, then this should be attached to the contract. In some jurisdictions, labour recruiters will be required to use a standard employment contract, which is issued by the relevant government authority. In cases where the standard employment contract does not include all the requirements listed above, labour recruiters should still utilize the standard employment contract, but should attach an annex that incorporates the missing requirements.

As a matter of good practice, the labour recruiter should work with the employer to provide a rights-based, gender-responsive employment contract that aligns with international norms and standards – namely, the UNGP, ILO conventions and human rights treaties such as the [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#) and the [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#).

It is the labour recruiter's responsibility to ensure that workers are given adequate time to consider their contract and are not forced or coerced to sign. For example, presenting a worker with their employment contract when they are at the airport and about to deploy would be considered coercive as the worker has not been given adequate time to review the contract. Similarly, labour recruiters should check that the terms and conditions of the employment contract are consistent with the initial job order and that they are being upheld by the employer in the country of destination. For example, labour recruiters should check that migrant domestic workers – particularly live-in workers – are not being pressured to work additional hours that breach the terms of the employment contract and applicable laws and labour standards. For example, in Hong Kong SAR, China, domestic workers are entitled to rest days, statutory holidays and annual leave. Employers must grant migrant domestic workers no less than one rest day (24 hours) per seven days. Similarly, labour recruiters should check whether the nature of the work (job description) has changed. For example, if a migrant domestic worker signs a contract to care for a household of five people but then arrives at the household and discovers they are expected to care for 16 people then this would represent a breach of the employment contract.

Similarly, labour recruiters should ensure that workers' employment contracts are not being substituted for contracts with worse conditions when they reach the employment site. For example, it is not uncommon for workers to sign an employment contract in the country of origin and then be presented with another employment contract to sign in the country of destination. In this situation, it will be the labour recruiter's responsibility to ensure that the new employment contract (in the country of destination) is consistent with or contains better conditions than the employment contract that the worker signed in the country of origin. If the employment contract contains better conditions, the labour recruiter should check that this is still consistent with the law in the country of destination – in particular as it relates to the hiring of migrant (foreign) workers in place of local workers.⁴⁶

In order to ensure that the terms and conditions are being met, labour recruiters will need to have a mechanism in place to monitor the worker's well-being. This may involve house visits (if appropriate) or at the very least ongoing communication with the migrant domestic worker. Labour recruiters are also encouraged to reach out and establish

⁴⁶ For instance, in some jurisdictions, employers need to complete a series of steps – such as conducting a labour market assessment – in order to hire a migrant worker. If there are significant changes to the employment contract, then this could represent a “new position” and the employer would need to begin the process again.

connections with local civil society networks, trade unions and labour attachés, as these stakeholders have a good understanding of the realities on the ground and can provide assistance and support to migrant domestic workers, when required.

Finally, labour recruiters should provide migrant domestic workers with comprehensive pre-departure orientation training. This involves providing migrant domestic workers with information about their rights and obligations, as well as information about the destination country, employer and living conditions. It may be as specific as providing training on how to cook a certain type of cuisine, or more general information such as cultural considerations in caring for children or the elderly. This training may be provided in addition to mandatory government PDO programmes. It is also good to encourage migrant domestic workers and their employers to join post-arrival orientation and/or training if available. These trainings are a good way for workers to settle in more quickly and to establish a network of peers. They are often hosted by labour attaché offices at embassies or consulates, or by civil society organizations.



USEFUL RESOURCES

- United Nations Women, [Gender-Responsive Guidance on Employment Contracts for Migrant Domestic Workers from South Asia](#) (includes template for employment contract)



IRIS Principle 4: Respect for Confidentiality and Data Protection

- Labour recruiters should only collect personal data from migrant domestic workers that is relevant to the recruitment process.
- Labour recruiters should ensure that all personal data that they collect, receive, use, transfer or store shall be treated as strictly confidential and shall not be communicated to any third party without the prior written informed consent of the worker or worker's representative, unless required by law.
- Labour recruiters should ensure that they are storing data in a safe way, such as in locked safes or password-protected electronic systems.



Guidance

Labour recruiters need to have policies and procedures in place for handling the personal data of migrant domestic workers. These policies and procedures should comply with national data protection laws. Personal data includes the information that labour recruiters collect from workers when they first apply for a job and when they are deployed, but also includes other sensitive information such as worker complaints. In the context of domestic work, labour recruiters should be particularly mindful of worker complaints that concern allegations of sexual and gender-based violence.

Labour recruiters should ensure that they are only collecting personal data from workers that is relevant for the recruitment process. For example, labour recruiters should not be collecting information about a person's sexual orientation. However, if they are sending a worker to a country that places restrictions on same-sex relationships, the labour recruiter should inform the worker (the applicant) about the country's laws during the recruitment placement so the applicant can make an informed decision. By doing so, the labour recruiter avoids needing to ask about a worker's sexual orientation.

Labour recruiters should ensure that they are only sharing data – such as with staff, government officials, business partners, etc. – on a “need to know” basis and with the written consent of the migrant domestic worker. Furthermore, labour recruiters need to ensure they are storing data in a safe and secure manner, both electronically and/or with their hard copy files. For example, labour recruiters should not leave workers passports and personal information lying on

the top of desks and cupboards, where anyone can view and access their information. Rather, this information should be locked up in filing cabinets or desk drawers, where only the relevant staff member can access them. Similarly, if it is common practice for recruitment staff and workers to exchange information such as photos of documents or identification cards via text and online messaging apps then the labour recruiter should ensure that they have an internal policy that stipulates to which secure locations such files should be uploaded before being deleted from any personal devices.

The period for which labour recruiters should store data will be dependent on national data laws. However, as a minimum, labour recruiters should store data until the migrant domestic worker has completed their employment and either returned to the country of origin, migrated to a new country, or remained in the country of destination and started a new employment contract.



USEFUL RESOURCES

- [IOM Data Protection Manual](#)

Labour recruiters should ensure that their staff are trained in the area of their data and confidentiality policy.

IRIS Principle 5: Respect for Access to Remedy

- Labour recruiters should ensure that migrant domestic workers have effective access to remedy, without fear of recrimination, reprisal, or dismissal.
- Labour recruiters should have their own, or participate in, effective operational-level grievance mechanisms.
- Labour recruiters should ensure that the migrant domestic workers are informed about and have an open and direct access to a grievance mechanism related to the recruitment process.
- Labour recruiters should provide migrant domestic workers with information about available State-, employer- and industry-provided grievance mechanisms related to employment in both origin and destination countries.



Guidance

Access to remedy can be understood as both the process and outcome when addressing an adverse human rights impact, or a grievance from a migrant domestic worker. The UNGP defines a grievance as “a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.”

While not an exhaustive list, labour recruiters should be aware of at least the following grievances that may arise in relation to migrant domestic workers: the charging of recruitment fees and related costs; inadequacies in relation to pre-departure orientation training; deception and/or lack of transparency in relation to working and living conditions; problems with the employer, including allegations of sexual harassment and/or sexual and gender-based violence; retention of workers’ documents and possessions; length of the recruitment process and repatriation policies.

The grievances listed above may be raised by migrant domestic workers, or others acting on their behalf, at any stage of the recruitment, deployment, employment or return home/onward process. While some of these grievances may relate directly to the labour recruiters’ business practices and will require an effective response, other grievances may concern the actions of the labour recruiters’ business partners or employers.

While labour recruiters are not directly responsible for addressing grievances that occur outside their business operations and control – such as some workplace disputes – they do need to proactively monitor the well-being of migrant domestic workers they recruited and provide information on the different grievance mechanisms (State-

based and non-State-based, judicial and non-judicial) that are available to the worker. It is important to note that a labour recruiter's role only ends when the migrant domestic worker's employment has been completed and the worker has either returned to the country of origin, migrated to a new country, or remained in the country of destination and started a new employment contract (which has been secured by the worker or by an alternate labour recruiter).

Labour recruiters should be mindful that migrant domestic workers – particularly those in live-in arrangements – may be less able to raise concerns about employment matters due to their social isolation, unequal power relationship and/or fear of reprisals from the employer (household). Again, this is where proactive monitoring of migrant domestic workers is important. In some cases, labour recruiters may be able to play a mediation role and help de-escalate issues. For example, there may be a minor employment dispute about the type of food the domestic worker is cooking for the children in their care. The migrant domestic worker may be providing the same type of food that they would provide to their own children; however, the employer (member of household) has told the worker not to provide this food to their child, which has upset the worker. While this would fall outside the scope of the labour recruiter's responsibility, the labour recruiter may still provide some mediation by speaking directly with the migrant domestic worker and explaining what is culturally appropriate food to provide to children in the country of destination. In doing so, the labour recruiter may be able to resolve a minor issue before it escalates into a larger problem.

As a matter of good practice, labour recruiters should have their own, or participate in, effective operational-level grievance mechanisms. Operational-level grievance mechanisms are formalized means for affected stakeholders to raise concerns about any impact they believe a company has had on them in order to receive remedy. Labour recruiters should establish or participate in effective operational-level grievance mechanisms for migrant domestic workers and other stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly. These mechanisms should not prevent migrant domestic workers from accessing judicial or other State-based processes or undermine the role of legitimate trade unions. These mechanisms should help to identify problems early, before they escalate, and provide solutions that offer remedy to anyone impacted.

As outlined in Principle 31 of the UNGP, an effective non-judicial grievance mechanism should be: credible; legitimate; accessible; predictable; equitable; transparent; fair rights-compatible; a source of continuous learning; based on engagement and dialogue; and free of charge for the worker. The grievance mechanism should allow grievances to be raised by individuals and/or their representatives and groups.

When developing or updating an existing grievance mechanism, labour recruiters should have in place:

- A formal grievance mechanism that is available for jobseekers and migrant domestic workers to lodge complaints or concerns about the recruitment process without fear of retaliation. This mechanism should be designed to receive and confidentially address grievances lodged against the recruiter, the recruiter's business recruitment partners and subcontractors, or the employer. For example, workers may be able to make complaints directly via email, Facebook/WhatsApp/text messages, phone or skype calls. Alternatively, others such as relatives or civil society organizations, may be able to make complaints on their behalf.
- Procedures that define roles and responsibilities for soliciting, receiving, investigating and resolving (referral and remedy) grievances. Procedures should assign a timeframe for each step in the process, up to and including communicating progress and resolution of the grievance to the jobseeker or migrant domestic worker who lodged the complaint.
- Procedures for assigning the investigation and resolution of the grievance to individuals independent of the subject of the grievance. For example, if the complaint is about the behaviour of one of the labour recruiter's staff then it would not be appropriate for the staff member (or one of their direct reports) to investigate the complaint. Rather, another staff member who is removed from this staff member should investigate the complaint.
- Instructions on how to file a grievance that are visible at the point of recruitment, at the premises of the recruiter and its recruitment business partners, and at the employer's worksite. For migrant domestic workers in individual households, hardcopy or electronic instructions will need to be provided to the worker prior to, and during, employment. Furthermore, information on the grievance mechanism should also be included in the written agreement between the recruiter and the worker, and during the worker's pre-departure orientation training.

- Procedures that allow migrant domestic workers to have personal representatives accompany them to any grievance meeting/interview, including hearings to appeal a grievance. For example, this could be a peer, fellow trade union member or service provider from a local civil society organization.
- Records that include the grievance report (for example, record of a phone call, SMS message, email, or other method of reporting), the investigation report, the decision or resolution of the grievance, and details about how any subsequent appeal by the migrant domestic worker was addressed; and a record of acknowledgement from the migrant domestic worker of the grievance status quo.
- Procedures for how grievances and their outcomes are brought to the attention of senior leadership within the recruitment agency and then used to create and/or strengthen existing policies, procedures and practices to prevent similar issues from occurring again.

Labour recruiters should ensure that migrant domestic workers are informed about and have direct access to grievance mechanisms related to both the recruitment and employment process. This includes providing migrant domestic workers with information about available State, employer and industry grievance mechanisms as well as relevant not-for-profit and civil society organizations in both countries of origin and destination. For example, if a worker has been the victim of sexual and gender-based violence, the labour recruiter should refer the worker to the police and their consulate office to initiate a criminal justice response as well as support with repatriation (provided this is what the worker wants). The labour recruiter should also refer the worker to one or more trusted civil society partners that can provide legal aid and advice, counselling services and assistance navigating medical services. Labour recruiters should be mindful that migrant workers may require support in the country of destination, but also in the country of origin when they return and reintegrate back into the community and workforce. Information about the different grievance mechanisms and support services available should be provided to migrant domestic workers during their pre-departure orientation training, and in the labour recruiter's written agreement to provide recruitment services to the worker.

Labour recruiters will need to be proactive and seek information on the different types of grievance mechanisms that are available to migrant domestic workers. For example, labour recruiters should know which government ministry or department is responsible for overseeing employment issues and/or matters relating to migrant workers, as well as the contact details for consulates/labour attaches in each of their countries of operations. Similarly, they should be familiar with any hotlines (run by government and/or civil society organizations) that are available for migrant domestic workers. For example, the Labour Department of Hong Kong SAR, China has established a dedicated 24-hour hotline for migrant domestic workers, available in their native languages.

Labour recruiters should also reach out and establish connections with civil society organizations, trade unions and legal aid providers in countries both of origin and destination. As mentioned above, these organizations often have strong connections with migrant groups and can provide direct assistance to migrant domestic workers, if needed. For example, both IOM and the ILO support migrant resource centres in many countries of destination. These centres provide support, and in some cases legal assistance, to migrant workers free of charge.

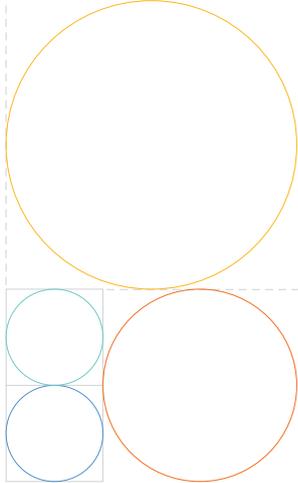
While private household employers may not have their own grievance mechanism in place, labour recruiters should be able to direct migrant domestic workers to alternative grievance mechanisms. In doing so, labour recruiters should consider the seriousness of the grievance. For example, suspected cases of forced labour should be directed to the police immediately, with additional support being sought from a trusted civil society partner.

If in doubt about where to start, labour recruiters should reach out to their local IOM mission for advice.



USEFUL RESOURCES

- [United Nations Guiding Principles on Business and Human Rights](#)
- [IOM missions](#)
- [Civil society organizations](#)
- [Trade unions, such as the International Domestic Workers Federation](#)
- [Migrant resource centres, such as the Migrant Forum in Asia](#)
- [Diaspora networks](#)
- [Government embassies and consulates \(e.g. Hong Kong SAR, China Labour Department Foreign Domestic Helper Help Corner\)](#)



ANNEX

ILO definition of recruitment fees and related costs

Definition of recruitment fees and related costs

- 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.⁴⁷
- Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits.
- The recruitment fees and related costs considered under this definition should not lead to direct or indirect discrimination between workers who have the right to freedom of movement for the purpose of employment, within the framework of regional economic integration areas.

A. Recruitment fees

1. Recruitment fees include:
 - a. payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;
 - b. payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
 - c. payments made in the case of direct recruitment by the employer; or
 - d. payments required to recover recruitment fees from workers.
2. These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment.

B. Related costs

1. Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment. These costs are listed below and may apply to both national and international recruitment. Depending on the recruitment process and the context, these cost categories could be further developed by the governments and the social partners at the national level. It is recognized that the competent authority has flexibility to determine exceptions to their applicability, consistent with relevant international labour standards, through national regulations, and after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject, but not limited, to the following conditions:
 - a. they are in the interest of the workers concerned; and
 - b. they are limited to certain categories of workers and specified types of services; and
 - c. the corresponding related costs are disclosed to the worker before the job is accepted.

⁴⁷ The text of this annex is taken from ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs* (Geneva, 2019).

2. When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process:
 - a. Medical costs: payments for medical examinations, tests or vaccinations;
 - b. Insurance costs: costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds;
 - c. Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing;
 - d. Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
 - e. Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively;
 - f. Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation;
 - g. Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.
3. Enumeration of related costs in this definition is generalized and not exhaustive. Other related costs required as a condition of recruitment could also be prohibited.
4. These costs should be regulated in ways to respect the principle of equality of treatment for both national and migrant workers.

C. Illegitimate, unreasonable and undisclosed costs

Extra-contractual, undisclosed, inflated or illicit costs are never legitimate. Anti-bribery and anti-corruption regulation should be complied with at all times and at any stage of the recruitment process. Examples of such illegitimate costs include: bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain.

