



# PRINCIPLES AND GUIDELINES FOR THE REPAYMENT OF MIGRANT WORKER RECRUITMENT FEES AND RELATED COSTS

October 2021

## INTRODUCTION

In many migration corridors around the world, nearly all migrant workers pay recruitment fees and related costs to obtain employment. The prevention of such payments, that frequently result in workers falling into debt bondage at high risk of forced labour, remains one of the biggest challenges to ethical recruitment globally. These payments have been internationally defined by the [ILO definition of recruitment fees and related costs](#) (referred to as ‘Recruitment Fees and Costs’ throughout this document). According to this definition, recruitment fees and 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.”<sup>1</sup>

Employers, should, first and foremost, take steps to prevent payment of any Recruitment Fees and Costs by migrant workers by implementing robust and ethical recruitment systems in line with international standards.<sup>2</sup> Such steps are also crucial prevention methods against workers falling subject to forced labour and/or modern slavery. However, where this is not achieved, workers must be repaid Recruitment Fees and Costs they have expended. This document sets out recommended principles and guidelines developed by Impactt for repayment of migrant worker-paid Recruitment Fees and Costs.

The principles and guidelines outlined in this document are underpinned by the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence Guidance for Responsible Business Conduct. In particular, [UNGP 31: Criteria for Effective Grievance Mechanisms](#) has informed the thematic subsections of the guidance<sup>3</sup>. According to these principles and guidelines, businesses are responsible for providing remedy where harms or wrongs done to workers are identified.

Impactt has developed the guidance based on its in-depth field experience implementing repayment programmes. Impactt has worked with partners to facilitate repayment of over US\$111 million in recruitment costs to over 86,000 migrant workers employed by 210 companies around the globe, acting both for employers and for other supply chain actors. The guidelines have also benefited from consultation with over 150 expert stakeholders from international bodies, governmental organisations, international trade unions, multi-stakeholder initiatives, investors, CSOs, consultancies, lawyers, activists, campaigners, employers, former migrant workers and multi-national companies.

### Why repayment?

Much effort has been expended for over a decade on developing and debating more ethical migrant worker recruitment channels to address risks of forced labour<sup>4</sup>, through the development of ‘Employer Pays recruitment models’<sup>5</sup>, ‘ethical,’ ‘responsible’ or ‘fair recruitment principles and frameworks’<sup>6</sup>. Repayment of Recruitment Fees and Costs is a necessary and important pre-cursor to sustainable ethical recruitment for two key reasons:

---

<sup>1</sup> See ILO: ‘General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs’ (2019)

<sup>2</sup> Ibid.

<sup>3</sup> See Appendix B for further information.

<sup>4</sup> See ILO: ‘ILO Indicators of Forced Labour’ (2012)

<sup>5</sup> See Institute for Human Rights and Business: ‘The Employer Pays Principle’

<sup>6</sup> The term ‘ethical recruitment’ is used here to encapsulate ‘ethical,’ ‘fair’ or ‘responsible’ recruitment concepts. Various international organisations and buyer or industry-led associations have developed guidance and tools to drive work in this space. For example, see: [ILO:](#)

1. *Repayment matters to workers.* Repayment of Recruitment Fees and Costs can and does ameliorate or even remove entirely situations of severe debt bondage that contribute to forced labour and modern slavery like situations.
2. *Repayment sharpens focus on more ethical recruitment in the future.* The substantial shock of a repayment on companies, employers and supply chain actors serves to stimulate more concentrated and serious efforts to get ethical recruitment right. In addition, there is more focus to try to understand the actual processes involved in and true costs that need to be expended to ensure ethical recruitment by employers, so as to close the loopholes that can contribute to unethical and costly recruitment occurring.

### **Target audience**

The guidelines outlined in this document can be used by employers, labour recruiters, buyers, investors, governments, public employment agencies, regulators and enforcement authorities, auditors, NGOs, CSOs, as well as trade unions or worker representatives when designing, implementing and evaluating repayment of historic migrant worker-paid Recruitment Fees and Costs.

### **Scope**

The guidelines aim to provide practical, experience-based guidance for investigating, estimating and repaying migrant worker-paid Recruitment Fees and Costs in a way that is transparent and practical, where there is limited or no proof of payment, as is generally the case in migrant worker recruitment processes across the globe.

### **How to use the guidelines**

Guidelines are presented for six key aspects of the Recruitment Fees and Costs repayment process. For each section, this document outlines a set of “minimum recommendations”, as well as “best practice” approaches where applicable. This structure is based on experience of implementing repayment programmes on the ground and provides different levels against which companies can measure their performance. The intention is for this guidance document to be field-tested and further refined in collaboration with a range of international stakeholders and experts based on lessons learned. Guidance notes are provided throughout the document that provide general guidance which is applicable to all approaches outlined.

These guidelines do not:

- Constitute legal advice.
- Cover remediation of forced labour as a whole (instead, the guidelines focus on repayment of Recruitment Fees and costs only).
- Provide guidance on the prevention of payment of Recruitment Fees and Costs and/or implementation of ethical recruitment programmes looking forwards.
- Address accountability – how actors that exploit workers during the recruitment process should be brought to justice.

These issues are considered out of scope for these guidelines. However, additional information and resources on these topics are provided in the further reading section at the end of this document.

The following of these guidelines alone should not be a replacement for ongoing efforts to enhance workplace social dialogue between employers and workers.

---

[General Principles and Operational Guidelines for Fair Recruitment](#), [IRIS Standard](#), [IHRB: The Employer Pays Principle](#), [Responsible Recruitment Toolkit](#), [Verité Fair Hiring Toolkit](#), [RBA Practical Guide to Due Diligence on Recruitment Fees in International Supply Chains](#), [American Apparel and Footwear Association Commitment to Responsible Recruitment](#), [Consumer Goods Forum’s Driving Responsible Recruitment in Southeast Asia](#), and many others.

# KEY CONSIDERATIONS

## Worker agency

Worker agency and participation in the repayment process are critical to any best practice approach. Rather than being passive recipients of payments that have been determined by other stakeholders, it is important for workers to be involved across all key stages of the repayment process, including investigation, repayment calculation, and verification. A lack of meaningful worker agency or social dialogue limits the robustness of the repayment process, and may therefore significantly limit the overall effectiveness of the intended remedy.

## Who should pay?

Under Principle 22 of the UNGPs, businesses have a responsibility to “provide for or cooperate in” remediation where they have caused or contributed to adverse impacts on workers, communities or human rights generally. This would, in most cases, imply that the direct employer and/or labour recruiter or sub-agent is responsible for funding the repayment of Recruitment Fees and Costs. The commentary clarifies that impacts to which businesses are directly linked<sup>7</sup> by a business relationship do not require the enterprise itself to provide remedy (although they may choose to participate in remedy), but instead merely to seek to mitigate or prevent. This implies that buyers of products produced by suppliers whose workers have paid Recruitment Fees and Costs are not always obliged to participate in remedy, unless it is clear that they have caused or contributed to adverse impacts. Even where not obliged - buyers should consider participating in remediation of payment of Recruitment Fees and Costs where they have benefitted financially due to the existence of such adverse impacts, including through lower buying costs. Such action by buyers can help to reallocate financial gain towards remedy of the adverse impacts, and may mitigate potential reputational, financial or legal risks to their business.<sup>8</sup>

The shared goal of all stakeholders should be to collaborate to make repayments as quickly as possible while ensuring that they are made correctly. Shared responsibility may entail that:

- Labour recruiters are held accountable for repayments to workers, for example by utilising contractual obligations between companies and agencies or withholding outstanding payment amounts to fund part of the repayments, with capacity building support provided to help ensure practices are improved into the future.
- Where an employer or labour recruiter is financially unable to repay workers, or can only repay over a time period beyond the minimum recommendations presented in this document, buyers or investors could be called on to repay upfront, with the employer or labour recruiter then repaying the buyer.

## Repayment does not entail full remediation

Repayment processes as outlined in this document may not lead to complete remediation of and reductions in the risk of debt bondage and forced labour situations<sup>9</sup> arising in workplaces and supply chains. Full remediation of complex and sensitive situations of forced labour, in many cases, will require a much broader range of actions beyond the scope of this document. For instance, developing and implementing new policies, targeting systemic company practices, ensuring accountability for illegality and wrongdoing, apologies and guarantees of non-recurrence<sup>10</sup>, as well as addressing more complex harms which forced labour victims may have suffered (e.g. psychological damage, loss of opportunities).

---

<sup>7</sup> The term “direct link” refers to the linkage between the harm and the company’s products, services and operations through another company (the business relationship). However, it must be remembered that causality between the activities of a company and the adverse impact is not a factor in determining strength of linkage.

<sup>8</sup> See UN Guiding Principle 19 on prevention and mitigation.

<sup>9</sup> Forced labour being defined by the ILO [ILO Forced Labour Indicators](#).

<sup>10</sup> See for example OHCHR commentary on UNGP no.25, on p27 of: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

### **Repayment must not prevent workers from making further claims through criminal justice systems or other available mechanisms**

There will be cases where, even following the best practice guidelines set out in this document, some individuals worthy of repayment of Recruitment Fees and Costs may be omitted or may receive a lesser amount than they have paid in advance for their job. It is therefore recommended that employers set aside a Contingency Fund (see Section 3 of the guidelines) to compensate in such cases.

Employers should ensure that workers understand that receipt of financial repayment does not prevent them from exercising or claiming other rights or damages to which they may be entitled under law. Different jurisdictions and judicial systems assess adequacy and requirements of remediation to situations of forced labour or rights abuses in different ways, according to their laws and precedent. Informing migrant workers of their rights and how they can seek redressal through criminal justice systems or other formal avenues is therefore crucial.

### **Investment in responsible recruitment systems is key to ensure sustainability of repayments**

The ‘best practice’ options for repayment of Recruitment Fees and Costs outlined here represent a viable and recommended pathway whereby Impactt believes workers will receive the repayment they are entitled to, and employers will be most protected from the risk of future litigation and claims for additional pay-outs by migrant workers alleged to have been subject to situations of forced labour<sup>11</sup>.

However, in order for repayments to be sustainable, it is vital that employers, buyers, investors, governments and/or regulators work together to ensure the adoption and implementation of responsible recruitment systems which will effectively prevent worker-paid Recruitment Fees and Costs in the future. Lessons learned throughout the repayment process should be reflected in revised organisational policies, practices and procedures to ensure that charging of Recruitment Fees and Costs to workers does not continue in the future. This may also include blacklisting labour recruiters identified as exploiting workers during the investigation stage (see Section I of the guide).

Employers and other stakeholders within the supply chain must ensure continuous due diligence to prevent workers from paying Recruitment Fees and Costs and suffering other forms of exploitation during the recruitment process. Such work must be carried out in parallel with any repayment efforts.

---

<sup>11</sup> Forced labour through debt bondage, as defined internationally in various legal and state jurisdictions.

## CORE PRINCIPLES OF REPAYMENT

The following core principles should underpin any activities related to implementation of the repayment guidelines. The principles are aligned with the UNGPs to guide implementors to act in accordance with international best practice.

1. **Protect workers.** All stakeholders involved in the repayment process must take steps to ensure that all workers and their families are protected from harm and retaliation throughout the repayment process. This includes putting in place non-retaliation policies and agreements, training investigators to be responsive to workers' needs, and providing workers with access to transparent, equitable and legitimate grievance mechanisms.
2. **Commit to transparency and disclosure.** All stakeholders should engage transparently in all aspects of the repayment process and disclose relevant information required for repayment-related activities. Payments should be made in a transparent manner (i.e. via bank transfers) and payment amounts should be publicly disclosed.
3. **Engage in meaningful multi-stakeholder collaboration.** All stakeholders should collaborate in good faith towards the common goal of providing effective repayment of Recruitment Fees and Costs to workers as quickly and effectively as possible. The repayment plan should be developed collaboratively, ensuring engagement with and inputs from workers, their representatives, and other stakeholders including employers, labour recruiters, buyers, investors, and CSOs. Worker agency and participation in the repayment process should be at the centre of any best practice approach.
4. **Ensure oversight, quality and integrity of the repayment process.** Stakeholders should implement a governing body that provides oversight of the repayment process and should implement mechanisms to ensure and monitor the quality and integrity of all repayment-related activities. Where possible or appropriate, third parties should be involved to add credibility, expertise and independence to all aspects of the process.
5. **Provide workers with access to alternate channels for remedy.** In many cases the investigation into Recruitment Fees and Costs may identify other issues which require a wider range of remedy to be provided. Provide workers with referrals to other support services (e.g. medical, legal, psychosocial etc.). Where the repayment process identifies corrupt or criminal activity, stakeholders should collaborate to pursue criminal justice. This includes supporting workers to pursue additional compensation through state-based mechanisms where possible and appropriate.
6. **Integrate shared learning.** Lessons learned throughout the repayment process should be shared among all stakeholders involved and used to strengthen company policies and practices related to recruitment of migrant workers, to ensure non-repetition of future exploitative practices.

Please see the Appendix for definitions of terms used (Appendix A), and information on how this guidance relates to Article 31 of the UN Guiding Principles on Business and Human Rights (Appendix B).

# IMPACTT GUIDELINES FOR REPAYMENT OF RECRUITMENT FEES AND COSTS – OVERVIEW

(Click on the graphic icon to jump to section)



## OVERVIEW OF REPAYMENT GUIDELINES

Step	Minimum recommendation	Best practice
<p><b>1</b></p> <p>Investigate the Recruitment Fees and Costs paid by workers</p>	<p>Goal: The investigation gathers reliable data on Recruitment Fees and Costs paid by workers during the recruitment process.</p> <p>Carry out an internal investigation, using trained HR staff or, if possible, company staff specially employed for the purposes of the investigation, who are not involved in migrant worker recruitment or management activities. Interview a representative sample of workers, amounting to at least 20% of the workforce, covering all nationalities and genders.</p>	<p>Commission a credible, experienced, and independent third party to carry out an investigation into Recruitment Fees and Costs. Interview 100% of workers (or as close to this as possible), using a trained, mixed-gender team that can accommodate the specific needs of workers.</p>
<p><b>2</b></p> <p>Identify eligibility for repayment</p>	<p>Goal: All migrant workers that paid Recruitment Fees and Costs have their Fees and Costs repaid.</p> <p>Repay all migrant workers employed on the “date of first diagnosis”, i.e. the date the issue of fee-charging was first identified (e.g. by investigation, media, or the company itself).</p>	<p>Repay all current and former migrant workers that paid Recruitment Fees and Costs, whether they were recruited locally or from abroad.</p>
<p><b>3</b></p> <p>Calculate the repayment amount</p>	<p>Goal: The repayment amount is accurately calculated through robust and reliable data collection methods, and represents the actual value of money workers originally paid for Recruitment Fees and Costs, considering interest, inflation, exchange rate and opportunity cost.</p> <p>Calculate the repayment amount using an average for each identified sub-group of workers (e.g. by nationality, gender, recruitment actor, recruitment date, recruitment location or other relevant group), factoring in interest and exchange rate. Also calculate the median and apply in case this results in an amount that is more advantageous to workers.</p>	<p>Calculate the repayment amount using an average for each identified sub-group of workers (e.g. by nationality, gender, recruitment actor, recruitment date, recruitment location, or other relevant group), factoring in interest, exchange rate, inflation, and opportunity cost. Also calculate the median and apply in case this results in an amount that is more advantageous to workers.</p>
<p><b>4</b></p> <p>Timeline for repayment</p>	<p>Goal: Migrant workers are paid back for Recruitment Fees and Costs paid as quickly as possible.</p> <p>Complete all repayments within 3 – 9 months, allowing a maximum of 3 months for negotiation with stakeholders where relevant.</p>	<p>Make all repayments in one lump sum payment within 1 month.</p>
<p><b>5</b></p> <p>Engage and communicate with migrant workers</p>	<p>Goal: Workers are engaged in the repayment process and receive clear communication related to the purpose, amount, timeline and protocol for payments.</p> <p>Invite migrant workers to engage in the repayment process. Provide all workers with clear information about the payment amount, protocol, timeline, and grievance and appeals mechanisms available, using a variety of channels including: a general memo, personal letter, communications sessions, pay slip, and other communication channels (e.g. worker committee).</p>	<p>Provide all workers with clear information as outlined under the minimum recommendations, and engage with trade unions or other representatives trusted by workers to ensure workers have various channels for raising concerns and providing formal inputs on the repayment plan.</p>
<p><b>6</b></p> <p>Verify payment</p>	<p>Goal: A credible, experienced and independent third party verifies that all repayments have been made correctly, without any negative consequences for workers.</p> <p>Commission a credible, experienced and independent third party to carry out regular verification of payments to check that workers are paid fully and on time.</p>	<p>Engage in ongoing monitoring activities beyond regular verifications, for example through engagement with trade unions or other forms of worker representation, to check how the payment process is going, and make ongoing improvements based on feedback received.</p>



## GUIDELINES FOR REPAYMENT OF RECRUITMENT FEES AND COSTS

### I. INVESTIGATE THE RECRUITMENT FEES AND COSTS PAID BY WORKERS

I

#### Investigate the Recruitment Fees and Costs paid by workers

**Goal:** The investigation gathers reliable data on Recruitment Fees and Costs paid by workers during the recruitment process.



#### Minimum recommendations

As a first step, carry out an in-depth investigation to establish Recruitment Fees and Costs paid by workers. Where there are insufficient resources to commission a third party to carry out this work (see best practice), internal company staff may carry out the investigation. In such cases:

- Staff must be adequately trained on how to gather accurate data on Recruitment Fees and Costs during worker interviews. In many cases workers may not have a clear understanding of what constitutes Recruitment Fees and Costs. For example, many workers may not consider broker fees paid to relatives or subagents/third party actors. Where workers can recall an itemised list of the breakdown of Recruitment Fees and Costs this should be recorded.<sup>12</sup>
- Where possible, staff should be specifically appointed for the purposes of the investigation, from departments that are not involved with the recruitment or management of migrant workers, i.e. they must be as independent as possible within the context of the company to avoid power imbalances and potential bias within the investigation process.
- The investigation must be carried out using local laws as guidelines and the ILO definition on recruitment fees and related costs.
- Investigation findings and resulting repayments should be verified by a credible, experienced and independent third party to ensure reliable processes have been undertaken. Where employers cannot fund third party verifications themselves, they should engage with buyers and investors for support. Buyers can also carry out verifications, where this could build on existing relations and reduce supplier costs, provided the buyer has internal capacity to do so.

#### Sampling

Standard audit methodologies recommend sample sizes which are, based on Impactt's field experience, typically too low for recruitment fee investigations. A more in-depth investigation into Recruitment Fees and Costs requires a larger sample size, due to the range of fees often reported, and the need for a high level of statistical significance of the results.

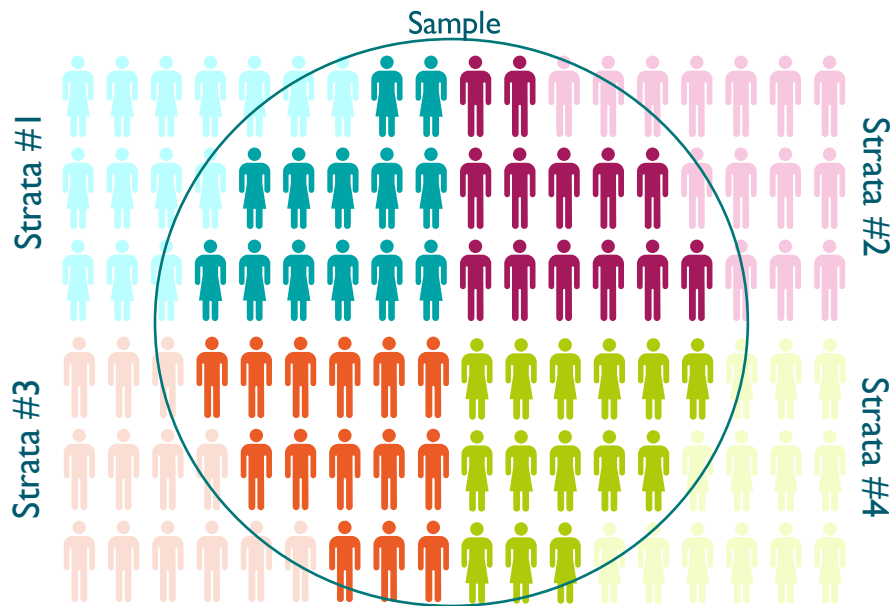
Stratified random sampling is the recommended approach for deep-dive investigations into Recruitment Fees and Costs. This is a method of sampling that involves the division of a population into smaller sub-groups known as strata.<sup>13</sup> In stratified random sampling, the strata are formed based on members' shared attributes or characteristics such as nationality, gender, recruitment year, recruitment actor, or other factors. This approach is recommended because it:

- Enables collection of robust and reliable quantitative data based on a representative sample. This provides a key input to negotiations on Recruitment Fee and Cost reimbursements, as the sample is structured to take account of a full range of recruitment experiences, including all known source/destination country labour recruiter configurations.

<sup>12</sup> See ILO-World Bank methodology and manual for data collection on recruitment costs. [https://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_670175/lang--en/index.htm](https://www.ilo.org/global/topics/labour-migration/publications/WCMS_670175/lang--en/index.htm)

<sup>13</sup> See [https://www.investopedia.com/terms/stratified\\_random\\_sampling.asp](https://www.investopedia.com/terms/stratified_random_sampling.asp)

- Deepens and expands analytical capabilities: e.g. calculating averages within strata rather than groups (mitigates outliers), interrogating variance within and between strata, and across groups where the same destination country labour recruiter is used.



**Fig. 1 Stratified random sample**

Nationality is often a key variable in the level of Recruitment Fees and Costs paid by workers. However, other variables such as which labour recruiter recruited the workers in source or destination country, the date of recruitment, recruitment location, and/or workers' gender or religion, etc. may also play a role, and must be investigated.

A deep-dive investigation into Recruitment Fees and Costs should include a minimum sample of 20% of workers, given the wide range of fees and costs likely to have been paid.

- This sample must include a representative number of workers for each nationality, gender, recruitment year, recruitment actor, recruitment location, and any other criteria that may be relevant to the dataset.
- Where certain nationalities or groups are small (e.g. 40 workers or less) – 100% of that group should be interviewed.
- Where greater than 40 workers are in a group, a minimum of 40 workers should be interviewed from that group – even if this is above the 20% threshold for overall worker sampling.
- Where a company is small (e.g. 100 total workers or less), all workers should be included in the sample to achieve the most accurate results.

Please see Appendix C for further guidance on developing the investigation sample.

### **Worker interviews**

- Worker interviews must be carried out in a confidential setting by trusted, experienced interviewers.
  - Where internal staff carry out such interviews, appropriate interviewers must be identified to ensure there is no conflict of interest (e.g. interviews are not carried out by anyone that workers may have reason to fear, e.g. supervisors or department heads) and that workers feel they can speak openly and honestly.

- Interviewers should be diverse, enabling interviews to be gender-sensitive where appropriate.
- Where no staff with relevant language skills are available, ensure an experienced interpreter, familiar with the subject-matter is present, or that a worker is permitted to bring a friend to interpret or be present during the interview.
- Worker interviews must gather data on:
  - Recruitment Fees and Costs paid.
  - Interest rates paid by workers on loans taken out to cover their Recruitment Fees and Costs. The investigation must establish interest already paid and interest still to be paid. The interest amounts<sup>14</sup> must be factored into the total Recruitment Fees and Costs reported by each migrant worker. It is not uncommon for migrant workers to pay 40% interest per annum on loans taken out to cover Recruitment Fees and Costs.
- Worker testimony does not need to be evidenced by receipts, which are usually not provided in modern day recruitment channels.

### Triangulation

Data gathered through worker interviews should be triangulated throughout the investigation. Triangulation of Recruitment Fees and Costs can be challenging, because actual documented evidence of fees charged typically does not exist, and fees charged are highly informal and can fluctuate across time-periods. The vast majority of workers are not provided with receipts for their payments, or where they are, these may reflect only the officially permitted payment amounts, and therefore provide a misleading view of actual payments made. Cross-check data against as many sources as possible, including:

- Existing research and benchmarks on Recruitment Fees and Costs paid in specific migration corridors where available and considered reliable.
- Existing local and transnational statutory regulations related to charging of Recruitment Fees and Costs and articles on the effectiveness of their implementation.
- Discussions with local and international experts (including but not limited to unions, NGOs, CSOs, former workers and community leaders for instance) who may have detailed knowledge and insight on current Recruitment Fees and Costs charged in practice.

While triangulation can provide valuable context to investigation findings, ultimately, amounts identified during investigations based on worker testimony should be considered as the primary and

### Available resources

The following list provides a couple of example studies which can provide reliable benchmarking of fees. Note that the landscape related to Recruitment Fees and Costs is constantly shifting, and that each stakeholder will need to carry out their own research to identify appropriate and up to date benchmarking resources:

- [Migrant Forum Asia: Recruitment Fees & Migrants' Rights Violations](#)
- [ILO-World Bank partnership on measuring recruitment costs \(see slide 6\)](#)
- [Migration corridor or destination country specific research reports. See for example:](#)
  - [ILO: "Recruitment Fees and Related Costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand"](#)
  - [Impactt: "Annual Compliance Report of the Supreme Committee for Delivery & Legacy's Worker Welfare Standards" \(see page 28 for analysis of Recruitment Fees and Costs for workers migrating to Qatar\).](#)

Impactt will publish available data on its website regularly as well (date TBC). ILO and World Bank will also be providing further data collection on recruitment costs in accordance with SDG indicator 10.7.1 in future.

<sup>14</sup> The interest noted here, being paid on loans taken out historically, is completely distinct from the mention of interest relating to opportunity cost in the subsequent section, and the two should not be confused.

most reliable evidence during that investigation, as these amounts are directly representative of what the workers at the site have paid.

## Best practice

### Investigation by third party

Amounts of Recruitment Fees and Costs paid by migrant workers should be established through confidential interviews carried out by an experienced, credible and independent third party. Use of an independent third party can increase reliability of results, as workers are more likely to speak without fear of retaliation from their employer.

### Sampling – 100% of migrant workers

As an ideal, best practice for determining the repayment amount would be to interview each worker in scope individually (i.e. sample 100% of the workforce) and to repay the exact amount they honestly report as being paid by them, plus interest. Where this is practical, for example, for any nationality groups on site with a small total number (40 or fewer), or for companies with a small total workforce, (100 or fewer) this method should be pursued i.e. the whole group should be sampled to obtain more accurate results.

For many medium and large size companies, attempting to interview 100% of workers in order to repay the exact amounts they originally paid is challenging because:

- It may incentivise or increase the risk of worker coaching, coercion, and abuse. This is because employers, recruitment agencies and sub-agents may have a vested interest in workers reporting lower (or no) recruitment fee and related cost payments.
- There is no guarantee that reported amounts will always be accurate. Discrepancies may still occur with this method, as workers may misreport because they don't trust interviewers, or expect they will be paid more money.
- Greater overall resource and time is required to implement this approach.

Investigators at medium and large size companies should be prepared to face the above challenges. Where the above-listed risks manifest as significant issues which would obstruct, prevent or delay payment, investigators may choose to resort to the minimum recommendations outlined above (i.e. interviewing as high a sample of workers as possible, but not 100%).

### Third parties

Involvement of third parties can bring added credibility, expertise, and independence to the repayment process. This is particularly important in contexts where employers or companies do not have the relevant internal experience to carry out such work. Third parties may include accredited auditing bodies, International Organisations (IOs), NGOs, CSOs and other types of community-based organisations (CBOs), trade unions as well as subject-matter experts. Any third parties engaged throughout the repayment process, should:

- Be familiar and experienced in carrying out investigations into Recruitment Fees and Costs.
- Be independent, i.e. not affiliated with any investors, buyers, employers, labour recruiters, or others that may have a vested interest in the outcome of the investigation and other repayment related activities.
- Be able to demonstrate steps taken to mitigate any potential conflicts of interest.

## General guidance

- In some cases, it may be established that some migrant workers did not pay Recruitment Fees or Costs. For example, this may apply in cases where workers arrived in the country on a tourist visa and were subsequently recruited locally and brought onto a work permit, or for certain nationality groups that came via a recruitment corridor where fees are not prevalent. It is important to note, however, that in some such cases, the risk of Recruitment Fees and Costs having been paid may in fact be higher (e.g. workers paying exorbitant fees to travel agents for a tourist visa or visit pass), and may be exacerbated by other forms of exploitation that are common to irregular migration or recruitment processes.
- In some cases, an employer or company management benefits from Recruitment Fees and Costs charged through kickbacks received from labour recruiters. A kickback is “an illegal payment intended as compensation for preferential treatment or any other type of improper services received. The kickback may be money, a gift, credit, or anything of value.”<sup>15</sup> Where any evidence of corrupt practices is identified, a separate investigation must be launched, and disciplinary action taken where findings prove wrongdoing. This should include recourse to criminal justice where appropriate. In addition, steps must be taken to mitigate risks related to potential influencing of investigation results by employer or labour recruiter staff. As outlined above, where investigations are carried out by internal staff, ensure that those involved are independent of migrant worker recruitment and employment processes.
- Some workers may have been either partially or fully reimbursed for Recruitment Fees and Costs paid already (for example by their former employer, current employer or labour recruiter). Such cases should be investigated (including review of relevant documentation such as bank transfers and payment receipts), and, where the facts of the case are confirmed by an independent third party, this can be taken into account when making repayment calculations.

### Example 1 – Sampling at a small company

- A company has an overall workforce of 90 workers – with 72 from Bangladesh, 12 from Nepal, and 6 from Myanmar.
- Due to the small size, the entire workforce is sampled regardless of there being more than 40 Bangladeshi workers.

### Example 2 - Sampling at a small to medium sized company

- A company has an overall workforce of 140 workers – with 51 from Nepal, 35 from Vietnam, 30 from Myanmar and 24 from Bangladesh.
- All workers from Vietnam, Myanmar and Bangladesh are interviewed, and a minimum of 40 workers from Nepal are also interviewed.

### Example 3 – Sampling at a medium sized company

- A company has an overall workforce of 280 workers – with 240 from Nepal, 32 from India, and 8 from Sri Lanka.
- All workers from India and Sri Lanka are interviewed.
- 48 Nepali workers are interviewed – equalling 20% of this nationality group.

<sup>15</sup> Paying or receiving kickbacks is a corrupt practice that interferes with an employee's or a public official's ability to make unbiased decisions. Kickbacks are often referred to as a type of bribery. See [Investopedia: "Kickback"](#), for a full definition.

## 2. IDENTIFY ELIGIBILITY FOR REPAYMENT



### Identify eligibility for repayment

**Goal:** All migrant workers that paid Recruitment Fees and Costs have their Fees and Costs repaid.

2

**Minimum recommendation: All workers employed on the date of first diagnosis are in scope.**

#### Date of first diagnosis

The “date of first diagnosis” is the date the issue of unethical recruitment or charging of Recruitment Fees and Costs was first established, discovered, or reported by an internal or external party. This date may be different for different recruitment corridors. Evidence that can support companies to establish this date could include the following.

#### Date of discovery by investigation

At minimum, all current and former migrant workers that reported paying Recruitment Fees and Costs, and were employed at the date of the most recent investigation which established fee payments must be in scope. This includes any migrant workers that have left since the investigation date, as well as sub-contracted, outsourced, part-time or temporary workers that were regularly employed at the date of investigation. All migrant workers in scope must:

- Remain free to resign without losing their entitlement to repayment. Where there is any penalty/risk of losing access to repayment by resigning, migrant workers can effectively again be placed in a condition of bonded or forced labour.
- Remain entitled to the repayment regardless of the circumstances. For example, a migrant worker that faces disciplinary action should still be entitled to repayment.
- Remain entitled to other benefits such as repatriation costs (i.e. not face deductions or loss of other benefits as a result of receiving the repayment).
- Remain entitled to seek remediation through state-based or other grievance mechanisms.
- Not be forced to sign any waivers preventing them from seeking other forms of remedy following the repayment of Recruitment Fees and Costs.

Other examples of a date of first diagnosis may include:

- The date workers first reported fee-charging to the employer or another stakeholder.
- The date that Human Resources or senior management staff acknowledged worker-paid Recruitment Fees and Costs, for example in contracts or communications with private employment agencies.
- The date that the buyer or employer adopted an Employer Pays Policy.
- The date a credible, experienced and independent third-party first reported the issue (e.g. a third-party audit or whistle-blowers’ communications or engagement).
- Other legitimate evidence such as reputable media reports or government statements which indicate that Recruitment Fees and Costs have been endemic within a certain recruitment corridor or industry from a certain date. It should be noted that while such sources can be used to establish an initial hypothesis on scope, and can provide grounds for an investigation, the investigation itself must verify whether this is correct. In some countries there are a handful of labour recruiters that genuinely implement ethical recruitment practices; in such cases the findings of the media reports of government statements may not be applicable.

Stakeholders must act in good faith to establish the actual first date of diagnosis.

- Where several of the above dates could apply, the earliest date must be selected.

- Where no robust evidence exists, taking the date the employer first began recruiting migrant workers as the “date of first diagnosis” is a useful approach (see Best Practice approach outlined below). This is based on Impactt’s experience that where worker Recruitment Fees and Costs have been identified in the present – it is likely that this has always existed in these recruitment channels.
- Labour recruiters may have information that can contribute to identifying the date of diagnosis, for example evidence that Recruitment Fees and Costs needed to be covered by workers, e.g. due to the employer not paying for any costs upfront.

### Examples

- The Employer adopted an Employer Pays Policy in January 2019, however, an audit report from September 2015 first identified worker-paid Recruitment Fees and Costs as an issue. *The Employer uses September 2015 as the date of first diagnosis.*
- The first contract signed between the Employer and a Private Employment Agency commissioned to recruit migrant workers is dated April 2010. This contract shows that the Employer did not pay any Fees or Costs towards the recruitment of migrant workers. This indicates workers are highly likely to have paid Recruitment Fees and Costs. This is confirmed via worker interviews. *The Employer uses April 2010 as the date of first diagnosis.*
- An independent audit carried out in April 2009 identified worker-paid Fees and Related Costs as an issue. *The Employer uses April 2009 as the date of first diagnosis.*
- A media-report published in January 1998 shows that recruitment fees are endemic for recruitment from Bangladesh and Nepal to the Middle East. *The Employer uses January 1998 as the date of first diagnosis.*

### Best practice: all currently and formerly employed migrant workers are in scope

According to a best practice approach, all current and former migrant workers who paid Recruitment Fees and Costs should be eligible for repayment, regardless of when they were recruited, when they paid fees or when they left the employer. This includes:

- Any migrant workers recruited since the employer adopted The Employer Pays Principle (EPP)<sup>16</sup> (otherwise known as a “Zero-Cost Policy”). Impactt’s experience has shown that such individuals often still pay a wide range of Recruitment Fees and Costs during their recruitment even after policies have changed. Workers employed under an EPP policy should be regularly interviewed to monitor fee-payment.
- Any indirectly employed migrant workers that regularly work on the employer’s worksite. This may include, for example, sub-contracted or outsourced workers such as cleaners, security or other temporary or part-time workers.
- According to a best practice approach, employers should also cover any Recruitment Fees and Costs incurred by local migrants (i.e. nationals of the destination country that have migrated within their own country for the purposes of employment). This should apply particularly when local workers come from another state or remote part of the country on employer invitation, but also when local workers travel and approach the employer on their own initiative.

### General guidance

- It is important to note that many workers may have already repaid their loans and therefore could be interpreted as no longer being in bonded labour. All workers, regardless of their current debt status, should be repaid.

<sup>16</sup> See [Institute for Human Rights and Business](#). “The Employer Pays Principle: No worker should pay for a job. The costs of recruitment should be borne not by the worker, but by the employer.”

- Employers that choose to repay some but not all workers (for example, only workers employed at facilities that produce goods for a specific customer) risk causing conflict among the workforce. Repayment should be made to all workers to avoid this issue.
- Repayments for all workers (including the categories listed below) should:
  - Be made in equal instalments across nationalities (i.e. according to an equal schedule of payments).
  - Be made subject to monitoring and verification by independent third parties in the same way that payments are verified for current workers (i.e. those still employed on site).

### **Former workers**

- In some cases it may be challenging to contact former workers, as their contact details may have changed, they may have re-migrated, or may be difficult to reach for other reasons. Employers must make a reasonable effort to contact any formerly employed migrant workers in scope to inform them about the repayment and how to access it. This can be done by:
  - Contacting former migrant workers directly to inform them of the existence of their right to repayment. As general good practice, Employers should strive to keep a record of former migrant worker contact details (e.g. this can be requested during a workers' exit interview) to enable communication regarding any possible employment related matters.
  - Asking existing workers to make any eligible alumni aware of their entitlement.
  - Publicly communicating migrant workers' right to claim repayment via various channels such as newspapers, radio or social media, in both destination and origin countries.
  - Collaborating with relevant governments, trade unions or civil society organisations where available to trace individual workers. Worker's respective embassies or consulates may also support.

### **Migrant workers who leave during the repayment period**

- Migrant workers who resign or whose contracts end during the repayment period should be paid any outstanding amounts prior to departure, as part of their final settlement.
- If the repayment plan has not yet been agreed at the time of their departure, or their employer is unable to pay the full outstanding amount in lump sum, then an agreement can be made to continue paying the workers in instalments in their home country. Where this is done, the payment method should be agreed in consultation with workers and relevant worker organisations to ensure it is practical. Where workers do not have bank accounts this may include mobile or cash-transfer methods (such as Western Union). Any bank transaction costs should be borne by the employer.
- Frequency of payments may differ from current migrant workers if this saves on administrative costs – however, the overall timeframe for repayment should not be extended.
- Similarly, the complete quantum of repayment should still be paid.

### **Sub-contracted workers**

- For sub-contracted, outsourced, temporary or part-time workers, the direct employer of these workers (i.e. a private employment agency) is responsible for actually repaying their worker's Recruitment Fees and Costs. However, the employer as the "end-user" can also take the lead in ensuring repayment is undertaken in a timely manner – even if this may mean paying some or all of required repayment payments initially to workers and receiving payment back from their private employment agencies and/or enforcing contractual obligations against these private employment agencies.



## Locally recruited migrant workers

There are various scenarios in which an employer may recruit migrant workers locally, i.e. in the destination country rather than from abroad. This may include workers that:

- Are recruited after having been employed in the country by one or more other employers (in countries where movement between employers is legally permitted).
- Are recruited and/or transferred from another employer which has gone bankrupt or is no longer in business (where such reemployment is legally permitted).
- Travelled to the destination country at their own cost to seek employment, without the involvement of any recruitment actors, or a job lined up.<sup>17</sup>
- Are recruited locally in any other manner permitted by local law.

When recruiting such migrant workers locally, the employer is not directly responsible for the workers' recruitment journey. However, where these workers have paid Recruitment Fees and Costs for previous employment, they are at the same risk of debt bondage and forced labour as workers directly recruited from abroad. In such cases the below remediation actions are recommended.

- **Best practice:** Repayment should be made to all migrant workers including any recruited locally. Given the risk of debt bondage and historic fee payment, employers should take responsibility for remediating these workers as a part of their workforce if they choose to recruit migrant workers locally with the inherent risks involved.
  - The repayment amount for this group of workers should use the amounts calculated per nationality, or other criteria identified as relevant (such as recruitment year, recruitment actor, recruitment location, job description, gender, religion or other) for the regular workforce as a baseline. However, these workers should also be interviewed individually once hired to establish and correct any major deviations from that amount. Findings from these interviews should be triangulated.
- **Minimum recommendation:** Where employers are not prepared to cover the full recruitment cost of locally recruited workers, a one-off 'goodwill' payment of 2 months' salary should be made to migrant workers recruited locally that have paid Recruitment Fees and Costs<sup>18</sup>. A flat rate, rather than a per-nationality rate, is recommended here to avoid situations of discrimination in hiring – where employers may, for example, avoid hiring Bangladeshis because it would cost more in repayment payments.
  - This amount must be paid in the same currency that workers' salary is paid in.
  - Employers may consider providing this payment to workers after they have completed their probation period.
  - This payment will to some extent mitigate the impact of migrant worker-paid Recruitment Fees and Costs, whilst also recognising that the employer did not directly recruit these migrant workers. Covering this will, in most cases, still cost less than recruiting a new worker directly from their home country, and therefore should not disincentivize hiring of such workers locally. However, in exceptional cases where there is reason to believe this approach will disincentivize hiring of migrant workers – this approach may be tailored.
  - Appropriate communications must accompany remediation and repayments which recognise:
    - a. The purpose of the payment being towards remediating historic unethical and often illegal Recruitment Fees and Costs paid by the migrant worker, and
    - b. that this may only partially cover those costs paid historically.

Employers should not use loopholes to avoid taking responsibility for payment of Recruitment Fees and Costs for locally recruited migrant workers.

---

<sup>17</sup> This is, for example, common in free market contexts like the European Union.

<sup>18</sup> This relates to Goal 10.7 of the Sustainable Development Goals (SDGs) which calls for facilitating orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies, specifically indicator 10.7.1: "Recruitment cost borne by an employee as a proportion of monthly income earned in country of destination."

Summary of workers in scope	Minimum standard	Best practice
All current workers	✓	✓
All former workers recruited by the employer	✗	✓
All former workers who were recruited within the “date of first diagnosis”	✗	✓
All former workers who have left the employer since the most recent audit/investigation which identified Recruitment Fees and Costs	✓	✓
Sub-contracted/outsourced/temporary/part-time workers employed regularly by the employer	✓	✓
Locally recruited migrant workers	✗	✓
Local workers that migrated within their own country (i.e. nationals of the destination country)	✗	✓

### 3. CALCULATING THE REPAYMENT AMOUNT



#### Calculating the repayment amount

**Goal:** The repayment amount is accurately calculated through robust and reliable data collection methods, and represents the actual value of money workers originally paid for Recruitment Fees and Costs, considering interest, inflation, exchange rate and opportunity cost.

3

#### Key considerations

Where it is not feasible for exact fee-payments to be calculated for each worker, repayments of Recruitment Fees and Costs should be based on the average (mean) amount of costs reported by migrant workers of each nationality or other relevant sub-groups of the workforce identified (e.g. recruitment year, recruitment actor, recruitment corridor, job description, gender or other identified criteria). Three further factors influence the fairness of repayment amounts of Recruitment Fees and Costs:

1. **Exchange rates:** given that many migrant workers were recruited and paid Recruitment Fees and Costs several years before repayment takes place, the exchange rate selected between the currency/(ies) in which costs have been paid in and the employer's standard currency has a significant impact on the validity and fairness of calculations.
2. **Inflation:** the compound inflation (pegged to USD) since original payment of Recruitment Fees and Costs should be reflected in repayment calculations so that the value of the repayment received by migrant workers is the same as that which they have lost.
3. **Opportunity cost:** the cost incurred by not enjoying the benefit associated with the best alternative. For example, if a migrant worker has sold land to pay Recruitment Fees and Costs – not only have they incurred capital gains losses, but there is also an opportunity cost from the lost potential income from use of that land. We recommend reflecting opportunity costs via compound interest calculations (see Best Practice approach).

To ensure credibility, expertise, and independence, third parties should be involved in calculating the repayment amounts.

#### Minimum recommendations

At minimum, the repayment calculation must consider:

- ✓ Average fees paid per nationality group (or other relevant group criteria, e.g. recruitment year, recruitment actor, recruitment corridor, job description, gender or other)
- ✓ Appropriate historic and current currency exchange rates
- ✓ Inflation

**Step 1.** Analyse the data on Recruitment Fees and Costs obtained through the investigation (See Section 1) to check if the recruitment year, recruitment actor, recruitment corridor, job description, gender or other identified variable has a significant impact on the average amount paid.

- If yes, determine the amount to be paid based on the average (mean) per nationality, recruitment year, and recruitment actor (see Example 1).
- If no, i.e. if Recruitment Fees and Costs paid are largely the same across recruitment years, actors and/or other factors such as listed in the examples above, determine the amount to be paid based on the average per nationality (see Example 2).
- Companies may consider either option above. It should be noted that each option may result in a different overall quantum to be repaid. Worker agency within the repayment process is critical to its success, and companies should consult with workers and their representatives and unions (where present in the workplace), as well as CSOs, NGOs and governments, to

determine the most appropriate option to take when deciding on repayment methodologies. It may also be relevant to speak to employer associations, buyers and investors.

- Where such representatives, unions, and/or freedom of association are non-existent – and where no effective social dialogue between management and workers is deemed to be present via investigation (see ‘guideline 1’) this should be raised as a ‘limitation’ in any reporting or recommendations provided to relevant stakeholders as part of the repayment procedure. A lack of any form of meaningful worker agency or social dialogue limits the robustness of the investigation, repayment calculation, and verification – and therefore may significantly limit the overall effectiveness of the intended remedy. Whilst an effective 3rd party helpline helps to increase monitoring of the remedy directly via workers, it is important to note that this limitation should be listed regardless of the presence of such a helpline – which, in its function as a direct grievance mechanism, does not serve to build worker agency and social dialogue in the same manner.
- Where there is significant variation in the amounts reported by migrant workers recruited in different batches, employers may use the average (mean) by nationality for each recruitment batch.

**Step 2.** ‘Peg’ the amount paid by the migrant worker in their local currency to the USD, using the historic exchange rate when the fee was paid (e.g. [Currency Rate History for 10 years – USD to BDT](#)). If grouping the sample by year of recruitment, the modal batch of recruits in that year (i.e. the date on which the largest group were recruited together) can provide the exact date for applying the historic exchange rate to use.

- Add compound inflation year on year (based on [USD CPI](#)). In Example 1 below, this would result<sup>19</sup> in an amount of USD 4,155, or RM17,409 being paid back to the Bangladeshi workers recruited in 2012. This represents an overall decrease in money received by this group of ~10%
- Next, convert this USD amount back to the currency in which the worker is to be paid in (i.e. the currency which the employer uses to pay workers their salary). **Use the current XE exchange rate (i.e. the exchange rate on the date of calculation of repayment).**<sup>20</sup> As the workers are receiving this money now – they should receive this amount as an accurate reflection of what it is worth in today’s terms – pegged to the USD to protect against unfair fluctuation. It is not recommended that employers use a historic exchange rate – as this will provide an incorrect and unfair reflection of the repayment amount’s value today.

Employers should be aware that this minimum standard approach may not provide sufficient protection against future litigation or migrant worker claims for adequate remediation to situations of forced labour.

## Best practice

A best practice approach should calculate the repayment amount factoring in:

- ✓ Average fees paid per nationality group (or other relevant group criteria, e.g. recruitment year, recruitment actor, recruitment corridor, job description, gender or other))
- ✓ Appropriate historic and current currency exchange rates
- ✓ Inflation
- ✓ Interest to account for lost opportunity cost

In order to implement the best practice approach, follow the same steps as outlined under minimum recommendations, however, under Step 2, add compound interest to the amount, in USD, for each year since the recruitment. This accounts for inflation.

<sup>19</sup> As the ‘compound interest’ rate of 3 is replaced by a rate of 1.6 (the mean average inflation during the 8 year time period since recruitment), and multiplied year on year – making the sum  $3660 * (1.016^8) = \text{USD } 4155$ . To note, this average rate of 1.6 would change depending on how many years since recruitment

<sup>20</sup> This should be as close as possible to the initial payment – no more than 1 month prior.

Based on consultation with stakeholders including economists, Impactt recommend an interest rate of 3%<sup>21</sup> to be slightly above a fair global (US) rate of inflation (~1.6% based on [USD CPI](#)). This makes an allowance for opportunity cost. It should be noted that attempting to cover opportunity costs in repayments is a new area. This guidance may be revised based on further learning from field-tests.

### Contingency Fund

- Employers should ringfence a “contingency fund” in the total repayment costs to cover:
  - Individuals who have paid more than the average amounts calculated in accordance with the guidelines in this document. The individual payments resulting from the above calculations may fall far short of what those migrant workers who may have paid significantly more than the average are entitled to. In such cases, individual workers should be able to claim further compensation from the contingency fund set aside.
  - Future claims from former migrant workers.
- The contingency fund should have a clear protocol which establishes:
  - A governance system for the fund, with transparent information on how it will be managed and by whom. A fund management committee should be set up, ensuring that none of the committee members have any conflicts of interest, and are as independent as possible within the context of the organisation, i.e. removed from any duties that involve recruitment or management of migrant workers. Overall management of the fund should be overseen by a credible, experienced and independent third party, with regular reporting and verification of reports.
  - Criteria for workers’ eligibility to claim further funds, if any.
  - Protocols for workers to submit additional claims, covering which parties should be involved (e.g. support for workers in the process, such as worker representatives, or friends that may attend claims procedures), any documentation and evidence required (e.g. workers may be asked to provide an interview, or sign a claim statement), relevant policies and procedures that will apply (e.g. confidentiality and protection from retaliation), timelines for claims to be reviewed and responded to, and appeals processes.
  - Mechanisms for referring workers to third party or state-based grievance mechanisms should the appeals process fail to identify a solution that is acceptable to all parties.
- All information related to the contingency fund and applicable processes should be made available in workers’ languages and communicated through a variety of platforms (See section 5 on communication with workers).

### Examples of implementing a best practice approach

The below examples demonstrate how a best practice calculation can be applied, considering exchange rates, interest [over and above inflation] and opportunity cost.

#### Example 1 - Group workers by nationality and recruitment year:

The following example demonstrates how the above calculation method could be applied to an imaginary employer – “Employer X”.

A third-party investigation is carried out at Employer X in Malaysia. As part of the investigation, the third party interviews a representative sample of the workforce, and gathers data on reported Recruitment Fees and Costs, recruitment dates and recruitment agencies involved.

- Employer X has 1,000 Bangladeshi workers

<sup>21</sup> Where legitimate and effective worker unions or representatives exist, worker representatives should be included in discussions regarding amount to be repaid, including fair levels of interest to account for lost opportunity cost and the most just methodologies to be applied during remediation processes.

- 400 of these workers were recruited in 2012
- 200 were recruited in 2013
- 400 were recruited in 2014
  
- For those recruited in 2012, check the modal recruitment date (most workers are recruited in groups).
  - *In this example, let's say the vast majority were recruited January 1<sup>st</sup>, 2012*
  
- The investigation shows that at Employer X, the average (mean) amount reported to have been paid by workers in this year (2012) was 300,000 BDT. This amount is taken as the 2012 batch figure.
  
- Take the exchange rate for BDT → USD for the modal recruitment date of 1<sup>st</sup> Jan, 2012 (which is 0.0122) and use this to convert and 'peg' to the USD.
  - *In this example, BDT 300,000 \* 0.0122 = USD 3660*
  
- In an excel formula, multiply this USD amount by  $(IR ^ Y)$ , where IR is the compound interest rate<sup>22</sup> (or inflation if adopting the minimum standard requirements) being used (e.g. 1.03 for 3%) and the multiplication (or to the power) of the Y exponent is applied. Y represents the number of years between the recruitment year and current year (e.g. 8 years for 2012 to 2020).
  - *In this example,  $3660 * (1.03^8) = USD 4636$ .*
    - *$1.03^8 = 1.267$  which represents the compound interest multiplier over this time*
  
- This results in a current USD value of what the money is worth now, which factors in a small compensation for opportunity cost.
  
- Convert this USD value into the currency in which Employer X pays workers their salaries, using the **current XE** exchange rate (i.e. as close to the date on which payment will be made as possible). This is then the amount to be paid to this specific batch.
  - *In this case, we take USD 4636, and applying the exchange rate of 4.19 for date of publication on 12/08/2020, this brings a total to be paid of RM19,456.*
  - *The final amount is paid to workers in local currency (i.e. RM: the currency in which workers receive their salaries).*
  
- For those recruited in 2013 and 2014, repeat the steps above as appropriate, to calculate the amount which they should receive.
  
- Similarly, repeat these steps for other nationalities

**Example 2 – Grouping into one payment per nationality (avoiding ‘batch by year’ approach):**

- Check the median year of recruitment by nationality
- Multiply by the historic exchange rate into USD from the median migrant worker for the recruitment batch, using their hiring date
- Add compound interest to this up to current date for a current USD value including interest
- Convert this total USD amount back to Employer X currency in current exchange rate

<sup>22</sup> This is the selected amount of year-on-year interest agreed.

- In short – this method simply uses the ‘median’ migrant worker on a calendar scale of recruitment as the benchmark for how much all migrant workers should receive, as the fairest means.

## Guidance notes

### Selecting the fairest method

- It is important to use the calculation method which is fairest to workers. In the majority of cases, field-experience has shown that use of the average (mean) will be the fairest, leading to a repayment amount that is most advantageous to workers. However, stakeholders are encouraged to calculate the median as well (i.e. the middle number within a list of numbers organised from lowest to highest). If the median provides a larger repayment amount, this should be considered as an alternative in conversation with stakeholders.
- It should be noted that using the mean average payment amount will entail that some workers will get a slightly higher, and some will get a slightly lower amount than what they originally paid.

### Why should the mode not be used?

The mode is the number that appears most frequently in a set of numbers. For example, if, in a dataset on Recruitment Fees and Costs, 10 out of 100 workers reported they paid USD 500, and this is the most frequently reported number, then this would be the selected payment amount for all workers. In general, Impactt advise against using the mode to determine repayment amounts. Use of the mode can be unreliable, as:

- It is unlikely that there will be many exact number matches of total fees paid.
- Therefore, fees may need to be rounded up or down to ensure a modal group can be found. This could:
  - Oversimplify the dataset.
  - Cause multiple modes to be found, making it unclear which to choose.

### Outliers

- Where there are outliers in data sets, each case should be investigated to identify any signs of coercion (in the case of very low reported Recruitment Fees and Costs) or exaggeration (in the case of very high reported Recruitment Fees and Costs). Such investigations should be carried out by a third party to ensure credibility, expertise and independence. Based on investigation results, companies can then determine whether to exclude outliers from the overall average calculation on a case-by-case basis. In some cases, it may be appropriate to remove the outlier from the dataset but still repay the worker the full amount.

### Exchange rate & banking fees

- Taking an average exchange rate across all years covered by the repayment can result in inequitable repayment and does not represent the fair value of the money which migrant workers have lost. Instead, make calculations using the exchange rate that was applicable at the time of recruitment, add inflation and interest, and then convert back at the exchange rate applicable at the time of payment, as illustrated in Example 1 above.
- The Employer should cover banking transaction costs for any workers who leave employment and receive the payments in their home country. Workers who continue to work for the employer may be expected to remit the money home alongside regular wages at their own expense.

## 4. TIMELINE FOR REPAYMENT

4

### Timeline for repayment

**Goal:** Migrant workers are paid back for Recruitment Fees and Costs paid as quickly as possible.



#### Minimum recommendation: 6 – 9 months

Where complex negotiations between multiple parties are required to determine the payment amount and plan, negotiations must be completed within a maximum of 3 months from the date of discovery.

- Payments should be made where possible within 3 months, and within a maximum timeframe of 6 months once negotiation is completed. The total timeframe for repayment, ranging from negotiation to final payment, should therefore not exceed 9 months.
- All payments should be completed before the end of a workers employment contract.

#### Best practice: lump sum payment within 1 month

Following a best practice approach, payment should be made to migrant workers in a lump sum payment as soon as possible after the issue has been identified, or within a timeframe of 1 month, in order to remediate the risk of debt bondage and/or forced labour as quickly as possible.

#### Exceptional circumstances

In exceptional circumstances, where an employer can demonstrate they are unable to complete the payment schedule within 6 - 9 months, it may be permissible to extend the overall repayment timeline to a maximum of 12 months. This should only be permitted where an independent third party expert monitoring team is able to determine that enforcing a faster timeline will result in the employer going bankrupt, or result in other consequences which may harm workers (e.g. which will affect the financial health of the employer such that redundancies must be made).

- Where multiple stakeholders are involved in the repayment process, they should verify and confirm whether the employer is unable to pay within 6 - 9 months, or commission a credible third party to do so (e.g. through review of financial records). Stakeholders should also support the employer to approach buyers and investors for financial support to enable faster repayment where appropriate.
- Where payments are made over a 12 month-period, the instalment amounts should be higher during the initial months of the payment period or should be distributed equally. Payments should not be weighted towards the end of the payment period.
- Extension of the payment timeline to 12 months should be a last resort approach, which is taken only after requests for financial support have been shared with buyers and investors without adequate response.

#### Example 1

- An employer is in critical financial hardship, and is able to provide irrefutable evidence that if they make remediation payments within 0-6 months, this will cause an adverse effect on workers by bankrupting the business.
- The employer provides this evidence to its buyers (and any other relevant organisations) to seek financial support to ensure that the repayment can occur within the 6-month timeframe. Multiple buyers group together to support the initial funding of this repayment to meet the 6-month repayment schedule.



### Example 2

- Another employer is in similar critical financial hardship.
- However, only one of its buyers can put forward any initial funding towards repayment, and this cannot meet the funding required to meet the 6-month requirement. The employer calculates, with evidence, that attempting to complete the repayment within the 6-month window, even with this additional funding, would bankrupt the business causing an adverse effect on workers.
- Therefore, as a last resort approach, the payment window is extended to 12 months.
- Even with this extension to the payment window, some migrant workers have to be let go to ensure the business does not go bankrupt. The employer requests financial support from investors to fund the payments as quickly as possible, but this is denied. The contact details of these workers are gathered, and 1 year later once the business has recovered, the workers are contacted and have their repayments completed over the course of 0-6 months.

### Guidance notes

- **Bankruptcy.** Where migrant workers are let go due to bankruptcy, the employer should gather workers' current contact and banking details in destination and home country in order to enable payments to be made as soon as possible once funds become available through themselves or via a buyer. The employer should actively pursue avenues to obtain financial support to make the outstanding payments within 6 months.
- **Financial advice** should be made available to workers to manage any vulnerabilities they may be exposed to as a result of the repayment received, whether this is paid in lump sum or over an extended period of time. Guidance on how to re-establish any assets workers sold in order to fund Recruitment Fees and Costs should also be provided.
- **Tax.** Check any potential tax implications of providing payments to workers (lump sum or otherwise) – as they may not yet be classed as tax-exempt. Arrangements should be made to ensure any such tax requirements are offset by the employer if they are required – to ensure the worker receives the full intended amount.
- **Recalculations.** As long as workers remain uncompensated, the burden on them continues to compound. A recalculation of the repayment amount may therefore be required, if repayments are made over an extended period of time.
- **Simultaneous payments.** Workers should all be paid at the same time, rather than paying some groups of workers before others (i.e. a staggered approach). Efforts should be made to apply this to all workers. It should be noted that:
  - In some cases, employers may need to take a staggered approach in order to prevent the company from going bankrupt and ensure workers retain employment. In such cases it is recommended that workers identified to be at highest risk of forced labour (e.g. those currently still paying off debts) are reimbursed first.
  - In some cases, for example for sub-contracted workers, more time may be required to negotiate payment terms with the relevant employers.
- **Risk of bonded labour.** There are two ways in which timelines can recreate an additional forced labour risk on workers: either by being too long, or by weighting the bulk of payments later in the timeline. Longer periods of repayment risk constituting a new form of bonded labour, as migrant workers may feel tied to their jobs for longer periods of time, just to ensure they receive their payments in full. Employers should avoid consideration of 'risks' of migrant workers resigning upon receipt of payment for this reason. Experience shows that such resignations are rare – as migrant workers report feeling more respected and motivated to work for their employer, once repayment is properly communicated and implementation started. Instead of focusing on preventing workers from resigning, employers should focus on ensuring working and living

conditions are such that workers will want to stay even if they are free to leave without constraints.

## 5. ENGAGEMENT AND COMMUNICATION WITH MIGRANT WORKERS

5

### Engagement and communication with migrant workers

**Goal:** Workers are engaged in the repayment process and receive clear communication related to the purpose, amount, timeline and protocol for payments.



### Minimum recommendation: clear communication throughout the repayment process

Clear communication and engagement with workers in their own language, and through a variety of channels, including verbal and written form, is vital to ensure the repayment is carried out effectively. Communication and engagement with migrant workers should take place in 3 key phases:

- a) **During the investigation** – where workers are interviewed about how much they paid.
- b) **During development of the payment plan** – to inform and gather workers inputs on the repayment process and proposed calculation method, allowing an opportunity for workers to make suggestions or appeals before the payment plan is finalised.
- c) **On finalisation of the payment plan** – to ensure workers clearly understand the purpose and protocol behind the payments, before the first payment is made.

#### Phase A: Communication during the investigation

In an ideal world, workers should be engaged and informed about the potential repayment prior to the investigation. However, in practice, this risks jeopardising employers' buy-in for the repayment process. In many cases employers are concerned that, if workers know the purposes of the investigation in advance, and know they will be repaid, they will have an incentive to increase or misreport the Recruitment Fees and Costs they paid in order to get more money. While Impactt's field experience shows this is likely not to be the case, it is important to ensure companies trust in the credibility of the process. In addition, some companies are unable to commit to repayment until they have a detailed understanding of Recruitment Fees and Costs paid, as a result of which communication with workers during the investigation stage could result in false promises. Workers should have an opportunity to appeal and share suggestions related to the repayment plan during phases B and C highlighted below. During the investigation itself, workers should be informed that their participation is voluntary, and that the information they share will be treated confidentially.

#### Phase B: Communication during the development of the payment plan

Migrant workers should be engaged and consulted throughout the development of the repayment plan. This includes engagement to:

- Inform workers about the repayment purpose, as well as processes and protocols for investigating and, calculating repayment amounts.
- Consult workers on the proposed payment amount, providing a clear explanation of how the amounts were calculated, as well as other aspects of the payment plan, including payment timeline, method, and communication to the workforce.
- Provide access to an appeal mechanism, where workers can raise questions and concerns and seek additional support.

#### Phase C: Communication on finalisation of the payment plan

Following finalisation of the repayment plan in consultation with migrant workers, an employer must ensure that all local and migrant workers understand the cause and reasons for repayment, the repayment process (amounts, timings) and that they have avenues to ask further questions, provide feedback or raise grievances.

Before the first payment is made, employers should:

- Provide all local<sup>23</sup> and migrant workers with a general memo in their own language which indicates why the payments are being made. This should:
  - Explain the issue of unethical Recruitment Fees and Costs as context for the proposed repayment.
  - Provide an apology on behalf of the employer.
  - Indicate transparently that migrant workers' payments will be different per nationality (and per recruitment year, recruitment actor, recruitment corridor, gender, or other criteria if that is the case). This communication does not necessarily need to publicly detail the exact figures for each group – however, transparency about differing amounts will be key to avoiding misunderstanding and potential unrest.
- Provide migrant workers receiving repayment with:
  - An individually addressed letter in their own language clearly communicating the process, protocol, rationale, and timeline for repayments. The actual amount of repayment that the worker will receive should be included in such communication, as well as details of how it was calculated.
  - Information about how they can appeal or seek additional support if they feel the final proposed plan does not provide sufficient remedy. Appeals should be monitored by a credible, experienced and independent third party.
- Organise communications sessions in workers' own languages, which explain the above verbally. These sessions must:
  - Cover all migrant workers eligible for repayment.
  - Be carried out in an appropriate location (i.e. a place where workers are comfortable and safe, where they can see and hear the person presenting, and which takes into account e.g. social distancing requirements).
  - Communicate a helpline (see below) or other available grievance mechanisms and their purpose.
  - Make clear to workers that receipt of financial repayment under any of the models presented here does not prevent these workers from exercising or claiming other rights or damages to which they may be entitled under law.
- Set up a helpline for workers. Where internal resources or expertise are limited or unavailable, contract an independent third party helpline or utilise other independent methods to enable migrant workers to report any issues related to payment.
  - The helpline should be available in workers' languages and ideally be operated by people trusted by workers.
  - Awareness-raising sessions should be carried out to make workers aware of the helpline and how to use it.
  - A log of issues raised, and their resolution should be kept, including confirmation that worker unions/representatives have knowledge of these issues.
  - The helpline can have its purpose extended to become a more general external grievance line where appropriate. It can also be used as an information line, where workers can access information on the repayment process, and financial advice on management of the repayment amount received.

After each payment is made:

- Each worker should receive a payslip which shows the repayment amount as a separate item, clearly labelled.
- Workers can be asked to sign a form acknowledging receipt of payment.

---

<sup>23</sup> This document should also be provided to local workers, to ensure transparency and understanding, and reducing the risk of tensions between groups

## Best practice: Engagement with trade unions and worker representatives

In addition to the recommended communications outlined above, a best practice approach would ensure worker agency throughout the repayment process, through broader engagement with migrant workers and their elected worker representatives, trade unions or other independent organisations or third parties that they trust or choose to represent them in negotiations. A best practice approach would:

- Enable opportunities for workers and their representatives to engage in a collective bargaining process in order to reach agreement on the fairest repayment plan.
- Use feedback shared through formal worker representation structures to improve the design of the repayment plan.

## 6. VERIFY PAYMENT



### Verify Payment

**Goal:** A credible, experienced and independent third party verifies that all repayments have been made correctly, without any negative consequences for workers.

6

#### Minimum recommendations

Independent third party verification(s) of payments to migrant workers should be conducted throughout the payment process. During the verification, the employer will be responsible for proving to any parties they are accountable to that Recruitment Fees and Costs have been repaid (i.e. the burden of proof will be on the employer).

#### Verification components

Verification should consist of:

##### 1. Worker interviews

- Worker interviews provide the primary source of evidence during a verification.
- The verification should include interviews with a representative sample of workers. This should cover:
  - Workers across all nationalities, genders, recruitment actors, regions, and dates, or other relevant criteria identified.
  - Sub-contracted, outsourced, or part-time workers covered under the payment plan.
  - Workers' whose contract has ended, or who have resigned and returned to their home country, to confirm they received all outstanding payment prior to departure.
  - Worker unions or other worker representatives, where existent.
- The representative sample should cover at least 20% of the total migrant workers receiving payment, including at least 20% of each relevant sub-group, where sub-groups are receiving different payment amounts.

##### 2. Management interview

- Speak with parties responsible for managing and implementing the reimbursement process. Focus on understanding any challenges related to the repayment process, and steps taken to resolve them.

##### 3. Document review

- Review bank transactions and confirmation of electronic transfers via payroll. Check these across the entire selection of workers being paid (especially during a first verification where errors are most likely to occur).
- Review employee files (payslips, individual payroll records, etc.) for a random sample of 10-20% of the workers interviewed.
- Note that documents can be falsified and all evidence must be triangulated – therefore, bank statements and documentation alone can never provide full verification without worker testimony.

##### 4. Triangulation

Triangulation should be carried out between all above-listed sources. Engagement with other relevant stakeholders such as CSOs that have been engaged in the process, worker

representatives, community leaders, etc. may provide further input to support the triangulation process.

Verifications must check:

- That all workers (including workers that have returned to their home country) are being paid in full and on time.
- That all workers understand what the payments are for. Impactt's experience shows that knowing what the payment is for greatly affects migrant workers' feelings of respect, and overall worker satisfaction, compared to simply receiving the money without knowledge of what it is for.
- That payments are not being made via a labour recruiter or broker, and documents are not being falsified. If workers can only be contacted through labour recruiters or brokers, obtain workers' contact details and then manage payment with them directly. Workers' identity can be verified by requesting e.g. passports, former work permits or other relevant documentation.
  - If for any reason, the only way to make the payment is via the labour recruiter, then additional checks should be made (including several months after payments have been made) to verify workers have not faced retaliation or confiscation of funds.
- The impact of the payment on migrant workers. Workers can be asked to share how they plan to spend the money (if they are comfortable to share this) and whether they now plan to leave their job (indicating they could not before). At the end of the repayment period, additional questions can check whether the repayment amount was sufficient to pay off workers' debts, and other ways in which the payment helped workers in their lives.

### Timing

Verifications should be carried out regularly throughout the repayment schedule, but do not necessarily have to occur alongside every payment date. Carry out at least one verification after the first payment and one after the last payment.

- Early verifications will be especially helpful for identifying and correcting any issues and discrepancies related to the payments process.
- The final verification will confirm whether all payments have been completed successfully.

### Reporting

The third party verifier should provide a report to all stakeholders involved, summarising key findings from the verification. This should include any discrepancies or issues related to payment, and recommendations for how to resolve them.

**Remote verifications:** Where in-person access to workers is limited, remote verification methodologies can be utilised (i.e. speaking with workers via relevant ICT solutions and messaging apps/platforms).

## Best practice

A best practice approach would include the implementation of ongoing monitoring mechanisms, which are active beyond the regular verification dates. For example, this could include:

- Verifier engagement with union and other worker representatives (for example, through weekly or monthly calls) to check how the payment process is going, and use this feedback to improve the process on an ongoing basis.
- Set up of a third-party helpline, which gathers feedback from workers on an ongoing basis, and uses this feedback to improve repayment processes and protocols.

## FURTHER READING

The following list provides additional resources that will support stakeholders to implement ethical recruitment practices:

### Ethical recruitment and prevention of worker-paid Recruitment Fees and Costs

#### Guidance and Reports

- [IHRB: 'Responsible Recruitment: Addressing Gaps in Protections for Migrant Workers' \(2018\)](#)
- [ILO: 'General Principles and Guidelines for Fair Recruitment and Definition of Recruitment Fees and Costs' \(2019\)](#)
- [ILO: 'Ways Forward in Recruitment of Low-Skilled Migrant Workers in the Asia-Arab States corridor' \(2016\)](#)
- [Impactt: Ethical Recruitment: Translating Policy into Practice \(2019\)](#)
- [Interfaith Center on Corporate Responsibility \(ICCR\): 'Best Practice Guidance on Ethical Recruitment of Migrant Workers' \(2017\)](#)
- [Institute for Human Rights and Business \(IHRB\): 'Six Steps to Responsible Recruitment'](#)
- [IOM CREST: 'The IRIS Standard' \(2019\)](#)
- [Responsible Business Alliance \(RBA\): 'Practical Guide to Due Diligence on Recruitment Fees in International Supply Chains' \(2020\)](#)

#### Tools & Training materials

- [ILO's Training Toolkit on Establishing Fair Recruitment Processes.](#)
- [The Leadership Group for Responsible Recruitment \(LGRR\): 'Responsible Recruitment Metrics'](#)
- [The RISE Roadmap: Responsible Recruitment Toolkit](#)
- [Stronger Together: Template for The Employer Pays Policy](#)
- [Verité: Fair Hiring Toolkit](#)

This is a living document. Stakeholders are invited to share any further resources for inclusion in this further reading list with the Impactt team. See end of this document for contact details.

## Appendix A – Definitions

### Recruitment Fees and Related Costs

The below table summarises the ILO’s definition of recruitment fees and related costs. These are costs that should be paid by governments, employers, and recruitment agencies, not by workers.<sup>24</sup>

<b>ILO Overview of Recruitment Fees and Related Costs (referred to in this document as ‘Fees’)<sup>25</sup></b>	
<b>Recruitment Fees</b>	
1	Payments for recruitment services offered by public or private labour recruiters. These fees may be one-off or recurring and can cover recruitment, referral, and placement services. Costs 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</b>	
Related costs are expenses which are integral to recruitment and placement within or across national borders. It is generally acknowledged that the widest set of related costs are incurred for international recruitment. The following costs should be considered related to the recruitment process when initiated by an employer, labour recruiter or an agent acting on behalf of workers; when required to secure access to employment or placement; or imposed during the recruitment process. <i>To note – a company policy which aims to ensure that workers do not bare these fees and related costs is referred to in this document (and in many cases by companies) as a ‘Zero Cost’ policy</i>	
2	<b>Medical costs</b> (payments for required medical examinations, tests, or vaccinations)
3	<b>Insurance costs</b> (costs to insure the lives, health, and safety of migrant workers, including through enrolment in migrant welfare funds)
4	<b>Skills and qualification tests</b> (e.g. to verify workers’ language proficiency, level of skills and qualifications, location-specific certification, or licensing)
5	<b>Training and orientation</b> (e.g. expenses for language, skills, and other required trainings, on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers)
6	<b>Equipment costs</b> (costs for tools, uniforms, safety gear and other equipment needed to perform assigned work safely and effectively)
7	<b>Travel costs</b> (expenses incurred for travel, accommodation, and subsistence during the recruitment process, e.g. during training, interviews, consular appointments, as well as costs for return and repatriation).
8	<b>Administrative costs</b> (application and service fees that are required for the sole purpose of fulling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining, or legalizing workers’ employment contracts, identify documents, passports, visas, background checks, security and exit clearances, banking services and work and residence permits).
<b>Illegitimate costs</b>	
9	Extra-contractual, undisclosed, inflated, or illicit costs (e.g. bribes, extortion or ‘kickback’ payments <sup>26</sup> , bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain).

<sup>24</sup> See summary: ILO, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf)

<sup>25</sup> Note: this table covers Recruitment Fees and Costs paid by workers in their home country only.

<sup>26</sup> These kinds of costs, including especially kickback payments and bribes that are accepted by employers, agencies and their representatives may warrant an internal or independent and detailed investigation to ensure criminal, civil or general contractual accountability and to recoup some of the workers’ repayment costs.



## Further definitions

**Country of destination:** In the migration context, a country that is the destination for a person or a group of persons, irrespective of whether they migrate regularly or irregularly. Also known as host country, receiving country, State of employment.

**Country of origin:** In the migration context, 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. Also known as home country, sending country or state of origin.<sup>27</sup>

**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.<sup>28</sup>

**Employer:** A person or an entity that engages employees or workers, either directly or indirectly.

**Employer Pays Principle:** Reflecting Principle I of the Dhaka Principles for Migration with Dignity, the Employer Pays Principle is a commitment to ensure that no worker should pay for a job. In response to this internationally recognised principle, many companies adopt an “Employer Pays” or “Zero-Cost” Policy to ensure migrant workers do not pay any Fees or Costs.<sup>29</sup>

**End-user employer:** 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.<sup>30</sup>

**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.<sup>31</sup>

**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. Trafficking in persons can take place within the borders of one State or may have a transnational character.<sup>32</sup>

**Labour recruiter:** The term labour recruiter refers to both public employment services and to private employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, whether for profit or non-profit, or operating within or outside legal and regulatory frameworks.<sup>33</sup> Private employment agencies fall within the definition of labour recruiters. For the purpose of this document, the term of private employment agency refers to the agencies that provide recruitment and employment services in the destination country.

**Mean:** The average in a set of numbers, obtained by dividing the sum total of a set of figures by the number of figures.

---

<sup>27</sup> [IOM Glossary](#)

<sup>28</sup> [Ibid](#)

<sup>29</sup> [IHRB: The Employer Pays Principle](#)

<sup>30</sup> [IRIS Standard](#)

<sup>31</sup> ILO, CO29 – Forced Labour Convention (39 UNTS 55, 1930), art. 2(1)

<sup>32</sup> UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000

<sup>33</sup> [ILO General Principles and Operational Guidelines for Fair Recruitment](#)

**Median:** The value that represents the point at which there are as many instances above as there are below.

**Mode:** Number which appears most often in a set of numbers.

**Migrant worker:** A “migrant worker” is defined in the International Labour Organization (ILO) instruments as a person who migrates or has migrated from one country to another with a view to being employed other than on his own account, and includes any person regularly admitted as a migrant for employment. Here we also apply the term to any workers that are travelling or migrating within their own country of birth or residency. The same mechanisms and approach should be applied in such cases.

**Private Employment Agency:** For the purpose of this document, the term of private employment agency refers to the agencies that provide recruitment and employment services in the destination country.

**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.<sup>34</sup>

## Appendix B – UNGP 31: ‘Criteria for effective grievance mechanisms’ and how this relates to this guidance

In line with the UN Guiding Principles on Business and Human Rights (UNGPs), companies are required to ensure that victims of human rights abuses have access to effective remedy. Effective remedy means putting right harms caused to people, including financial harms to workers as part of the recruitment process.

Impactt assesses the effectiveness of a remediation plan against the following criteria:

1. Legitimacy – i.e. the amount is calculated through a credible and/or independent investigation
2. Accessibility – i.e. all workers entitled to remediation are in scope of the remediation plan
3. Equitable and fair – i.e. repayment amounts are calculated in a fair and trustworthy manner
4. Transparent – i.e. all parties have received clear information throughout the process
5. Compatible with internationally recognised human rights – i.e. amounts are compatible with existing benchmarks on worker-paid Recruitment Fees and Costs and paid according to a timeline which does not perpetuate bonded labour
6. Based on engagement and dialogue with the groups remedy is meant for – i.e. workers have been engaged in the process

These principles cover 6 of 8 criteria outlined under the UNGPs for judging the effectiveness of grievance mechanisms.

Impactt measures outcomes using one of the two remaining criteria:

7. Predictable – i.e. on verification, does it turn out that the plan has been implemented successfully

Impactt urge companies to use the final criteria, 8. *a source of continuous learning*, in their ongoing efforts towards zero cost recruitment, as they continue to engage with workers and other actors to understand how to improve the ongoing recruitment experience for workers.

---

<sup>34</sup> [IRIS Standard](#)

Source: [The UNGP Criteria for Effective Grievance Mechanisms](#)



---

## Appendix C – Further guidance on developing an interview sample for investigations into Recruitment Fees and Costs

The below steps provide guidance on the process for developing a sample of migrant workers to interview as part of a deep-dive investigation into Recruitment Fees and Costs.

1. Create an excel list which provides information on all migrant workers including:
  - All currently employed migrant workers.
  - All indirectly employed migrant workers that regularly work on the employer’s worksite. E.g. sub-contracted or outsourced workers such as cleaners, security or other temporary or part-time workers.
  - For all workers: worker name, nationality, gender, labour recruiter in source and destination country, joining date, region of recruitment, worker shift (e.g. day or night) and any other criteria that may be relevant to your dataset.
2. Calculate a representative sample based on nationality (GROUP) in order to reflect the demographics of the site. Where a nationality group has fewer than 40 workers, the entire group should be interviewed.
  - e.g. a site employs 1700 migrant workers, 500 of whom are Nepalese (30%), 1200 of whom are Burmese (70%).
3. Calculate the number of workers interviewed from each nationality (GROUP) in order to be representative of site demographics. This step is not necessary if all migrant workers employed onsite are the same nationality.
  - e.g. the target minimum sample size is 20% of the workforce at the above site, or 340 workers. Therefore, 240 of the workers in the sample should be Burmese (70%) and 100 should be Nepalese (30%).
4. In Excel, highlight all data and generate a pivot table that:
  - Uses NATIONALITY as a report filter
  - Uses DESTINATION LABOUR RECRUITER as a column label

- Uses SOURCE LABOUR RECRUITER as a row label
  - Uses NAME or EMPLOYEE NUMBER as values
5. Within each GROUP, calculate target sample weighting for each labour recruiter configuration (STRATA) in order to reflect relative significance of known recruitment channels.
- e.g. at the aforementioned site, the Burmese GROUP of 1200 are recruited through one destination country labour recruiter, and two source country labour recruiters. 750 members of the GROUP (63%) have been recruited via source labour recruiter B -> destination labour recruiter A. The remaining 450 (37%) were recruited via source labour recruiter A -> destination labour recruiter A. Therefore, there are two STRATA within the GROUP.
  - As above, the sample target of 20% equates to 240 interviews with members of the Burmese GROUP. These 240 interviews must be weighted to reflect significance of all STRATA within the GROUP (in this case, two). Therefore, out of the 240 interviews, 152 interviews (63%) should be held with individuals recruited via source labour recruiter B -> destination labour recruiter A and 88 interviews (37%) should be held with individuals recruited via source labour recruiter A -> destination labour recruiter A.
6. For each STRATA, randomize the full list of workers and select individuals for interview.
- e.g. As above, 750 individuals belong to a STRATA representing recruitment via source labour recruiter B -> destination labour recruiter A. Randomize this list, and then select the 152 individuals from the STRATA who will be interviewed.

---

## Disclaimer

The information contained in this document may not be used, published, or redistributed without the prior written consent of Impactt Limited. The opinions expressed are in good faith and while every care has been taken in preparing this document, Impactt Limited makes no representations and gives no warranties of whatever nature in respect of this document.

Any enquiries regarding this document should be sent to us at:

[Rosey@impacttlimited.com](mailto:Rosey@impacttlimited.com)

[Ben@impacttlimited.com](mailto:Ben@impacttlimited.com)

[Emma@impacttlimited.com](mailto:Emma@impacttlimited.com)