



Legal Remedies for China's Overseas Workers

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The half-million Chinese citizens travelling overseas to work each year are often misled about the job, charged high recruitment fees, not paid wages, or injured on the jobsite. But what recourse do they have? An analysis of Chinese court decisions shows that workers, including those who use informal brokers, are sometimes able to receive unpaid wages or work injury compensation upon their return. However, practical obstacles like obtaining physical evidence or affording a lawyer still prevent many abused workers from obtaining justice.

In 2015, the Mongolian company Baoyingerile, owned by Mr Wu, contracted with Mr Liu to hire between 100 and 200 Chinese workers to build 16-storey residential complexes in Ulaanbaatar. Liu recruited a group of 112 Chinese workers from Hebei Province. After working long hours in the cold winds for three months, the workers were paid only a small portion of their promised salaries. Liu owed them more than 2.4 million yuan in wages but claimed that he could not pay because he was owed money by Baoyingerile. The Chinese workers protested by blocking the entrance to the construction site and confronting Liu. They also contacted the Chinese Embassy for assistance. However, as Baoyingerile claimed it had no money, the workers were only able to obtain a paper signed by Wu and Liu acknowledging the amounts owed. The workers returned to China, unsure whether they would ever be paid.

Over the past three decades, the number of Chinese working abroad has exploded. China's official statistics demonstrate that, while 57,900 Chinese workers were stationed abroad in 1990, this number grew to 424,900 by 2000, 846,600 by 2010, and 996,800 by 2018 (NBS 2019: 659). Nearly 40 per cent of these migrants work in the construction industry. The media increasingly reports on the hardships endured by these workers, such as not being paid, dying as a result of unsafe conditions, or paying large recruitment fees for these overseas opportunities. However, the limited scholarly attention that has been paid to this population of workers has generally come through a sociological or anthropological lens that focuses on the workers' lives abroad or their interactions with the local population.

The authors' research, alternatively, examines the legal mechanisms available to protect the labour rights of overseas Chinese workers. Does Chinese law offer any protection for such workers? And, if so, to what extent can workers avail themselves of these protections? This essay describes Chinese Government policies that regulate the dispatch of workers overseas and establish labour protections for them. However, it also notes that many workers choose to go abroad through informal, unregistered labour brokers who are not part of the regulated system. Nonetheless, the authors introduce several cases in which Chinese courts have demonstrated a willingness to provide a remedy for aggrieved workers after they return home to China, even if they went through such informal channels. This marks a positive trend. However, there still remain many workers who never file a legal claim due to a lack of evidence or inability to find legal representation.

Labour Abuses Suffered by Overseas Workers

The abuses commonly endured by overseas migrants often start before the workers have even left China. Most workers become aware

of opportunities through a labour broker or agency, which commonly charge a sizeable recruitment fee that must be paid prior to departure. Some desperate workers pay nearly 100,000 yuan upfront based on the promise of a good job abroad. In addition, brokers may require some type of security deposit to ensure that the worker will fulfil their contract or not abscond while overseas. As these workers often lack such funds, they are forced to borrow money from family and friends or, if that is not possible, from loan sharks at high interest rates. These lenders may require the worker to post collateral to borrow the money, such as their house or crops. Relatives who stay behind in China, such as spouses, may also be forced to guarantee repayment of the loan.

Labour brokers often make false promises or provide inaccurate information to workers about the conditions overseas. The intermediaries promise high wages, reasonable hours, safe work conditions, and comfortable living arrangements. But the reality is frequently quite different. This problem is exacerbated by the fact that many workers will pay the required recruitment fees without obtaining a written contract defining even the basic terms of their overseas employment—such as the name of the employer, duration of employment, wage rates, or working hours. Workers may be told that they have the legal authorisation to work overseas, but later discover they lack the proper visas or permits.

In the case of Ms Wang, for example, she saw a broker's advertisement on WeChat promising a three-year visa to work as a masseuse in Malaysia earning 15,000 yuan per month, with the employer providing free training, food, and housing. Wang therefore paid a 35,000-yuan fee to secure the position. When it came to depart China, Wang learned she would only have a seven-day tourist visa. On arrival in Malaysia, she learned that the wage was only 5,000 yuan, and the employer planned to deduct from it the cost of the work visa application fee (*Liu Panpan and Wang Zhiqiang Contract Dispute Second Instance Civil Judgement* 2020). The pervasiveness of such fraudulent activities

is considerable. One Hubei company was found to have misled 930 victims into paying more than 30 million yuan in recruitment fees for fake overseas job opportunities, even charging one individual a fee of 150,000 yuan. The company's principals were eventually prosecuted and sentenced to imprisonment for three to seven years (*People's Procuratorate of Wuhan City, Hubei Province v. Tan Weiwen, Xiong Li, et al.* 2016).

Once overseas workers commence their employment, they face many of the same labour issues encountered by migrant workers within China. Excessive overtime and unpaid wages are pervasive problems, as experienced by the Baoyingerile workers in Mongolia. Work-related injuries are also common. There are also abuses more unique to workers travelling overseas. For instance, Chinese employers often confiscate workers' passports—ostensibly to ensure their safekeeping, but with the practical impact of making it impossible for workers to leave a bad employer. If a worker lacking a proper visa exhibits any disobedience, the employer may threaten to call local immigration authorities. Such employer practices can convert an exploitative work situation into a forced labour scenario. Another significant problem that arises in these overseas arrangements—which often involve a complex chain of employers and recruiters—is the ambiguity as to who bears ultimate responsibility for the payment of wages or purchase of work-injury insurance for these workers.

Government Efforts to Protect Overseas Workers

Prior to China's Reform and Opening Up in the late 1970s, only workers tied to state-owned enterprises were dispatched overseas and just a few vague policies governing this phenomenon existed. However, as Chinese citizens gained

the right to apply for passports and foreign travel restrictions loosened, more individuals sought better-paying jobs abroad, causing Chinese authorities to issue more detailed regulations (see also Nyíri's essay in the present issue). These regulations sought to establish the respective liabilities of the Chinese parent companies, intermediary labour agencies, and foreign employers in terms of ensuring the payment of wages, purchasing work-injury insurance, and limiting recruitment fees.

One set of rules pertains to what are essentially secondment arrangements, where an 'overseas project contracting enterprise' (对外承包工程单位, or OPCE) in China dispatches a worker to a foreign subsidiary. In such cases, regulations require that the Chinese parent company maintain a labour relationship with the worker. The second regulatory approach has been to permit only registered intermediary agencies—'foreign labour service cooperation enterprises' (对外劳务合作企业, or FLSCEs)—to recruit and organise overseas work for Chinese nationals, and then set rules governing these arrangements. No other entities or individuals are permitted to directly recruit individuals within China for work abroad. In 2002, the Ministry of Labour and Social Security issued a regulation obligating FLSCEs to provide written contracts, abstain from collecting excessive recruitment fees, and contribute to a reserve fund to compensate workers who are not paid their wages abroad. As abuses persisted, in 2012, the State Council promulgated stricter rules requiring that all labour agencies be registered and demanding that they purchase work-injury insurance, ensure workers have valid visas, pay wages, comply with labour standards in the destination country, and not collect security deposits.

The regulations provide FLSCEs the option of signing a 'labour contract' or 'service contract' with the worker. In the case of the former, the FLSCE would form a labour relationship with the worker, accept extensive liability for the worker's experience abroad, and be prohibited from charging a recruitment fee. By contrast, if the FLSCE signs a service contract with the

worker, the FLSCE may collect a fee for its services and it is the foreign employer who must form the labour relationship with the worker and take on the corresponding legal obligations. Technically, however, even where a service contract is concluded, the FLSCE may be held responsible for compensating unpaid or injured workers where the foreign employer fails to do so. The authors' research shows that FLSCEs almost exclusively choose to conclude service contracts, thus permitting themselves to charge fees.

In practice, however, there are many Chinese going abroad to work under neither of these two models. Instead, a large number of migrants find work through informal channels, such as through unregistered labour brokers. In 2017, the Ministry of Commerce even launched a special investigation to crack down on such intermediaries, but the practice continues. When workers use these informal channels, there is an increased likelihood of abuse by the recruiters, such as by collecting security deposits, charging high fees, providing misleading information about the conditions overseas, not providing written contracts, failing to purchase work-injury insurance, or arranging for workers to enter the host country on tourist or business visas. The use of these unregistered, informal intermediaries makes regulation more difficult and presents significant challenges for workers seeking redress after things go wrong.

Enforcement of Overseas Workers' Rights

When workers are abused overseas, it is extremely difficult to obtain redress while abroad. Workers generally lack knowledge about the host country and its legal system, do not know where to find help, and significant language barriers often exist. This proved to be true of the 112 construction workers in Mongolia, who returned to China with only a slip of paper.

What about enforcing the protections contained within the Chinese regulations described above? After arriving back in China, there are several channels open to workers seeking help, including police assistance, trade unions, the Ministry of Commerce's complaint mechanism, mediation committees, and other administrative bodies. Given the lack of any comprehensive data, it is difficult to gauge the extent to which workers approach these institutions or what results are achieved. By contrast, as a result of the government's effort to publish all Chinese court decisions in an online database, there are considerable data concerning judicial responses to workers who return to China and seek redress for unpaid wages, work injuries, or the repayment of recruitment fees.

The authors have identified a promising sample of cases from this database in which overseas workers have been able to obtain redress through the Chinese courts. For those workers who go abroad through a properly registered FLSCE, the courts are often willing to make those agencies honour their obligations under the regulations. For instance, when Mr Xu was not paid 80,000 yuan in wages by his employer in Angola, the court required the FLSCE that dispatched him there pay the money (*Xu Xiaozhong and Luoyang Songzhou Foreign Economic and Technical Cooperation Co. Ltd Service Contract Dispute Second Instance Civil Judgement* 2018). In another matter, a group of 48 construction workers signed an employment agreement with a construction firm in Beijing to work in Algeria. On arrival there, a separate company employed them, which collected a 10,000-yuan 'security deposit' from each worker and then failed to pay them their full wages. The Chinese court adjudicating the case found that, although the plaintiffs paid the security deposit and performed their work overseas, the Beijing firm had executed an employment agreement with the workers and was thus liable for the monies owed (Zhao 2016). Similarly, where OPCEs seek to evade legal responsibility by requiring workers to execute labour contracts

with their foreign subsidiaries (rather than with the OPCE in China), some courts nonetheless deem there to be a labour relationship between the OPCE and the worker and thus hold the OPCE responsible for remedying labour abuses, such as compensating work-related injuries (*China Overseas Engineering Co. Ltd and Dong Minggang Labour Dispute Second Instance Civil Judgement* 2018).

There are also cases in which the courts order a remedy for workers against an unregistered labour broker or an intermediary who did not comply with the appropriate procedures. The 112 unpaid migrants who worked for Baoyingerile in Mongolia filed a lawsuit on returning to China. Due to the numerous impracticalities, they did not sue the company in Mongolia; instead, they sued Mr Wu (the owner of Baoyingerile, who turned out to also be a Chinese national) and Mr Liu (the recruiter). The workers demonstrated that Wu and Liu did not go through the appropriate legal procedures to recruit them for overseas employment, and that it was therefore proper to find them liable for payment of the owed wages. The court was then able to mediate a settlement in which the two defendants together agreed to pay the amounts due (Yang 2020). In the other example, when Ms Wang brought a lawsuit regarding the masseuse job arranged for her in Malaysia, the court ordered that the broker return her recruitment fee because the work conditions did not match what she had been promised (*Liu Panpan and Wang Zhiqiang Contract Dispute Second Instance Civil Judgement* 2020).

Not all courts, however, are so generous towards workers who use informal or unregistered brokers. Some courts find that the obligations imposed on FLSCs do not necessarily apply to these unregistered intermediaries, and thus any dispute between the worker and the broker is simply a question of whether the contractual promises were fulfilled. Therefore, if the contract simply obligated the broker to arrange a job overseas, and the worker was given such a job, courts have found it proper for the broker to retain

the fee. A number of judges have also found that the worker should bear some fault for engaging such a broker. For example, Mr Ge signed a labour contract with an agency that lacked the proper qualifications to send workers to Angola. When he returned to China and sued the agency to compensate him for an injury suffered while abroad, the court held that the plaintiff bore some responsibility for not properly investigating the agency and therefore should not be compensated the full amount (*Ge Weibing and Nantong Far East Labour Cooperation Co. Ltd Service Contract Dispute Second Instance Civil Judgement* 2015).

Accessing the Courts

While the courts are providing important remedies for at least some workers, it is important to be mindful of the obstacles preventing many aggrieved workers from prevailing in court—or from ever filing a claim in the first place. One significant issue is workers' lack of physical evidence to prove their claims. The plaintiffs who worked in Mongolia were fortunate to have a signed statement affirming that they were owed wages by Mr Wu and Mr Liu. However, this contrasts sharply with the many workers who are never provided a written contract or may lack any evidence that even establishes the identity of their employer, let alone the specific amount they are owed.

Another serious obstacle for many workers is affording legal representation in China. The 112 plaintiffs who worked in Mongolia found a legal aid organisation, the Beijing Zhicheng Public Interest Migrant Worker Legal Aid Centre (北京致诚公益农民工法律援助中心), which agreed to represent them for no charge. The 48 workers who went to Algeria were assisted by the same organisation on their return to China. But such resources are limited, and most migrant workers cannot afford to pay a private lawyer. Bringing a lawsuit may also entail other costs, such as translating foreign

documents or travelling to the courthouse for a hearing, which may be prohibitively expensive for many workers.

There is also the problem of locating these informal brokers and finding their assets. In the case of the Baoyingerile plaintiffs, not only were they able to locate their recruiter, Mr Liu, but also they were fortunate that Liu had money that he was willing to put towards a settlement. Even when the defendant is found and a judgement is obtained, collecting money may still be difficult. For the family of one worker who died from malaria while working in Africa, it took an additional five months after a judgement was rendered to actually collect any money (*Fu Guiqun, Guan Moumou, Lin Shuoqiong Application for Enforcement in the Work Injury Insurance Compensation Dispute with Sichuan Qianheng Construction Engineering Co. Ltd* 2015). In short, while judges may be able to assist workers who file claims, a variety of obstacles and challenges prevent many aggrieved workers from ever making it to the courthouse steps or ultimately obtaining relief.

penalise workers who use informal recruiters but rather to compel these brokers to assume all the same obligations as a formal FLSCE. The common practice of Chinese OPCEs requiring workers to sign labour contracts with their foreign subsidiaries, rather than executing such contracts themselves, should be more strictly regulated, including fines or other penalties for OPCEs that wilfully evade their obligations. Chinese authorities can also provide know-your-rights education to migrants seeking to work abroad, including information on choosing a licensed labour agency, not paying exorbitant fees, demanding a written contract, and preserving physical evidence while overseas. China can also make legal aid services more readily available to overseas workers after they return home. Hopefully, China will take steps towards implementing such reforms. ■

Policy Recommendations

Migrant workers in China are extremely vulnerable, and those travelling overseas to work are even more susceptible to abuse. The Chinese authorities have responded by regulating the practice of sending workers overseas and creating protections for such labourers. Moreover, the Chinese courts are playing a positive role in enforcing those protections for many workers. However, the widespread use of informal or unregistered brokers as well as practical obstacles to accessing the courts limit the efficacy of the judicial remedy. Nonetheless, some of these limitations can be overcome by prudent policies. The Chinese judiciary can offer guidance to courts on handling cases involving informal brokers—for instance, instructing judges not to

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