

Draft model framework on temporary and permanent migration for employment of refugee workers

This draft model framework has been informed by the ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons annexed to ILO Recommendation R 86 Migration for Employment Recommendation (Revised) of 1949.

Preamble:

- Reference to applicable international and regional labour law and human rights instruments
- Reference to the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol
- Reference to relevant regional or bilateral agreements and/or framework
- Reference to the goals and objectives of the parties

Parties to the agreement:

- Countries [*these countries would include at the minimum the country in which the refugee is in and the country hosting the scheme. Where such a labour migration scheme is considered as an alternative to repatriation after cessation, it could also include the refugee's country of origin. For temporary migration schemes, possible also the country of onward migration*]
- UNHCR, ILO other international organizations [*optional*]
- Civil society [*where relevant and desired*]

Section I: General Provisions

Terminology

- Receiving country: country hosting the scheme
- Host country: country in which the refugee is in
- Country of origin: country of nationality or habitual residence
- Refugee: individual qualifying for refugee status under the 1951 Convention or otherwise in need of international protection
- Refugee worker: a refugee expressing an interest in participating in a labour mobility programme
- Family

Objective and purpose of agreement

Different roles and responsibilities of State parties

Joint determination of qualification criteria for programme

- age, physical aptitude and health,
- occupational qualifications;
- members of the refugee workers' families authorised to accompany or to join them.
- numbers and occupational categories of refugee workers to be recruited in the course of a stated period;
- areas of recruitment and the areas of placing and settlement.

Co-operation among parties, including exchange of information

Roles and responsibilities of UNHCR and/or other international organisations

- support implementation of agreement
- monitoring and supervision, reference to Art. 35 of the 1951 Convention
- non effect on privileges and immunities [*only where party to agreement*]

Section II: Activities in the host country

Organisation of Recruitment, Introduction and Placing

- joint nomination of bodies for recruitment, introduction and placing
- restrictions of bodies or persons that can be engaged to:
 - public offices or bodies
 - body established in accordance with the terms of an international instrument or this agreement
 - the prospective employers
- No administrative costs of recruitment, introduction and placing for refugee worker or family
- Action against misleading propaganda

Selection in host country

- recognition and composition of selection body
- organisation, including location of selection examinations,
- allocation of expenses resulting from these examinations;
- co-operation with employment services.

Information and assistance of refugee workers and their families

- provision of information to selected refugee worker before departure in a language he understands on:
 - the nature of the work for which he or she has been engaged and the location
 - the length of the programme, whether it is temporary or permanent
 - travel arrangements

- the conditions of life and work in the receiving country
- rights and benefits
- potential risks
- On arrival in the receiving country, receipt of :
 - all the documents which they need for their work, their residence and their settlement in the country,
 - information, instruction and advice regarding conditions of life and work,
 - rights and benefits
 - useful contacts and helplines
 - other assistance with the integration into the receiving country.

Education, vocational training and orientation before departure

Acceleration and simplification of administrative formalities for departure, entry and return

Agreement on validity of documents (civil status, qualification)

Issuance of travel documents by host country

- In 51 Convention State parties according to Art. 28 of the 1951 Convention
- Alternative travel documents in States not party
- Alternative travel documents for refugees not falling under the 1951 Convention
- Favourable consideration of issuing travel document by receiving country if refugee cannot obtain a travel document from the host country
- Other alternatives

Section III – During travel

Conditions of travel

- safeguarding health and welfare of and assistance to refugee worker and family during their journey and initial stay in reception centre upon arrival
- safe and dignified transport

Travel and support expenses

- meeting the cost of
 - travel and transport of personal belongings of the refugee workers and families
 - support while travelling, sick or hospitalised.

Section IV – Arrival and stay in receiving country

Facilitation of the transfer of funds

- authorise and facilitate for the periodical transfer of funds to families in the host country and/or the country of origin
- applying the prevailing official rate of exchange
- simplify and accelerate administrative formalities for the transfer of funds

Facilitation of integration

- fixed period, during which refugee workers shall receive special assistance
- language programmes
- naturalisation [*only after acquisition of permanent residence*]

Monitoring of living and working conditions

- by responsible government agency or other bodies and/or
- specifically created body under this agreement and
- UNHCR and IOM

Access to national redress systems in case of dispute with employer

Equal Treatment with nationals

Refugee workers and their families will enjoy equal treatment with nationals without discrimination of the receiving country with regard to:

- conditions at work(eg remuneration, hours of work, weekly rest days, overtime arrangements,etc)
- membership of trade unions and benefits of collective bargaining;
- education, including vocational training,
- recreation and welfare measures;
- employment taxes, dues or contributions payable in respect of the persons employed;
- access to courts and legal proceedings in relation to this agreement
- other security assistance national enjoy
- access to trades and occupations to the extent permitted under national laws and regulations;
- acquisition, possession and transmission of property.

Social Security

- Refugee workers and their family will receive equal treatment with national as regards social security, except where particular residence qualifications apply to nationals.
- Exception for temporary refugee workers regarding compulsory pension schemes

- Maintenance of refugee workers' acquired rights and rights in course of acquisition.

Contracts of Employment

- Develop model contract which would be drawn up by the parties for the principal branches of economic activity.
- Individual contract of employment will include:
 - duration of the contract, the conditions of renewal and denunciation of the contract;
 - conditions under which entry and residence in the territory of immigration are permitted for the refugee worker and the family;
 - the grounds on which a contract may be prematurely terminated.
 - general conditions of employment
 - Full name and biodata of refugee and his family
 - Nature and place of work, occupational category of work
 - Remuneration and other payments (bonuses, allowances etc)
 - In kind benefits
- translated into a language which the refugee worker understands.
- copy of the contract delivered before departure or, latest directly upon arrival in the host country.
- In the latter case, written, individualized information of the occupational category in which he is to be engaged and the conditions of work, in particular the minimum wage

Possibility to change employer

- possibility to change employers
- possibility to maintain refugee worker during time of unemployment

Employment stability

- facilitate placing if refugee migrant's work becomes redundant before expiration of contract
- support during period of unemployment

Transfer of responsibility to the receiving country for the issuance of a Convention travel document

- agreement on time period after which the responsibility for the issuance of a travel document transfers to the receiving country
- reference to paragraphs 6, 11 of the annexed schedule to the 1951 Convention

Possibility to extend residence and work- permit [*only for temporary programmes*]

Section IV: End of stay in receiving country

Possibility to return to the host country

- definition of time period during which host country guarantees re-entry and enjoyment of asylum

Possibility to move onwards to a third country

Facilitation of voluntary repatriation to the country of origin

- repatriation in safety and dignity

Protection against expulsion and refoulement

- protection against expulsion, reference to Art. 32 of the 1951 Convention
- protection against refoulement, reference to Art. 33 of the 1951 Convention and non-refoulement principles under international human rights law.
- possibility to return to asylum country

Return/onward journey

- no cost for return journey for refugee and his family if he is obliged to leave for reasons for which he is not responsible
- identify person or agency responsible for defraying the cost of return
- cooperation among parties in organising return in safety and dignity
- exemption from custom duty of personal effects, portable hand-tools and equipment for trade

Section V – Final Provisions

Saving clause

- no affect of agreement on other rights, obligations and responsibilities under international law, including international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 protocol.

Final Provisions

- entry into force
- duration of the Agreement as well as the period of notice for termination
- settlement of disputes
- provisions of this Agreement which remain in operation after expiration of this Agreement.