GFMD 2020
Theme 4: Addressing Gaps in Migrant Protection
Business position

- While the business community promotes stronger frameworks for skills mobility, gaps in migrant protection must be addressed. This is particularly the case in the context of the current economic crisis led by the pandemic Covid-19.

- To curtail the spread of the pandemic, the governments across the world have declared health emergency and have literally locked down almost all economic activities. The range of restrictive measures to contain the pandemic, including trade and travel restrictions, port and borders closures, self-isolation, has led to devastating consequences on economies. This is causing further uncertainty in the African and Latin American continent already grappling with widespread geopolitical and economic instability.

- Employers struggle with a range of challenges linked to place of employment, layoffs, leave entitlements, partial unemployment, among others. Low-skilled migrant workers across the world are being particularly hit. Governments must now think of long terms solutions that respond to the global health priority, while taking into account the economic recovery and the protection of its citizen and migrant's communities.

- We see three areas where improvement is needed and that would contribute to addressing gaps in migrants' protection:

  1. Legal pathways for employment
  2. Transitioning from informal to formal economies
  3. Frameworks for responsible recruitment

1. Legal pathways for employment

- The current crisis will change the migration landscape drastically, but it will not close the skills gap that every region of the world is facing. Migrant workers who enter job markets filling local skills gaps, should have access to jobs through regular channels. Strengthening the legal pathways for employment will therefore contribute to addressing gaps in migrant workers' protection. An efficient infrastructure for cross border skills mobility remains crucial; even more so for the global economy to recover.

- An efficient infrastructure/immigration system includes:

- **Pathways for workforce mobility that respond to today's and tomorrow's employment's needs.** This requires facilitating the movement of people to a greater extent than in the past. In the current context, legal pathways should be strengthened to allow employment of essential workers in occupations where there are chronic shortages of local workers, ensuring that they are employed through regular channels.

- Most of the existing immigration systems were built for a now-obsolete economic model based upon fixed work locations and contracts for structured employment. Migration law, policy and administration have not kept pace with the workplace changes. In fact,

local labour market policy increasingly conflicts with labour needs at both national and employer-specific levels.

- A significant complicating factor faced by employers and migration administrations is the ongoing evolution in the workplace. Existing systems and policies do not adequately address the new workplace flexibility in its various forms, which include work at home and work at client worksites (with or without a home base and even across borders). The so-called "gig economy" is another new development, where on-demand or crowdsourced jobs require workers available "just in time", perhaps for multiple employers. Project-based work is increasing, in which knowledge of proprietary or unique products or services may be required and where employers may not have a permanent presence in the continuity of employment.

- **Increased interaction with line ministries and employers.** As policymakers will reflect on revised migration systems, labour market needs and modern business practices will have to be considered. This will mean increased interaction with Labour and Employment ministries, as well as with employers themselves, because employers are best positioned to determine the skills and business models necessary to effectively achieve their business objectives.

- This will require an alignment and better coherence between national skilling strategies with migration strategies. Employers can be a valuable partner in identifying skills needs and establishing frameworks for assessing foreign qualifications. Policies should avoid rigid qualification requirements and skills definitions, trusting employers to identify the most-qualified candidate.

- **Transparency in migration processes**. This applies to employers/recruiters to ensure due diligence in the recruitment and employment of migrant workers. It also applies to governments and to good governance. The use of technology by governments could help improve transparency in the migration process, as well as improving legal certainty which is currently lacking.

- **Sound low-skill migration mechanisms** – with appropriate protections such as recruitment obligations as well as skills matching components. Their absence has serious consequences. Where policies allowing the international recruitment of low-skill workers exist, processes are often time-consuming. Waiting is not an option for some businesses: farms can rarely postpone a harvest. Constraints on work authorization can prevent businesses from recruiting local hires from another employer. A few practical solutions that benefit multiple stakeholder emerge in this area. Trusted employer programs facilitate migration processes for organizations with a record of compliance, conserving resources for government and business. Work authorization portability, where migrants can change employers in a country, increases labour market flexibility for business while allowing migrants to seek the most favourable conditions of employment. Equality goes with legality. Social welfare should be accessible to all, including migrant workers.

2. **Transitioning from informal to formal economies.**

- The Covid-19 crisis has shed light on a serious concern to businesses: informality, in particular for employers in Africa and South America. Most of the migrant workers who are now in difficult situations were working in the informal market, with no protection or social safety net.
- Business and governments have to work together to counter informality, which generated huge losses for the economy: the main objectives should be to identify the root causes of the existence of the informal economy and the barriers to formalization and to put in place policies to assist informal entrepreneurs to more easily formalize.
- One of the main industries of concern here is the recruitment industry, which operates with high level of informality.

3. Frameworks for responsible recruitment

- Many migrant workers fall through the cracks of rogue intermediaries, due to a gap in efficient policies and frameworks for responsible recruitment. When regulated appropriately, private employment and recruitment services improve labour-market functioning by matching jobseekers to a decent job, inside and across borders. Today many countries have inadequate regulatory frameworks for these services, and/or simply do not enforce them. This allows for illegal, unethical and/or rogue players to deceive and trap (overseas) jobseekers and workers into indecent jobs, debt bondage and dangerous working conditions.
- Appropriate and effective national regulation is required to balance the interest of (international) jobseekers, workers and businesses on private labour-market allocation.
- There is a wide range of international instruments and initiatives which aim at reducing unethical recruitment. Their aspiration is to ensure that the rights of workers are not violated through the recruitment process and that workers will not be exploited in the workplace. Principles include no recruitment fees to be charged to workers, the right of workers to be in possession of identity documents at all times, and the requirement that contracts cannot be confiscated, destroyed or retained, wages to be paid in a timely fashion, access by workers to information and grievance and dispute resolution mechanisms at all times.
- But despite the substantive convergence of these initiatives, as well as the widespread consensus around the principles they espouse, abuses persist in many parts of the world. Low-and medium-skilled migrants seeking job opportunities are most vulnerable in this regard and require special attention and protection.
- Addressing these human rights violations is a shared task. Governments have the primary duty to respect, protect and fulfil human rights, while ensuring social protection to their populations. Businesses also have a responsibility to respect human rights and undertake due diligence to identify and address adverse situations in which they may be involved. This is a business imperative. For responsible enterprises, the importance of compliance with existing laws and regulations goes beyond avoidance of monetary fines and other legal sanctions. It speaks to the protection of brands and corporate reputation, the

management and control of risk, and the preservation of a level playing field and fair competition.

- The regulatory framework should be conducive to an ethical recruitment business case that serves as an alternative to rogue providers for both domestic and cross-border jobseekers. Such a business case depends on the cost of deliberately breaking the law. At national level, dialogue should take place to put the right regulations in place targeted at the recruitment industry. The global business community is prepared to support the work of governments in implementing and enforcing the regulatory frameworks needed to fight rogue providers.
- Examples of partnerships:

    1. The SNCU (Foundation for Compliance with CLA for Temporary Agency Workers) is a bi-partite initiative in the Netherlands that supervises compliance with the CLAs. The "CLA Police" (SNC) is a bipartite enforcement initiative which is part of the SNCU. There is tripartite cooperation to educate workers about their rights under the collective labour agreement for agency workers, and to monitor user companies by looking for violations. The CLA Police have the power to start legal procedures against rogue agencies which infringe upon workers' rights, or which hinder its supervisory role. The results of the investigation can amount to significantly high monetary fines for the agency involved. It is important to note that there is good cooperation between the private and public enforcers in the Netherlands. If private inspectors see the signs of trafficking, they will immediately contact public enforcement. For user companies, it is very important to do business with bona fide companies and since registration is publicly known, it is easier for user companies and public enforcement to identify rogue companies. http://www.sncu.nl/n
    2. The Swedish Staffing Association membership authorization scheme ensures legitimate businesses who meet high standards of professionalism. They carry out thorough checks in order to make the staffing industry in Sweden safe and sound. Companies are also required, according to the bylaws, to comply with Swedish law, to provide the Swedish Staffing Agencies and the Confederation of Swedish Enterprise with statistics needed by the association to do the best job possible. Authorization and membership require that the business is conducted as a legal entity. All companies undergo checks upon joining the federation, and thereafter once a year. Companies who, upon check, do not meet the conditions of authorization will not be able to retain membership with the Swedish Staffing Agencies. The checks are done by the authorization board and the decisions are made by the board of the Swedish Staffing Agencies Association. There is a bi -partite commission to recommend on applications and national federation board final decision. Conditions of authorization can be seen at: www.kompetensforetagen.se/in-english