

Protection des plus vulnérables par le cadre légal

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Colloque du CSDH

11.12.2020

Plan

- I. Introduction
- II. Cadre légal
- III. Problématiques rencontrées par les personnes migrantes les plus vulnérables
- IV. Réponse urgente
- V. Réflexion prospective
- VI. Conclusion

I. Introduction

- Idée de réfléchir à des solutions pour améliorer la protection des personnes les plus vulnérables dans le cadre légal suisse.
- Réflexion autour de la 1^e vague de Covid-19 et des mesures d'urgence prises dans ce contexte ;
- Importance de ne pas se limiter au domaine de la migration mais de prendre en compte d'autres domaines ;
- Difficultés juridiques mais aussi politiques

II. Cadre légal

- Conséquences différentes en fonction du type de statut de séjour (resp. de l'absence d'un tel statut) ;
- Accès aux assurances et prestations sociales
 - Assurance-maladie
 - AVS/AI/APG et prestations complémentaires
 - Assurance-chômage
- Perte du statut de séjour (art. 62 et 63 LEI)
- Régularisation (art. 30 LEI, art. 14 LAsi)

III. Problématiques rencontrées par les personnes migrantes les plus vulnérables

- Impact des mesures sanitaires particulièrement fort dans certains domaines de l'économie ;
- Beaucoup de personnes migrantes actives dans les secteurs les plus touchés : économie domestique, hôtellerie/restauration, construction ;
- Perte d'emploi et/ou de revenus pour un grand nombre de personnes ;
- Conséquence directe : problèmes financiers.
En découlent : accès aux soins, maintien du logement, alimentation ; perte du statut de séjour.

IV. Réponse urgente

- Absence de réponse unifiée au niveau suisse. Réponse au niveau cantonal, voire local ;
- Au niveau matériel : aide mise en place par des associations au niveau local, parfois avec soutien financier des cantons/villes ;
- Au niveau légal : conséquences d'une dépendance à l'aide sociale → Directive du SEM
- Exemples : BE, GE, VD

V. Réflexion prospective

- Une réflexion ne peut se limiter au droit de la migration ;
- Prise en compte également des personnes vulnérables non-migrantes ;
- Pistes de réflexion :
 - Accès aux prestations sociales ;
 - Perte du statut de séjour ;
 - Régularisation pour les sans-papiers ;
- Actions au niveau politique

VI. Conclusion

- Cadre légal déjà largement existant.
- Réel besoin de changement ou nécessité de mise en œuvre des mécanismes existants ?
- Nécessité d'une réponse unifiée ?
- Volonté politique ?

**“Stay home, save lives.” Unless you are an unprotected
“essential” worker. *The legal and institutional responses to
minimise the increased precarity of vulnerable migrant
workers in COVID-19***

Dr Amy Weatherburn

Overview

1. Impact of COVID-19 on vulnerable migrant workers
2. Legal and Institutional responses
3. Ongoing challenges & long-term impact on precarious work

1. Impact of COVID-19 on vulnerable migrant workers

- Health and safety of workers jeopardized
- COVID-19 infection clusters amongst migrant workers
- Low-skilled, low-paid sectors e.g., meat processing in Germany and Netherlands, garment industry in UK
- Not just working conditions but also living conditions

A tale of two COVID-clusters.

LIÈGE

Grève chez AB InBev: un conflit social devenu emblématique

Home > Régions > Liège Liège - 14-09-2020 à 18:12 - Benjamin HERMANN - L'Avenir
Lecture 3 min.

Partager



ZWARTWERK

Eerst in quarantaine, dan het land uit

In de vroegere Capitole in Aalter zitten 84 Portugese bouwvakkers in hun afgeleefde kamers in quarantaine. 'We waren stomverbaasd dat er hier mensen in deze omstandigheden leven.'

Jeroen Struys
Dinsdag 3 november 2020 om 3.25 uur



De Capitole: eerst dorpsbioscoop, dan hotel, nu krotwoning. © Fred Debrock

1. Impact of COVID-19 on vulnerable migrant workers

- Lack of access to income protection schemes
- Relief measures aimed at reducing precarity on those in temporary unemployment or in precarious sectors
- Economic impact increases, risk of homelessness, lack of resources for subsistence needs

2. Legal and institutional responses

Récoltes de fruits: quand les demandeurs d'asile remplacent les saisonniers étrangers au temps du coronavirus



Ali Nizam. Libanais, demandeur d'asile et cueilleur de fraises dans le Limbourg. - © RTBF

Quentin Warlop

🕒 Publié le mercredi 27 mai 2020 - Mis à jour le mercredi 27 mai 2020 à 18h55

2. Legal and institutional responses

- **Federal Taskforce for Vulnerable Groups (April – July 2020)**
 - Identify the impact on vulnerable people of the epidemic, the containment measures and the socio-economic measures taken by the different levels of power, governments in the short and long term
 - **Identify people who do not fall within the scope of the socio-economic measures taken and make their problems visible**
 - Consult on proposals for additional concrete and justified COVID measures in the short and long term
 - Issue recommendations/policy proposals on the socio-economic measures to be taken
 - Facilitate coordination with the federated entities for a better articulation of measures

3. Ongoing challenges & long term impact

- Need for relief measures still ongoing due to unemployment, increased cost of living, lack of savings
- Focus on those who cannot access the relief measures
- Systemic change needed for areas of labour market that fostered and facilitated precarity in the workplace pre-COVID.
 - Germany: slaughterhouse – investigation into working and living conditions & ban on sub-contracting temporary employers
 - The Netherlands: Migrant Worker Protection Taskforce – recommendations for reducing multi-dependency of worker on employer/temporary employment agencies.

Prise de position et pistes de réflexions de la CFM

Etienne Piguet
Vice-président



La CFM

La Commission Fédérale des Migrations est une commission extraparlamentaire de 30 membres dont la moitié au moins sont issus de la migration.

Elle conseille le Conseil fédéral et l'administration dans les questions de migration et encourage la cohésion sociale en soutenant des projets.

- **INVENTAIRE des soucis identifiés à l'interface Migrations/Politique sanitaire auprès des membres CFM**



Statut de séjour des étrangers/ères en Suisse

- Permis L (secteur gastro. / tourisme)
- Permis B et C en cas de recours à l'aide sociale (> cas de renonciations volontaires)
- Transformations de permis F en B (humanitaires)
- Naturalisations compromises en cas de recours à l'aide sociale

- Recommandation de la Conférence des directeurs cantonaux des affaires sociales) « année COVID » > et après ?



Conditions de travail des groupes précaires

- Micro-Indépendants (services domestiques, chauffeurs de taxis, etc.)
- EmployéEs de la vente (restrictions au commerce)
- Travail sur appel
- Marché du sexe (interdiction prostitution 18.03-27.05.20)
- Impact des mises en quarantaine
- Précarisation amplifiée pour les personnes sans titres de séjours (même si certaines ont cotisé).



Mobilité et frontières

- Fermeture des frontières durant le confinement
 - Demandeurs d'asile
 - Couples non-mariés transnationaux
 - Assistance familiale transfrontalière
-
- Mise en place de liste de pays « à risque » (quarantaine) > image de la mobilité comme LOISIR
 - > risque de stigmatisation



Pays « à risque »

- Liste pour une entrée en Suisse du 14.12.2020 (**Portugal**)
- Liste pour une entrée en Suisse entre le 23.11.2020 et le 13.12.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 29.10.2020 et le 22.11.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 12.10.20 et le 28.10.202020 (**Portugal**)
- Liste pour une entrée en Suisse entre le 28.9.2020 et le 11.10.2020 (**Portugal**)
- Liste pour une entrée en Suisse entre le 14.9.2020 et le 27.9.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 7.9.2020 et le 13.9.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 20.8.2020 et le 6.9.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 08.8.2020 et le 19.8.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 23.7.2020 et le 07.8.2020 (**sans le Portugal**)
- Liste pour une entrée en Suisse entre le 06.7.2020 et le 22.7.2020 (**sans le Portugal**)



Manque d'un NOUS qui englobe la société dans sa diversité

- Reconnaissance de la contribution des migrantEs à la lutte contre la pandémie
- Inclusion de toutes les personnes présentes sur la territoire dans la COMMUNAUTE
- Caractère exceptionnel de la situation > mesures exceptionnelles (régularisations, dérogations, cas de rigueur...)



Protéger les droits des personnes vulnérables – même en temps de crise

Prise de position de la CFM du 10 juin 2020

- La CFM attire l'attention sur le fait que l'accès des demandeurs d'asile au territoire et le respect du principe de non-refoulement doivent être garantis, même en temps de crise. Plus généralement, elle souligne la nécessité de protéger les droits fondamentaux des réfugiés.
- Elle suggère que soient prévues des prolongations de délais dans la procédure d'asile.
- Elle demande au Conseil fédéral de garantir la transparence et la sécurité juridique dans le domaine de l'intégration : d'éventuelles lacunes d'intégration induites par la crise sanitaire ne doivent pas être interprétées au détriment des personnes concernées par les décisions relevant du droit de la migration.
- <https://www.ekm.admin.ch/ekm/fr/home/aktuell/stellungnahmen/2020/2020-06-10.html>



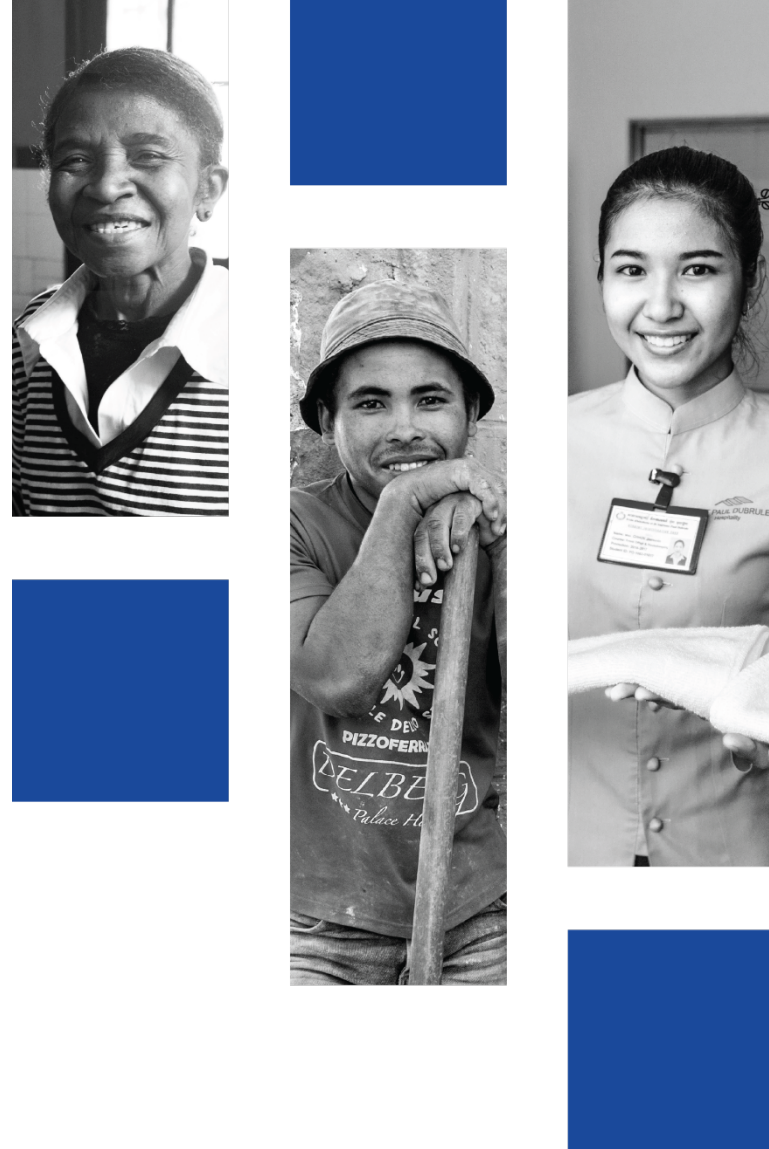
Poursuite de l'inventaire

- Suivi, synthèse et hiérarchisation
- Mise en discussion publique (<http://www.terra-cognita.ch>)

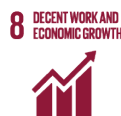


COVID-19: Guidance for Employers and Recruiters to Enhance Migrant Worker Protection

Geneva, 11 December 2020



Responding to UN Sustainable Development Goals



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development and Cooperation SDC

*IRIS - a global multi-stakeholder initiative of IOM.
To promote ethical recruitment that is fair*



- *Helps with compliance across jurisdictions*
- *Helps to facilitate labour mobility*



FOR
GOVERNMENTS



FOR
WORKERS

- *Helps jobseekers identify ethical labour recruiters*
- *Reduces risks of exploitation*
- *Improves access to remedy*

- *Levels playing field for ethical recruiters*
- *Helps optimize costs and gain market advantage*



FOR
RECRUITERS



FOR
EMPLOYERS

- *Helps employers identify ethical labour recruiters*
- *Helps improve transparency in the hiring process*



Introducing two guides for business on COVID-19

- Guides for *employers* and *labour recruiters* on protecting migrant workers in COVID-19 context
- Employers: steps to take in the workplace, dormitories, social protection
- Recruiter: performing recruitment during crisis, travel, liaising with migrants and employers, and supporting return and reintegration
- Targeted – Aligned – Comprehensive
- Both are published as
 - Preliminary guidance
 - Living documents to be updated and improved



Why two guides for business?

- Broad, institutional, policy-level responses, but nothing for the private sector
- Reinforcing the micro, local level engagement
- Responding to the specific health- and livelihood risks faced by migrant workers
 - Workplace and dormitories
 - Heightened risk in migrant communities
 - During recruitment and migration
 - Loss of employment, wages: reports of starvation
 - Loss of permits and risks facing irregular migrants: fear of deportation
 - Access to social protection, limited livelihood alternatives
 - Return and reintegration in context of self-isolation, social distancing



IRIS
ETHICAL RECRUITMENT



IOM
UN MIGRATION



Employers and business play a vital role in protecting migrant workers and their communities during the COVID-19 pandemic. Many provide essential care, services and goods and, in doing so, rely heavily on their migrant workforce. This includes nurses, doctors and other frontline care workers as well as the agricultural, transport and retail workers that keep our cities and towns supplied with food and other essential items. This resource is designed to help employers more effectively respond to the impact of COVID-19 and to enhance protections for migrant workers in their operations and supply chains. We hope that the guidance it provides will prove valuable.

IOM Director General Antonio Vitorino



IRIS
ETHICAL RECRUITMENT



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Employer guidance to enhance migrant worker protection during the health crisis

- Primary audience: employers, HR officers, OSH committees
- Secondary audience: global brands/buyers, other business partners
- Global and voluntary
- Cross-sectoral and not industry- or occupation-specific
- Consistent with international standards (WHO, ILO)



Thematic content and coverage

- Rights-based, migrant-centered and multi-stakeholder response
 - Centrality of communication, dialogue and cooperation
1. General considerations
 2. Enhancing workplace safety and health
 3. Mitigating stress and anxiety
 4. Promoting access to healthcare/insurance
 5. Adapting work arrangements
 6. Adapting living conditions of migrant workers
 7. Safeguarding the rights of migrant workers
 8. Payment of wages and economic well-being
 9. Migrant access to social protection
 10. Unique vulnerability of domestic workers
 11. Combating xenophobia and social exclusion
 12. Ensuring ethical recruitment during the crisis
 13. Return of migrant workers
 14. Communicating with migrant workers
 15. Role of supply chain due diligence
 16. Additional resources



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ETHICAL RECRUITMENT



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During the current global health crisis, labour recruiters play an essential role in protecting migrant workers and ensuring essential services have the staff they need to provide elevated levels of care. Recruitment agencies are also on the frontlines of helping migrant workers get home and supporting those who have already returned to access social assistance, seek alternative livelihood opportunities and navigate the challenges related to reintegration in a time of mandatory quarantine and social distancing. This resource provides guidance to labour recruiters on how to maintain high standards of ethical recruitment despite the challenges posed by COVID-19. We hope that it provides inspiration and insight for the application of practical measures to promote enhanced migrant worker protection.

IOM Deputy Director General Laura Thompson



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ETHICAL RECRUITMENT



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UN MIGRATION



Labour recruiter guidance to enhance migrant worker protections during the current crisis

- Targeted guidance for recruitment agencies to complement employer resource
- Steps to enhance health-related protections during recruitment, including interviews, transit, arrival, quarantine measures, on-boarding, etc.
- Maintaining contact with migrant workers and employers
- Repatriation and reintegration
- Guidance on access to social protection and/or alternative employment opportunities
- Post-crisis considerations in returning to full production, “business as usual”



Using the guides at national and regional levels

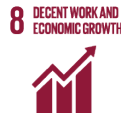
- Share them with employers and recruiters you know
- Map relevant industries hardest hit by crisis to target outreach and engagement
- Host a joint webinar with a Chamber of Commerce or an industry association
- Reach out to professional human resources associations
- Conduct a survey of employers or recruiters to better understand their current needs
- Translate, disseminate, gather input from other stakeholders to shape future versions
- What else?

Access the guides here: <https://iris.iom.int/covid-19-response>



THANK YOU
iris@iom.int

Responding to UN Sustainable
Development Goals



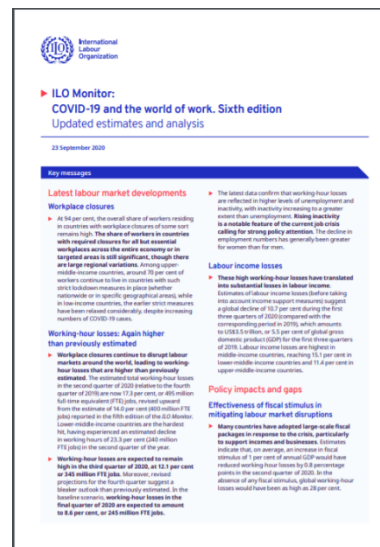
Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development
and Cooperation SDC

COVID-19 : effects on employment and wages

Patrick Belser
Senior Economist, ILO

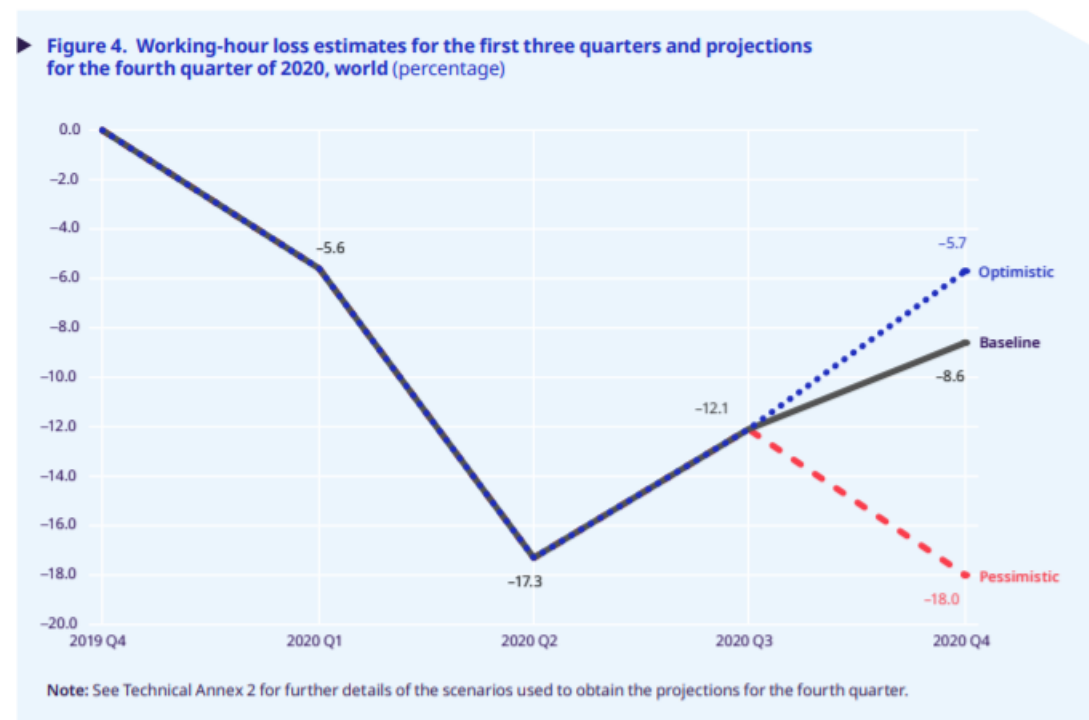
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COVID-19 and the world of work >

COVID-19 has had a huge impact on jobs and labour incomes

- COVID-19 generated an unprecedented economic and labour market crisis, with workplace closures (lockdowns) in 94% of countries in September 2020
- This led to estimated working-hour losses of 17% in Q2 2020 - equivalent to 495 million full-time equivalent jobs - and 12% in Q3 (equal to 345 million jobs)
- Approx. 3.5 trillion dollars in labour incomes (10.7% of the total) were lost during the first 3 quarters of 2020 compared to 2019



ILO Monitor, 6th edition

Not all groups of workers have been equally impacted by the crisis

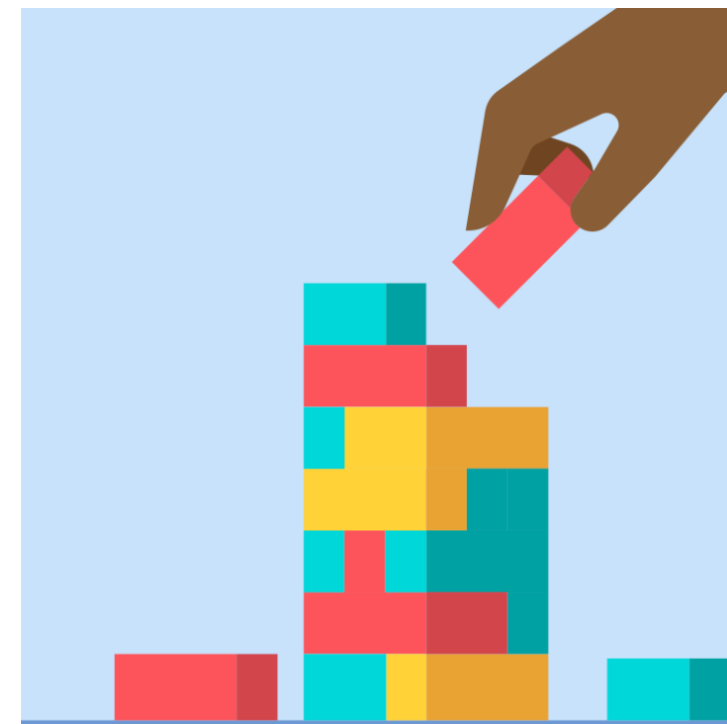
- 61% of workers, more than 2 billion, work in the informal economy, with very low pay & incomes, facing higher risks
- Low-paid workers and groups (e.g. migrants) have been disproportionately affected by losses in jobs and hours worked
- Women are over-represented in many of the sectors that have been most affected by closures (hotels, restaurants, etc...)



ILO Global Wage Report 2020-21

An unprecedented set of measures has been implemented ... temporarily (?)

- More than 40 countries have implemented wage subsidies, meaning that the State paid part of the wages for lost hours of work
- Social protection and income support was extended to many people who, under “normal circumstances” have no access
- Remote working has been allowed and encouraged
- The importance of equitable and inclusive policy responses, and building a “better normal”



The ILO Centenary Declaration for the Future of Work, 2019

Some key elements:

- Policies to enhance productivity and sustainable enterprises as well as transition to formality
- Stronger “institutions of work” to ensure adequate labour protection for all workers
- Universal social protection, gender equality and education for all to strengthen the capacity of people
- Rely on social dialogue to find solutions



An example: minimum wages

- ▶ The State of Qatar has introduced major changes to its labour market, becoming the first country in the region to adopt a non-discriminatory minimum wage.
- ▶ The minimum wage is set at 1'000 QR, plus decent food and accomodatuion



A small red triangle pointing to the right, positioned to the left of the text.

Thank you