

# The Five Corridors Project:

Exploring Regulatory and Enforcement Mechanisms  
and their relationship with Fair Recruitment

## *Key recommendations*

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## **ABOUT THIS DOCUMENT**

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Workers from Myanmar remove husks from coconuts in Koh Samui, 2015. © Chris Bird / Flickr

## Recommendations to both origin and destination states

### 5. Design grievance and remedy processes that take account of the power imbalance between employers and recruitment agents, on the one hand, and migrant workers on the other.

Poorly designed and implemented processes to deal with grievances against recruiters and employers present numerous practical problems for migrant workers, in many cases resulting in them settling for a fraction of what they are owed and what they could be reasonably due in damages. The power dynamic between employers / recruiters and migrant workers is strongly stacked in favour of the former and most grievance processes do little to acknowledge and account for this fact. In destination states, migrants are particularly hampered by their temporary status and tied visas, which may prevent them from working during the grievance process, and can place a time limit on how long they can pursue their cases. Even if special immigration measures are in theory or in practice available to assist migrant workers bringing cases against employers, the precarity of their status may deter them from lodging complaints in the first place. Governments on both sides of the migration corridor should design grievance and remedy processes that take

account of and adapt to the realities of migrant workers' situations.

The solution many governments have arrived at in order to provide quick and simple grievance mechanism for migrant and other workers is to provide non-judicial mediation or dispute settlement fora. The intention is that such mechanisms mean workers can avoid having to take recruiters or employers through lengthy, complex, and potentially costly court processes. A fundamental principle of such mechanisms is generally that the mediator does not adjudicate but rather assists the parties to come to an agreement on how to proceed with the dispute. Cases where a settlement cannot be found usually proceed to court.

In practice, such systems are often not adequately staffed by skilled mediators and translation is not always available. Secondly, and arguably more significantly, the inherent power dynamic between

recruiters/employers and migrants can be so strongly skewed against the migrant that the concept of a fairly negotiated settlement is often unrealistic. In the case of employers, their control over migrants' immigration status is particularly difficult for migrants to confront - tied visas, as noted under Recommendation 2, are a key obstacle to the provision of an effective remedy for migrant workers. Domestic workers, isolated in their employers' homes, find it almost impossible to make complaints without leaving their employers and risking becoming undocumented. Thirdly, if a migrant does not want to accept what (if anything) is offered in the mediation process, the employer or recruiters knows their alternative option is to proceed through a lengthy and difficult court case, significantly reducing the worker's leverage. For migrants in a destination country, this means waiting, potentially without income or documentation, for an uncertain outcome. In an origin state, this may mean repeated cross-country trips to the capital, where courts are often located. Many recruiters and employers will bet on workers not wanting to go through these gruelling processes and either offer workers desultory sums, or don't engage in the mediation at all.

Mechanisms that do not recognise and make adaptation to these specific risks for migrants are unlikely to provide workers with an effective remedy. In contexts where workers lack bargaining power and have no realistic alternative, they may all too often feel their only choice is to accept a compromise settlement that surrenders much of their entitlements under the law. This in turn perpetuates poor practices by employers and recruiters. It is true that there are good practical reasons for states to provide quick, simple mechanisms for workers to raise grievances and claim back unpaid wages, illegally charged recruitment fees or other entitlements. Lengthy court processes are likely to be unattractive to migrant workers. However, migrant workers should not be expected to trade off basic rights (to be paid what they are actually owed) for the sake of convenience. States should design mechanisms that deliver remedy simply and quickly, where cases are straightforward. In destination states, grievance mechanisms must provide a simple means for workers can secure their immigration status and potentially find new work for the duration of

the process. Governments should also explore the use of technology, where feasible, to bridge geographical barriers that can make it impossible for workers who have return to their home countries to bring a case against employers, and open regional offices to accept and process complaints, rather than force workers to cross countries in order to lodge cases in capital cities.

In Myanmar, the labour ministry (MOLIP) has since 2013 had two complaint centres in Nay Pyi Taw and Yangon with 24/7 hotlines operated by the Department of Labour's Migration Division.<sup>226</sup> Complaints can also be made free of charge by workers to the many Labour Exchange Offices (LEOs) in Myanmar, or to their agent, MOEAF or the Labour Attache in Thailand. Where these cannot be resolved locally, they are forwarded to MOLIP. In most instances, MOEAF - the federation of recruitment agencies, also the quasi-regulator - will attempt to "settle" the dispute, whether it is between worker and employer or worker and agency. Where negotiations do not lead to a resolution, a "formal investigation team" is established including a senior official of the state or provincial Department of Labor office along with LEO/ MOEAF officials. According to a World Bank study, such teams are rarely formed.<sup>227</sup> Senior office-bearers of MOEAF own and run recruitment agencies, presenting obvious conflicting interests when attempting to "resolve" a situation with employers in Thailand. On one hand they are responsible for protecting the rights of the worker they sent, but on the other hand, they also do not want to antagonise the employer. As one union representative explained, "the problem is that they are worried that if they try and take some action, they will not get the demand in future. If they file a case and it gets big, the employers would be angry towards them and would not give them any more demand."<sup>228</sup> One civil society representative told us that, "the only thing [workers] get [from the complaints process] is the refund of recruitment fees they paid. They do not get any other form of compensation for their time or the wages they lost."<sup>229</sup> The MOEAF chairman told us that the refund of excess recruitment fees was usually the desired outcome.<sup>230</sup>

Statistics on cases taken to Myanmar courts are not available, but a civil society representative did not think

226. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 103.

227. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 129.

228. Name and organisation withheld, interview, 25 March 2020.

229. Name and organisation withheld, interview, 20 February 2020.

230. Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020.

there were many cases filed in courts, even though trade unions and organisations had started using it more in recent years. A trade union representative told us that in 2019 their union helped to take 51 cases to court in regard to brokers. They noted that cases in court are complicated, in part because of jurisdiction issues. With payments often made in Yangon, cases must be filed there: “a worker from Chin state must come to north dagon [a Yangon neighbourhood] to file a complaint. Who would be able to come? It is impossible to attend hearings from Kalay to Yangon [nearly 1000 kilometres]”.<sup>231</sup>

Thailand has a complex and fragmented setup for complaints. Complaints with respect to recruitment under the Foreign Workers Ordinance can be taken up by regular migrants with the Department of Employment (DOE).<sup>232</sup> The Labour Protection Act 1998 provides all workers in Thailand the right to register complaints with the Department of Labour Protection and Welfare (DLPW) on a range of issues including related to working hours, payment of wages and harassment.<sup>233</sup> Additional access to civil claims and criminal complaints is also available to documented migrant workers.<sup>234</sup> With global attention on the fisheries sector, the Thai authorities have introduced significant measures to improve access to grievance redressal for workers in this sector. These have included Migrant Workers Assistance Centers (MWAC) which can receive grievances; a fisheries worker centre for victims of forced labour and abuse established by DLPW with the Labour Rights Promotion Network Foundation (LPN); and online chat-groups, a website, a mobile app and a phone hotline to provide support and receive complaints.<sup>235</sup> The Anti-Trafficking Act specifically includes a provision to allow trafficked persons to remain in Thailand temporarily for the purpose of accessing remedies.

In practice, according to the ILO, migrant workers have much more difficulty accessing grievance mechanisms than Thai workers, due to lack of awareness of their rights, language barriers, discrimination, wariness of accessing government services, and fear of employer

retaliation.<sup>236</sup> An ILO study in 2017 shows that while migrant workers from Myanmar were the most likely of all migrants to seek assistance with respect to migration issues (58%) or labour concerns (39%), they typically sought the assistance of family and friends and did not rely on the formal Thai mechanisms.<sup>237</sup> However, according to a DLPW official, between 2017 and 15 September 2020, they received approximately 10,000 complaints from migrant workers filed online or in person with labour inspectors, while a further 300,000 calls were received on their hotline. The majority of the workers complaining were from Myanmar. Nonetheless, only 80 official written complaints were taken forward from these 300,000 calls.<sup>238</sup>

The small number of workers who complain to DLPW about labour abuse prefer to avoid court, mostly due to costly and lengthy legal proceedings. This is often because the workers’ permission to stay in Thailand is tied to their employment and the long process effectively denies them remedy, as migrants must return home regardless of whether a resolution was reached. The DLPW prioritises mediation of such disputes over the provision of adequate remedy. A Chiang Mai based staff person with a Thai NGO focused on the legal rights of migrant workers told us that even if workers want to take matters to court, mediation is encouraged by the authorities and out-of-court settlements are common, often to the detriment of workers.<sup>239</sup> A DLPW official accepted that workers often accepted low compensation amounts to withdraw the complaint because of the difficulties they face without income.<sup>240</sup> Retaliation against workers and those supporting them is frequent, with migrant workers facing threats of being fired and informally ‘blacklisted’ amongst local employers. Such reprisals are more serious in cases involving large companies that reach the courts, and workers risk counter-cases for defamation, which discourages complaints.

Nepal’s Foreign Employment Act (FEA) provides a framework for migrant workers seeking redress for recruitment-related abuses both at home and abroad. However, a nexus of financial, geographical and personal obstacles discourage many victims from

231. Name and organisation withheld, interview, 25 March 2020.

232. Winrock International, “Labor Abuse Complaint Mechanisms in Thailand,” (March 2020), 10.

233. [The Labour Protection Act, 1998](#)

234. Liberty Global Asia 2018 “Turning Possibilities into Realities,” (2018), 32.

235. ILO Committee, “Comments adopted in 2020 - Thailand,” (2021).

236. ILO, “Access to justice for migrant workers in South-East Asia,” (2017): 17.

237. ILO and IOM, “Risks and rewards: Outcomes of labour migration in South-East Asia,” (2017): 38, 58.

238. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.

239. Sugarnta Sookpaita, HRDF, interview, 9 March 2020.

240. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.

filing complaints, or lead to them either abandoning complaints or accepting mediation processes that yield relatively small sums in compensation. This is particularly the case for female workers who have migrated informally for domestic work. Within Nepal, the FEA mandates a range of government bodies to investigate complaints against recruiters, affording them powers to oversee mediations, require payment of compensation, issue fines, withdraw licences, and even sentence perpetrators to prison terms. Many migrant workers are not aware of these rights, and for those who are and who pursue claims, the process is lengthy, complicated and expensive – often involving travel to Kathmandu. Government data suggests that the number of complaints made by migrant workers is very low compared to the number of migrant workers returning each year and does not reflect the scale of abuse. For example, in the fiscal year 2018/2019, there were 855 complaints submitted against individuals and 1263 against recruitment agencies. Set against the figure of 756,000 recently returned migrant workers in Nepal of working age, this constitutes a remarkably low rate of complaints.<sup>241</sup> An Amnesty 2017 report cited the case of a worker who was claiming US1124 from his recruiter, but accepted US290 in a so-called “mediation” process after being intimidated by the recruiter, who told him he would otherwise “receive nothing”.<sup>242</sup> The government recognised in a 2020 report that “sufficient human and financial resources” need to be invested in all institutions handling grievances for migrant workers, to ensure a timely response and follow-up.<sup>243</sup> Authorities have little capacity to conduct investigations, and even if victims win compensation at the Foreign Employment Tribunal (FET) level, they must spend more time and money obtaining an enforcement decision from district courts. All the while, complainants have little to no protection against threats or intimidation from recruitment agencies, and no access to state-funded legal aid, forcing them to rely on help from civil society. As a result, most accept low settlements through mediation.

Lack of information is a further reason why workers are unable to access remedy. The Foreign Employment Act provides for the use of Nepal’s Migrant Welfare

Fund, which was established to compensate workers and provide assistance to migrant returnees or to their families.<sup>244</sup> This is something few workers avail of, in part because few are aware of their right to access it. Fewer than 1% of workers and their families interviewed by the National Human Rights Commission in 2019 were aware of its existence, even though all migrants are legally required to make a contribution before departure, and the funds can be in theory used for compensation to workers who sustain major injuries or illnesses abroad, or to provide financial assistance to the families of deceased migrants.<sup>245</sup> The Nepali authorities have been widely criticised for not using the Fund to provide assistance to workers abroad, including those stranded in destination countries during the Covid-19 pandemic.<sup>246</sup>

Kuwait’s domestic workers and private sector laws provide for free access to a grievance mechanism, which envisages that most labour disputes will be settled within one month through a process of mediation, with any unsettled disputes then referred to the courts. In reality, however, the resolution of disputes can be slow and costly, and the system is weighted firmly against complainants. There are significant language barriers, since all documents need to be submitted in Arabic, and very few pro bono interpreters are available in the Public Authority of Manpower’s labour relations or domestic work departments and in the courts.<sup>247</sup> Filing a complaint can be expensive, since there is very limited access to free legal aid, and little knowledge among workers of the basic free assistance available. The process can be very slow, since grievances that are not resolved at the mediation stage may take up between one and three years to be addressed by the courts. The fear of retaliation is a major factor in discouraging workers from complaining in the first place, given Kuwait’s sponsorship system. One civil society group that supports migrant workers in Kuwait has noted that, “many (workers) are afraid because they are worried that the employer will kick them out of the accommodation or that they will not receive their pending salaries or end of service payment.”<sup>248</sup>

241. MOLESS, “Nepal Labour Migration Report 2020”, (2020): 57, 37.

242. Amnesty International, “Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepal Migrant Workers”, (2017): 26.

243. MOLESS, “Nepal Labour Migration Report 2020”, (2020): XVIII.

244. Foreign Employment Act, 2007, Section 33(1,b). Both migrant workers and recruitment agencies are required to make financial deposits into the fund during the visa processing stage, which can then be used to provide workers with assistance and compensation.

245. MOLESS, “Nepal Labour Migration Report 2020”, (2020): XVIII.

246. The Kathmandu Post, “Supreme Court orders government to use welfare fund to repatriate Nepali workers stranded abroad”, (17 June 2020).

247. Interview with ILO official, 12 December 2019, remote interview with Migrant-Rights.Org representative, 13 October 2020, remote interview with representative of Social Work Society, 27 October 2020

248. Migrant-Rights.org, *Job loss and wage theft: The grim reality of Kuwait’s F&B sector*, (19 April 2021)

In this context, the Kuwaiti authorities have in recent years taken a number of steps to improve accessibility to the grievance mechanism. In 2014, they established a shelter for women domestic workers who are at risk and wish to be either repatriated to their countries of origin or change employers, and, with the support of civil society, they set up legal services there to assist them in filing complaints against their employers.<sup>249</sup> In January 2018, they launched the Mobile Labor Disputes Office to enable workers in remote areas to file complaints against employers without having to take time off work to visit PAM's offices or cover transportation costs. The mobile unit includes a team of investigators, inspectors, translators, lawyers, and volunteers. PAM also set up a hotline for women migrants and launched online services that allow workers and employers to submit complaints and track them electronically. The system is supposed to automatically alert workers if an employer files an absconding charge against them, notify the relevant embassy, and ensure that users are able to challenge any settlement incurred.<sup>250</sup> With the sharp rise of employment-related complaints about non-payment of wages following the outbreak of Covid-19 in March 2020, PAM also set up a WhatsApp number to enable its emergency team to receive both complaints and inspection requests.<sup>251</sup> An NGO told us that the mobile phone application was unable to cope with the large number of complaints it received.<sup>252</sup>

Despite these initiatives, the US State department said in 2020 that, "the government was more effective in resolving unpaid salary disputes involving private sector laborers than those involving domestic workers."<sup>253</sup> A 2019 report by Migrant-Rights.org found that women domestic workers only attempted to file official complaints if they received support from their embassies, recruitment agencies or community groups. They may be unaware of grievance processes or lack trust in the Kuwaiti justice system, and additionally they have restricted mobility and often can only leave their employers' homes once a week, and may not have private access to a phone.<sup>254</sup> While the number of

complaints filed to the Domestic Workers Department appears to have increased since the 2017 Domestic Workers Law was adopted, the majority of cases are settled through mediation. According to PAM's data, between April and November 2019, the Domestic Workers Department received 2,087 complaints, of which only 256 were referred to courts, and "1,232 were settled amicably."<sup>255</sup> Such amicable settlements are usually in the form of financial compensation.

Qatar came under criticism from the UN Special Rapporteur on migrants in 2014 for the inadequacies of its labour complaints and labour courts system, where extensive delays to rulings, court fees, and the need to obtain separate enforcement decisions, all colluded to prevent migrant workers' access to redress.<sup>256</sup> It has since engaged in substantial reforms, establishing the Labour Dispute Resolution Committees in 2018, an attempt at blending the speed and convenience of mediation processes with the judicial authority of full courts. The Committees are in their third year of operation - they do not levy court fees, provide free translation during hearings, hold some sessions outside of most migrants' working hours, and were designed to issue decisions that have executory force within a period of six weeks. In 2018, the Workers' Support and Insurance Fund (WSIF) was established to assist migrants financially while they pursue labour disputes, including providing relief for workers who have won their cases at the Committees but who have failed to secure any payment from their employers. In such cases, the WSIF is meant to pay the money owed to workers directly and then seek reimbursement from the employer. The Fund became operational in 2020 and as of August that year, it had apparently disbursed 14 million riyals (USD 3.85 million) to 5,500 workers.<sup>257</sup>

The Labour Dispute Resolution committees and the WSIF have resolved some of the problems associated with the previous mediation process. Nevertheless, delays have continued to be a serious problem. The court cannot accept group cases, meaning that cases

249. UN Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21", A/HRC/WG.6/35/KWT/1, (November 2019): 23.

250. US Department of State, "2020 Trafficking in Persons report: Kuwait", (2020).

251. Arab Times, "For labor complaints – complain over WhatsApp 55629845", (9 May 2020).

252. Representative of Migrant-Rights.org, remote interview, 13 October 2020.

253. US Department of State, "Kuwait 2019 Human Rights Report", (2020): 39.

254. Migrant-Rights.org, "Lived experience of migrant women: Qatar, Bahrain, and Kuwait", (2019): 34.

255. UN Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21", A/HRC/WG.6/35/KWT/1, (November 2019): 16.

256. UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Qatar, (23 April 2014): 12.

257. ILO governing body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 4.

involving large numbers of workers almost identically subjected to wage theft by the same employers are split up, forcing migrant workers to each bear the burden of taking their own cases and slowing the process significantly. The ILO office said in its 2020 update that it would work with ADLSA (the labour ministry) on multi-worker complaints.<sup>258</sup> Amnesty International's research into the effectiveness of the Committees, published in 2019, noted that they appear to have reduced the time in some cases, but that typically judgements still took three months and in some cases as long as eight months.<sup>259</sup> In 2020 Human Rights Watch also documented cases taking as long as eight months to resolve, "which can be incredibly costly for migrant workers".<sup>260</sup> These delays force workers to make difficult decisions about whether to continue pursuing remedy or to return home unpaid and with greater debts. In its 2020 update, the ILO noted various plans to "ensure a more efficient processing of complaints" as well as working with the Qatari authorities to ensure "rapid enforcement of agreements / adjudications through the Workers' Support Fund".<sup>261</sup> A 2019 ILO review of the Wage Protection System (WPS), which holds electronic evidence of the non-payment of wages, recommended a greater use of WPS data in disputes resolution at the Committees as a way to expedite the process stating that, "the information provided in the WPS should be more than sufficient to put the burden of proof squarely on the employer to provide evidence or testimony to the contrary", and that "workers should not be required to travel and be physically present to advance their case through a lengthy adjudication process".<sup>262</sup>

Retaliation is a particular concern for domestic workers, who typically live in the homes of their employers. Amnesty International has noted that there is a lack of shelters for domestic workers in Qatar. In 2019 the authorities opened a government-run shelter for victims of human trafficking, including domestic workers, but it had yet to become fully operational at the time of writing. Eligibility criteria were not clear and there was no walk-in centre.<sup>263</sup> Separately, the labour ministry

(ADLSA) in 2021 launched an online platform to enable workers to submit complaints against employers, including as "whistleblowers", meaning that employers are not notified that the complaint has been made.<sup>264</sup> Migrant-Rights.org said that, "the ability to file a complaint without revealing personal information will go a long way in reporting more violations as a lot of workers fear retribution if they file a formal complaint", though noted that the requirement for complainants to provide a valid Qatari mobile number may dissuade some migrant workers.<sup>265</sup>

The Philippines places a heavy emphasis on the importance of conciliation and mediation and all civil cases are first processed in line with its Single Entry Approach (SEnA), which is a 30-day mandatory conciliation-mediation that "seeks to provide a speedy, impartial, inexpensive, and accessible settlement services for unresolved grievances and complaints arising from employer-employee relations."<sup>266</sup> The SEnA reflects stated Philippines Overseas Employment Administration policy "to strengthen conciliation and mediation as primary modes of dispute resolution." In cases of "illegal recruitment", which is to say alleged criminal offences that carry heavy prison sentences akin to human trafficking offences, the POEA provides free legal assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling during preliminary investigations and hearings.

At a regional level, the quasi-judicial National Labor Relations Commission (NLRC) deals with civil cases. The process for filing a complaint with the NLRC is compulsory arbitration, followed by the submission of position papers, where the parties lay out their arguments. The NLRC then has 90 days to hear and decide the claim and financial damages must be paid within 30 days of the judgment.<sup>267</sup> Workers who win their cases have their lawyers' fees deducted from their settlement, but workers who lose cases are liable for costs, and workers also have to pay some indirect costs,

258. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9.

259. Amnesty International, "All Work, No Pay. The struggle of Qatar's migrant workers for justice", (2019): 6.

260. Human Rights Watch, "How can we work without wages? Salary abuses facing migrant workers ahead of Qatar's FIFA World Cup 2022", (August 2020).

261. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 8-9.

262. ILO Project Office for the State of Qatar, "Assessment of the wage protection system in Qatar", (June 2019): 27.

263. Amnesty International, "Why do you want to rest? Ongoing abuse of domestic workers in Qatar", (October 2020): 29.

264. [Unified Platform for Complaints and Whistleblowers](#)

265. [Migrant-Rights.org, Qatar launches whistleblower platform](#), (17 June 2021)

266. National Conciliation and Mediation Board, [Single ENtry Approach \(SENA\)](#)

267. [National Labor Relations Commission](#)



such as transport and food and photocopying costs. Workers' rights groups told us that the main deterrent to workers taking cases is not cost, but rather the length of time that cases take to resolve.<sup>268</sup>

Civil society representatives told us that only a very small portion of Filipino migrant workers avail of the complaints and grievance mechanisms available to them. Ellene Sana of CMA told us that a variety of factors combined to dissuade workers from pursuing remedy, including their desire not to antagonise their recruitment agent, and the realisation that they may need a lawyer. Many workers don't take claims in the first place, and those who do often drop or settle cases as the length or the complexity of the process becomes apparent.<sup>269</sup> According to data provided by the National Labour Relations Commission, for the period from 2015 to 2017, 73% of claims filed with the NLRC were resolved through settlements rather than decisions based on the merits of the case.<sup>270</sup> The Centre for Migrant Advocacy has found that "NLRC money claims are disposed through settlements and not through decisions on the merits of the cases... Often, [migrant workers] are forced to settle for lesser amounts of money."<sup>271</sup> In Taiwan, Filipino workers are similarly often unable for practical reasons to wait for the formal complaint process to run its course, and as a consequence accept relatively paltry sums in settlement agreements. In response to this problem, which afflicts workers from the Philippines in many destination states, the ILO is piloting a project to allow Filipino workers to give video testimony in civil cases initiated in Hong Kong.<sup>272</sup>

Since 2009, Taiwan has provided migrant workers with access to a 24-hour consultation and protection hotline. The 1955 Hotline, as it is known, provides free advice services to foreign workers in their own languages and also allows them to make formal complaints against abusive employers or recruitment agents. Taiwan's Vice-Minister of Labour told us that he regarded the

1955 Hotline as one of the Taiwanese authorities' positive achievements in the realm of migrant worker protection.<sup>273</sup> A Philippines Labour Attache in Khasiung told us that the hotline was, in addition to strong laws and a robust inspection system, an area where Taiwan performed well in migrant worker protection.<sup>274</sup> One NGO also said that the introduction of the 1955 Hotline had led to improvements, saying that it had for the first time opened up a direct line between migrant workers and the Taiwanese authorities, whereas prior to its introduction workers relied on their recruitment agents when they wanted to make complaints.<sup>275</sup> Between the start of 2015 and the end of June 2020, the hotline received a total of 133,111 complaints (more than 500 per week) about a range of issues, including problems with salaries and contracts.<sup>276</sup>

When the 1955 hotline receives complaints, they designate the case to the municipal Labour Bureau and they take the employee's passport number in order to locate their employer's address.<sup>277</sup> When the Labour Bureau receives complaints they notify the employer and the recruitment agent and ask them to negotiate with the employee. Calls to the hotline can also result in cases being reported to criminal investigating authorities - 42 possible trafficking cases were reported to investigators between 2015 and 2020 as a result of calls made to the hotline. Workers can submit complaints directly to the authorities, but the Ministry of Labour data indicates that most tend to use the hotline - only 505 complaints were lodged directly with the Ministry of Labour in the same time period.<sup>278</sup> The Ministry of Labour told us that in 2020, calls to the hotline resulted in the recovery of wage arrears amounting to NT\$ 116,075 (USD 4,146) and 2,985 migrant workers transferring employers.<sup>279</sup> However, several NGOs that told us that knowledge and use of the 1955 Hotline varies across sectors, with manufacturing and domestic workers using it far more often than those in the fishing sector.<sup>280</sup>

268. Remote interview with Ellene Sana, Center for Migrant Advocacy, 30 June 2020.

269. Remote interview with Ellene Sana, Center for Migrant Advocacy, 23 October 2020.

270. Centre for Migrant Advocacy, "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", (2018): 2-3.

271. Centre for Migrant Advocacy, "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", (2018): 16.

272. Remote interview with Hussain Macarambon, International Labour Organisation, 13 July 2020.

273. Interview with San Quei Lin, Vice-Minister of Labor, Taipei, 18 February 2020.

274. Interview with Rustico Dela Fuente, Labor Attache, Philippines Overseas Labor Office, Kaohsiung, 19 February 2020.

275. Interview with Rerum Novarum, Taipei, 20 February 2020.

276. Data provided to FairSquare by the Ministry of Labor of Taiwan, 26 August 2020.

277. Interview with Lennon Ying-Dah Wong, Serve the People Association, 20 February 2020.

278. Data provided to FairSquare by the Ministry of Labor of Taiwan, 26 August 2020.

279. Letter from Ministry of Labor of Taiwan to FairSquare, 17 May 2021.

280. Interview with New Thing, February 11, 2020. Interview with Rerum Novarum, Taipei, 20 February 2020. Interview with Lennon Ying-Dah Wong, Serve the People Association, 20 February 2020.

We spoke to numerous Filipino migrant workers in Taiwan who told us of their experience with the Hotline. Most described a system that can be effective in extricating migrant workers from jobs where they are abused, overworked or underpaid. A 37-year old fisherman told us that Taiwanese police had rescued him from a highly abusive employer after he called the 1955 Hotline to report very serious criminal abuses on board a vessel.<sup>281</sup> Most of the cases we documented related to less abusive situations, but it is clear that the 1955 Hotline can be effective if workers are able and confident to call it, and know how to make a complaint when they do. Several workers told us that their complaints, in cases relating to pay, working hours and contract violations, resulted in the authorities investigating and providing a remedy of sorts, typically in the form of back-pay or allowing the worker to transfer jobs. However, the specific role that recruitment agents play, acting as intermediaries between employers and their foreign workers, means that they can obstruct migrant workers' efforts to seek remedy or change employers in the case of abusive working conditions or contractual violations. One 28-year old Filipina who had worked in Taiwan's electronics sector told us that Taiwanese recruitment agents discouraged her from calling the 1955 Hotline to complain about her employer's efforts to force her resignation, warning her that if she did so recruitment agents would be notified of her complaint and she would be identified as a troublemaker, making it difficult for her to find alternative employment.<sup>282</sup>

In cases where workers want to bring civil or criminal complaints against their employers, recruitment agents, or lending agencies, Taiwan provides free legal aid. In 2015, amendments were made to the law that enabled free legal assistance to be provided to workers who are undocumented. The Taiwanese government funds the Taiwan Legal Aid Foundation (TLAF) and they provide legal assistance to between 2,000 and 3,000 foreign workers every year. The TLAF told us that the most common issue that arose with cases involving migrant workers were related to judges or prosecutors not availing of interpreters that are made available for cases involving migrant workers. This, they told us, can lead to cases where workers with only basic Mandarin are

unable to either understand proceedings or participate in them effectively.<sup>283</sup>

Mechanisms for Mexican migrant workers to hold exploitative recruiters accountable are not fully developed. Under the law, labour recruiters are liable for repatriation costs if a worker is deceived regarding their working conditions overseas, but the law and the regulations make no provision for other forms of remedy or compensation for migrant workers. Legally, migrant workers have access to two mechanisms to file grievances related to labour recruiters. The first is by requesting an inspection of the labour recruiter through Mexico's Ministry of Labour and Social Welfare (STPS). The General Directorate of Federal Labour Inspections (DGIFT) under the STPS is responsible for enforcing provisions related to breaches by labour recruiters.<sup>284</sup> The second is by filing a complaint with the Public Ministry (Ministerio Público) if the migrant worker or job seeker has been a victim of fraud.<sup>285</sup> There is no cost to making complaints through either channel.

Reports from worker organizations also confirm that both labour inspections and criminal investigations of licensed and unlicensed labour recruiters are rare. A 2019 report by CDM cites the case of a recruitment agency Chambamex, which defrauded more than 3,000 Mexican workers in 19 states out of more than 20 million pesos (approximately US\$1 million) between 2012 and 2013 with the promise of jobs in the United States and Canada. The report notes that "despite the scale of the fraud, Mexican authorities systematically failed to investigate complaints against Chambamex. Only one attorney general's office in one of the affected states processed and investigated the complaints."<sup>286</sup> CDM told us that in a relatively small number of cases, they have been able to help workers to recover fees charged to workers and job seekers through various legal channels, including through complaints to the STPS or a Public Ministry, and voluntary compensation by recruiters. They also told us that when identifying information is available (in particular, an address), the STPS has conducted inspections with the aim of closing down fraudulent actors. However in many cases, workers only have a WhatsApp number for recruiters.<sup>287</sup>

281. Remote interview, 21 August 2020.

282. Remote interview, 23 August 2020.

283. Remote interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, 10 July 2020.

284. *Secretaría del Trabajo y Previsión Social - Dirección General de Inspección Federal del Trabajo*

285. Centro de los Derechos del Migrante, "Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment", (April 2019): 32.

286. Centro de los Derechos del Migrante, "Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment", (2019): 20.

287. Rachel Micah-Jones, Centro de los Derechos del Migrante, remote interview, 19 April 2021.

A 2015 Solidarity Center report documented a formal complaint made against fraudulent recruiters in 2014 by civil society groups ProDESC and the Sinaloa Workers' Coalition.<sup>288</sup> Updates provided to us by ProDESC in January 2021 detail protracted legal processes around the case, which was still ongoing when Mexican courts closed in 2020 due to Covid-19.<sup>289</sup> As well as the limited prospects of success, the fear of being blacklisted by recruiters is a factor that discourages migrant workers from making complaints. Workers involved in the ProDESC / Sinaloa Workers' Coalition case were blacklisted by employers and recruiters for their activism, and others "have become afraid to step forward." The Solidarity Centre notes that the group was careful to choose its first case in a distant state: "such a target raises far fewer concerns of retaliation than taking on a local recruiter with relationships in the community, which the workers fear would lead directly to blacklisting."<sup>290</sup> ProDESC told us that, "most of the time the recruiters are part of the communities. That is why it's so complicated."<sup>291</sup>

In Canada, there are a range of mechanisms for workers to file grievances, all of which are free. The responsible agency depends on the type of violation by the employer, immigration consultant, and/or labour recruiter. At a federal level, if the employer is non-compliant in relation to the requirements that led to the hiring of the migrant worker, workers or others can submit "tips" or complaints to ESDC, who can initiate inspections of employers in response.<sup>292</sup> All provinces also have authorities to inspect employers and labour recruiters in relation to breaches of employment standards, workplace safety, and labour recruitment on receipt of complaints by workers. Officials of the largest province, Ontario, told us that while it has powers to carry out proactive inspections as well, the province conducts the large majority of its inspections in response to worker complaints. Complaints against registered immigration consultants are received by a national regulator, while unlicensed consultants are investigated by the Canada Border Services Agency (CBSA). Migrant

workers can also bring cases against employers under provincial human rights codes if they can demonstrate discrimination in, for example, their access to housing or employment. Workers who have support from civil society organisations or unions have had some success in bringing severe cases to court to win more significant compensation payments. In 2015, after a 7 year case, two Mexican migrant workers won CAD 200,000 (USD 166,000) at the Ontario Human Rights Tribunal after being subjected to repeated sexual harassment and abuse by their employer at a fish processing factory.<sup>293</sup>

This range of options creates a complexity that can be a barrier for workers. As one study puts it, "when a temporary foreign worker has a concern or a grievance, the particulars of the issue dictate the path to resolution, whether it is the courts, a provincial administrative body (such as an employment standards officer or workers' compensation board), a federal administrative body (such as CIC) or a public or private social service. All this makes it hard even for a legal expert to navigate through the appropriate channels."<sup>294</sup> An Ontario social worker told us that, "for an exploited migrant worker, they know something bad has happened. Where that fits along our legal remedy system, even I am not always sure."<sup>295</sup> A union representative noted that the process of gathering supporting information and filing a federal complaint are complex, and generally require that migrant workers receive assistance from civil society organizations to undertake the process.<sup>296</sup>

Complaints mechanisms vary but it is generally the case that inspections are triggered when workers make complaints federally or provincially. Such inspections can lead to "corrective actions", including employers being required to provide compensation to migrant workers, generally in relation to non-payment or underpayment of wages. Delays can be a problem: in 2017/18, the average length of federal administrative inspections was 270 days for seasonal agricultural worker program (SAWP) cases and 213 days for other cases.<sup>297</sup> This presents a significant obstacle for migrant workers seeking remedy, particularly

288. Jennifer Gordon, "Roles for Workers and Unions in Regulating Labor Recruitment in Mexico", Fordham Law School, (22 January 2015): 10.

289. Written updates from ProDESC, on file with FairSquare

290. Jennifer Gordon, "Roles for Workers and Unions in Regulating Labor Recruitment in Mexico", Fordham Law School, (22 January 2015): 10.

291. Paulina Montes de Oca and Eduardo Villareal, ProDESC, remote interview, 15 December 2020.

292. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, section 209.5, 2002.

293. CanLII Connects, "Vulnerable Migrant Workers Assaulted and Taken Advantage Of By Employer: O.P.T. v. Presteve Foods Ltd.", (27 December 2015).

294. Delphine Nakache and Paula J. Kinoshita, IRPP Study, "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?", (5 May 2010): 8.

295. Shelley Gilbert, remote interview, 2 February 2021.

296. Santiago Escobar, United Food and Commercial Workers (UFCW) union, remote interview, 18 February 2021.

297. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018). Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

where seasonal workers may be back in their country of origin by the time that an inspection is completed. Such issues are exacerbated by Canada's Privacy Act and ESDC inspection practices, which means that authorities do not update migrant workers or advocates on whether action is taking place, unless and until there is a final, public determination of non-compliance. A Mexican consular official told us that this can discourage workers from filing complaints, since they feel their complaints are not followed up on.<sup>298</sup> Delays may be reported at provincial level - a 2016 Ontario provincial review found that, "budgetary considerations do not permit the hiring of enough [Employment Standards Officers] to complete the investigation of all complaints in a timely fashion while also maintaining a significant proactive presence. The result is that there is a backlog of uninvestigated and unresolved complaints".<sup>299</sup>

Another concern is the risk of retaliation, in particular repatriation, may have in dissuading migrant workers from lodging claims. A lawyer representing migrant workers at a small claims court in Ontario told us, "you're not going to [submit a claim] if you rely on your employer. The problem is most extreme with closed work permits.... You could have the best tribunals in the world but who is going to use them?"<sup>300</sup> In an attempt to respond to these concerns, the government introduced the Open Permit scheme for vulnerable workers in 2019, "to provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer".<sup>301</sup> A government official told us that immigration officials will make a decision on whether abuse is likely to be happening based solely on information provided by the migrant workers, and they will only initiate an inspection of the employer after they have issued an open work permit to the migrant worker. Between June 2019 when this initiative was introduced, and December 2020, 800 open work permits for workers in situations of abuse were issued by IRCC.<sup>302</sup>

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## Specific recommendations

In far too many cases, migrant workers raising grievances have to give up and drop cases because of

the long delays, or settle in unfair mediation processes for a fraction of what they are owed and what they could be reasonably due in damages. Many may not ever make claims in the first place because of the fear of being blacklisted by recruiters, or being repatriated or reported by employers. Mechanisms that do not recognise and are not suited to the specific risks for migrants are likely to fail to provide workers with an effective remedy. Origin and destination states should take a series of steps to address this:

- 5.1. Provide simple and clear grievance processes, and consider the introduction of fast-track processing to reflect the particular vulnerability of migrant workers to delay and its impact on their ability to pursue remedy.
- 5.2. Where state-run mediation processes exist, appoint skilled, trained and impartial mediators. Ensure that no employer or recruitment agency associations are involved in the administration or funding of mediation processes.
- 5.3. Ensure migrant workers, including undocumented workers, have the right to adequately-funded legal aid for labour cases against employers and recruiters, and are able to access legal aid services.
- 5.4. Ensure - in destination countries - that the status of undocumented migrant workers raising grievances is not shared with immigration authorities.
- 5.5. Develop mechanisms to facilitate the filing of anonymous complaints.
- 5.6. Provide sufficient walk-in shelter facilities for domestic workers / live-in caregivers to be able to leave employers in order to lodge grievances safely.
- 5.7. Explore the feasibility of video-technology and other cooperative mechanisms, in allowing returnee workers to access judicial and non-judicial grievance mechanisms in destination states.

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298. Government of Canada, "Report abuse or misuse of temporary foreign workers: What to tell us"; Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020.  
 299. Ministry of Labour, Training and Skills Development, "Changing Workplaces Review Special Advisors' Interim Report", chapter 5.5, (27 July 2016).  
 300. Remote interview with Louis Century, 20 January 2021.  
 301. Government of Canada, "Open work permits for vulnerable workers"  
 302. Presentation by Glen Bornais, "Migrant Worker Project Metro Vancouver & Fraser Valley Regional Meeting", 30 November, 2020.

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