

MIGRANT WORKERS' ACCESS TO JUSTICE SERIES

Migrant Workers' Access to Justice at Home: **Indonesia**



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Law

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Cover photo: After a 10-hour drive, Sugiyani Waryomiharjo arrives at a migrant training center in Jakarta on February 26, 2007, and tries to contact her mother and her husband before she has to surrender her mobile phone so she won't be "distracted" by calls from family members. ©Sim Chi Yin/VII Mentor Program

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Terminology and Glossary of Terms

Abbreviation or Acronym	English Translation	Bahasa Indonesia
ASEAN	Association of Southeast Asian Nations	
BAP	Examination Report	Berita Acara Pemeriksaan
BNP2TKI	National Body for the Placement and Protection of Indonesian Migrant Workers	Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia
BP3TKI	Agency for the Service, Placement and Protection of Indonesian Migrant Workers	Balai Pelayanan, Penempatan dan Perlindungan Tenaga Kerja Indonesia
CMW	United Nations Convention on the Rights of Migrant Workers and Members of their Families	
DPR	People's Representative Assembly	Dewan Perwakilan Rakyat
DPDR	Regional People's Representative Assembly	Dewan Perwakilan Rakyat Daerah

Abbreviation or Acronym	English Translation	Bahasa Indonesia
KPA	Insurance Membership Card	Kartu Peserta Asuransi
KTKLN	Overseas Workers Card	Kartu Tenaga Kerja Luar Negeri
KUHAP	Criminal Procedure Code	Kode Undang Undang Hukum Acara Pidana
KUHP	Criminal Code	Kode Undang Undang Hukum Pidana
MoFA	Ministry of Foreign Affairs	Kementerian Luar Negeri
MoM	Ministry of Manpower and Transmigration	Kementerian Tenaga Kerja dan Transmigrasi
PAP	Pre-Departure Briefing	Pembekalan Akhir Pemberangkatan
Perda	Regional Regulation	Peraturan Daerah
SATGAS TKI	Special Taskforce on the Handling of Cases of Migrant Workers and Citizens Abroad Threatened with the Death Sentence	Satuan Tugas Penanganan Kasus Warga Negara Indonesia/ Tenaga Kerja Indonesia di Luar Negeri yang Terancam Hukuman Mati
SOP	Standard Operating Procedure	
TKI	Indonesian Migrant Worker/ Overseas Worker	Tenaga Kerja Indonesia

Unless otherwise stated, all references in this report to statutory provisions refer to articles of Law 39/2004.

The term “recruitment agency” refers to private migrant labour recruitment companies, commonly described elsewhere as manpower agencies, placement agencies or private employment agencies, among other terms.

The term “country of origin” refers to a migrant worker’s home country (described elsewhere as “sending country,” a term regarded by some as reflecting the commodification of migrant workers). The terms “destination country” and “country of work” refer to the country in which a migrant worker is placed as a temporary migrant worker, instead of “receiving country.”

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Executive Summary

I. Overview

This report is the first comprehensive study of migrant workers' access to justice in their country of origin. Using the case study of Indonesian migrant workers who travel to work in the Middle East, it analyses the mechanisms through which those workers may access justice in Indonesia, and the systemic barriers that prevent most workers from receiving full redress for harms that they suffer before, during, and after their work abroad. It also outlines the laws, policies and procedures that govern the operation of each redress mechanism, and analyzes the legal frameworks that govern migrant workers' relationships with Indonesian private and public actors more generally. Finally, the report sets out detailed findings on migrant workers' access to justice overall, as well as findings specific to each redress mechanism. It concludes with recommendations for improving access to justice in 11 key areas, addressed to government, parliament, civil society, donors, and others.

The findings and recommendations made in this report are based on interviews and focus groups conducted in Indonesia in 2012, involving 75 returned migrant workers and their families, as well as representatives from civil society organizations, government ministries and departments, and migrant worker recruitment and insurance companies, as well as legal academics.

The report is the first in a two part series on migrant workers' access to justice in their countries of origin, with a forthcoming report on Nepal in 2014.

II. Indonesian Workers to the Middle East

Each year, more than half a million Indonesians travel abroad to work for foreign employers on two-year labor contracts. Around half go to the Middle East. They are typically women, from small cities or villages, with primary school education and limited prior work experience, and most are hired for domestic work in private households. Migrants from all countries performing low-wage work in the Middle East suffer particularly high levels of abuse and exploitation, in part due to the *kafala* system which bonds a worker to her employer in many Gulf States. Routine harms include unpaid wages, unsafe work conditions, inadequate rest, inhumane housing conditions, fundamental changes in the nature or conditions of work, the employers' confiscation of the worker's identity documents, or in some cases, confinement to the home and/or physical or sexual abuse.

When migrant workers' rights are violated, their access to redress in local courts or other institutions in the Middle East is extremely limited. To the extent that an Indonesian worker can access justice at all, it generally depends on (1) access to assistance from Indonesian consulates in the destination country, and/or (2) access to redress upon return home. Access to justice in countries of origin is also independently important. Many of the harms workers experience abroad can be linked to lack of transparency and accountability in the privatized recruitment process in the country of origin, as well as to failure to provide adequate training and rights-based information to migrants pre-departure. Home-based government and private actors therefore often bear or share responsibility for worker harms, alongside destination country actors. Indeed, many common harms, such as wages or work conditions different to what was promised by recruitment agencies in Indonesia, are often violations of the contract signed between workers and those agencies.

III. Migrant Workers' Access to Justice in Indonesia: Key Findings

Over the past decade the Indonesian government has sought actively to regulate recruitment and placement of workers overseas, and has developed processes and programs to enable migrant workers to access redress in Indonesia. During this time the Indonesian government has expanded its protection responsibilities for migrant workers, including those made available through its consulates. Further domestic law reform efforts are under way, and 2012 saw Indonesia's historic ratification of the UN Migrant Worker Convention.¹

Despite these promising efforts, significant challenges persist. Most migrant workers and civil society participants in this study expressed frustration, disappointment, and a general view that the vast majority of migrant workers cannot access justice in Indonesia. Some of the study's specific findings are summarized below.

A. Findings on the Four Indonesia-based Redress Mechanisms:

1. *Administrative Dispute Resolution* : non-enforceable government-facilitated negotiation with a recruitment agency or insurer, culminating in “mediation.” Although this is the most accessible mechanism, redress is undermined by lack of standardized procedures and unclear agency functions, lack of transparency, an unremedied power imbalance between workers and recruiters/insurers, untrained government mediators, and no appeals, complaints or enforcement procedures.
2. *Migrant Worker Insurance Scheme*: a mandatory scheme, run by private insurance consortiums, intended to compensate workers for harms prior to departure and while abroad. In practice, the insurance system provides very limited redress to the majority of workers because of low worker awareness of their insured status, claims procedures that are unfamiliar and inaccessible to most migrant workers, and coverage exclusions and documentation requirements inappropriate to the realities of migrant work.
3. *Indonesian Judicial System*: civil (e.g., contract disputes) and criminal (e.g., fraud, trafficking) cases against private individuals and agencies involved in recruitment. Very few cases have been brought (including strategic litigation), due to systemic barriers such as the costs, time, expertise and evidence required, as well as perceived judicial bias/corruption.
4. *Embassy and Consulate Assistance*: assistance to access redress or obtain evidence while the worker is abroad, and upon return home. The mechanism most familiar to workers, but also most criticized for inadequate resourcing, lack of expertise in relevant Indonesian and destination country laws and processes, and lack of standardized transparent procedures.

B. Overall Findings on Migrant Workers' Access to Justice in Indonesia

- Indonesia's labor migration laws do not enable workers to access justice. Most statutory rights and obligations lack accountable actors and enforcement mechanisms, and laws do not focus on worker redress or recruiter accountability for preventing and redressing worker harms.

- Migrant workers should, by law, have substantial contractual rights within their agreements with private recruitment agencies, employers and insurers. However, those rights are not always included in contracts, and are in any case under-recognized by all actors (including by migrant workers and their representatives), and are under-enforced.
- The most frequently used redress mechanisms often yield unsatisfactory or unfair outcomes for workers, in part because the mechanisms lack standardized procedures, transparency and meaningful oversight.
- Implementation and accountability gaps exist due to overlapping responsibilities between the Ministry of Manpower, the labor migration agency under the President (BNP2TKI), and private sector actors, as well as between different levels of government (national and local).
- Migrant workers face numerous barriers to accessing justice common to all mechanisms:
 - Inadequate information regarding their rights and the procedures for accessing redress in the destination country and upon return to Indonesia.
 - Challenging evidentiary and documentation requirements for claims, made worse by inappropriate hurdles to obtaining replacement documents.
 - Centralization of redress mechanisms, recruitment agencies, insurers and government agencies in Jakarta, resulting in practical, financial, and psychological obstacles to access.
 - Necessity of legal assistance for most redress mechanisms, and its limited availability.
 - Inadequate and non-transparent regulation of recruitment agencies, and lack of government oversight of village-level brokers.
 - Perceptions that government, insurers, and recruiters do not value worker concerns.
 - Corruption, or perceptions of corruption, associated with mechanisms and documentation.

IV. Recommendations

Improving access to justice for migrant workers requires reforming the specific redress mechanisms available to migrant workers, and considering new mechanisms. It also requires changes to the labor migration system overall, including increased transparency and more effective oversight and regulation to hold all public and private actors within the system to greater account. This is primarily a task for Indonesia's parliament and government, but other actors, including non-government organizations, the legal and academic community, and the donor community, can play important roles in advocating, guiding, and supporting needed reforms and providing direct assistance to migrant workers seeking to access these systems.

Accordingly, the report makes the following recommendations to Indonesia's government:

- In the current labor migration law reform process, emphasize transparency across the labor migration system and private sector accountability (of recruitment agencies, brokers, insurers, and others), and ensure that effective pathways exist for Indonesian migrant workers to access justice. This includes clarifying legal rights and responsibilities of all actors, and establishing clearly defined enforcement and redress procedures for breaches of existing statutory and contractual obligations.
- Decentralize key mechanisms including the insurance claims process and government-facilitated administrative dispute resolution in a manner that enables workers to effectively access redress throughout Indonesia.
- *Administrative Dispute Resolution.* Standardize procedures and make them transparent. Task mediators with facilitating fair outcomes in light of the parties' contractual and statutory responsibilities, and train mediators accordingly. Also establish a complaints mechanism and appeals process, and require Ministry of Manpower investigations and sanctions for serious or repeat recruitment agency violations identified in administrative dispute resolution claims.
- *Migrant Worker Insurance Program.* Reform both the structure and operation of the program based on quality empirical data and expert analysis. Make the claims process simpler and more transparent, and require the insurer to meet a pay-out ratio that reflects appropriate coverage of the most common risks to migrant workers at all stages of the migration process. The new consortiums should have stricter compliance requirements for their ongoing appointment.
- *Embassies and Consulates.* Increase resources and training to: provide competent legal assistance to workers in the destination country; conduct more rigorous

evaluations of destination-country recruitment agencies and employers, and make information available to workers pre-departure; and advise workers on redress processes in Indonesia, and advise and assist them to obtain necessary evidence while still abroad. Embassy complaint-handling processes should also be more standardized, transparent, responsive, and geographically accessible.

- Regulate recruitment agencies more effectively, including through more rigorous government oversight and transparent licensing procedures that require ongoing compliance with worker protection and redress responsibilities. In addition, establish procedures for migrant workers and civil society to lodge complaints that trigger investigations and sanctions.
- Regulate village-level brokers, either through recruitment agencies or independently.
- In collaboration with the private sector, establish a process for migrant workers to easily obtain copies of their placement agreement, employment contract, insurance card, and other documents needed to pursue claims for redress, and eliminate opportunities for corruption or obstruction by recruiters, brokers or insurers.

Government, law schools, the legal profession, civil society organizations and donors should work together to expand the availability of competent and affordable legal assistance to migrant workers. This includes enabling access to government-funded legal aid and developing law school clinical programs and labor migration courses, as well as improving training and capacity of lawyers and paralegals to advise and represent migrant workers within Indonesian redress mechanisms, and possibly to advise on basic destination country law.

Civil society, legal academics, and government should also partner to develop high-quality, accessible resources and training for migrant workers, the private sector and government. This should include resources on legal rights and responsibilities of migrant workers, recruiters, insurers, and each government ministry/agency, as well as resources on procedures and documents required to seek redress through insurance or other Indonesia-based mechanisms.

Finally, donors should support academics and civil society to engage in further empirical and legal research to fill critical data gaps, as well as to develop strategic litigation to test and enforce migrant workers' contractual rights, and to enforce Indonesia's international human rights obligations.

All reform initiatives should be developed in close consultation with civil society representatives and migrant workers, and implemented with the goals of furthering transparency and accountability and ameliorating barriers to accessing justice.

V. Conclusion

Many of the challenges to migrant workers' access to redress detailed in this report are not unique to Indonesia, or to migrants travelling to the Middle East. Countries of origin, and the various stakeholders within them, have much to learn from each other's efforts (and failures) to address these challenges. It is hoped that this report provides an empirical foundation for those discussions, as well as providing an evidence-based foundation for advocacy and law reform within Indonesia. It may also function as a manual of sorts, to enable Indonesian civil society to better understand, use, and test existing justice mechanisms.

1. Introduction

1.A Origin Countries and Access to Justice for Migrant Workers

Global labor migration has increased exponentially during the past 20 years. Approximately 90 million migrant workers now provide essential services in domestic work, care-giving, construction, agriculture, fisheries, manufacturing, and the service industry.² Some of these workers travel through official government-sanctioned channels, some travel without the requisite immigration and labor permits (i.e., irregularly), and others move between statuses as their work or visa situation changes. Throughout the world, private commercial agencies, private brokers, and employers in origin and destination countries perform the vast majority of recruitment and placement of low-wage migrant workers.

Low-wage labor migration raises complex human rights and labor rights concerns, including treatment of noncitizens; equality and nondiscrimination based on race, ethnicity, and gender; rights to decent work and to a decent standard of living; and corporate human rights responsibilities. Low-wage migrant workers routinely encounter harms such as unpaid wages, unsafe work conditions, inadequate rest, inhumane housing conditions, or employers' confiscation of their identity documents.³ Accounts of exploitation, abuse, human trafficking, debt bondage, and other severe human rights problems are not uncommon.

To date, international advocacy efforts to seek redress for low-wage labor migrants have primarily focused on destination countries and actors within those countries: it is in the countries of work that temporary workers often experience direct and egregious human rights violations at the hands of unscrupulous employers. As a result, however, policy makers, human rights advocates, and donors at the international level have paid less attention to the critical role that countries of origin may play in enabling migrant workers' access to justice.

The special vulnerability of migrant workers stems not only from their circumstances in destination countries. The conditions that give rise to the exploitation, labor rights violations, and other problems that migrant workers encounter often begin at the point of recruitment and persist through their return home as they are frustrated in their attempts to secure access to justice, accountability, and a remedy for the harms they suffered.⁴ Indeed, many of these harms can be linked to the lack of transparency and accountability in the privatized recruitment process, and the inadequacy of pre-departure training and rights-based education that migrants receive. Many harms that occur abroad also breach the contracts that workers sign with recruitment agencies at home, and are also covered by private insurance policies that workers must purchase before departing abroad. Workers' access to affordable and efficient redress mechanisms within countries of origin is therefore especially important, appropriate, and often required by international law.

In many destination countries, particularly in the Middle East, opportunities to seek redress and to systemically improve access to justice are limited. The supply of migrant labor is greater than the demand, and many destination countries see little incentive to better regulate and enforce regulations protecting migrant workers, particularly those with limited social and political capital.

Countries of origin and the private actors operating within them profit significantly from workers' remittances, recruitment, and insurance costs. Indeed, in 2012, global remittances from migrant workers to their origin countries amounted to \$534 billion—triple the amount of global development aid.⁵ This has positive and negative consequences. On the one hand, it incentivises income maximization at the expense of worker protection. On the other, it creates longer-term incentives to ensure that labor migration is effectively regulated and that workers can access justice, for example to receive wages to which they are entitled or compensation for injuries.

For all of these reasons, there is now a pressing need to examine migrant workers' access to justice within their countries of origin and to identify paths to improvement, alongside efforts to strengthen access to redress in destination countries.

Indonesia provides an ideal case study for understanding the challenges that migrant workers face in obtaining access to justice in their origin country, and the

promising opportunities for improvement. Indonesia is one of the largest migrant-sending countries in Southeast Asia. It is currently reforming its domestic labor migration regulatory framework, and recently ratified the UN Migrant Worker Convention,⁶ becoming one of only three countries in Southeast Asia to do so.⁷ Its civil society organizations are becoming increasingly engaged in the protection of migrant worker rights, and have formed coalitions to jointly advocate for better protection of Indonesian migrant workers under domestic and international law. Indonesia's efforts to increase transparency and accountability within the private sector, and to address corruption, may also offer valuable lessons for improving regulation of the privatized recruitment and insurance industries that serve migrant workers. And the demonstrated interest of international organizations and donors in supporting these efforts by government and civil society creates possibilities for trials and innovation to systemically improve migrant workers' access to justice at home. Finally, many of the challenges to migrant workers' access to redress in Indonesia, and the conditions that give rise to them, are not unique. Countries of origin, and civil society within them, have much to learn from each other's efforts (and failures) to address these challenges, and it is hoped that this report provides a foundation for those discussions.

1.B Overview of Report and Research Method

This report is one of two case studies within a larger study—the first of its kind—that comprehensively examines migrant workers' access to redress within countries of origin. A second report will focus on Nepal, the country in Asia that receives the largest volume of remittances in proportion to GDP.

Report Overview

The report provides an in-depth examination of the mechanisms available to migrant workers seeking redress in Indonesia. It identifies migrant workers' key legal rights under domestic laws, private contracts, and international law. It also clarifies the legal obligations of government, recruitment agencies, private insurers, and others, to redress the harms that workers suffer. And it provides an overview of the legal and institutional framework that governs labor migration in Indonesia, as relevant to the enforcement of worker rights and accessing justice.

The case studies of both Indonesia and Nepal focus on migrant workers who travel to the Middle East. The “Asia-Middle East corridor” is one of today's most-travelled and fastest-growing migration corridors. Labor migration to the region, particularly to the Gulf countries, is almost all temporary contractual migration, in which workers

are bonded to their employers through the *kafala* system. As a result, workers in the region suffer particularly high levels of abuse and exploitation, and a number of Middle Eastern countries have received considerable criticism for failing to protect the rights of their significant migrant worker populations. Migrant workers' access to redress in local courts or other institutions is generally extremely limited. Because of these challenges, the ability to access justice in one's home country is particularly important for migrants to the Gulf and wider Middle East.

Drawing on documentary sources and interviews, focus groups, and roundtables with migrant workers and a range of other stakeholders, both reports aim to fill critical information gaps pertaining to access to justice within countries of origin, while also highlighting areas for further study. They examine in detail the means by which labor migrants from specific origin countries access informal, administrative, commercial, and court-based justice mechanisms, against an overlay of the current domestic and international legal frameworks that regulate migrant laborers and establish legal rights and obligations.

This first report demonstrates that Indonesia, like other countries of origin in Asia, has made some efforts to improve protections for its nationals who travel abroad for low-wage work, including establishing specific redress mechanisms for migrant workers who experience problems in Indonesia or abroad. However, it also reveals a lack of clarity and knowledge across all sectors, both among implementers and users of these mechanisms, regarding the operation of the legal framework, the rights of migrant workers, and available avenues for accessing justice.

This report works to fill that knowledge gap, in order to inform medium and long-term systemic change in Indonesia and beyond. Taken together, the two reports also aim to catalyze dialogue among stakeholders across countries of origin and globally about ways to strengthen migrant workers' access to justice. Ultimately, the detailed case studies contained in these two reports will contribute to the development of new transnational strategies for protecting and fulfilling the human rights of the more than one million migrant workers who leave their homes in South and Southeast Asia every year for work in the Middle East, at all stages of the migratory process.⁸

Research Method

The findings of this study are based on field research in Indonesia, as well as analysis of laws, regulations, academic literature, and other secondary sources in both English and Bahasa Indonesia.⁹ The field research took place between January and July 2012.¹⁰ It began with a roundtable in Jakarta in January 2012 on key pathways and obstacles to migrant workers' access to redress.¹¹ Twenty-three individuals participated, including scholars of law and women's rights, civil society organizations, and private lawyers. The chairperson of the National Commission on Violence Against Women chaired

the roundtable. During this visit, researchers also met government representatives in Jakarta who were not formally involved in the study, but who provided background information about the migration process for Indonesian migrant workers.

The roundtable was followed by in-depth interviews and focus groups with 75 returned migrant men and women and their families. Thirty-nine experts and stakeholders were also interviewed about the structure, operation, and effectiveness of specific mechanisms for obtaining justice. These experts included government officials at both national and regional offices, migrant workers,¹² and representatives of civil society organizations ranging from national advocacy organizations to small local groups that provided “case handling” assistance to workers (see Annexure 2 for participant breakdown, and Annexure 3 for a full list of interviewees).

Focus groups provided the views of migrants and their families on their efforts to seek justice, and perceptions of the system. Discussion was wide-ranging, and data collected was qualitative (personal experiences, opinions) rather than quantitative (such as numbers of persons who tried a certain mechanism). The focus groups were held at five locations across four provinces—West, Central and East Java, and West Nusa Tenggara—that are responsible for sending three-quarters of all migrants who travel abroad each year.¹³ The towns selected were known by local organizations to send workers specifically to the Middle East. Seven focus groups were held in total: two groups in Suka-bumi and East Lombok sub-districts and one in each other district (see Annexure 2).

Focus group participants were either:

- Former migrant workers who had experienced problems during the process of migrating (or applying to migrate) to the Middle East for work—including before, during or after work abroad—and who had returned since 2009; or
- Family members of migrant workers who met the above conditions or who were still abroad at the time of the focus group.

Local civil society organizations in the district capitals played a central role, including identifying suitable participants and inviting them to the focus groups. Many workers felt somewhat reluctant to join a focus group and share details about their experiences with others, and the organizations supported workers to feel safe in this environment. In many cases, the organizations had helped these women and men migrant workers, and those migrant workers recommended other people to join (snowball sampling). On these organizations’ recommendation, the focus groups also included family members; in many cases it was family members who had used various mechanisms in Indonesia on behalf of a migrant worker abroad, or had assisted the worker after return.

This report is qualitative in nature and therefore rich in detail and experience, but does not purport to be representative of all migrant workers or other participants. It

also takes a broad approach to access to justice, looking at all mechanisms and users of the system. While this is useful in identifying key issues and barriers, further detailed research on particular mechanisms would be useful. Similarly, the study could not, for reasons of time and space, investigate the experiences of particular groups of migrants such as women or irregular migrants, and the impact of gender and status on the migrants' experiences and ability to access justice. These would be valuable follow-up studies.

1.C International law and a Rights-Based Approach to Labor Migration

In considering access to justice for migrant workers, this report first takes a human rights approach: it looks not just at the laws and mechanisms in place to provide redress to migrant workers, but also examines how those laws and mechanisms ultimately serve the individual migrant worker's realization and enjoyment of rights. It views migrant workers as rights-holders, and seeks to identify the specific entities that are responsible for fulfilling those rights—be they government agencies and ministries, private recruitment agencies, insurers or others. Finally, the report draws on human rights established in the international treaties to which Indonesia is a party, alongside other statutory and contractual sources of migrant worker rights.

International Human Rights Instruments and Labor Migration

As the international community has grown increasingly aware of the special vulnerabilities of migrant workers, it has developed new instruments for protecting and promoting migrant worker rights, such as the U.N. Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (the CMW).¹⁴ The CMW provides guidance on the applicability to migrant workers of existing human rights treaty provisions, aimed at protecting and promoting the free and equal enjoyment of rights and dignity. The committee overseeing the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW Committee) has also specifically addressed the human rights concerns of women migrants through General Recommendation 26 on Women Migrant Workers, noting that women experience human rights violations during all stages of migration. Other international treaties place specific responsibilities on origin countries to protect migrants from illegal practices of discrimination, exploitation, and abuse.

Regional organizations have also created their own normative frameworks. Within South East Asia, for example, ASEAN adopted the ASEAN Declaration on the

Protection and Promotion of the Rights of Migrant Workers at the 12th ASEAN Summit (Jan. 2007).¹⁵ Efforts are underway among the South East Asia National Human Rights Institutions Forum to support and develop an ASEAN Instrument on Protection and Promotion of the Rights of Migrant Workers, in furtherance of this Declaration.¹⁶ And the “Dhaka Declaration” focused on migration with dignity was adopted in 2011 by the Colombo Process, a regional ministerial consultation process on labor migration for countries of origins in Asia.¹⁷

Origin Country Obligations Regarding Access to Justice and Related Rights

Indonesia has ratified a number of international conventions pertaining to the rights of migrants and workers (Annexure 1). International human rights law imposes on states the obligations to respect, protect, and fulfil the human rights of all persons within their jurisdiction. With regard to countries of origin vis-à-vis their obligations to their citizens traveling abroad for work, this requires taking affirmative measures at the outset to protect the rights of their migrant workers. This includes, for example, effectively regulating the recruitment process, and ensuring redress when the rights of migrant workers are violated. Access to justice thus becomes a critical component of ensuring not just transparency and accountability in the labor migration system, but also the ultimate fulfilment of the rights of the individual worker and her family members.

The CMW identifies a specific obligation on origin countries to provide access to justice to migrant workers whose rights have been violated (Article 83). Indeed, access to justice, or access to redress, is a basic human right across all of the core international human rights treaties. Victims of human rights violations have an explicit right to equal access to the courts and to an effective remedy, determined by a competent and independent tribunal, for rights violations. Furthermore, those rights must be enjoyed equally among all people without discrimination. This right is also reflected or implied in many national constitutions. For example, Indonesia’s Constitution states in Article 28D(1): “each person has a right to recognition, security, protection and certainty under the law.”¹⁸

In addition to the specific obligation to ensure access to redress, origin countries have relevant obligations regarding the provision of information and documentation to migrant workers. As this study of Indonesia reveals, lack of information and lack of documents are frequent barriers to migrant workers accessing justice, and are also a contributing factor to other rights violations. The CMW provides that origin country governments have an obligation to inform prospective migrant workers of:

- All working conditions and requirements they must satisfy in the state of employment before their departure (Article 37).

- Their rights arising out of the CMW (Article 33(a)); and,
- The conditions of their admission and their rights and obligations under the law and practice of the state of employment (Article 33(b)).

It further requires origin country governments to adopt measures against the dissemination of misleading information relating to emigration and immigration (Article 68). Among other things, this means that a state-party to the CMW such as Indonesia has an affirmative obligation to guard against migrants being placed in positions in which the terms and conditions of their work differ significantly from what they had been promised at the time of recruitment. Migrant workers must also be protected from the confiscation of their documents (Article 21). Finally, the CMW aims to create international and inter-state cooperation, consultation, and information sharing regarding the flow of migration, and calls upon state parties to collaborate.¹⁹

The CEDAW Committee has critiqued practices common in origin countries including detention of women by recruitment agencies during training, failure to provide information on migration, exploitative fees, and bans or restrictions on women's out-migration which contribute to the abuses endured by migrant women.²⁰ It specifically recommends that countries of origin:

- Provide comprehensive education on the migration process, including education specific to the contents of the labor contracts, legal rights, and entitlements within the countries of work, and procedures for accessing formal and informal justice mechanisms;
- Require recruitment agencies to participate in training programs on women migrant workers' rights and recruitment agency obligations toward women migrant workers;
- Provide a list of reliable recruitment agencies, and implement accreditation programs to ensure good practices among recruitment agencies;
- Establish clear regulations and monitoring systems to protect female migrants, including to ensure that recruitment agencies protect women migrant workers' rights, including legal sanctions for breaches of the law by recruitment agencies;
- Safeguard the remittances of women migrant workers; and,
- Facilitate and ensure the right to return, services to women upon return, and other protections.²¹

1.D Defining and Assessing Access to Justice

As well as being a fundamental human right guaranteed to all people, access to justice serves several important legal, normative, and practical functions. It is essential for enforcement of contractual rights, particularly relevant to migrant workers who enter into private contracts with recruitment agencies, insurers, and sometimes employers over the course of the migration process. It strengthens the rule of law by increasing transparency and ensuring accountability of private and government actors, often addressing systemic gaps in rights protections. It can encourage future good behavior by state and private actors, and increase individuals' faith and participation in public life and institutions. Financial redress can enable workers to escape the cycle of debt and poverty that makes them vulnerable to further exploitation and abuse. And of course, it achieves the ultimate aim of providing justice to individuals who have been wronged.

“Access to justice” is a large field of inquiry, with numerous competing definitions and frameworks. The American Bar Association Rule of Law Initiative, for example, emphasizes the importance of institutions:

Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizens' justice problems.²²

The World Bank takes a broader development-based view that recognizes social and economic injustice. It considers equality, access to decision-makers, and both formal and informal “systems” (rather than institutions) for accessing justice. It defines access to justice as:

Access by people, in particular from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions.²³

This report takes an intermediate position. It reviews both formal and informal avenues for accessing justice but pays particular attention to the laws and institutions that enable and implement these pathways, as well as to their place in the overall legal and institutional frameworks governing migrant labor in Indonesia. In addition, it considers perceptions regarding the implementation of the mechanisms or processes.

To assess the effectiveness of these mechanisms, the study draws on lists of indicators created by various international institutions to identify a set of core indicators.²⁴

It then assesses the legal framework and the perspectives of users of each mechanism against these indicators. These indicators include:

1. The clarity of the legal framework;
2. Citizen and institutional actors' awareness of the mechanism(s) and its procedures;
3. The accessibility of those mechanisms, in terms of geography, cost, language, duration, complexity, need for representation, and other potential barriers;
4. The fairness of procedures governing access to those mechanisms and due process; and,
5. The perceived justness of outcomes that the mechanism provides.

As UNDP has outlined, efforts to increase access to justice should focus on removing impediments to access, with clear identification of “claims holders” or beneficiaries, and “duty bearers,” as well as an assessment of capacity gaps. It also notes, though, that access to justice is, “much more than improving an individual’s access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.”²⁵ As far as possible, this report also highlights the duty bearers of particular rights, the extent to which those actors are held accountable by particular mechanisms, and ultimately whether just and equitable outcomes are achieved.

2. Indonesian Workers to the Middle East: A Case Study

2.A Indonesian Labor Migration

Indonesia established a government-sponsored overseas migrant labor program in 1970 under the Suharto New Order Regime as a way to reduce domestic unemployment and attract foreign exchange. Today, the country sends more laborers abroad than any other Southeast Asian nation apart from the Philippines, with over half a million workers officially departing each year. As of May 2012, 2.4 million Indonesians were officially recorded as migrant workers abroad, with an unknown number working unofficially.²⁶

The vast majority of these workers are women who work in the domestic sector as cooks, cleaners, childcare providers, or eldercare workers in private households. Experiences at work and access to justice for Indonesian migrant workers are also, therefore, strongly gendered issues. They are shaped by the treatment of women both in Indonesia and abroad, including for example women's differential access to education and labor markets, and the (lack of) social respect and legal protection given to "women's work" in the home.

Like workers from other countries of origin, many Indonesian migrant workers experience problems while working abroad, and cases of severe abuse are frequently reported by the Indonesian media. Arrivals records maintained by the Indonesian government reveal that each year tens of thousands of returnees report having "experienced

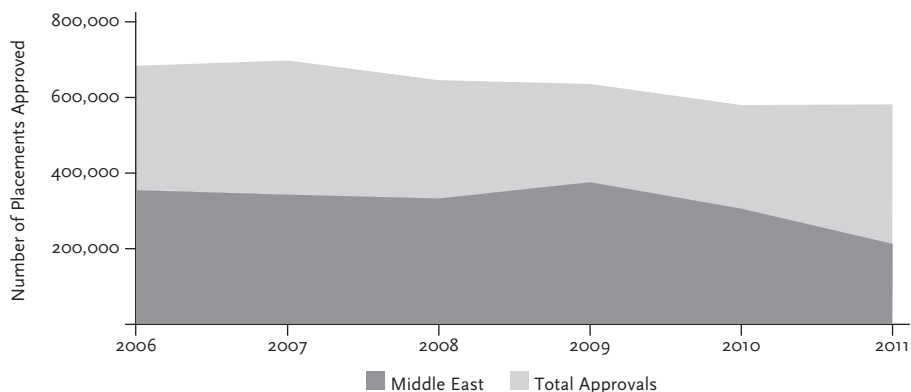
a problem”—14.5 percent of all returnees in 2011 and 18 percent in 2010 (the numbers of unreported problems are likely far higher). This equates to tens of thousands of problems reported per year, a significant challenge to any institutional redress mechanisms in Indonesia or abroad, and does not include those who experience problems in Indonesia pre-departure and post-return.

2.B Indonesian Labor Migration to the Middle East

The Middle East, particularly Saudi Arabia, has been a significant destination for Indonesian migrant workers since Indonesia began its labor migration program. The first workers left for Saudi Arabia following the oil boom in the Gulf in the 1970s to meet sky-rocketing demand for low-wage labor. Today workers continue to travel to the region for a variety of reasons. Returned migrant workers in this study spoke of the pre-departure procedures being faster and more affordable for Middle East countries than other destinations in East and Southeast Asia. They also noted the region’s cultural and spiritual significance for Indonesian Muslims. Expert interviewees in the study believed that Muslim women continue to choose Saudi Arabia above geographically closer countries in the hope that they will have the opportunity to see the holy city of Mecca and complete the *Hajj*. Indonesian scholars note a common perception that the Middle East is a “Land of Hope,” but add that workers have very little understanding of the social and cultural context before departure, and so are surprised by the “heavy work and long hours that are the reality they must face” on arrival.²⁷

Around a third to a half of Indonesian migrant workers departing abroad each year travel to the Middle East (see Figure 1). The official numbers have declined since the introduction of moratoriums on labor migration to several Middle East countries in 2009 and 2010 (discussed below) but remain significant. In May 2012, the Ministry of Foreign Affairs reported that 861,000 Indonesian migrant workers were registered as living in the Middle East region.²⁸ Many others are believed to be working in the Middle East unofficially.

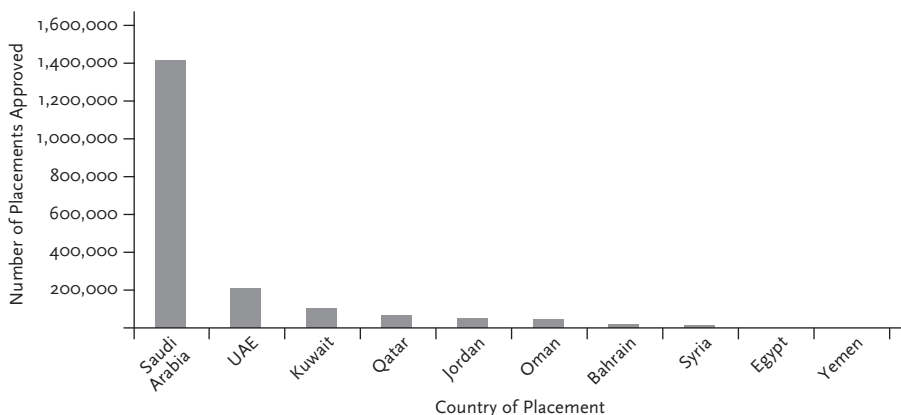
FIGURE 1: Approvals by the Ministry of Manpower for Indonesians to Work Abroad 2006–2011, Total and to Middle East



Source: Indonesia Ministry of Manpower and Transmigration

Saudi Arabia remains by far the most popular destination for Indonesian migrant workers in the Middle East (see Figure 2). However, other destinations in the region have opened up in recent years and many migrant workers travel to more than one country.²⁹

FIGURE 2: Middle East Destinations for Indonesian Migrant Workers, 2006–2011



Source: Indonesia Ministry of Manpower and Transmigration

There is limited data on the specific demographics of Indonesian workers in the Middle East, but government data suggests migrant workers to the region are overwhelmingly female (95 percent on average across countries in the region) and are mostly employed as domestic workers in private households.³⁰

A small study of workers who returned from the Gulf found that most were young (51 percent were under 21 the first time they migrated for work), had very low levels of education and literacy (56 percent had elementary school or lower), and had no previous work experience outside the home.³¹ Anecdotal evidence from migrant workers and civil society organizations that participated in this study was consistent with these findings, indicating that the women who travel abroad generally, and to the Middle East specifically, are invariably from rural areas and have little or no formal work experience before departure. Muslim women may speak basic Arabic before departure, but usually the learning curve upon arrival is steep.³² Civil society groups generally expressed the view in this study that less educated workers chose to go to the Middle East, where education was not required by overseas recruiters, whereas workers with higher levels of education (junior high school and above) went to Hong Kong, Singapore, or Taiwan.

These intersecting vulnerabilities—gender, youth, little formal work experience, and low levels of education—make the barriers to accessing justice even greater for workers who travel to the Middle East. Indeed, this study shows that Indonesian migrant workers in the Middle East face more difficulties generally than migrant workers traveling to other regions. Experts perceived this group as encountering more frequent problems, and problems of a more serious nature, than workers to the Asia Pacific region (see section 4.B below for discussion of these harms). In addition, the structure and procedures for the recruitment of Indonesian migrant workers make obtaining redress for harms more challenging. Because recruitment and processing of workers to the Middle East is highly centralized in Jakarta, workers are often connected directly with recruiters in the capital via brokers, thus circumventing local checks and protections and requiring workers to travel farther from their homes for pre-departure preparations. Circumvention of local checks can result in inadequate training, information, and documentation for workers. Workers to the Middle East are thus more vulnerable abroad and more likely to have negative experiences. Upon workers' return, the location of recruiters in the capital creates even greater challenges to seeking redress.

2.C Migrant Workers' Access to Justice in Indonesia

Although the challenges faced by Indonesian migrant workers are well known to many Indonesians, the strategies that workers use, or could use, to resolve these challenges

are less understood. A common perception, demonstrated in at least one localized study, is that most migrant workers do not try to access justice at all. Rather, they rely on informal advice from fellow migrants, particularly those who are known to have been successful in confronting a recruiter or other party directly.³³

This reflects the situation for Indonesians generally. Indonesia's justice system presents many challenges to access, particularly for poorer segments of society. Large studies of access to justice across Indonesia have shown that awareness of legal rights among the general population (not just migrant workers) is generally low; and that most people prefer informal mechanisms or traditional dispute resolution to the overburdened judicial and courts system.³⁴ Women in particular have been found to, "face serious constraints accessing the formal justice system," including trouble meeting financial costs and potentially social exclusion.³⁵ Less is known, however, about how the international and highly regulated nature of migrant work interacts with these broader challenges in Indonesia.

Given this, the Indonesia-based research combined various data sources to assess migrant workers' access to justice, beginning with identifying the key mechanisms available, their basis in law and policy, and their operation in practice. This study shows that Indonesia has several semi-formal mechanisms through which migrant workers might seek redress, in addition to the judicial system. These mechanisms include administrative dispute resolution and an insurance scheme in Indonesia, as well as assistance through Indonesia's embassies and consulates abroad. Indonesia does not have a specialized tribunal for resolving disputes between migrant workers and recruiters, brokers, or employers.

Almost uniformly, the many participants in this study were pessimistic about migrant workers' prospects of redress for harms suffered in Indonesia or abroad. Participants from outside of government were highly critical of the existing legal and institutional frameworks governing overseas labor migration, and frustrated with their application. Some civil society representatives viewed the system as corrupt and extortionate. Participants within government had more faith in the system but appeared constrained in their ability to assist migrants by bureaucracy and institutional in-fighting.

Nevertheless, several recent developments in Indonesia may give rise to new possibilities for innovation and improvement in the resolution of migrant worker problems in Indonesia. For example, the government recently introduced the National Strategy on Access to Justice, which recognizes the importance of access to justice for poverty reduction and has been incorporated into the country's 2010–2014 development plan.³⁶ The Indonesian legislative body is also in the process of reviewing the national laws on labor migration, in the wake of the country's historic ratification of the Migrant Worker Convention.

3. Legal & Institutional Frameworks Governing Indonesian Labor Migration

3.A Legal Framework

Indonesia has regulated labor migration for almost 40 years. Early regulations governing labor recruitment and placement were adopted by Ministerial decree in the 1970s, during the Suharto Era.³⁷ These decrees were aimed primarily at maximizing the number of workers sent abroad, and included very few protections for workers. In 1999, soon after the fall of President Suharto, the minister of manpower passed the first reformation-era decree on overseas migrant workers.³⁸ The decree established the broad framework for migrant labor that exists today, i.e., an essentially private enterprise overseen by the state. The legal framework has expanded considerably since the 1999 decree (itself no longer in force).

In 2004, the Indonesian Parliament (DPR) enacted the first national labor migration law. Law 39/2004 on the Placement and Protection of Indonesian Migrant Workers Abroad is now the central governing instrument of the labor migration system. It focuses on governance and administration; institutional powers and responsibilities; licensing requirements for recruitment agencies; administrative requirements to travel abroad; and pre-departure processes. It also establishes a small set of migrant worker rights.

The minister of manpower has passed numerous implementing regulations related to Law 39/2004. These include:

- Regulation 7/2010 on Insurance for Migrant Workers;³⁹
- Regulation 14/2010 on the Implementation of Placement and Protection of Migrant Workers, expanding on recruitment procedures for recruitment companies and pre-departure documentation and preparation of workers;⁴⁰ and,
- Regulation 12/2011 on Labor Attachés Overseas, which places ministry staff in embassies abroad to assist migrant workers.⁴¹

In early 2013, the president also adopted a whole-of-government regulation, Government Regulation 3/2013, regarding Protection of Indonesian Migrant Workers Abroad. This regulation sets out a protection framework for migrant workers, clarifying the role of each government department prior to departure, during overseas placement, and upon return.

As well as national-level laws and regulations, Indonesia has 33 provinces and 402 districts (regencies) that may pass regional regulations (*Peraturan Daerah*, known as *Perda*) to regulate matters within their jurisdiction. A number of local jurisdictions have passed *Perda* relating to labor migration, particularly regulating pre-departure activities in their district or province. Three district-level *Perda* from West Nusa Tenggara Province are reviewed in this study.⁴² *Perda* are subordinate to any national legislation on the same topic.⁴³ And they are only practically useful for migrant workers if the relevant recruitment agency is headquartered in that jurisdiction (the head office is responsible for the activities of its branches).⁴⁴ For migrants to the Middle East, *Perda* do not generally provide additional protections because, as noted above, the recruitment agencies that send workers to the Middle East are all centralized in Jakarta and are presumed to be outside the jurisdictional reach of the district level *Perda*.

Jurisdiction over recruitment agencies might be achieved through local brokers, but brokers are not currently recognized in the law or given independent legal status, and are not mentioned in the local regulations that this study examined. Regulation of local brokers and the nature of their legal relationship with recruitment agencies warrants further study (see discussion of brokers below).

Who can be a Migrant Worker?

Anyone in Indonesia can apply to be a migrant worker, free of charge, provided they meet the following conditions:⁴⁵

- Are at least 18 years of age, proven by birth certificate and national identity card;
- Have a letter from a medical practitioner stating that the prospective worker is in good health, and not pregnant (for female migrant workers);
- Have a letter of permission from the prospective worker's husband or wife if married, and parent or guardian if not, witnessed by the local village head;
- Have a job-seeker card obtained after registering at a local manpower office as a job seeker; and,
- Possess the qualifications or have the education level required by the employer.⁴⁶

Manpower offices at the local level are responsible for ensuring applicants meet these criteria,⁴⁷ and recruitment agencies may impose their own additional criteria such as literacy,⁴⁸ based on specific employers' needs.

After satisfying these criteria and being accepted for a position by a recruitment agency, the worker must then fulfill further requirements, including:

- Pass a competency examination demonstrating work-related skills;⁴⁹
- Pass a physical and mental health examination;⁵⁰
- Obtain an Indonesian passport, and a visa and work permit for destination country;
- Attend a pre-departure briefing;⁵¹
- Sign an employment agreement;
- Obtain Migrant Worker Insurance (see Migrant Worker Insurance Program below);
- Pay the migrant worker fee to an authorized bank; and,
- Obtain an Overseas Migrant Worker Card, a "smart-card" containing all of the migrant worker's information on a micro-chip.⁵²

3.B Institutional Framework: Responsibilities of Relevant Government and Private Entities

As in many other countries of origin, the vast majority of low-wage Indonesian migrant workers are placed overseas by private recruitment agencies and other related organizations, regulated by the Indonesian government.⁵³ The following section outlines the roles of the main government agencies and private actors involved.

Government Agencies

The Indonesian government is responsible for overseeing the operation of private recruitment agencies, providing workers with information, and performing the screenings and approvals for workers travelling abroad. Key government functions are carried out by the national-level Manpower and Transmigration Ministry (MoM), the Ministry of Foreign Affairs, and a specialized national body, BNP2TKI. Because of the large geographic size and population of Indonesia, provincial and local governments also have management and oversight responsibilities.

This section sets out the functions of the principle government agencies and ministries. These functions often overlap, particularly between the MoM and BNP2TKI and their local counterparts. For example, provincial MoM officials do much of the document verification and approval of recruitment in their area, but a BP3TKI official may then reapprove the documents or ask for additional material. When interviewed for this study, local MoM and BP3TKI officials described a lack of clarity about their respective roles. Civil society organization representatives and workers themselves were equally unclear about the precise delineation of responsibilities between MoM and BP3TKI offices—a problem that results in both inefficiencies and accountability gaps.

► National Institutions (Jakarta)

- **Ministry of Manpower and Transmigration (Ministry of Manpower or MoM)**

The Ministry of Manpower has principle responsibility for managing overseas labor migration in Indonesia, pursuant to Law 39/2004. MoM's roles are to set standards and develop rules and regulations for implementation of the law, and to enforce the law. Its specific responsibilities under Law 39/2004 include licensing and oversight of private recruitment agencies and insurance companies (Articles 12–26, 68), approving specific “job orders” from abroad (Articles 28–40), setting standards for all pre-departure processes and documents (Articles 41–47, 62–63), and supervising the placement of migrant worker applicants (Articles 92–93). It is also in charge of developing international coopera-

tion regarding migrant workers, for example negotiating bilateral agreements, and determining which countries can receive Indonesian migrant workers (Article 90).

- **National Body for Placement and Protection of Migrant Workers (BNP2TKI)**

To support the Ministry of Manpower, which has responsibility for overseeing domestic employment concerns as well as migrant labor, the Indonesian president established the National Body on the Placement and Protection of Migrant Workers (BNP2TKI) in 2006.⁵⁴ The National Body answers directly to the president (not the MoM) and is comprised of representatives of all departments, agencies, and institutions relevant to migrant work, who are tasked with coordinating their labor migration functions through BNP2TKI.⁵⁵

BNP2TKI is responsible for “implementing policy regarding placement and protection of migrant workers abroad in a coordinated and integrated manner,” including reviewing documents, providing pre-departure briefings to workers, providing information to would-be and current migrant workers, managing the departure and return of migrant workers through Indonesian ports, and ensuring “the resolution of problems.”⁵⁶ BNP2TKI also places migrant workers recruited through government-to-government recruitment programs. In contrast to MoM, BNP2TKI does not have any enforcement authority over recruitment agencies or other actors. However, other differences are not as clear. In interviews, experts repeatedly emphasized the overlap between the functions of MoM and BNP2TKI in Jakarta, and the lack of clarity regarding their respective roles and responsibilities.

- **Ministry of Foreign Affairs (MoFA)**

The MoFA is responsible for Indonesian citizens abroad, primarily implemented through embassies and consulates in destination countries. Under Law 39/2004, embassies’ specific responsibilities for migrant workers include:

- Assessing the quality of employers and partner recruitment agencies in the destination country who are seeking Indonesian workers, and accrediting partner agencies;
- Based on this assessment, approving placement documents (including the placement agreement and the employment agreement) before giving the worker permission to travel to the destination country (Article 25(2)).
- Recording a migrant worker’s arrival in the destination country, her address, and her date of departure, following the worker’s reporting of her presence in the country to embassy staff (Article 9(d)).

The “quality” assessment of recruitment agency partners is based on whether the recruitment agency is legally constituted and operating according to the law of the destination country (Articles 24–25(1)). The foreign mission must compile and publish a list of problematic recruitment agencies every three months (Article 25(3)–(4)). According to Government Regulation 3/2013, in order to obtain accreditation, the agency must also demonstrate adequate facilities and human resources, a minimum two-year work plan, and present its latest balance sheet. It must also have a clear track record concerning the placement of migrant workers in the destination country—namely not appearing on the list of problematic agencies.⁵⁷ Without further investigation or criteria for inclusion in the list it may not adequately reflect the agencies’ treatment of migrant workers, but this might be addressed in the implementation of the 2013 regulation.

► **Regional Institutions and Agencies**

A number of different offices work at the regional level across Indonesia. In order of authority:

- The provincial MoM office, under the authority of the governor;
- BP3TKI (Agency for the Service, Placement and Protection of Migrant Workers);
- District/City MoM offices, under the authority of the equivalent of a mayor.

• **Provincial Manpower Offices and BP3TKI**

Both the MoM and BP3TKI (the provincial office of BNP2TKI) operate at the provincial level and their respective functions are not clearly delineated in regulations (see Section 6.B on Government Agencies’ Dispute Resolution Functions below for further discussion). The MoM is generally responsible for coordinating within the province all activity and actors related to the placement and protection of migrant workers from the province, including coordinating the work of the BP3TKI.⁵⁸ It also grants permission to recruitment agencies to recruit labor in the province.⁵⁹

The BP3TKI is tasked with implementation, namely “simplifying the document preparation and processing for migrant workers” in the province.⁶⁰ After the recruitment agency and local MoM office select workers for placement, copies of all signed placement agreements are sent to the BP3TKI (Article 19(3)) and BP3TKI “undertakes all placement-related services for those workers” (Article 20). These services are not defined in the regulation. The BP3TKI

also provides the worker pre-departure briefings (*Pembekalan Akhir Pemberangkatan*, or “PAP”), facilitated by the MoM provincial office.

- **District/ City (Local) Manpower Offices**

The MoM has labor offices within local government administration. These offices are invariably geographically closest to migrant workers and thus the first port of call for individuals seeking information (as detailed under Administrative Dispute Resolution below).

Under the law, the local MoM labor migration staff are responsible for handling all government interactions with an aspiring migrant worker until the person is officially selected by a recruitment agency. They first screen candidates, (see Box on “Who Can be a Migrant Worker”) and provide job-seeker cards.⁶¹ They are then tasked with carrying out selection of workers with recruitment agencies in their jurisdiction.⁶² After the workers are selected, the local MoM provides approval for a passport to be prepared, and BP3TKI will then prepare the relevant documents at the province level.⁶³ In practice, however, it is unclear whether all of these steps happen for all migrant workers; they generally do not happen for workers to the Middle East for whom local brokers handle the initial stages of migration and connect the worker directly with a recruitment agency in Jakarta.

BNP2TKI also has a local presence in a handful of locations through Service Posts (P4TKI offices), created to smooth the departure and return of migrant workers from major ports.⁶⁴ Until recently, P4TKI offices were solely located in transit points, rather than in workers’ small home communities, although a handful have opened recently in sending regions.⁶⁵ None of the focus group communities had a service post in the area, and future study is warranted to understand P4TKI’s potential for facilitating dispute resolution between migrant workers and recruitment agencies.

Recruitment Agencies and Other Private Actors

Private Recruitment Agencies

The vast majority of migrant workers are recruited and placed overseas by private agencies. As of January 2013, the Ministry of Manpower reported 559 private recruitment agencies currently licensed to operate in Indonesia.⁶⁶ These agencies handle the selection, training, departure, placement, and return of migrant workers from overseas.

Regulation of private recruitment agencies is primarily conducted through licensing. An agency may receive a license from the Ministry of Manpower after submitting

its documents of incorporation and paying a license fee. The conditions for obtaining a license are not onerous.⁶⁷ The applicant is not obliged, for example, to demonstrate that he or she is a fit and proper person or to provide character references, and there is no provision for the ministry to seek additional information from the applicant or to place conditions on a license. Further, the licensing process is highly opaque—applicants are not required to publish their application, and the regulations do not provide for the filing of an objection to an applicant receiving a license. The MoM does have the power to cancel a license in certain cases, after providing written notice to an agency, and can temporarily suspend its operation (Article 100).⁶⁸

The Ministry of Manpower is responsible for oversight of recruiters at national, provincial, and local levels, and the Ministry of Foreign Affairs is responsible for overseas branches of an agency (Article 92). However, Law 39/2004 and regulations do not specify what “oversight” entails, or establish a mechanism for inspection of agency premises or records. Furthermore, neither the act nor regulations prohibit individuals involved in deregistered agencies from involvement in new agencies seeking registration. The limited regulation and oversight of recruitment agencies in Indonesia makes it extremely difficult for migrant workers to hold recruiters accountable for rights violations, ultimately undermining their access to justice.

Recruitment Agency “Partners” Abroad

Indonesia-based recruiters frequently partner with destination country agencies that place workers with specific employers.⁶⁹ The employment agreement that migrant workers sign in Indonesia must be made with either the employer or the partner agency abroad.⁷⁰ As discussed earlier in this section (see Ministry of Foreign Affairs, above), the MoFA, through its foreign missions, is tasked with assessing partners and reporting problematic agencies to Jakarta.⁷¹

In early 2013, the Minister of Human Rights adopted a government regulation, signed by the president, to further clarify the responsibilities of business partners. The regulation recognizes the importance of agency partners as protectors of migrant workers from cruel employers, and as responsible for resolving conflicts between employers and migrant workers.⁷²

Brokers/Agents

Individual brokers (commonly called “sponsors” in Indonesia) operate at the local level, identifying potential workers and connecting them with recruitment agencies. Although brokers are a common part of many migrants’ experiences, their activities are not directly regulated. They are not subject to any independent licensing scheme and are not mentioned in Law 39/2004. Under some circumstances they might be considered “agents” of recruitment agencies and thus indirectly subject to regulation, though

this relationship does not appear to have been tested in court. Indeed, if brokers are not acting for recruitment agencies some of their activities could be prohibited by Article 4 of Law 39/2004, which criminalizes recruitment by individuals of Indonesian citizens for work abroad. As discussed later in this report, the lack of government oversight of brokers has led to frequent fraud and other systemic problems for which workers have limited, if any, avenues for redress. As discussed earlier, this is a particularly significant problem for workers to the Middle East because the recruitment agencies are all Jakarta-based, and workers rely on brokers to connect them with an agency.

Insurance Companies, Training Centers, and Related Organizations

A number of other private actors are involved in the labor migration process. Insurance companies (discussed in section 6.C., The Migrant Worker Insurance Program) provide financial redress to migrant workers who suffer covered losses. Other private entities include training centers paid to provide job and language training to migrants, health centers that conduct pre-departure examinations, certification organizations that certify a worker as qualified to work abroad, and professional associations of recruitment agencies, such as APJATI (Indonesian Migrant Worker Companies Association) and Himsataki (Indonesian Migrant Workers Employers Association). Finally, banks are involved in the transmission of remittances, and transportation companies are involved in transporting workers from the airport in Jakarta back to their home communities.

Besides insurance companies, these actors were not specifically involved in disputes described by civil society interviewees or workers in this study. However there is no reason to believe that they are better regulated—or more protective of workers—than private recruitment agencies and brokers operating within the labor migration system. The operation and oversight of these entities would benefit from further study.

3.C Procedural Framework and Institutional Responsibilities Pre-Departure

Migrant workers' experience throughout the pre-departure phase has a significant impact on whether they experience harm before or during the placement abroad, and whether and how they seek redress following this harm. Under Article 31 of Law 39/2004, once the recruitment agency has received permission from MoM to recruit for a job order and then conducted recruitment and selection, the agency must arrange for all selected migrant workers:

- Education and training;
- Physical and mental health examinations;

- Personal and travel documents;
- A competency exam;
- A pre-departure briefing;
- Departure.

Following sustained criticism of the government’s oversight of this process, in January 2013, the president signed new regulations that attempt to clarify the state’s role in protecting workers during pre-departure preparations.⁷³ These include both standard-setting (“administrative”) responsibilities, and service delivery (“technical”) responsibilities as follows:

- Standard-setting (“administrative”) responsibilities:
 - Determining placement document requirements, and preparing workers’ documents;
 - Setting placement fees, based on the country of destination and work sector;
 - Setting conditions and terms of work abroad, including hours of work, wages and method of payment, leave and rest time, and social security.
- Service delivery (“technical”) responsibilities:
 - Public awareness campaigns and information dissemination about working abroad, both through direct provision of information and through the media;
 - Improving the “quality” of migrant workers through trainings, pre-departure briefings, and a competency exam;
 - Defending the fulfillment of the rights of migrant workers who have died, have been seriously injured, become unwell or whose placement has not occurred through no fault of the worker;
 - Monitoring and oversight of placement agencies.

How these will be defined and implemented in practice remains to be seen.

Education and Training

Recruitment agencies and the government have three phases of pre-departure information, education, and training obligations toward prospective migrant workers (see Table 1). Article 31 of Law 39/2004 requires recruitment agencies to provide: education and training as part of the initial recruitment process with MoM’s oversight; additional training as part of pre-departure preparations; and a final briefing session immediately

pre-departure. The government is also required to provide workers with information before they decide to apply to work abroad.

TABLE 1: Information and Training Requirements

Timing	Method of Delivery	Information Provided	Responsible Party	Location
Prior to application	In-person one-day “counseling and guidance” session. ⁷⁴	<ul style="list-style-type: none"> – Recruitment process – Documents required – Rights and responsibilities of prospective/current migrant workers – Situation, conditions, and risks in destination country; – Methods for protecting migrant workers.⁷⁵ <p>Regulation also requires that the information include fees and details of the position, including wages, leave, etc.⁷⁶</p>	Recruitment agency together with the local office of the MoM. ⁷⁷ The local office must also approve the content of the briefing. ⁷⁸	Local office of MoM in region where recruitment will take place.
Pre-departure preparations	Education, training and/or work experience, culminating in “competency exam.” ⁷⁹	<ul style="list-style-type: none"> – Work skills relevant to job – Situation, conditions, culture and traditions of country of work. – Communication in language of country of work. – Rights and responsibilities.⁸⁰ 	Recruitment agency	In Jakarta, at an institution licensed to provide training, either independent or owned by recruitment agency. ⁸¹
Pre-departure	“PAP” briefing session in the several days before departure (not necessary for workers who returned from abroad within past two years). ⁸²	<ul style="list-style-type: none"> – Laws and regulations (immigration, labor and relevant criminal laws) of destination country. – Employment contract, including type of work, conditions and wages, rights and methods for resolving disputes.⁸³ 	Government (BP3TKI). ⁸⁴ Recruitment agency responsible for enrolling worker. ⁸⁵	At BP3TKI at the provincial level. In Jakarta for those traveling to Middle East.

At each pre-departure stage the worker is to be informed of certain rights and obligations. The PAP also includes discussion of how to resolve disputes. However, neither Law 39/2004 nor the subsidiary regulations detail the specific rights of which workers should be made aware, or even the source of those rights. Nor do they specify which dispute resolution methods workers should be instructed on or the kind of information they should receive.

Evidence from the focus groups and expert interviews indicates that few (if any) workers receive all of the required information. The pre-application sessions were not mentioned by any returned workers—all described a broker putting them in contact with a recruitment agency directly. The study did not determine when or how these sessions might take place for other workers recruited through locally-based agencies.

Most migrants described receiving some competency training, however the level and depth of the training varied considerably. In some cases the workers learned how to clean and iron. Others said they learned a little about the language and culture of their country of destination. Some described several weeks of training and others just a few days. A recruitment agency reported that some training centers gave the competency certificate for a fee without workers ever having to step through the door, apart from having their photographs taken.

The most consistently available of the pre-departure information sessions is the government-run PAP: almost all workers reported attending a PAP, in which they signed the employment agreement and received information about what to expect and how to behave abroad. It was in the PAP that many workers learned to contact the Indonesian embassy if they have problems.

Former migrant workers participating in focus groups frequently described the manner of delivery of information and training as disempowering. They recounted being held in crowded placement centers with little opportunity to leave or visit their families, sometimes for several months, while they waited for their documents to be prepared.⁸⁶ The authors observed recruitment agencies referring to the women as “children,” and both government and recruiters displayed a paternalistic attitude toward the women who were leaving abroad, even though some had traveled several times previously. For example, civil society organization experts attributed migrant workers’ low awareness to the failure of recruitment agencies to inform workers about the contents and importance of the insurance policy, considering it unnecessary or too complicated for them.

Practices appear to have improved somewhat over the past 10 years, as the recruitment industry has received increased scrutiny. But the provision of pre-departure information and training remains inadequate, and likely contributes to the problems that workers encounter abroad. It also limits workers’ ability to seek redress for those prob-

lems. As detailed in the sections that follow, many workers do not seek redress because they are unaware of their legal rights, the mechanisms that exist to enforce them, or they do not know how to access the relevant mechanisms.

4. Harms Experienced by Migrant Workers

4.A Harms in Destination Country

Indonesian migrant workers encounter problems in all destination countries. On average, BNP2TKI reports that around 14 percent of returnees report a problem, and this does not include the many more who decline to describe their experiences to officials at ports.⁸⁷ For those who travel through Jakarta's Terminal 4 Selapajang, the main gateway into Indonesia, workers describe problems such as early termination, work-related illness, non-payment of wages, physical mistreatment, and sexual assault. In 2011 alone, 2,137 returned workers reported physical abuse and 2,186 workers reported sexual assault during their time abroad.

BNP2TKI reports that the Middle East, and specifically Saudi Arabia, is responsible for the majority of problems reported by returnees. In the four years between 2008 and 2011, workers arriving at Terminal 4 reported a total of 194,967 problems. Around half of these were made by workers coming from Saudi Arabia, and almost 75 percent were made by workers returning from the Middle East as a whole (see Table 2).⁸⁸

TABLE 2: Problems reported by migrant workers returning through Jakarta Terminal 4, 2008–2011

Country of work	Number of workers who reported problems upon return	Percentage of all workers who reported problems upon return
Saudi Arabia	96,448	49%
UAE	21,146	11%
Qatar	10,312	5%
Kuwait	7,930	4%
Oman	6,611	3%
Bahrain	2,214	1%
Syria	1,181	1%
Middle East Total	145,842	75%

Source: BNP2TKI Returns Statistics

Records of complaints made directly to BNP2TKI’s Crisis Center also reflect this pattern. Between July 2011 and June 2012, three quarters of the 7,615 formal complaints made by migrants or their families related to work experiences in the Middle East (74 percent), even though only around one third to one half of workers are placed in that region.⁸⁹ Almost 60 percent of the complaints related to Saudi Arabia, far higher than the next highest country, Malaysia, which accounted for just 9 percent of complaints.⁹⁰

Interviewees and focus group participants generally held the view that most problems experienced by Middle East migrant workers occur overseas in the home of the employer, rather than pre-departure or post return. Official figures supported this observation. Of all complaints to BNP2TKI’s crisis center that identified a particular problem (a total of 7607), almost half were based on one of two issues: non-payment of wages, or “loss of contact” between the family and the worker abroad, i.e., when the family loses all contact with the worker abroad and contacts BNP2TKI for assistance in finding her. (See Table 3). It is possible that some complaints raised multiple issues, but this is not recorded in the data.

TABLE 3: Complaints By Type Received by BNP2TKI Crisis Center, July 2011–June 2012

Type of Complaint	Number of Complaints Received and Verified	% Of All Complaints
Non-Payment of wages	1,639	22%
Loss of contact	1,520	20%
Employment different to contract	811	11%
Worker wishes to be brought home	782	10%
Worker dies while abroad	472	6%
Violence at the hands of employer	358	5%
Total	5,582	73%

Source: BNP2TKI, Reports per Case, July 2011–June 2012.

BNP2TKI does not disaggregate the types of complaints by country or region, so it is unclear whether this distribution applies equally across destination countries. Government and civil society interviewees suggested that families of migrants working in the Middle East bring most “loss of contact” cases. Interviewees believed the increased prevalence in the Middle East was because homes are less connected to the internet for Skype communication or social media like Facebook (frequently used by workers to communicate with their family), and because employers in the Middle East take workers’ phones from them as a matter of course (unlike those in destinations such as Hong Kong and Singapore). As well as making it difficult for workers to maintain relationships with family and friends and causing workers and family much emotional hardship, “loss of contact” also prevents workers from seeking help when problems arise. Experts also noted a perception that cases of physical abuse and workplace injury were qualitatively more severe in Middle East destinations, particularly in Saudi Arabia.

Almost all of the harms that focus group participants reported had occurred abroad; most were contract-related. The most common contractual problems related to non-payment of wages, sometimes for several months, sometimes for several years. Some workers reported that the work differed from what had been promised—one had agreed to domestic work, for example, but was made to work outside tending goats. Others said the hours or nature of the work was excessive and they were not able to rest or provided with enough food or time to eat. In some cases workers were hit or threatened when they asked for their wages. In a handful of cases, workers reported that members of their employer’s family had hit and kicked them for making mistakes.

In the late 2000s, public outcry about reports of ill-treatment of Indonesians working in the Middle East caused the Ministry of Manpower to impose moratoriums on recruitment of domestic workers to a number of Middle East countries. At the time of writing, moratoriums were in place on Kuwait (since 2009), Jordan (since 2010), and Saudi Arabia (since 2011).⁹¹ In 2011, the ministry also imposed moratoria on recruitment to Yemen and Syria due to internal armed conflict. While the official number of domestic workers departing to these destinations has dropped considerably, hundreds of thousands remain in the region under current or expired contracts, and some continue to travel through irregular channels. BNP2TKI has been assisting Indonesian migrants in those countries to return.⁹²

4.B Harms in Indonesia

Even though workers mainly described harms they suffered abroad, many of these problems were likely connected to problems in the pre-departure phase. Inadequate documentation, information and training, for example, make workers more vulnerable to abuse, and less able to seek help should problems arise.

In addition, a handful of focus group participants had experienced harms in Indonesia that were unrelated to what occurred abroad. For example, one worker paid a recruitment agency but the promised job did not materialize (this is referred to as a “failed departure”). Others described lost luggage and savings on the journey home. Studies by others have noted that in fact harms occur at every stage of the journey.⁹³

Interestingly, when pressed about efforts to seek redress, workers and civil society lawyers revealed other challenges not initially described as “problems” associated with the migration process. For example, interviewees described recruitment agencies that refused to return crucial personal documents submitted during the application process (such as a birth certificate or diploma) without payment of a fee. The fee was purportedly to compensate the agency for the worker having broken the contract by returning early. In other cases, agencies reportedly took a cut of insurance payments, or demanded the worker travel abroad again to repay debts incurred through a previous trip that ended early. Recruiters appeared to see these as commercial solutions to a broken contract, regardless of the terms of the placement agreement (if one was provided). These actions do not appear to be permitted by law.

5. Migrant Workers' Rights Under Indonesian Legislation, Contract, and International Law

Many of the government officials and others interviewed in this study underscored the importance of educating workers about their rights, and fulfilling workers' rights. However discussion of rights was always non-specific; neither government nor civil society representatives referred to a specific right or set of rights. No interviewees, government documents, or even legislation identified the source of the rights about which migrants ought to be educated, and it is unclear whether they were referring to rights under the Indonesian Constitution, legislation, contractual agreements, international law, or rights in some broader moral sense. Indeed, a review of the law, literature, and advocacy materials in Indonesia did not reveal any document that comprehensively sets out the legal rights of Indonesian migrant workers.

An important task of this research was therefore to begin identifying some of the specific legal rights that migrant workers possess under public, private, and international law, that they might later be able to enforce in various forums to seek redress for harms that they have suffered—and about which they ought to be informed as part of government and recruitment agencies' worker-education obligations (see Section 3.C).

This is not intended to be a comprehensive list, and it should be noted that the vast majority of the rights identified below have not been tested in Indonesia's courts or elsewhere. Their scope therefore remains undetermined, as does their enforceability and any causes of action or remedies that might be associated with them. Further rights will also likely be implicitly drawn from these sources as they are developed in the future.

Needless to say, there remains a significant gap between the existence and the enforcement of protective rights contained in the Indonesian Constitution and domestic laws, as well as in private contracts between workers and recruitment agencies and insurers, and international treaties that Indonesia has ratified. This is an area ripe for further research, policy development, strategic litigation, and law reform.

5.A Domestic Laws

The Constitution

Indonesia's constitution is the supreme law of the land in Indonesia. In the period known commonly as *reformasi* (reformation), which followed the fall of the Suharto dictatorship, the constitution was amended four times to create stronger checks and balances on government power, and to strengthen rights protection. The second amendment of August 2000 created a bill of rights in Article 28 that includes rights to earn a livelihood, to healthcare, to information, and to social security. These rights may implicitly create significant protections for migrant workers, though they have not, to date, been tested in this context. Article 27 (2) also guarantees that each person has a right to decent and humane work.

Rights and State Obligations under the Constitution of the Republic of Indonesia Potentially Relevant to Migrant Worker Protection and Access to Redress

- Every person shall have the right to decent and humane work (Article 27(2)).
- Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law (Article 28D(1)).
- Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment (Article 28D(2)).

- Every person shall have the right to communicate and to obtain information for the purpose of the development of his/herself and social environment, and shall have the right to seek, obtain, possess, store and convey information by employing all available types of channels (Article 28F).
- Every person shall have the right to protection of his/herself, family, honor, dignity, and property (Article 28G(1)).
- Every person shall have the right to live in physical and spiritual prosperity ... and shall have the right to obtain medical care (Article 28H).
- The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government (Article 28I(4)).

Statute

Law 39/2004 establishes a small set of migrant worker rights within a statute primarily focused on administration of the labor migration program (see Section 3.A). This includes the right to:

- a) Work abroad;
- b) Correct information about the labor market and the placement procedures for migrant workers abroad;
- c) Equal service and treatment in overseas placement;
- d) Freedom of religion and belief and to have the opportunity to worship according to one's beliefs;
- e) Payment according to the standard wage in the destination country;
- f) The same rights, opportunities and treatment as other foreign workers according to the rules and laws in the destination country;
- g) A guarantee of protection of the law according to the rules and laws in respect to dehumanizing treatment, or violation of one's rights set out in the law for the duration of the placement abroad;
- h) A guarantee of protection and safe return to the place of origin; and,
- i) Access to a draft of the original work contract.⁹⁴

Though limited, these rights offer some potentially significant protections for workers. For example, the right to “[r]eceive a guarantee of protection of the law ... in respect to ... violation of one’s rights set out in the law for the duration of the placement abroad” might form the basis of a right to redress. However the law does not identify the party or parties responsible for fulfilling and enforcing any of these rights. Nor does it impose any penalty if the right is not fulfilled: If, for example, the worker is not paid according to the standard wage in the destination country. Without means for enforcing these rights against particular actors, or consequences for non-fulfillment, workers do not find these rights especially valuable in practice.

In contrast, the law establishes serious consequences for migrant workers if they do not uphold their obligations, namely that the worker will be considered “illegal” and potentially unable to obtain redress. The obligations of workers include:

- a) Complying with the law both internally and in the country of destination;
- b) Complying with and undertaking the work according to the work contract;
- c) Paying the service fee for overseas placement; and,
- d) Notifying or reporting arrival, presence and return to the representative of the Indonesian Republic in the destination country.⁹⁵

Other national laws also provide some rights to migrant workers indirectly. These include Law 21/2007 against the Trafficking of Migrant Workers, and the Criminal and Civil Codes (see Judicial Remedies under Mechanisms below.) Although not framed as rights as such, the criminal law also theoretically protects migrant workers from crimes committed by recruitment agencies or individual brokers, including fraud.

Rights in Regional Legislation

Perda, described in the Legal Framework section above, can potentially provide greater protections and support to migrant workers in a local context. For example, the *Perda* adopted by the governor of Sumbawa District, an island in West Nusa Tenggara Province, requires that recruitment agencies provide the community with simple and clear information about their recruitment processes and positions available, and holds agencies responsible for the security and safety of all migrant workers during the pre-departure process.⁹⁶ However, one study found that over 80 percent of *Perda* addressing migrant workers are “extractive” rather than protective; in that they levy additional charges on recruitment agencies and workers as part of regulating recruitment in their jurisdictions.⁹⁷

Three of the five focus groups in this study were held in regions that have a *Perda* in place. There was no observable difference between the experience of those workers

and workers from regions without a *Perda*. Expert interviewees observed that *Perda* are only useful if the relevant recruitment agency has a branch at the local level. As noted above, the agencies that send workers to the Middle East are located in Jakarta, and are perceived as beyond the reach of local *Perda* because they do not have a local office. Brokers who arrange overseas employment for migrant workers might potentially be subject to local regulation if they could be recognized under the law as agents of recruiters, however they are not specifically mentioned in the *Perda* examined in this study.

5.B International Law and Bilateral Agreements

Indonesia has ratified all of the major international human rights conventions, including the International Convention on the Rights of All Migrant Workers and Members of their Families 1990, which it ratified in early 2012. This latest ratification was a milestone in Indonesia's commitment to protect migrant workers, and had been demanded by civil society for many years (see Annexure 1 for a list of the treaties that Indonesia has ratified). Indonesia has also ratified the core ILO agreements on migrant workers and labor protections. For a discussion of Indonesia's relevant obligations under international human rights treaties see Section 1.C above.

Although Indonesia's Constitution requires that international treaties be incorporated into domestic legislation before becoming law, Law 39/1999 concerning Human Rights effectively incorporates *all* of Indonesia's international human rights obligations. It also makes them directly enforceable in Indonesian courts and via other "effective national legal means." Article 7 of Law 39/1999 states:

- (1) Everyone has the right to use all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law, and under international law concerning human rights which has been ratified by Indonesia.
- (2) Provisions set forth in international law concerning human rights ratified by the Republic of Indonesia, are recognized under this Act as legally binding in Indonesia.⁹⁸

According to civil society experts, few Indonesian judges are familiar with Article 7 of Law 39/1999, and it has not yet been used in Indonesian courts to enforce migrant workers' human rights (and has generally been used infrequently, with limited success). This provision may form the basis of future strategic litigation to enforce Indonesia's human rights obligations to migrant workers, drawing also on the general principle under Indonesia's Constitution that: "The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government" (Constitution, Article 28I(4)).

In addition to Indonesia's international legal obligations, the Indonesian government has entered into non-binding, and non-enforceable, memorandums of understanding (MOUs) with a handful of destination countries.⁹⁹ Only the MOUs with Malaysia and Qatar cover Indonesian migrant workers in the informal or "unskilled" sectors. The signing of these agreements has been highly publicized but they have not generally increased protections for migrant workers, and have been criticized from many quarters. Among other things, they have been negotiated in a non-transparent manner, and it remains difficult or impossible to obtain copies of most MOUs.¹⁰⁰

5.C Contractual Rights

The strongest and most clearly stated legal rights of migrant workers derive from the commercial contracts they sign prior to departure: the placement agreement (*perjanjian penempatan*) between the migrant worker and the recruitment agency, and the employment agreement (*perjanjian kerja*) between the migrant worker and employer or partner recruitment agency in the destination country.

Both agreements are prepared by the prospective worker's recruitment agency, and are signed prior to departure. Though requirements of these agreements are set out in law, Indonesia does not have standard versions of the agreements. Rather, each agency develops its own version of each agreement in collaboration with its partner agency in the destination country. Various government agencies must see the draft documents before they are provided to workers: the Indonesian Embassy in the destination country must view both documents before approving a placement in the country, and the MoM views the documents when the recruiter seeks permission to fill a job order.¹⁰¹ However the regulations do not require that the government ministries do any more than merely view a draft or sample version of the document. Indeed, they do not require or even encourage ministry staff to assess the agreements for compliance with the law or any other standards. As a result there is effectively no oversight of the content of the agreements. And in practice, as detailed in the following section, agreements are frequently inconsistent with statutory requirements.

Placement Agreement

The placement agreement is central in the Indonesian migrant labor system. Law 39/2004 mentions the agreement frequently, including setting out requirements for content and delivery to the worker. Not only is it intended to protect workers during pre-departure preparations and potentially while abroad, the mandatory delivery of signed agreements to government agencies is intended to ensure that local governments are

aware of who is preparing to travel from their district, with which agencies and to which countries. This information may be valuable later in the event the worker needs copies of documents or assistance from government to resolve a dispute (see Section 6 on Enforcement Mechanisms below).

According to the regulations, the draft placement agreement, once viewed by the embassy in the destination country and the MoM in Jakarta, must be presented to the local MoM office in the district where recruitment is to take place.¹⁰² A recent Government Regulation of January 2013 clarifies that the head of the local office must “research” (presumably read and evaluate) the placement agreement before approving the production of a passport for the worker.¹⁰³

Both the worker and the recruitment agency must sign the agreement before the worker commences training, document preparation, and other pre-departure requirements. The law states that the worker and the recruitment agency must hold identical copies of the signed placement agreement, and it cannot be changed or retracted without mutual consent.¹⁰⁴ The recruitment agency must then submit a copy of every signed placement agreement to the local city or provincial authority (the local MoM office that assisted with recruitment, and BP3TKI).

These safeguards do not include procedures for invalidating or correcting deficient placement agreements, or for redress if an agency fails to comply with its obligations. And because migrants to the Middle East use brokers to connect directly with Jakarta-based recruiters who are generally viewed as outside the local regulatory ambit,¹⁰⁵ these locally-based safeguards generally do not help migrants to the Middle East at all.

Content of the Placement Agreement

The placement agreement must set out the details of the position that the worker will fill, as well as obligations during the pre-departure process, including any fees the worker must pay, and the prospective date of departure abroad.

Most significantly, Law 39/2004 requires that the agreement include a provision that the agency will compensate the worker in the event that the employer in the destination country does not fulfill all of the terms of the related employment agreement (such as payment of wages) (Article 52(2)). The explanatory notes to Law 39/2004 state that,

The guarantee referred to is a statement of the ability of the private recruitment agency to fulfill the promises made to the prospective migrant worker being placed by the agency. For example, if the Placement Agreement promises that the worker will be paid a certain amount by the employer, and this amount is not paid, the private recruitment agency must compensate the worker for the loss.¹⁰⁶

Two Sample Placement Agreements

Placement agreements for migrants to the Middle East were surprisingly difficult to obtain during the completion of this study. Indeed, nobody interviewed in this study had heard of a placement agreement being signed by a migrant worker to the Middle East. Eventually the research team obtained one sample agreement for workers to Qatar from a recruitment agency. In contrast, sample placement agreements for workers to the Asia Pacific were relatively easy to locate, and the research team viewed a sample from a recruitment agency website for workers to Malaysia.¹⁰⁷

Both agreements were several pages long but the second agreement (for workers to Malaysia) was considerably more comprehensive. It included detailed rights for the worker including to refuse a specific placement that does not accord with what was promised, to worship during the placement, and to receive insurance and 200 hours of training. By contrast the sample agreement for a worker to Qatar contained no specific rights at all. Both agreements obligate the recruitment agency to protect the welfare of the worker, but for a worker to Qatar, the agency must only ensure the worker's "safety, security and protection" until the placement "is in accordance with the applicable conditions"—presumably until the placement is found to be in accordance with the contract.

With respect to disputes and compensation, the Qatar agreement makes no mention of disputes related to performance of the employment agreement. It addresses only the situation where a placement does not go ahead: the worker has a right to return of the fees paid to the agency if he or she withdraws from the placement or is found to be medically unfit, but the costs of procedures carried out to that point would be deducted before the fees are returned. In addition, the worker can receive a refund if the placement does not occur within three months from the signature of the agreement, if both parties attend mediation at the MoM and the recruitment agency is found to be at fault. These protections are very limited, onerous to enforce, and substantially beneath legal requirements. On this point, the Malaysia agreement is similar in that it requires repayment of costs if the worker leaves the training or placement. Both agreements fail to incorporate the provisions of Article 52(2).

This is clearly a small sample, and many more contracts should be viewed to determine the protections given or not given by placement agreements. Nevertheless, the differences between these two documents (both of which have been viewed and approved by the government) suggest at minimum a need for a more comprehensive legal vetting process.

This provision is critical, because it imposes direct responsibility on recruitment agencies for the treatment of workers abroad, as well as accountability for the promises made to workers during the hiring process. It is unclear from the law and from the documents themselves how the recruitment agency's compensation obligations under the placement agreement interact with insurance coverage provided to the worker, or the obligations of the employer to fulfill the terms of the employment agreement. As the agreements have not been tested in court, this is an area that would benefit from further analysis and potentially from strategic litigation.

Employment Agreement

The employment agreement must be given to the worker after training is completed and the worker is approved for departure, usually in the few days prior to leaving the country. At this stage a worker going to the Middle East is in Jakarta, far from home, having invested much time and effort in the pre-departure process, and with much to lose if she changes her mind once she sees the employment agreement (including reputational consequences of returning to the village instead of going abroad).

Indonesia has not developed a standard employment agreement, but Law 39/2004 sets out minimum required provisions including: the names and addresses of the parties, the type of work and conditions including hours, wages, and holidays, and the duration of the contract period (two years, with a possibility to extend).¹⁰⁸ The law does not require the contract to be in a language the worker understands. For migrants to the Middle East (the majority of whom have primary school education or less—see Section 2.B) the contract may be in English or Arabic. The three sample contracts obtained from civil society organizations for this study were in Arabic and Bahasa Indonesia.

The employment agreement raises a host of transnational legal issues, given that one party (the employer/partner agency) is in the destination country; the majority of the contract is performed in the destination country; and the contract is prepared by the Indonesian recruitment agency and partner agency, and signed by the worker in Indonesia. Although the content of the agreements are governed, at least in part, by requirements under Indonesian law, the role of the destination country's law and legal system in the content and enforcement of the agreement is unclear. These issues warrant further study.

Fulfillment of Rights in Placement and Employment Agreements

Taken together, the placement and employment agreements ought to contain legal rights that provide workers with significant protections from bad faith dealings by recruiters and employers. This is not the case in practice. First, despite the many layers of government checks and approvals, it appears that many migrant workers, particularly those traveling to the Middle East, do not receive a placement agreement at all (see

Text Box above). Civil society organizations said they rarely saw placement agreements, and a recruitment agency representative intimated that the document is rarely given to the worker. According to legal experts, recruitment agencies commonly place workers in a boarding house for training before a job order has even been received, making it impossible for her to receive a placement agreement with details of the position at the time of recruitment; instead the agreement is given at the airport, if ever. In contrast, most focus group participants received and were aware of the employment agreement.

Second, even if the placement agreement is given, the agency does not have an obligation to explain it to the worker. This is in contrast to the employment agreement, which must be explained by public officials during the pre-departure briefing. Civil society organizations suggested that even when the agreement is given to workers, the recruitment agency takes it back after the worker has signed it, and migrant workers are not encouraged to read it or take steps to understand its terms, or the rights that it contains.

Third, as described in the box, the majority of placement and employment agreements may be out of compliance with the law in any case. Neither of the two documents reviewed for this study included a guarantee by the recruiter, required under Law 39, article 52(f), to compensate the worker in the case that the employer violates the agreement. Furthermore, the agreements do not contain mechanisms for enforcing contractual rights or resolving disputes, though workers may try to do this in practice through negotiation and mediation (see Section 6.A on Administrative Dispute Resolution below).

The law does not impose any sanction if the agreements provided by the recruiter are not in accordance with the law, and neither the statute nor the agreements themselves establish consequences for recruiters if they fail to comply with their obligations. As a result of all of these legal and implementation failures, the migrant workers who took part in the study were unaware of their rights under the placement and employment agreements, beyond the promised wage and country of work.

Experts interviewed for the study were unable to identify case law exploring the enforceability of contractual rights, or explaining the relationship between the placement agreement and employment agreement. This raises further questions for research, and potentially fertile ground for strategic litigation to enforce statutory requirements and contractual rights.

5.D Summary of Rights under Law and Contract

Migrant workers in Indonesia have legal rights deriving from the constitution, statute, regulations, and private commercial agreements with recruitment agencies and employers (and insurers—see below), as well as under international law. Statutory rights include specific rights to work abroad, to be treated equally to other prospective workers, to be paid the prevailing wage, receive a copy of the work contract, and to not be mistreated or exploited. Workers also have a right to training and information suitable to the type of work they will undertake.

In practice, migrant workers' statutory rights provide little protection because most rights are difficult (if not impossible) for workers to enforce; they rarely identify the party responsible for fulfilling particular rights; and they do not clearly delineate between the obligations of government and recruitment agencies. Nor do they establish enforcement mechanisms. For example Law 39/2004 does not set out any method by which a worker may complain if he or she is not treated equally, or does not receive the prevailing wage, or does not receive a copy of the contract. It also provides no mechanism for filing or resolving a complaint if a government official does not do the required checks, or if the placement agreement does not contain the required worker rights.

Rights under the employment agreement include rights to specific wages, to a certain type of work, to leave days, and other details of the relationship with the employer. Rights under the placement agreement include a guaranteed placement if a fee was paid (or have the money returned), and compensation by the recruitment agency if the employer does not pay the agreed wages or does not comply with other terms of the placement and employment agreements. Similarly, the placement agreement (which Middle East workers rarely receive, in any event) contains no mechanism for obtaining the compensation that the agency must pay if the worker's employment agreement is not fulfilled. The employment agreement is difficult, if not impossible, to enforce after a worker returns to Indonesia.

Workers are generally left with verbal agreements made with brokers, and various sources of legal rights in need of accountable actors and effective enforcement mechanisms. The following section examines current redress mechanisms in Indonesia and the extent to which they do, or might, provide avenues for enforcement of these rights.

6. Mechanisms for Enforcing Rights and Seeking Redress

Throughout the migration process, migrant workers interact with numerous government agencies and private parties in Indonesia and abroad, in relation to whom they have legal rights (see previous section). These private parties include recruitment agencies, insurance companies, overseas employers, and potentially private local brokers who make verbal promises to workers. They may also include transport workers (who extort returning migrant workers), training center staff, and other parties based in Indonesia.

Workers have several avenues through which they might attempt to seek redress in the event of a dispute with, or rights violation by, one of these parties. Apart from the courts, these avenues were typically viewed by the various stakeholders in this study as paths to problem-solving rather than mechanisms for legal rights enforcement. They include:

- In person negotiation/“peaceable resolution;”
- Filing of a claim with a government agency and attending mediation (Administrative Dispute Resolution);
- Filing of a claim for insurance;
- Use of the court system.

This section reviews each of these mechanisms, identifying: the relevant legal framework where applicable, the various actors involved, the procedures for filing and resolving a complaint, and perceptions of the efficacy (or otherwise) of the mechanism. It draws on the experiences of migrant workers, the perceptions of lawyers and civil society “case-handlers” who assist migrants, and the views of government officials who implement and oversee the mechanisms.

By far the most popular method for a worker seeking redress against a private party in Indonesia, according to study participants, is informal in-person negotiation, whether with the broker, the recruitment agency or the employer. And very few migrant workers take their problems any further because of lack of information and a lack of faith in the efficacy of available mechanisms. This perception was borne out by focus group participants, among whom only a handful had taken any action beyond communicating with the broker or the agency.

In addition to the mechanisms above, workers also use the services of the Indonesian embassy to resolve problems directly with employers while they are still abroad. Foreign missions may also support cases in Indonesia by providing documents or other evidence of harms that occurred abroad. The role of the Indonesian embassy in resolving disputes between workers and their employers in the Middle East is the final “mechanism” discussed in this section.

Legal Aid in Indonesia

While abroad, migrants can potentially access legal aid services through the Indonesian embassy and consulates (see section on Embassy Protection below). In Indonesia, however, state-funded legal aid is generally only provided to criminal defendants.

Nongovernment options are available to migrant workers, but they are limited. Private legal aid services have a long and respected history in Indonesia; the first official organization, *Lembaga Bantuan Hukum* (LBH) Jakarta, opened in 1970, under the military-led regime of President Suharto, and was a vital outlet for the pro-democracy movement.¹⁰⁹ Today, alongside other issue-mandated civil society groups with lawyers on staff, such as women’s organizations, branches of the LBH Foundation operate in 15 provinces of Indonesia.¹¹⁰ However, legal aid organizations still operate largely in cities. Though they take up a great variety of cases, from corruption to gender equality and land claims, lawyers at Legal Aid Jakarta who were interviewed

for this study said that migrant worker cases were “extremely rare” and fell generally within labor cases.¹¹¹ And while some private lawyers specialize in migrant worker cases, one lawyer interviewed suggested this was also rare because the cases are complex, and migrant workers can rarely pay legal fees.¹¹²

Instead, when seeking redress migrant workers rely on local non-legal civil society organizations, usually staffed by returned migrant workers who are personally invested in improving the system. All the migrant workers who participated in focus groups in this study had received such assistance; none had received professional legal advice. These organizations play a vital function in advocating for individual migrant workers in claims against government or private parties and assisting with gathering documents and evidence. Nevertheless, several experts lamented the scarcity of trained legal advisors in regional areas who could advise workers on their rights under statute and contract.

This situation may change in light of the new 2011 Legal Aid Law (16 of 2011).¹¹³ Significantly, the law recognizes a “right to access justice” in Indonesia, and reaffirms the constitutional right of all Indonesians to equality before the law.¹¹⁴ It also provides state funding for legal aid services provided by private lawyers and organizations. It is not yet clear how the law will be implemented. For migrant workers, a central question is whether they will be included within the definition of “the poor,” the target population of the law. Migrant workers may come home with some earnings, but still face structural barriers to seeking redress for valid claims. Agustinus Supriyanto, an expert on international law and migrant workers, suggests that a broad interpretation of the law could provide a vital service to the thousands of migrant workers seeking redress each year.¹¹⁵

6.A Negotiation and Informal Dispute Resolution

Informal negotiation is the first, and often only, dispute resolution method used by migrant workers and their families, if they take any action at all. Law 39/2004 in fact requires workers and recruitment agencies to negotiate their disputes before taking further action:

85(1): In the event of a dispute between a migrant worker and a private recruitment agency regarding the implementation of the Placement Agreement, the two parties must endeavor to resolve the matter peacefully and through informal discussion.

Participants described negotiation as useful for a range of disputes with recruitment agencies, including: repayment of lost fees if the placement fails; return of personal documents; repayment of lost wages if the worker was not paid according to the placement agreement; an insurance payment (see Migrant Worker Insurance Program below); and to improve working conditions or obtain back-wages from an employer. Such negotiation is also usually the only option for workers in disputes with local brokers, who are not subject to direct regulation and receive little government oversight (unless the matter is reported to the police for criminal fraud).

Who is Responsible? Recruiters vs. Insurers

Indonesia's migrant worker insurance scheme covers workers for many categories of harm in Indonesia and abroad—including harms that are the fault of the recruitment agency, directly or indirectly. Further, Law 39/2004 requires that migrant workers' placement agreements contain a guarantee that the recruitment agency will compensate the worker for violations of the employment contract (including, for example, non-payment of wages). The insurance policy covers some losses that are also breaches of the employment contract (including non-payment of wages).

As a result of these overlaps, in practice civil society organizations often approach both for compensation. One former case-handler explained that in cases of non-payment of wages, for example, civil society organizations would generally go to the recruitment agency, which would rarely compensate the worker directly, but might also "help" the worker to make an insurance claim. Because this adds significant time to the claims process, many civil society organizations now go straight to the insurer with such claims. It would appear from Law 39/2004 that the recruiter retains ultimate responsibility for compensating contractual breaches if the insurer improperly fails to do so, but this issue was not explored by participants in this study.

The BNP2TKI 2011 Standard Operating Procedure Manual instructs staff that the recruitment agency and the insurance company may both be parties to a mediation, but that each deals with different harms. According to the manual the insurer deals with work-related harms, whereas the recruitment agency is responsible for problems associated with the pre-departure

process, i.e.: the worker was unable to do the work, could not communicate with the employer, was not in good health, or returned home with a child.¹¹⁶ It is not clear whether this reflects standard practice or BNP2TKI's assessment of the legal obligations of each party. In any case, a clearer statement in legislation or regulation about the respective responsibilities of recruitment agencies and insurers would aid civil society organizations and migrant workers and their families to make successful claims.

Law 39/2004 does not establish a procedure for negotiation/informal discussion. Previous studies have demonstrated that migrant workers and their families learn strategies from each other.¹¹⁷

Participants explained that in most cases, the migrant worker or family member attempts to locate the other party, explains the situation, and asks for some relief. In some cases a local authority or civil society organization assists the worker to gather necessary documents or to retrieve documents from recruitment agencies—such as a copy of the employment agreement if the worker did not receive or keep a copy.

Negotiations may range from highly informal conversations to more formal meetings in which civil society organization representatives present documents and evidence of loss to the other party, and request specific redress. Civil society organization representatives noted that these discussions are sometimes heated, with each side making demands of the other.

Parties may discuss the dispute by letter or phone, but civil society representatives emphasized that in-person meetings were usually required to achieve a result. A representative of SBMI Brebes noted: “We have to be very careful in our case handling and negotiation—we do it all in person. As soon as we need to involve the sponsor/broker or even the placement agency, we go straight to the placement agency office.” Participants described the considerable time and work involved in every negotiation, including sending letters, making calls, and driving or taking transport to numerous meetings.

In-person meetings present several challenges. Meeting with brokers can be difficult because some disappear after arranging recruitment, although others may be known to the community and can eventually be contacted.¹¹⁸ Brokers who are contacted often deny any responsibility and blame the agency. An in-person meeting at an agency can be highly intimidating for a worker or her family, as it involves travel to Jakarta (for Middle East recruiters), and agencies are often located in secure private complexes protected by high walls. Travel to Jakarta may also be expensive (though direct negotiation may still be cheaper than other pathways to redress).

One mother in Central Java described attempting to negotiate with the recruitment agency after her daughter, who was working in Saudi Arabia, had not been paid for two years and was being prevented from returning home. She told the focus group:

I have been going back and forth, back and forth, to the recruitment agency for the last year. But nothing happens. There is no one there except the outsourcing agent and he just says, “yes, yes” but gives me no answer. Really it is the broker’s responsibility, but he has disappeared.¹¹⁹

Although Law 39/2004 refers to negotiation between the recruitment agent and the worker, workers also negotiate with other parties, such as insurers (see Migrant Worker Insurance Program below) and employers. In the latter case, civil society groups described workers enlisting the help of friends, family, civil society organizations and even the recruitment agency to speak to an employer. An organization in Lombok explained their process as follows:

In a case of a salary not being paid, we sometimes contact someone who has worked in that country before and ask her to telephone the employer. This is actually a new technique for us. It turns out that the employers can also be approached. A woman who helped us in one recent case had worked there a long time and knew the language and the culture of people there to help smooth our path [in the negotiation]. The return flight was arranged and the salary paid.¹²⁰

In this way, negotiation may also prevent problems from escalating, or help to resolve misunderstandings before a worker needs to seek formal redress. And despite the inherent power imbalances that can make a fair negotiation difficult to achieve, negotiation appeared to be a familiar method for resolving disputes. Indeed, participants described negotiation as an ongoing component of all dispute resolution mechanisms, even after a worker has filed an official complaint.

6.B Administrative Dispute Resolution

Beyond direct negotiation, the principal mechanism for resolving disputes between migrant workers and Indonesia-based actors is administrative dispute resolution services provided by government agencies. Services range from assisting workers to obtain documents from recruitment agencies and other government departments, to writing letters to various parties such as the recruitment agency or embassy abroad, or speaking to the other party on the worker’s behalf.¹²¹ The final stage in administrative dispute resolution is a “mediation” in which the government agency brings together the parties to a dispute to negotiate.

It is unclear which government agency is ultimately responsible for resolving migrant worker disputes, the procedures they should follow, the potential claims that can be made, the remedies available, and possible appeal mechanisms. Although not an

official term used by government in Indonesia, this report uses the term “administrative dispute resolution” to broadly encompass all of the dispute resolution activities that government agencies perform, described in as much detail as could be obtained from stakeholder interviews and government documents.

Government Agencies’ Dispute Resolution Functions

Indonesian law does not clearly distinguish which government ministries and agencies can receive migrant worker’s complaints and assist in their resolution. Indeed, participants in this study generally viewed MoM and BNP2TKI’s dispute resolution functions as interchangeable. As one lawyer noted, “The more formal mechanism we use to resolve disputes is filing a complaint with the government, in this case either BNP2TKI or the Ministry of Manpower, the main thing is that it is government.”¹²²

Law 39/2004 authorizes the MoM to assist to resolve disputes. Article 85(2) states:

If a resolution through informal discussion is not reached, one or both of the parties can request the assistance of an agency with responsibility for labour [the MoM] in the District/ City, Province or National Government.

However, BNP2TKI in Jakarta and provincial BP3TKI offices also receive migrant worker complaints, as does the Ministry of Foreign Affairs in Jakarta. They may be authorized to do so under Article 90 of Law 39/2004, a provision that broadly requires the national government to, “facilitate the resolution of disputes or conflicts between the migrant or prospective migrant workers and the employer and/or the placement agency.”

In practice, responsibility for receiving complaints appears to have been increasingly delegated, to BNP2TKI.¹²³ The involvement of the MoM was in fact described as a source of frustration by the MoM head of protection in Jakarta, who emphasized that all cases should go to BNP2TKI. This has not occurred in practice because manpower offices in cities and districts are better known to the community than BNP2TKI, which does not have many local offices.

The specific dispute resolution functions by agency were described by study participants as follows:

Ministry of Manpower. Because of the lack of implementing regulations, most of the eight local and provincial MoM offices interviewed in this study¹²⁴ were unsure of their responsibility for resolving disputes. Nevertheless, most MoM administrators expressed great concern about the situation of migrant workers, and were reluctant to refuse people.¹²⁵ They noted that they receive complaints and assist workers or their families in compiling their documents, but felt their powers to actually resolve disputes were limited, and that they “do facilitation only.” As one explained:

We provide all services but are limited in resolving problems—we just forward them on. But we do try our best to help. We write down the story from the beginning—who invited you to work abroad, which recruitment company did you use? We can give people options and help them make contact with other offices.¹²⁶

The MoM in Jakarta and some local offices also facilitate resolution of disputes that occur within their jurisdiction. For example, officials in Lombok and Sukabumi stated that they call in local recruitment agencies if a migrant worker files a complaint. In practice, because all Middle East recruitment agencies are in Jakarta, the mediation must be conducted in Jakarta or it is unlikely the recruitment agency will attend.

BNP2TKI Crisis Center. BNP2TKI's dispute resolution service is provided by its crisis center in Jakarta, created in November 2008. In June 2011 the center established "Hello TKI," a toll-free hotline for migrant workers and their families within Indonesia. Workers abroad can also call an international number (although not toll-free), or send an e-mail or SMS.¹²⁷

In its first year of operation the crisis center hotline received 243,799 calls or emails from migrant workers, family members, or persons interested in working abroad—suggesting considerable awareness of the service. Only 3 percent (7,601) of calls were registered as complaints (other calls were requests for information or other matters). After officials verified the documents in these cases, half (4,097) were accepted as formal complaints. By the end of the first year (June 2012) 2,729 cases had been resolved.¹²⁸ By November 2012 these figures had almost doubled: 9,764 complaints had been received from migrant workers and their families, and 4,577 of those cases had been resolved—primarily cases involving non-payment of wages (22 percent) and 'loss of contact' (21 percent).¹²⁹ Data is not available on the nature of the resolution of these cases, as compared with the amounts or actions that workers and their families demanded.

Ministry of Foreign Affairs. When the worker is still abroad, the family members (or civil society organizations contacted by family) can file a complaint with the MoFA. In most cases this is done through the local MoM office, which forwards the complaint to staff in the MoFA's Citizen Protection Division (see Section 4: Protection of Citizens Abroad). Citizen Protection then, "coordinates the provision of protective measures for citizens abroad with foreign Indonesian Representatives and the relevant agencies in the country."¹³⁰ Individuals may also submit complaints directly to the Ministry of Foreign Affairs in Jakarta, without going through a local government office. Complaints may be submitted in person, or through an online complaint service.¹³¹

Some organizations described contacting all agencies at many levels at once in order to get a response, for example:

[W]e usually send a letter to the village head, the local government head, the district head, the recruitment agency, to BNP2TKI and to the Ministry of Foreign Affairs—everyone who could be involved. The village office will help us in drafting these letters, and so will the local Ministry of Manpower office. Everyone plays a role. Without their support nothing will happen.¹³²

Some perceived the MoM to be more effective or authoritative than BNP2TKI because only the ministry has the ability to sanction recruitment agencies. As Legal Aid Jakarta explained:

The choice of whether to go to BNP2TKI or the Ministry of Manpower is completely up to us. In practice, we usually request a meeting with the Ministry of Foreign Affairs if the case is for a migrant worker, and then at the Ministry of Manpower, not to BNP2TKI. Because we think of BNP2TKI as below the Ministry of Manpower and it is the Ministry that has the authority—that is the most important thing in resolving disputes.¹³³

Holding Government Accountable—the Ombudsman of Indonesia

The Ombudsman of the Republic of Indonesia was established in the early days of “reformasi,” following the fall of the Suharto regime. It is composed of nine members, who are selected by the legislature. In 2008, the office was significantly reformed and its powers expanded by Law 37/2008 regarding the Ombudsman of the Republic of Indonesia.¹³⁴

The Ombudsman is charged with overseeing all government institutions, or private entities contracted by the government, that provide services to the community. These functions are particularly relevant to Indonesia’s migrant labor system, which relies heavily on bureaucratic administration, oversight, and enforcement. Members of the community may make a complaint (including through an online complaints service) or request an investigation, or the staff of the Ombudsman may commence an investigation independently. The investigation results in a report. The Ombudsman does not have enforcement capability.¹³⁵

During the Roundtable held in Jakarta in January 2012, participants spoke highly of the Ombudsman as a promising new tool for addressing the concerns of migrant workers. At least one organization, Migrant Care, reported using the Ombudsman’s Office as part of their advocacy and case-handling work. Further research is needed to understand how the Ombudsman complaints procedures work in practice, and the ways in which investigations or reports may enable workers to compel action or obtain redress.

Dispute Resolution Procedure

The implementation of Articles 85 and 90 of Law 39/2004 is not yet governed by comprehensive regulation. Indeed Law 39/2004 does not direct the Minister of Manpower to pass regulations establishing operational details for dispute resolution, in contrast to other areas such as recruitment and placement.

BNP2TKI has several guiding documents for resolving migrant worker disputes, including a 2011 Standard Operating Procedure Manual and a 2012 internal regulation on Service Standards for Migrant Worker Protection.¹³⁶ According to the service standards, the agency will receive complaints against recruitment agencies and insurers that are filed at any related agency, including an MoM office. BNP2TKI officials are then instructed to gather all relevant documents, including the worker's personal documents, contracts, and other pre-departure documents such as the medical exam and insurance card. Although MoM does not have documented procedures, interviewees from MoM and BNP2TKI described a similar procedure followed by both institutions.

The BNP2TKI Dispute Resolution Process¹³⁷

The Standard Operating Procedure manual sets out complaints-handling procedures as follows:

A) Procedure for Handling/Resolving Problems

- a) Prospective Migrant Worker/Migrant Worker/Family Member ["complainant" or their legal representative] submits a complaint in person or indirectly to relevant agency (i.e., to BNP2TKI (Deputy of Protection), BP3TKI, or MoM at the provincial, district or city Levels) and completes a complaint form.
- b) Recording of the complaint, and researching the complainant's personal documents and other related documents in support of the complaint (passport, KPA, placement and employment agreements, medical report).
- c) Verification of the type and character of the case, to determine the appropriate person to handle the case.
- d) Scheduling a mediation (calling the recruitment company/insurer and complainant) to resolve any case arising from overseas placement, not including criminal cases.
- e) If the case involves criminal matters, urge and guide the complainant to file a complaint with the relevant authorities.
- f) Prepare a summary of a concluded case including notes of the agreement.

As the MoM official in Jakarta noted, migrant workers rarely have all of their documents, particularly if they left the place of employment in distress: “The documents are usually not compiled properly—they will just know they were in Saudi Arabia, but often won’t even know their passport number.”

An MoM representative explained that in such a case, it would contact the recruitment agency to verify the facts claimed by the worker, request additional documents (such as the employment or placement agreement) and the details of the agency in the destination country. The official further explained that recruitment agencies are usually given two weeks to comply with these requests, and if they did not comply a further letter would be sent.¹³⁸ It was not possible to determine the extent to which recruiters and insurers comply with government requests for documents, and the steps the government can take if faced with non-cooperation.

Once all of the documents are gathered, the staff of BNP2TKI and/or the MoM in Jakarta will register the complaint formally and start the resolution process. Unless the complaint involves criminal conduct, the service standards require that the case go to “mediation.” Officials interviewed said that in practice, prior to scheduling a mediation they would often try to negotiate directly with the recruitment agency or insurance representative, and encourage the party to respond to the migrant worker’s complaint.

“Mediation”

The final stage of administrative dispute resolution is a meeting between all parties at BNP2TKI’s offices, or the MoM offices in Jakarta, where insurance companies and Middle East recruitment agencies are located. Study participants commonly used the term “mediation” to describe this meeting, although the meetings are not presided over by a professional mediator, and are not governed by the rules on mediations that apply to court-based alternative dispute resolution.¹³⁹ In essence, these “mediations” are meetings between the parties organized and presided over by a bureaucrat, who assists the parties to come to a negotiated settlement. As an interviewee from Legal Aid Jakarta explained, “the mediator is just someone who we believe has the authority and who understands the problem and it is hoped will help us resolve the case.”

Not all cases are suited to mediation. As a practical matter, mediation is only possible with parties who are based in Indonesia and who are recognized under the law—overseas employers and brokers/agents, for example, are not subject to mediation. Legal experts interviewed in this study agreed that mediation works best for insurance claims for unpaid wages, or in cases of “failed departure”—where the worker has not departed Indonesia but has paid pre-departure fees (e.g., for insurance and medical examinations). In both cases, the other party is located in Indonesia, and the claims are for easily quantifiable financial loss.

The MoM does not have a standard procedure for mediating disputes, and rather “does it as we have always done it.” Based on the description provided by officials, the procedure appears identical to that set out in BNP2TKI’s Service Standards (see box below). It involves contacting the parties in dispute, trying to achieve some negotiated resolution over the phone or by letter, and if this fails, calling all parties into a meeting.

The BNP2TKI Mediation Process

Following section “A” concerning pre-mediation case handling (see previous box) BNP2TKI Regulation 13/2012 then sets out the procedures for mediation as follows:¹⁴⁰

B) Pre-Mediation Stage

- a) The mediator must suggest to both parties that they negotiate their dispute directly.
- b) The mediator must give the parties a negotiation period and must explain the mediation process to both parties.
- c) Any decision made by an attorney [on behalf of a client] must be approved in writing by both parties.

C) Mediation Stage

- a) The mediator must determine a time to hold the mediation.
- b) During the mediation, either party may be accompanied by an attorney.
- c) The mediator must encourage the parties to explore their individual interests and to find a solution that is best for both parties.
- d) The resulting agreement from the mediation must be completed within 14 working days.
- e) The agreement must be stated in the minutes of the meeting, signed by both parties.
- f) When the parties cannot reach agreement, the failure to agree is noted, and the mediator must suggest the parties seek legal recourse.
- g) In the event the recruitment company does not respond to calls to attend three times or is not proactive in resolving the case, BNP2TKI may delay placement processing services.
- h) In the event that the recruitment agency does not fulfill its obligations, it will be suggested that the Ministry of Manpower impose a sanction in line with the law.
- i) If the parties fail to reach an agreement, any information or admission made by the other party during the mediation cannot be used as evidence in a court of law.

Neither BNP2TKI Service Standards Regulation nor Law 39/2004 provides any guidance about appropriate redress for particular harms, except in insurance claims (as described in the next section).

Remedies, Sanctions, and Appeals

BNP2TKI does not have an internal appeal or grievance procedure if a migrant worker is dissatisfied with the conduct or outcome of mediation or if the recruitment agency has refused to attend. BNP2TKI explained that the worker's principal option is to appeal through the courts. None of the legal experts interviewed had experience appealing a mediation and recourse to the courts for the filing of a civil claim was not viewed as a realistic option (see Section 6.D on the courts). In some criminal cases the violation may be reported to the police if mediation fails, and an MoM official believed that the courts have resolved a handful of such criminal cases.

The MoM has power to sanction, or even de-register, a recruitment agency if it believes the agency has violated the law.¹⁴¹ BNP2TKI does not have power to compel or sanction a recruitment agency but it may report the agency to the MoM. The BNP2TKI deputy of protection explained:

For example we call the recruitment agency because there is a problem with a migrant worker, her salary has not been paid or other problem. We call the agency and ask them to come here, but often they won't want to resolve the case or they don't have any information. We then deem the agency as negligent, and as violating the law. So we send a recommendation to the Manpower Ministry that the agency be sanctioned.¹⁴²

The deputy knew of one or two agencies that had been sanctioned by MoM, but to his knowledge none had been sanctioned as a result of BNP2TKI's recommendation. In general, lawyers and civil society groups did not consider MoM sanctions to be an effective tool for holding agencies accountable for violations committed against migrant workers in individual cases.

Perceived Effectiveness of Administrative Dispute Resolution

Awareness of Administrative Dispute Resolution among Migrant Workers

Civil society organizations and legal experts were highly familiar with administrative dispute resolution services and spoke of them as the routine first step if direct negotiations fail. In contrast, although migrant worker focus group participants mentioned visiting a local government office for advice or assistance in resolving a case, they did not view this as a mechanism or pathway to justice as such. Rather their use of local government was framed as seeking the intervention of a more powerful local figure in a dispute, usually with a local broker or agent.

Workers were not familiar with the more formal mediation procedure, possibly because BNP2TKI's Crisis Centre is new. None of the workers described being informed pre-departure about the dispute resolution role of the MoM or BNP2TKI. Instead, as detailed in later sections, they were advised to simply go to their embassy if they had a problem. The large number of calls to the crisis center in its first year of operation suggests that awareness of the center is growing, though the very small percentage (3 percent) of those calls that involved a claim suggests that awareness of the agency's dispute resolution function may still be relatively low.

Accessibility to Migrant Workers and their Families

Legal experts and civil society groups were generally positive about administrative procedures. They perceived them as relatively accessible options, and far cheaper than litigation. These procedures also enable the civil society group to confront the other party directly and present the worker's case. As Umu Hilmy of Brawijaya University explained: "For non-litigation methods, we have more hope because we can argue against the denials from the recruitment agency lawyers directly." Because workers were unfamiliar with mediation, they did not have a view on its accessibility.

Administrative dispute resolution can also be relatively fast and affordable—apart from potentially substantial travel costs—because neither MoM nor BNP2TKI charge a fee for the filing of a complaint. The informal or quasi-formal negotiation process was also described as a familiar dispute resolution method for local conflicts.

At the same time, geographic distance is a significant barrier for many migrant workers. Although Article 85(2) of Law 39/2004 requires that a complaint against a recruitment agency be filed at a local manpower office, in practice this was usually ineffective because of the limitations of local manpower offices generally (see discussion in Government Agencies' Dispute Resolution Functions above) and because Middle East recruiters are located in Jakarta.¹⁴³ As a result, a migrant worker or family member must travel to the MoM or BNP2TKI in Jakarta, which is expensive, intimidating, and takes the complainant away from his or her family responsibilities. Until the role of local manpower offices is strengthened, or BNP2TKI has greater reach to the district level, accessibility will remain an obstacle, particularly for migrant workers to the Middle East.

Fairness of Procedures

All officials and civil society groups interviewed for the study were clear about the procedures for administrative dispute resolution, including mediation. Their perceptions accorded with the BNP2TKI SOP and its service standards, suggesting a measure of clarity and transparency. However, the service standards themselves note that implementation is not "optimal," and that technical implementers in the field have found the numerous changes in the law and procedures "confusing."¹⁴⁴

A number of organizations believed that the process of negotiation and mediation could be empowering for workers. It gives organizations an opportunity to spend time with the worker and provide counseling or other moral support, and also provides an opportunity for organizations to educate and train workers about the process. Jihun from SBMI explained, “When we accompany a case, the family or the migrant worker herself experiences the case along with us. We invite them to Jakarta so that they can learn and we hope they could do on their own next time if they face a similar situation, and they also get to know the different government buildings.”

This learning-by-doing approach may also benefit communities. Eddy Purwanto, who was previously a private lawyer representing migrant workers, explained that he demonstrated to workers that they have rights by bringing them through the process, and that, “there is a transformation, there is a learning for the whole community so that if their case finishes and they go home to their village, they can help others who have similar problems.”

Nevertheless, most migrant workers still confront significant challenges when using these quasi-formal administrative mechanisms. These include difficulties in gathering all of the required documents, and the need for some skilled representation, especially for mediation. The recruitment agency is not required to provide copies of documents that the worker has lost (such as the contract), and there is no mechanism to compel the agency’s attendance or to enforce promises made or agreements reached. The procedural standards do not establish appropriate remedies or set monetary benchmarks. And because the format is more akin to a facilitated negotiation rather than a true mediation, the presence of the “mediator” does little to ameliorate the significant power imbalance between the two parties. The procedures also lack general worker protections such as a guarantee of confidentiality.

Compounded by the lack of an appeals process, the administrative dispute resolution procedure is thus relatively weak: recruiters have little incentive, and cannot be compelled, to reach an outcome that is truly fair to the worker, and neither the process nor the government “mediators” structurally correct the barriers that workers face in seeking justice.

Yuni's Experience

Yuni is a mother of two who works with her husband selling snacks on the street in Sukabumi West Java. To supplement the family income, she went to Qatar in 2008–2009 to work as a domestic worker, using a local broker and a Jakarta-based recruitment agency. In Qatar, she was responsible for caring for a young baby, cleaning the house, and cooking for the family, which left her only around three hours per day to sleep. For the first eight months, her employers did not pay her wages and forbade her from calling her family or receiving calls from home. She was finally paid after eight months, but only for three months of work. This pattern continued for the next nine months, and after one year and five months, she was still missing seven months of wages. Finally, Yuni went on strike for a day in protest and in response, her employers returned her to Indonesia without paying any of what they owed. She explained the process when she returned:

When I came back I didn't know where to file a complaint. I just thought that this is my fortune, and I was resigned to my situation. I did go to my sponsor [broker] and he said he would fix it, he even took my documents with him, but after more than a year I never heard anything. Finally, I spoke to my older sister who had had a similar problem and she introduced me to Mrs. Jejen [Coordinator of SBMI in Sukabumi]. I asked her if she could get my wages for me, but she said it was not possible now, but that I could put in a claim for insurance. Mrs. Jejen handled everything for me. She took me to Jakarta one time—to BNP2TKI and then to the recruitment agency. Thanks to God, they agreed to handle it, to help me.

After that I don't know what the process was as I didn't go along. But three months later Mrs. Jejen called me and said the recruitment agency wanted to meet with us in Jakarta. They had arranged the insurance for me—I received 3 million rupiah (around US\$315). This was not the full amount I was owed though—for seven months work I should have received 15 million (\$1560). However, we only had the documents to prove early termination—I couldn't prove the unpaid wages so I couldn't submit the full claim. That was in early 2011.

The reason they gave for the low payment was that I didn't have my passport, only my contract. But the broker had taken my passport and when we asked him he said he gave it to the recruitment agency.

The agency refused to give it to me, even after they had paid me the money. They just said that if I wanted to travel abroad again, I would have to use them. They are still holding it today.

The whole process was really hard for me. The hardest thing was going back and forth to Jakarta, and I just went two times, Mrs. Jejen went many times. This cost money each time—around 300,000 (\$30) per person. Many people explained to me the process along the way: Mrs. Jejen, another person in Jakarta, a researcher and also someone at the woman’s human rights commission. But I have forgotten most of it now. In the end, the amount was not enough, but satisfied or not satisfied, I just had to accept it.

Justness of Outcomes

As the Crisis Centre figures indicate (see discussion in Government Agencies’ Dispute Resolution Functions above), BNP2TKI has a relatively high clearance rate, resolving more than half of complaints within a year. It does not, however, provide information about the outcome of the cases, the kind of redress achieved, or the extent to which the redress obtained is comparable to the losses sustained and/or the amounts claimed.

In general, participants indicated that all amounts and claims were subject to some negotiation, and that as a result workers would never get the full amount, but they would always get something. As a staff member at one civil society group stated:

We have never had true satisfaction in a case. Because we see that in almost all cases the worker loses something. For example from any claim, the worker will only receive 75 percent or 80 percent at most of what she deserves—whether salary or concrete demands. And more serious claims such as sexual harassment are never even discussed—there is no compensation for them.¹⁴⁵

As the Crisis Center refines its procedures, it would be valuable to gather detailed outcome data as well as data on migrant workers’ satisfaction with the procedure and result in their cases.

6.C The Migrant Worker Insurance Program

The Indonesian Migrant Worker Insurance Program is a specialized scheme established under Law 39/2004 as:

A form of protection for migrant workers in the form of financial compensation for losses suffered by the migrant worker before, during and after working abroad.¹⁴⁶

The Insurance Program is regulated and monitored by the Minister of Manpower, and serves as the ministry's key strategy for providing redress to, and protecting the financial wellbeing of, Indonesian migrant workers.¹⁴⁷ The scheme is broad in scope and could, if it functioned effectively, provide meaningful financial redress for many of the problems commonly experienced by workers.

Pursuant to Law 39/2004, all migrant workers are required to participate in the Insurance Program, thereby spreading the risks of traveling abroad across migrant workers, similar to national health insurance or workers' compensation. Protection of migrant workers through insurance began in 1998 through a foundation run by recruitment agencies, and the current scheme was established in 2006.¹⁴⁸

Although lawyers, civil society groups, and workers believe that migrant workers should be insured, they expressed frustration and cynicism about this particular program. Many described the program as essentially extortionate, in that migrant workers are required to pay money to the insurance companies in order to receive approval to travel, but receive little benefit in return because they rarely receive pay-outs for losses. The World Bank in Indonesia has also been critical of the scheme, identifying problems in both its structure and implementation.¹⁴⁹ In interviews, The Ministry of Manpower rejected such assessments and described them as "misperceptions," as did the insurance consortium at the time, Proteksi.¹⁵⁰

At the time of publication of this study, the fate of the Migrant Worker Insurance Program was uncertain. On 16 July 2013, the Supreme Court reportedly invalidated the key implementing regulation for the scheme on the basis that it was inconsistent with the broader law on insurance and with anti-monopoly legislation, however the decision has not yet been made public.¹⁵¹ Further, the previous day (15 July 2013) the Indonesian Financial Services Authority (Otoritas Jasa Keuangan, OJK) froze the operations of the consortium of insurers appointed to provide insurance to migrant workers under the program. It noted that, "several things needed improvement in the current migrant worker insurance scheme," and announced that some consortium members would be audited.¹⁵² On 30 July, 2013 the Ministry of Manpower appointed three new consortiums comprising 32 insurance companies, none of which had participated in the previous scheme.¹⁵³ However the reported Supreme Court invalidation of the 2010 regulation raises questions as to the validity of the appointments and the continuing operation of the program.

Despite these uncertainties, the analysis of the Insurance Program below, based on research conducted in 2012, remains relevant to any efforts to reform the program. The review of the structure and the operation of the program revealed systemic problems that went beyond the specific consortium members. These included inappropriate

gaps in the insurance policy, a failure of recruiters to meaningfully inform migrant workers about their insurance coverage and procedures for making claims, and a need for greater procedural clarity, transparency and accountability within the claims process, among other problems.

In the discussion that follows, the term “Proteksi” or the “Proteksi Consortium” refers to that specific previous insurance consortium. Whenever the discussion refers to the general role and functions of a consortium appointed to provide insurance to migrant workers, the term “consortium” is used. The discussion below also refers to regulation 7/2010 which established the contours of the Insurance Program during the period of this study.

Legal Framework and Institutions for Insurance

Licensing and Regulation of Insurance Providers

Law 39/2004 makes the purchasing of comprehensive insurance mandatory before departure. It places the onus on recruitment agencies to arrange insurance for workers they place (Article 68(1)), although regulations allow recruiters to recoup insurance costs from the worker.¹⁵⁴ The law assigns responsibility for establishing and overseeing the scheme to the Ministry of Manpower (Article 68(2)). In contrast to the largely unregulated administrative redress mechanisms for migrant workers, the MoM has adopted numerous regulations governing the insurance program (see Table 4, below). It has established a licensing scheme for insurers that provide migrant worker insurance (see Institutional Actors later in this section), and has set out insurance coverage and claims requirements.

TABLE 4: Laws and Regulations Governing Migrant Worker Insurance

Law/Regulation	Content
Law 39/2004	Governs the recruitment, placement and protection of Indonesian migrant workers; establishes insurance requirement and MoM and recruitment agency responsibilities.
MoM Regulation 23/2006	The original regulation governing insurance for migrant workers; since amended by later regulations.
MoM Regulation 7/2010	The current regulation on the insurance system for migrant workers when research for this study was conducted. Reportedly invalidated by the Supreme Court on 16 July 2013.
MoM Regulation 14/2010	The current regulation on the recruitment and training process for migrant workers, including the obligation to purchase insurance.
MoM Regulation 1/2012	Amended evidentiary requirements in Regulation 7/2010 for insurance claims. Potentially invalidated by the Supreme Court decision of 16 July 2013.

National insurance legislation also sets out a framework for the insurance industry as a whole, presumably including migrant worker insurance, with oversight from the Minister of Finance.¹⁵⁵ The relationship between the migrant worker insurance scheme and the general insurance regulatory framework is gaining increasing attention, and was reportedly the basis of the July 2013 decision of the Supreme Court.¹⁵⁶

The Insurance Consortium

Migrant worker insurance is provided by a consortium of insurers appointed by the minister of manpower. In 2010, the minister appointed the Proteksi Consortium as the sole provider of migrant worker insurance for a four-year term.¹⁵⁷ Each consortium draws on a pool of ten insurance companies: three life insurance companies and seven general insurance companies.¹⁵⁸ Proteksi was based in Jakarta but purportedly had branches in major cities across Indonesia.¹⁵⁹ It was responsible under Regulation 7/2010 for all insurance services for migrant workers, including selling the policies, extending coverage, providing insurance documents, and paying claims.¹⁶⁰ Between October 2010 and February 2012, BNP2TKI reported that 1,028,243 individuals had purchased insurance policies from Proteksi.¹⁶¹

For a number of reasons, including the low pay-out rate (see discussion below), the work of the Proteksi Consortium has been controversial in Indonesia. In 2012, Parliamentary Committee IX established a working group to review Proteksi, and found that it, “had failed to carry out its tasks as the provider of insurance in guaranteeing protection to migrant workers working abroad against risks arising prior to, during, and post placement.”¹⁶² The committee recommended that the Proteksi consortium be disbanded and replaced by a “more competent” consortium within three months.¹⁶³ The MoM rejected this recommendation, noting that Proteksi had already been twice sanctioned. The Financial Services Authority (OJK) froze the operations of Proteksi in July 2013, and it was replaced by three new consortiums.

Insurance Brokers—An Important Role in Need of Reform

Like recruitment brokers, insurance brokers are “middle-men” between migrant workers and the insurance company. Unlike recruitment brokers, insurance brokers are independently regulated—both by general insurance law and by Ministry of Manpower regulation. The Ministry of Manpower appoints brokers (s. 20) and the broker selected by the consortium must sign a collaboration agreement to be able to handle cases (s. 21). The brokerage firm engaged by the Proteksi consortium was PT Paladin International Insurance Brokers.

If this system worked effectively, brokers could be powerful allies for workers. Brokers are tasked with helping insurance purchasers—in this case the workers—with two key tasks: “to find appropriate coverage and to make claims.”¹⁶⁴ The regulations clearly intend for brokers to act in the best interests of the worker.

However, the structure of the Migrant Worker Insurance Program complicates the role of brokers. First, the program is essentially a regulated monopoly offering only one product, so the services of a broker to identify an appropriate product for the worker are redundant. Further, the only fee that brokers receive is for selling the insurance policy (from the insurer) and brokers, therefore, have little incentive to assist a worker in the filing of a claim or any other activities beyond the sale of the policy.

Second, although the broker is only entitled to receive 15 percent of the insurance premium for the sale of each policy, the media has reported that Paladin in fact received up to 50 percent of the worker’s premium.¹⁶⁵ The insurance industry suggested this amount was to cover Paladin’s costs in setting up representatives across Indonesia and abroad. The insurance regulating body within Indonesia’s Ministry of Finance (BAPEPAM) was highly critical of the high commission received by PT Paladin, noting: “[The brokers’] loyalty is unclear at present. Based on insurance law the brokers must function as representatives of their customers, but in practice here they work for the consortium.” He also noted that the high commission reduces the pool of insurance funds held by the consortium, in effect limiting the amounts that may be paid out in claims.¹⁶⁶ In July 2013 the Financial Services Authority (OJK) ordered a stop to PT Paladin’s marketing of migrant worker insurance, on the basis that the broker’s commission constituted a misappropriation of funds.¹⁶⁷

The Standard Insurance Policy

Under a standard Proteksi insurance policy, identical coverage was provided to all migrant workers, regardless of where they were travelling to work or individual risk factors.¹⁶⁸ The policy was based on the requirements of Regulation 7/2010, which sets the premiums that a consortium can charge, the risks it must cover, the amount of coverage for different risks, and the duration of coverage.¹⁶⁹ Insurance coverage is divided into three periods, each with separate premiums: pre-departure (IDR 50,000), during placement (IDR 300,000), and post-placement and return (IDR 50,000) (Table 5). The total premium for these three periods for all migrant workers is IDR 400,000 (approximately US \$40).

TABLE 5: Periods of Migrant Worker Insurance Coverage

Period	Duration of coverage	Premiums (IDR)	Risks covered
Pre-departure	5 months	50,000	Death Illness or Injury Accident Failure to depart for no fault of the worker Physical or sexual assault/harassment
During placement	24 months	300,000	Death Illness and Injury Accident either during or outside of work hours Unemployment, either individual or en mass, before the contract has expired Legal problems Wages not paid Returned home early Physical and sexual assault/harassment Mental illness Failure to be placed for no fault of the worker Moved to another worksite or place against the wishes of the worker
Post-placement and return	1 month	50,000	Death Illness Accident Loss due to actions of a third party during the journey home, including loss of luggage, physical /sexual assault

Source: Minister of Manpower Regulation 7/2010.

This scheme has the benefits of simplicity (a single standard policy) and breadth of coverage (combining life, health, employment, and general insurance). However it has several significant shortcomings that have been the subject of criticism from many quarters.

The primary criticism is that more complex claims are simply not paid out, in part because of the overly-broad and ill-defined coverage under the policy. The World Bank and International Finance Corporation in Indonesia analyzed limited figures from 2010. Their study, conducted at the request of the Indonesian government, found that the vast majority of insurance payments are for simple, quantifiable and easily documented losses—early termination/worker sent home (43 percent) and the cost of a return flight home (49 percent). Because of a lack of reliable public data, it is unclear whether the scheme is currently an effective redress mechanism for other contractual breaches such as non-payment of wages, changes in the nature of work against the worker’s wishes, or other breaches of labor conditions such as excessive hours or unsafe work conditions. It is also unclear whether it is effective for accidents and injuries that migrant workers sustain while working abroad.

What is clear is that claims for serious harms such as physical or sexual violence were not paid.¹⁷⁰ The Ministry of Finance Insurance Bureau has criticized the scope of coverage and suggested that such harms should be covered by the government, and are not appropriate for an insurance scheme. A spokesperson noted in September 2012 that new regulations are needed to, “explicitly state what is insured and what is not” and to delineate the different responsibilities of the private and public sectors.¹⁷¹ The World Bank has similarly argued that serious risks that are not traditionally “insurable” (such as physical and sexual assault or torture) should be covered by a public protection scheme, such as a welfare fund.¹⁷²

The World Bank also critiqued the policy for placing responsibility for all possible risk on the migrant worker, as opposed to the recruitment agency or other party. It has argued, for example, that only some of the risks covered above should be borne by the worker, such as death or illness. Other risks should be borne by the recruitment agency as a cost of doing business—for example, early termination of the employment agreement.

Finally, the standard insurance policy contains a number of significant exclusions to coverage such as pre-existing health conditions, war, and losses due to the migrant worker being charged with a crime. The policy also excludes coverage if the worker undertakes work in the destination country that differs from the placement agreement, without taking into account that this frequent practice is rarely the worker’s fault. Further, workers are not covered for loss of employment if they leave their employer, regardless of the grounds for departure. This is particularly problematic as departure from employment is often one of the only options that workers have to escape abusive situations, particularly in the context of domestic work (see Section 6.E below, on Protection

of Workers Abroad). Although these may be standard exclusions for employment insurance contracts, they do not recognize the particular circumstances of migrant workers and may unfairly exclude coverage when workers need it most, leaving them without redress for significant harms.

The regulations do, however, provide the insurer with discretion, “as part of [the insurer’s] social function,” to compensate a migrant worker for harms that are not covered by the insurance policy.¹⁷³ There are no guidelines on when and how this discretion should be exercised; it appears to be exercised in an entirely ad hoc and non-transparent manner in the awarding of “charity” payments that are a fraction of the amount claimed by workers whose claims are otherwise denied (discussed below).

Purchasing Insurance and Claims Procedures

Compounding the structural shortcomings of the Migrant Worker Insurance Program, the mechanics of the system have made it particularly challenging for workers to file claims and obtain compensation. Study participants underscored the inaccessibility of the system including the particularly complicated procedures for filing claims, and expressed deep dissatisfaction with the small number of claims approved and amounts paid.

Obtaining Insurance

Under Law 39/2004, the obligation to enroll a prospective migrant worker in an insurance program rests exclusively on the head office of the recruitment agency placing the worker (Article 68). Insurance is a prerequisite for obtaining the KTKLN Card (migrant worker identity card) (Article 63) and must be obtained before the worker departs abroad.¹⁷⁴ Placement of a worker abroad without insurance coverage is a crime with severe penalties¹⁷⁵ (Article 103).

Under MoM Regulation 7/2010, recruitment agencies are obligated to pay the premium on behalf of the worker.¹⁷⁶ The pre-placement insurance must be paid before the worker signs the placement agreement with the agency, and the insurance to cover the period of employment and post-employment must be paid as part of the pre-departure preparations. The recruiter may then recover the costs of the premium from the worker.

Following payment of the premium, the consortium must issue to the recruitment agency a receipt for payment and a copy of the insurance policy in the worker’s name, as well as the participant insurance card (“KPA”), for the agency to then provide to the worker.¹⁷⁷ The insurance company must also give a copy of the insurance policy to the director-general of the MoM, the head of the Provincial MoM Office, the head of the District or Municipal MoM Executive, and the chair of the recruitment agency.¹⁷⁸

Key Insurance Documents

The migrant worker's ability to make an insurance claim is dependent on her possession of two key insurance documents: the policy and the insurance participation card (KPA):

Insurance Policy: *An insurance agreement between the insurer and the insured, printed by the insurer and based on the list of participants provided by the private placement agency.*

Regulation 7/2010 states that the consortium must give the policy to the worker after the premium is paid. All workers receive the same insurance policy, a copy of which is available on the Proteksi website.¹⁷⁹ The coverage and the premium do not change regardless of where the migrant worker is travelling. The only unique information on the policy is the policy number. It does not contain the migrant worker's name.

Insurance Participation Card (KPA): *A card printed by the insurer in the name of the migrant worker/prospective migrant worker as proof of being insured. The card is linked to and cannot be separate from an insurance policy.*

The KPA is required for making an insurance claim. Regulation 7/2010 states that every worker has the right to a KPA (Article 18), and mandates that the consortium print and provide the KPA (Article 14(1)) through the recruitment agency (Article 16(5)) together with the policy after the premium is paid (Article 16(2)).

The regulations do not specify procedures for supplying a worker with a replacement KPA, nor an obligation to provide one, which is particularly significant for the many workers unable to make claims because they either lost or never received their KPA.

The Ministry of Manpower can impose administrative sanctions on the consortium if it fails to print and provide the KPA and insurance policy to the worker or distribute copies to other relevant government offices. The sanctions include written reminders, temporary stoppage of some functions, and finally removal of the license to participate in the program. The ministry is required to publish neither the details of sanctions imposed, nor any remedial action taken by the consortium in response. Moreover, it is not clear how sanctions are triggered, and the law does not provide a

mechanism through which a migrant worker can complain to the ministry about not having received her KPA or policy.

It is also not clear whether the consortium's obligations to give the worker her KPA and policy are satisfied by giving the documents to the recruitment agency. In fact, there is no accompanying obligation on the part of the recruitment agency to deliver the documents to the worker or ensure that he or she understands them, and there are no sanctions for failure to do so. As a result, many workers do not receive the policy and KPA, and do not understand their contents or implications, substantially limiting their ability to pursue claims.

Submitting a Claim

The procedure for submitting a claim is set out in MoM Regulation 7/2010, as well as in the standard insurance policy. A migrant worker, or her rightful heir, must file an insurance claim with the consortium¹⁸⁰ within 12 months after the harm occurred or loss was sustained, regardless of whether it was in Indonesia or abroad.¹⁸¹ This requirement is particularly onerous in light of the standard two year duration of migrant worker contracts, and the significant practical barriers faced by a worker filing a claim from abroad (or by family members in Indonesia collecting the required original documents while the worker is abroad).

To submit a claim, the migrant worker or family member must present the original KPA, together with supporting documents, to the consortium.¹⁸² These documents may include receipts for medical expenses such as hospital bills, the employment agreement, or a letter from the embassy supporting the basis of the claim. Evidence of harm abroad invariably requires documentation from abroad, which is significantly easier to obtain while in the country, rather than after returning home.

Disputing a Claim Decision

If a worker's claim is rejected or the worker is unsatisfied with the payment, he or she may submit a complaint to the Ministry of Manpower (at local or national levels) or BNP2TKI, and request a facilitated dispute resolution identical to the process for disputes with recruitment agencies¹⁸³ (see Section 6.A above). Regulation 7/2010 does not set out any detail about this process.

The standard insurance policy has its own conflict resolution clause, which is not consistent with the regulation, and was not mentioned by any participant in this study. It provides workers with the options to either seek arbitration of a dispute, with each side appointing their choice of arbiter, or file a claim in the district court. None of the interviewees in this study knew of a case being arbitrated, or brought in court, and all were cynical about its prospects of success (see Section 6.D on Redress through the Courts below).

Perceived Effectiveness of the Insurance Program

Awareness of the Program

Although the Migrant Worker Insurance Program is a mandatory program for migrant workers, awareness of the program among focus group participants was very low. Almost none of the focus group participants mentioned insurance coverage when asked about documents or steps they took to access redress. Five participants, when asked directly, simply said that they were not insured and did not receive any insurance card. Another from Indramayu recalled, “I didn’t receive any insurance, but I wasn’t even told my passport number, let alone receive an insurance card.”

Participants who mentioned insurance expressed limited understanding of its operation. One returned worker in Malang noted: “When I left the second time I heard someone at the [recruitment] office say: ‘You have insurance.’ But the insurance documents weren’t given to me. [The agency] just said, ‘Later, if anything happens, telephone the office and the office will arrange everything.’” Only two participants stated that they knew they were insured and had a KPA. While this sample is not representative, and the interviewed workers left at different times, these reports suggest a general lack of awareness and understanding of the insurance program among migrant workers.

A lack of awareness about insurance and claims procedures was generally accepted by all interviewees, although they gave different explanations. A former insurance broker interviewed blamed the lack of awareness on workers, commenting that migrant workers would just throw the policies they received on the floor, not understanding them. In the end, he explained, his company stopped providing the policies to save on paper.¹⁸⁴ Other experts attributed the lack of awareness to bad faith dealings. The director of the BNP2TKI Crisis Center said:

In this area, a lot of games are played. I get very upset, because for example they give out policies, but the worker is not required to sign the policy. So how would the worker understand what the content says, especially the fine print? This is how I see it and so I get very upset, not against the individuals but the institutions ... they are sneaky.¹⁸⁵

Experts from civil society groups invariably attributed migrant workers’ low awareness to the failure of recruitment agencies to inform workers about the contents and importance of the insurance policy, which may explain migrant workers not wishing to keep a copy. Lack of information, however, means that workers often do not know to gather evidentiary documents before returning, or to submit a claim within the 12-month period.

Accessibility

Migrant workers face substantial barriers to accessing the insurance claims process, despite the accessibility of insurance coverage itself, which is arranged by recruitment agencies. Empirical data confirms that the number of claims submitted is very small compared to the workers who likely have valid claims.¹⁸⁶ The parliamentary working group cited that, in 2010-2011, 113,910 returning workers reported experiencing problems when interviewed at the airport, but only 15,874 (or 14 percent) of those workers submitted insurance claims. Given the breadth of the policy, it is likely many returning workers with valid claims are not filing them.

As noted above, the greatest hurdle that migrant workers confront is their lack of awareness and understanding of their insurance coverage and related claims procedures. A second major hurdle is geography. *Proteksi* was based in Jakarta, and although it reportedly had representatives across the country, interviewees were sceptical that these representatives could effectively receive and process claims. Further, *Proteksi*'s presence in major destination countries was limited, and thus workers were not able to submit their claims abroad.

Combined with the one-year deadline for filing claims, this excluded significant numbers of workers from accessing insurance benefits to which they would otherwise be entitled. *Proteksi* had a desk at the airport for returning migrant workers to file claims immediately upon return, although filing at the airport was not required. This ameliorated the problem somewhat for workers able to return home within a year of the harm occurring, but was of no avail to those for whom the harm or loss occurred during the earlier part of their time abroad. And the statistics cited by the parliamentary working group (see above) revealed that even with this facility, only 14 percent of workers with problems filed claims.

In June 2012, the Indonesian Lawyers Association (AAI) and BNP2TKI launched a three-month (June to September 2012) joint project to provide legal assistance to migrant workers seeking to file insurance claims at the airport. The head of AAI reported that lawyers accompanied 5,889 workers during interviews with the insurance claims handlers at Terminal 4, and that 2,750 persons (47 percent) received a payout.¹⁸⁷ This is not significantly greater than the proportion of successful claims reported by *Proteksi* more generally. It is likely, however, that more claims were filed than would have been filed had the lawyers not been present, and that the payouts were higher. More research should be undertaken to determine the impact of legal aid on migrant workers' ability to access compensation through the insurance program.

In addition to barriers to filing a claim, migrant workers and their families also confront the obstacle of travel to Jakarta to negotiate the rejection of a claim. As one SBMI case handler from Brebes explained:

In Brebes, there is no bargaining directly with the insurer. At most, the government will bargain on our behalf, it is the way [the system] is structured. And [the local official] also has to coordinate with the provincial level—that is the bureaucracy. So the best path is to take it to the center [Jakarta] directly. Then the case is mediated.¹⁸⁸

Fairness and Transparency of Procedures

Study participants were highly critical of the insurance claims procedure. Almost all civil society group case-handlers who assist workers to submit insurance claims described the process as unnecessarily complicated, noting that workers could rarely fulfill the claim requirements. For example, many migrants could not submit a claim because they did not hold their original KPA, either because they never received it, or they had to leave it behind when they fled their employer's home. The regulation does not require replacement of a lost KPA.

Organizations also complained of a lack of transparency in the insurance claims process. Roma Hidayat from ADBMI, stated that, “the way to make a claim and the mechanism for deciding a claim is not public information—there is a serious lack of transparency and accountability in the system.” She noted that, “If we ever ask ... what is happening to a claim they will still say it is ‘in process’ but what process we don’t know, we never receive an answer.”¹⁸⁹ Workers are often unable to establish the status of their claim, or the timeframe in which it will be decided, making it difficult for them to make financial and other key decisions about their future. There is a similar lack of transparency and due process in the rejection of claims, with no reasons provided to the worker.

Outcomes

According to case handlers and lawyers, because of evidentiary and other challenges, almost all claims submitted are either rejected outright or not paid out in full. Data from BNP2TKI revealed that in both 2010 and 2011 just under half of claims (45 percent and 48 percent respectively) were rejected.¹⁹⁰ Civil society groups suggested that this was sometimes attributable to incomplete documents, but at other times the claims were simply refused. The consortium explained that claims are usually rejected because the worker was sent home due to poor physical or mental health, due to not having the required skills, or because the worker wished to return, none of which are covered by the policy.¹⁹¹ Because the regulations do not require reasons to be provided to the claimant when rejecting a claim, and because there is no publicly available data on the types of claims made, it is difficult to assess the accuracy of this explanation.

Data on the amounts paid out, including whether accepted claims were paid in full or in part, is similarly unavailable. However, the perception among civil society organizations was that claimants rarely received the full amount claimed due to documentation difficulties. As one advocate explained:

One weakness in the insurance system is when ... if you don't have one thing, like the Employment Agreement, the company won't pay out 100 percent on the basis that the documents aren't complete. So there are some that only receive 25 percent of what they are due, after much negotiation, and this really harms migrant workers.¹⁹²

One returned worker, for example, had submitted a claim for unpaid wages of IDR 15 million (\$1560), but received only IDR 3 million (US \$312) from the consortium. The consortium determined she did not have evidence of non-payment of wages, so gave her compensation for a claim of early termination, which provides a smaller payment. Payments in such cases were often described as “ex gratia payments” or “charity cases,” in which the insurer declared that the full claim was invalid, but paid a reduced amount as a form of charity. Although technically legal since early 2012 (see Legal Framework, above) worker representatives believed the practice was used to stop workers challenging the refusal of their entire claim.

Mimi's Case

My sponsor took me to the recruitment agency and I stayed at the boarding house for 1.5 months. They taught me how to sew. I had no problems there, but when I got to Jeddah, Saudi Arabia, the placement wasn't the same as what was written onto my visa, the employer was different. I was put on the top floor of the house, and I wasn't allowed to eat or drink while I was working, not allowed to go out. They didn't pay me for five months, they said because I couldn't speak Arabic. They were angry with me all the time because I couldn't understand them. I asked the agent if I could change, but the agent said no. I asked my employers if I could go home, but they refused. Eventually I just refused to work, and they took me to the embassy. There was a big argument at the embassy, and finally the employer agreed to pay my trip home, thanks to God. But they held onto my wages.

The recruitment agency helped me file the insurance claim, but I didn't get all of my wages back. The claim was for two million rupiah, but they paid out 1.5 million. Even then, the sponsor only gave me 500,000 ... It was all divided up—the sponsor received 500,000, the agency 500,000, and 500,000 to me. It was hard for me to accept this. But it was complicated because I didn't hold onto the policy ... There were policies but the recruitment agency didn't want to give them to us—if we held them and arranged everything ourselves, then of course the payment couldn't be divided up.

In some cases, delays in assessing insurance claims result in justice denied. Indeed, participants reported instances in which the government reportedly stepped in to provide assistance when insurance claims were delayed or rejected. ADBMI in Lombok provided an example of such a case:

We had a case that when we claimed insurance, we asked [BP3TKI] to put forward the claim, and the staff of [BNP2TKI], a person from Jakarta answered us that they were finding it difficult to communicate with the recruitment agency. So at that time, because the victim had broken her leg and needed money for treatment, BNP2TKI gave money from their own budget for the treatment, although it should have been covered by insurance.¹⁹³

6.D Seeking Redress in the Courts

Indonesia has a national network of courts overseen by the Supreme Court in Jakarta. In labor-related cases such as claims of unpaid wages, migrants have the right to bring suit against another party under civil law. Indeed, the BNP2TKI Regulation 13/2012 requires BNP2TKI officials to direct parties to the courts if they cannot resolve their insurance claim or their case against a recruitment company at mediation. In cases of serious abuse and exploitation of migrant workers, police may file charges against the recruiter, resulting in a criminal trial.

The universal opinion of the lawyers and civil society groups interviewed in this study was that the court system is not a viable option for the vast majority of migrant workers seeking redress. Criminal cases are hamstrung by lack of evidence of what occurred abroad, among other challenges, and civil litigation is expensive, slow, and time-consuming. Migrants appearing before the courts require sophisticated legal representation and extensive documentary evidence—generally insurmountable barriers to access. As a result, very few cases involving migrant workers have gone to court, and none of the migrant workers interviewed for this study had used the Indonesian court system to resolve their cases.

This section provides a brief overview of the court system and describes stakeholders' perceptions of both the civil and criminal jurisdictions of the court, with the aim of identifying specific barriers to entry, and potential areas for further exploration and action.

Overview of Indonesian Courts and Tribunals

Indonesia has a civil law system based on the Roman-Dutch model, modified by customary and Islamic law.¹⁹⁴ Judges are trained specifically for their positions and appointed for life. The highest court in Indonesia is the Mahkamah Agung (the Supreme Court).

It has the authority “to hear a trial at the highest level, [and] to review ordinances and regulations made under any law against such law.” For example, the Supreme Court may review regulations made by the Minister of Manpower for compliance with the minister’s authority under Law 39/2004.¹⁹⁵

Beneath the Supreme Court, the constitution provides¹⁹⁶ for public courts of general jurisdiction, a constitutional court based in Jakarta,¹⁹⁷ and other specialized courts and tribunals.¹⁹⁸ The public courts (also known as ordinary courts) would hear the vast majority of potential migrant worker cases, whether civil or criminal in nature, because they apply the law contained in civil, criminal and commercial codes. They include courts of first instance (district courts) as well as appeals courts (high courts).

The Industrial Relations Court

In 2004, Indonesia revised its system for resolving industrial or workplace disputes by passing Law 2/2004 on Industrial Relations Disputes Settlement. The law sets out a framework for the settlement of disputes that is intended to be “prompt, fair, and inexpensive.” “Disputes” include, “a disagreement on rights, conflicting interests, a dispute over termination of employment, or a dispute among trade unions within one company” (Article 1).¹⁹⁹ The law was intended to resolve workplace disputes between companies and workers within Indonesia.

Law 2/2004 establishes a process that initially mirrors the process in the migrant labor system—bipartite deliberations and negotiations, followed by conciliation (in the case of an unfair dismissal challenge) or mediation by a civil servant at the Ministry of Manpower. However, if the case fails to resolve through mediation, the parties can bring the case to the Industrial Relations Court.

The Industrial Relations Court is created within the public courts of general jurisdiction, and has jurisdiction over “the workplace of the worker” (Article 81). Cases must be brought at the district court level. On each case sits a panel of three judges—a regular district court judge and two ad-hoc judges whose appointments are proposed by the employer organization and the worker/union respectively (Article 88). Decisions of the Industrial Relations Court can only be appealed directly to the Supreme Court (there is no right to appeal to the intermediate high court level).

The Industrial Relations Court is generally viewed as foreclosed to migrant workers. The law limits parties to the dispute to a worker/worker’s organi-

zation and an employer/employer's organization (Article 1), and does not extend to parties involved in the recruitment of workers. Although the law does not mention recruitment agencies, there may be scope to examine and test joint liability or agency theories that could allow workers to bring industrial relations claims against recruitment agencies within Indonesia, though it should be noted that this court has also been criticized for its inaccessibility and failure to provide workers with timely just outcomes. Regardless, the structure of the Industrial Relations Court, and the lessons learned from its operation, may provide a useful basis for considering a specialized tribunal for migrant workers.

Like other branches of government, the judicial branch has undergone significant structural reform in the past 15 years, including a shift in responsibility for judicial appointments²⁰⁰ and organizational, administrative, and financial functions away from the executive branch.²⁰¹

However, perhaps due to the relatively closed nature of court work and deliberations, the judicial branch in Indonesia is viewed as having been slower to reform than other branches of government. Numerous critical reports have highlighted the perception or reality of nepotism, collusion, and corruption in the judicial branch. For example, Transparency International's Global Corruption Barometer found that Indonesians in 2010–2011 perceived the judiciary to be among the most corrupt institutions (after the legislature, political parties, and police) in the country.²⁰² There is a widespread perception, even among lawyers and others within the system, that the outcomes of cases can be bought by the wealthy, and thus litigation is a losing battle for people from poorer and disadvantaged communities.²⁰³ This was reflected in the views of participants in this study, although the challenges in civil and criminal cases may differ.

Redress through the Criminal Justice System

Criminal offenses in Indonesia are predominantly set out in the Indonesian Penal Code²⁰⁴ (*Kitab Undang-Undang Hukum Pidana*, or KUHP), although some other regulations, including those related to immigration and anti-trafficking, contain criminal offenses relevant to migrant workers.²⁰⁵

Indonesian Penal Code

The KUHP contains a number of offenses relevant to migrant workers.²⁰⁶ These include fraud, abduction of children, child labor, and deprivation of liberty. Private recruiters could potentially be criminally liable if, for example, their negligence results in the “deprivation of [the migrant worker's] freedom by illegal means, or caus[ing] the persis-

tence of such deprivation of freedom,” punishable by up to three months imprisonment (KUHP, Article 334).

Migrant workers face numerous obstacles to bringing charges under the code, most notably the statute of limitations for bringing claims. Under the KUHP, the complaint must be filed within six months after the complainant “has knowledge of the committed act,” if domiciled in Indonesia, or within nine months if the complainant is abroad (KUHP, Article 73). Family members and civil society organizations cannot file while the worker is overseas because the KUHP only permits the individual to make the complaint, unless she is a minor below the age of 16, in which case a guardian can bring the complaint (KUHP, Article 72). For migrant workers who are often abroad for two years or more, these are significant constraints, unless the offense occurs in the pre-departure phase and the complaint is filed in this period.

Immigration Violations and Trafficking in Persons

In 2009, Indonesia ratified the United Nations Convention on Transnational Organized Crime 2000 and its two related protocols on the trafficking and smuggling of human beings. Related domestic legislation has resulted in the creation of potential avenues of redress for migrant workers, as well as potential liabilities.

The recently passed Law on Immigration 6/2011, for example, established more severe penalties for possessing or using a false Indonesian passport for one’s own use or the use of another.²⁰⁷ The same penalty applies for providing false information to the government in an application for a passport.²⁰⁸ Such offenses must be prosecuted by the Ministry of Immigration and so may be double-edged swords for migrant workers: although they could be used to prosecute a broker or recruitment company that arranges a falsified passport for a worker, the worker who unwittingly uses the falsified passport could also be prosecuted.

The Indonesian legislature also passed the national Law on Trafficking in Persons (Anti-Trafficking Law) in 2007, which came into force in 2009. The Anti-Trafficking Law addresses more serious cases of abuse and exploitation of migrant workers.²⁰⁹ It defines trafficking²¹⁰ in line with the international definition of trafficking in persons under the UN Convention. This includes the recruitment of an individual by the use of fraud, deception, or abuse of power, by a person having control over that individual, for the purpose of exploitation. “Exploitation” includes “forced labor or services, and slavery or slavery-like practices ... or the use of the labor or ability of a person by another to obtain a material or a non-material benefit.” These provisions may be relevant in many migrant labor cases, particularly those involving deceit, abuse, force, or other forms of coercion.

The procedures for investigation and prosecution of the Anti-Trafficking Law follow the KUHP, though specific provisions intended to protect victims are included. For example, victims of trafficking have a right to confidentiality and witness protection

throughout the legal process (Article 44), as well as a right to restitution (Article 48). Restitution in this context refers to compensation for financial loss or loss of earnings, pain and suffering, medical and psychological treatment, and other losses sustained as a result of being trafficked. The restitution must be ordered at the same time as other orders of the court in a criminal matter, and must be paid within 14 days from the day the defendant is informed of the order and will be held by the court until all appeals, if any, are decided (Article 48).

Importantly, the Anti-Trafficking Law establishes liability for corporations found guilty of trafficking in persons. If a corporation, such as a recruitment company, is found guilty of a trafficking offense, the managers of the corporation will be held liable for the offense (Article 13). In addition, the corporation can be levied substantial fines of three times the amount imposed on individuals, and may also have its license or legal status revoked, the proceeds of the crime confiscated, its management dismissed, and its board prohibited from establishing another corporation to conduct the same business (Article 15).

Civil society groups and lawyers interviewed in Indonesia were highly familiar with the Anti-Trafficking Law, perhaps because of a strong anti-trafficking movement that led to the law's enactment. Nevertheless, according to the experts at the January 2012 roundtable and interviewees, the law is still not widely used. Some attributed this to the penalties in the Anti-Trafficking Law being too high, as a result of which police are unwilling to bring charges. Others suggested that because the Anti-Trafficking Law only came into force in 2009, justice actors are less confident about using it.

It is hard—the courts and other parts of the justice system don't really understand the Anti-trafficking law, they just know the Criminal Code (KUHP). And in fact this is an advantage to the recruitment agencies that lobby the justice system actors not to process the case according to law.²¹¹

Perceptions of the Criminal Justice Framework

In general, the experts interviewed for this study or who participated in the Roundtable were more critical of the criminal procedure and its implementation than they were about underlying laws and criminal offenses.

Criminal prosecution has the benefit of highlighting egregious cases of abuse, and bringing some justice to victims and their families. It may also hold recruitment agencies and individuals accountable for abuses suffered by workers. In some cases, a guilty verdict in a criminal case may also support a civil claim for redress, or may support a claim for restitution from the defendant as part of sentencing (for example in trafficking cases).

However numerous procedural barriers obstruct migrant workers' access to the criminal justice system. Indonesian criminal procedure is set out in the Criminal

Procedure Code or KUHAP.²¹² Under the KUHAP, police officers are responsible for receiving and investigating complaints brought to their attention. The police then provide a file of evidence to the public prosecutor, who may also be involved in the investigation phase. According to the Ministry of Manpower in Jakarta, cases may also be brought to court if the migrant workers are unable to resolve their claims through mediation within the ministry or BNP2TKI. In those cases, migrant workers will then report their cases to the police, and staff from the ministry may act as witnesses.²¹³

Experts interviewed during this study indicated that migrant workers frequently go to the police to file complaints, for example if the broker defrauded them of fees or documents, but they knew of very few cases resulting in prosecution before the court. Unlike informal mechanisms or a civil case, the victim and his or her representatives' play no role in criminal cases beyond reporting the matter and then appearing at trial. The ultimate decision-making authority as to whether or not to proceed with a case rests with the police and prosecutors.

Prosecutorial review was described as difficult in many cases, because migrant workers usually have little documentary evidence of the crime. A representative of Migrant Care, a large case-handling organization in Jakarta, said that he almost always receives a letter of termination of investigation because the evidence is not strong enough. He described the high-profile case of Ermawati, a minor (under 15) who died while working in Saudi Arabia. After two years, her case had still not been processed and the prosecutor had sent it back to the police for more evidence.

Several lawyers and civil society staff noted the difficulty in having cases taken seriously by the police. As the coordinator of ADBMI in Lombok explained, "We have reported cases to the police a number of times but the police always say they can't find anything to charge the defendant with." A lawyer experienced in migrant worker cases noted that police seem to be "less than vigilant" in cases involving migrant workers. He explained:

What is needed from the lawyer or CSO in these cases is to push the [police and prosecutors] and remind them to go forward with the case. If not, the case will simply disappear as we have experienced. It is extraordinary.²¹⁴

Finally, even if a case is prosecuted, it may still fail if the victims decide not to testify. Eddy Purwanto of TIFA and Jihun of SBMI described a case in which the recruitment company essentially bribed victims to not testify at a trial for trafficking-related offenses.²¹⁵ In that case, eight workers were sent to Hong Kong but when they arrived, the agency partner collected them and sent them on to Macau. Most of the workers were minors sent abroad illegally, and their employer in Macau did not pay them for their work. After hearing of the case, SBMI and the TIFA lawyer believed the action of the

agency could constitute trafficking. They secured the return of the girls and reported the case to the police:

We reported the recruitment agency to the police so that the company would be punished for sending these young girls abroad. But the staff of the agency started approaching and intimidating the girls. They said ‘Come on, don’t file a complaint, what is it you want? Money? We can give it to you, how much—10 million, 50 million rupiah?’ Two workers immediately decided to take the money. The others refused, but as the amount offered increased, they agreed. Eventually only one girl was left who wanted to see them punished. This young girl wanted to see them prosecuted up to the last minute, but finally she succumbed to the pressure and was paid IDR 40 million [approx. US\$4,000] from the agency in return for not testifying.²¹⁶

This case also demonstrates an important benefit for migrant workers of direct negotiation or government-facilitated mediation over the criminal justice system: it provides them with a more direct route to financial redress. Another member of a civil society organization noted:

The informal system is far more satisfying in terms of a sense of justice for victims than going to the police. The police might resolve the case according to law and the perpetrator may go to jail, but justice for the victim is getting back her money and her money won’t come back by sending the perpetrator to jail. The lost money will always be a burden for the victim.²¹⁷

Participants interviewed for this study mentioned only two cases in which a recruitment agency or broker was successfully prosecuted for crimes against migrant workers. In one case in Indramayu, West Java, SBMI noted that a broker received three years imprisonment and the recruitment agency manager received four. It was not clear what these defendants had been charged with, whether they had paid a fine, or whether the individual worker had received restitution. In addition, a case-handling officer from Migrant Care described a case in Jakarta in 2007 in which there were two victims. While the broker in that case received a sentence of four years imprisonment, the recruitment agency was allowed to continue to operate.

According to an MoM official, most cases do resolve if they proceed to court, but he acknowledged that because migrant workers rarely have all of the necessary evidentiary documents, the “resolution” is rarely restitution in the form of full compensation for the loss. Rather, he implied, it would be a compromise solution or partial payment. He was unable to provide examples of such resolutions.²¹⁸

It was very difficult to obtain information on the specific charges and criminal provisions that have been invoked in relation to crimes perpetrated against migrant workers, and the nature or identity of the defendants (i.e., brokers or recruiters in

their individual capacity, recruitment agencies in their corporate capacity, insurers etc.). Some interviewees appeared to conflate criminal and civil processes, demonstrating a lack of clear understanding of the distinct mechanisms and processes through which migrant workers may seek redress. The types of criminal charges filed warrants further research and examination.

Redress for Civil Claims

In addition to pursuing criminal cases prosecuted by the state, Indonesians may bring civil claims in the courts of general jurisdiction. Civil claims are matters between private individuals or companies based on the provisions of Indonesia's Civil Code, the B.W. (*Burgerlijk Wetboek*).²¹⁹

There are several potential claims a migrant worker could bring under the Civil Code. The Civil Code provides for breach of contract claims (regulated by Book III of the Civil Code), or enforcement of a contract if a recruiter has failed to carry out a necessary step in the placement process. A worker could, for example, bring a claim against a recruitment agency if she was not sent to the location agreed under the placement agreement, was not paid the amount agreed, or was made to do a different kind of work or work under very different conditions than those stipulated in the agreement. A worker could also potentially sue for nullification of the agreement based on fraud or duress if the situation abroad was not as promised, but a recruiter was still demanding payment of fees (B.W. Article 1321). The worker may also sue an insurer for breach of the insurance contract if the insurer improperly denies a claim.

The potential benefits of a civil claim are significant. Both parties to a civil claim are required to attend all hearings (unlike an informal mediation at BNP2TKI). Potential compensation available to the migrant workers could cover direct financial losses as well as pain and suffering if the recruitment agency is found liable. Furthermore, in seeking to address the more systemic issues underlying contract fraud and related abuses, the pursuit of civil claims would contribute to an analysis of the law and of migrant worker contracts that could bring much needed clarity to this complex area of law, while clearly identifying liability for recruitment agents and their brokers. For further claims that could be tested through strategic test case litigation, see Recommendation 10 below. As noted in the recommendation, pro bono involvement of law firms, donor support for civil society organizations, and law school clinics and academics may be needed to develop and bring any viable claims.

Accessibility of the Civil Courts

Pursuing a claim through the civil courts faces many barriers. Most significantly, the pursuit of civil claims is generally cost-prohibitive for migrant workers and their family members. In order to bring a civil case, the worker must be represented by a lawyer

who is paid on an hourly basis (unless acting pro bono), and must pay an administrative/registration fee and other fees for each document submitted in evidence. Further, because the claim is generally filed in the locality of the defendant, the migrant worker must usually travel back and forth to Jakarta to attend the hearings.

If jurisdiction over the defendant can be established, the next impediment is the length of the civil litigation process. After a claim is filed, the court will require the parties to mediate the case with a professional court mediator, through a confidential mediation process. If the mediation fails, the case will progress to court, proceed through stages of filing of documents and claims, and then go to trial. The Supreme Court has indicated that most such claims will be resolved between 6 and 12 months after the first court hearing. Once the district court has decided the case, however, it may be appealed to the high court and eventually to the Supreme Court. The entire process could take a number of years and may require a substantial investment of time and effort that may be prohibitive for individual migrant workers needing to support their family.

Perceptions of Procedures and Outcomes

According to those interviewed, civil claims filed in the court by a migrant worker are extremely rare; most interviewees did not know of any such case. Only three of the experts interviewed had direct experience with a civil claim in the district courts. They noted that an experienced lawyer with detailed knowledge of migrant worker law and contracts was needed, and civil society groups rarely had lawyers on staff. Even if they had the legal expertise on staff, civil society groups usually did not pursue civil cases because they would not meet the worker's need for immediate assistance, and workers were unable to wait for a trial and then various appeals before ultimately receiving compensation. Finally, they stated that migrant workers rarely have the documents required to support a civil claim. As Pratiwi from Jakarta Legal Aid explained, "most workers [with serious problems] have lost their documents or they never had a contract at all, but if they enter the formal system, they need this as evidence." Migrant workers may be able to obtain certain documents such as employment, placement, or insurance contracts from the other party through the required discovery process, but this requires further examination.²²⁰

6.E Protection Abroad and Embassy Assistance

All mechanisms described above are available within Indonesia. However, focus group participants who had travelled abroad frequently started their search for justice while they were in the destination country. A number of options are open to workers while they are abroad, including contacting the agent in the destination country, contacting

the recruitment company back in Indonesia, and contacting local authorities abroad, such as police or migrant worker assistance organizations. For the purpose of this study and its focus on workers' country of origin, the Indonesian embassy and its assistance services play a critical role.

Legal and Institutional Framework

Like other major migrant worker countries of origin, Indonesia has established services within its missions abroad that focus on the protection of citizens including migrant workers. In fact, the employment agreements reviewed for this study required that any dispute between a worker and an employer be resolved peaceably with the assistance of an embassy.

The Citizen Protection division within the embassy is charged with protecting and assisting all Indonesian citizens abroad.²²¹ Article 78 of Law 39/2004 states that Indonesian foreign missions are responsible for the protection of migrant workers. Article 80 further elaborates on that obligation:

78(1): Republic of Indonesia representatives provide protection to migrant workers abroad in accordance with [national] law and international law and custom.

In 2006, after numerous complaints about the treatment of migrant workers abroad, the President's Instruction on Improving the Placement and Protection of Migrant Workers included an enhancement of embassies' protection role (Table 6).²²²

TABLE 6: Enhanced Protection Role for Embassies after 2006

	Program	Action	Outcome	Target Date
1.	Advocacy and Defense	Facilitating Legal Aid for Migrant Workers	Cooperation between Indonesian embassies and local law firms in 11 destination countries Placement of Police Attachés in Embassies according to need.	July 2007
2.	Strengthening the Role of Embassies in Migrant Worker Protection	Establishing Citizen Services/Labour Attachés in migrant worker receiving countries	Citizen Services/Labor Attachés in six countries, including [in the Middle East] Jordan, Syria and Qatar	June 2007

Source: Adapted from Presidential Instruction 6/2006.

In 2008, following the Presidential Instruction, the Ministry of Foreign Affairs adopted a regulation on Citizen Services, containing the Guideline on Services to and Protection for Indonesian Citizens Abroad.²²³ The Ministry of Manpower also adopted a regulation in 2011 to place its own staff in embassies as labor attachés to undertake labor-related activities.²²⁴ Labor attaché offices within embassies have specific protection functions for migrant workers, namely:

- Facilitating and mediating the resolution of disputes and conflicts between migrant workers and their employers; and,
- Facilitating advocacy for migrant workers according to law and regulations in the country of placement, and international law.²²⁵

In January 2013 the president signed a further regulation Government Regulation 3/2013, underscoring that the Indonesian government is responsible for the protection of migrant workers abroad, and that Indonesian representatives abroad are charged with providing this protection in line with international standards and the laws of the destination country.²²⁶ Crucially, the regulation also requires that the Indonesia-based recruitment agency assist the embassy or consulate in providing protection and legal aid to a migrant worker if required during the placement period.²²⁷ It is not clear whether and how recruitment agencies will meet this obligation, particularly given that the regulation does not include a provision for compelling assistance or sanctioning an agency if it fails to assist.

Establishment of a Right to Legal Aid and Legal Assistance Abroad

Under Law 39/2004, the protective responsibilities of embassies and consulates include a responsibility to provide migrant workers with legal aid:

80(1) Protection during the placement period is implemented by, among other things:

- (a) Providing legal aid according to the law in the country of destination along with international law and custom;
- (b) Defending the fulfillment of the rights of migrant workers under their contracts and/or under the law of the country of migrant worker placement.

According to the recent 2013 government regulation (Government Regulation 3/2013), this includes:

- Guidance and oversight, including monitoring of recruitment agencies and employers;
- Consular assistance and protection;

- Provision of legal aid;
- Defense and fulfillment of the rights of migrant workers;
- Protection and other assistance in accordance with international norms; and,
- Diplomatic efforts on behalf of migrant workers.

The provision of legal advice and legal defense are essential to migrant workers seeking justice abroad, and the legal services set forth in the 2013 regulation are reasonably comprehensive. The regulation clarifies that legal aid and rights protection obligations extend to mediation between the worker and another party, assistance in filing claims in court, and the provision of a lawyer (see Table 7).

TABLE 7: Rights Protection Obligations of Indonesian Foreign Missions

Protection Obligation	Activities of Indonesian Representative Mission
Provision of Legal Aid	Mediation services
	Advocacy services
	Accompanying a migrant worker with a “legal problem,” (i.e., to meetings, court dates, government services in destination country).
	Handling cases of migrant workers who have experienced physical and/or sexual violence.
	Providing an advocate/lawyer
Defending and fulfilling the rights of migrant workers	Calling to the embassy a party who has not fulfilled the rights of a migrant worker.
	Reporting cases to the relevant authorities
	Demanding fulfillment of the rights of migrant workers, as contained in the employment agreement, national law, labor law of the destination country, and international law.
	Filing claims in court against parties that have violated the rights of a migrant worker.
	Assisting migrant workers who have been given work in a different location or with a different employer than what was promised in the contract, or whose work was not as described in the employment agreement.
	Resolving demands and disputes between migrant workers and their employers and/or recruitment agency partners in the destination country.

Adapted from Government Regulation 3 of 2013 regarding Protection of Indonesian Migrant Workers Abroad, January 2, 2013, articles 20–21.

Government Regulation 3/2013 vests both authority and responsibility for protection of migrant workers in the head of the embassy, through the labor attaché. It does not, however, make legal services mandatory for every case, and does not provide guidance for determining which migrants are eligible for assistance. The extent to which comprehensive legal aid is provided will depend on the budget provided to the Ministry of Foreign Affairs and labor attachés, and the availability of other resources, such as local lawyers in the destination country who are familiar with the legal framework, language, and procedures of the legal system, and are available to provide the needed legal aid.

Complaint Resolution Procedures

An MoFA “Standard Operating Procedure” (MoFA SOP) for handling cases is available on an MoFA blog, and sets out the procedures for different kinds of cases.²²⁸ Similar to procedures in Indonesia, resolution of a case begins with a complaint filed by a migrant worker. The MoFA website explains that appointments will be “fast, friendly, free and transparent.”²²⁹ The usual procedure, as explained by the MoFA, is for the migrant worker to report to security, who will then send the worker to be interviewed by a task force: “The task force will interview the person and then will determine whether it is a labor case, or if it is a criminal case, in which case it should be handled by the police attaché. In labor cases it goes to the labor attaché.”

The MoFA Guideline on Providing Services to and Protection of Indonesian Citizens Abroad (MoFA Guideline) explains that the foreign missions will assist migrant workers to fulfill their rights under the employment agreement, including wages, holidays, payment of expenses, insurance, type of work, location of work, change of employer, and early termination of the contract.²³⁰ This assistance includes:

- 1) Calling the employer/agent in to resolve the dispute;
- 2) Assisting in reporting the matter faced by the migrant worker to agencies in the sending country [Indonesia] to proceed further, in the event the migrant worker/agent/employer is not prepared to resolve the case at the Indonesian foreign mission;
- 3) Accompany the migrant worker [to meetings, hearings or proceedings], provide legal advice and translation.
- 4) Forward a report on the handling of the case to the MoFA to be forwarded to the MoM, BNP2TKI and the family of the migrant worker.²³¹

Perceived Effectiveness of Embassy Dispute Resolution

Awareness of Embassy Services and Legal Rights

Migrant workers participating in focus groups were familiar with the services provided by the Indonesian missions abroad, often more so than with the services available to them within Indonesia. Many were informed before departing that they should contact the embassy if they had any problems with their employer, and were usually given the number of the embassy in the destination country. MoFA data suggests that significant numbers of workers do report to their embassy with complaints. In 2010, 16,064 cases were reported to Indonesian embassies, of which 10,587 were to embassies in the Middle East (4,242 in Saudi Arabia and 6,345 in other Middle East countries).²³²

Thirteen of the migrant workers participating in this study reported or attempted to report their cases to the Indonesian embassy. In other cases the worker knew of the embassy, but either could not, or chose not, to seek help. Those who did not report to an embassy explained that they were located in smaller towns or cities and physically distant from a foreign mission to which they could report. Some noted their lack of knowledge about the location of the embassy and the services available, and others reported a negative perception of embassy assistance. In one focus group, the workers agreed that the embassy staff “were the same as everyone else” and “don’t defend us, and sometimes they even get angry at us.” One worker reported hearing rumors that people were slapped or hit by embassy staff and told to go home, although the researchers were not able to confirm this and it was strongly denied by the Ministry of Foreign Affairs. Whether true or not, negative rumors significantly affected the decision of migrant workers as to whether to report their situation or claims to the embassy or consulate.

Accessibility of Services

Embassies are accessible to migrant workers in person, by phone, or via an internet connection. Of the 13 migrant workers in this study who sought embassy assistance while in the Middle East, one telephoned the embassy because she had access to the Internet and Skype through her employer’s son. For others, the employer or a friend of the employer took the worker to the embassy after she expressed a wish to return home. In one case, a relative of the employer helped the worker contact the embassy after seeing her crying because the employer had prevented her from leaving at the end of her contract. Others escaped and caught a taxi on their own, relying on the assistance of the taxi driver to locate the embassy.

Despite the multiple methods through which a worker might contact an embassy, significant challenges to accessibility persist. These include workers’ limited access to telephone and internet services, and the limited number of foreign missions capable of

receiving complaints. In Saudi Arabia, for example, geographically the largest country in the Middle East, Indonesia has a presence only in Riyadh (the embassy) and Jeddah (a consulate). For migrant workers who escape from towns or cities outside of these two urban areas, reaching a foreign mission is extremely difficult. As one migrant said, “I was given the number of the embassy in Jeddah but I was in a small village called Abdaha. How would I get to Jeddah? It was 12 hours or more by car.” Although Indonesia has reportedly requested permission to open more offices in the Kingdom to handle complaints, this request has been refused.

Documentation may also limit access. One migrant worker described being turned away by an embassy after fleeing because she did not have her passport, even though her employer was holding her passport and she could not reclaim it. An expert in migrant worker cases reported from her research in Malaysia that the Indonesian embassies frequently denied migrant workers assistance or even entry because the workers did not have their passport and so were considered “illegal.”²³³ This prevented the embassy from performing key protective functions because many migrant workers go to the embassy precisely when they have fled their employer without their documents. Other migrants in the focus group agreed this was common, but the Ministry of Foreign Affairs disputed that migrants in distress would ever be turned away.

Fairness and Transparency of Procedures

An embassy’s procedures for handling migrant worker cases are not clearly set out in regulations or the MoFA Guideline. Although the regulations provide a general list of activities that embassy staff can perform (see above), this list does not contain timelines, ethical provisions, rights of the migrant worker during the process (for example to information or involvement in the case), or any detail about the circumstances under which a case should be considered resolved and closed. These procedural fairness and transparency concerns were reflected in the experience of migrant workers.

In most cases described by focus group participants who received embassy assistance, the embassy called the employer upon receiving the complaint, heard the employer’s perspective and negotiated on the worker’s behalf.²³⁴ A worker whose employer in Saudi Arabia had prevented her from going home to her family for 13 years described her experience as follows:

When I finally ran away [in 2011], I left the house, and straight away I found an Indonesian domestic worker who helped me, and I told her everything. She took me to the embassy the next day, and [an embassy official] helped me. I told him that I had been there for 13 years and now I wanted to see my parents. [The official] called my employer to come to the embassy and asked her why I hadn’t been sent home, and she lied and said I hadn’t wanted to go, even though I had been asking to leave for a long time. I found out later that my family had called me many times but my employer had told them each time that no one of my name

was there. I asked [the official] to help me with my wages as well because I had not been paid for 4 of the 13 years I had been there, but he was unsuccessful. To this day I have not received the money.²³⁵

Migrant workers did not describe embassy staff members involving them in the communications or negotiations undertaken with the employer, and workers were often left in the dark about what transpired during those interactions. One worker who fled her employer without her passport or other documents reported: “the embassy people went to the house of my boss I think, but I don’t know anything about that or what happened there.” She then learned the embassy staff requested the employer attend the embassy to mediate the wage claim with the worker but the employer refused. Eventually, she said, “my employer opened her heart and her heart was open enough to give me back my passport,” and the embassy staff went to the house to collect the passport. She did not know what was said.

Workers expressed gratitude for the assistance they received abroad, but also spoke of feeling confused and disempowered, and that they had no real choice to accept or refuse a negotiated resolution. This sense was compounded by their physical situation in the closed shelter (see below), but was likely also a result of the lack of transparent procedures and worker protections within the dispute resolution process.

Availability of Legal Aid in Practice

Although both law and regulations provide for legal aid and legal representation through the embassy or consulate, none of the migrants interviewed for the study had received legal assistance from the embassy. This may be because until recently, the embassies did not hire lawyers to assist with cases—cases were either handled by an embassy or consulate’s foreign services staff or labor attachés.

At the time of the research for this report, the introduction of legal experts into embassies was a subject of public discussion due to a recent visit to major destination countries by a specially created taskforce, the SATGAS TKI (see Text Box below). The SATGAS TKI had visited the Middle East and strongly recommended a lawyer be placed in embassies to assist migrant workers who faced serious legal problems. The chairperson of the taskforce noted that access to legal assistance must be meaningful, and he urged that lawyers who are genuinely able to represent workers in foreign systems be placed within, or made readily available to, the embassies. One example would be a “retainer lawyer”—for example, a Saudi lawyer paid on a retainer to represent Indonesian clients. The chairperson noted that in Saudi Arabia even criminal cases could be resolved by negotiation and payment of compensation, but that competent representation was necessary to achieve that result.

Experts nevertheless remain concerned that even if local legal experts are retained by embassies, they would focus on those cases deemed most serious—particularly cases in which migrant workers are themselves charged with serious crimes and imprisoned in foreign jails (see Text Box below)—and they would not necessarily be available to assist workers with more common employment contract violations.

Protecting Migrant Workers Sentenced to Death

In addition to legal problems that some workers encounter as the victim of a crime or labor violation, some are also charged with offenses as defendants. In the Middle East, many of these cases involve migrant domestic workers and are frequently related to their work situation. In 2011, one such migrant worker, Ruyati Binti Sapubi from West Java was sentenced to death in Saudi Arabia for the murder of her female employer. Although the Indonesian government had been informed of her trial and had made diplomatic requests for leniency, Ruyati was executed on June 18, 2011.²³⁶ The Indonesian government was not informed of the execution in advance.²³⁷

In August 2011, the president responded to the public outcry by placing a moratorium on labor migration to Saudi Arabia, and formed a Special Taskforce on the Handling of Cases of Migrant Workers and Citizens Abroad Threatened with the Death Sentence (SATGAS TKI). The taskforce includes members of government, the legal profession, and civil society, as well as experts on migrant worker issues. It has conducted field visits to Indonesian embassies abroad to determine the number of Indonesians potentially on death row and the reasons for their sentences.

The spokesperson for SATGAS TKI, Humphrey Djemat, the chair of the Indonesian Lawyers Association, noted that among countries in the Middle East, the largest number of migrant workers threatened with the death sentence are in Saudi Arabia—28 as of June 2011. He described the findings of the field trip to Saudi Arabia as follows:

In Saudi Arabia it was very difficult to enter the prisons, even for the consular offices it is hard, at least two weeks notice is needed. But finally we were able to visit and obtain information on Indonesians detained there. The cases were varied. Some had murdered Saudi nationals or also other Indonesians. Others, however, were charged with witchcraft—seen as “black magic”—based on reports by their employers, or with adultery,

which also attracts the death sentence. It is very hard for Indonesians; most do not speak Arabic well and so are not able to defend themselves during the investigations. At least the Saudi government respects the right to consular assistance (unlike Malaysia) but it often takes five or six months to reach us.

The chairperson called for greater specialized legal assistance for migrant workers abroad but noted the sensitivity of this issue. It is important, according to Djemat, to keep the other government informed so that they are not offended and do not suspect interference in their domestic laws and policies.²³⁸

Justness of Outcomes

The MoFA reports high rates of “resolution” of cases, noting that in Saudi Arabia it resolves 94 percent of cases, while in the rest of the Middle East, the figure is 90 percent (the remaining cases were still “in process”). Because the MoFA does not define “resolution” or give any information on the types of resolution available,²³⁹ however, it is unclear how well the resolution ultimately serves the justice interests of the migrant workers.

The perception of the migrant workers and others interviewed for the study was that the outcomes rarely constituted complete redress. As with the other mechanisms reviewed, workers believed that the emphasis of embassy or consulate staff was on getting the case closed and sending them home to Indonesia, rather than seeking a fair outcome. Several participants said that they did not feel the embassy took their concerns seriously. Two former migrant workers recounted that embassy officials advised them to return to Indonesia and that their employer would send their wages, but the money never arrived. The employer may indeed have promised this, but in any event the embassy did not explain to the workers its limited power to enforce any promise and the risks to the worker of leaving early.

Another worker reported having asked to return home because she could not cope with the volume of work and was frequently hit by her employer. The employer took her to the embassy and she stayed there for two weeks while her case was negotiated on her behalf by an embassy official. The worker finally received her salary but the cost of the flight was deducted from the total, and she received no compensation for the abuse she endured. Another worker who asked to leave at the end of her two years had her flight paid but none of her outstanding wages were returned to her. In most cases workers described themselves as resigned to the situation and wished only to go home rather than staying longer without employment.

Experts acknowledged that embassy officials face many challenges in advocating for a fair outcome for workers. First, a number of destination countries in the Middle East (such as Saudi Arabia) are intolerant of rights-based advocacy in general, or are in the midst of internal conflict (such as Syria and Yemen). Embassy or attaché staff members are also limited by the laws and procedures of the destination country. The *kafala* system, present in many Middle Eastern countries, creates a structural obstacle because it prevents workers from changing employers, regardless of abuse or other problems at the place of employment. If a worker leaves her employer she loses her immigration status and is left with no place to go and no opportunity to sustain herself while her case is being resolved. Indonesian government representatives therefore often have little leverage to demand a fair outcome from employers. One member of the SATGAS TKI who visited Saudi Arabia explained:

The employer is called, and a translator is arranged. But there is no obligation on the employer to attend. So it depends on the kindness of employer. If they are nice people they pay. If they are not, then the worker can only wait for a ticket home. If the worker is still within the period covered by insurance, the insurer will usually pay [for the ticket].²⁴⁰

He also described the bureaucratic challenges in seeking non-financial redress in Saudi Arabia:

As soon as [the embassy] wants to send a troubled worker home it faces many difficulties with the government of Saudi Arabia. Usually, obtaining the exit permit takes a long time; the bureaucracy in Saudi Arabia is bad and the system and procedures are unclear, which is why it takes so long. For example, a migrant worker who has been sentenced to one month in prison should be released after that time, but the bureaucracy is so bad that it can be a long time before they process her documents to be released.²⁴¹

Despite these challenges, the users of the system suggested that embassies could do more to promote fairness in outcomes, and not only “resolution” of the case.

Even if complete redress is not available in the destination country from the employer, embassy staff also play a vital role in preparing workers before they travel home including ensuring they have all the necessary documents from their time in-country to make an insurance claim on their return, such as agreements, receipts of medical care, evidence of complaints to police, and letters from the embassy itself. Given that so many migrant workers were unaware of available mechanisms, or did not have these vital documents, when they returned, it appears that embassies are still focusing on immediate protection and resolution of cases, and are less focused on, or equipped to address, meaningful and long-term access to justice for migrant workers.

Roma

Roma's experience seeking the payment of unpaid wages in Saudi Arabia demonstrates not only the challenges of obtaining justice from disingenuous employers, but also how the effort and time invested in seeking redress abroad can dissuade workers from submitting claims when they return.

Roma left her village for Saudi Arabia in 2002 as a 22-year-old young mother with only elementary school education. She explained, "All the women from my home town went to Saudi, I wanted to be like them and see what it was like." When she arrived, she found she was the only domestic worker for her employers and their nine children. She cared for the children, as well as cleaning the house, rarely sleeping more than five hours a night, and getting little food. Each month her employer asked her to sign her wage statement for 600 Riyal, telling her that her money was being saved and would be given to her when she went home. At first she believed her employer, but then started to complain. The recruitment agency sought to advocate on her behalf, as did the local Saudi assistance services, but each time the employer lied and said the money would be paid. She describes her case:

After four years I decided to leave, I was so stressed I was fainting, because they still had not paid me and let me go home as promised. So one day when my employer's son was coming home, I snuck out the back door and caught a taxi. I told him to take me to the embassy but he took me to the Maktab Amal (the Saudi shelter for workers in distress). The shelter remembered me from my earlier complaint but this time told me not to go back to my employer, and to stay there at the shelter.

The shelter at the Maktab Amal was huge and most of the people were Indonesians—almost 600. They treated us well and we ate a lot, I became fat! Every night we would chat and help each other reduce the stress of our situations. The staff offered to help us find a new employer, but I just wanted to be paid and go home. So they approached my employer very nicely to ask for my salary, but she lied and told them I had been paid and showed them the papers I signed. So the Maktab Amal helped me take the case to the court. I went to the court seven times and really fought with the employer in that room but they denied everything because of the pay-stubs.²⁴² The process was difficult—it took so long and I became exhausted waiting but I wanted to win because I had earned that money through hard work.

Finally, the staff at the Maktab Amal asked if I would accept a partial amount from the employer and I agreed because I wanted to leave. They helped me negotiate 6000 Riyal, just ten months salary, and then I had to pay for my own flight home, so I only received 4,800 Riyal in the end. This process took a year and I wasn't happy, it was so little compared to what I was owed.

I moved to the embassy while my flight home was arranged, but I was more stressed because the space was so small and I couldn't go anywhere. We couldn't leave, not even to go out to the yard. I was there for more than a month waiting for my ticket. The embassy staff didn't help me—I was told to just look after myself. They knew I had already received my salary so weren't concerned with me. When I finally came home I was tired and didn't put in a claim anywhere because I thought it would be pointless, I just left the airport and went straight home.

Beyond Claims Assistance: Other Protective Services

One of the most important services that embassies and consulates offer to workers seeking redress abroad is accommodation. According to the director of Citizen Services in Jakarta if the person has run away and the embassy staff determine after an interview that she or he has a case, the worker will be taken inside and housed in the shelter. The shelter enables workers to stay in the country to seek redress, and is also a safe transit station for workers on their way home. The Citizens Protection Division of the ministry reports that a large number of workers are housed by the embassy each year. In 2009, the number was 17,152 people worldwide, and in 2010 it was 15,766. The breakdown in Middle Eastern countries is as follows:

Indonesian Mission in Middle East	No. of Indonesian Citizens Housed in Shelter	
	2009	2010
Abu Dhabi	985	748
Amman	1,509	1,641
Damascus	499	544
Doha	703	798
Dubai	713	883
Kuwait City	3,116	1,731
Jeddah	1,650	1,472
Riyadh	3,102	2,770
TOTAL	12,277	10,587

Source: Directorate of Citizen Services, Ministry of Foreign Affairs, Indonesia²⁴³

Some migrant workers reported spending only a night or several days in the shelter while their flight home was arranged. For others it was a stay of several months or even years, while they waited for their cases to resolve. This significantly disincentivizes migrant workers from bringing a case abroad, especially because they are not able to leave the embassy grounds once they decide to leave their employer because they no longer have legal status in the country. Workers who participated in focus groups and who had stayed at an embassy described feeling trapped, and reported that the facilities were overcrowded. One male migrant worker who had fled his employment at a salon after not being paid many months' wages expressed great frustration with the embassy shelter because he was cut off from society and not allowed to receive guests. He recalled 10 people sharing a room and, recounted, "We had to go to sleep at 9 p.m. Some people had been there for two years and nothing had happened in their case at all. Some people stayed under the stairs."

Outside of bilateral agreements, Indonesia's use of diplomatic channels on behalf of individual or all migrant workers has often been met with opposition. In Saudi Arabia, for example, the Indonesian Labor Attaché in Riyadh has reportedly requested a minimum wage and inclusion of domestic workers in the national labor law before it will lift the moratorium on workers to Saudi Arabia. Saudi Arabia has reportedly dismissed the request as meddling in domestic affairs.²⁴⁴

Fleeing an Employer

Focus group discussions revealed that workers in problematic employment situations frequently take matters into their own hands and flee their employer. This may be because they do not trust the embassy to resolve their problem, or because they would rather keep working and earning money in the destination country instead of filing a complaint and having to return home. Fleeing and working irregularly exposes workers to other risks as their visa status is generally tied to the original employer, and becoming "illegal" in the destination country severely limits the worker's recourse to help if she encounters problems. Several focus group participants described such experiences:

I went to Saudi Arabia as a domestic worker but after one year I ran away from my employer. She hadn't paid me anything for six months and when I asked for my money she slapped me across the face for asking. When I fled the house I had no documents. I ran to the highway and eventually came across an Indonesian who would take in undocumented

workers. I worked for him for two years and my pay was much more than with my legal employer. But then I became sick and the police found me and took me to the hospital. My phone was taken from me at that time and I lost contact with my family for seven months before I was able to get home.

—Female Migrant Worker, Indramayu, West Java

I went to Saudi Arabia as a private driver and had no problem with the work but I was unhappy with my employer. First, I was not allowed to leave the house and also I was not paid anything for the first three months—just one month's wages after the fourth month. Also, my employer would speak to me rudely and called me an animal. I tried talking to him many times but he never listened. I also complained to the agent twice but it was pointless. I wanted to change my fate so after four months I ran away to Jeddah and worked for four years, always changing employers and without a contract or my passport.

—Male Migrant Worker, Sukabumi, West Java

This was my second time as a migrant domestic worker to Saudi Arabia. I arrived in Riyadh in 2006 but ran away after seven months because they didn't pay me anything for my work. So I went to Jeddah and worked there, working from house to house, but the work was never guaranteed, there was a lot of insecurity. I stayed in a place that took in run-aways and paid monthly rent until 2009. Jeddah wasn't safe—there were raids. So I came home.

—Female Migrant Worker, Sukabumi, West Java

7. Challenges to Enforcing Migrant Workers' Rights and Obtaining Redress

Across interviews with migrant workers, their families, civil society organizations, and in some cases government officials, a set of challenges emerged that was common to all mechanisms. These challenges revealed deeper structural obstacles to migrant workers' access to redress than can be comprehensively addressed through reform of any single mechanism. These challenges are outlined below, and include: centralization of actors and mechanisms; documentation requirements for claims; a lack of seriousness in the approach of various actors to worker complaints; workers' lack of awareness and understanding of their legal rights and redress options; inadequate legal aid; inadequate recruitment agency regulation and accountability; overlaps and gaps in responsibilities for worker protection; the time, resources and emotional cost to a migrant worker of seeking redress; and corruption, or perceptions of corruption, within government and the private sector.

7.A Centralization and Distance

A pervasive challenge for workers, their families and CSO representatives is the centralization of the migrant labor system for workers traveling to the Middle East. Because all Middle East recruitment agencies are Jakarta-based, most disputes can only be resolved in the capital, far from many workers' homes.

Case-handlers noted the need to travel back and forth to Jakarta to negotiate directly with any Indonesia-based party or make any kind of claim. As a civil society organization staff person recalled: "In one case where the worker was not paid up to IDR 158,000,000 in wages, someone in our office went to Jakarta to submit an insurance claim. The process went for a long time, and he went back and forth at least three times." This should not be necessary given that Proteksi has outposts around Indonesia, but even a recruitment agent agreed that to get any response from the insurer, one must go directly to its central office and confront Proteksi representatives in person.²⁴⁵

Administrative dispute resolution presented a similar challenge. Although local labor offices can receive complaints, they can rarely resolve them. This is due partly to constraints on local offices' authority, but also due to the practical constraint that recruitment companies and the insurance consortium are located in Jakarta. As a local official noted:

If the recruitment agency has a branch here we call them. But if the office is in Jakarta, or if the broker is here but took the worker to the capital for departure [as in most Middle East cases], well, that is a significant obstacle for us. We still write to them, but they never come.²⁴⁶

Official mediation services are also primarily available in Jakarta at the BNP2TKI Crisis Center, although a BP3TKI or other local offices may occasionally conduct mediations if the recruitment agency has a branch in the province.

Travel to Jakarta is costly and intimidating for many workers. It is also time-consuming and stressful for workers who must leave their work and family responsibilities in order to make the journey each time—factors that significantly disincentivize workers from pursuing claims.

7.B Documentation Requirements that Workers Struggle to Meet

The lack of required documentation was one of the most commonly cited reasons for not filing a claim, or for failing to achieve the desired claim outcome. This was true of

insurance claims, administrative dispute resolution, and use of the civil courts. It was also considered the principal reason that prosecutors decline to file criminal cases. As one legal expert said:

Obtaining the documents is really the hardest part; meeting the requirements is extremely difficult. It is hard both when trying to get copies of documents from the recruitment agencies, and when presenting them to the insurance company—[the process] is difficult and full of problems.²⁴⁷

In some cases, as detailed in earlier sections, migrant workers never receive key documents such as the KPA (the insurance card), placement agreement or insurance policy. A migrant worker who has fled her employer in the Middle East is generally unable to retrieve her documents from the employer, who frequently confiscates or retains the worker's documents upon arrival. As a result, the worker does not have her passport, identity card, or insurance card when she seeks help from an embassy or seeks to return to Indonesia of her own accord. If the worker is still abroad, civil society groups in Indonesia will meet with the migrant worker's family in Indonesia to try to obtain the needed documentation, but families often do not have copies of all documents. In such cases the organization must try to obtain the documents from various government agencies and the recruitment agency. As one civil society staffer explained, "this itself is not an easy process. We must go back and forth, back and forth, and just finding the documents for one case can take three or four full days [of meetings and travel]."²⁴⁸

In some cases, the recruitment agency itself holds the personal documents, and is either reluctant to give them up, or will (improperly) demand a fee for their return. If a worker's contract is terminated early, the agency will commonly refuse to give her any of her documents (including her birth certificate, high school diplomas, and others) unless she pays around Rp. 25 million (around USD 2,600).²⁴⁹ TIFA Foundation noted that a migrant worker may visit the recruiter to seek the return of the documents and, if this "informal" method fails, may file a formal complaint at the provincial-level BP3TKI and "with the authority of the government, and the power of the law behind us, we can force the agency to give us the documents."²⁵⁰

For some harms, the worker must also produce evidence of the occurrence of the harm and any costs incurred. The MoM office in Sukabumi noted that to receive compensation for an accident, for example, the migrant worker must provide receipts for treatment received. However, in most cases migrant workers use traditional healers rather than doctors because of custom and because they cannot afford high quality medical care, so they do not have any receipts.²⁵¹ A recruitment agency recalled a case of sexual assault of a domestic worker by her employer in which the worker was unable

to supply documentary evidence demonstrating that the assault occurred, and her claim was refused.²⁵²

Since early 2012 when new insurance rules²⁵³ were passed, evidence of many losses may now be provided in the form of a letter from the embassy stating that a particular harm occurred. However, civil society groups explained that obtaining such a letter was time-consuming and difficult, because in most cases the worker has already returned home, and communicating with the embassy abroad is a highly bureaucratic process (workers are rarely aware of their insurance coverage or the need to obtain claims evidence while abroad). Moreover, embassies are often unaware of the information required to satisfy an insurance claim and so insurers reject the letters that embassies produce. One embassy letter viewed in this study lacked the key information requested by the insurer about the reason for termination of a worker's contract, leading to the rejection of the claim.

7.C Workers' Concerns and Cases Not Taken Seriously

Migrant workers and civil society organizations repeatedly described the lack of seriousness with which various actors addressed concerns and claims. Interviewees raised this challenge in relation to private recruitment agencies, insurers, and government officials, within all of the redress mechanisms. For example, in negotiations—or even government-facilitated mediations—with recruitment agencies, representatives from the agency often fail to appear, and workers have little leverage to compel their response or attendance.

Similarly, workers and civil society group representatives described a dismissive attitude from certain government officials within offices ranging from the Ministry of Manpower to the Ministry of Foreign Affairs. They described being “ping-ponged” between departments, with each agency blaming the other for a lack of results. Civil society groups expressed particularly deep frustration when recounting their dealings with the Ministry of Foreign Affairs and embassies in destination countries. They reported having to follow up many times, often receiving no information about the status of inquiries and cases. One civil society representative explained, “When it comes to communicating with an embassy, you have to call, send letters, SMS them there—we really have to be active. It seems like there is not enough attention or care about these cases. We do usually get a response but often after sending the letter twice or more.”²⁵⁴

Workers who had been housed in embassies after leaving their employer also described being addressed rudely or ignored by embassy staff. One worker who stayed at the embassy for four years to resolve her case remembered:

At the embassy the staff in the shelter yelled at me and told me I was misbehaved, and asked how would my employer ever have agreed to pay me if I acted like this. I was the one who was put in the wrong. This was hard for me as I was already stressed staying in that small space for so long, not able to go anywhere.²⁵⁵

7.D Lack of Awareness and Understanding of Legal Rights and Redress Options

The vast majority of focus group participants had little understanding of their rights under Indonesian law and the contracts they had signed, and also very limited awareness of redress mechanisms available to them should they suffer harm in the course of labor migration. While many workers seemed to know that they ought to go to the embassy if they had a problem in the destination country, and some knew they were insured, they had not been informed and had no knowledge of the procedures or documentation required to make an insurance claim, or how to seek redress after they returned home.

Workers' lack of awareness and understanding of their legal rights and redress options is highly disempowering, and is likely the result of several factors. One factor often cited is the lack of formal education among many low-wage migrant workers, particularly those to the Middle East. This presents challenges to reading and understanding a contract or insurance policy or other key document, especially if it is not explained to the worker or is not provided in Indonesian (as employment contracts often are not).

The central role of brokers in recruiting migrant workers also limits a worker's knowledge of her rights and options before departure, because the brokers handle all documentation and usually only ask the worker to sign where required, without effectively communicating anything to the worker about her rights and corresponding obligations. BNP3TKI has a statutory obligation to provide migrant workers with information pre-departure, but this obligation has failed to translate into actual knowledge: workers participating in the study either did not receive or did not fully understand information they received on their rights, or on procedures for accessing redress in Indonesia or abroad. This is likely because brokers directly connect most Middle East workers with Jakarta-based recruitment agencies, circumventing the information and protection services of the local MoM and regional-level BNP3TKI offices.

Finally, information is difficult to access. If prospective migrant workers do not receive it during the training period, it is not easily available while abroad. The information available online is limited, and not available to workers without access to the internet or telephones. Embassies—charged with protecting and fulfilling the rights of migrant workers in the destination countries—provide assistance to some workers, but

do not seem to prioritize educating workers about their rights or redress options on return. Moreover, despite some promising small paralegal-training programs, the quality of information that is generally available is still limited. This study reveals few if any resources that clearly and simply set out migrant workers' rights under various sources of law, or delineate the responsibilities of recruiters, insurers, and various government departments. Nor did the study identify publicly available materials that clearly and simply set out the procedures and documents required to seek redress through insurance or other Indonesia-based mechanisms, in a manner accessible to a low-wage migrant worker or local civil society organization.

7.E Lack of Legal Aid and Legal Advice

Legal experts emphasized the importance of legal representation for migrant workers at all negotiations and mediations, and when going to the police to file a complaint. Umu Hilmy of Brawijaya University explained that it is difficult for people without legal training to, “truly understand the laws on migrant workers [in order to] argue against these recruitment agency lawyers. [Migrant worker lawyers] need to memorize the law and know all of the gaps and loop-holes that the other lawyer will use.” This includes Law 39/2004 and regulations, as well as the criminal code and Anti-Trafficking Law as they relate to migrant workers (see Redress through the Criminal Justice System in Section 6, above).

Few private or civil society lawyers have training in these areas, and interviewees noted that it is difficult for migrant workers to engage private lawyers because they can very rarely pay legal fees, and their claims are for relatively small amounts. Within legal aid organizations such as Jakarta Legal Aid, lawyers may specialize in labor law or criminal law, but experts said that none focused on migrant worker law specifically. Several interviewees were hopeful that a new law on legal aid, which recognizes a right to access justice and provides a framework for funding and overseeing legal aid, will assist migrant workers (see text box on Legal Aid in Indonesia in Section 6, above).²⁵⁶ At the time of the field research the law had not yet been implemented.

Legal expertise is also a challenge abroad. Embassy staff reportedly do not have the capacity to seriously handle all of the cases that are brought to them—in terms of both the time and skills required. For example, if migrant workers wish to take their cases beyond informal mediation to domestic legal processes, an understanding of the language, laws, and legal culture of the destination country is required. According to the civil society representative on SATGAS TKI, “the real problem is that the Indonesian embassies don't have a lawyer there who understands the labor law of Saudi Arabia.”²⁵⁷

Participants also noted that it was often difficult for workers to obtain necessary information and assistance because embassy officials were unfamiliar with key *Indonesian* labor migration laws, such as laws regulating migrant worker insurance. Indeed, the letters supplied to workers by embassies as evidence for insurance claims are frequently inadequate and rejected by the insurer. In some cases, embassy security officers also improperly exclude workers without documents, despite the fact that the worker's lack of documents was the result of mistreatment so that it is often these workers who are in greatest need of legal assistance.

Finally, lawyers interviewed in this study lamented the lack of information and training available to them on relevant law in major destination countries. They believed this gap prevented them from providing advice and assistance to migrant workers' families when their relatives encountered problems abroad.

7.F Inadequate Regulation of the Private Sector, which Is Not Held Accountable for Worker Harms

Participants regarded government oversight of recruitment agencies, insurers, and brokers as weak in general and particularly weak with respect to agencies' provision of appropriate redress for worker harms. As noted in the section on ADR, securing recruitment agency or insurer attendance at mediation is a persistent challenge. There is no mechanism for compelling private parties to negotiate with migrant workers, let alone negotiate in good faith. As a result, a recruitment agency can, and often does, simply refuse to respond to letters or to attend. As a representative of ATKI Jakarta explained, "Very few recruitment agencies are cooperative about returning money, they usually insist they are right." She also noted a common perception that many recruitment agencies are owned by people in positions of power who protect them from serious claims.

Ministry of Manpower officials emphasized the importance of building close working relationships with recruitment agencies, "so that they will be willing to cooperate. Because usually the worker who comes home does not have any data at all, so it is just her word against the agency's." However, these close relationships with recruitment agencies raise concerns about the officials' capacity to act as objective arbiters between the parties, and could reinforce the perception among workers that the government and recruitment agencies are aligned.

The law contains limited sanctions for such behavior. Facilitation (or even non-obstruction) of migrant worker redress is not a condition of agency licensing, for example. Those sanctions that do exist appear to be rarely imposed, or at least not imposed in a manner that guarantees transparency and accountability. Recruitment agencies

therefore have little incentive to comply with their legal obligations regarding information and training, to engage constructively in dispute resolution processes, to assist workers to obtain copies of key documents required for claims, or to ensure that the local brokers with whom they work deal honestly and fairly with workers.

A number of interviewees expressed the view that the courts do not hold recruitment agencies accountable because courts are fundamentally biased toward wealthier and more powerful private sector parties. A representative of Legal Aid Jakarta noted that even if a migrant worker had all of her documents, “we already know which way a case will go, we know the worker will lose.”²⁵⁸

7.G Overlaps and Gaps in Migrant Worker Protection

Inadequate delineation of responsibilities for migrant workers has resulted in gaps and inefficiencies in worker protection in various parts of the labor migration system. These gaps present practical challenges to workers seeking redress, both because workers and their representatives do not know who is responsible for a particular function and because individuals within government and private institutions are unclear as to their responsibilities.

Most significantly, the content and boundaries between the migrant-worker-related functions of the Ministry of Manpower and BNP2TKI, and between the national, regional and local levels within each agency, are unclear. The division of responsibilities between recruitment agencies and insurers to compensate workers for harms related to their work abroad is also opaque. For some work-related harms, responsibility may be shared by the insurer, recruitment agency, and possibly even the broker in Indonesia, as well as by the partner recruitment agency abroad and the employer—not to mention the responsibilities of governments in the countries of origin and destination. In practice, this often results in all parties denying responsibility.

7.H Time, Resources, and Emotional Cost

Geographic distance and layers of bureaucracy make administrative dispute resolution in Jakarta time-consuming, resource-draining, intimidating, and stressful. Most migrant workers seeking redress after working in the Middle East have little option but to travel to Jakarta (see Section 7.A above), and remain both patient and persistent. The required travel to Jakarta presents an insurmountable obstacle to many migrant workers who need urgent redress in order to pay debts, medical costs, or other expenses.

Local government offices are constrained in their ability to resolve disputes, and usually lengthen the dispute resolution process further when they are involved. As one local Ministry of Manpower official noted:

Our facilitation of the process can take a long time, so those who are not patient or who want a quick resolution will take matters in their own hands with [a civil society organization] or other person directly to Jakarta. Usually it is like that. After they report to us, we call them a second and third time and then we go to that village for some reason we will find the family and ask, “Hey, what happened, why hasn’t she come? Has she received her wages?” They then say yes, but it was reduced for this reason and that reason. Well it is up to them; the main thing is that they reach their goal.²⁵⁹

The insurance claims process poses similar challenges. Migrant Care noted it could take up to a year to receive a response from the insurer regarding a claim. Although Regulation 7/2010 requires the consortium to pay a claim within seven days of fulfillment of all requirements for submitting a claim (Article 26(5)), there is no time limit for deciding whether these requirements have been met. Furthermore, the redress provided is rarely for the full amount claimed, which influences the workers’ decision as to whether to pursue a claim.

Of all mechanisms, the court process is the most time-consuming and emotionally exhausting. TIFA Foundation described a case in which civil society lawyers assisted a migrant worker to file a case related to a failed departure. The worker had paid a large upfront fee to the recruitment agency and when the agency did not follow through on its departure promise, she sued for return of the fee based on breach of contract. The case progressed slowly but eventually was dismissed when the defendant could not be located. The TIFA Foundation lawyer explained:

We identified another defendant and I recommended that she file the claim again, but she was already too tired from the first filing. Civil cases are exhausting because you have to be very active and if you don’t have enough stamina, you won’t succeed, you will be worn out.²⁶⁰

Reform of the redress system must therefore take into account geographic accessibility, as well as the potential for timely redress.

7.1 Corruption and Perceptions of Corruption

Almost all participants outside of government expressed deep mistrust of the labor migration system, as well as a certainty that individual workers would never win if they challenged a large recruitment agency, powerful broker, or insurer in court. Many

viewed the migrant labor system as burdened by collusion between recruitment agencies, insurers, and government officials who undermined regulatory or bureaucratic procedures intended to protect workers—a view reinforced by the lack of transparency common to all redress mechanisms examined in this study.

Recruitment agencies supported this view, noting that the more rules introduced, the more bribes they were required to pay. In addition, participants thought police, prosecutors, and courts favored the wealthy and powerful, and were unlikely to hold a recruitment agency accountable for criminal wrongdoing. As a result, participants believed that pursuing justice through the criminal justice system would only expose the worker to more stress, expense, and disappointment. Whether these allegations are true or not, the widely held scepticism toward the governmental and judicial bodies that facilitate access to redress creates a strong disincentive against seeking justice.

7.J Summary—Despondency and Frustration

At the Indonesia Roundtable in January 2012, participants were asked in their introductions to identify a success story about access to justice. Very few were able to do so; most appeared discouraged, frustrated with the system, and generally skeptical about access to justice for Indonesian migrant workers, whether through formal, informal, or quasi-formal mechanisms. In the view of many experts, the limited bargaining power of migrant workers, along with lower levels of education, capital, and confidence to take cases, meant that recruitment agencies, insurers, and others are frequently permitted to unjustly profit from and avoid liability for the harms to which they contributed or from which they failed to adequately protect workers. Migrant workers also supported this view.

The inherently transnational nature of migrant labor, in which many of the violations occur abroad in jurisdictions in which lawyers in Indonesia have no access and little understanding, understandably poses a significant challenge to achieving redress. But that alone does not account for the multitude of barriers to justice identified above. Contrary to the perspectives of some experts who viewed workers as relatively passive and bearing the onus for all aspects of achieving justice, our study revealed an engaged and even angry population seeking change. A number of the workers interviewed for this study expressed their frustration after trying in a number of ways to assert their rights and being thwarted throughout. When asked for their recommendations for improvements to the system, almost all focused on the need for Indonesia's embassies to be more responsive to the migrant workers and their family members, and to be more proactive in protecting the rights of migrant workers. They also critiqued the gov-

ernment's relationships with destination countries, and identified these relationships as a barrier to ensuring government assistance in protecting their rights and working to achieve full redress when those rights are violated. Workers also demanded greater accountability in the system, a demand that requires greater transparency of each of the redress mechanisms as they respond to and resolve workers' claims.

8. Conclusion and Recommendations

For the vast majority of low-wage Indonesian migrant workers who travel to the Middle East, access to justice remains elusive both abroad and at home. In some areas, the rights of migrant workers under Indonesian laws and private contracts are under-enforced, and in other areas better regulation is needed. Throughout the Indonesian labor migration system, greater transparency is critical.

Since research on this report began, Indonesian government and civil society have taken some promising steps toward improving access to justice for migrant workers. For example, the Association of Indonesian Lawyers has experimented with placement of lawyers in the main airport terminal in Jakarta to receive workers' complaints directly and facilitate insurance claims. The BNP2TKI Crisis Centre in Jakarta began operations in 2008 and is receiving a significant number of calls, and the public has demanded accountability for corruption and mismanagement in the insurance system and elsewhere in the labor migration system.

Ultimately, improving access to justice for Indonesian migrant workers will require a fundamental change in the way that migrant workers are viewed—as rights-holders with legitimate legal claims, rather than as passive charity-seekers or disruptive children. All parts of the labor migration system must be involved in this change, beginning with the Ministry of Manpower and the private sector. The government of Indonesia can enable this change by systematically enforcing the law and better regu-

lating the private-sector recruitment agencies, insurers, brokers, and others that profit from labor migration. The Indonesian Parliament can reform labor migration laws to include stronger *enforceable* protections for migrant workers. It can also initiate reforms to provide migrant workers with specific rights to redress, including provisions establishing enforceable government and private sector obligations to ensure and provide redress to migrant workers. Academia can support change by increasing the scrutiny of migrant worker laws and contracts, conducting further studies, collecting relevant data, and training a new generation of lawyers to represent migrant workers. Donors can support all of these efforts by supporting civil society advocacy, legal assistance, and litigation on behalf of workers. Donors can support training of law students, lawyers, and paralegals, as well as further research and analysis, and the development of better information sources for migrant workers on the content and enforcement of their rights.

8.A Summary of General Findings

1. **Migrant Workers Face a Range of Legal Problems Involving Multiple Actors**

Indonesian migrant workers travelling to the Middle East face problems involving multiple private and public sector actors. Within the private sector these include recruitment brokers (“sponsors”), recruitment agencies, and insurers in the country of origin, as well as partner recruitment agencies and employers in the destination country. Problems arise throughout the migration process, including pre-departure, during placement, and post-return.

Indonesian migrant workers’ problems are governed by numerous sources of law that provide rights to migrant workers and impose obligations on government and private actors. These sources of law traverse private and public law, and include the constitution, statutes, regulations, private contracts, and international law. They may also include laws in the destination country.

Relevant areas of law include:

- Law specifically related to migrant labor;
- Contract law;
- Insurance law;
- Criminal law, including the general criminal code and the Anti-Trafficking Law;
- Consumer protection; and,
- Labor/employment law (in the country of origin and destination country).

Migrant workers' legal issues are often complicated by the inherent transnational nature of migrant work. In particular, harms suffered abroad may be connected to problems that arise in Indonesia before departure, such that multiple private and government actors in Indonesia and abroad may bear legal responsibility to prevent and/or remedy a particular harm.

2. The Key Laws on Migrant Worker Placement and Protection Do Not Effectively Ensure Workers' Access to Justice

Indonesia's labor migration laws, regulations, and policies do not focus on workers' redress and restitution, and place only limited emphasis on holding recruitment agencies and others accountable for worker harms. Indonesia's single national law concerning migrant workers (Law 39 of 2004 on the Placement and Protection of Migrant Workers), which governs labor migration in Indonesia, does not specifically reference access to justice. It only requires that workers directly and "peaceably" negotiate disputes with recruitment agencies and, if this fails, that they seek the assistance of the Ministry of Manpower (see below) or submit a claim for insurance to the Migrant Worker Insurance Program. At a broader level, the ministry has power to sanction recruitment companies for violations ranging from non-compliance with licensing conditions to failure to give workers required documents, though there is no systematic regime and sanctions are rarely imposed.

The statute does, however, provide workers with rights to information, equality of treatment, the standard wage in the destination country, a copy of the work contract, and to "receive a guarantee of protection of the law ... [for] violation of one's rights set out in the law for the duration of the placement abroad."

In practice, these rights are effectively unenforceable. The statute and regulations rarely identify the party responsible for fulfilling particular rights, and do not clearly delineate between government and recruitment agency obligations. They do not establish enforcement mechanisms nor consequences for non-fulfilment of government or recruiter obligations. For example, Law 39/2004 does not set out any method by which a worker may obtain redress if he or she is not treated equally, does not receive the prevailing wage, and does not receive a copy of the contract.

Moreover, although the statute and regulations task government with regulating certain aspects of privatized recruitment (primarily through licensing), these laws are generally assumed to apply only to recruitment agencies and not to local brokers who are the first and primary contact point for most migrant workers to the Middle East (though this assumption remains to be tested in the courts).

Finally, although Indonesia's human rights law declares the country's international human rights obligations to be directly enforceable in Indonesian courts and via other "effective national legal means," this provision remains to be tested in the context of enforcement of the rights of migrant workers under the Migrant Worker Convention and other human rights treaties to which Indonesia is a party.

3. Migrant Workers who Go to the Middle East Face Particular Challenges to Rights Protection and Access to Redress

The Middle East, and specifically Saudi Arabia, is a significant destination for Indonesian migrant workers. It provided placements to around half of all Indonesian migrant workers until several countries were "banned" in recent years, and still accounts for almost one third of placements.

Government, civil society, and lawyers interviewed for this study agreed that the Middle East as a destination region poses particular challenges for both migrant workers who travel there, and for those seeking to improve access to justice for those workers. These challenges were viewed in contrast to the Asia Pacific region, the other main destination area, and specifically to Hong Kong, Malaysia, Singapore, and Taiwan. Participants observed that:

- The migrant workers who travel to the Middle East come from particular rural areas in Java and West Nusa Tenggara. They are overwhelmingly women, with low levels of education and little if any formal work experience before departure. These factors make them more vulnerable to fraud and other abuses.
- The recruitment process is inherently disempowering for migrant workers to the Middle East. All recruitment agencies for the Middle East are located in Jakarta—far from most migrant workers' homes. As a result, the vast majority of workers use local-level brokers to connect them with the agencies—a process that remains beyond government oversight and direct regulation. Migrant workers must sometimes travel several days to the capital, depending on the worker's home province, which separates the worker from her or his family and local authorities. As a result of geographical distance, workers also face greater difficulties obtaining documents and seeking assistance or redress from the recruitment agencies if problems arise.
- Migrant workers in the Middle East experience more problems, and problems of a more severe nature, than other migrant workers. The most common problem unique to Middle East workers is "loss of contact," in which a family loses all contact with the worker, sometimes for a number of years, when the worker is cut off from phone and internet access. Participants believed that cases of

unpaid wages were also more common in the Middle East, as were serious physical and sexual abuse cases.

- Organizations noted that advocacy on behalf of migrant workers is particularly difficult for those already in the Middle East or who have returned home, because the region is geographically far; the language and culture are very different to Indonesia (unlike Malaysia, for example); domestic redress mechanisms, laws, and institutions are especially weak or non-existent; rights-based advocacy is not tolerated, particularly in Saudi Arabia; connections with local advocacy organizations and lawyers are limited; and the Indonesian embassies and consulates are overburdened and fail to provide timely responses to requests for information, and generally lack expertise in local legal systems.
- Moratoriums may limit the numbers of workers who travel to the region, but do not improve protections for migrants who have already departed, nor enhance their ability to access justice for rights violations.

4. **Migrant Workers Have Significant Contractual Rights, but They Are Underutilized**

The contractual rights of migrant workers are most clearly articulated in private agreements, which are governed by statute and regulations. Migrant workers must sign two private agreements before departing abroad: one with the recruitment agency (the placement agreement), and one with the employer or placement agency in the destination country (the employment agreement). In addition, workers must obtain an insurance policy, which sets out the worker's rights and the insurer's obligations during the coverage period. Requirements for all of these documents are set out in statutes and regulations, but there are no legislated standard contracts.

Employment agreements (between the worker and the employer or partner recruitment agency abroad) are generally provided close to the worker's departure overseas and the contents must be explained by government officials at pre-departure briefings. They cover all aspects of the employment including the period of employment, wages and holidays. The role of the destination country's law and legal system in the content and enforcement of this agreement is unclear.

The **placement agreement** (between the worker and the recruitment agency in Indonesia) should be signed by the recruitment agency and the worker before the worker commences pre-departure requirements. According to statute, the placement agreement must include details about the employer and the prospective employment. Most significantly, Law 39/2004 requires that the agreement include a guarantee that the agency will compensate the worker in the event that

the employer in the destination country does not fulfill the terms of the placement and employment agreements (such as the amount of wages payable). It also gives the migrant worker rights against the recruitment agency if a placement does not take place as promised.

Though recent regulations require placement agreements to be vetted by local or provincial authorities, there is no mechanism for invalidating or correcting deficient placement agreements. Moreover, because migrants to the Middle East use brokers to connect directly with Jakarta-based recruiters who are viewed as outside the local regulatory ambit, the locally-based safeguards generally do not help migrants to the Middle East.

Workers and their representatives interviewed in this study rarely discussed private contracts as sources of rights or redress in Indonesia. Recruitment agencies and workers' case-handlers do not rely explicitly on the terms of these documents as a basis for negotiation except regarding the agreed wage. Indeed, recruiters were perceived as generally denying responsibility for harms that workers suffer abroad, despite their contractual obligations under the placement agreement. Participants could not identify any instances in which recruiters' contractual obligations to workers were tested through litigation, and they were unable to identify any case law that explored the scope or enforceability of contractual rights or explained the relationship between the placement agreement and employment agreement. The intersection between recruiters' contractual responsibility for workers' losses and workers' insurance was also unclear.

Further, experts and workers believed that workers to the Middle East rarely receive a placement agreement from the recruiter at all, and even if recruiters did provide a placement agreement, its contents were not explained to the worker. Indeed, the migrant workers who took part in the study were unaware of their rights under the placement agreement. This study's researchers were only able to obtain one sample Middle East agreement (despite significant efforts to obtain others), which did not comply with statutory requirements. For example, it gave no guarantee of protection once the employment had commenced and provided no information on available mechanisms for resolving disputes.

5. Migrant Workers Seek Redress through Four Institutional Mechanisms: "Mediation," Insurance, Courts, and Consular Assistance

Most workers handle their disputes informally by calling a friend, relative, or local organization to negotiate with their recruitment agency or broker, rather than

using any institutional mechanism. The few that do take their cases further have four mechanisms available to them.

Mechanism	Responsible Institution	Location
Administrative Dispute Resolution, including “Mediation”	Ministry of Manpower and/or BNP2TKI (unclear)	Primarily Jakarta
Migrant Worker Insurance Program	Private sector insurance companies overseen by the Ministry of Manpower	Primarily Jakarta
Judicial System	The Ministry of Justice	Regional
Embassy/Consular Assistance	Ministry of Foreign Affairs and Ministry of Manpower (through labor attachés)	Destination Country

Findings specific to each mechanism include the following:

Administrative Dispute Resolution/Mediation

- Administrative dispute resolution (ADR)—resolution of migrant workers’ disputes with the assistance of a civil servant—reflects the common Indonesian practice of seeking local authority figures’ intervention in private disputes, a mechanism familiar to migrant workers, civil society organizations, and lawyers.
- Migrant workers use this method in disputes with recruitment agencies and insurance companies, after direct negotiations have failed. Services range from assisting workers to obtain documents from recruitment agencies and other government departments to contacting parties such as the recruitment agency and insurer on the worker’s behalf in order to obtain compensation. The final stage in ADR is a “mediation,” in which the government agency brings together the parties to a dispute to negotiate.
- The Ministry of Manpower is responsible for resolving disputes related to migrant workers, but in practice, responsibility has shifted to BNP2TKI in Jakarta. This is particularly the case for Middle East workers because recruiters and insurers are located in Jakarta, beyond the reach of local MoM offices. The law is unclear on the respective dispute resolution responsibilities of MoM and BNP2TKI.
- Mediation procedures are not legislated and a BNP2TKI Standard Operating Procedure Manual provides only general guidance to staff conducting the mediations. Mediations are held in private on an ad hoc basis by BNP2TKI, as well as by MoM offices at national, regional, and local levels. Mediators are not trained; they are bureaucrats who bring the parties together to negotiate

rather than to mediate a fair resolution. There is no avenue for appealing the result of a mediation, except to take the matter to court.

- Recruitment agencies regularly do not attend mediations. If they do, they are generally represented by a lawyer. There is no mechanism to compel attendance or to provide workers with a lawyer to ameliorate the power disparity.
- Outcomes of mediation vary from obtaining information and copies of documents, to obtaining compensation for injuries, lost wages, or other losses (which, as worker representatives noted, were only ever partial).

The Migrant Worker Insurance Program

- The Indonesian Migrant Worker Insurance Program is a unique privately-run scheme through which all migrant workers must obtain insurance as a condition of migrating abroad. A standard insurance policy covers losses throughout the migration process.
- The program has had very low pay-out rate and has been the subject of sustained criticism from many quarters. Civil society and legal professionals were sceptical about its ability to provide redress to workers and regarded the program as extortionate; the World Bank described regulation of the program as ineffective and an Indonesian parliamentary committee recommended that the insurance consortium be disbanded. At the time of writing, the Indonesian Financial Services Authority had ordered the current consortium to stop selling insurance to migrant workers due to misappropriation of funds by the consortium's broker. Further, the Supreme Court had invalidated implementing regulations. In July 2013 the Ministry of Manpower appointed 3 new consortiums.
- Awareness and understanding of insurance coverage among migrant worker returnee participants was very low. Most did not know they were insured, and others had limited understanding of the operation of their insurance. According to civil society groups, only 2 out of 48 participants stated that they knew they were insured and had an insurance card—a reflection of general levels of awareness and understanding among migrant workers.
- Although participation in the program is mandatory and the premiums are low, the claims process is not accessible to low-wage migrant workers and very few workers make successful claims. The Proteksi consortium received approximately 15,000 claims per year from across all migrant workers, a tiny proportion of the number of persons who report problems while abroad. Half

of claims were rejected. Inappropriate exclusions and limitations, for example a short time limit for filing claims (12 months from date of harm, even if the worker is still abroad) also impeded access.

- Participants perceived the claims procedures to be onerous and unfair: particularly the documentation requirements such as the worker's original insurance card (KPA), which many workers do not receive, or lose, and evidence of loss, which workers find difficult to obtain. In practice, workers could only file insurance claims at Proteksi's head office in Jakarta (not at regional offices or offices abroad), which was prohibitive for many workers who live far from the capital. Civil society groups also complained that the procedure was highly non-transparent, and that information about the status of a claim was very difficult to obtain. Proteksi did not provide reasons for rejecting a claim, and had no appeals process for disputing an insurance decision.
- The outcome of claims was a source of frustration to many civil society groups who felt that decision-making was often arbitrary. They noted that the system was not compensating workers for the range of harms they commonly experience. Insurers regularly use the controversial practice of "ex gratia" payments, declaring a claim incomplete but providing a small "charity" sum (permissible under regulations, but regarded by worker representatives as a way to close the file and prevent challenges).
- The insurance regulator (Insurance Directorate) has had limited involvement in the program, which is primarily overseen by the Ministry of Manpower.

Foreign Mission-Based Assistance Abroad

- Consulates and embassies have substantial statutory obligations to Indonesian migrant workers abroad. These were strengthened in a 2013 regulation that includes obligations to provide legal aid and to monitor recruitment agencies and employers.
- Many workers were aware of the possibility of contacting the Indonesian embassy and receiving assistance, and embassies in the Middle East provided shelter to a significant number of workers while they attempted to resolve problems. Civil society groups and lawyers were also familiar with the services offered by embassies and used them frequently to obtain information about a migrant worker or a case.
- Embassy-based services are theoretically accessible in that they are intended to be free, open to any citizen, and in that a shelter is available for migrant work-

ers who cannot return home. However, the services are based only in capital or other large cities, and so are practically inaccessible to workers based in other areas. Workers also reported being turned away if they did not have required identity documents, which are often retained by employers from whom workers flee. Workers who chose not to go to the embassy cited a lack of information or knowledge about the location of the embassy, negative perceptions of the embassy, or that the embassy was too far away (i.e., in the vast geography of Saudi Arabia, Indonesian consular services are only present in Jeddah and Riyadh).

- The procedures used by the labor attaché or diplomatic staff to resolve complaints are informal, and generally involve negotiation with the employer on the worker's behalf. Legal advice was not provided to any migrant worker focus group participant, although it is theoretically available. In the few places that Indonesian government lawyers work in embassies on workers' behalf, the lawyers do not appear to be fluent in the local language or legal system and legal assistance abroad is perceived by workers and civil society groups as inadequate. Most non-government participants described the procedures as lengthy, bureaucratic, and non-transparent.
- Civil society organizations generally believe that embassies prioritize resolution of complaints as quickly as possible, regardless of whether the resolution is fair—partly because of severe overcrowding in shelters, limited embassy staff, and the limited ability to act in a foreign legal system. Despite Ministry of Foreign Affairs reports that 90 percent of Middle East cases are “resolved,” civil society groups indicated that workers generally only receive a flight home, rather than back wages or compensation for more serious harms.

The Court System for Criminal and Civil cases

- Courts can theoretically be used by workers in at least three ways: (1) Migrants can bring a civil law suit against a recruiter for contractual violations such as unpaid wages or differences in the nature or location of work, or against an insurer for improper denial of a claim; (2) Courts can be used to compel government regulatory or other actions; and, (3) Police may file criminal charges against the recruiter or broker in serious cases of fraud, abuse, trafficking, or exploitation of migrant workers.
- The court system was the least used of all pathways to justice, and all civil society and legal representatives interviewed believed that the courts were not a viable option for most migrant workers.

- All participants were aware of the existence of the courts, and that in order to bring a criminal case one contacts the police. Awareness of the civil law and its relevance to migrant workers was low.
- Although courts of general jurisdiction are geographically accessible in that they exist at local and provincial levels, there are other practical barriers that make access extremely difficult. These include onerous evidentiary requirements; expensive, slow, and time-consuming court procedures (including related appeals); the requirement of skilled legal representation; and the need to travel to and from the police, prosecutor, courts, and other locations. Claims are generally filed in the locality of the defendant, i.e., Jakarta for Middle East recruiters.
- Study participants knew of only a handful of migrant worker court cases; in all, the workers were unsuccessful. More research is needed to determine the reasons for the failure. Little litigation to test the scope and meaning of the law has been conducted in this area.

6. Most Institutional Mechanisms Lack Formality and Procedural Standardization

Most institutional mechanisms were strikingly informal in implementation. Except for the courts, the procedures for filing complaints and claims, and for resolving disputes, are governed only by general internal rules, if governed by rules at all. Dispute resolution appears to be carried out in a relatively informal and ad hoc manner.

This informality both benefits and disadvantages workers. On one hand, the informal procedures associated with administrative dispute resolution and embassy complaints are quicker, less expensive, and simpler than going to court. No discovery or other requirements common to court matters can be used to delay proceedings or exclude workers. Indeed some lawyers suggested that the more rules introduced, the more barriers faced by workers, and the less likely they would receive anything at all.

On the other hand, informality undermines transparency. Significant imbalances in power between workers and recruitment agencies or insurance companies give workers limited leverage in negotiations. In “mediation,” for example, neither the worker nor the government mediator can force the other party to the table (recruitment agencies frequently fail to attend), and workers often accept whatever is offered, regardless of whether it is fair. This also happens in insurance claims, when, for example, workers are simply reimbursed the cost of a

flight home and several months' wages regardless of the wages actually owed to them or other injuries suffered. Like insurance claims and embassies' complaints-handling, migrant workers have no way to appeal a government mediation and no truly independent arbiter of disputes, unless the worker is able to go to court. As a result, worker representatives believe that most workers get something from a negotiation and/or mediation, but workers almost never receive their full entitlement, and private actors have no incentive or realistic threat of sanction to compel them to provide fair redress.

7. **Migrant Workers Face Barriers to Accessing Justice that Are Common to All Mechanisms**

According to many experts, the limited bargaining power of migrant workers, along with lower levels of education, capital, and confidence to take cases, enables recruitment agencies, insurers and others to unjustly profit from and avoid liability for the harms to which they contributed, or from which they failed to adequately protect workers. Migrant workers also supported this view.

The study found that, across all mechanisms, a further set of common key structural barriers prevents migrant workers from effectively obtaining adequate—if any—redress:

- A) *Redress Mechanisms, Recruiters, Insurers, and Government Agencies Are Centralized in Jakarta—Far from Most Workers' Homes:* Because all Middle East recruitment agencies, the insurance consortium, and government departments are all headquartered in Jakarta, migrants must invariably travel to Jakarta to negotiate with the recruiter or insurer or to file a claim. BNP2TKI's Crisis Centre is presently also only in Jakarta, and although local government officials may resolve disputes more informally, this is not possible in practice if the recruitment agency does not have a branch in the province, as is the case for Middle East recruiters. Travel to Jakarta is costly, intimidating, time-consuming, and stressful for most migrant workers.
- B) *All Mechanisms Have Documentation Requirements that Workers Struggle to Meet:* Many workers either do not receive all of the standard contracts and other documents required to make claims, or their documents are improperly retained by the recruitment agency or employer. It is difficult for workers to obtain replacement copies of key documents such as the insurance card, or to obtain necessary information from the worker's recruitment agency. In addition, workers are often unable to provide supporting evidence for their claims because when they were abroad they did not know what documents they were

required to obtain, or they were unable to obtain such evidence (e.g., wage statements). Evidentiary letters from the embassy are difficult to obtain while abroad, and often inadequate to support workers' claims.

- C) *Workers' Concerns Are Not Taken Seriously by Government, Recruiters, and Insurers:* Workers and civil society organizations described a dismissive attitude toward workers on the part of many government departments and private sector recruitment agencies and insurers, for whom civil society groups believed worker protection was an inferior concern to the profit-making aspect of migrant work. There was a widespread perception that government officials would not side with workers demanding full accountability from recruitment agencies or insurers for worker losses. This prevented workers from filing claims and from challenging decisions they believed to be unjust.
- D) *Workers Lack Awareness and Understanding of Their Legal Rights and Redress Options:* Despite detailed training requirements under the statute, workers in this study generally did not receive, or did not understand, information about their rights, or procedures for accessing redress in Indonesia or abroad, beyond going to the embassy. There are few if any publicly available resources that clearly set out workers' legal rights under statute and typical contracts, or the procedures and documents required to seek redress.
- E) *The Private Sector Is Not Sufficiently Regulated or Held Accountable for Migrant Worker Protection:* Participants regarded government oversight of recruitment agencies, insurers, and brokers as weak in general, and particularly weak with respect to agencies' provision of appropriate redress for worker harms. The law does not contain effective sanctions for agency misconduct, and where sanctions do exist, they are rarely imposed. Facilitation (or even non-obstruction) of migrant worker redress is not a condition of agency licensing. Recruitment agencies have little incentive to comply with their legal obligations regarding information and training, to engage constructively in dispute resolution, to assist workers in obtaining copies of key documents required for claims, or to ensure that the local brokers with whom they work deal honestly and fairly with workers.
- F) *Migrant Workers Lack Legal Advice and Legal Aid Essential to Accessing Redress:* Legal experts emphasized the importance of legal representation for migrant workers at all negotiations and mediations, and when going to the police to file a complaint. Legal aid organizations have little presence in the rural areas where most workers live, and generally do not focus on labor migration law. It is difficult for workers to retain private lawyers due to physical access con-

straints and lack of financial resources. Most workers, if they receive assistance, do so through small civil society organizations of advocates and former migrant workers, who assist workers to gather their documents and negotiate with private and public actors, linking workers to other essential services. However, civil society group staff outside of Jakarta rarely have legal training and do not feel able to litigate complex cases in the courts. It is difficult for workers to access legal advice when abroad because embassy lawyers are often unfamiliar with destination country law and Indonesian labor migration law. Indonesian legal aid lawyers are unable to access information on destination country laws.

- G) *There Are Overlaps and Gaps in Migrant Worker Protection:* Inadequate delineation of responsibilities impedes workers seeking redress, both because workers do not know who is responsible for a particular function and because individuals within government and private institutions are unclear as to their responsibilities. This is true of the functions of the Ministry of Manpower and BNP2TKI relating to migrant workers, and of the national, regional, and local levels of each agency. For some work-related harms, responsibility may be shared by the insurer, recruitment agency, and the broker in Indonesia, as well as by the partner recruitment agency abroad and the employer (and origin and destination country governments)—resulting in no party accepting responsibility and ensuring redress.
- H) *All Mechanisms Have Financial, Time, and Emotional Costs:* Migrant workers rarely have timely and physically accessible redress options. Geographic distance and layers of bureaucracy make administrative dispute resolution and insurance claims in Jakarta time-consuming and resource draining (as well as intimidating and stressful). This presents an insurmountable obstacle to the many migrant workers who need urgent redress in order to pay debts, medical costs, or other expenses. The court process is especially expensive, lengthy, and emotionally exhausting.
- I) *Redress Mechanisms Are Subject to Corruption or Perceptions of Corruption:* Almost all participants outside of government expressed deep mistrust in the labor migration system. They perceived the migrant labor system as burdened by collusion between recruitment agencies, insurers, and government officials who undermined the regulatory and bureaucratic procedures intended to protect workers. Recruitment agencies supported this view, noting that the more rules introduced, the more bribes they were required to pay. In addition, participants thought that police, prosecutors, and courts favored the wealthy

and powerful, making them unlikely to hold a recruitment agency accountable for criminal wrongdoing, and only exposing the worker to further stress, expense, and disappointment. Whether these allegations are true or not, this widely-held scepticism of the government and the judicial bodies that facilitate access to redress creates a strong disincentive against seeking justice.

8.B Recommendations

Based on these findings, and the specific findings on each mechanism, (see Section 6, above), the authors make the following recommendations.

1. **Establish a Right to Access to Justice for Migrant Workers within Indonesian Labor Migration Laws**

Access to justice and redress should be a central component of current labor migration law reform. At a minimum, the law on migrant workers should state that migrant workers have a right to obtain redress for contractual and statutory violations, and should define the specific mechanisms available for seeking redress, the nature of redress, the parties responsible for providing redress, and the consequences for failure to provide redress or constructively engage with the available mechanisms. Standardized procedures that are accessible to workers should be set out in regulations.

The redress mechanisms made available to migrant workers should be developed in consultation with civil society, migrant workers, families of migrant workers, and their representatives. The mechanisms should reflect the specific needs of migrant workers seeking redress and address the common obstacles to accessing justice. Given the large number of returnees who report problems while abroad (at least 14 percent), as well as those who do not report their problems and those who experience problems before departure and after return, the mechanisms must be simple, affordable, geographically accessible, and able to operate at scale.

Education and training about the redress mechanisms, and assistance programs to aid access, are critical. Training should also be provided to government officials charged with implementing redress mechanisms, as well as to law enforcement officials and civil society groups tasked with enabling access, with additional targeted training for recruitment agents, brokers, and insurers. Simple information and instructions on redress mechanisms should be made electronically available and incorporated into pre-departure training.

Finally, redress mechanisms should be available to all migrant workers and their families, regardless of their regular or irregular status, as required under international law.

2. Strengthen Enforceability of Existing Rights Under Statute and Contracts

Labor migration statutes and regulations should explicitly identify the actor(s) responsible for fulfilling the rights of migrant workers. In particular, they should delineate between government responsibilities and the responsibilities of recruitment agencies and others. They should also specify the consequences for the failure of recruitment agencies (or government) to meet their responsibilities—including, where possible, mechanisms through which workers may enforce their rights. Brokers should be directly regulated, or defined as “agents” of recruiters in appropriate circumstances.

To improve consistency and enforceability of migrant workers’ protections under placement agreements, the Ministry of Manpower should draft a standard placement agreement that incorporates the statutory rights of migrant workers and corresponding obligations of recruitment agencies. In particular, the standard agreement should include reference to Article 52(f) of 39/2004, which requires recruitment agencies to compensate workers if the employer does not fulfil the terms of the employment agreement. To the extent that recruitment agencies rely on insurers to fulfil this obligation, the agreement should be explicit about the recruitment agency’s responsibilities with respect to a worker making an insurance claim, including in the event that the worker’s claim is not fully paid by the insurer.

The Ministry of Manpower should require agencies to use the standard agreement, or until such agreement is drafted, should establish penalties for failure to provide a placement agreement and/or failure to provide an agreement that complies with 39/2004 and regulations. Lawmakers should consider including a presumption that the rights of migrant workers under both domestic and international human rights law are implied in any agreement.

3. Standardize and Regulate the Administrative Mediation Procedures

To strengthen the administrative dispute resolution procedures operated by BNP2TKI and the Ministry of Manpower, both institutions should consider standardizing and improving their procedures at all levels. This should include, for example:

- Clearly delineating between the complaint-handling and mediation responsibilities of BNP2TKI and the Ministry of Manpower, and between different levels of government (national/regional/district).
- Training mediators through an accredited course, and tasking mediators with assisting parties to reach a fair outcome based on the rights and obligations of parties under the placement agreement (or insurance contract) and statute.
- Employing lawyers at crisis centers who specialize in migrant worker law, to advise migrant workers about their rights and redress options.
- Setting clear documentation requirements that take into account obstacles that migrant workers commonly encounter, processes for obtaining missing documents, and alternative procedures if documents are unavailable.
- Setting transparent reporting processes if BNP2TKI finds evidence of wrongdoing or of bad faith by a recruitment agency, including timeframes by which the Ministry of Manpower is required to act.
- Setting clear procedures in the event BNP2TKI identifies potential criminal conduct in the course of complaint-handling and mediating a case.
- Enabling the sanctioning of recruitment agencies that refuse to take part in mediation, to respond to worker inquiries, or answer requests for documents.
- Collecting and publicizing key data such as the amounts claimed by workers, against which parties claims were made; the compensation agreed upon; and amounts received by workers (de-identifying workers' names and personal details to ensure the privacy of the migrant worker).
- Establishing a complaint and grievance procedure in relation to the conduct of the mediator or another party, and related sanctions.
- Guaranteeing workers' right to privacy and confidentiality throughout the process, as well as the workers' right to be informed about progress in their case.

In addition to mediation, the government should consider an administrative tribunal based in regional areas for hearing appeals or deciding cases if mediation fails. The composition of the tribunal could mirror the domestic labor tribunal, with representatives of industry, unions, and migrant advocates sitting as tribunal members.

Changes to the mediation system and/or the creation of a tribunal should be made as simple and transparent as possible in order to avoid creation of further barriers to access. Extensive public consultation and pilot programs should be initiated before a new system is introduced.

4. **Improve Effectiveness and Oversight of the Migrant Worker Insurance Program**

The insurance program requires significant structural and operational reform in order to become the meaningful redress mechanism for low-wage migrant workers that it was intended to be. This should begin with a thorough review of its current operation, based on quality data on the nature of claims paid and refused, the amounts claimed and paid, the interpretation of claims and reasons for refusal, the relevant processing times, and all other aspects of the claims determination process. It should also include an evaluation of the operation of current policy exclusions and claim-filing time limits, amending these as necessary to ensure that they reflect common risks and challenges associated with labor migration and do not unfairly deny coverage (and to ensure that they are consistent with current regulations). The claims process should be made simpler, more accessible, and more transparent, and the insurer should be required to establish a pay-out ratio that reflects appropriate coverage of the most common risks to migrant workers at all stages of the migration process.

Independent insurance experts, together with the Ministry of Finance insurance regulator and civil society, should conduct the review. The review should also examine whether the program would operate more effectively and transparently under the Ministry of Finance rather than the Ministry of Manpower, under the jurisdiction of the general insurance regulator (BAPEPAM).

Any insurance consortium providing insurance to migrant workers should be given a limited period within which to process claims. Failure to comply should result in termination of the consortium's license, and ongoing compliance should be a condition of ongoing appointment to the program.

A number of additional reforms can be implemented immediately:

- The Ministry of Manpower should:
 - Set short time limits for deciding and paying claims;
 - Require insurers to provide a claim number that workers and their representatives can use to check the status of their cases, as well as a telephone service through which workers may easily check the status of their claim;
 - Require insurers to replace a migrant workers' lost insurance card within seven days, at no cost, and establish a hotline for workers to file a complaint about insurer misconduct in this or other respects;
 - Sanction recruitment agencies for failure to provide workers with copies of documents in their possession in a timely manner or for charging

improper fees for doing so. Establish a hotline through which migrant workers may report improper recruiter conduct in this respect; and,

- Require insurers to provide claimants with detailed reasons for rejecting a claim, an internal review of a claim determination upon request, and an opportunity to re-submit a claim if deficiencies may be rectified.
- BNP2TKI, insurers, and recruitment agencies should provide workers with better information about the insurance program before workers depart, including an explanation of the evidence that workers should seek to obtain while still abroad (see also Recommendation 5 on assistance to obtain evidence while abroad). Simple information on the insurance policy and claims process should also be published and made freely available. This could be a joint initiative between government, civil society groups, and possibly donors in the initial stage.
- BNP2TKI should better assist workers to obtain personal/identity documents for insurance claims, and Ministry of Foreign Affairs staff in embassies and consulates should better assist workers to obtain evidentiary documents and to learn about document requirements for insurance claims.

In the medium term, insurers should be required to establish *effective* regional claims processing centers. They should also be required to establish an effective and accessible complaint and appeal process that is monitored by the insurance regulator. This process should be accessible in regional areas and should not require travel to Jakarta. In order for these processes to be available to workers, there must be an expansion of legal assistance to file claims and challenge rejections, beginning with an evaluation of the three month airport trial program run by BNP2TKI and the Indonesian Lawyers Association.

Rules on insurance brokerage and the role of brokers in migrant worker insurance should be clarified so that the use of a broker is either removed from the system as redundant, or the broker is required to act as genuine impartial actor working to the benefit of the insured.

The government of Indonesia should also consider establishing a separate state compensation scheme for workers who suffer hardships and injuries that are difficult to insure. For example, physical, sexual, and emotional abuse could be compensated by such a scheme. The practice of awarding discretionary charity payments as part of the “social function” of insurers should be subject to transparent criteria.

5. **Improve Oversight and Accountability of Recruitment Agencies**

Migrant workers can only be effectively protected if recruitment agencies act in good faith to ensure that their promises and legal obligations to workers are met throughout the migration process, and if those agencies that fail to do so are identified through effective monitoring and sanctioned. Elements of a more effective regulatory system include:

- More frequent monitoring of agencies using established criteria, as well as investigations in response to an accessible public complaints process and mandatory sanctions or de-registration for repeated compliance failures.
- Stronger licensing requirements, including linking of license renewal with compliance with key migrant worker protections (among other things), and denial of licences to applicants previously involved in de-registered agencies.
- Greater transparency in licensing, including opportunities for public comment on licensing applications and publication of recruiter sanctions and the identities of senior management and other individuals/corporations with a significant financial interest in a recruitment agency.
- Holding recruitment agencies accountable for brokers acting as their agents.
- Providing recruiters with detailed guidance on their obligations to migrant workers under existing statute, regulations, and standard placement agreements, as well as the ways in which recruiters ought to meet those obligations and the consequences of failure to do so. This information does not currently appear to be clearly defined or available.

6. **Regulate the Broker System**

Local brokers/sponsors are an established part of the Indonesian labor migration system, acting essentially as agents for recruitment agencies at the village level. Some advocates call for banning brokers, because of high incidences of fraud and deceptive or incompetent conduct. However, it is the authors' view that this is currently unrealistic given the extent to which workers rely on brokers to identify recruitment agencies and arrange travel documents. In light of the pervasive role of brokers within the labor migration system, there is a clear need to achieve far greater oversight of, and accountability within, the broker system.

This should begin with an empirically informed understanding of the operation of the broker system based on a national study that evaluates the services that brokers provide to workers, their relationship with recruiters (including the circumstances under which they are the “agents” of recruiters in practice and/or in

law), brokers' geographic scope, the problems that migrant workers frequently encounter with brokers, and the ways in which brokers may protect workers.

The study should reflect realistic regulatory models that take into account the large number of brokers at the village level across the country as well as the significance of personal relationships in the broker model.

Potential regulatory initiatives might include:

- Defining the circumstances under which brokers are “agents” of recruiters, such that recruiters are liable for their actions.
- Subjecting brokers to a statutory licensing and regulatory scheme that runs parallel to the scheme for recruitment agencies, including a mechanism for migrant worker complaints, investigation, dispute resolution, and redress. This would need to be reconciled with the prohibition under Article 4 of Law 39/2004 against individuals engaging in migrant worker recruitment.
- Prohibiting recruitment agencies from engaging brokers who are unlicensed (and sanctioning those who do so), and making a list of licensed brokers in each district publicly available and easily accessible.
- Making licenses valid for a limited period, with periodic renewal contingent on a clean record.
- Training brokers on the law, including their obligations, duties, and the rights of migrant workers. This could be standardized nationally, implemented locally.
- Sanctioning brokers for engaging in conduct intended to mislead or otherwise disadvantage a migrant worker, and banning repeat offenders from acting as brokers in the future.

7. Strengthen Embassy Oversight and Systematize Consular Assistance

Embassies and consulates in significant migrant worker destination countries should be better resourced, and their staff should be better trained to provide legal assistance to workers and to conduct more rigorous evaluation of partner recruitment agencies and employers. This is required in order to implement the responsibilities of the Indonesian government for protecting its citizens abroad, as recently articulated under Government Regulation 3 of 2013. Furthermore, consular staff should make themselves more accessible to migrant workers outside of the capital cities, and should travel more frequently to local shelters in other parts of the country, particularly in geographically large countries such as Saudi Arabia.

Specific recommendations to the Ministry of Foreign Affairs, and Ministry of Manpower attachés where relevant, include:

- Embassies and consulates should provide free competent legal advice to low-wage migrant workers in relation to employment and criminal matters, addressing rights to redress within the destination country as well as upon return to Indonesia. While Government Regulation 3/2013 outlines the activities to be undertaken by the Indonesian Foreign Missions in providing legal aid, additional regulations should establish guidelines for determining when legal aid is mandatory and which migrants are eligible for legal aid, and that guidance should be as inclusive as possible. Resources must also be allocated to the Ministry of Foreign Affairs and labor attachés to ensure that those legal services are truly accessible and meaningful. Embassy lawyers should either be extensively trained in local language, laws, and legal systems, or should engage local lawyers. Embassy staff should also be trained in Indonesian labor migration law, including the Migrant Worker Insurance Scheme, as well as relevant international legal standards.
- Relevant parties should develop standardized procedures for consulate/embassy staff to resolve disputes between workers and employers, including defining workers' rights to information and to participate in the process, to ensure transparency and fairness.
- Embassies and consulates should establish procedures to ensure that workers not in possession of their passports or other documentation receive assistance from foreign missions, and work to facilitate the workers' retrieval of their documentation necessary to pursue a claim, either within the country of work or upon their return to Indonesia.
- Embassies and consulates should establish a more efficient mechanism for responding to worker and family complaints and to inquiries regarding the status of their case at a particular mission abroad, and work to overcome the duration of time workers are trapped in the country of work while trying to resolve disputes with their employer.
- The government should establish a mechanism for receiving and responding to complaints about consular handling of worker disputes or requests for information.
- The government should establish clearer criteria and processes for assessing the quality of partner recruitment agencies and commercial employers based on their ongoing treatment of migrant workers.

- The Ministry of Foreign Affairs should maintain records regarding the types of complaints received by Indonesian missions abroad, the length of time to resolve the cases, and the outcomes of those cases, and make de-identified data publicly available. This is particularly important for fulfilling the missions' obligations under Government Regulation 3/2013 to monitor, as well as provide guidance and oversight of recruitment agencies and employers.

8. Improve Information on Rights and Redress, and Workers' Access to Documents Required to Substantiate Claims

Government (and possibly donors) should support the development of resources that clearly and simply set out migrant workers' rights under various sources of law, as well as the responsibilities of recruiters, insurers, and various government departments. Publicly available materials should also clearly and simply set out the procedures and documents required to seek redress through insurance or other Indonesia-based mechanisms in a manner accessible to local civil society groups and low-wage migrant workers. These should be developed by civil society, in collaboration with government and academics, with input from the private sector. They should be made available online and in hard copy pre-departure, at embassies, and at local government offices. Development and distribution of materials should be supported by the government (and possibly donors).

The Ministry of Manpower and BNP2TKI should establish a system in partnership with recruitment agencies and insurers through which migrant workers may easily obtain copies of their contract and insurance documents in a timely manner and at no cost. One option would be to create a centralized electronic or hard-copy location with copies of all documents that migrants can access.

The ministry should also train diplomatic staff about Indonesia-based redress mechanisms such as insurance, and establish procedures for consulates to advise and assist workers to collect documentation that they will need to make claims, before the workers leave the destination country. The Ministry of Foreign Affairs should develop template letters for embassies to timely provide evidence of harm suffered by a worker.

The BNP2TKI Crisis Centre Hotline should also advise workers on the documents that they must obtain and any other steps they should take while in the destination country to make an insurance or other related claim for redress in Indonesia.

9. Improve Training and Capacity of Lawyers Representing Migrants

To increase the pool of skilled individuals assisting migrant workers, law schools could teach courses on overseas migrant labor, including classes on relevant human rights, labor rights, consumer rights, and contract law. Law schools could also establish related clinical legal education programs that both train future lawyers and provide essential services to migrant workers. In the future, transnational clinical collaboration with law schools in destination countries could be a particularly powerful route to increasing access to justice for workers at all stages of the labor migration process, particularly with the support of established migration-focused clinical legal education programs. This would likely require donor support at the outset.

The legal professional associations should also offer short courses so that practising labor migration lawyers can improve their skills and remain current with changes to the law. Short courses on the law in significant destination countries would also be beneficial.

Donor organizations, in partnership with law firms and law schools, could also offer more in-depth legal training to paralegals and civil society groups assisting migrant workers, as well as to pro bono lawyers. In addition to domestic legal training, this could include modules on destination country laws as well as Indonesia's obligations under the Migrant Worker Convention and other international treaties.

Finally, donor organizations can support civil society organizations that are teaching workers to assist others by involving the workers in the process to resolve their disputes. For such training to have a sustainable impact, particularly in light of significant power imbalances inherent in the dispute resolution process, the trained workers will need ongoing support.

10. Support Legal Research and Strategic Litigation

Further research, analysis, and dialogue among lawyers and academics is strongly recommended to identify creative new ways for migrant workers to use the courts to enforce their rights. This could include cases to compel government action or to obtain redress from recruitment agencies or other private parties under contract.

It could also include strategic litigation to test the enforceability of workers' rights under the placement agreement, or the standard insurance policy, or to establish the accountability of recruitment agencies for the conduct of brokers (or

the independent liability of brokers) for worker harms. There may also be scope to test the new legal aid law as applied to migrant workers. Litigation may also be used to test the import of Indonesia's obligations under the Migrant Worker Convention and other international treaties in domestic courts and international forums, particularly in light of Indonesia's human rights law, which directly incorporates those obligations into domestic law and creates a right to their enforcement through domestic and international mechanisms.

In all of these areas, the involvement of pro bono law firms, civil society groups, law school clinics/academics and international donors, will be needed to develop and bring viable claims.

Future research is recommended into the amenability of non-traditional forums, such as the Industrial Relations Tribunal, to migrant worker claims. It should also consider migrant workers' access to redress for rights violations by other private sector actors, such as training centers, banks involved in the transmission of remittances, and transportation companies that transport workers from Jakarta airport back to their home communities (with reportedly frequent theft and fraud). Studies could also explore the discriminatory discrepancies between placement agreements of Middle East workers and those going to other regions.

Finally, the impact of gender on the type of harms suffered and the barriers to redress for those harms is greatly needed, given that the vast majority of migrant workers from Indonesia are women carrying out work traditionally undervalued as "women's work." Further research should include the treatment of pregnant migrant workers, sexual assault cases, and barriers to seeking redress as experienced by women.

Annexure 1: International Law Ratifications by Indonesia

United Nations Conventions And Protocols	Ratif.	Year
Universal Declaration of Human Rights 1948	YES	2000
Convention on the Elimination of All Forms of Racial Discrimination 1963	YES	1999
International Covenant on Economic, Social and Cultural Rights 1966	YES	2006
International Covenant on Civil and Political Rights 1966	YES	2006
Optional Protocol to the International Covenant on Civil and Political Rights	NO	—
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	NO	—
Convention on the Elimination of All Forms of Discrimination Against Women 1979	YES	1984
Convention Against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment, 1984	YES	1998
Convention on the Rights of the Child 1990	YES	1990
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 in force 2003	YES	2012

United Nations Conventions And Protocols	Ratif.	Year
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (a) 2002	SIGNED	2003
UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted 1956, entered into force 1957	NO	—
The United Nations Convention against Transnational Organized Crime, 2000	YES	2009
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”) 2000	YES	2009

International Labour Organization Conventions	Ratif.	Year
<i>ILO Convention 14: Weekly Rest (Industry) Convention, 1921</i>	NO	—
<i>ILO Convention 29: Concerning Forced Labour Convention 1930, entered into force 1932</i>	YES	1950
<i>ILO Convention 87: Freedom of Association and Protection of the Right to Organize 1948</i>	YES	1998
<i>ILO Convention 98: Right to Organize and Collective Bargaining Convention, 1949</i>	YES	1957
<i>ILO Convention 100: Equal Remuneration Convention, 1951</i>	YES	1957
<i>ILO Convention 105: Abolition of Forced Labour Convention, 1957</i>	YES	1999
<i>ILO Convention 111: Discrimination (Employment and Occupation) Convention, 1958</i>	YES	1999
<i>ILO Convention 131: Minimum Wage Fixing Convention, 1970</i>	NO	—
<i>ILO Convention 138: Minimum Age for Admission to Employment Convention, 1973</i>	YES	1999
<i>ILO Conventions 144: Tripartite Consultation (International Labour Standards) Convention, 1976</i>	YES	1990
<i>ILO Conventions 169: Indigenous and Tribal Peoples Convention, 1989</i>	NO	—
<i>ILO Conventions 182: Concerning the Prohibition and Immediate Action for the Worst Forms of Child Labour Convention, 1999</i>	YES	2000
<i>ILO Convention 97: Migration for Employment Convention (Revised) 1949</i>	NO	—
<i>ILO Convention 143: Migrant Workers (Supplementary Provisions) Convention, 1975</i>	NO	—
<i>ILO Convention 189: On Decent Work for Domestic Workers</i>	NO	—
<i>ILO Convention 181: Private Employment Agencies Convention, 1997</i>		

Annexure 2: Interviews and Focus Groups

Research Methodology

TABLE 1: Category of Persons Interviewed

Category	Number
Returned Worker	4
Civil Society Organizations	16
Government	14
Legal Practice/ Academic	3
Private Sector	4
International Organizations	2
Total	43

TABLE 2: Focus Groups and Participants

District or Sub-District	Province	Dates (2012)	Participants		
			Returned Worker	Family Member/CSO	Total
Malang	East Java	12 April	8	1	9
Brebes	Central Java	7 May	6	5	11
Indramayu	West Java	20 May	7	7	14
Sukabumi (1)	West Java	27 May	9	1	10
Sukabumi (2)	West Java	27 May	7	3	10
East Lombok (1)	West N.T.	10 June	6	7	13
East Lombok (2)	West N.T.	11 June	5	3	8
Total			48	27	75

Annexure 3: List of Organizations/ Persons Interviewed

Organization/Agency	Name
Jakarta	
1. BNP2TKI Crisis Center	Henry Prayitno
2. Ministry of Manpower, Placement Division	Berry Komaruzaman
3. Ministry of Manpower, Protection Division	Oscar Abdulrachman
4. Ministry of Foreign Affairs, Citizen Protection Division	Tatang Budie Utama Razak
5. Migrant Workers Task Force (SATGAS TKI)	Humphrey Djemat
6. Assosiasi Tenaga Kerja Indonesia (ATKI)	Retno Dewi
7. The Institute for Ecosoc Rights	Sri Palupi
8. Jakarta Legal Aid	Pratiwi Febry
9. Jala PRT	Lita Anggraini
10. Migrant Care	Nurharsono and Badriyah
11. Migrant Institute	Adi Candra Utama and Nursalim
12. Serikat Buruh Migran Indonesia (SBMI) Head Office	Jamaluddin
13. SBMI Banyuwangi	Yudi

	Organization/Agency	Name
14.	Private legal practice	Harisan Aritonang
15.	TIFA Foundation	Eddy Purwanto
16.	PT Abdillah Putra Tamala (Private recruitment agency)	Irwan Rosadi and Made Bagus Surajaya
17.	PT Jasindo; formerly PT Grasia Media Utama (Insurance Brokerage Company)	Bambang Sarjito
18.	PT Harta Aman Pratama/ Konsorsium Asuransi Proteksi (Insurer)	Rusdiansyah
19.	International Labour Organization (ILO)	Lotte Kejser
20.	World Bank, Justice for the Poor Program	Lisa Noor Humaidah
Brebes, Central Java		
21.	Local MoM Office	Henky Budi Rahmawan
22.	SBMI Brebes	Cahyo Subagyo
Indramayu, West Java		
23.	Local MoM Office	Adi Satria
24.	SBMI Indramayu	Jihun
25.	Fokbumi	Heru
Malang, East Java		
26.	Local MoM Office	Sukardi
27.	Brawijaya University	Umu Hilmy
28.	Paguyuban Jinggo Putri (PJP)	Mutmainah
East Lombok, NTB Province		
29.	BNP2TKI in Lombok	M. Saleh
30.	Office of Manpower, Placement Division	Tohari Waluyo
31.	Office of Manpower, Oversight Division	Djunaidi and Syaiful
32.	Advokasi Buruh Migran Indonesia (ADBMI) Lombok Timur	Roma Hidayat
Sukabumi		
33.	Local MoM Office	Sukarwandi and Adi Kurniai
34.	SBMI Sukabumi	Jejen Nurjanah

Notes

1. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, opened for signature December 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003).
2. International Labour Organization. Migrant Workers. <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang-en/index.htm>.
3. See Auwal, M.A. 2010. "Ending the Exploitation of Migrant Workers in the Gulf," *Fletcher Forum of World Affairs* 34 (Summer): 87–108, at 87–88. ("In numerous cases, the migrant labourers end up not only losing the investments they make in obtaining their jobs, but also their basic human dignity, health, and, in some tragic cases, even their lives. All too often, they are deprived of pay, forced to work, left in squalid living conditions, denied the freedom to move or change jobs, and subjected to physical and sexual abuse.").
4. Ibid, 88 and 99.
5. Groves, S. 2012. "Remittances Hit \$534 Billion in 2012, Setting New Record," *International Diaspora Engagement Alliance*, November 26, 2012. <http://diasporaalliance.org/remittances-hit-a-record-high-of-534-billion-in-2012/>, quoting World Bank figures.
6. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, opened for signature December 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003), (CMW).
7. East Timor and the Philippines have also ratified the convention.
8. A separate complementary study, funded by the Open Society Foundations, is also currently being undertaken on migrant workers' access to justice within Qatar.

9. All fieldwork was conducted in accordance with the Human Research Ethics Advisory of the University of New South Wales.
10. The research director based at UNSW, who is fluent in Bahasa and English, undertook the desk research and legal review. The field research was overseen by the research director and conducted by an Indonesia-based researcher with extensive experience in migrant worker policy advocacy and direct services. A legal expert was also retained to obtain copies of laws and to advise on their interpretation under Indonesian law.
11. The roundtable was held in partnership with the TIFA Foundation.
12. Three migrant workers who wished to share their story in more detail were interviewed; one of those also participated in a focus group.
13. Ministry of Manpower and Transmigration Data Center, n.d., *Migrant Worker Departures According to Region of Origin and Sex, 2011*. Jakarta: Ministry of Manpower and Transmigration (MoM).
14. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, opened for signature December 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003).
15. South East Asia National Human Rights Institutions Forum (SEANF). 2010. *SEANF Paper on Migrant Workers*. (Indonesia, but not Nepal, is a member of ASEAN).
16. See generally, Office of the UN High Commissioner for Human Rights. 2005. *The International Convention on Migrant Workers and its Committee, Fact Sheet No.24 (Rev. 1)*. New York/ Geneva: United Nations.
17. Colombo Process. 2011. Dhaka Declaration of Colombo Process Member Countries. *Colombo Process*, April 21, 2011. http://www.colomboprocess.org/images/docs/dc2011/dhaka_declaration.pdf. (Indonesia and Nepal are members of the Colombo Process).
18. 1945 Constitution of the Republic of Indonesia, as amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2004 (Constitution of the Republic of Indonesia 1945, as amended).
19. CEDAW General Recommendation 26, paras. 10–11.
20. *Ibid.*
21. *Ibid.*, para. 24.
22. ABA Rule of Law Initiative. 2012. *Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for Civil Society Organizations*. New York: American Bar Association.
23. The World Bank. n.d. *A Framework for Strengthening Access to Justice in Indonesia*. Washington, D.C. <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2JFrameworkEnglish.pdf>, citing to Bedner, A. 2004. *Towards Meaningful Rule of Law Research: An Elementary Approach*. Unpublished manuscript; and Van Vollenhoven Instituut and United Nations Development Programme. 2005. *Access to Justice Practitioner Guide*. Bangkok: United Nations Development Programme.
24. The ABA-ROLI assessment tool includes, for example: a legal framework establishing rights and duties, and providing “mechanisms to solve their common justice problems”; citizen knowledge

of rights and duties, and mechanisms for achieving justice; access to legal advice and representation; accessibility, affordability, and timeliness of justice institutions; institutions that provide citizens opportunity to present case, independence, and opportunity for voluntary and informed decisions regarding settlement of dispute; and, enforceability of decisions. The World Bank, by contrast, considers the existence of: a normative legal framework; legal awareness, looking not just at the awareness of laws, rights and responsibilities, but also how to access the relevant mechanisms; actual access to the mechanisms, both formal and informal; the effective administration of justice through those mechanisms; and, transparency and accountability. See, Vel, J. 2010. "Policy Research on Access to Justice in Indonesia: A Review of World Bank and UNDP Reports. *Law, Social Justice and Global Development Journal* 15: 1–27.

25. United Nations Development Programme. 2004. *Access to Justice Practice Note*. New York: United Nations Development Programme, at pp. 5–6.

26. Indonesian Ministry of Foreign Affairs (MoFA). 2012. *Profile of Indonesian Citizens Abroad*. Jakarta: MoFA.

27. Sulistyowati Irianto. 2011. *Akses Keadilan dan Migrasi Global [Access to Justice and Global Migration]*. Jakarta: University of Indonesia and International Development Research Center, at p. xii.

28. MoFA. 2012. *Distribution of Indonesian Citizens Abroad*. Jakarta: MoFA.

29. Raharto, A. 2011. "The Migratory Experience of Returned Migrant Domestic Workers: The Example of Indonesia." Workshop on Strengthening Dialogue Between ESCWA and ESCAP Countries on International Migration and Development, Beirut, June 29–30, 2011.

30. The Ministry of Manpower figures note that between 2007 and 2009, a total of 1,051,168 migrant workers were approved to travel to the Middle East, 998,177 of whom were women. MoM. 2010. *Data on the Placement of Migrant Workers Abroad 2005–2010*. <http://pusdatinaker.balitfo.depnakertrans.go.id/katalog/download.php?g=2&c=17>.

31. Raharto, A. 2011. "The Migratory Experience of Returned Migrant Domestic Workers: The Example of Indonesia." Workshop on Strengthening Dialogue Between ESCWA and ESCAP Countries on International Migration and Development, Beirut, June 29–30, 2011.

32. Focus group participants mentioned language barriers a number of times as a source of frustration for both employee and employer, and an additional barrier to seeking assistance and redress in the destination country.

33. Hilmy, U. 2008. Pemberdayaan Perempuan di Kabupaten Malang untuk Memperoleh Hak atas Akses dan Kontrol pada Penghasilan Proses Bermigrasi ke Hong Kong ["Empowerment of Women in Malang for Realizing Rights to Access and Control the Benefits of Migration to Hong Kong"]. *Rechtidee Law Journal* 3: 93–101.

34. United Nations Development Programme in Indonesia. 2007. *Justice for All? An Assessment of Access to Justice in Five Provinces of Indonesia*. Jakarta: United Nations Development Programme in Indonesia.

35. World Bank. 2011. *Briefing Note: Justice for the Poor* 6(2) (March). See also Hardiyanto, Y.G., et. al. 2008. *Akses Perempuan Terhadap Keadilan di Indonesia* ["Women's Access to Justice in Indonesia"]. New York: World Bank.

36. This Strategy has been developed together with the United Nations Development Programme. See e.g., Sadiawati, D. 2009. "National Strategy on Access to Justice." Presented at BAP-PENAS, Government of Indonesia, Bangkok, March 3, 2009.

37. The first government-sanctioned migrant workers were reportedly placed abroad under a 1970 scheme implemented by the then Department of Manpower, Transmigration and Cooperation, pursuant to Government Regulation 4/1970. This regulation established programs of "Inter-regional" and "Inter-national" work to move, through private recruitment agencies. Asyarifah. "Sejarah Penempatan TKI Dari Masa Ke Masa" ["The History of Indonesian Migrant Worker Placement Over Time"]. *Kompasiana*. Jakarta, October 24, 2011. <http://sosbud.kompasiana.com/2011/10/14/sejarah-penempatan-tki-dari-masa-ke-masa-403483.html>.

38. Ministry of Manpower and Transmigration (MoM) Decree 204/1999 concerning the Placement of Migrant Workers Abroad (KEP-204/MEN/1999).

39. MoM, Ministerial Regulation 7/2010 concerning Indonesian Migrant Worker Insurance (PER.07/MEN/V/2010), May 31, 2010.

40. MoM, Ministerial Regulation 14/2010 on the Implementation of Placement and Protection of Migrant Workers (PER.14/MEN/X/2010), October 13, 2010. This was preceded by an earlier ministerial regulation of the same name, 18/2007.

41. MoM, Ministerial Regulation 12/2011, concerning Labor Attachés and Labor Technical Staff in Indonesian Foreign Missions Abroad (PER.12/MEN/X/2011), November 1, 2011.

42. East Lombok District, Regional Regulation 12/2006 concerning the Placement, Protection And Development Of Indonesian Migrant Workers from East Lombok District; West Lombok District, Regional Regulation 5/2007 concerning Protection of Indonesian Migrant Workers; Sumbawa District, Regional Regulation 21/2007 concerning Protection and Guidance of Indonesian Migrant Workers.

43. Indonesia is not a federal state. Its constitution states that, "The State of Indonesia shall be a unitary state in the form of a republic." Although the constitution provides for regional assemblies to pass local regulations, the relationship between the regions and the central government is set out in legislation (rather than in the constitution) and may differ between regions, "*having regard to the particularities and diversity of each region.*" Constitution of the Republic of Indonesia 1945, as amended, Articles 1, 18 & 18A.

44. Law 39/2004, Article 23.

45. These requirements are a combination of the list set out in Law 39/2004 Article 35 and Manpower Regulation 14/2010 Article 8.

46. Law 39/2004 requires workers to have completed junior high school (Article 35(d)). However, the recruitment agency representative body, APJATI, and others from the industry successfully challenged this requirement in the Constitutional Court of Indonesia in 2006. The court determined that the educational requirement interfered with the constitutional rights to work and to life, and found that the interference could not be considered necessary. Education was not an actual requirement for the jobs migrant workers undertake, and further the requirement did not directly protect certain vulnerable groups such as children or pregnant women. (Case Nos. 019/PUU-III/2005, 020/PUU-III/2005, February 2006). However, employers may nevertheless set their own educational requirements for a placement.

47. Law 39/2004, Article 36.
48. One agency representative interviewed for the study remarked that, “if the migrant worker is illiterate ... I send them back to the sponsor and tell him to take the worker home.” Interview with Mr. Irwan Rosadi and Made Bagus Surajaya, Recruitment Agency PT Abdillah Putra Tamala, Jakarta, June 22, 2012.
49. Manpower Regulation 14/2010, Article 22.
50. Ibid, Article 24.
51. Ibid, Articles 31–37.
52. Ibid, Articles 38–40.
53. A small number of workers organize their own work and visas abroad, or are placed by the state according to government-to-government contracts. The present report does not focus on those workers, or on workers who travel abroad through unofficial channels independent of any local recruiters.
54. BNP2TKI was created by Law 39/2004, but it wasn’t until 2006 that the president passed the rules necessary to establish the body: Regulation of the President of the Republic of Indonesia Number 81/2006 concerning the National Body for Placement and Protection of Indonesian Migrant Workers, September 8, 2006 (Perpres 81/2006). Note also that a prior interagency body had been created in 1999 during reformasi, known as the Indonesian Migrant Worker Placement Coordination Body (BKPTKI), pursuant to Presidential Decree Number 29/1999 (Keppres 81/2006). In this earlier version, the Minister of Manpower headed the body.
55. This includes ministries of manpower, immigration, foreign affairs, health, population and the police. Perpres 81/2006 Article 2.
56. Law 39/2004 on the Placement and Protection of Indonesian Migrant Workers, Article 95(2).
57. Government Regulation 5/2013 Concerning Procedures for Evaluating and Appointing Business Partners and Individual Employers, January 2, 2013, Article 4.
58. Manpower Regulation 14/2010, Article 42.
59. Ibid, Article 9.
60. Ibid, Article 1(8).
61. Ibid, Article 8.
62. Ibid, Articles 11–12, 16.
63. Ibid, Article 19(5).
64. Presidential Regulation 81/2006 concerning BNP2TKI, Articles 27–28.
65. See for example, Sources. 2013. “BNP2TKI Prepares to Open P4TKI in Cirebon [West Java].” *Antara News*, June 2, 2013. <http://www.antarasumber.com/berita/nasional/d/o/292441/bnp2tki-siapkan-pembentukan-p4tki-di-cirebon.html>.
66. MoM, [n.d.], list of private recruitment agencies to January 2013, on file with authors. Note that this figure may be misleading as it refers to recruitment agencies currently registered by MoM. However, experts explained that at the local level, individuals with an expired or cancelled license number still operate and it is difficult for prospective workers or civil society organizations

to identify if the agency is genuine; the list is available on the BNP2TKI site (<http://www.bnp2tki.go.id/pptkis.html>) but is updated infrequently. In practice, many more recruitment agencies are in operation, whether legally or not.

67. Criteria for a recruitment agency to obtain a license are: Formation as a limited liability company (PT); paid-up capital in the company of at least 3 billion rupiah (around US \$315,000); payment of a deposit to the ministry of 500 million rupiah (\$52,000); and, at least a three-year plan for the placement and protection of migrant workers abroad, including possession of a training unit, and the facilities and infrastructure to place workers. MoM Regulation 10/2009 concerning Procedures for Granting, Extending and Withdrawing a License for Recruitment of Indonesian Migrant Workers, PER.10/MEN/V/2009, May 7, 2009.

68. In late 2011, for example, the Ministry withdrew the licenses of 28 recruitment agencies after finding serious violations. The most common violation was sending migrant workers to countries for which there was a moratorium, including Saudi Arabia. Other violations included holding a worker in a placement center for many months and not sending him or her abroad, and falsifying training documents. See Serambi Indonesia. 2011. "Kemenakertrans Cabut Ijin 28 PPTKIS Nakal" ["The Ministry of Manpower Withdraws License from 28 Naughty Recruitment Agencies"]. *Serambi.news.com*, November 7, 2011. <http://aceh.tribunnews.com/m/index.php/2011/11/07/kemenaker-trans-cabut-ijin-28-pptkis-nakal>.

69. Law 39/2004, Article 1(6).

70. *Ibid*, Article 1(8).

71. *Ibid*, Article 25. See also Government Regulation 3/2013 concerning Protection of Indonesian Migrant Workers Abroad, January 2, 2013.

72. Government Regulation 5/2013 Concerning Procedures for Evaluating and Appointing Business Partners and Individual Employers, January 2, 2013. See explanatory notes for discussion of role of Business Partners.

73. Government Regulation 3/2013 concerning Protection of Indonesian Migrant Workers Abroad, January 2, 2013.

74. MoM Regulation 14/2010, Article 11(1).

75. Law 39/2004, Article 34(1).

76. MoM Regulation 14/2010, Articles 10–11.

77. *Ibid*, Article 11(2).

78. Law 39/2004, Article 34(3).

79. Law 39/2004, Article 41; MoM Regulation 14/2010, Article 22.

80. More detail about the content of the training is provided by Minister of Manpower Decree 23/2009 concerning Information and Training for Prospective Indonesian Migrant Workers Overseas, NOMOR PER.23/MEN/IX/2009, September 30, 2009. This decree does not adopt an empowering approach to training, defining the training as "a process of work training that gives, obtains, increases and develops work competency, productivity, discipline, attitude and a work ethic, increasing skills and specialized knowledge according to the scale and qualifications necessary for the position." (Article 1(3)).

81. MoM Regulation 14/2010, Article 22; MoM Regional 23/2009 concerning Education and Training for Prospective Overseas Workers, PER.23/MEN/IX/200930, September 2009.
82. MoM Regulation 14/2010, Article 37(2).
83. Law 39/2004, Article 69(2).
84. *Ibid*, Article 69(3).
85. MoM Regulation 14/2010, Article 31.
86. Many studies have documented and critiqued the training center model. See for example Lindquist, who notes that women are confined before departure so that they don't fall pregnant or change their minds before departure: Lindquist J. 2010. "Labour Recruitment, Circuits of Capital and Gender Mobility: Reconceptualizing the Indonesian Migration Industry." *Pacific Affairs* 83, no. 1, pp. 115–132.
87. BNP2TKI. 2012. Recapitulation of migrant worker returns (2006–May 2012), June 11, 2012. Jakarta: BNP2TKI.
88. It is not possible to determine whether the numbers of returned workers reporting problems per country are proportionate to the number of workers returning from those countries, as the numbers of *returns* by destination country is presently unavailable (i.e., it is possible that 80 percent of returns from Jakarta are workers from the Middle East for example and other workers return through other ports). However, given that only around one third to one half of migrant workers are placed in the Middle East, the large proportion of problems (75 percent) reported by migrants upon return indicate that workers to these countries report more problems than those to the Asia Pacific. Further analysis of government data in this area would be valuable. See BNP2TKI. "Kepulauan TKI Di BPK TKI Selapajang" ["Migrant Worker Returns through Selapajang Terminal"] (2006–31 May 2012) <http://www.bnptki.go.id/statistik-penempatan/statistik-kepulauan/6762-kepulauan-tki-di-bpk-tki-selapajang-2006-31-mei-2012.html>.
89. BNP2TKI [n.d.] Reports per Country, July 2011–June 2012.
90. *Ibid*.
91. Abdullah, A. 2009. "Kuwait Outraged at Indonesia Domestic Help Ban." *Al Arabiya News*, October 29, 2009. <http://www.bnptki.go.id/berita-mainmenu-231/8429-bnptki-sudah-pulangkan-7653-tkib-suriah-ke-daerah-asal.html>. Hitipeuw, J. 2011. "Indonesia's Gov't Moratorium on Dispatch of Migrant Workers to Jordan." *Kompas*, December 19, 2011. <http://english.kompas.com/read/2011/12/19/08275753/Indonesias.Govt.Moratorium.on.Dispatch.of.Migrant.Workers.to.Jordan>; and "Indonesian Ban on Workers to Saudi Arabia." *Al Jazeera*, June 23, 2011. <http://www.aljazeera.com/news/asia-pacific/2011/06/201162383559495252.html>.
92. BNP2TKI. 2013. BNP2TKI has brought 7,653 Indonesian migrant workers back to their home regions. <http://www.bnptki.go.id/berita-mainmenu-231/8429-bnptki-sudah-pulangkan-7653-tkib-suriah-ke-daerah-asal.html>.
93. See e.g., a review of all of the migrant worker cases received at a local legal clinic: Hilmy, U. 2011. "Pelanggaran dan perlindungan hukum tenaga kerja perempuan di kabupaten malang" ["Violations and Legal Protection for Female Migrant Workers in Malang"]. *Gajah Madah University Journal of Law* 23: 566–581.
94. Law 39/2004, Article 8.

95. Ibid, Article 9.
96. Regional Regulation of Sumbawa District 21/2007 concerning Protection and Guidance of Indonesian Migrant Workers, August 1, 2007.
97. For a study of *Perda* regulating migrant work in Indonesia, see Bachtiar, P.P. 2011. *The Governance of Indonesian Overseas Employment in the Context of Decentralization*. Manila: Philippine Institute for Development Studies.
98. Law 39/1999 concerning Human Rights, Article 7.
99. According to IOM, these include agreements with the Republic of Korea, (government-to-government (G-to-G) via the Employment Permit System), Jordan (revised, signed March 2008); Kuwait (in the process of being renewed, being separated into formal and informal sectors); Taiwan Province of China; United Arab Emirates (dated December 18, 2007, for the formal sector); Qatar (signed on January 21, 2008); Australia (Government-to-Private Sector); and Malaysia (2 MOUs: one covering formal sector workers and the other covering domestic workers). International Organization for Migration. 2010. *Labour Migration from Indonesia: An Overview*. Jakarta: International Organization for Migration.
100. For example, the U.S. Embassy noted that the Qatar MOU provides for a joint committee on labor cooperation to seek possible employment opportunities in Qatar for Indonesian workers, but the MOU is not public and an Indonesian Embassy official in Doha reported in 2008 that he had not seen the agreement. The U.S. embassy official noted his belief that Qatari agreements are little more than window-dressing to address the often appalling expatriate labor situation in Qatar. United States Embassy in Doha. 2008. Qatar's bilateral labor agreements-all pomp and no circumstance. Confidential cable; *Wikileaks*, February 4, 2008. <http://dazzlepod.com/cable/08DOHA88/>.
101. MoM Regulation 14/2010, Article 3.
102. MoM Regulation 14/2010, Article 9(2).
103. Government Regulation 3/2013, Article 29.
104. Law 39/2004, Articles 52(4) and 53.
105. Although this is a widely held view, it is possible that brokers might be considered “agents” of recruiters and thus indirectly subject to regulation. As noted earlier, this area warrants further study and potentially litigation to test the law on recruiters and their relationship to their agents.
106. Explanatory notes to Article 52(2)(f), Law 39/2004.
107. See also examples on blogs, such as “Doglosss.” 2010. Perjanjian Penempatan TKI – Singapura [Placement Agreement – Singapore], Jakarta: Maju Makmur Blog. <http://doglosss.blogspot.com/2010/11/perjanjian-penempatan-tki-singapura.html>.
108. Law 39/2004, Article 52(2)(j).
109. See generally, Lev D. 2000. “Legal Aid in Indonesia.” In *Legal Evolution and Political Authority in Indonesia: Selected Essays*, 283–304. The Hague: Kluwer Law International.
110. See the website of the Legal Aid Foundation: <http://www.ylbhi.or.id>
111. Interview with Pratiwi Febry, Jakarta Legal Aid, Jakarta, January 27, 2012.
112. Interview with Haris Aritonang, private legal practitioner, Jakarta, January 2012.

113. Law 16/2011 concerning Legal Aid, November 2, 2011.
114. Law 16/2011, Article 3.
115. Agustinus Supriyanto, Komnas Perempuan, written comments provided to the authors, June 24, 2013.
116. BNP2TKI. 2011. *Standard Operating Procedure: Complaints Service System for Prospective Workers/ Workers Abroad and In-Country*. Jakarta: BNP2TKI.
117. Hilmy, U. 2008. "Pemberdayaan perempuan di kabupaten malang untuk memperoleh hak atas akses dan kontrol pada penghasilan proses bermigrasi ke Hong Kong" ["Empowerment of Women in Malang for Realizing Rights to Access and Control the Benefits of Migration to Hong Kong"]. *Rechtidee Law Journal* 3: 93–101.
118. Interview with Jihun, SBMI Indramayu, Jakarta, May 22, 2012.
119. Mother of a migrant worker, focus group, Brebes, May 7, 2012.
120. Interview with Roma Hidayat, ADBMI Lotim, East Lombok, June 10, 2012.
121. Law 39/2004, Article 85(2).
122. Interview with Eddy Purwanto, Legal Advisor, TIFA Foundation, Jakarta, June 24, 2012.
123. Interview with Oscar Abdulrachman, Case-Handling Division, and Berry Komarudzaman SH, director of Overseas Manpower Placement, Ministry of Manpower, Jakarta, July 27, 2012.
124. Ibid.
125. Ibid.
126. Interview with Sukardi, Placement and Case-Handling Section, Manpower Office of Malang District, East Java, April 18, 2012.
127. See BNP2TKI webpage. 2011. TKI Complaints Service (Call Center). *BNP2TKI*, June 27, 2011. <http://www.bnp2tki.go.id/berita-mainmenu-231/4786-pelayanan-pengaduan-tki-call-center-bnp2tki.html>.
128. BNP2TKI. 2012. Dalam Setahun Crisis Center BNP2TKI Selesaikan 2.714 Kasus TKI [In one year BNP2TKI Crisis Center resolves 2,714 cases]. *BNP2TKI*, June 27, 2012.
129. BNP2TKI . 2012. Crisis Center BNP2TKI Resolves 4,577 TKI Cases. *BNP2TKI*, December 10, 2012. <http://www.bnp2tki.go.id/berita-mainmenu-231/7684-crisis-center-bnp2tki-selesaikan-4577-kasus-tki.html>.
130. Indonesian Embassy in Riyadh. Mechanism for protection assistance. <http://www.kemlu.go.id/riyadh/Pages/ServiceDisplay.aspx?IDP=1&l=id>.
131. Indonesian Embassy in Riyadh. 2009. Online Complaint Form: <http://www.kemlu.go.id/riyadh/Pages/FormulirPengaduanOnline.aspx>.
132. Interview with Mutmainah, Peguyuban Jinggo Putri, Malang, April 26, 2012.
133. Interview with Pratiwi Febri, Jakarta Legal Aid, Jakarta, January 27, 2012. Note that technically BNP2TKI is answerable directly to the president rather than the Ministry of Manpower, and so is not technically "below" the ministry. However, only the Ministry of Manpower has the power to sanction recruitment agencies.

134. Law 37/2008 concerning the Ombudsman of the Republic of Indonesia.
135. For information on the Ombudsman's role and functions, see Ombudsman's website, Ombudsman of the Republic of Indonesia. <http://www.ombudsman.go.id>.
136. BNP2TKI, Standard Operating Procedure: Complaints Service System for Prospective Workers/ Workers Abroad and In-Country, 2011; and Head of BNP2TKI, Regulation 13/2012 concerning Protection Services Standards for Prospective/Current Migrant Workers (PER 13/KA/VII/2012), July 2012. This regulation was originally adopted in a more informal document in 2010.
137. Head of BNP2TKI, Regulation 13/2012, Chapter 5, Part A.
138. Interview with Oscar Abdurachman, Case-Handling Division, and Berry Komarudzaman SH, Director of Overseas Manpower Placement, Ministry of Manpower, Jakarta, July 27, 2012.
139. Court-based mediation was formalized only recently by Supreme Court of Indonesia Regulation (Perma) 2/2008 concerning Court Mediation Procedures. The regulation states in the preamble that "Mediation is a conflict resolution process that is faster and cheaper and can increase access to parties to find a resolution that is satisfying and fulfils a sense of justice."
140. Head of BNP2TKI, Regulation 13/2012 concerning Protection Services Standards for Prospective/Current Migrant Workers (PER 13/KA/VII/2012), July 2012.
141. See discussion on Private Recruitment Agencies in Section 3B.
142. Interview with Henry Prayitno, crisis center coordinator at BNP2TKI, Jakarta, June 25, 2012.
143. Sukardi, Placement and Case-Handling Section, Manpower Office of Malang District, East Java, Malang, April 8, 2012; Budi Rahmawan, Placement Section, Manpower Office of Brebes District, Central Java, May 7, 2012; Adi Satria, Industrial and Labor Oversight Section, Office of Manpower, Indramayu District, West Java, May 22, 2012; Tohari Waluyo and Syaiful Wathan, Placement and Oversight Sections, Office of Manpower, East Lombok, June 11, 2012; and Sukarwandi Kaidun and Ade Kurnia, Placement Section, Manpower Office of Sukabumi District, West Java, Sukabumi, June 28, 2012.
144. Head of BNP2TKI, Regulation 13/2012, p. 15.
145. Interview with Retno Dewi, ATKI Jakarta, Jakarta, June 23, 2012.
146. Law 39/2004, Article 1.
147. Erman Suparno, Indonesian Minister of Labor and Transmigration. 2008. Kebijakan dan strategi penempatan tenaga kerja Indonesia di luar negeri [Policies and Strategies for the Placement of Indonesian Migrant Workers Abroad], March 27, 2008. Jakarta: Indonesia National Secretariat.
148. MoM Decree Kep-92/Men/1998 concerning the Protection of Indonesian Manpower Abroad Through Insurance.
149. "[T]he current system of supervision and regulation of insurance for migrant workers is ineffective. This results in regulatory duplication in some areas; contradictory interpretations of claims; policy exclusions that contradict regulations; the revocation of licenses by different agencies; and gaps in supervision." The World Bank. 2010. *Enhancing access to finance for Indonesia overseas migrant workers: Evidence from a survey of three provinces*. Jakarta: The World Bank.
150. Interview with Oscar Abdurachman, Case-Handling Division, and Berry Komarudzaman SH, Director of Overseas Manpower Placement, Ministry of Manpower, Jakarta, July 27, 2012.

151. Herman Sina. MA Batalan Permenakertrans Tentang Asuransi TKI [Supreme Court Invalidates Minister of Manpower and Transmigration Regulation Concerning Migrant Worker Insurance]. *Jurnas*, August 1, 2013. Available at: http://www.jurnas.com/news/102119/MA_Batalan_Permenakertrans_Tentang_Asuransi_TKI/1/Nasional/Hukum.
152. Friska Yolandha. OJK Bekukan Konsorsium Asuransi TKI [OJK Freezes Migrant Worker Insurance Consortium]. *Republika Online*. July 15, 2013. Available at: <http://www.republika.co.id/berita/ekonomi/keuangan/13/07/15/mpyyuo-ojk-bekukan-konsorsium-asuransi-tki> [last accessed September 6, 2013].
153. Tempo.co, Ini Daftar Asuransi TKI pada Konsorsium Baru [List of Migrant Worker Insurers in New Consortium]. *Tempo.co Bisnis*, August 1, 2013.
154. MoM Regulation 14/2010, Article 45.
155. Law 2/1992 concerning Insurance Business, ratified on February 11, 1992, Chapter 10: Guidance and Oversight.
156. The insurance law is not mentioned on the Proteksi website. Konsorsium Proteksi. 2010. Tentang kami [about us]. http://asuransi.tki.car.co.id/index.php?option=com_content&task=view&id=22&Itemid=45.
157. Minister of Manpower Decision 209/2010 concerning Appointment of One Consortium, Proteksi Insurance (209/MEN/IX/2010), September 6, 2010. Note that an association of recruitment agencies (HIMSATAKI) challenged the appointment of a single consortium under Kepmen 209/2010 as a violation of insurance law, and laws outlawing monopolies. The Supreme Court determined that it did not have jurisdiction to review the appointment because it was a personal decision of the minister, rather than a law. See Supreme Court of Indonesia, *Himsataki v. Minister of Manpower and Transmigration*, Decision 61 P/HUM/ 2010.
158. During the period of this study, the ten consortium members were: PT ACA (Consortium head), PT Asuransi Umum Mega, PT Asuransi Harta Aman Pratama, PT Asuransi Tugu Kresna Pratama, PT Asuransi LIG, PT Asuransi Raya, PT Asuransi Ramayana, PT Asuransi Purna Artanugraha, PT Asuransi Tafakul Keluarga and PT Asuransi Relife. Konsorsium Proteksi Homepage: <http://asuransi.tki.car.co.id/index.php>. “PT” in Indonesia denotes a private company.
159. Konsorsium Proteksi Page: <http://www.proteksi-tki.com/index.php>.
160. MoM Regulation 7/2010, Article 14.
161. Commission IX, Parliament of Indonesia. (2013) Recommendations of the Working Committee on the TKI Insurance Consortium, April 17, 2013. : <http://politik.kompasiana.com/2013/04/17/rekomendasi-panitia-kerja-konsorsium-asuransi-tki-komisi-ix-dpr-ri-551970.html>.
162. Arif Minardi, member of DPR Commission IX, addressing the Commission, Jakarta, June 19, 2012, quoted in BNP2TKI press release, “BNP2TKI (2012) Commission IX calls for the Dissolution of the Migrant Worker Insurance Consortium,” June 19, 2012: <http://www.bn2tki.go.id/berita-mainmenu-231/6852-komisi-ix-dpr-wacanakan-pembubaran-konsorsium-asuransi-proteksi-tki.html>.
163. Ibid.
164. Definition of Brokerage Company, Regulation 7/2010 section 1.

165. Christine Novita Nabebam. 2011. "Association of Insurance Brokers of Indonesia Explains Migrant Worker Broker's Commission of up to 50% of Premium." *Kontan News*, September 20, 2011. <http://keuangan.kontan.co.id/news/abai-memaklumi-soal-komisi-broker-asuransi-tki-hingga-50-dari-premi-1>.

166. Isa Rachmatarwata, head of the Insurance Bureau at the Ministry of Finance, speaking to the DPR Standing Committee IX, September 10, 2012. Quoted in Siahaan, C. 2012. "Ministry of Finances Evaluates the Role of Brokers in Migrant Worker Insurance." *Inilah.com News*, September 10, 2012. <http://ekonomi.inilah.com/read/detail/1903158/kemenkeu-evaluasi-peran-broker-di-asuransi-tki>.

167. The Jakarta Post. 2013. "Misappropriation in Workers' Insurance Funds." *The Jakarta Post*, July 16, 2013. <http://www.thejakartapost.com/news/2013/07/16/misappropriation-workers-insurance-funds.html>

168. Proteksi Consortium. 2010. Migrant worker standard insurance policy. <http://asuransi.tki.car.co.id/Polis%20Induk%20Asuransi%20Tenaga%20Kerja%20Indonesia%20-%2001.96910%20-%20PROTEKSI%20TKI.pdf>.

169. MoM Regulation 7/2010, Articles 23 and 25.

170. World Bank Indonesia, International Finance Corporation Indonesia. 2012. Improving IOMW's Protection Scheme: Review on [sic] Asuransi TKI. Presentation to the National Seminar on Indonesian Overseas Migrant Worker's Insurance, Jakarta, June 25, 2012 (World Bank & IFC Review of Migrant Worker Insurance).

171. Isa Rachmatarwata, head of the Insurance Bureau at the Ministry of Finance, speaking to the DPR Standing Committee IX, September 10, 2012, quoted in Siahaan, C. 2012. "The Migrant Worker Insurance Program Has Many Weaknesses." *Inilah.com News*, September 10, 2012. <http://ekonomi.inilah.com/read/detail/1903361/asuransi-tki-miliki-banyak-kelemahan>.

172. World Bank & IFC Review of Migrant Worker Insurance.

173. MoM Regulation 1/2010, Article 1(3), adding a new Article 41A to MoM Regulation 7/2010 Concerning Insurance.

174. The exception to this is if the employer wishes to extend the worker's contract after two years have expired. In this case, the employer is responsible for paying the insurance premium. Ministry of Labor Regulation 14/Men/X/2010, ss. 28–29.

175. It can result in one to five years in prison or a fine of between IDR one and five billion (Article 103).

176. MoM Regulation 7/2010, Article 15.

177. MoM Regulation 7/2010, Article 16.

178. *Ibid*, Articles 16(4) and 16(5).

179. Proteksi Insurance Consortium. Standard Insurance Policy, *Proteksi*. <http://asuransi.tki.car.co.id/Polis%20Induk%20Asuransi%20Tenaga%20Kerja%20Indonesia%20-%2001.96910%20-%20PROTEKSI%20TKI.pdf>.

180. MoM Regulation 7/2010, Article 26(1).

181. Ibid, Article 26(2).
182. Ibid, Article 26(4), as amended by MoM Regulation 1/2012.
183. Ibid, Article 27.
184. Bambang Sarjito, director of PT Gracia Media Utama Insurance, insurance broker for migrant workers between 2006–2010, Jakarta, June 27, 2012.
185. Interview with Henry Prayitno, crisis center coordinator at BNP2TKI, Jakarta, June 25, 2012. “Fine print” details that could be important for the worker to know are, for example, the 12-month limit on making a claim from the time the loss occurred.
186. Commission IX. 2013. Recommendations of the Working Committee on the TKI Insurance Consortium, Parliament of Indonesia, April 17, 2013 (citing BNP2TKI). <http://politik.kompasiana.com/2013/04/17/rekomendasi-panitia-kerja-konsorsium-asuransi-tki-komisi-ix-dpr-ri-551970.html>.
187. Law Online. “Humphrey Djemat: A Lawyer Fighting for Migrant Workers.” <http://www.hukumonline.com/berita/baca/lt519241932d5b5/humphrey-djemat-br-mencetak-advokat-pejuang-melalui-tki>.
188. Interview with Cahyo Subagyo, SBMI Brebes, Brebes, May 6, 2012.
189. Interview with Roma Hidayat, ADBMI Lotim, East Lombok, June 10, 2012.
190. BNP2TKI found that in 2010 14,854 claims were submitted and 8,124 were accepted, while in 2011 15,874 claims were submitted and 8,269 were accepted. See BNP2TKI. 2012. Commission IX Calls for the Dissolution of the Migrant Worker Insurance Consortium, June 19, 2012. <http://www.bnptki.go.id/berita-mainmenu-231/6852-komisi-ix-dpr-wacanakan-pembubaran-konsorsium-asuransi-proteksi-tki.html>.
191. Commission IX. 2013. Recommendations of the Working Committee on the TKI Insurance Consortium, Parliament of Indonesia, April 17, 2013. <http://politik.kompasiana.com/2013/04/17/rekomendasi-panitia-kerja-konsorsium-asuransi-tki-komisi-ix-dpr-ri-551970.html>.
192. Interview with Nurharsono and Badriyah, Migrant Care, Jakarta, June 28, 2012.
193. Interview with Roma Hidayat, ADBMI Lotim, East Lombok, June 10, 2012.
194. This means that the law is codified and judges apply the law as it exists, rather than creating new law. Precedent is persuasive but not binding. For an overview of the civil law system, see Apple, J., and R. Deyling. 1995. *A Primer on the Civil Law System*. Washington, D.C.: Federal Judicial Center.
195. As an example, in 2010 recruitment agencies challenged in the Mahkamah Agung the Minister of Manpower’s decision in 2010 (KEP – 209/MEN/IX/2010) to have only one insurance consortium. The Mahkamah Agung held that the decision was not a “regulation” but a “determination” and therefore was not within its jurisdiction. Mahkamah Agung Republik Indonesia, Decision 61/P/HUM/2010.
196. Constitution of the Republic of Indonesia 1945, as amended, Article 24(2).
197. The constitutional court was an important addition to the system in the *reformasi* period. The court is responsible for hearing all cases, at the first and final level, “in reviewing laws against the constitution, determining disputes over the authority of state institutions whose powers are given by this constitution, deciding over the dissolution of political parties, and deciding disputes over the

results of general elections.” Constitution of the Republic of Indonesia 1945, as amended, article 24C.

198. These include religious affairs courts, dealing with family and probate matters for Muslims, military tribunals, and state administrative courts.

199. See generally International Labour Organization. 2005. *Major Labour Laws of Indonesia*. Jakarta: International Labour Organization. http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_120126.pdf.

200. Responsibility for appointments to the courts was given to the independent Judicial Commission (Komisi Yudisial), with approval by the legislature (DPR). See the Judicial Commission of the Republic of Indonesia website, “History of Establishment”: <http://www.komisiyudisial.go.id/statis-14-sejarah-pembentukan.html>.

201. In addition to the creation of the Constitutional Court and an Ad Hoc Human Rights Court for crimes against humanity, the legislature has shifted organizational, administrative, and financial responsibility for the lower courts away from the executive branch (the Department of Justice and Human Rights, Department of Religious Affairs, and Department of Defense) to the Supreme Court. See Law 4/2004 on Judicial Powers repealing Law 14/1974 as amended by Law No 35/1999.

202. Transparency International. Corruption by country 2010-2011 – Indonesia. http://www.transparency.org/country#IDN_PublicOpinion.

203. See for example, Al Jazeera. 2012. “Indonesia’s Justice System,” *Al Jazeera*, March 1, 2012, <http://www.aljazeera.com/programmes/101east/2012/02/2012221142341411535.html>.

204. The Indonesian Penal Code is based on the Dutch colonial criminal code of 1915, the *Wetboek van Strafrecht voor Indonesia*.

205. All of these codes set out the crime and the maximum penalty if found guilty, usually comprising a penal sentence and a fine.

206. For KUHP provision and regulations relevant to migrant workers, see generally Hamim, A., and R. Rosenberg. 2003. Review of Indonesian legislation. In *Trafficking of Women and Children in Indonesia*, 195–215. Indonesia: International Catholic Migration Commission Indonesia.

207. The offense is now punishable by up to five years imprisonment or maximum IDR 500,000,000 (US\$52,000) fine.

208. Law 6 of 2011 on Immigration, Articles 126 and 127. This law replaced the earlier Law 9 of 1992 and according to the explanation, is intended to bring Indonesia’s system into the third millennium and the era of globalization of trade and labor, as well as to combat transnational organized crime and the irregular movement of migrants.

209. Law 21/2007 on Combating Trafficking in Persons.

210. The trafficking offense carries a sentence of three to fifteen years. The same sentence applies for sending a child abroad for the purpose of exploitation by any means (Law 21/2007, Article 6).

211. Interview with Nurharsono and Badriyah, Migrant Care, Jakarta, June 28, 2012.

212. The KUHAP, unlike the KUHP, was significantly updated by the Suharto regime in 1981, replacing the earlier Dutch procedural law.

213. Interview with Oscar Abdulrachman, Case-Handling Division of the Ministry of Manpower, Jakarta, July 27, 2012.
214. Interview with Eddy Purwanto, legal advisor, TIFA Foundation, Jakarta, June 24, 2012.
215. *Ibid.*
216. Interview with Jihun, SBMI Indramayu, and Eddy Purwanto, legal advisor, TIFA Foundation, Jakarta, June 24, 2012.
217. Interview with Roma Hidayat, ADBMI Lotim, East Lombok, June 10, 2012.
218. Interview with Oscar Abdulrachman, Case-Handling Division, and Berry Komarudzaman SH, director of Overseas Manpower Placement, Ministry of Manpower, Jakarta, July 27, 2012.
219. The Civil Code in Indonesia was introduced by the Dutch in 1847 and is based on the Napoleonic civil code. Except for discrete sections that have been superseded by later legislation, such as family law, mortgage law, and bankruptcy law, the Civil Code is still largely intact.
220. Interview with Pratiwi Febri, Jakarta Legal Aid, Jakarta, January 27, 2012.
221. In 2003, Presidential Decision 108/2003 specified the tasks of both embassies and consulates, including the provision of legal and material assistance to Indonesian citizens in distress. Embassies are tasked with “representing and defending the interests of the nation, state and government” of Indonesia, as well as “protecting the citizens of Indonesia,” including through “guardianship, care, protection and legal and material assistance to Indonesian Nationals in the event of threats and/or legal problems in the destination country.” Consulates have the same overall role for defending the interests/Indonesia and Indonesians abroad.
222. Presidential Instruction 6/2006, Policy for the Reform of the System of Placement and Protection for Indonesian Migrant Workers, August 2, 2006.
223. MoFA Regulation 4/2008 concerning Services to Citizens at Foreign Missions of the Republic of Indonesia; and Guideline on Providing Services to and Protection of Indonesian Citizens Abroad.
224. MoM Regulation 12/2011 concerning Labour Attaches and Technical Labour Staff in Missions of the Indonesian Government Abroad, 12/MEN/X/2011.
225. *Ibid*, Articles 7(e) and (f). Focus group participants who remembered contacting the embassy were unclear as to whether they spoke to diplomatic or labor attaché staff, so in this section all are described as simply “embassy staff.”
226. Government Regulation 3/2013 concerning Protection of Indonesian Migrant Workers Abroad, January 2, 2013, Article 16.
227. *Ibid*, Article 25.
228. The Embassy in Saudi Arabia has also developed a comprehensive procedure for handling cases in the Kingdom which it has made available on its website: <http://www.kemlu.go.id/riyadh/Pages/TipsOrIndonesiaGlanceDisplay.aspx?IDP=4&l=id>.
229. MoFA Website. 2009. Pelayanan Perlindungan WNI & BHI [Citizen Services]. <http://www.kemlu.go.id/Pages/ServiceDisplay.aspx?IDP=1&l=id>.

230. MoFA Guideline on Providing Services to and Protection of Indonesian Citizens Abroad, p. 71.
231. *Ibid.*
232. Directorate of Citizen Services. 2011. "Migrant Workers between National Asset and National Image." *Tabloid Diplomasi*, September 15 –October 14, 2011, at p. 4.
233. Interview with Sri Palupi, Institute for ECOSOC Rights, Jakarta, January 27, 2012.
234. Interview with Tatang Boedi Utama Razak, director of Citizen Services, Ministry of Foreign Affairs, Jakarta, June 26, 2012.
235. Female migrant worker, focus group, Malang, East Java, April 12, 2012.
236. Vienna Convention on Consular Relations, 1963, 21 U.S.T. 77, T.I.A.S. 6820, 596 U.N.T.S. 261.
237. Embassy of the Republic of Indonesia, Riyadh. 2011. KBRI Riyadh Kecam Pelaksanaan Eksekusi Hukuman Mati Ruyati ["Indonesian Embassy in Riyadh Denounces Execution of Ruyati"]. *Cabinet Secretariat of Indonesia Website*, June 21, 2011. <http://www.setkab.go.id/international-2088-kbri-riyadh-kecam- -eksekusi-hukuman-mati-ruyati.html>; and Hidayati, N. 2011. Kronologi Pemancungan Ruyati ["Chronology of Beheading of Ruyati"]. *Detik News*, June 19, 2011. <http://news.detik.com/read/2011/06/19/124055/1663347/10/kronologi-pemancungan-ruyati>.
238. Interview with Humphrey Djemat, spokesperson for the Task Force on Indonesian Citizens/ Migrant Workers Threatened with the Death Sentence Abroad, Jakarta, June 26, 2012.
239. Directorate of Citizen Services. 2011. "Migrant Workers between National Asset and National Image." *Tabloid Diplomasi*, September 15 –October 14, 2011, at p. 4.
240. Interview with Jamaluddin, civil society representative on the SATGAS TKI, Jakarta, January 28, 2012.
241. *Ibid.*
242. The description of the court given by Roma appears similar to an employment tribunal where parties represent themselves and negotiate an outcome.
243. Directorate of Citizen Services. 2011. "Migrant Workers between National Asset and National Image." *Tabloid Diplomasi*, September 15 –October 14, 2011, at p. 4.
244. *Saudi Gazette*. 2012. "Jakarta Seeks ILO Cover for Its Domestic Workers." February 26, 2012. <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20120226118340>.
245. Interview with Irwan Rosadi and Made Bagus Surajaya, Recruitment Agency PT Abdillah Putra Tamala, Jakarta, June 22, 2012.
246. Interview with Sukardi, Placement and Case-Handling Section, Manpower Office of Malang District, East Java, April 18, 2012.
247. Interview with Nurharsono and Badriyah, Migrant Care, Jakarta, June 28, 2012.
248. Interview with Jihun SBMI Indramayu, Jakarta, June 24, 2012.
249. "Then the case will come to us. We will go to the agency and demand they release them or we will report it to the police, but if we don't accompany the worker she will have to pay. This is the crazy situation in Indonesia." Interview with Eddy Purwanto, TIFA Foundation, Jakarta, June 24, 2012.

250. Interview with Eddy Purwanto, legal advisor, TIFA Foundation, Jakarta, June 24, 2012.
251. Interview with Office of Manpower, Sukabumi, June 28, 2012.
252. Interview with Mr Irwan Rosadi and Made Bagus Surajaya, Recruitment Agency PT Abdillah Putra Tamala, Jakarta, June 22, 2012.
253. MoM Regulation 1/2012.
254. Interview with Mutmainah, Paguyuban Jinggo Putri, Malang, April 26, 2012.
255. Female migrant worker, focus group, Lombok Timor, June 10, 2012.
256. Law 16/2011 concerning Legal Aid, November 2, 2011.
257. Interview with Jamaluddin, civil society representative on the SATGAS TKI, Jakarta, January 28, 2012.
258. Interview with Pratiwi Febri, Jakarta Legal Aid, Jakarta, January 27, 2012.
259. Interview with Sukardi, Placement and Case-Handling Section, Manpower Office of Malang District, East Java, April 18, 2012.
260. Interview with Eddy Purwanto, legal advisor, TIFA Foundation, Jakarta, June 24, 2012.

Open Society Foundations

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

www.soros.org

Migrant Worker Access to Justice Project

This report was produced by the Migrant Worker Access to Justice Project. The Project examines and seeks to strengthen the legal frameworks that underpin low-wage labor migration, so as to better protect the rights of migrant workers and ensure redress for workers whose rights are violated. It is currently focused on the under-examined role of countries of origin in ensuring justice for labor migrants and private sector accountability, with a focus on the Asia-Middle East corridor.

The Migrant Worker Access to Justice Project is an applied research collaboration between law professors at the University of New South Wales Law School and the University of Pennsylvania Law School, who work closely with local partners in South and South East Asia. It is led by Bassina Farbenblum (Director of the Australian Human Rights Centre's Migrant and Refugee Rights Project, and the Human Rights Clinic at UNSW Law), Eleanor Taylor-Nicholson (Fellow of the Australian Human Rights Centre at UNSW), and Sarah Paoletti (Director of the Transnational Legal Clinic, Penn Law School).

www.migrantworkerjustice.org

International Migration Initiative

The International Migration Initiative (IMI) designs and supports initiatives to reform the most abusive aspects of the migration process. The program organizes its work around migration corridors, pursuing coordinated action in countries of origin, transit, and destination. IMI seeks to achieve two specific goals: (1) that labor migration is a safe, just, and non-exploitative process, and (2) that laws, policies, and practices do not discriminate against migrants or violate their rights. To achieve these, IMI targets employment practices and recruitment systems to improve labor protections, migration enforcement policies to reduce rights violations by ensuring that immigration and border controls comply with human rights norms, and governance structures to establish systems that more effectively protect the rights of migrants. IMI draws on the experience and activism of grassroots organizations while simultaneously and vigorously engaging with policymakers and political leaders.

www.opensocietyfoundations.org/about/programs/international-migration-initiative

Tifa Foundation

Tifa Foundation is a grant-making organization that strives to build an open society by actively strengthening civil society in Indonesia. Since 2012, Tifa has been dedicated to advancing quality democracy in Indonesia. Tifa Foundation's vision is a society in which citizens, businesses and the government promote good governance, nurture solidarity and support individual rights, particularly the rights and views of women, minorities, and other disadvantaged groups. Tifa works to promote an open society in Indonesia, one which respects diversity and honors the rule of law, justice, and equality.

www.tifafoundation.org

Each year, around half a million Indonesians travel abroad to work, half of those to the Middle East. They are typically women from small cities or villages with primary education and limited work experience, hired to perform domestic work. Many suffer abuse and exploitation but have virtually no access to recourse within their host country's legal system.

The vulnerability of migrant workers abroad makes it crucial for them to be able to seek redress in their own countries. Access to justice at home also allows for redress when home governments and private recruitment businesses breach their legal responsibilities to migrant workers.

Migrant Workers' Access to Justice at Home: Indonesia is the first comprehensive study of migrant workers' access to justice in their country of origin. The report analyses the mechanisms through which migrant workers may access justice in Indonesia, and the systemic barriers that prevent most workers from receiving full redress for harms that they suffer before, during, and after their work abroad.

The report also outlines the laws, policies, and procedures that govern the operation of each redress mechanism, and contains recommendations for improving access to justice and private sector accountability in 11 key areas, addressed to government, parliament, civil society, donors, and others.

Migrant Workers' Access to Justice at Home: Indonesia provides a strong evidence-based foundation for advocacy and law reform within Indonesia and globally. It can also function as a guide for civil society groups in Indonesia to better understand, use, and test existing justice mechanisms to enforce migrant workers' rights.

