

MIGRANT WORKERS' ACCESS TO JUSTICE SERIES

Migrant Workers' Access to Justice at Home: Indonesia



EXECUTIVE SUMMARY

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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.