

## WP8: Opening up legal remedies and access to justice

### Principal Investigator

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### Research Context

Regardless of their nationality or reasons for moving, migrants enjoy the same fundamental human rights as all human beings under international human rights law. The [Human Rights Committee](#) – the monitoring body of the [International Covenant on Civil and Political Rights](#) (ICCPR) – has long since established that, with the exception of the right to political participation, every right within the ICCPR applies to migrants, including the right to life, the right to non-discrimination, the right to liberty, and the right to prohibition of torture. Additionally, under international law, migrants have rights to non-refoulement, freedom from slavery or forced labour, prohibition of collective expulsion, and procedural safeguards in expulsion proceedings.

Whilst migration is a positive and empowering experience for some, for others the lack of rights-based systems of migration governance at the global, regional and national levels have created a human rights crisis for migrants at borders and in countries of destination, in turn undermining the potential for migration to contribution to development and delivery of the SDGs. Access to fundamental civil and social rights – including the rights to health care, to adequate housing, to education and training, to a minimum subsistence, to family life, to moral and physical integrity, to legal aid, and to fair labour conditions – are very significantly restricted, and sometimes entirely denied, in some of the MIDEQ case study countries. Not only does this violate States' obligations under international and human rights law towards those who move, it also tends to foster increased violence, xenophobia, racism and exploitation. Issues which are increasingly well-documented in the existing research include the following:

- Low-wage migrant workers routinely encounter harms such as unpaid wages, unsafe work conditions, inadequate rest, inhumane housing conditions, or confiscation of their identity documents by employers. Accounts of exploitation, abuse, human trafficking, debt bondage, and other severe human rights violations are not uncommon;
- There are significant obstacles faced by low-wage migrant workers in lodging and resolving complaints. Only the most brazen violations of migrants' rights are

rectified, such as collecting recruitment and documentation fees for non-existent jobs. Everyday abuses, including overcharging migrant workers on recruitment fees and misrepresenting the terms of employment, continue to go unchallenged;

- There are a lack of legal routes to safety and protection under international refugee law for those fleeing persecution and human rights abuse, in countries that are both signatories and non-signatories of the 1951 Convention relating to the Status of Refugees ('the Refugee Convention'); and
- There is often a corresponding lack of access to other rights e.g. the right to access, without discrimination, services including health and education, not only for those who move across international borders but also potentially for those 'left behind'.

The lack of opportunities for migrants, most notably those in irregular situations, to access justice and the rights to which they are entitled is due, in part, to the fact that they tend to live and work in the shadows, denied rights and freedoms, lacking knowledge about their rights and disproportionately vulnerable to discrimination, exploitation and marginalization. However, it is also symptomatic of a bigger issue, namely that the language of 'rights' has become increasingly contested at the national level. Migrant and refugee rights have come to be seen as a problem by some States and increasingly presented as a zero-sum game, in other words as though there is a limited quantity of opportunities associated with the provision of rights (particularly socio-economic rights) such that giving rights to one group takes away and/or undermines the rights and opportunities available to another. In this way different groups are set against one another, most notably nationals and non-nationals. Rights for refugees and other migrants have also come to be seen as a threat to border control particularly in contexts where issues of national security have been emphasised in domestic political narratives, and despite the fact that there is no statistical correlation between increased migration and refugee movements on the one hand, and increased criminality or national security threats on the other.

In this context the research undertaken as part of WP8 aims to better understand both the availability of, and access in practice to, rights for migrants in MIDEQ destination countries, situating these opportunities within broader political discourses of migration and citizenship. Working with researchers from across the Hub, our international project partners (particularly [ILO](#) and [OHCHR](#)), the [Migrant Worker Justice Initiative](#), [Namati](#) and local non-governmental and civil society organisations, we will identify and deliver interventions which support access to justice for migrants and their families, assessing their effectiveness and producing a series of best practice and advocacy toolkits for use in supporting migrants to access justice within and beyond the MIDEQ case study countries.

## Research Questions

1. What **formal and informal mechanisms** exist for migrants to access justice/rights in MIDEQ destination countries? In what ways do these

mechanisms reflect broader political and policy approaches to rights for citizens/non-citizens and national/regional migration narratives? Are migrants able to access these mechanisms in practice? How effective are they?

2. What role is or could be played by **governments in countries of origin** in ensuring that migrants are protected from exploitation or abuse e.g. pre-departure information, consular support?
3. What role is or could be played by **non-governmental and civil society organisations** in supporting migrants to secure access to justice in destination countries? How can **international organisations** best support this work?
4. What are the opportunities and constraints for **developing networks of community paralegals** to work with migrants in securing access to justice in MIDEQ destination countries? Where legal empowerment programmes are developed, how effective are they?
5. How can **other 'actors'** including the private sector and recruitment agencies be supported or encouraged to centre migrant rights and access to justice in their work?

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