

Fair and Ethical Recruitment of Migrant Workers in the Indian Ocean region

A GOOD PRACTICE GUIDE FOR EMPLOYERS

Tom Hadley

April 2024

Fair and Ethical Recruitment of Migrant Workers in the Indian Ocean region

A GOOD PRACTICE GUIDE FOR EMPLOYERS

The following document provides an overview of the specific areas that employers can focus to enhance the way they recruit, integrate and manage migrant workers. The guide is based on good practice insight from participants in the recent workshops hosted in Mauritius and in the Seychelles, as part of the Southern African Migration Management (SAMM) Project.

The contents of the guide also reflect good practice in the management of migrant workers in other parts of the world and draws on the insight from compliance professionals and workforce management experts.

1. Good practice in general awareness-raising

A core building-block for promoting good practice in the management of migrant workers is ensuring that those involved in the process are awareness of and fully understand the regulatory framework, including national laws and international conventions.

Good practice approaches in this area include:

- Regularly reviewing the mechanisms in place at a company level to monitor and maintain compliance with all national legislation, as well as with all ratified ILO conventions and international guidelines.
- Linked to the above, having mechanisms and support networks in place (for example, through membership of recognised business organisations, sectoral associations or Chambers of Commerce) to stay up to date with evolving regulations and to adapt policies and practices to all new requirements.
- Having a dedicated person (or team of people) in place for ensuring compliance within your organization and for reviewing due diligence. For smaller employers, this may simply form part of the designated person's role. But this still helps to ensure that there is clear accountability and oversight.
- Developing internal mechanisms in place (such as access to alerts and briefings from a business membership organization or harnessing external legal expertise) for ensuring that regulatory requirements and good practice guidance are regularly disseminated internally across all relevant staff and to partner organization within the recruitment supply chain.

2. Good practice in ensuring contractual transparency

Ensuring contractual transparency – between employers and PRAs as well as between employers and workers - was flagged as one of the most common challenges by participants in Mauritius and in the Seychelles. Developing 'approved' model contracts that are recognised as clear and compliant is one way forward. In some regions, representative

employer organisations have taken a lead in developing these model contracts and have positioned this as core member benefit and service.

Good practice approaches in this area include:

- Creating employment contracts that provide migrant workers with full details of the work, conditions of employment, the nature of the work to be undertaken, rates of pay and methods and frequency of payment.
- Ensuring that any variation to the engagement terms and employment contract only occurs with prior notification and with the full agreement of the worker.
- Verifying awareness of and compliance with the ILO Definition of Recruitment Fees and Related costs – including provisions for prompt payment, overtime, and holiday wage rates.
- Reviewing job adverts and job descriptions to ensure that they are clear and reflect the reality of the role. As part of this, procedures should be in place for ensuring that PEAs only advertise positions for which they have permission from the employer to recruit for.

3. Good practice in worker engagement and acting on worker feedback

Generating regular feedback from workers (and acting on this feedback) provides a means of improving current policies and practices relating to the recruitment and management of migrant workers.

Good practice approaches in this area include:

- Implementing mechanisms for capturing feedback from workers and line managers on the effectiveness of current recruitment and management practices and on compliance issues. This can include worker surveys and focus groups as well as insight from one to one conversations.
- Ensuring that workers have access to grievance and dispute resolution mechanisms and receive appropriate remedies. This also involves making sure that migrant workers are made aware of the availability of these grievance procedures when they start in a new role.
- Using the insight from workers to inform the training and guidance provided to staff on non-discrimination issues.
- Regularly reviewing recruitment procedures to ensure that non-discrimination and respect for diversity are enshrined throughout.

4. Good practice in promoting health and safety and worker wellbeing

Making sure that internal staff are adequately trained and skilled to undertake their responsibilities in fair and ethical recruitment of migrant workers is a vital step in promoting health and safety and worker wellbeing. This includes all staff being briefed on how to identify and report 'red flags' linked to signs of forced labour.

Good practice approaches in this area include:

- Having a clear process in place for assessing any health and safety risks to workers and to ensure that potential risks are flagged, understood and addressed (including risks linked to transportation to and from the workplace).
- Providing effective induction and onboarding (the overall process of introducing newly hired employees into an organization) to all migrant workers, with a specific focus on health and safety and wellbeing.
- Ensuring that mechanisms are in place to address language barriers, including for induction/onboarding procedures as well as for day-to-day communication in the workplace.
- Engaging with public employment services (where this is an option) to ensure that jobseekers are aware of their right and to promote inclusive hiring practices?.

5. Good practice in promoting workplace and community integration

Moving beyond legal compliance and driving a proactive approach to relocation and integration support is a driver of productivity and performance. This is an area for ongoing exchanges and benchmarking between companies (which representative employer organisations and sectoral associations can help to facilitate).

Good practice approaches in this area include:

- Providing both workplace and community integration and relocation support to enhance wellbeing as well as productivity and performance. This will involve developing a formal relocation policy to ensure a consistent and effective approach.
- Ensuring that workers have access to suitable accommodation and living conditions, in line with national laws and international conventions.
- Providing additional integration support and signposting to support migrant workers who have spouses and family members with them in the country.

6. Good practice in respecting confidentiality and data protection requirements

Having the right mechanisms in place will ensure that all information on migrant workers and personal records are held in accordance with national law and latest data protection and confidentiality requirements.

Good practice approaches in this area include:

- Systematically obtaining required consent before disclosing, transferring, displaying, submitting or seeking confidential or personal information.
- Implementing regular reviews and risk management procedures to ensure that any new technology and online platforms used as part of the recruitment process comply with data protection requirements.

- Having the right mechanisms in place to track changes to data protection and confidentiality regulations as a means of ensuring ongoing compliance.

7. Good practice in exercising due diligence throughout the recruitment process

International hiring processes have become increasingly complex with a number of intermediaries involved in the recruitment supply chain. Having due diligence mechanisms in place when working with other actors and stakeholders is key to promoting compliant procedures and business ethics at all stages of the recruitment process.

Good practice approaches in this area include:

- For employers, having clear selection criteria in place to verify the compliance, ethics and professional standards of PEAs and other intermediaries involved in the recruitment process.
- For Private Employment Agencies (PEAs), being prepared to challenge unethical employment practices within the companies they are supplying staff to. This will include training and briefings for front line staff that support and encourage this approach.
- For PEAs, the focus must also be on having clear selection criteria in place to verify the compliance, ethics and professional standards of umbrella organisations (and other service providers) involved in the recruitment process.

8. Good practice in positively informing the broader mobility agenda and migration policy

The political and public policy debate around migration and skills is continuing to intensify. For the business community, the underlying aim is to ensure access to the staff and skills needed to support competitiveness, business growth and productivity.

Good practice approaches in this area include:

- Feeding into the campaigning work of representative employer organizations by submitting evidence to reviews of national-level migration policy, social dialogue and discussions around ratification of ILO conventions. This can involve contributing to surveys as well as to research and policy papers.
- Supporting targeted awareness-raising campaigns, aimed at those who are most at risk from fraudulent or abusive recruitment and employment practices.
- Implementing internal procedures for flagging examples of abuse and bad practices raised by individuals who were previously working for other employers and/or through PEAs with questionable workforce management practices.

9. *Good practice in promoting continuous improvement and peer-to-peer exchanges*

Ensuring the right mechanisms, policies and people are in place to enhance workforce management practices is an ongoing challenge. Continuous improvement will come through regular good practice exchanges and benchmarking activities, often driven and facilitated by representative employer organisations.

Good practice approaches in this area include:

- Sharing examples of good practice in the management of migrant workers with other business leaders and employer organizations. This can include supporting targeted forums and forums created to drive ongoing exchanges.
- Identifying specific issues for these ongoing good practice exchanges. For examples, priority topics identified by participants in the Mauritius and Seychelles events included managing trusted internal complaints mechanisms, using new tech to overcome language barriers for migrant workers, enhancing pastoral care and integration support for overseas workers and understanding evolving migrant worker expectations.

The Guide is based on a desktop review together with a list of interviews with key stakeholders from Comoros, Madagascar, Mauritius and Seychelles (Annex 1).

Annex1. Interviews' questionnaire of key stakeholders

1. Can you please mention what you know about the **UN Guiding Principles on Business and Human Rights** on corporate social responsibility? Do you know the **ILO's General Principles and Operational Guidelines on Fair Recruitment and Definition of Recruitment Fees and Related Costs**? If so, can you please tell us what they recommend to Private Employment Agencies (PEAs) and Employers in terms of the recruitment of migrant workers?
2. Have you heard of the **Business for Social Responsibility (BSR)**'s Good Practice Guide: Global Migration? Are you aware of the **World Employment Federation (WEC)** Code of Conduct "Promoting fair recruitment and employment practices" as well as the "Code of Professional Conduct for Private Employment Agencies (PEAs)" of the **Confederation of Associations in the Private Employment Sector (CAPES)**? If so, can you please tell us about them?.
3. Can you please tell us how many PEAs exist in your country? Could you please mention the names of the 5-10 most important ones or, the name of your PEA?
4. Could you please mention if most PEAs in your country belong to national Associations and if those Associations have Codes of Conduct or Codes of Ethics? Could you please mention if your PEA is governed by a Code of Conduct or Code of Ethics? Please briefly explain.
5. Can you please mention if PEAs in your country/Associations (or if your PEA/Association) are/is governed by any other type of Business Principles Guidelines or Minimum Standards for Practice in terms of provision of **employment contracts, charging fees, working conditions (working hours, weekly rest and annual leave, occupational safety and health protection, social protection coverage and portability, wages withholding and non-payment, respect for minimum wage, identity documents withholding, etc), living conditions, grievance procedures, termination and repatriation of migrant workers**?
6. Can you please tell us if your PEAs Association has a Model Self-Assessment Tool on the Fair and Ethical Recruitment of Migrant Workers? If so, please explain its content.
7. Could you please share with us documents/reports that can testify the respect for those Code of Conducts/Code of Ethics/Business Principles Guidelines or the Model Self-Assessment Tool? Are the principles of non-discrimination, recognition of fundamental

rights at work of all migrant workers¹, principles of equal treatment² and opportunities³ between migrant workers and national workers included in them?

8. Do you know if your country has a legal and policy framework supporting Private Employment Services/Agencies (PEAs) mandate in the fair recruitment and placement of national and migrant workers⁴? Can you please mention the most important existing regulation (e.g. Orders, Decrees, other national legislation, etc?)
9. Do you know if the law distinguishes between services to be provided to national and migrant workers? Can you please explain how it differs? Would it be possible to share copies of that legislation with us?

¹ **Recognition of fundamental rights at work of all migrant workers:** Convention No. 143 recognizes the need to ensure full respect of human rights of all migrant workers, including those in an irregular situation (Article 1). Notably, these comprise the fundamental rights at work contained in the eight ILO fundamental Conventions: the right to freedom of association and collective bargaining (Conventions Nos 87 and 98), the prohibition and abolition of forced labour (Conventions Nos 29 and 105 as well as the 2014 Protocol to the Forced Labour Convention No. 29), the elimination of child labour (Conventions Nos. 138 and 182), as well as the right to equal remuneration (equal pay for work of equal value) and the prohibition of all forms of discrimination in employment and occupation (Conventions Nos 100 and 111).

² **Equal treatment between migrant workers in a regular situation and national workers:** Convention No. 97 (Article 6) guarantees equal treatment without discrimination on the basis of nationality, race, religion or sex, to migrants lawfully within the territory of countries of destination in relation to the following

- working conditions (remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons);
- membership of trade unions and enjoyment of the benefits of collective bargaining;
- accommodation;
- social security;
- employment taxes, dues or contributions payable in respect of the person employed;
- access to justice

Equal treatment between migrant workers in an irregular situation with regard to rights arising out of previous employment: Convention No. 143 (Article 9) also establishes that equal treatment must be guaranteed to migrant workers in an irregular situation with regard to rights arising out of previous employment concerning:

- remuneration due;
- social security and other benefits accrued as entitlements;
- access to justice in defending their rights before a competent body;
- the costs of expulsion, which should not be borne by migrant workers and their families

³ **Equality of treatment and opportunity between migrant workers in a regular situation and national workers:** Convention No. 143 (Art. 10) also calls on member States to pursue a national policy designed to promote and guarantee, by methods appropriate to national conditions and practice, for persons who, as migrant workers or as members of their families, are lawfully within its territory, equality of opportunity and treatment, in respect of:

- employment and occupation;
- social security;
- trade union and cultural rights; and,
- individual and collective freedoms.

⁴ According to ILO C 143 Migrant Workers (Supplementary Provisions) Convention, 1975 the term **migrant worker** means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker. The Convention does not apply to: (a) frontier workers; (b) artistes and members of the liberal professions who have entered the country on a short-term basis; (c) seamen; (d) persons coming specifically for purposes of training or education; (e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

The International Labour Organisation's International Labour Standards on the protection of migrant workers cover displaced persons and refugees where they are employed as workers outside their country of origin.

