

Justice for Wage Theft Series
VOLUME 2

CRYING OUT FOR JUSTICE:

*Wage Theft Against
Migrant Workers
during COVID-19*

An Analysis Report on Wage Theft
Cases Documented by MFA
Members and Partners



JUSTICE FOR
WAGE THEFT

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Migrant Forum in Asia

25 Matiyaga Street, Central District, Diliman, Quezon City, 1100 Philippines

Email: mfa@mfasia.org

Telefax: +63-2-2779484

Mobile: +63-921-540-5063

Website: <http://www.mfasia.org>

Facebook: <https://www.facebook.com/migrantforumasia>

Twitter: https://www.twitter.com/mfasia_

RecruitmentReform: <http://www.recruitmentreform.org>

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Migrant Forum in Asia (MFA) is a network of grassroots organizations, trade unions, faith-based groups, migrants and their families and individual advocates in Asia working together for social justice for migrant workers and members of their families. Since 1994, MFA has thrived into a formidable migrants' rights advocacy network in Asia affecting significant influence to other networks and processes on the globe. To date, MFA is represented in membership in the region close to 260, and growing each year.

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BACKGROUND

During the pandemic, migrant workers were recognised as being disproportionately affected despite being acknowledged as ‘essential workers’ in countries of destination that previously treated them as dispensable population within the workforce. Civil society, community and faith-based organisations and trade unions that were deeply involved with the migrant worker community in countries of origin and destination found themselves overwhelmed with request for service provision as well as grievances related to job losses and wage theft. Such a situation has now been recognised by civil society organisations as the failure of private and public actors in mitigating the migrant worker crises and facilitating access to justice at a crucial time when migrant workers were leaving (or forced to) or staying on as frontline workers and essential service-people.

On 1st June 2020, a large coalition of civil society organizations and trade unions launched an appeal to governments to establish an “Urgent Justice Mechanism” that addresses the plight of millions of migrant workers whose wages have been unjustly withheld by their employers. Subsequently the coalition released 4 more appeals focusing on concerted action to be taken by UN bodies, governments, and businesses in engaging with existing cases of wage theft and lack of justice as well as the creation and maintenance of effective mechanisms for continued progress.

The first appeal highlighted the basic initiatives to be taken with respect to ensuring workers access to justice and redressal for current and repatriated workers. The second appeal focused upon concrete mechanisms to be established such as International Claims Commission, Compensation Fund, and reforms of national justice systems. The third appeal recommended responsible actions by businesses and employers in particular, to prevent labour and human rights abuse. The fourth appeal commended actions of certain States in recognising the need for migrant worker protection with further recommendations. The fifth appeal focussed upon recommendations specifically for countries of origin and destination.

With a dedicated website for Justice for Wage Theft (JWT) campaign, MFA members and partners have been active in documenting cases received by them and their grassroots-level workers. The flagship report analysed the cases received in the documentation system in the year 2020. The first report further detailed the different forms of wage theft as well as difficulties with respect to collection and analysis of wage theft data. The second report will focus on cases from January to May 2021.

Access Justice in Abjection

Understanding wage theft requires an inherent understanding of structures of inequality and the power dynamics of employment that migrant workers are, willingly or unwillingly, victims of. Civil society actors, community organisations and grassroots-level interactions with migrants themselves reveal the deep-rooted inequalities migrant workers face in terms of the nature of work, the nature of their stay at the destination, their status as migrants, their gender, among other layers of intersectionality. Needless to say, the pandemic exposed structural inequalities despite state rhetoric and piecemeal efforts to prove otherwise.

Since the start of the pandemic in 2019, the precarity and uncertainty migrant workers faced on a daily basis as an underlying aspect of their existence, became exposed and magnified in society and among state actors. The Justice for Wage Theft campaign has explicitly emphasised upon the remedies to accessing justice for wage theft victims – many of whom continue to face bottlenecks and obstacles in doing so, one year into the reporting of their case to the platform, civil society organisations, or state actors.

At such a juncture, it becomes pertinent to recognize socio-economic inequalities that contribute to the lack of access to justice for migrant workers. These inequalities include education levels, health conditions, employment and housing conditions, income inequality, which are important markers of well-being. Other structural factors include complexity of the justice system (and their nature of their legal case), time, individual capability, geographical and physical constraints and the presence of social networks or supportive ecosystems. Discourse on how access to justice is an integral aspect in “promoting inclusiveness, growth, and mutual well-being” is predominant within global and regional consultation processes as well as state policy. However, without prioritising rights-based migration governance and the political will to facilitate the process of institutionalising inclusive strategies for migrant workers, this would remain a far-off goal.

In the present context, states do not require ‘convincing’ of the importance or relevance of access to justice for migrant workers - the concept is very much understood among state actors, it is the attitude of apathy that allows the lack of prioritisation. State actors consequently need to be goaded to create and ensure concrete, sustainable, flexible and rights-based solutions and alternatives.

“*Inequality is both a driver and a consequence of lack of effective access to justice and therefore actionable policies focused on meeting people’s legal and justice needs are an important mechanism to intervene in this negative self-reinforcing dynamic*”
(OECD, 2019)

With respect to wage theft, the recognition of inequalities must then be succeeded by an honest attempt at ensuring access to justice and grievance redressal for those who have been treated unjustly, viz., victims of wage theft and abuse. 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.

In the context of the pandemic, state machinery, dependent upon bureaucratic procedure, faced changes in day-to-day functioning (leading to shutdowns in certain countries) as well as discovered new modes of engagement. Among the biggest changes observed in the legal system was the potential of technology and its various benefits such as outreach and security.

One of the primary demands of the Justice for Wage Theft campaign was in ensuring a transitional justice mechanism (1st and 2nd Appeal). However, since the start of the campaign, there has been hardly any

progress with respect to access to justice for migrant workers as states have yet to come to grips with the prevalence of the issue.

The United Arab Emirates (UAE) and the Kingdom of Saudi Arabia (KSA) saw changes in their justice systems – arranging for civil disputes to be resolved via digital courts. The UAE introduced e-Trials in 2017¹ across a range of civil disputes. The e-Trials for civil disputes were intended to fast-track civil trials and facilitate reciprocal judicial cooperation treaties signed among Gulf countries, France, China, India and Egypt. In 2018, it launched the Abu Dhabi Global Markets (ADGM) courts as fully-fledged digital courts and end-to-end tele-justice system². The ADGM Courts allow for access 24/7 from anywhere in the world, regardless of geographical or time boundaries. Corporate legal teams can register, submit documents, file and pay online, and utilize Skype-enabled trial hearings from remote locations.

During the pandemic, the government further opened virtual courts for criminal cases in April 2020³ due to the pandemic. While all labour cases are held online, since many workers were not technically savvy Al Adheed centres provide special rooms for them to attend and see their cases being conducted. In August, the Dubai Foundation for Woman and Children reported virtual court trials were being carried out for victims of abuse at the foundation. In general, if any judicial body wishes to investigate a case involving a victim at the shelter, the authority will just have to send a link to the foundation so that a hearing can be done at the tele-trials chamber. During the session, an image of the victim and that of the representative of the authorities would appear on the screen. Files can be exchanged, and the session is kept in electronic records⁴.

A recent paper by Gibril Faal for the Abu Dhabi Dialogue Senior Officials Meeting (2021) highlighted the fast-tracking of disputes/cases of workers through technology and the use of online courts and legal procedures. He states that the formality/rigidity of court administration as well as the power imbalance in the employee-employer relationships ‘inherent in migrant labour relations’ as the two broad factors that detrimentally affect reform measures for justice systems.

A pertinent question that arises is if virtual court trials are being used for commercial dispute resolution, and why it cannot be applied to deliver rights and entitlements of migrant workers – this is relevant to the Justice for Wage Theft campaign.

Due to the ‘privity of contract’ principle, legal complaints are generally restricted to individual complaints. With restrictions on trade unionism and collective bargaining, access to justice for group and collective grievances is limited. As such, it is important that State authorities, regulators and support institutions proactively deploy technology and digital tools to prevent injustice against migrant workers. (Faal, 2021) Considering the willingness of the government to extend such services to civil society organisations such as the DFWAC, the possibility of extending the use of virtual courts for victims of wage theft through community organisations or Missions must be seriously considered.

For those still in the COD as well as for returnees and repatriated migrant workers, digitised labour courts, with its various benefits would also allow for automated archiving and document retrieval; easy access to past judgments and analytical data on orders and awards, to reduce bias and disparities in judgements.

¹ Al Marzouqi, Mohamed. November 2017. *Introducing smart e-Trials into the UAE judicial system*. Al Tamimi & Company, Abu Dhabi.

² 14 August 2018. Abu Dhabi Global Market (ADGM) Courts: Pioneering digital transformation in the legal and justice system. Microsoft News.

³ The National. 5 April 2020. *Virtual courts to dispense digital justice in Abu Dhabi*.

⁴ 4 August 2020. Khaleej Times. *Remote trails launched for victims of abuse in Dubai*.

The use of Online Dispute Resolution (ODR) systems and platforms, with its multi-language, remote access and affordability features can improve access to justice for migrant workers. Migrants can lodge and pursue claims even if they are outside the country. It also increases their options to get specialist legal aid and pro bono technical and legal assistance from diverse institutions and organisations. (Faal, 2021)

In fact, technological infrastructure if inclusive and targeted towards social justice for vulnerable populations, can be used to predict, pre-empt and prevent injustices – particularly, in commonly reported situations of housing and sanitation, health and safety at work, human trafficking, unfair and prejudicial criminal prosecution of migrants, harsh and disproportionate punishment of migrant convicts, etc.

Furthermore, technology, without compromising on legality, can be leveraged within these digital courts and address power differentials for repatriated workers (wherein workers coming home might be more confident to pursue their case in the presence of support systems). Finally, it can save huge legal costs that usually become a detriment for both victims and their legal aid to fully pursue the case.

If systems could be created, adapted and maintained for commercial disputes, why can it not be enabled for those who have been repatriated – which could be easily facilitated by Missions of COD in the COO, as well as through setting up of tele-trials facilities via Missions of COO? Despite its ease in replicability, the lack of action in implementation can be taken as hesitation on the part of state actors to pursue justice for systemic forms of labour abuse.

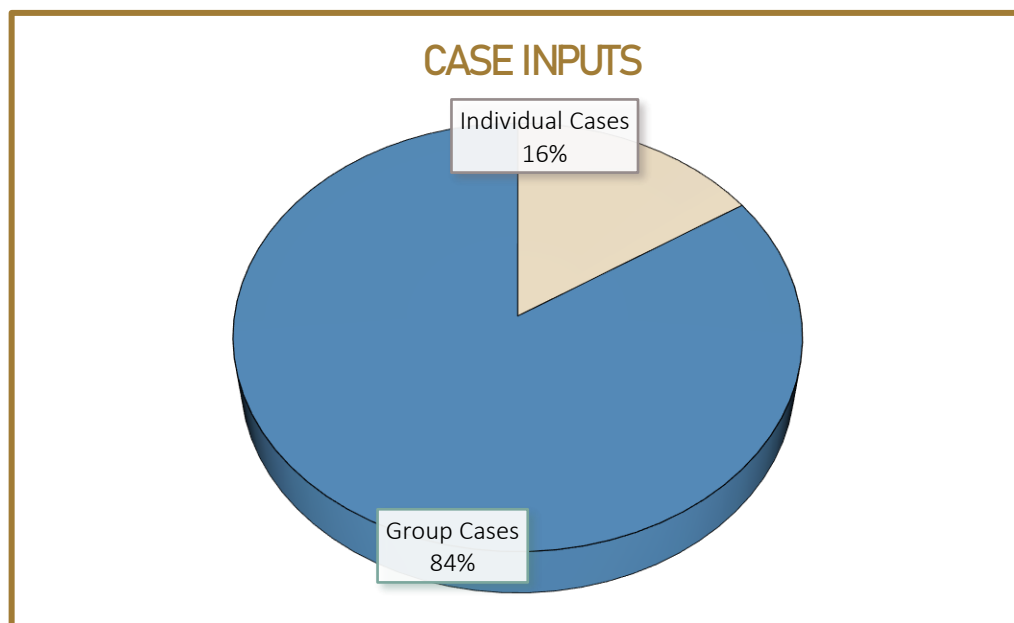
Quick Stats for January-May 2021

For the period of January – May 2021, a total of 1,113 new cases were filed on the JWT-Uwazi platform. Among these, there were 22 group cases and 175 individual cases.

In the first report, a major challenge in data collection such as filing group cases under one victim's name – hence the actual number of workers in group cases who suffered from wage theft reduced the total number to a little over 1000 cases for the period of November 2019 to January 2021. In the second report, this challenge has been managed and case filing has been performed for each member of the group case.

- Within the 22 group cases, there were 938 individuals affected by various forms of wage theft.
- Group cases could range from at least 2 individuals to 159 individuals at most, depending on reporting. As was with the first report, the number of group cases become a far better indicator of corporate accountability affecting large companies of more than 100 workers.
- Majority of group cases were filed from India. Of the cases filed, India had 11 group cases, comprising of 741 migrant workers. The numbers within the groups range from 2 to 159.
- Nepal had 9 group cases, with individuals within groups ranging between 2 and 23. Indonesia also had greater proportion of cases that were part of 2 groups, equalling 131 cases filed.

Figure 1: Percentage of individual and group cases



Countries of Destination

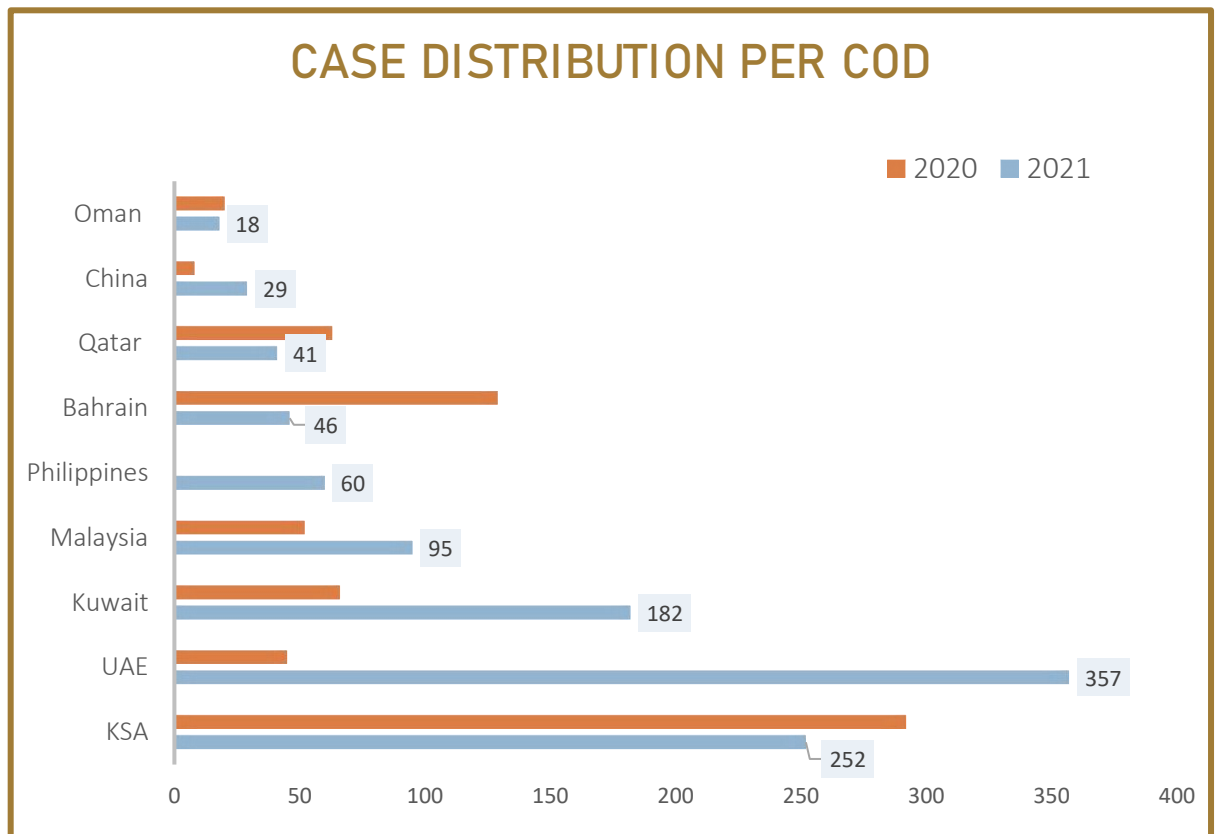


Figure 2: Number of cases per country of destination

The data provided is only based upon data submitted to the platform and is NOT to be interpreted as an indicator of performance of each COD with respect to wage theft.

- Among the countries of destination, we see that UAE has registered 357 cases of wage theft within the period of January – May 2021, accounting for 32.33% of the total casework.
- While **KSA** had registered 292 cases in 2020, it has registered 252 cases as of 31 May 2021. 182 and 95 cases were registered from **Kuwait** and **Malaysia** respectively.
- Although **Philippines** was not usually considered a country of destination, 60 cases of wage theft were registered by Indonesian construction workers in a group case.
- Except for 3 cases of domestic workers, all cases registered in **China** were from migrants in the fishing industry.
- We see the differences as an overall improvement in data collection and engagement with the platform by members and partners (due to better outreach). Other countries of destination include Singapore (6 cases), Lebanon (4), Jordan (4), Taiwan (2), Vietnam (2), Libya (2), Hong Kong, Iraq, Japan, Taiwan (1 case each).

Below we look at some of the nationalities that were affected in prominent countries of destination.

- > In the GCC region, the workers who filed cases regarding wage theft in **UAE** were primarily from 4 countries. These include a substantive 324 cases from India, 13 from Bangladesh, 9 from Nepal and 11 from Philippines.
- > **KSA** saw 124 cases registered from India, 63 cases from Bangladesh, 29 from Philippines, 20 and 16 cases registered from Nepal and Indonesia respectively.
- > **Malaysia** also saw a majority of cases from Indonesian workers (80) and workers from Nepal (14).
- > All cases registered in relation to **China** were pertaining to Indonesian migrant workers. 43 cases registered **in Bahrain** were of Nepali migrant workers of a group case. 29 cases in **Qatar** were also registered by Nepali migrant workers.

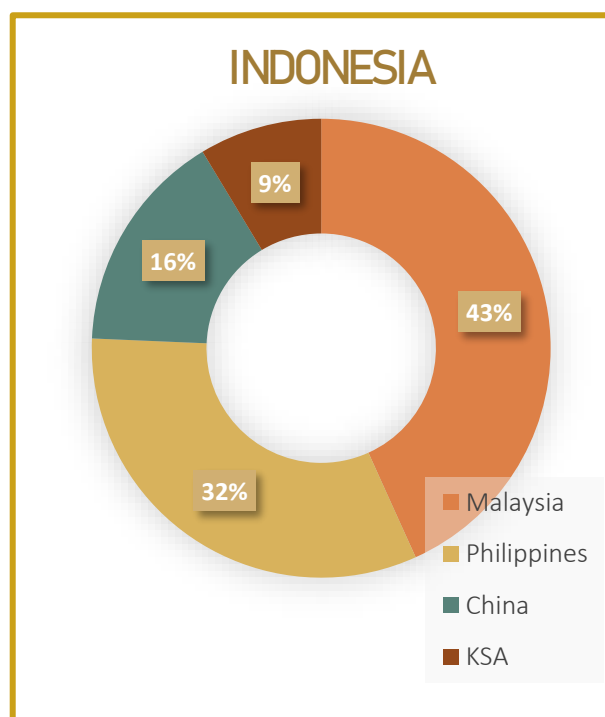
“I went to Saudi Arabia in September 2019 through a recruiting agent who offered me a job as driver at an Indian household there. Soon after reaching I realized that I was cheated as they took me to an Arab’s home for work. They run a bakery next to the house and I was asked to work in the packing and cleaning section. I wanted to return home but in vain. They did not pay me for a few months and later they shifted me to sales where I was asked to go along with the driver to sell baked goods to small shops. I have not received my salary since November 2020 till present. When I asked the reason for non-payment, they accused me of stealing 60,000 Saudi Riyals. They must have got some bills misplaced because I never took any money. They recently forced me to sign a paper in Arabic which says I owe them 60,000 Saudi Riyals. I had no option but to do that and they took away my passport so I will not try to go home. I am very afraid that they might make false complaints against me and put me in jail if I try to run away.” – SH, Indian migrant worker

“Ms. LG went to Saudi Arabia 11 years ago. She was working there as a housemaid. The owner did not allow her to return to Nepal. She also did not receive her payment for working for 10 years. So, she left the owner’s house and has been staying at the Nepal Embassy’s shelter home for three months. She is waiting for her remaining salary. She has no passport copy or any other supporting documents. She even doesn't know the name of her sponsor.” – Nepal CSO member and documenter

Countries of Origin

Country of Origin	No. of cases registered (Jan-May 2021)	No. of cases registered (2020)
India	620	146
Indonesia	200	44
Nepal	116	372
Bangladesh	115	67
Philippines	62	73

- Among cases documented from origin countries, **India** accounted for the largest proportion of cases at 620. **Indonesia** has the largest number of registered cases of wage theft at 200 cases for the period of January – May 2021.
- From India, the maximum number of wage theft cases were registered in UAE, accounting for 51.9% of its total caseload. This is followed by Kuwait (27.1%) and KSA (20.6%).
- From **Bangladesh** and **Philippines**, the highest number of cases were registered in KSA at 54.7% and 46% respectively.
- A majority of **Nepal**'s cases were registered in GCC countries with Bahrain accounting for 43 of the 117 cases, followed by Qatar at 28 cases and KSA at 20 cases. 14 cases were registered in Malaysia as well.
- Apart from KSA, the **Philippines** reported cases from UAE (11) and Kuwait (8). Other countries included Hong Kong, Jordan, Lebanon, Oman, Qatar and Singapore – majority of these cases were of domestic workers.
- With the improvement in data collection on the platform, Indonesia now displays a majority of cases from Malaysia (80), followed by Philippines (60), China (29) and KSA (16). Indonesia further reported cases of wage theft from South Korea (6), Singapore (4), Iraq, Japan, Poland, Sri Lanka and Taiwan.

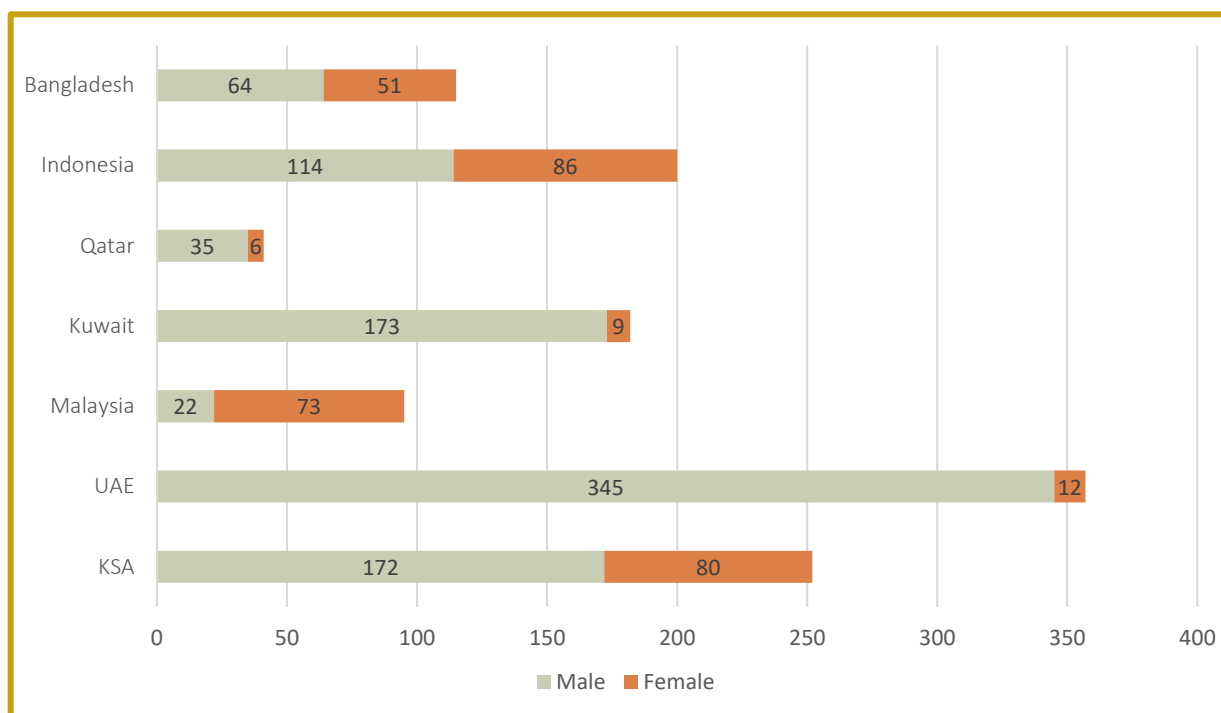


In a recent impact assessment by IOM Philippines on returnee Overseas Filipino Workers OFWs (May 2021) which covered over 8000 returnees, it was revealed that over 19% reported early termination of their contract and 59% did not receive their statutory dues or compensation pay. The respondents worked primarily in the GCC region with returnees from KSA and UAE comprising over 50% of the target group.

67% of respondents lost their jobs due to COVID-19 or were coerced by their employer to leave via early termination of contract. 17% of respondents failed to receive their statutory dues prior to return. Female migrants were found to be disproportionately affected by job losses and lack of savings or financial back-up. Female OFWs had a greater likelihood (66%) of not receiving separation or compensation pay. Nearly 20% of females stated that they bore the costs of the return journey compared to 13% of males.

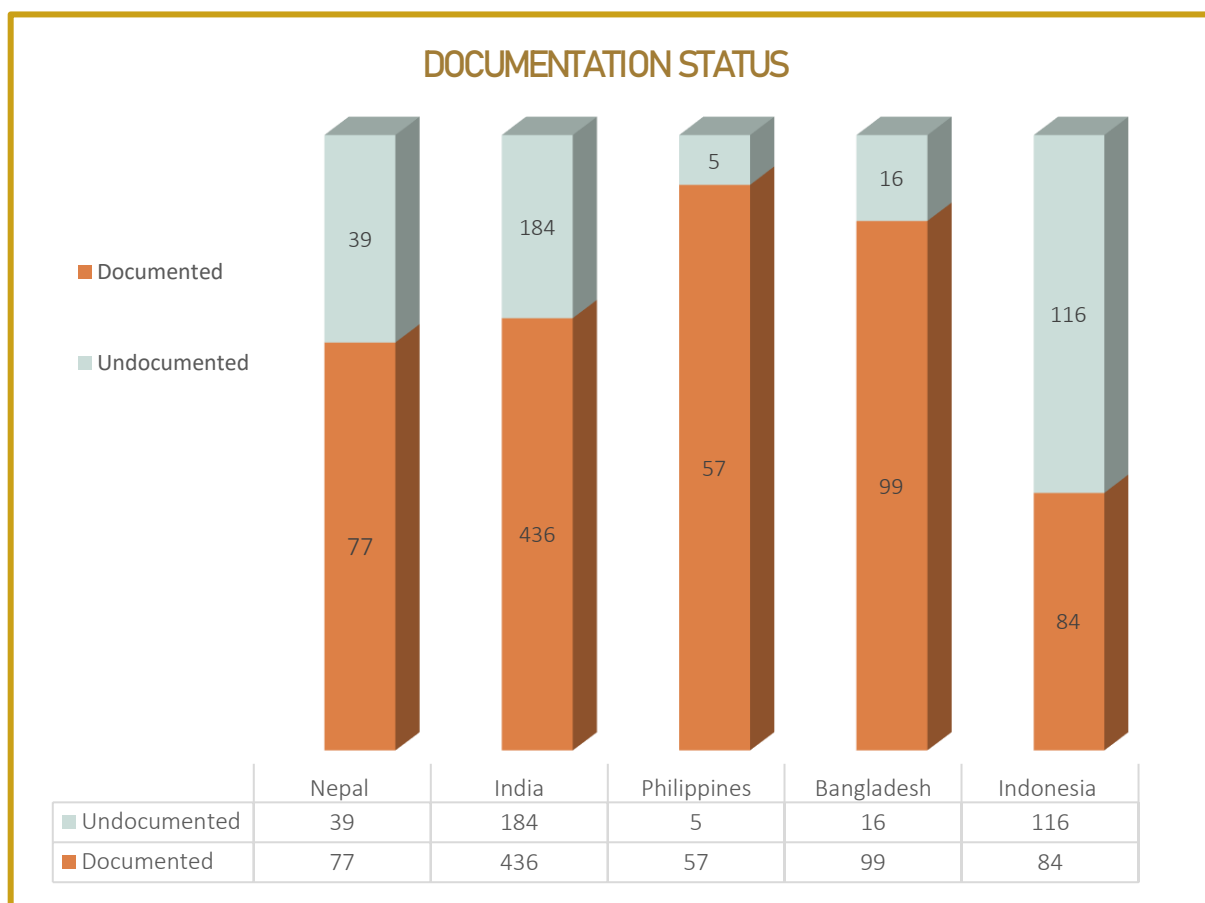
The industries that respondents belonged to included domestic worker, technicians, service & sales, elementary occupations, tradespersons, agriculture, hospitality and transportation, among others. Over 70% required cash assistance to meet basic needs after their return and nearly half of the respondents mentioned the desire to re-migrate.

Gender-wise Distribution



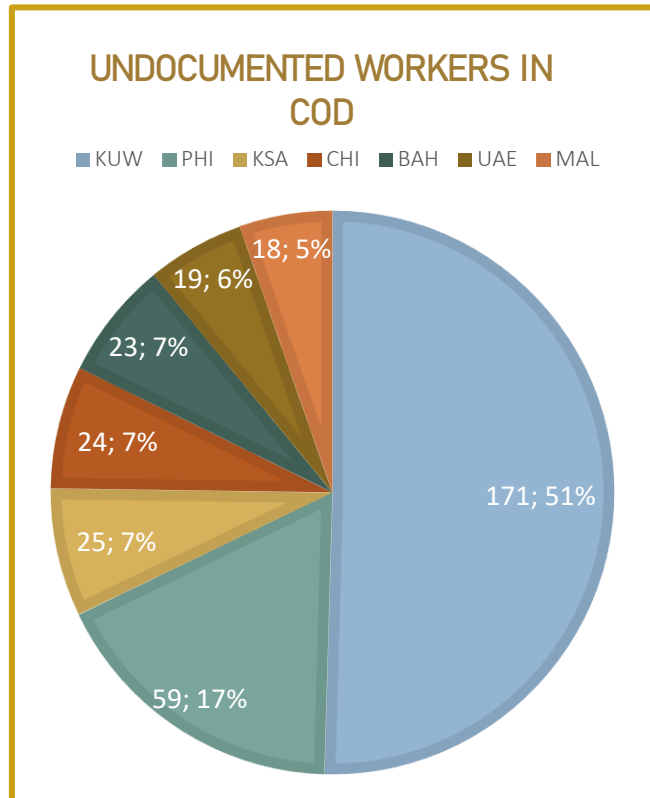
- Out of 1,113 cases, 912 cases were of male migrant workers and 201 were of female migrant workers.
- Among countries of destination**, KSA registered the highest number of cases of female migrant workers (80). This is followed by Malaysia where 73 cases of wage theft were reported by female migrant workers. Malaysia is also the only destination country where female migrants' cases were reported more than male migrants - this is attributed to stronger civil society presence in Malaysia as compared to the GCC region.
- UAE, Kuwait and Qatar registered respectively 12, 9 and 6 cases of wage theft faced by female migrant workers. Other countries of destination where female migrants faced wage theft included Iraq, Jordan, Lebanon, China, Philippines and Singapore.
- Among countries of origin**, Indonesia filed the highest number of cases with respect to female migrant workers at 86.
- Philippines and Bangladesh filed 59 and 51 cases respectively. Philippines was the only origin country that has registered more female cases than male (3 cases). India and Nepal have registered 3 and 2 cases respectively.
- The high proportion of domestic workers among female cases in countries (except Malaysia) demonstrated the continuing vulnerability and precarity of women involved in care work. For instance, 71 out of 80 cases of females in KSA, 8 out of 12 cases in UAE and 8 out of 9 cases in Kuwait were of domestic workers. All female cases from Jordan, Lebanon, Hong Kong and Iraq (between 1-4 cases) as well were of domestic workers.

Documentation Status

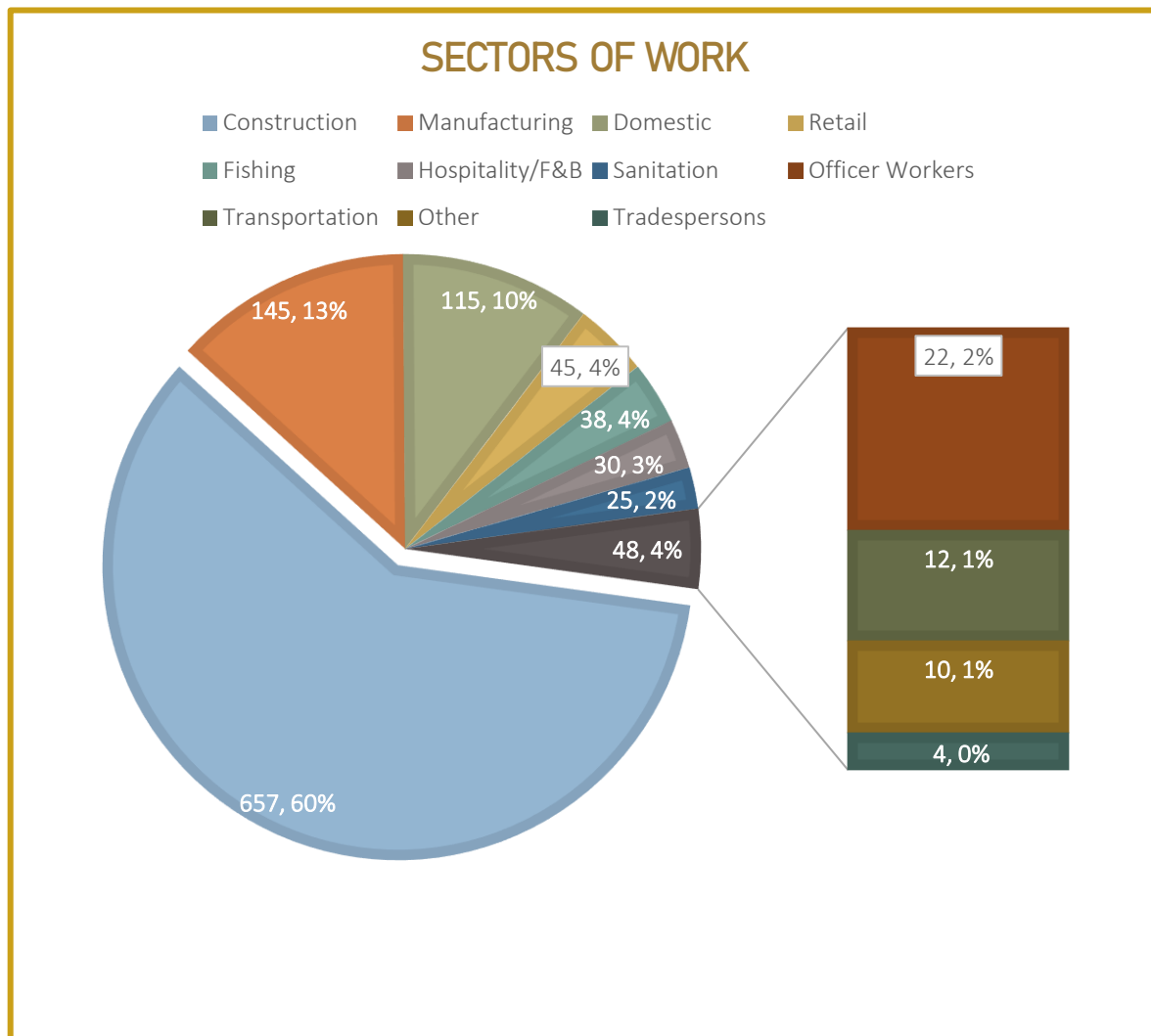


- Out of 1,113 cases between January – May 2021, a total of **753 cases** of wage theft were experienced by documented workers and **359 cases** by undocumented workers (32.2%).
- Out of 359 cases, 39 cases of undocumented workers were **female migrant workers**, primarily located in Saudi Arabia and Malaysia. A majority of them were from Indonesia, followed by Bangladesh.
- **Among countries of origin**, while Philippines has the highest proportion of documented workers, Indonesia was observed as having the largest proportion of cases related to undocumented workers (58%), followed by Nepal (33.6%).
- The above data followed similar trends as 2020 and was indicative of the forms of wage theft that were experienced by documented workers despite being assumed as having better access to facilities and grievance redressal than undocumented workers.
- For documented workers, the **major countries of destination** where wage theft cases were reported to the platform included UAE (accounting for 44.8% of total cases of documented workers), KSA (30%), and Malaysia (10%). This was followed by (in the order of number of cases) Qatar, Bahrain, Oman, Kuwait, China and Singapore. All cases from Jordan were documented workers.
- Other countries of documented workers included Hong Kong, Japan, Libya, Maldives, Poland, South Korea, Sri Lanka and Vietnam.

- > **Among countries of destination**, the highest number of cases registered on behalf of undocumented workers were from Kuwait, accounting for 61% of the total cases filed between January – May 2021.
- > This was followed by China, KSA (both 9%), Bahrain (8%), UAE (7%), and Malaysia (6%).
- > A majority of the undocumented cases of wage theft in Kuwait were Indian males in the construction industry. The cases registered in Philippines were Indonesian males who were employed in the manufacturing sector. Cases registered in **China** were primarily undocumented Indonesian males working in the fishing sector. In all situations, cases were filed as part of a group.
- > 19 undocumented cases were registered from Lebanon (2), Oman (3), Qatar (8), Singapore (3), Taiwan, Maldives, Iraq and Indonesia (1 each).



Sectors of Work



- The largest number of cases of wage theft that have been registered were from the **construction sector** (59%). This was followed by the manufacturing sector (13%), domestic work (10.33%) and retail (4%). Compared to 2020, there has also been a significant increase of cases of wage theft reported in domestic work, retail and among office staff.
- For 2020 and January- May 2021, **construction sector** continued to account for the largest proportion of wage theft cases. Out of the 657 cases registered during January – May 2021 under construction sector for wage theft, 318 cases were from UAE, 165 cases from Kuwait, 135 cases from KSA, 14 from Qatar and 8 each from Malaysia and Bahrain. The sector further accounted for the largest proportion of cases in UAE, Kuwait and KSA.
- Out of 145 cases registered under the **manufacturing sector**, 75 cases were filed in Malaysia, followed by 59 cases in the Philippines. Other destination countries included UAE (3), KSA (1), Oman (3), Qatar, Poland and Japan (1 each). Cases in Malaysia and Philippines were part of group cases by Indonesian migrant workers.
- The 45 **retail cases** comprised of group cases from Bahrain (36), followed by Saudi Arabia (6), UAE and Philippines.

- Majority of cases registered on behalf of **female migrant workers** were in domestic work (113 out of 201 total female cases and 115 total domestic worker cases). Other sectors of work included manufacturing (73), sanitation (6), hospitality, office administration, and retail.
- The sector categorised as **“other”** (10 cases) involved workers in the gig economy (such as food delivery), beauty workers (hairstylists and salon workers), salespersons in small-scale grocery stores as well as unskilled labourers who were contractually employed, etc.
- For the period of January-May 2021, a total of 38 cases were filed under the **fishing sector**, which was a major improvement of data collection from 2020, which had 20 cases. **All cases were from Indonesia** and destination countries were primarily China (accounting for more than 50% of cases), Taiwan, Sri Lanka, South Korea, and Singapore.

Countries of Origin

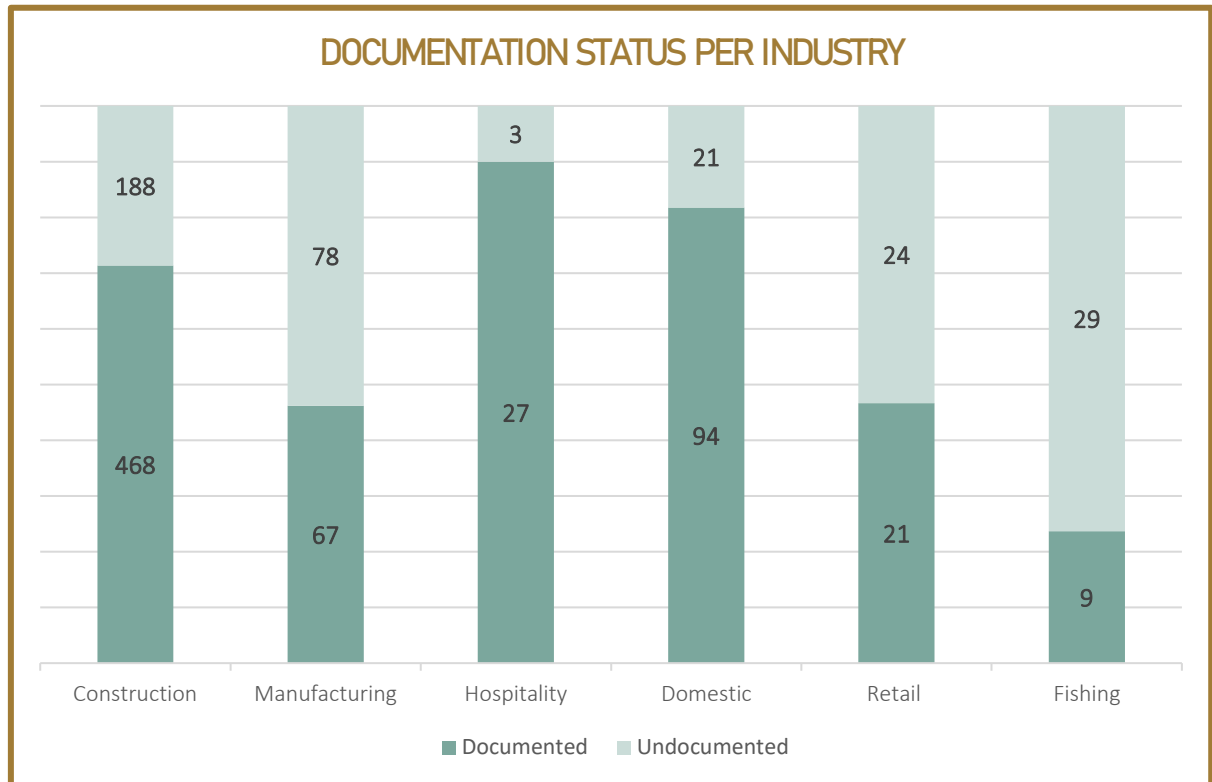
	India	Indonesia	Philippines	Bangladesh	Nepal
Construction	595	7	1	24	29
Manufacturing	3	133	-	4	5
Domestic	2	14	47	50	2
Retail	1	-	3	5	36

- When we correlate the sectors with the largest number of cases with the cases registered in each COO, we found that data collection and registration of cases have been focused upon certain sectors – this was due to the presence of group cases (such as all cases under fishing sector from Indonesia).
- For the period of January-May 2021, **Indian** migrant workers account for the highest number of cases within the construction sector (595 out of 657). Moreover, out of 620 total cases registered by Indian workers, maximum cases were reported from the construction sector (595).
- For **Indonesian** migrant workers, the major sectors where wage theft was prevalent included manufacturing (133 out of 200), and fishing (38) – they also composed the majority of cases under these sectors as well. 14 cases were registered under domestic work, 7 cases under construction, 5 cases under mining and 3 under hospitality. Cases under mining were understood as offshore mining which meant a majority of wage theft cases have been reported within sea-based work, a prominent feature seen among Indonesian migrant workers.
- Cases reported **under domestic work** were primarily from the Philippines and Bangladesh. 47 out of 115 domestic workers were from the Philippines and 50 out of 115 were from Bangladesh. Domestic workers also constituted the majority cases (47 out of 62) for Filipino migrant workers (OFWs) that have reported wage theft.
- For the **Philippines**, apart from domestic work, 5 cases have been reported by sanitation workers (all female), 4 cases by office staff, 3 cases by retail workers, and 1 each in construction and hospitality. **Bangladesh** (115 cases in total) showed variation proportionally among sectors with 24 cases reported

in construction, 12 cases in sanitation, 8 cases in 'other' sectors. Bangladeshi workers have also reported wage theft from the hospitality sector, manufacturing, transport and retail.

- Among 116 **Nepali** migrant workers, 36 workers reported wage theft in the retail sector (this related to the group case filed). Other prominent sectors included construction (29), hospitality (19) and office staff (10). Nepali migrant workers also formed a majority of cases among office staff. Sanitation and transportation sectors reported equal number of cases (6), followed by manufacturing, domestic and 'other' sectors.

*“Ms. T returned to the Philippines on March 2021 because of her health condition and abusive employer. She was deployed to KSA as a domestic worker in September 2019. According to her they were scammed by their recruitment agencies because when they arrived in KSA they informed that a different recruitment agency was going to handle them. She had 2 employers. She stayed with her second employer for 9 months. However, her employer was abusive, and she left because her son was becoming severely ill and she also had her own worries on her health. T’s second employer returned her to the agency where she stayed for 5 months because her employer did not want to give her the exit visa. She filed a complaint against him until she was brought to POLO (Philippines Overseas Labour Organisation) where she signed a waiver that her employer did not owe her any money and she would not file a case against her employer and recruitment agency when she was finally in the Philippines. But the truth was, she was the one who paid for her plane ticket. She is yet to file a complaint to POEA.” **Philippines CSO member and documenter***



- > We observed that the fishing sector has the highest proportion of undocumented workers (more than 70%), followed by manufacturing (53.7%) and retail (51%) for the period of January-May 2021. This differed from 2020 where manufacturing had the least cases of undocumented workers.
- > The precarity of the fishing and construction industries have been highlighted since 2020 where a consistent proportion of workers were undocumented.
- > Other sectors where cases of undocumented workers facing wage theft have been reported were agriculture (2), Mining (2), Office staff (2), Sanitation (4) and Transportation (4).
- > When observing cases of undocumented workers in each industry per COD, we found that:
 - o Kuwait formed the majority of undocumented cases among workers in construction sector (165 out of 188)
 - o Undocumented workers in manufacturing were primarily located in the Philippines (59 out of 78) and Malaysia (17)
 - o KSA accounted for 14 out of 21 cases of wage theft among undocumented domestic workers. This trend was also seen in 2020 where KSA accounted for majority of undocumented domestic worker cases of wage theft.
 - o China accounted for 24 out of 29 wage theft cases among workers in the fishing sector. As in 2020, South Korea was also a COD that reported wage theft in the fishing industry – this change may be explained by group cases uploaded in the period of January – May 2021.

“Prevalence of wage theft is endemic to labour migration”

- William Gois, MFA

The below wage theft cases in the GCC and ASEAN region were collected by MFA partners in separate submissions.

1. **Awaj Foundation (Bangladesh)** received 14 cases of wage theft from Bangladeshi workers.
 - a. 8 out of the 14 cases were reported from KSA. 2 cases were from migrants recruited to Libya via the Libyan embassy in Dhaka. Other CODs included Qatar, Vietnam and Lebanon.
 - b. 4 cases were reported by domestic workers.
 - c. All workers reported wage theft for more than one year, except for one domestic worker that was not paid for 3 years.
2. **People Forum (Nepal)** provides legal support and aid to migrant workers and returnees. From September 2011 to July 2020, it has provided free legal aid service to 22,635 distress and destitute migrant workers and their families and have facilitated the acquisition of verdicts providing compensation of NRs 806,933,880/- to victims through free legal aid service. Via legal recourse, the organisation was also able to facilitate verdicts providing compensation to 20 victims of wage theft. 69 percent of the cases were workers victimized by recruiting agencies and 31 percent were cheated by individual agents who functioned illegally.
 - a. From 16 July 2020 to 8 May 2021, People Forum received 1,317 complaints where 16 percent (217 complaints) was related to wage theft in destination countries. The cases have further been filed with the Department of foreign Employment.
 - b. 56% of cases were filed by migrant workers/returnees from the UAE, 12% from KSA, 10% from Kuwait, 8% from Qatar, 4% from Malaysia. Other destination countries included Afghanistan, Ukraine, Ghana, Maldives, Malta, Turkey, Africa, Cambodia, Cyprus, Jordan, Macau and Iraq.
 - c. 91% of wage theft cases were registered by men and the remaining 9 percent were by women. The low level of female cases was linked to the current restrictions of travel and migrant employment for females in certain GCC countries.
3. **Arab Reporters for Investigative Journalism (ARIJ)** reported 15 cases of wage theft under one sponsor in the construction sector from Bahrain.
 - a. 11 out of the 15 cases were from India. Other 4 were from Bangladeshi and Nepali migrant workers.
 - b. The period of abuse varied from 8 to 16 months. All workers have been employed under the sponsor for more than 3 years.
 - c. All workers were undocumented and recruited under work visa.
4. **In Dubai Labour Courts** alone, partners have reported 11 cases of wage theft for which they were able to secure legal redress at Labour Courts in Dubai. All the victims worked for one employer, a prominent construction company in Dubai which had not paid them for a common period of 1 year. Total dues owed to each worker ranged from USD \$13,600 to USD \$48,600.
5. **South Asian Regional Trade Union Council** carried out a survey of 142 returnees from five provinces of Nepal (selected based upon the highest proportion of returnees to each province).
 - a. The survey showed that 15.9% of respondents did not receive their salary during the pandemic and 7.2% reported being forced out of their job. 37.5% reported wage theft (non-payment of salary) prior to the pandemic.
 - b. Since the start of the pandemic 48.6% of respondents reported to have experienced different forms of mistreatment and abuses.

- c. 11.6% reported deduction in salary and 21.7% reported deduction/withdrawal of benefits.
- d. 28.2% of respondents were able to report their wage theft and abuse grievance with Nepalese Missions at the COD while 66.2% reported unable to register their grievance at the COD (“they had nowhere to report...”). 43.7% of respondents reported that they did not receive any compensation in the COD for their grievance.

6. International Labour Organisations (ASEAN) with support from Malaysian Trade Unions Congress (MTUC) settled two major legal cases in Malaysia regarding wage violations during Movement Control Order (MCO).

- a. In May 2020, a total of 10,455 migrant workers reported wage theft by 13 subcontractors of the Mass Rapid Transit (MRT) rail line construction project at various locations in Kuala Lumpur and Serdang, Malaysia – the construction work of which stopped during the MCO/lockdown. The workers from Bangladesh, Indonesia, Myanmar, Nepal and Vietnam were left without money for basic expenses, including food. MTUC officers, who were approached by 5 community leaders, contacted the 13 subcontractors and the latter claimed that they could not pay because of non-settlement of dues by the main contractor, or that they intended to conserve their cash flow. With consistent pressure and negotiations, due wages of MYR12,546,000 (US\$3,100,840), consisting of MYR1,200 (US\$297) were paid to each of the 10,455 migrant workers.
- b. In other instance, 4,441 workers from Bangladesh, India, Indonesia, Myanmar (including from Rakhine State), Nepal, Pakistan and Vietnam reported wage theft by seven different manufacturing companies producing wood and steel products, furniture, electrical components and other products. These companies were allowed to continue operating at a reduced capacity (only 50% of staff) during the lockdown and they paid salaries only to those 50 per cent who were working. The workers also claimed that the companies did not explain clearly how the selection of the 50 per cent was made and that the selection was not done in a fair manner. Migrant worker network leaders in the seven companies had consulted their concerned co-workers and then approached the MTUC MRC together. The MRC contacted human resources personnel in each of the seven companies to investigate the issue. The companies claimed that they could not pay wages to workers who were not working, as they needed to preserve their business cash flow. Finally, persistence of the MRC officers lead to the seven companies agreeing to pay due wages of MYR5,329,200 (US\$1,317,153) including MYR1,200 (US\$297) payments to each of the 4,441 migrant workers.

Wage Theft - Systematic or Incidental?

Despite the complexity of migratory movements, we understand that the root causes of migration remain the same in different countries due to similar forms, levels and cross-cutting nature of inequalities. While migration can be understood as natural, the question is at what point it becomes perilous.

Wage theft as it happens in its many forms is indicative of the many layers of inequalities that persist in a society. Structural and power inequalities that are reinforced, have become symptomatic of migration today. There is hence an inherent need to link migrant rights discourse to macro-economic drivers and open up the discussion on financial globalisation, commodities in financial markets and how it affects labour markets and the push for migration. When relating to a larger framework of macro-economic aspects of migration, Elver and Shapiro mention two important questions to determine whether lack of state accountability can be considered formalized as a state crime:

“First, is the unmonitored pursuit by private actors to minimize the protection of these workers as a means to cut costs and ensure profitability; **second**, is the practice of states to embrace free market economy rules and global competition without adopting adequate safeguards for workers.” (Elver & Shapiro, 2021) .

During the pandemic, a pertinent example that arose was those of food industry workers. From production to delivery, these workers, being absolutely essential for society, worked throughout to ensure production, supply and continued to cater to household demand. Food industry workers, particularly those involved in delivery, were exposed to the pandemic every day to earn a livelihood. In the name of the pandemic, the rights of food industry workers were disregarded and further showed that the weakening of rights for the pursuit of profit was ‘not only morally acceptable, but legally permissible.’ (Elver & Shapiro, 2021)

Migrants, who form a large portion of workers in essential industries, are most often non-unionized, face informality of work, undocumented status, and lack of legal and social protections. In fact, informal and casual work arrangements (for example, part-time, short-term or temporary contracts, on-call schedules, multi-layered subcontracts, seasonal patterns of migration, etc.) have become commonplace in global supply chains, as the corporate food system regime prioritizes efficiency and cost-saving measures, often at the expense of workers.

For instance, when the Kuwaiti government announced lockdown and closure of dining establishments (in February 2021), restaurants and cafes worked limited hours and that affected migrant workers the most – many of whom had already not been paid since the start of the pandemic. In 2021, many companies have issued a “No Work, No Pay” policy, stating they will only pay employees for hours worked — rather than their contracted monthly salary. A protracted complaints procedure has led to migrant workers preferring to register complaints in person at the Public Authority of Manpower instead of using the online complaints procedure.⁵

As is seen within the data of this report, abusive employment practices are often carried out beyond the reach of authorities, such as in construction, manufacturing, domestic work, fisheries – sectors of work that have reported trafficking, forced labour and exploitative conditions as a systemic issue. Governments have also allowed businesses to continue such as allowing temporary cross-border migration for agriculture (as in the Mekong region). Despite the visibility their plight garnered by civil society and within public rhetoric, there has been no advancement in developing infrastructural support for migrant workers such as social protection, unfiltered access to justice and healthcare and freedom of association/setup of migrant worker

⁵ Job loss and wage theft: The grim reality of Kuwait’s F&B sector | Migrant-Rights.org. (2021). Retrieved from <https://www.migrant-rights.org/2021/04/job-loss-and-wage-theft-the-grim-reality-of-kuwaits-fb-sector/>

committees at the workplace. Civil society actors continue to receive grievances of wage theft and abusive conditions well into 2021.

In the face of an already weak system of migrant protections and a worsening pandemic, the judicial system at countries of destination and origin are responding to rights abuse complaints, which could have been easily avoided, had there been sufficient political will and state action. Furthermore, many of these complaints concern the private sector's obligations to workers, thus excluding state responsibility from the discourse. (Elver & Shapiro, 2021)

THEORIES OF UNDERSTANDING

A prominent development in theoretical approaches to migration include the **transnational approach** to migration, focussing upon migrant communities in destination countries and their manoeuvring of transnational identity, integration, and globalisation. While the initial stages of the pandemic saw governments locally focussing on deglobalizing their economies, they quickly realised that this was possible in limited situations as the presence of emigrant and immigrant communities meant that macro-level, meso-level and micro-level aspects of migration have to be effectively dealt with. Macro level drivers would include influential factors such as economy, legislation, infrastructure, social issues, politics and demography. The meso level of drivers looks at ‘dalals’/sub-agents, receiving and sending countries’ concerns and the micro level includes the individual aspirations of migrants. During the pandemic there was sufficient proof to suggest that despite the way macro level drivers were severely affected, meso and micro level drivers continued to spur migration and remigration trends as soon as travel routes opened up.

The local development context determines to what extent people are able to pursue their aspirations (including, to migrate) through local livelihood activities. Another way that local development determines migration aspirations is through influencing financial, social, and human capital. In return, migration processes affect local aspects of development particularly labour supply consumption patterns, investments, as well as addressing inequality, social stratification, relative deprivation, local culture and aspirations. As De Hass discusses, the creation of social capital through the formation of migrant networks tends to facilitate additional movement.

The concept of remittances becomes important to consider when discussing theorisation within the wage theft discourse. The fall in remittances (yet improvement of formal remittances) during the pandemic was implied as affecting the development of origin countries, some of whom derive a large portion of their national budgets from migrant remittances. Garza (2013) criticizes the **remittance-based approach** to understanding or theorising upon migration and development, particularly with respect to the capacity of remittances to generate growth, solve structural problems and economic/social insecurity. Although economically, remittance may allow for a certain level of stability, political and economic development would depend upon the economic climate in countries of destination and origin as well as working and living conditions of migrant workers. For instance, indirect taxation upon migrant workers, lack of price ceiling on remittance costs, improper monitoring of recruitment processes can all affect remittances and its capacity to spur the empowerment of migrant workers and their families. (Garza, 2013)

The challenges in sending remittances and the phenomena of wage theft that prevailed during the pandemic provides further impetus to this argument. Remittances which were considered sustainable sources of income or ‘safety nets’ for those without social security, have proved to become dependent upon larger macro-level factors such as state action and policy in ensuring the safety and social protection of migrant workers, particularly for those deemed “essential workers”.

When placing the context of abuse and exploitation of migrant workers that occurred during the pandemic, in line with the discourse of unfree labour, there is a clear dissonance from the liberal view that migrant workers are free and equal and have freely entered contractual relations. As Lerche (2007) discusses the **Marxian discourse** on migrant labour, he mentions that,

“The sheen of equality provided by contracts covers the fact that all labourers are exploited through their production of surplus value”

He uses this discourse to criticize the pervading neoliberal view (“among liberal economists and ILO”) where exploitation is placed firmly within the concept of forced labour and fails to consider that ‘free’ labour too is involved in an unequal exchange of their labour power for wages.

For instance, Lerche mentions that discourse on trafficking for forced labour and commodity chain links leading to forced labour, and employers in transition countries misusing cheap labour, etc., fails to link these concepts to the consequences of globalized economies and capitalism. This is also true of present-day migration and decent work discourse where the emphasis is upon ‘reformation’ of inherently exploitative labour markets instead of challenging the clear power dynamics and inequalities that plague migration processes at the macro, meso and micro levels.

Despite a global pandemic affecting every aspect of human life and work as it exists, there is yet to be concerted action to challenge the overall system that created conditions for the occurrence of such exploitation. As is with isolating ‘3D jobs’ and decent work discourse from state culpability in enabling discriminatory conditions, international, regional and national institutions and processes are focused on piecemeal actions that serve compartmentalised labour (such as ‘free’, ‘forced’, ‘domestic’, etc.) instead of tackling the pervading phenomena of labour exploitation, present among all sections of migrant labour.

PRECARITY

The decision to migrate is framed by international and state actors as being a rational process made by rational beings who are able to capitalise on high wages and labour demand in other countries, leading to local development and benefits back home. However, there is a need to clearly determine the insecurities and precarity of migration as a movement and a life process for migrant workers and their households.

Koser (2013) attempts to analyse the reasons for gaps between legal and institutional provisions and migrant worker protection. Among these areas he identifies as shaping experiences of institutionalised precarity is the *'decreasing significance of the state in the recruitment of migrant labour and the increasing importance of private agents and intermediaries'*. Indeed, the costs of migration and employment that migrant workers are forced to deal with, is an indicator of neoliberal regime where the workers right to negotiate their terms of employment are diminished to an extent of making them pay to be employed. Recruitment costs are also shown as figuring into wage theft cases and is a prominent occurrence among wage theft victims that had to return prematurely and in debt to their recruitment agent. This matters not only for migrant households and policy makers in origin countries, but also for policy makers in host countries if the poor working conditions of migrants undermine the working conditions of the native-born or create unfair competition – thereby affecting local employment and nationalisation measures. (Aleksynska, Kazi Aoul, & Petrencu, 2017)

Migrant labour has been systematically made insecure through increased stratifications, wage inequalities, policy invisibility of undocumented and irregular workers, alteration of social rights to the benefit of employers, among others. Migration rhetoric has recently deemed migrant labour as **'guest workers'**, becoming placed in between migration law and labour law of the destination country and attempting to navigate these spaces without the support of workers movements, or unions (Perocco, 2019). Migration policies made for the benefit of the destination countries attempt to provide migrants with a semblance of flexibility, but only as per the needs of the labour market. In destination countries where labour contracts determine the legal and social rights of the worker, workers in the gig economy, part-time workers, etc., become extremely insecure.

“By lowering the cost of labour and by offering an ultra-flexible workforce, migrants are forced into a subordinated position, and are liable to blackmail by migration policies and institutional discrimination” (Perocco, 2019)

GENDER

Understanding wage theft and the political economy of migration necessitates discussion on the involvement of women in the migration process, particularly the involvement of gendered processes and the intersectionality of the gendered international division of labour in the region. While migration challenges always exist, with regards to mobility, the beneficiary is determined by social class and gender.

The cases of wage theft reported to the platform by female migrant workers were predominantly from the **care sector**. The notion of care industry is built upon gendered notions where even soft skills are gendered and governments demand and deploy more women into the sectors of hospitality and care. Moreover, the terminology of ‘domestic worker’ is increasingly changing and the nature of the job is also facing major changes in countries of destination. Domestic work has now been separated into different roles such as ‘nanny’, ‘home nurse’ ‘cleaner’, ‘cook’, etc., in certain destination countries to cater to labour market governance changes. However, the inherent nature of care work and the ‘live-in’ aspect of their job determine the domestic workers’ experience in the destination country.

The increasing value of the care economy deems it necessary for domestic workers to be present for long periods of time within the living space of the employer and are preferred as ‘live-in’. It becomes problematic for the workers themselves when they are made to live-in with the employers and this has primarily been identified as a major loophole where abuse and exploitation occurs – particularly, in terms of access to healthcare and justice mechanisms. For example, migrant women who do report sexual mistreatment or abuse by employer or sponsor, are referred to public attorneys to handle the case as it is criminal in nature. While the case is being heard, the women are unable to get a regular job and find it difficult to get employers who would sign contracts with them. However, the challenge is to prove that such an assault has taken place, as domestic workers are usually isolated in their employers’ homes. There are no outside witnesses and family members of the employer often support those accused of sexual offences. Domestic workers that reported being physically or sexually abused during the pandemic mentioned that they only wanted to return home and did not want to pursue the case due to the consequences upon their life and employment.

During the pandemic, **wage theft** cases among domestic workers observed that when employers were affected by job losses or downturn in business, this directly affected their ability to pay the domestic worker – in fact, the pandemic became an excuse to keep domestic workers bound to the job. For instance, in Lebanon, after the currency crash, domestic workers were found leaving the country as soon as possible. News reports mentioned certain nationalities such as Ethiopian domestic workers in particular were dumped outside their embassies by their employers without their owed wages and no money to buy a ticket home. Domestic workers were paid at an exchange rate far less than the market rate and were struggling to buy basic necessities.

In September 2020, the Lebanese labour ministry adopted a new standard unified contract for domestic workers that guaranteed overtime pay, sick pay, annual leave, and the national minimum wage. Most importantly, it allowed workers to leave employment without the consent of their employer. But the new contract has been stalled by the Syndicate of the Owners of Recruitment Agencies and is currently under appeal.⁶

The situation of domestic workers was further compounded by **lockdowns** which increased the duties and effort of the domestic work to cater to more members of the family round-the-clock. Domestic workers further reported receiving little to no rest during the pandemic and were performing multiple duties in caring

⁶ Al-Jazeera. 16 April 2021. Lebanon’s financial crisis worsens exploitation of domestic workers <https://www.aljazeera.com/news/2021/4/11/lebanons-economic-crisis-and-its-domestic-workers>

for children, the elderly and managing household duties. Among the biggest issues that affected domestic workers and was clear in its absence during the pandemic was the lack of labour inspection and **monitoring mechanism** for domestic work due to social reservations in destination countries. This led to several domestic workers turning undocumented or staying so; their return was dependent upon their access to Missions.

MFA would like to stress that with regard to migrant women workers, the vital action is of removing the risk from work rather than removing the worker from a risky situation, the onus of which falls upon regulatory and monitoring bodies of labour migration within the country of destination. 2021 is the 10th anniversary of the adoption of C189 Domestic Workers Convention. COD and COO must ratify this convention as a step towards ensuring and enabling protection based upon global benchmarks and not subjective policymaking.

Apart from domestic work, female migrants in the fields of hospitality, sanitation, and other sectors such as 'beauty workers' at salons and spas, hairdressers, etc. were reported as being affected by wage theft. Domestic workers were also not prioritised in testing and vaccination policies of destination countries, despite being at risk from the employer's family members.

In many cases, **origin countries** have been wilfully ignorant of ground realities of abuse that occurs at the place of work, thereby dehumanizing the female migrant worker and removing her from accessing her human and labour rights. Women's decommodification strategies will require additional affirmative action as traditional indexes reflect a male-breadwinner bias as unemployment, pensions and insurance benefits are accessible only to full-time employed workers. For female migrant workers and returnees that faced wage theft, job losses and severe forms of abuse and exploitation, women's access to welfare is only through the husband or other paid worker's family income. (Nakray, 2021)

CSO & TU FREEDOMS

In countries of destination, apart from the public sector, several stakeholders including Missions of COO, CSO's and trade unions (where allowed), diaspora/community organisation, faith-based organisations actively endeavour on the field to ensure protection of existing migrant rights. However, overarching gaps reported by CSO's include lack of monitoring mechanisms for cross-collaborative efforts, lack of formal recognition of community/diaspora leaders and communities at COD and COO and lack of human and financial resources for grassroots level work. Local CSOs and community/diaspora organisations work with Missions of COO as well as departments of the police, immigration, labour and health in casework, with the former strongly involved in advocacy and consultation with government authorities. Due to the restricted presence of civil society organisations in the GCC region, community/diaspora organisations and their members play a crucial role as linkages between governmental authorities of COD and migrant workers. This is because in context where labour as a collective force has been repressed and debt-laden migrant workers are deprived of many legal-political rights, dynamics of production tend to close off spaces for agitation while opening up opportunities for informal negotiations. (Bal, 2015)

In origin countries, partnerships between the public and the non-governmental sector efficient at the local and state/provincial levels, however are unable to be as prevalent in national policymaking. At the outset, in developing countries such as those in South and South-East Asia, emigrant labour is yet to be considered as a major priority compared to other predominant issues in the country (except for Philippines and Nepal where migrant workers are recognised in state rhetoric for their contributions to the nation). This detrimentally affects government interest and efficiency in migration governance and fostering effective partnerships which would mean increased responsibility and accountability to another entity. Due to these predominant gaps, governments are also seen making policy decisions with very little to no consultation with other stakeholders.

In destination countries, it has been commonly observed that state understanding on CSO activity and involvement in public affairs differ and this further affects activity on the ground in terms of advocacy, if it is outside what is considered the “**acceptable frame**” (that other CSO's may willingly adhere to). Bal (2015) highlights this as a feature where CSOs and advocacy groups in regimes where expression is restricted do not ‘*pursue agendas to fundamentally transform the established political order but are generally geared towards reform and the promotion and protection of various rights and collective goods*’. In other regimes, state actors consider CSOs as sources of technocratic problem solving. Finally, state actors also attempt to resolve or mitigate political conflicts by framing and managing these conflicts in technical and administrative terms, effectively depoliticising them. (Bal, 2015)

Moreover, many governments do not respect the freedom of association and impose restrictions upon it if they do. **Trade unions** were also noted as being prominent in policymaking but failing to foster solidarity in addressing and advocating for migrant worker protection at the grassroots level across countries of origin and destination. For instance, certain countries of destination do not allow migrant workers to join their trade unions and trade unions in COO do not engage with migrant worker population at the risk of being perceived as ignoring the local workforce. In addition, non-compliance of governments to core labour standards also make it difficult for trade unions to form partnerships and engage in social dialogue on migration. While recent reforms to the migrant labour regime have delivered greater legal protection for migrant workers, they also need to be understood for the manner in which they depoliticise the workplace grievances of migrant workers while attempting to administratively incorporate independent voices for reform (Bal, 2015)

Despite their active presence in the social and economic life of CODs and COOs, **community organisations** are only officially recognised by the Kuwaiti government in the GCC (for example). Missions of COO recognise certain individuals as embassy volunteers or set up separate welfare agencies as part of Mission activities (such as the Indian Community Welfare Fund or NORKA-Roots). However, these individuals also have limited capacity in assisting and representing migrant workers as they are not recognised by the COD government. Furthermore, they are migrant workers themselves - hence the fear of retaliatory measures persists for many, particularly when attempting dispute resolution with employers.⁷

⁷ Contract migrant workers are usually unable to muster a collective response to address the issues which they face at work such as low and unpaid wages, job insecurity, unreported workplace injuries, under-deployment, forceful repatriation and employer kickbacks for hiring and contract renewal due to restrictive conditions and their “deportability” as migrants. (Bal, 2015)

CORPORATE RESPONSIBILITY

The expansion of informal labour, high levels of unemployment in many countries, and restrictions on access to labour markets abroad have created a large and growing population lacking a viable and secure means of subsistence. These broad structural conditions give rise to vulnerabilities that can be exploited, creating a ready supply of workers that can be subjected to forced labour. In labour intensive industries such as construction and farming, wages and other non-wage costs (such as benefits) paid to workers constitute a major driver of profitability for producers. That is, these variable costs represent a large proportion of total costs and so reducing them is the single best way to increase profitability. Therefore, firms may look to minimise direct labour costs through coercion in order to undercut competition and maximise profitability. Low value-adding activities are also more likely to be associated with forced labour due to • requiring low skills, which attracts an extremely low-paid and frequently vulnerable workforce. • such activities being more likely to be subcontracted, which means less oversight by the primary producer, and more scope for informality and unscrupulous behaviour. • tendency to happen 'backstage', sometimes at night, and are generally less visible to observers, including other workers, managers, and auditors (Allain, Crane, Lebaron, & Behbahan, 2013)

“Wages and the human rights abuses they intertwine with, therefore, are not isolatable to the individual businesses that employ workers, but rather relate to broader business dynamics and relationships along the entire supply chain.”
(Lebaron, 2021)

In situations where low-skilled work is required in time sensitive situations or in volatile industries, the need for additional workers generally means that labour agencies will fill the gap. Where there is high demand for labour within a short period of time, the labour supply chain will be extended, with subcontracting being the norm. Within this context, where intermediaries are charging costs for their services and the amount of subcontracting creates a deeper labour supply chain beyond the knowledge of the principal contractor, the risks of exploitation escalate. (ILO, 2016)

In the different models of employment, one model as detailed by Allain, Crane et al. (2013) is where ancillary services (such as housing, transportation and food) by the employer also reaps benefits for them. This is prevalent among wage theft cases - employers leverage their existing assets (perhaps a porto-cabin for accommodation or a van for transport) to drive additional revenue, especially where profitability from the main business is relatively low. In forced labour contexts, this means that charges for these services are often hidden or only deducted at a later stage. Overall, charging for such services allows employers to diffuse these amounts into debts accrued by workers (such as for recruitment costs), which provides increased control for employers. In order to maximise returns on ancillary services, producers impose obstacles to workers leaving, such as threats, withholding of wages, or confiscation of documents (Allain, Crane, Lebaron, & Behbahan, 2013)

Lebaron (2021) discusses that the prevailing rhetoric regarding forced labour being practised by 'unscrupulous employer' or 'criminal' agents has diminished corporate responsibility and accountability of their supply chain dynamics and a key reason why wage theft and forced labour is under-investigated.

GLOBAL GOVERNANCE OF MIGRATION: THE EMERGENCE OF THE ESSENTIAL WORKER

Since the early 1970s **low-wage foreign labour** has been progressively construed as unnecessary and unwanted. However, such assumptions were proven false during the pandemic as apart from medical staff, ‘low-skilled’ migrant workers in care work, food industry, construction, agriculture, logistics proved themselves indispensable to the economy and society of destination countries – while highly-skilled migrants had the privilege of working from home. In certain destination countries, low-skilled and low-wage migrant workers (“hands”) were further expected to fill gaps in the labour market not pursued by the local workforce, while the recruitment of highly skilled and professional migrants (“brains”) was selectively and limitedly encouraged with the explicit aim of fostering innovation and competitiveness among the local workforce. (Bonizzoni, 2018)

The 4 aspects of labour migration that currently affect the future of work include (a) the use of money and debt crisis in the country of origin (b) governance, national policies, and its inclusiveness (c) the RCPs and (d) GCM and SDGs. Hence there is a need to observe the definitions of vulnerability, poverty, and data produced. (Tzvetkova, 2017)

Global governance in migration has been determined by ‘**principled pragmatism**’ - proposed by Ruggie (2008) as a critique to rights-based discourse, the model proposed to manage business and human rights rests on three pillars: the State duty to protect against human rights abuses; corporate responsibility to respect human rights; and greater access for victims to effective remedy.⁸ However, within this approach, priorities of stakeholders are different, even if interests are shared. Hence, actors will have to make compromises and in certain cases, human rights may be compromised in order to achieve specific results. Other risks of this approach include (i) delayed responses (human rights issues require timely interventions and adequate and feasible strategies especially in the case of crises), (ii) watering down of human-rights related demands during crises that require negotiation and compromise among stakeholders, multilateral solutions and high stakes, (iii) the maintenance of balance between pragmatism and principle viz. balance between pragmatic and result-oriented considerations and those related to principles and values when applied in practice. (decision-making based upon established norms and rules versus cost-benefit calculations of outcomes of all considered actions) (iv) theory/interest and value should be encouraged and pursued for the approach to be consistent.

The Colombo Process and the ADD are shown to be important landmarks - however, there are no time bound commitments, nor ostensible goals. For civil society organisations, time has come to take stock of what has been achieved at various national levels. Hence instead of trying to bilaterally negotiate with governments (which is difficult), using such platforms of consultations would become helpful since governments’ methods of preparatory work are insufficient and non-transparent, and national consultations are superficial in a certain sense.

⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/PrincipledpragmatismBusinessHR.aspx>

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