



Justice for Migrant Workers: Creating an Effective Solution to Address Wage Theft

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This brief has been developed with the aim of providing an overview of the problem of wage theft and highlight the urgent need to address it, putting an end to its perpetration and stopping condoning the impunity of those who exercise it. Among others, the document raises the attention to the need of creating an international justice mechanism that enables the rapid processing of migrant workers' wage theft claims and ensures they are returned the money they are owed as soon as possible.

Whilst the problem of wage theft is a long-standing global issue, this document has been developed bearing in mind the experiences of low-wage¹ migrant workers, documented and undocumented, and the need to address the cases of wage theft for returned migrant workers in particular: on the one hand returned migrant workers have suffered both the loss of employment and the non-payment of their salaries and dues; on the other, they are especially exposed to the projected economic instability and low prospects or re-employment resulting from the ongoing pandemic.

This brief opens with a definition of wage theft, followed by its contextualisation in relation to the human rights framework and key international conventions and an overview of the link between wage theft and global development. In the subsequent pages the discussion is centred on the recent exacerbation of the problem due to the COVID-19 pandemic and the importance of ensuring justice for migrant workers. Before discussing actions needed, and presenting a set of recommendations, the relation between wage theft, remittances as well as the impact of the shrinking of the global economy on migrant workers is touched upon.

This brief is based on the thought-provoking panel discussion [Transitional Justice: Towards “Building Back Better”](#), and the insights of the panellists as well as the contributions of the attendees. It also draws from the [ongoing campaign calling for the creation of an international justice mechanism to address wage theft of repatriated migrant workers](#).

¹ In this paper, the term *low-wage* is preferred to *low-skilled*, an important distinction as the two are not synonymous. Low-wage occupations, which include jobs in the agriculture, health, hospitality and construction sectors may in fact require a high degree of skills to handle complex situations and specialist tasks. Besides, the use of the term low-skilled may confer a negative connotation to the abilities of migrant workers, despite the fact that many of the so defined low-skilled jobs have increasingly been recognised as key roles for the functioning of society, especially in the wake of the COVID-19 pandemic.

What is Wage Theft – a Definition

Wage theft consists of the total or partial non-payment of a worker's remuneration, earned through the provision of labour services, as stipulated in a written or non-written employment contract. It also includes the payment of salaries below the minimum wage, non-payment of overtime, non-payment of contractually owed benefits, the non-negotiated reduction of salaries as well as the retention of dues upon one's contract termination.

A Rights-Perspective and an Overview of International Standards

Wage theft undermines a fundamental right to just and favourable remuneration, to which all workers are inherently entitled: article 23(3) of the Universal Declaration of Human Rights (UDHR) affirms that “[e]veryone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity.”² Being employed and forced to work without receiving the agreed salary effectively constitutes slavery, which is prohibited by the UDHR under article 4.³ Article 11 of the United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, also affirms that no migrant worker (or member of their families) should be put in slavery or in a condition of servitude nor forced to perform compulsory labour services.⁴

The International Labour Organisation, the main setter of minimum labour standards at international level and whose founding mission is to achieve and protect social justice in the world, suggests the unlawful demand of labour activities under force or coercion is an offence to be punished adequately under criminal law and victims thereof to be ensured appropriate and effective remedies.⁵ In its ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up,⁶ the organisation also recognises shared responsibility of all its member states to eradicate all forms of forced or compulsory labour. In article 12 of Convention no. 95 on the Protection of Wages, the International Labour Organisation also states that workers' “wages shall be paid regularly [and] [u]pon termination of a contract of employment a final settlement of all wages due shall be effected”.⁷ It also declares that deductions from workers' salaries are permitted only under few specific circumstances, disciplined by laws or agreements.

These are the premises on which is grounded the call for the eradication of wage theft and the creation of an effective international justice mechanism that is mandated to ensure access to justice and effective remedies for migrant workers.

² UN General Assembly, [Universal Declaration of Human Rights](#), 10 December 1948, Res. 217A

³ Ibid.

⁴ UN General Assembly, [International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families](#), 18 December 1990, A/RES/45/158

⁵ International Labour Organization, [Forced Labour Convention](#), 28 June 1930, C29; and International Labour Organisation, [Protocol of 2014 to the Forced Labour Convention](#), 1930, 11 June 2014, P029

⁶ International Labour Organization, [ILO Declaration on Fundamental Principles and Rights at Work](#), 18 June 1988

⁷ International Labour Organization, [Convention concerning the Protection of Wages](#), 1 July 1949, C095

Wage Theft and its Consequences on Global Development⁸

Low-wage migrant workers are particularly vulnerable to abuse and exploitation; they have little bargaining power or ability to address injustices.⁹ Wage theft has been a common grievance among migrant workers across all sectors for many years, but little action has ever been taken to respond to their plight, resulting in a normalisation of the issue over time: whilst great attention is given to extreme forms of rights violations, the large-scale failure to guarantee basic rights in the workplace has until now remained overlooked both at international and national levels. The implications that wage theft has on the life of individuals can, nonetheless, lead to dire consequences. Migrant workers, particularly those in low-wage jobs who have limited education, skills and resources, often migrate out of necessity for survival. Their migration journey happens not out of passion but rather out of need and hope, to earn enough to be able to provide food and access to basic services for their families back home and increase the opportunities for their children to have a better future. Low-wage migrant workers often invest significantly in their migration journey as well, putting at stake the little they own or incurring debt to finance their migration opportunity.¹⁰

Detracting money from migrant workers through wage theft thus does not only adversely impact an individual's ability to earn enough for survival and repay their migration debt; rather, it deprives their households and communities of origin of needed support to exit poverty and improve their living conditions. The denial of low-wage migrant workers' enjoyment of a fair, timely and rightfully owned remuneration and their frequent inability to report and claim justice for cases of wage thefts, undermines not only the upholding of individual's human rights and the respect of minimum labour standards set forth in international conventions, but also compromises global efforts towards the achievement of greater development. In this respect, Goal 16 of the 2030 Sustainable Development Goals Agenda is of crucial importance. Target 16.3 of this goal specifically aims at advancing the rule of law¹¹ at the national and international levels and providing equal access to justice for all. In other words, there is a strong link between wage theft, the enjoyment of justice and global development. In the case of migrant workers in low-paid jobs, the inability to denounce wage theft and receive an effective remedy to the violations experienced translates to the inability to invest their earned resources in the communities of origin and contribute to household and local improvement.

⁸ A right to development is recognised by the UN [Declaration on the Right to Development](#), Res.41/128, 04 December 1986

⁹ International Labour Organisation, [Labour Protection in a transforming world of work](#), Report VI, 2015

¹⁰ Migration costs can be exorbitantly high for migrant workers, resulting in debt bondage, forcing migrant workers to accept exploitative employment arrangements or compelling them to conditions of forced labour. The cost of migration is being addressed by the 2030 Sustainable Development Goals Agenda, [under indicator 10.7.1](#) and touched upon in the Global Compact for Migration as well. For further information, see for example: World Bank, Yi et al., [Labor migration costs – Too high for low-skilled workers](#), World Bank Blogs, 18 December 2015

¹¹ World Justice Project, [Rule of Law Index 2020](#), 2020

Wage theft and COVID-19

Besides a worsening of many migrant workers' living and working conditions,¹² the current COVID-19 pandemic resulted in a further exacerbation of cases of wage theft: there has been an intensification in the cases of wage theft experienced by migrant workers in low-paid jobs, with many employers taking advantage of the ongoing situation of emergency to further curtail migrant workers' entitlements and elude their obligation to compensate salaries and contract termination dues. Over the past months, migrant workers have been exposed to increased physical and mental abuses, the unilateral re-negotiation of salaries and to the sudden loss of employment, without the ability to rely on access to any forms of social security.¹³ They have been denied back-payments of the salaries owed to them and of any employment termination benefit. Low-wage migrant workers have thus been facing increased poverty and debt, stranded in countries of destination or returned empty-handed to their community of origin, where they may then face stigmatisation and discrimination.¹⁴

An article by Thomson Reuters Foundation,¹⁵ published last September, highlights the cases of many South Asian migrant workers who lost their job in the wake of the COVID-19 pandemic and did not receive the payment of their wages as well as of contract termination benefits from their employers. The article reports an increase by over three times in cases of wage theft between April and July, when compared with the same timeframe last year. An even more recent article,¹⁶ authored by migration journalist M.O.U. Bhuyan, tells the reality of over 17,000 Bangladeshi women migrant workers who, in the past six months, have returned home from their countries of employment due to the spread of COVID-19, in many cases forcibly and empty-handed. Accounts, collected through interviews as well as official data from authorities and institutions, depict realities of inhumanely long working hours (over 20 hours a day), increased workload, physical and mental abuses suffered at the hands of their employers and/or their families, and non-payment of their salaries, let alone of their overtime and dues upon contract termination.

Claiming Justice

Whilst at employment destination, low-wage migrant workers do not always have the ability to denounce cases of wage theft. This is, among other reasons, due to fear for their status, especially when employment is in the informal economy; to the power exercised by the employers, often withholding migrant workers' passports since their arrival; to fear for the loss of their employment and the related ability to support families back home; to violent retaliation by employers themselves, when unpaid salaries are claimed; to the fear of incurring additional debt, for instance if charged overstay fines; to

¹² Many migrant workers found themselves stranded in urban economic centres, living in small, crowded spaces that prevented them to be able to protect themselves appropriately from the risk of infection, with no or limited access to health care and basic services. Many have been dismissed, deprived of their accommodation and money for food, or forced to keep working in unsafe conditions.

¹³ World Bank, [Covid-19 Crisis Through A Migration Lens](#), Migration and Development Brief 32, April 2020; International Organisation for Migration, [Analytical Snapshot n#50](#), 26 June 2020

¹⁴ See for example: Kumar, C., and Mohanty, D., [Migrant workers battle stigma, bias back home](#), The Hindustan Times, 11 May 2020; and World Health Organisation, [Joint Press Statement: Stop Stigma and Discrimination, Spread Love](#), 23 June 2020

¹⁵ Anuradha, N. et al., [South Asian migrant workers seek justice as wage theft worsens under coronavirus](#), Thomson Reuters Foundation, 09 September 2020

¹⁶ Bhuyan, M.O.U., [Overworked, unpaid and abused, Bangladeshi women return from Middle East](#), Prothomalo, 08 October 2020

the lack of any forms of protection in the country of destination; and to the lack of knowledge of the local language and their rights. Lacking access to free or affordable legal aid, when migrant workers denounce cases of wage theft, they rarely reach court. When cases are brought to the attention of authorities, in many cases embassies, official responses tend to be excessively slow¹⁷ and procedures inappropriate, with a likely outcome of the case being ultimately dropped when the employer has no intention to remedy the violation.¹⁸ If other complaint mechanisms exist in the country of destination, they are often inadequate and ineffective.

An imbalance in the power relation between employer and employee as well as between country of origin and country of destination, flawed national legislations leaving serious gaps in the protection of migrant workers' rights, and overall faulty justice systems result in migrant workers paying the price for a world devised to leave the poor and most vulnerable exposed to and unprotected from abuses and violations. The continuous lack of adequate mechanisms that allow low-wage migrant workers to speedily and effectively pursue their claims, in countries of destination and even once back home, thus evidences a dangerous risk of a continued exploitative pattern among employers as well as of significant justice violations that remain unaddressed. The existence and adoption of international agreements and of international standards is not enough to effectively address and eradicate the issue of wage theft.

How Wage Theft Undermines the Positive Impact of Remittances

When working abroad migrant workers from low- and middle-income countries send money back home. That money, remittances, is used by the household to improve their living conditions and their access to basic services: remittances are a powerful resource in poverty alleviation and facilitate development.

In 2019, the total amount of remittances surpassed for the first time the total amount of Foreign Debt Investments¹⁹ to low- and middle-income countries, a significant threshold that shows the importance that the money earned by migrant workers holds in their country of origin. The World Bank has predicted that, because of the COVID-19 pandemic, the flow of remittances will decrease by an average of 20 percent in 2020, with certain individual countries likely to experience an even greater share in the decrease of remittances in-flow.²⁰ This significant downsizing of money flows is likely to result not only from an increase in the unemployment rates of migrant workers, but also from a unilateral renegotiation of migrant workers' salaries and lack of payments. In other words, a substantial share of the decline in remittances projected for this year could be attributed to wage theft.

The reduction in the flow of remittances is projected to have extremely negative consequences for millions of individuals: families are now back at risk of poverty and food insecurity, with a real risk of undoing the progress achieved so far and serious humanitarian consequences. Wage theft is thus not only stealing money. It is, among others, stealing people's ability to escape poverty and access to basic

¹⁷ Justice delayed is justice denied. Importantly, embassies cannot replace rule of law.

¹⁸ See [Panel Discussion: Transitional Justice: Towards "Building Back Better"](#), YouTube, streamed on 21 July 2020

¹⁹ Remittance flows surpassed Official Development Assistance money in the late 1990s. See Figure: KNOMAD, [Remittances and other external inflows](#), n.d.

²⁰ World Bank, [World Bank Predicts Sharpest Decline of Remittances in Recent History](#), Press Release (no. 2020/175/SPJ), April 22, 2020;

services, among which healthcare and education; it is stealing people's rights to life and to dignity as well as to justice. It is also depriving children from life opportunities, condemning future generations to pay for the mistakes of those who came before them.

An Additional Dimension to the Urgency of Addressing Wage Theft

A worrisome economic outlook on employment prospects for the next months, makes the importance of stopping wage theft and returning to migrant workers their own money now more pressing than ever. The International Labour Organisation suggests that “[t]he estimated total working-hour losses in the second quarter of 2020 (relative to the fourth quarter of 2019) are now 17.3 per cent, or 495 million full-time equivalent (FTE) jobs [...]. Lower-middle-income countries are the hardest hit, having experienced an estimated decline in working hours of 23.3 per cent (240 million FTE jobs) in the second quarter of the year.”²¹ The World Bank²² estimates that, as a result of the COVID-19 pandemic, there will be a rise in the percentage of global population falling into extreme poverty, the majority of which living in South Asia. An article authored by Furceri et al.²³ warns against the peril of increased inequalities resulting from this ongoing COVID-19 pandemic, of which low-wage migrant workers have already borne a disproportionate share of the economic consequences.²⁴ The article suggests that on the one hand, health protection measures enacted by governments across the globe are likely to benefit the rich more than the poor, unless an adequate policy response is put in place to mitigate the effects; on the other hand, employment prospects are likely to reduce for vulnerable groups, such as low-wage migrant workers.

The likely inability of many returned low-wage migrant workers to find new employment in the coming months adds a key dimension to the urgency of addressing cases of wage theft: the uncertainty brought by the COVID-19 pandemic makes the money earned by them even more necessary than before. To face the consequences of job losses, reduced working hours and the prospect of continued unemployment, in addition to pre-existing insecurity and debt, coupled with inadequate social support in countries of origin and destination,²⁵ migrant workers must have their salaries and dues swiftly and effectively returned as soon as possible.

²¹ International Labour Organisation, [ILO Monitor: COVID-19 and the world of work. Sixth edition Updated estimates and analysis](#), 23 September 2020

²² Lackner, C. et al., [Updated estimates of the impact of COVID-19 on global poverty: The effect of new data](#), World Bank Blogs, 07 October 2020

²³ Furceri, D., et al., [COVID-19 will raise inequality if past pandemics are a guide](#), Vox EU & CEPR, 08 May 2020

²⁴ See for example: Subramaniam, G., [The Compounding Impacts of COVID-19 on Migrant Workers Across Asia](#) (Pt 1), Institute for Human Rights and Business, 22 July 2020

²⁵ Strauss, D., [Tens of millions of migrant workers face job losses and poverty](#), Financial Times, 24 June 2020

The Way Forward

Witnessing the intolerable exacerbation of the plight suffered by many low-wage migrant workers and the long-lasting breach of fundamental rights at their expenses, a coalition of civil society organisations and trade unions is now calling for the creation of a justice mechanism to address wage theft, especially that suffered by repatriated migrant workers.²⁶ Action is called upon from all fronts: the international community, the private sector, and national governments. It is not possible to effectively build back better on foundations of flawed justice; change is needed in favour of greater access to justice and the respect of migrant workers' rights. The current crisis is thus an opportunity to make change possible and amend the flaws of migration and labour management as well as of the functioning of justice systems across the world. It is an opportunity to create more balanced relationships of power among employers and employees, countries of origin and destination and amend national legislations to better respond to the needs of the poor and vulnerable, giving a real opportunity to migrant workers to access justice and enjoy the right to an effective remedy.

The international community has a responsibility to address the issue of wage theft and create effective solutions to ensure not only the upholding of human rights and of international principles and standards declared in the many conventions advocating for equality and justice; it has a duty to effectively manage migration and protect individuals that are affected by it, with adequate resources. Governments have also a crucial role to play. Among others, in facilitating the efforts of the international community as a whole in advancing its agenda in this respect but also in drafting more inclusive, ethical and fair legislation, strengthening the rule of law and promoting more effective justice systems. Governments should reinforce their ties in advocating for migrant workers' rights, joining together to further the conditions of millions of individuals that still today are prevented from an effective access to the judicial system. Governments have also a key role to play in ensuring that businesses act fairly, in respect of ethical and moral values as well as fundamental human rights principles. This means both employers and recruitment agencies need to be monitored and checked in the manner they operate to prevent them from taking advantage of migrant workers' needs, precariousness and vulnerability. They need to be made accountable and punished for their violations as well. Businesses themselves can adopt more rigorous internal processes, to ensure ethical and rights-compliant recruitment procedures and employment conditions,²⁷ including making migrant workers aware of their entitlements. Lastly, the role played by civil society organisations and individuals is also important. We all have a responsibility in keeping governments and institutions accountable to their actions, in supporting fair and transparent employers instead of abusive ones, supporting and engaging in efforts to advance the cause of migrant workers and calling for the immediate addressing of the problem of wage theft.

²⁶ [Call for an urgent justice mechanism for repatriated migrant workers](#)

²⁷ The [UN Guiding Principles on Business and Human Rights](#) stress the responsibility of businesses to protect human rights in the workplace and represent a guideline for a human-rights-compliant business conduct.

Recommendations

Based on the considerations outlined above, and looking at practical solutions to address wage theft and violations against migrant workers, the following recommendations can be drawn, highlighting a need for:

- The **creation of an international justice mechanism (Claims Commission)**, sitting within the existing international framework and supported in its work by the International Labour Organisation and the International Organisation for Migration, in particular. The mechanism will be dedicated to the expedited processing of wage theft claims and their compensation to migrant workers, prioritising cases of wage theft suffered by repatriated low-wage migrant workers. In executing its mandate, the mechanism will guarantee both documented and undocumented migrant workers effective access to justice and an effective remedy. Migrant workers should be able to access the mechanism independently or by assigning power of attorney to chosen authorities, institutions, organisations or individuals.
- The **establishment of a wage theft justice fund (Compensation Fund)**, drawing resources from businesses, philanthropic foundations, private individuals and investors as well as national governments to support the work of the justice mechanism. The fund, operating as executive branch of the justice mechanism, will provide the resources necessary to compensate swiftly migrant workers who have experienced wage theft and will then recover amounts from the employers at fault, as appropriate. The creation of a dedicated compensation fund will protect migrant workers against the risk of not being repaid when, for instance, employers go bankrupt or do not have the necessary means to compensate salaries and dues.
- The **establishment of a global solidarity fund**, to support migrant workers who have suffered wage theft but whose losses, for specific reasons, are not covered by the justice fund.
- The **collection of disaggregated data and evidence** to be made publicly available on cases of wage theft. The information collected will represent an invaluable resource to governments, institutions as well as civil society organisations to give a precise dimension to a widespread problem, monitor its evolution, and develop adequate response measures.
- The **strengthening of national migration and labour legislations** in both countries of origin²⁸ and destination, making employers accountable for wage theft and the violations exercised against both documented and undocumented migrant workers. Provisions should promote inclusive and simple access to complaint mechanisms for migrant workers; a swifter and simplified processing of migrant workers' claims; the prosecution and conviction of employers and operators in recruitment agencies who breach fair and ethical recruitment and employment provisions; the request of a deposit worth six months of salary²⁹ to be paid by employers upon the application for migrant workers' entry visas; as well as the facilitation of migrant workers' ability to open bank accounts and transferring money whilst in the country of destination. Labour legislation provisions should also include minimum wage protection and comply with international labour standards, as outlined in international conventions.

²⁸ It is important to remember that wage theft is experienced both by national and international migrants.

²⁹ The deposit will be equivalent to six months of salary at the agreed rate upon employment.

- The definition of **additional protective measures for women migrant workers**, who are exposed to gender-related risks, including gender-based violence and being overburdened by additional care work.³⁰
- The **improvement of justice mechanisms** at national level, across the world, and the creation of **ad-hoc labour courts** that could be developed with the support of relevant international organisations such as the International Labour Organisation, taking stock of previous experience and consolidated knowledge.
- The forging of a **coalition among countries of origin**, to collectively advocate for the rights of migrant workers to be respected in countries of destination and reinforce the bargaining power in multilateral as well as bilateral fora.
- The **extension of social protection measures** in countries of destination to migrant workers, both documented and undocumented, facilitating their inclusion in the life of the local society and enabling them to access basic services that guarantee their well-being. Particular attention should be given to gender-specific needs and the creation of gender-specific services to assist migrant workers whilst in the country of destination.
- The provision of **financial inclusion for all migrant workers** in the country of destination, particularly involving the ability to open to bank accounts and to have access to them once they have left the country as well.
- The **maintenance of remittance flows**,³¹ as migration and the earnings of migrant workers have a significant impact in the country of origin. This implies, among others, reducing remittance transaction costs and granting migrant workers access to online banking services.
- The provision of **free or affordable legal aid** to migrant workers, accessible in both countries of origin and destination. Representatives must have power of attorney and, thus, the ability to effectively pursue migrant workers' claims, even in the instance they have left the country, guaranteeing the provision of effective remedies. Ensuring access to free or affordable legal aid can also empower migrant workers, giving them the confidence to put forwards their claims, in a safe space.
- The **recognition and protection of workers' freedom of association and representation**, which on the one hand enable unions, associations and civil society organisations to collect information to ensure the protection of migrant workers' rights, and individual migrant workers to enjoy a safe space where to share the issues they face in the county of destination; and on the other hand gives migrant workers the ability to collectively raise their voice, call for justice and achieve solutions to their grievances.
- The creation of an **international ranking system of employers** based on their history of migrants' rights violations and cases of wage theft. The ranking system will be fed by authorities, courts and civil society organisations. It will be made publicly available and will constitute a warning tool for recruitment agencies as well as migrant workers to avoid them.

³⁰ International Organisation for Migration, [The additional risks of COVID-19 for migrant women, and how to address them](#), n.d.

³¹ Knomad, [Remittances In Crisis, How To Keep Them Flowing](#), n.d.

- The **development of migrant workers' rights-compliant recruitment and employment standards** as well as overarching migration workers related ethical procedures **in recruitment agencies as well as businesses**, tackling and condemning internal malpractices and the perpetration of abuses. This, among others, includes the regular and timely issuing of documentation upon recruitment and dismissal of migrant workers as well as the keeping of employment records for a minimum number of years after termination of the employment relation. Lack of documentation counts among the reasons why migrant workers may refrain from putting forward claims of wage theft.
- The continuous **education of migrant workers**, providing information on their entitlements, rights, duties as well as services available at all stages of the migration experience. For example: in the country of origin; at the moment of stipulation of an employment contract; upon arrival in the country of destination. Migrant workers are ultimately responsible for the successful realisation of their migration project, but governments have a responsibility as well in creating the right conditions for them to be able to make the most of it.
- The creation of **employment opportunities for returned migrants** in the countries of origin as well as the creation of services to **facilitate social re-integration and psychological support** for their mental well-being, tackling instances of stigmatisation and discrimination from local communities. A fundamental aspect to ensure the protection of migrant workers' rights is, in fact, the creation of long-term viable solutions that enable them to live a life in dignity, beyond their migration experience.