

INTRODUCTION

This paper is addressed to those working in the ethical migrant worker recruitment space to explore and identify further how to maximise the impact and effectiveness of the **Standards for Repayment of Recruitment Fees and Related Costs ('Standards')**. These standards have been distilled from Impactt's field experience, rooted in international instruments, and enriched by two rounds of consultation with more than 60 bodies and individuals active in the field.

The paper is based on comments received during consultation on the Standards and sets out a potential model for the future for constructive debate. Impactt is keen to engage with all interested parties to examine what developments are possible in this area to enable swifter moves towards ethical recruitment and related remediation.

WHY FOCUS ON 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 labour¹, through the development of 'ethical,' 'responsible' or 'fair recruitment principles and frameworks². A primary focus at Impactt has been on the actual repayment of recruitment fees and related costs ('recruitment costs') to migrant workers. Impactt considers repayment of recruitment costs as a necessary and important pre-cursor to sustainable ethical recruitment.

Over the last four years Impactt has worked with partners to facilitate repayment of over US\$106 million in recruitment costs to over 70,000 migrant workers employed by 209 companies, acting both for employers and for other supply chain actors. Our work has convinced us that repayment of recruitment costs is important as a precursor to ethical recruitment for 2 key reasons:

Repayment matters to workers

Repayment of recruitment costs does not provide full remediation when migrant workers are in situations of forced labour. This, in many cases, will require a much broader range of actions. It is clear however that workers who have received a fair repayment of their recruitment costs are in a better position to make choices which protect them against forced labour risks and extreme exploitation in the future. Workers in Qatar report a 10% increase in job satisfaction if they receive repayment and understand what it is for³. During 2020, over 95% of migrant workers interviewed by

¹ ILO Indicators of Forced Labour (2012) https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

² 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 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.

³ Impactt, Annual External Compliance Report of the Supreme Committee for Delivery & Legacy's Workers' Welfare Standards Building a legacy: laying the foundations for lasting impact (2020), page 28, <https://impacttlimited.com/wp-content/uploads/2020/07/IMPA09-2020-Qatar-Annual-Report-v12-Digital.pdf>

Impactt put money as their top priority. Repayment of recruitment costs can and does ameliorate or even remove entirely situations of severe debt bondage that contribute to forced labour situations.

Repayment sharpens focus on more ethical recruitment in the future

Impactt's working theory is that 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 next time round. 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.

Impactt's fieldwork indicates that, when there has been no full repayment of recruitment costs, there tends to be lip service from employers and other supply chain actors to the form of ethical recruitment and related principles down the labour supply chain. Workers continue to pay fees, sometimes even larger amounts than before. Impactt has found that, under these circumstances, workers face more intimidation than previously to keep quiet about what they have paid, so as not to "blow the cover" of those who continue to charge workers, in knowing contravention of policies.

Conversely, Impactt has seen that, after having made an adequate or full repayment of recruitment costs to workers, employers and supply chain actors are more inclined to take ethical recruitment issues seriously, both in theory and in practice. Employers, suppliers, and buyers take more significant steps to seek to root out corruption and poor practices so as to prevent another remediation cycle. This process results in significant reductions in recruitment costs borne by newly recruited workers⁴.

However, repayment of recruitment costs is still very much the exception, rather than the rule. It has generally only taken place because of unrelenting public pressure on specific companies, suppliers, buyers, investors, or governments to remediate forced labour risks that have arisen from unethical and costly recruitment. This often results from sector specific media and campaign publicity that also remains focused only on a limited number of key migrant worker intensive destination countries and sectors.

In addition, there is little guidance in the public domain on how and why to repay recruitment costs, whilst the limited instances of repayment are often the subject of non-disclosure agreements and take place outside the public gaze. This means that each attempt at repayment of recruitment costs has needed to start from scratch with little in the way of precedent or accepted standards, alongside limited cooperation and information sharing from those involved.

It was this situation that prompted the development by Impactt of **Standards for Repayment of Recruitment Fees and Related Costs ('Standards')**, distilled from our field experience and underpinned by the ILO 11 Indicators of Forced Labour, 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 focus of the standards. Further, the Standards relate 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:

⁴ Impactt, Ethical Recruitment in the garment industry ,(2020) Page 5, https://impacttlimited.com/wp-content/uploads/2020/02/Impactt_Ethical-Recruitment_Case-Study_v.8_Feb2020_Final.pdf

“Recruitment cost borne by an employee as a proportion of monthly income earned in country of destination.”

The Standards have been further refined through consultation with 66 expert stakeholders from international bodies, governmental organisations, international trade unions, multi-stakeholder initiatives, investors, NGOs, consultancies, lawyers, activists, campaigners, employers, former migrant workers, and multi-national companies.

WHAT IS THE OPPORTUNITY?

As well as providing crucial refinement of the content and expression of the Standards, many consultees reflected on what should be done with the Standards so as to ensure that they drive a race to the top, rather than a race to the bottom when it comes both to delivering aspects of tangible remedy to migrant workers, and to stimulating the market for more ethical recruitment in the future.

Consultees identified the following risks which could lead to a race to the bottom:

- a. The risk of irrelevance – the Standards are approved but shelved, and don't make a real difference to people and behaviour.
- b. Poor diagnostics leading to under-reporting of amounts due.
- c. Any tendency to opt for minimum standard.
- d. Lack of transparency, leading to higher risk of actors being able to claim that they have repaid, without being asked to prove it.
- e. Being used by the company/employer as a standalone/one stop shop to address remediation.
- f. Being used by any actor to 'shirk' responsibilities of creating effective social dialogue with workers to improve recruitment sustainably and holistically.

This has encouraged us to think beyond the Standards document to develop a model which could help to counter these risks and drive high quality repayment of recruitment costs at scale and kick-start more ethical recruitment in the future.

THE MODEL

Consultees identified 6 factors necessary to drive a race to the top in applying the standards, to ensure the most benefit is delivered to workers and other stakeholders on the broadest scale. These factors were identified as crucial in terms of both adoption and quality of repayment of recruitment costs to more workers across more sectors and countries in accordance with the Standards, and so as to ensure greater sustainability of more ethical recruitment in the future. The key factors are:

- a. Endorsement/adoption of the Standard by international bodies
- b. Quality of investigation/verification
- c. Transparency and disclosure
- d. Governance, grievance, and appeals processes
- e. Agreement of responsibility for repayment
- f. Development of a sustainable recruitment model in parallel with repayment efforts.

The paragraphs below set out the factors in more detail.

a. Endorsement/adoption of the Standard by international bodies

Consultees felt that the Standards would benefit from being endorsed or adopted by international bodies if they are to become the norm that is more widely applied. Further, it might be good to find the Standards a permanent home, whether as an independent entity or an arm of an existing organisation.

b. Quality of investigation/verification

Consultees feared that poor quality investigation/verification of recruitment costs during remediation processes by employers or related 3rd parties or auditors could lead to under-reporting of fees paid by workers, and that some actors might use this as a way of minimizing the amounts of repayment made to workers under the cover of legitimacy. This might also lead to a failure to identify other forced labour indicators that would inhibit the successful repayment of recruitment fees back to workers (for example passport retention or other methods of coercion/intimidation which could give unscrupulous actors the ability to claw back repayments from workers. Consultees identified the need to develop a **Quality Standard for Investigation** in applying the Standards to mitigate this risk. Application of this investigation quality standard would be required for compliance with the repayment standard itself.

c. Transparency and disclosure

Consultees discussed the need for transparency and disclosure from a variety of standpoints:

- Requiring disclosure of amounts paid was widely seen to be a way of ensuring accountability and guarding against a race to the bottom.
- Some consultees felt that there should be a **Public Register of Repayment** to enable transparency and allow civil society and commercial actors to monitor the amounts involved in unethical recruitment and reasonable amounts to be repaid.
- Some companies consulted felt that this register could become a verification point for supplier qualification, investment decisions and enforcement agencies. This could help ensure a level playing field and provide benefit to early adopters of repayment processes.

d. Governance, grievance, and appeals processes

Some consultees saw the opportunity to develop governance, grievance, and appeals processes for any actor to appeal against the level, scope or mode of repayment of recruitment costs, so as to ensure fairness. This would include the right to appeal for workers or their representatives, employers, supply chain actors and investors on the implementation of the Standards and their completeness. The Register could act as a 'home' for this appeal process.

It is important to note that this model must not do anything to prevent those who exploit workers in the recruitment process from being held accountable in regulatory, criminal, or civil proceedings. Compliance with the Standards does not preclude any criminal, regulatory or civil liability, neither does repayment necessarily equate to full and adequate remediation for situations of forced labour, as discussed above.

e. Agreement of responsibility for repayment

Most consultees would like to see clear guidance on “Who Pays?” part or all the recruitment cost remediation. Impactt’s experience is that in 99% of the successful real-life cases in which we have been involved, the employer has funded repayments both to directly employed (and in some cases previously employed) workers and to those working on-site through agencies. In many cases buyers, working individually or as a group, have been supportive, funding the costs of investigation, development of repayment plans and verification of repayment. Buyers have also provided ongoing cashflow support through continuing orders, except where this has been outlawed by import bans.

Impactt recommends, for reasons of pragmatism and proximate cause, that the Standards and Registry take this approach – stating that the employer should fund repayments with associated support from customers. However, there is room for further discussion on this point, where the employer is facing financial difficulties. There is further the opportunity to work with lenders to broker specific recruitment fee repayment loans, which could enable speedy repayment and minimize cashflow impact. Currently, many banks refuse loans for this purpose. A broad-based initiative, such as this, could negotiate with financial institutions to access favourable terms.

The cost of repayment of recruitment costs and the increased cost of future recruitment is usually passed on to customers through price increases. However, where competitors have not had to repay recruitment costs (due to buyers not having a repayment policy, audits not picking up the payment of fees or suppliers deciding not to make repayment), employers/suppliers striving to do the right thing are disadvantaged. This type of initiative should therefore focus on developing a level playing field to incentivise better behaviour and thorough and adequate remediation of recruitment costs.

f. Investment in sustainable recruitment supply chains

Consultees noted that company actions to develop sustainable recruitment supply chains are critical. While work to strengthen company recruitment systems must be carried out by each company individually, albeit with support from industry, country or network – the Registry could provide information to companies regarding where they can get support to do this work as well as providing or signposting best practice or practical model materials to make ethical recruitment possible.

Impactt envisages structures and processes relating to these 6 factors are developed to kick-start large-scale and fair universal repayment and to stimulate both demand for and supply of more ethical recruitment of foreign migrant workers in the future. Impactt does not envisage the need for permanent structures and processes, rather, we envisage that these structures and processes could remain active for around 5 years, the time it would take for a concerted effort on repayment across sectors and geographies in order to provide remedy to workers and reset or develop an ethical recruitment market.

These structures and processes could be stood up as part of an existing initiative, or independently. What is important is their role in creating an enabling environment for efforts to improve recruitment practices now and in the future. We would see this initiative working in partnership with actors such as IOM, ILO IRIS, RBA and other organisations and networks in their work developing reasonable contracts inclusive of fair costs of recruitment, devising mechanisms to hold recruitment actors responsible (for example requiring bonds from agencies and/or instigating criminal or civil proceedings), and carrying out activities to raise the awareness of workers and upskill through capacity building and mentoring ethical recruitment potential for recruitment agencies and employers.

To deliver change at scale, this model requires the engagement of the following actors:

Stakeholder type	Who?	What's their role?	
Standard owner	Standard owner: either an existing body or a new body	Owens the standard.	
Standard endorsers / supporters	International bodies, including employer, industry, and worker organisations	Support and require adherence to the standard and use of the Registry.	
	Multi-Stakeholder Initiatives/		
	Forced labour related enforcement authorities	Use the Registry as part of enforcement criteria and regimes as evidence for trade enforcement action/sanctions.	
Standards regulators	Recruitment Fees Repayment Registry	Acts as the implementing body of the standards via a "Public Register of Repayment". This enables transparency and allows civil society and commercial actors to monitor the amounts involved in unethical recruitment and reasonable amounts to be repaid. Ideally the Register should have a tripartite (trade union, Employer and Government) system of governance.	
	Assessors	Independent and reliable bodies deliver assessments and verifications competently to the required standard.	
	Schemes/Database owners	Provide tools and reporting frameworks.	
Standards implementors	Investors	Require and support	Compliance with standards
	Buyers		
	Employers	Demonstrate	
	Lenders	Provide cashflow support loans to enable	
Standards enablers	Governments	Forced labour related enforcement authorities: accept adherence to the Standard and use of the Registry as part of enforcement criteria and regimes as evidence trade enforcement action/sanctions	

	Recruitment agencies	Interact with employers to participate in the development of a sustainable financial model for ethical recruitment going forward, for example by committing to zero-fee policies, and taking responsibility for any future ongoing fee-charging within their own supply chain.
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Readers are asked to consider the following questions:

1. **What is the appetite amongst stakeholders to get repayment working at scale across migrant worker labour intensive sectors and destination countries, using these Standards as a basis?**
2. **What needs to be done and what part does each actor need to play to drive towards the highest standards of best practice in the real world?**
3. **Are these 6 elements either necessary or sufficient to:**
 - a. **drive a race to the top in terms of fairness and adequacy of repayments?**
 - b. **drive adoption of repayment in a way which provides a level playing field?**
4. **What is missing?**
5. **What is your organisation willing to do?**

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