

Guidance for Remediation and Prevention of Migrant Worker Recruitment Fees and Related Costs in Public Procurement

Purpose

Migrant workers in public procurement supply chains may face risk of debt bondage and forced labour. These risks are pronounced in migration corridors to labour-intensive and low-wage industries, including the electronics industry in South East Asia, especially when migrant workers must pay recruitment fees and related costs for employment.

Electronics Watch has therefore developed the following guidance for public buyers to help them:

- Detect migrant worker debt bondage and forced labour risks in their supply chains.
- Ensure appropriate remediation and prevention when migrant workers face risk of debt bondage caused by recruitment fees and related costs.

Why Recruitment Fees Matter

According to the International Labour Organization there were 164 million migrant workers in search of decent employment and better livelihoods in 2018, a figure that had increased by nine percent since 2013.¹ An estimated six million migrants are in forced labour situations or trafficked.²

Recruitment-related abuses, in particular the collection of recruitment fees and related costs from workers, increase the risk to workers of experiencing debt bondage and forced labour. Workers who must borrow to get a job may struggle to pay off high interest loans and become trapped in low-wage, abusive conditions, without the freedom to return home to their families, obtain alternative employment, or speak up against poor treatment.

According to the ILO, debt bondage is a key indicator of forced labour and half of forced labour victims globally are in debt bondage.³ Debt bondage often goes hand in hand with

¹ International Labour Organization, "ILO Global Estimates on International Migrant Workers," 2018, accessible at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_652106/lang--en/index.htm.

² International Labour Organization, "Fair recruitment," accessible at <https://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>.

³ International Labour Organization and Walk Free Foundation, Global Estimates of Modern Slavery, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf

other indicators of forced labour, such as the retention by a recruitment agent or the employer of identity documents and excessive overtime to pay off debts.⁴

Recognising the risks to workers, the ILO Governing Body approved definitions of recruitment fees and related costs in March 2019. According to the ILO, “the definitions represent a critical step forward in providing clarity on the nature and characteristics of recruitment fees and related costs, and are intended to support the development, monitoring, implementation and enforcement of laws, policies and measures aimed at the protection of workers’ rights, recognizing the principle that workers must not be required to pay for access to employment.”⁵

This definition is the first step to operationalizing the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or costs for their recruitment, as stated in the ILO’s “General Principles and Operational Guidelines for Fair Recruitment.”⁶ This principle applies to recruitment of all workers, directly by employers or through intermediaries, within or across national borders, to the place of work or to temporary work agencies.⁷

The ILO definition of recruitment fees and related costs that workers should not pay is the starting point for this Guidance.

Recommendations for Public Buyers

Electronics Watch recommends that public buyers:

1. Identify contracts where the subject-matter is linked to migrant worker risk of debt bondage and forced labour, as is the case for many electronics products.
2. Reference the ILO Definition of Recruitment Fees and Related Costs (2019) in contract terms and conditions as a basis for engaging suppliers to ensure workers and jobseekers do not pay for access to employment.

⁴ ILO Indicators of Forced Labour, available at https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm.

⁵ International Labour Organization, “The ILO Governing Body approves the publication and dissemination of the Definition of Recruitment Fees and Related Costs,” 28 March 2019, available at https://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_682734/lang--en/index.htm.

⁶ International Labour Organization, General Principles and Operational Guidelines for Fair Recruitment, 2016, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_536755.pdf.

⁷ Ibid.

3. Adopt this Guidance as a tool to monitor, prevent, mitigate and, where appropriate, remedy recruitment fees and related costs in your supply chains.
4. Inform your contractors that you use the ILO Definition of Recruitment Fees and Related Costs and have adopted this Guidance in order to ensure workers and jobseekers do not pay for access to employment.
5. Follow Rules 1-3 of this Guidance to ensure appropriate remediation for workers in your supply chains in case they have paid recruitment fees and related costs.
6. Follow Rule 4 of this Guidance to work proactively with contractors to prevent and mitigate risk of workers in your supply chains paying recruitment fees and related costs.

Public buyers should generally ensure that they link these rules to the subject-matter of the contract, i.e., to the goods or components of goods that are procured through the contract. Under EU rules, public buyers cannot require contractors or suppliers to remediate or prevent recruitment fees and related costs in all their supplier factories or adopt general policies to prevent debt bondage and forced labour; instead such requirements must target factories and workers that manufacture or assemble the goods or components of goods that form the subject-matter of the contract. In case it does not seem possible to link a rule listed below to the subject-matter of the contract, public buyers may want to seek legal advice before implementing the rule.

In general, this Guidance offers flexibility for implementation. It is not intended as comprehensive and exhaustive rules for remediating, mitigating or preventing recruitment fees and related costs.

Definitions

Employer: The commercial entity, whether an employment agency or a manufacturer, that holds contracts of employment with workers, whether those contracts are express or implied, and (if it is express) whether oral or in writing.

Kickback fees: The process whereby destination country employers or their assigned recruitment agents charge origin country recruitment agents for recruitment-related costs and whereby these costs, whether legitimate or illegitimate (e.g., bribes and illicit payments to government officials), are passed onto workers in the form of recruitment fees.

Migrant worker: A migrant worker is “a person who migrates or has migrated to a country of which he or she is not a national with a view to being employed otherwise than on his or her own account.”⁸

Recruitment fees and related costs. This term refers to the ILO Definition of Recruitment Fees and Related Costs (2019). In broad terms these fees and costs refer to “any or all fees, charges, expenses or financial obligations incurred in the recruitment process in order for workers to secure employment, regardless of the manner, timing or location of their imposition or collection, and whether they are deducted from wages, paid back in wages or benefit concessions, remitted in connection with recruitment, or collected by an employer or a third party, including but not limited to agents, labour recruiters, staffing firms, subsidiaries/affiliates of the employer and any agent or employee of such entities.”⁹

Zero cost recruitment: A recruitment process in which workers do not pay and do not incur any debt in order to secure employment.

Five Rules to Remedy and Prevent Migrant Worker Recruitment Fees and Related Costs

1. Immediate Repayment of Recruitment Fees and Related Costs
2. Employer Burden of Proof
3. Independent Monitoring and Verification
4. Zero Cost Recruitment
5. Equitable Burden

1. Immediate Repayment of Recruitment Fees and Related Costs

1.1 Employers should ensure that workers who have paid recruitment fees and related costs are reimbursed fully immediately upon their arrival to their workplace or within a reasonable period of time agreed by the employer and the workers. The amount of repayment should be based on an independent and transparent investigation that documents migrant workers’ recruitment fees and related costs incurred in both the origin country and receiver country, including any kickback fees. The repayment should

⁸ ILO, “Findings from the global comparative study on the definition of recruitment fees and related costs: Background paper for discussion at the Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs,” *ibid.*

⁹ The definition is available in “Appendix: Proposed definition of recruitment fees and related costs,” in “Findings from the global comparative study on the definition of recruitment fees and related costs: Background paper for discussion at the Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs,” Geneva, 14–16 November 2018, accessible at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_646693.pdf.

equal at least the average expenses incurred by migrant workers of a specific country of origin and year of migration at a particular work site. The precise amount should, if possible, be determined through negotiation between workers or a worker representative organisation and the employer.

- 1.2 Migrant workers who have paid recruitment fees or related costs within the past ten years should be reimbursed based on the investigation of current costs if the calculation of costs for their year of migration is no longer possible.
- 1.3 Migrant workers who have already been partially reimbursed recruitment fees and related costs should be compensated the difference between the amount already reimbursed and the reimbursement amount for newly arrived migrant workers.
- 1.4 Employers, as well as manufacturers that use agencies to employ workers, should develop policies and systems for remediation of recruitment fees and related costs to ensure consistent remediation of workers over time.

2. Employer Burden of Proof

- 2.1 The employer is responsible for demonstrating that all recruitment fees and related costs have been paid.
- 2.2 No worker should be required to present receipts to receive reimbursement of recruitment-related fees and costs.
- 2.3 If an employer claims workers have been reimbursed partially or fully for recruitment fees and related costs, the employer should present proof of this reimbursement. In the case of workers transferred from other employers, employers should seek to obtain such proof from the other employers.
- 2.4 In case workers claim that they have not been fully reimbursed recruitment fees and related costs despite the employer's presentation of proof of repayment, the issue should be investigated independently and transparently and, when possible, negotiated between workers or a workers' organisation and the employer.

3. Independent Monitoring and Verification

- 3.1 Employers should invite independent monitoring organisations to monitor the calculation of recruitment fees and related costs to be reimbursed to workers as well as the reimbursement process itself. The monitor's role is to interview workers confidentially in an off-site setting that minimises risk of reprisals against workers, examine material evidence of calculations and reimbursements, and report irregularities

to the employer, workers' organisations, and buyers. When possible, independent monitors should collaborate with local civil society organisations located near migrant workers' communities who have long-term and trust-based relations with migrant workers. Independent monitors should ensure workers have access to effective grievance mechanisms.

3.2 The employer should clearly and unequivocally communicate to all workers that they should report their full recruitment fees and related costs to any auditor or third party that may inquire and assure all workers that they will not risk their jobs by doing so. An independent monitor should determine whether or not the employer has communicated this message effectively to workers.

3.3 In case verification of repayment of recruitment fees and related costs by an independent monitor is not possible, the employer should provide a written report, reviewed and signed by a senior level manager, explaining the repayment amount and process in detail.

4. Ethical and Zero Cost Recruitment

To ensure ethical and zero cost recruitment employers should:

4.1 Commit publicly to a company policy of ethical and zero cost recruitment. The policy should state that the employer is responsible for the cost of workers' total recruitment fees and related costs whether incurred in the origin country or the receiving country, and will pay these costs to recruitment agents, as appropriate, after a worker has accepted a job offer. The policy should state clearly that recruitment agents may not charge workers any recruitment fees or related costs.

4.2 Enter into contractually enforceable agreements with all recruitment agents utilised in recruitment processes in both destination and origin countries stating that the employer is responsible for all recruitment fees and related costs and specifying the amount that the recruitment agents will charge the employer for recruitment of workers and related expenses. This amount may include a reasonable and sustainable profit margin for the agents based on a thorough review of actual recruitment fees and related costs. The employer should undertake this review in consultation with migration experts, government officials, an independent monitor, civil society or worker organization, or others with relevant expertise.

4.3 Price the cost of zero cost recruitment into quotations for and contracts with buyers and provide buyers evidence of payment of all recruitment fees and related costs. These costs should be separated from other costs in quotations and contracts to create

transparency on costing and an agreement that buyers can audit and enforce contractually.

- 4.4 Ensure that migrant workers are aware of the full terms and conditions of their employment in a destination country at the time of recruitment and prior to contract signing and departure. The contract and any communication that advertises jobs to workers prior to contract signing should state explicitly, in a language workers understand, that the employer pays all recruitment fees and related costs in advance and reimburses any minimal costs on arrival.
- 4.5 Manage recruitment-related activities in the destination country without the use of destination country agencies, paying and working directly with origin country recruitment agencies. A direct relation to origin country recruitment agencies ensures greater transparency in the recruitment processes and ensures that they receive all payments assigned to them, thus reducing the risk of origin country recruitment agencies passing on recruitment fees and related costs they may have incurred to migrant workers. Where an employer must use destination country recruitment agencies for legal or other operational reasons, the employer should monitor the practices of these agencies and require transparency of their recruitment supply chain to prevent misconduct.
- 4.6 Cease using the services of recruitment agencies that have consistently charged migrant workers unlawful and excessive recruitment-related costs in favour of recruitment agencies that demonstrate, or are publicly committed to, practices that ensure genuine ethical and zero-cost recruitment. Incentivize agencies that demonstrate good practice, for example through long-term contracts and improved payment terms.
- 4.7 Launch internal investigations into potential misconduct by any staff or agents involved in abusive recruitment-related practices as warranted. Officials proven to have been involved in misconduct should be appropriately sanctioned.

5. Equitable Burden

- 5.1 The burden of zero cost recruitment should be shared fairly and equitably between buyers, employers, and recruitment agencies through standard contractual accountability mechanisms.
- 5.2 Recruitment agencies should not have to invest capital to recruit migrant workers at zero cost and then have to wait extensive periods of time for payment for their services.

Annex: Normative Context

- **The Global Compact for Safe, Orderly and Regular Migration (GCM) was prepared under the auspices of the United Nations (December 2018).** The GCM includes a commitment to “Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work” by “prohibit(ing) recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour...”
- **Employer Pays Principle (2016).** The Employer Pays Principle states that: “No worker should pay for a job - the costs of recruitment should be borne not by the worker but by the employer.” This principle has been endorsed by the Leadership Group for Responsible Recruitment. Likewise, the Responsible Labor Initiative, under the Responsible Business Alliance, is committed to ensuring that “No employer or agency recruitment fees should be paid by workers” and that “Recruitment fees already paid by workers should be reimbursed.”
- **The 2030 Agenda for Sustainable Development (2015).** Sustainable Development Goal (SDG) 10 on reducing inequality contains Target 10.7 to “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.” Indicator 10.7.1 states that effective implementation of this goal by States be measured by “Recruitment cost borne by employee as a proportion of yearly income earned in country of destination.”
- **ILO Private Employment Agencies Convention No. 181 (1997).** Article 7 states: “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.”
- **ILO Migration for Employment Convention No. 97 (1949).** Article 4 states: “...public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free” and “administrative costs of recruitment, introduction and placing shall not be borne by the migrants.”
- **ILO Forced Labour Convention No. 29 (1930).** The Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) states: “Members should take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as eliminating the charging of recruitment fees to workers.”