

COVID-19 Pandemic:

Wage protection of migrant workers in the Arab States

ILO Migration Advisory Group (Arab States)

Discussion Note for Policymakers *

Even prior to the COVID-19 pandemic, migrant workers faced critical wage-related issues globally, and especially in the Arab States, yet the scale of the problem has vastly increased as the pandemic led to job losses, salary reductions and unplanned repatriations.

This Discussion Note for Policymakers outlines how ILO standards, including the Protection of Wages Convention, 1949 (No. 95), can support countries in the region to “build back better” – not only through more robust systems of wage protection, but also through non-discriminatory wage-setting with regard to workers of different nationalities as international recruitment resumes. Governments in the Arab States can support fair remuneration and regular payment of wages by urgently strengthening access to justice mechanisms and promoting equal treatment in respect of remuneration including equal remuneration for work of equal value, particularly for migrant domestic workers.

1. What do we know about the impact of COVID-19 on wage protection of migrant workers in the Arab States?

COVID-19 has had an enormous impact on workers generally, but the effect has been especially felt by migrant workers, including the approximately 41.4 million migrants (and refugees) in the Arab States at the start of the pandemic.¹

Although systematic data is not yet available, it is undisputed that many migrant workers have lost their jobs and left the countries where they were working, sometimes with wages and/or end-of-service benefits delayed or still owing.² Others remained employed but had their salaries reduced, whether in accordance with national legislation³ or not.

Numerous civil society organizations have voiced the concern that COVID-19 has led to a major increase in non-payment of wages, with some employers taking advantage of the pandemic to unlawfully dismiss their migrant workforce and to withhold the wages and benefits that were owed to them.⁴ In other cases, employers were alleged to have placed migrant workers on drastically reduced salaries, forced them into unpaid leave without their consent,⁵ made unlawful deductions from the salary of the worker (including for accommodation or personal protective equipment) or refused to pay for the return ticket of the worker upon termination of their employment.⁶

All countries in the region have administrative systems for handling complaints related to labour issues (usually in the form of mediation) and have access to judicial remedy through labour or civil courts. Yet, even prior to the pandemic, redress for disputes arising out of problems with wage payments had been a challenge for migrant workers in the region due to language barriers, the time required to file a grievance and the vulnerability of workers in an irregular situation. This has been exacerbated by the fact that COVID-19 has pushed many workers to leave their destination countries before being able to file a claim – in order to take advantage of amnesty programmes, or because workers would not be able to

* This document was developed as an outcome of discussions of the Migration Advisory Group (Arab States) in February 2021. The MAG serves as a think tank and advisory forum to ILO's Regional Office for Arab States to provide advice on the ILO strategy to advocate for policy change under the Fair Migration Agenda in the region. The information and opinions contained herein do not constitute an endorsement by the International Labour Office or its constituents. The MAG is supported by the Swiss Agency for Development and Cooperation (SDC).

1 United Nations Department of Economic Affairs, Population Division, “International Migrant Stock 2020”, 2020.

2 ILO, “COVID-19: Labour Market Impact and Policy Response in the Arab States”, ILO Briefing Note with FAQs, 2020.

3 Legislation in the United Arab Emirates and in Jordan during COVID-19 permitted employers to temporarily (or in the case of the United Arab Emirates, permanently) reduce wages in specific circumstances, provided there is agreement between the worker and the employer. See also Fahad L. Al-Ghalib Alsharif, and Froilan T. Malit, “Migration and The COVID-19 Pandemic in the Gulf: A Study of Foreign Expatriate Worker Communities’ Coping Attitudes, Practices, and Future Prospects in Dubai and Jeddah”, Konrad Adenauer Stiftung Regional Programme Gulf States Policy Report No. 15, 2020, which notes a culture of “wage cuts” among migrant workers, particularly in the context of hospitality, education and other service-related industries, that ranged between 25 and 50 per cent, largely to take account of employers’ economic losses.

4 For example, the Business and Human Rights Resource Centre (BHRRC), noted an increase of 275 per cent in the number of allegations of labour abuse in the GCC between April and August 2020 compared to the same period from the previous year. Non-payment of wages was cited in 81 per cent of reported BHRRC cases. See: BHRRC, “COVID-19: Spike in Allegations of Labour Abuse against Migrant Workers in the Gulf” (September 2020).

5 For example, see Equidem, *The Cost of Contagion* (2020).

6 For example, see Migrant Forum in Asia, *Crying Out for Justice: Wage Theft Against Migrant Workers during COVID-19* (2021).



find alternative employment to remain in the country while pursuing a claim against a former employer.

Many dispute-resolution systems in the region also suffered from bottlenecks and case overload, meaning that time limits for mediation or judicial settlement – where set out in the legislation – could not be met. Even prior to COVID-19, court cases, whether for migrant or national workers, could drag to several years, taking into account appeals and enforcement orders.

Due to COVID-19 precautions, many government departments, including courts and labour complaints departments, closed or significantly reduced their capacity to comply with social distancing requirements, causing even greater delays to dispute handling. Thus, many workers had little choice but to repatriate to their country of origin without waiting until the resolution of their case, or they never submitted a complaint, assuming that such a process would be futile. In particular, while those working for large or high-profile companies that failed to pay dozens of workers could have benefited from collective dispute investigations (conducted by the Ministry of Labour or by an embassy) or perhaps greater media scrutiny of their claims, migrants employed in small- to medium-sized enterprises, “day labourers” or domestic workers would have found achieving an expedited resolution far more challenging.

With many companies in the region facing drastic cash flow issues, it is also likely that some employers would not have been in a position to provide departing migrant workers with their full end-of-service gratuity payments or benefits (which accumulate over the course of the workers’ employment) and thus negotiated only to give part of the amount owing.

While Gulf Cooperation Council (GCC) countries can be commended for having Wage Protection Systems (WPS) in place, and in some cases insurance funds to compensate workers in particular circumstances, pre-existing limitations meant that these mechanisms were insufficient to address the full scale of the problem. In the case of the WPS, non-compliance in wage payment is essentially addressed through employer sanction, but not necessarily worker compensation. Additionally, WPS do not cover migrant domestic workers, who in several GCC countries, comprise more than 25 per cent of total employment. Additionally, gaps in the WPS include the fact that the systems do not address wage manipulation (miscalculation of overtime, end-of-service gratuity payment) or prevent deception by an employer who withdraws cash on behalf of the worker.⁷

The scale of the challenge of ensuring that hundreds of thousands of departing migrant workers from the region are paid their wages and benefits, in circumstances where even existing channels were

flawed, gave rise to a global campaign led by civil society and trade unions, to call for an urgent justice mechanism to recover the unpaid wages of repatriated migrant workers and to shed light on the urgency and vast scale of the problem.⁸

2. What do international labour standards say about wages, including in a crisis context?

International labour standards for protecting the wages of workers, including migrant workers, and fair labour remuneration practices are key to the ILO’s mandate. Non-payment or delayed payment of wages may also in some instances give rise to forced labour practices and a breach of fundamental principles and rights at work.⁹

The [Protection of Wages Convention \(No. 95\)](#) and [Recommendation \(No. 85\), 1949](#), are two international labour instruments dealing comprehensively with the payment of wages, and seek to ensure the fullest possible protection for workers’ remuneration. They can be considered key instruments in setting a legal framework and standards on ensuring wage protection. Specifically, these instruments identify key issues to ensure that wages are paid to all workers, including migrant workers, irrespective of their migration status,¹⁰ in a predictable, timely and complete manner.

As of May 2021, 99 countries have ratified Convention No. 95, including most recently Saudi Arabia, which ratified it in December 2020.¹¹

Box 1

Key principles of Convention No. 95

- ▶ Workers shall be free to dispose of their wages as they choose.
- ▶ Wages shall be paid in legal tender.
- ▶ In cases of partial payment in kind, the value should be fair and reasonable.
- ▶ No unlawful deductions are permitted (right to receive wages in full).
- ▶ In cases of employer insolvency, wages shall enjoy a priority in the distribution of liquidated assets.
- ▶ Regular payment of wages, including full and swift final settlement of all wages within a reasonable time, upon termination of employment.

7 ILO, *Minimum Wages and Wage Protection in the Arab States: Ensuring a Just System for National and Migrant Workers* (2019). Jureidini, Ray “Wage Protection Systems and Programmes in the GCC”, in Philippe Fargues and Nasra M. Shah (eds) *Migration to the Gulf: Policies in Sending and Receiving Countries*, Cambridge, Gulf Migration Research and GLMM, (2018) pp. 9-32.

8 See [Justice for Wage Theft](#) campaign.

9 ILO, *Ending forced labour by 2030: A review of policies and programmes*. The ILO has identified 11 core operational indicators of forced labour, including the withholding of wages.

10 The ILO supervisory bodies have observed that Convention No. 95 applies to all persons to whom wages are paid or payable, irrespective of whether they have a formal employment contract, or a work permit. See Libya – Committee of Experts on the Application of Conventions and Recommendations (CEACR), Observations published between 1995 and 2001, and 2013, and Libya, *Individual Case (CAS) - Discussion: 1996, Publication: 83rd ILC session (1996)*.

11 Other countries in the region which have ratified Convention No. 95 are Iraq, Lebanon, the Syrian Arab Republic and Yemen.

The wage protection standards adopt a broad definition of “wages” (Article 1 of Convention No. 95 provides that “wages means remuneration or earnings”). This is important as some cases of non-payment of wages go beyond non-payment of the baseline or minimum wage, for example, and involve non-payment of other wages (or remuneration) owed, such as overtime payments as well as end-of-service benefits.¹² Because migrant workers (particularly migrant domestic workers) are commonly excluded from social protection schemes, end-of-service benefits are often a de facto substitute for pension provision, and thus critically important to migrant workers.¹³

Another important aspect of Convention No. 95, is that it provides guidance on how to consider whether a deduction is legal or not. Specifically, the Convention stipulates, “Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award” (Art. 8(1)). This would imply that an individual agreement between an employer and worker to reduce the worker’s wages would not be compatible with the Convention.¹⁴ It could also be argued that this is especially the case given the limitations on worker representation and collective bargaining in the Arab States.

The application of Convention No. 95, in particular the effective enforcement of wage payments, requires require three main elements : (i) efficient control; (ii) appropriate sanctions; and (iii) means to redress the injury caused.¹⁵

Another relevant aspect of Convention No. 95 during the COVID-19 pandemic relates to protection of workers’ wages following company bankruptcy (Article 11). In such a case, workers must be treated as privileged creditors with regard to any unpaid wages. A more recent standard that addresses protection of worker wages in the event of employer/enterprise insolvency is the [Protection of Workers Wage Claims \(Employer’s Insolvency\) Convention, 1992 \(No. 173\)](#), which stipulates in Part III that payment of workers’ claims can also be guaranteed through a “guarantee institution”.¹⁶

The ILO supervisory bodies have noted that in cases where migrant workers are deported or have to leave the country rapidly – regardless of the reasons for the departure – the government of the country of destination is responsible for ensuring that wages are paid regularly and in full and that any claims in respect of existing wage debts are promptly settled.¹⁷ In the case of the thousands of Palestinian workers who were deported from Libya in the 1990s (most of whom were in an irregular situation), the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that the Government of Libya was still under an obligation to ensure that workers received wages owed, even if the worker did not have a work permit or a formal employment contract.¹⁸

The [Migrant Workers \(Supplementary Provisions\) Convention \(No. 143\)](#) and the [Migrant Workers Recommendation, 1975 \(No. 151\)](#) guarantee equality of treatment for migrant workers, irrespective of their legal status, in respect of rights arising out of past employment as regards remuneration, social security and other benefits¹⁹ Additionally, the worker should be able to have their interests represented before the competent body and enjoy equal treatment with national workers as regards legal assistance.²⁰

3. How to build back better with respect to wages of migrant workers?

The principle of equality of treatment and non-discrimination, including in the context of wages, is a fundamental principle enshrined in various Conventions. In particular, the [Equal Remuneration Convention, 1951 \(No. 100\)](#), (ratified by some countries in the region)²¹ obliges ratifying Members to “promote [...] and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value” (Art. 2(1)). The principle is to apply to all workers, including domestic workers, whether nationals or non-nationals, and particular attention should be given to ensuring that domestic work is not undervalued due to gender stereotypes.²² The [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#), (ratified by most countries in the region)²³ prohibits “any distinction, exclusion or preference made on the basis

12 Katerine Landuyt and Najati Ghosheh. *Wage Protection for Migrant Workers and COVID 19*, forthcoming.

13 According to the ILO Migrant Workers Recommendation, 1975 (No. 151), “A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his [or her] stay therein, to any outstanding remuneration for work performed, including severance payments normally due” (Para. 34(1)).

14 The CEACR’s 2003 [General Survey of the Reports Concerning the Protection of Wages Convention \(No. 95\) and the Protection of Wages Recommendation \(No. 85\), 1949](#) addresses deductions from wages at length (paras 213- 271). The CEACR has stated that “In the Committee’s opinion, provisions of national legislation which permit deductions by virtue of individual agreements or consent are not therefore compatible with Article 8, paragraph 1, of the Convention” (para. 217).

15 ILO. *Protection of Wages, Standards and safeguards relating to the payment of Labour remuneration. General Survey of the Reports Concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949*, para. 368 (see also paras 368 to 474).

16 ILO, “[Protection of Workers Wage Claims in Enterprise Insolvency](#)” (2020).

17 [Libya – CEACR – Observation published in 2013](#); See also [Iraq – CEACR, observation published in 1992](#) and [Iraq- CEACR - Observation published in 1992, Publication: 79th ILC session \(1992\)](#).

18 See note 10 above.

19 [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#), Art. 9(1). [Recommendation No. 151](#), para. 34(1) stipulates that compensation should include severance payments normally due, compensation in lieu of any holiday entitlement acquired but not used, and reimbursement of any social security contributions.

20 [ILO Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#), Art. 9(2) and [Migrant Workers Recommendation, 1975 \(No. 151\)](#), Para. 34(2).

21 [Jordan, Lebanon, Saudi Arabia and the United Arab Emirates](#).

22 See ILO. [Giving Globalization a human face. General Survey on the fundamental Conventions, Report III \(Part 1B\), International Labour Conference, 101st session, 2012](#), para. 707.

23 [Bahrain, Iraq, Jordan, Kuwait, Lebanon, Qatar, Syrian Arab Republic, Saudi Arabia, the United Arab Emirates and Yemen](#).

Box 2

Promising practices in the establishment of a minimum wage in Qatar

The process of setting the minimum wage in Qatar drew on key principles set out in the Minimum Wage Fixing Convention, 1970 (No. 131), including: wide application; factoring in the needs of workers and their families, as well as the economic situation in the country; consultation with workers, employers, experts and other relevant entities; a review mechanism (the Minimum Wage Commission); and a means for enforcement (the WPS), as well as stronger penalties in law.

Detailed information on wage distribution was gathered from the WPS, and research was also conducted among workers, their family members, and employers in different sectors. For migrant domestic workers, information on wages was gathered through the Recruitment Department of the Ministry of Administrative Development, Labour and Social Affairs, as well as interviews with domestic workers, recruitment agencies and employers.

of race, colour, sex, religion, political opinion national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (Art. 1(1)(a)). The [Discrimination \(Employment and Occupation\) Recommendation, 1958 \(No. 111\)](#) also requires that the national equality policy includes measures to promote equal remuneration for work of equal value (Para 2(f)). The ILO supervisory bodies have on multiple occasions concerned themselves with issues related to unequal treatment of migrant workers,²⁴ including in the context of lower minimum wages set for migrant workers²⁵ or migrant workers being excluded from national minimum wage laws altogether.²⁶

Equal treatment with regard to conditions of work, including remuneration, is also one of the main principles embodied in the ILO migrant workers’ instruments.²⁷

The purpose of minimum wages is to protect workers against unduly low pay and thereby reduce inequality, including between men and women, as the latter are often overrepresented among low-paid workers.

Currently, there are minimum wage laws covering migrant workers in Jordan, Kuwait and Qatar; however, only Qatar applies a non-discriminatory minimum wage covering all workers including migrant domestic workers (see box 2).

However, even where minimum wages exist, migrant workers, particularly women migrant workers, may be still disadvantaged in wage-setting, according to a recent ILO report highlighting the pay gaps between migrant workers and nationals across 49 countries.²⁸

Due to limited data availability, the only Arab States country covered by the report was Jordan, where the research identified a migrant pay gap of 29 per cent. However, migrant care workers, many of whom are women, face a pay gap of 43 per cent and lower returns on education. Other countries in the region, though not included in the report, also seem to face high wage gaps. For example, in four key sectors in the private sector in Bahrain, the wage gap between national and non-national workers was calculated to be 336 Bahraini dinars (approximately US\$900),²⁹ while in Kuwait the gap between the private sector wages of nationals and non-nationals was calculated at 1,154 Kuwaiti dinars (US\$3,000).³⁰ However, the wages of the large number of migrant domestic workers in both countries are not included in these calculations.

In the absence of minimum wage coverage in law for migrant workers, and particularly for migrant domestic workers, the de facto position has often been for countries of origin to set minimum reference wages, which then determine the wages set by the employer, or at least influence social norms among employers and workers about what different nationalities should be paid.

However, these forms of ‘wage-setting’ can lead to wage discrimination, as workers are paid (in part) based on their nationality, ethnicity or gender, rather than their skills, competencies and qualifications.

24 See for example [Bahrain – CEACR observation published in 2019](#).

25 See for example: [Jordan – CEACR – Direct Request published in 2021](#).

26 See note 7 above.

27 ILO Migration for Employment Convention (Revised), 1949 (No. 97), Art. 6(1)(a)(i) and ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Arts. 10 and 12(g).

28 Silas Amo-Agyei, [The Migrant Pay Gap: Understanding Wage Differences between Migrants and Nationals](#) (ILO, 2020).

29 Bahrain, Labour Market Regulatory Authority, [“Bahrain Labour Market Indicators”](#), No. 46, 2019.

30 Kuwait, Labour Market Information System, Central Statistical Bureau, [Employees distribution by average monthly wages, nationality \(Kuwaiti / non Kuwaiti\), sector and sex as of 30/09/2020](#), 30 September 2020.

4. Why is it especially important to have regard for the wages of migrant domestic workers?

It is well known that women migrant domestic workers earn wages that are especially low, whether in comparison to nationals or even to men migrant domestic workers. This is sometimes justified on the basis that (women) migrant domestic workers benefit from in-kind payment in the form of food and accommodation,³¹ or that these workers are less “skilled” or educated than other workers. However, in reality, more structural causes are responsible, including the pervasive undervaluing of care work because it is expected to be performed by women and often unpaid; as well as because of poor labour market regulation and the weak bargaining power of domestic workers, due to freedom of association deficits.³²

The ILO [Domestic Workers Convention \(No. 189\)](#) and [Recommendation \(No. 201\), 2011](#), provide specific guidance regarding payment of the wages of domestic workers. Convention No. 189 requires that where minimum wages exist, these should extend to domestic workers, and that rates of remuneration

for domestic workers, including migrant workers, be established without discrimination based on sex (Article 11). Domestic workers should also be paid directly in cash at regular intervals at least once a month (Art. 12(1)).

The Convention further allows for national laws, regulations, collective agreements or arbitration awards to provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind, but these should not be less favourable than those generally applicable to other categories of workers. Measures should be taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable (Art. 12(2)).³³ Paragraph 15(2) of Recommendation No. 201 stipulates that upon termination of employment, any outstanding payments should be made promptly.³⁴

It is critical that methods used to design or adjust sectoral or occupational minimum wage schemes are free from gender bias and that certain skills relating to domestic work considered to be “female” are not undervalued or even overlooked, in comparison with traditionally “male” skills.³⁵

31 See, for example: [Jordan – CEACR – Direct Request published in 2021](#).

32 See, for example: ILO, “[Measuring the Economic and Social Value of Domestic Work](#)”, ILO Domestic Work Policy Brief No. 3, 2011.

33 Paragraph 14 of the Domestic Workers Recommendation, 2011 (No. 201), provides further details for when provision is made for the payment in kind of a limited proportion of remuneration.

34 Landuyt and Ghosheh, note 12, above

35 See ILO. [Giving Globalization a human face. General Survey on the fundamental Conventions, Report III \(Part 1B\)](#), International Labour Conference, 101st session, 2012, para. 706.

CONCLUSIONS

Delayed and non-payment of wages has been a systemic issue in the Arab States. The COVID-19 pandemic is an opportunity to take stock of lessons learnt and to devise innovative solutions to build back better.

Given the scarcity of available quantitative data on the extent of the problem, one important lesson is the necessity of documenting instances of delayed, incorrect and non-payment of wages, including end-of-service benefits, so that competent authorities in countries of origin and destination can continue to pursue justice for workers, even after repatriation. The fact that data on the scale of the problem remain piecemeal and hard to access, makes it challenging to build targeted policies and solutions.

Nonetheless, some key conclusions can be drawn, particularly for countries of destination in the Arab States, as international recruitment (particularly for migrant domestic workers) re-starts:

- 1. Governments in countries of destination need to take active steps to ensure that departing workers are provided with their owed wages and related benefits, including for workers in an irregular situation.** ILO Convention No. 95, which has been ratified by several countries in the region, can form a useful framework for ensuring the adoption and effective implementation of laws, policies and practices to meet this objective for all workers, including domestic workers. In this context, it is noteworthy that Convention No. 95 is meant to ensure all wages and benefits owed are paid to workers. One way in which governments can support payment of wages in an expedited manner is via a resourced government-facilitated insurance fund, which can directly compensate workers in case of non-payment, and then seek reimbursement from companies responsible, through separate proceedings.
- 2. Accessible and expedited dispute-resolution mechanisms are critical to ensuring that workers who are departing the destination country are not denied justice.** This requires urgent action by Ministries of Labour and Ministries of Justice in strengthening their administrative capacity in order to deal with the scale of the problem, ensuring access to free translation and interpretation, facilitating power of attorney procedures, providing legal aid, and encouraging workers to come forward to register their labour complaints. In cases where the worker has already returned to the country of origin, countries of destination could consider enabling workers to still file a claim, either by virtually completing a power of attorney or (at least during this unprecedented period) to temporarily enable workers to file complaints in destination country embassies in their countries of origin.

3. Given the prevalence of workers not having been paid their end-of-service benefits, **re-vitalizing discussions on access to social protection is important**, or at the very least, it should be ensured that these end-of-service benefits are “ring-fenced” over the course of the worker’s service (in a separate account that the employer cannot use) and easily accessible when the worker departs.
4. Despite the financial challenges faced by companies in the region due to the economic crisis caused by the COVID-19 pandemic, **it is critical that workers’ wages are not unduly lowered**. The development of non-discriminatory minimum wages that are free from gender bias is essential in this regard. The process of setting such minimum wages is also important – including consultation with workers’ and employers’ organizations; as are the institutional mechanisms to review the impact and application of the minimum wages.
5. **Protecting the wages of migrant workers requires action on the part of countries of destination**. While countries of origin will naturally want to protect their citizens through minimum reference wages, this can exacerbate the setting of wages based on nationality, and can thus lead to discrimination between different groups of migrant workers.
6. **The adoption and effective implementation of comprehensive equality and non-discrimination policies and legislation covering all workers can also help reduce discrimination with respect to wages** and promote equality of treatment between nationals and migrant workers, and in particular women migrant workers.