



THE JUSTICE FOR WAGE THEFT CAMPAIGN

Migrant Forum in Asia, through its global campaign, the Justice for Wage Theft (JFWT), and with the help of its partners, has been systematically documenting cases of wage theft since its launch in 2020 and has published three (3) volumes of the issue demonstrating its impact on the lives of migrants. The reports, entitled “Crying Out for Justice: Wage Theft Against Migrant Workers During COVID-19”, denotes a huge number of wage theft victims during the pandemic as well as the estimated cost of unpaid wages and benefits. These reports only present a small proportion of migrant workers who have experienced wage theft due to a lack of political commitment to data gathering.



WAGE THEFT

refers to the unlawful intentional under- or non-payment of an employee’s wages or entitlements by their employer or recruitment agency. It spans from unauthorized deductions from employees’ wages to the underpayment or delayed payment of wages, overtime, termination pay and entitlements such as sick leave and annual leave – or no payment at all. [1]

as of December 2021



2,604 cases of wage theft across Asia

recorded through the JFWT-Uwazi platform [2]

as of June 2022



\$19,519,840

total amount of wages lost

Of these, there are

50

group cases amounting to

1,219

workers in total, with an average of

24-25

victims per group case

JFWT documenters recorded the number of group cases below of workers coming from the following countries:



NEPAL

26



INDONESIA

7



INDIA

11



PHILIPPINES

6



35 total wage-theft related complaints filed by MFA

3 national jurisdictions

1 state jurisdiction

MFA filed wage theft-related labour complaints in three (3) national jurisdictions and one (1) state jurisdiction. There were a total of thirty-five (35) cases filed in various jurisdictions. Most of the cases have reached a partial resolution. However, the process have been arduous and proved to be a hurdle for migrant workers who cannot spare much time and resources on such processes because they need to send money back to their families.



JUSTICE FOR WAGE THEFT



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WHEN IS JUSTICE ELUSIVE?

At the beginning of 2021, MFA sought to assess the existing justice mechanisms to understand its responsiveness and promptness in resolving wage theft cases filed by migrant workers and their representatives.

The Justice for Wage Theft campaign has been calling for an establishment of a transitional justice mechanism that is expedited, accessible, affordable, and efficient for migrant workers who are seeking redress after experiencing wage theft. Along with a transitional justice mechanism, the campaign has been advocating for the reform of existing national justice mechanisms that are unable to respond to the influx of cases.



35 total wage-theft related complaints filed by MFA **3** national jurisdictions **1** state jurisdiction

The following challenges highlighted may apply to only select jurisdictions and not universally across all jurisdictions where migrant workers access justice.

Filing Complaints

- In response to a Writ Petition filed at the High Court, the High Court reverted to the petitioner to make use of the existing mechanisms in place. Interestingly, all existing mechanisms were exhausted before filing the Writ Petition.
- The complaint can be filed in the labour court through one of the government authorities, free of charge, but it will be necessary to engage a lawyer to submit the documents and responses to the court subsequently.
- Filing complaints totally free of charge before the Labour Court is not true in all cases. In one labour case, migrant workers who become disabled due to workplace occupational accidents must pay exorbitant charges before the court to undergo a medical examination to conclude the percentage of disability.
- Complaint charges and court fees are sometimes out of the range of the complainant even if it is a minimal amount. If the worker has not been paid for a few months and, therefore has no money, the worker would not be able to lodge a complaint. Pro-bono legal aid programs, where available, do not shoulder such costs.

Employment While Pursuing the Case

- Only a one-month grace period is provided after the expiry or cancellation of the visa for finding another job and obtaining a visa in some countries. Thereafter, the worker would become undocumented/irregular ("Illegal").
- Change of employment is sometimes only possible with the consent of the original employer.
- In some cases, migrant workers are not allowed to find alternative employment while pursuing formal redress mechanisms. Once the case is closed, the migrant must leave the country.
- A worker who has no money to pay a lawyer cannot pursue the case. Furthermore, he would have to leave the country if he is unable to secure employment.
- Even though the change of employment is permitted in some jurisdictions, the procedures are cumbersome despite newly introduced regulations on mobility. In reality, the workers are not allowed to change employment even when they are not paid for months as they are not able to meet the prescribed requirements for change.

Pursuing the Case

- The Employer deliberately fails to appear for the hearing before the Court with the intent to prolong proceedings. Three chances will be given to the Employer before the case will be disposed of. For the 1st and 2nd Non-Appearance, the migrant worker has to pay for the Private Courier Service to serve the Court Notice towards the Employer, which is exorbitant.
- All the documentation is in Arabic (in the case of Gulf countries) which prevents the worker from filing a complaint online directly (even if they have the technical knowledge). Most workers have no technical knowledge.
- In some jurisdictions, undocumented workers cannot file a claim for their dues after they leave the country. Some must also obtain special passes to remain and pursue a case in the country of destination.
- While settlement is possible through mediation processes, through the involvement of local authorities/stakeholders, the worker might still get a raw deal.
- Although migrant workers are permitted to stay in the country for a short period of time after their work permit has expired, there is no certainty as to when they would be deported as 'illegal' even if they have a pending case in court.

During Recovery Procedure

- Even if the final decree is in favour of the worker, it may be difficult if the company has declared bankruptcy.
- The procedure may be time-consuming and some companies refuse to pay.
- The Employer may Appeal the final decree in a Higher Court of jurisdiction, but it will be time and resource-consuming.
- The migrant worker has to file an Execution Petition by attaching the Assets of the Employer. Carrying out this legal procedure entails charges paid to the court by the worker.
- Some courts have now appointed private agencies for carrying out the execution of court orders for recovery. This could be expensive for the workers particularly if the amount of the claim is 'small'.
- Despite the labour court issues an order within a reasonable time, there may be a long delay in getting the money through the execution court as there is a lapse of time between the two court orders.
- In some cases, migrant workers are cheated and exploited by individuals/lawyers whom they have given a Power of Attorney by not issuing the claim amount towards the migrant workers.

WHY THE NEED FOR AN EXPEDITED, ACCESSIBLE, AFFORDABLE, AND EFFICIENT JUSTICE MECHANISM?

START

Among the 35 wage theft cases filed by Migrant Forum in Asia in various jurisdictions, all have been a taxing journey for each migrant worker - each with unique challenges encountered in their pursuit of justice. The journey to achieving justice for migrant workers is one with multiple obstacles through a long, winding, and perilous road, towards a seemingly uncertain destination.

Migrant worker who has given power of attorney and currently waiting for the statutory appeal period (30 days)



in COD

Migrant worker who has given power of attorney and struggling to look for a new job in the country of destination



NEW HIRES THIS WAY

Migrant workers who have given power of attorney and are about to work or are working in a different company in the country of destination

in COD



in COO

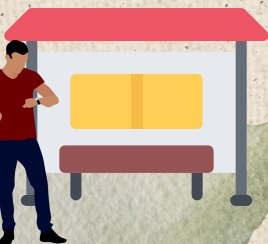
Migrant workers who have given power of attorney and are currently in the country of origin

found new job in the COO



Migrant worker who is currently in the COO but waiting for pending wage claims from employer in the COD

in COO



WAGE CLAIM WAITING AREA

settled in the COO



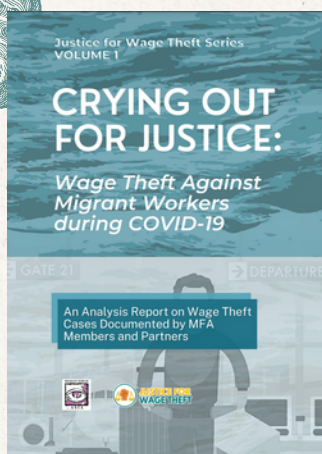
FINISH?



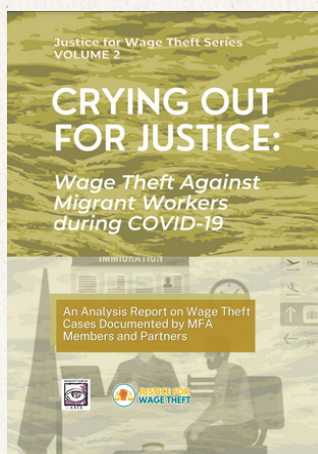


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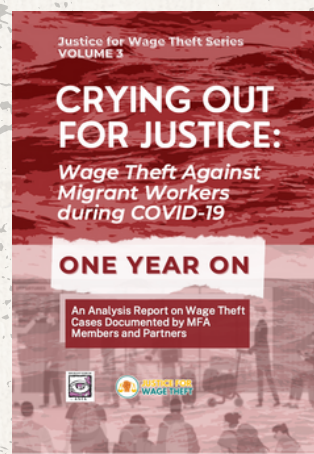
MORE FROM THE JUSTICE FOR WAGE THEFT CAMPAIGN:



CRYING OUT FOR
JUSTICE VOL. 1



CRYING OUT FOR
JUSTICE VOL. 2



CRYING OUT FOR
JUSTICE VOL. 3

Access more resources, follow news and update on the JFWT campaign and on the issue of wage theft through our online platforms:

Website: justiceforwagetheft.org

Facebook: facebook.com/justiceforwagetheft

Instagram: instagram.com/justiceforwagetheft

**SIGN THE
PETITION!**

Join us in demanding our governments to act now, to respond to the need of migrant workers, and to establish justice systems that aim to address the large volume of wage theft justly and without delay!

#SAYYESTOJUSTICE

SIGN THE PETITION THROUGH THIS LINK:



bit.ly/SayYestoJustice