



CALL FOR AN URGENT JUSTICE MECHANISM for Repatriated Migrant Workers

Urgent Justice Mechanism for Repatriated Migrant Workers Now

On 1 June 2020, a coalition of civil society organizations and trade unions launched an appeal for an “[Urgent Justice Mechanism](#)”, to address the plight of millions of migrant workers who have been repatriated or are awaiting repatriation as a result of pandemic-related job loss. The appeal called on governments to establish a *transitional justice mechanism* that would specifically address the huge volume of cases of wage theft and other outstanding claims heightened in the course of the pandemic, ensuring migrant workers are able to access justice and receive their due compensation.

A month later, the situation of migrant workers has significantly worsened. Large scale returns, deportations and repatriations have become a reality. Hundreds of thousands of migrant workers have returned home empty handed with nothing but a few personal belongings and the prospects of falling further into debt and poverty. Those numbers will continue to rise exponentially well beyond the availability of a vaccine even as markets struggle to stabilize.

Faced with this grave crime, we **renew our call and we urge governments and UN agencies to take immediate action in three main areas:**

1- Establish an International Claims Commission:

Due to the vast volume of emerging claims, a specialized body should be set up to specifically ensure the expedited and just resolution of wage-theft and other outstanding claims of repatriated migrant workers¹.

An International Claims Commission must be set up as a specialized international quasi-legal body of expedited justice to adjudicate on claims of migrant workers on an expedited basis in cases related to wage theft and other outstanding claims and to provide equitable remedies. Cases could be received directly from migrants themselves or through entities providing support or legal representation to migrants. All pre-existing case documentations should be referred to the Claims Commissions for resolution.

The International Claims Commission could be administered jointly by ILO and IOM², together with other relevant stakeholders. Given its quasi-legal nature, the composition of the Claims Commission could draw

¹ See below for more information on case eligibility criteria.

² ILO has the technical expertise and experience with an international compensation mechanism in the UNCC. In addition, its work with Qatar on the workers’ support and insurance fund provides a model in which the remedy is expedited by having the



on seconded judges, independent lawyers, legal experts, migration experts, and academia among others. It would be desirable if sub-commissions are also set up regionally and nationally where capacities exist to address the huge volume of emerging cases. The diverse multi-disciplinary composition of the claims sub-commissions would ensure no additional stress is placed on already overburdened justice systems at the national level.

Creating operational national-level sub-commissions will help streamline the submission and verification of claims. As a process of due diligence, and under procedures established by the International Claims Commission, national-level sub-commissions must evaluate claims of wage theft and other outstanding claims covered in the Terms of Reference.

Procedures for filing claims should be affordable, simplified, publicized and made available in different languages. Based on a review of available evidence, claims sub-commissions should be able to make authoritative determinations as to whether rights violations did occur and determine appropriate compensation to be dispensed by the compensation fund. Decisions by the claims sub-commissions should be binding and expedited.

Types of Admissible Claims

Claims commissions should look into all cases of wage theft and other outstanding claims:

- Non-payment of wages for work prior to the onset of the pandemic, for which it became impossible to pursue claims due to pandemic-related lockdowns, repatriations, etc.
- Non-payment of wages or reductions in wage payments for work as the pandemic and associated economic effects started taking hold
- Non-payment of other contractually owed benefits (allowances, end-of-service benefits, housing benefits, leave benefits, unpaid overtime, medical costs, costs of travel to country of origin, etc.)
- Loss of expected wages due to layoff, reduction in hours, or reduction in hourly wage
- Non-payment of wages for work required in excess of what is contractually agreed

government pay the claim and then collect from the employer. IOM has significant experience administering land and property claims programs, which while different from non-payment of wages, are highly relevant.



2- The Compensation Fund:

A Compensation Fund set up at the global and national level should accompany the work of the Claims Commission and act as its executive branch, dispensing appropriate compensation in cases determined as wage theft.

Funds must be set up at the national level, and contributions to them could be ensured by the government, private contributions, business, and philanthropic foundations.

Funds advanced by the government could be later recouped from employers and businesses who were involved in wage-theft. This approach would ensure that migrant workers are paid their dues without delay, and that their cases are resolved swiftly. It will also ensure that employers and business that have not respected their contractual obligations face accountability for their actions.

A global solidarity fund also needs to be established for those workers whose cases have been determined as a genuine wage theft but are unable to access compensation from national funds.

3- Reforming National Justice Systems:

National and global claims commissions and compensation funds are no substitutes to fair and functioning justice systems at the national level. Availment of remedies under the transitional justice mechanism is not exclusive, and without prejudice to the availment of more favourable legal remedies available under the existing national justice systems.

So far, national justice systems have largely failed migrant workers; this failure should no longer be accepted or normalized. Even in the best of times, migrant workers suffer unsurmountable obstacles accessing justice and seeking legal redress.

Challenges in accessing justice for wage theft at the national level cuts across various areas. Access to courts and police stations, documentation and proof of violations, cost and duration of litigation, language barriers, status dependency on employers, requirements for in person testimony are among the chief challenges to justice in the context of migration. Domestic workers are frequent victims of wages theft and face additional barriers to access to justice, which are not limited to restrictions on freedom of mobility alone. Lack of political will and weak enforcement mechanisms are also obstacles to justice for migrant workers.



The current pandemic provides us an opportunity to ensure that this systemic and structural barriers are forever removed. Ensuring justice systems are able to overcome those challenges and find workable and sustainable solutions becomes paramount. States must rebuild migrant-centered justice systems at the national level, that recognize the vulnerabilities and barriers in accessing justice for migrant workers, and ensuring employer accountability in order to respond to the influx of cases exacerbated by the pandemic. ***We urge governments to urgently take action now to reform national justice systems.***

Measures at the national level that have addressed claims related to wage theft need to be intensified and infused with greater political will. These include setting up expedited labor courts, waving court fees, putting in place wage protection systems, operating worker hotlines in different languages, ramping up documentation in cooperation with missions, facilitating power of attorney procedures, allowing for remote testimony post repatriation, providing legal aid, and encouraging workers to come forward to register their labor grievances. Allowing migrant workers full freedom of association and collective bargaining rights in destination countries would also allow for the creation of workplace grievance mechanisms that are easier and quicker to access.

Building Back Better Cannot Be at the Expense of Migrant Workers

The need for more robust mechanisms to expedite payment of wages and other entitlements owed must be recognized and addressed. This is a matter of great importance to migrants, to the family members and communities who depend on their remittances, and to the resilience of the economies in their countries of origin. More broadly, it is a matter of great importance to the efforts of the international community to “build back better”.

In building back better, we cannot continue to turn a blind eye to wage theft. For too long migrant workers have suffered this indignity. Transformative justice demands that we act now in ways that ensure that every aggrieved migrant worker is no longer denied the full rights and dignity they deserve.

