



## TOPIC THIRTEEN I ENSURING MIGRANTS' LABOR RIGHTS

### Main Takeaways

- Governments are obligated to protect migrant workers from being exploited by employers. This includes ensuring they are protected against wage theft, duly compensated for loss of employment, and provided with social protection
- This can be done through flexible visa schemes, instituting transitional justice mechanisms for resolving cases of wage theft, and including migrant workers in national social protection schemes.
- To make sure they are effective, governments must invest maximum available resources in such initiatives.

### 1. Why is this topic important in the context of COVID-19?

The COVID-19 pandemic has exposed the grave vulnerabilities faced by migrants the world over. Migrants are one of the most marginalized communities in most countries, often deprived of basic services and protections. They have therefore been among the hardest hit by the pandemic.

In many countries, at the outset of the pandemic migrant workers were asked to continue working as part of the “essential workforce”. This was often without sufficient COVID-19 protections in place. In many cases, the only accommodation available to migrant workers is overcrowded and unsanitary. In these conditions, infections spread fast.

Later, as national lockdowns affected the economy, migrant workers were the first hit by widespread job losses. In many instances, they were also repatriated (sent back) to their home countries, through mass repatriation programs, undertaken hastily by countries of both origin and destination. Many migrant workers accepted their wages being lowered and even withheld, in order to remain employed and in country. They suffered great financial difficulty as a result.

For many migrant workers, their visa status is tied to their employer. This means their access to decent work, basic services, and other necessities is dependent upon the employer that sponsors their visa. This insecure immigration status undermines their bargaining power and access to justice. Withheld wages are a commonly reported problem with this employer-tied system of migrant labor.

Civil society organizations have reported that wage theft has intensified during the pandemic. This has taken many different forms, such as underpayment of salaries, late payment, reduced pay, and forced unpaid leave, among others. For example, key global brands and retailers were implicated in \$500

to \$850 million in total severance theft during Covid-19. In some cases, especially for domestic workers, increased hours and workload has also gone uncompensated.

Migrants’ access to social protection, which was already limited, has also worsened during the pandemic. They struggle to access social protection schemes, such as healthcare, housing, and income support. Seasonal workers are frequently explicitly excluded from these schemes. The Global Knowledge Partnership on Migration and Development (KNOMAD), reports that living costs faced by migrant workers are significant.

For the most vulnerable migrant workers—such as domestic workers, irregular or undocumented migrants and refugees—the situation has been even worse. Women migrant workers, particularly those in care work, are often subject to physical, sexual and verbal abuse and are prevented from taking days off. When domestic work is live-in, lockdowns have aggravated abuse and exploitation.

### 2. What is being proposed?

A number of proposals have been made to transform the ways in which migrant laborers are compensated and protected, including:

**Wage Protection Systems:** Some wage protection systems, implemented prior to and during the pandemic, have proved moderately successful. But there is room for improvement, including through:

- stricter requirements on employers to keep all employment records, including payroll, employee lists, and hours worked and to allow workers to take copies of their record;
- stronger recognition and protection of workers’ right to freedom of association, so that they can collect information on wage theft and participate actively in redressing their grievances;

- outreach to migrant communities, to reassure them that registering grievances won't result in negative legal or economic consequences;
- creating flexible visa schemes that account for the consequences of lay-offs and other employment changes on a worker's status;
- facilitating the transfer of workers to other employers where possible;
- restricting access to public funds or bailouts for companies who have engaged in wage theft or other labor rights violations (see [Topic 5](#)).

#### **Access to Justice for Repatriated Workers:**

Effective wage protection must include a [transitional justice mechanism](#), such as an international claims commission, to address grievances of repatriated workers who have lost wages as a result of the pandemic, when national courts and tribunals in origin and destination countries can't. Establishing compensation funds would ensure that cases are resolved swiftly.

**Adequate Social Protection:** As detailed in [Topic 7](#), strong social protection systems—that include comprehensive income support—are critical to COVID-19 relief. Specific initiatives to ensure migrant workers' access to social protection include:

- breaking the link between immigration status and eligibility for social security, e.g. by establishing firewalls between immigration departments and the administration of social security benefits;
- ensuring eligibility criteria are objective, reasonable, transparent and compliant with international human rights norms;
- making social protection schemes "opt-out" not "opt-in", so coverage is the default;
- imposing strict monitoring and enforcement measures to ensure companies observe their obligations regarding notice periods, wage payment, and end-of-service benefits.

### **3. What are the human rights arguments in favor of these proposals?**

Most of the world's governments have signed up to binding human rights treaties that commit them to guaranteeing a range of labor protections, the right to decent work, the right to social security, and the right to an adequate standard of living. International Labor Organization instruments complement and flesh out governments' duties in this regard.

Governments have to take concrete steps to guarantee these rights using the *maximum of their available resources* (see [Topic 1](#)). In particular, human rights and labor law direct governments to

reform employer-tied contractual systems that have a harmful impact on migrant laborers' rights. Article 7 of the International Covenant on Economic, Social and Cultural Rights specifically requires governments take steps to protect the right of remuneration, fair wages and equal pay for equal work. This includes investing sufficient resources in programs that ensure employer conduct is properly regulated and that workers have meaningful redress when these rights are violated.

Human rights also provide a binding framework that must guide the design and implementation of social protection schemes. In line with this, universal schemes are preferable to targeted ones and governments should take steps towards universal coverage. When universal coverage is impossible, schemes must prioritize reaching those who most need protection. This includes migrant laborers. Human rights law requires that social protection measures apply equally to nationals and non-nationals (except in rare cases where the government can provide objective and reasonable justification).

Other sources of relevant standards include the Global Compact on Migration, which directs governments to ensure the rights of migrant laborers are protected and that transnational schemes are developed to facilitate human rights-compliant labor migration and practices. The UN Guiding Principles on Business and Human Rights also require businesses to respect human rights. This includes providing safe working conditions and fair wages to all workers.

#### **Critical Questions**

- ▶ Does the government have accurate data regarding repatriation due to sector-specific job losses during the pandemic?
- ▶ What are the enforcement and accountability measures in place for employers to ensure compensation and benefits for workers who lost jobs? What resources are dedicated to this?
- ▶ What measures has the government taken to improve migrants' access to justice and pursuance of their case from the origin country? How many cases have been resolved through them during the pandemic?
- ▶ How much does the government invest in social protection for migrant workers and/or reintegration of returnee migrants? Have benefits/eligibility for migrant workers been extended or cut back during the pandemic?