



Policy Memo 1

Legal aid for migrants and refugees: Continuous efforts, better protection?

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In brief

In view of the fact that migrant workers and refugees are vulnerable groups of any society, ensuring that they have access to legal aid is critical to guaranteeing that they lead a dignified life and form an organic part of host societies. Based on ARDD's 15 years of legal aid experience, multiple research projects, and analysis, and based on consultations with the Committee on migrant workers and refugees in Jordan¹, the brief proposes **10 recommendations** to promote effective access to legal aid and, through it, enjoy a dignified life:

- 1) Invest in **quality data gathering** through targeted research in order to identify legal challenges faced by and opportunities available to migrant workers and refugees.
- 2) Make known **specific vulnerabilities** by providing disaggregated data, with particular attention to categories such as gender, age, nationality, ethnicity, and health conditions.
- 3) Pursue a **diversified education** approach (targeting various sectors of society) through legal sessions on (a) the rights and legal means available to migrant workers and refugees, (b) the added value and richness brought by diverse communities to the host society at large.
- 4) Use legal aid opportunities to **strengthen the capacity** of networks of migrant workers and refugees, and grassroots organizations working with them.
- 5) Build **effective partnerships** with institutional actors, lawmakers, policymakers, law-enforcement agents and courts, to give effect to the internationally recognized rights of migrant workers and refugees.
- 6) Access communities by **forming mediators and representatives** to act as a "bridge" between people in need and providers of legal services.
- 7) Promote **meetings and better coordination** with institutional actors and non-governmental organizations to support legal access, as well as access to services for migrant workers and refugees.
- 8) Support setting up and or strengthening **institutional infrastructures** that can facilitate vulnerable people's access to legal aid, and support the work provided by pro bono lawyers.
- 9) Maintain an **effective partnership with international donors and agencies** so as to enhance ownership of responses (i.e. localized responses to local crises).
- 10) Involve **media and social media** in promoting a fair account of the reality experienced by refugees and migrant workers.

¹ This committee, including 30 representatives of various non-national (migrant worker and refugee) communities in Jordan, is set up and supported through the ARDD's Haquna project.

Introduction

Raising awareness about the situation of migrants and refugees in the region, promoting access to justice and dignified life, and promoting positive policy change constitute an essential part of ARDD's mission vis-à-vis vulnerable groups. While working primarily in Jordan, ARDD aims to expand its work to other parts of the region, to help legal organizations strengthen their capacity in places where legal aid for vulnerable groups is unavailable, and to strengthen partnerships with legal aid peers, to make it possible for vulnerable people to access their rights. The provision of legal aid for migrant workers and refugees has been one of ARDD's main drives. This policy brief: (1) provides a brief overview of the precarious status of migrant workers and refugees, outlining the main challenges and obstacles they may face in seek-

ing legal assistance; (2) presents ideas to effectively use legal aid as both a means and an end in itself, on the path toward helping vulnerable groups become an organic part of host societies. The brief builds on ARDD's experience, achievements and lessons learned, as well as on consultations with migrant workers and refugees in Jordan: their voices, aspirations, and concerns are being shed light at through this brief. It may serve not only as a synopsis to those who wish to better understand legal aid for migrant workers and refugees in Jordan, but also as a road map for legal aid providers and current and prospective partners who wish to work with ARDD or simply be inspired by its experience, achievements, and lessons learned.

Why the context matter: some overarching reflections from the experience in Jordan

Migrant workers' and refugees' access to rights and services, as well as their duties and responsibilities, are generally regulated by a legal framework based on national laws as well as by international treaties host countries ratified. While international law provides for the universally recognized rights of migrant workers and refugees, it is domestic law and policy which ultimately determine access to and quality of services for non-nationals. Constant monitoring of compliance of national laws and policies with international standards is extremely sensitive, which adds on the work of legal aid providers to vulnerable groups.

In Jordan, like in other places in the region, protection and the guarantee of rights are ensured by ratified international conventions, particularly those regarding economic and social rights, and prohibiting the unequal treatment of migrant workers and refugees in the area such as living and working conditions, social security, employment taxes and access to justice. Making sure that international obligations are fully understood and implemented is part and parcel of creating an enabling environment for vulnerable groups.

Cases of exploitation and difficult working conditions remain common and undermine migrant workers' basic rights and ability to live in the country. Jordan showcases common problems in the region, where migrant workers' employment may be guaranteed, but is also tied to employer approval, without which these workers cannot enter or leave the country and cannot change employment. The main challenge facing migrant workers' work, is the fact that any movement and any job-related choice requires the approval of the employer. Tying the migrant worker with an employer forms an unbalanced relationship which often means that workers cannot leave their job and move to another position without the approval of their employer; this leaves them with the only option of working illegally if problems arise with their employer.

Governments are not necessarily inherently hostile to migrant workers and refugees, and they often try to prioritize the improvement of the latter's working and living conditions by taking measures to prevent exploitation and abuses, which remain widespread nonetheless. This is why civil society and legal aid providers are essential in monitoring documenting and providing legal aid. The situation is all the more complicated for refugees. Refugees' condition is often precarious in most Arab countries. Lack of registration impinges on their legal status: lack of official documentation leaves some refugees vulnerable to re-foulement and makes it virtually impossible to access protection or public services, such as education and health; it also prevents them from obtaining work permits or humanitarian assistance.

In the past years, due to the COVID-19 pandemic, the refugees' condition worsened, as has their ability to access protection. Debt, chronic illness, lack of access to medical services and schools, growing numbers of child labor and exploitation, as well as of underage marriage have skyrocketed. In countries like Jordan, legal aid has proven more urgent than ever which is also what prompted ARDD to work to further upgrade and diversify its legal program and, with HBS' support to strengthen refugees' and migrants' access to rights in Jordan.

Legal aid as a means and an end in itself: the way toward a dignified life

The precarious condition of many migrant workers and refugees makes access to legal aid a vital issue. Understanding the legal framework that protects the rights of refugees and migrants in the country helps prevent their exploitation and abuse, improve their living conditions, and guarantee a dignified life. Accessing **legal aid is a means and an end in itself** for vulnerable people: it is a mean as it represents the **way out of socio-economic marginalization**, illegal stay in a country, and lack of protections; it guarantees basic rights such as those health and education services. It is an end in itself because it is often extremely difficult for migrant workers and refugees to find and afford the legal support, they need to achieve justice and protection.

Structural problems hamper migrant workers' and refugees' access to legal aid and justice. For instance, despite the government's effort to support migrant workers through specific channels (offices, hotlines), access is difficult because it is available only during migrant workers' **working hours**, or they simply lack the means to reach out to those who provide a certain service. **Language** may also be a barrier for foreigners trying to seek justice or report violations (interpreters and translators are hardly available in public offices). Even when litigation is available, refugees and migrant workers often refrain from contacting the relevant authorities for **fear** of being detained, especially if they lack documentation (refugee registration, proof of residency, or work permit). Moreover, for those living in hardship and poor financial conditions, it is often difficult to **find lawyers that can take on their cases** and follow up on them. Thus, even if by law legal representation should be guaranteed to all individuals, including those who cannot afford it, this legal support is only assured when requested by courts, and it is then provided mainly by non-governmental organizations that have to struggle for funding, rather than by an effective public system.

In the context of vulnerability and uncertain legal status that often characterizes the life of migrant workers and refugees, legal assistance can make a difference. Lawyers become bridges with institutions, facilitating the understanding and awareness of the rights and duties of refugees and migrant workers, and ensuring that institutions follow procedures that guarantee protection. They are the fundamental actors between institutions and individuals who would not otherwise approach authorities because of their precarious status. The provision of legal services is therefore fundamental to assuring that documentation such as birth or death certificates, marriage certificates, or residence permits are issued, or to challenge detention or deportation. In complex and urgent cases, legal aid needs also to be propped by extra means, including emergency cash assistance, to make sure that legal aid is provided to a person that has the means to sustain him or herself and remains part of society.

Strategic engagement with international organizations and NGOs also needs to be maximized in the pursuit of the achievement of results, instead of competing (often over resources). The emphasis on localization should not be a pipe-dream but a practical reality for all those involved in assisting refugees and migrant workers.

From experience to shared resources

ARDD has been providing legal support to vulnerable groups to help protect their legal rights. The limited resources available for *pro bono* legal services, insufficient for the high number of people in need of assistance, remains an important constraint.

Based on its experience, ARDD recommends investing in the following actionable recommendations:

1- *Invest in quality **data gathering through targeted research in the field** to identify the legal challenges faced by vulnerable groups and keep providing the relevant support and assistance, according to the needs.*

Collaboration with members of vulnerable groups can directly engage the community and help build the framework, methodology, and fieldwork that are fully representative of the reality on the ground. Investing in participatory, action-oriented research that builds on, and reinforces, partnerships among researchers, stakeholders, and community members is key: data is relevant to real-world contexts, and the outcome and responses may be more effectively translated into community knowledge and effective strategies and policies to support people in need.

2- *Reveal specific vulnerabilities by providing **disaggregated data** that reveals the specific legal struggles faced by migrant workers and refugees, according to their status and conditions, with particular attention to categories such as gender, age, nationality, ethnicity, and health conditions.*

Building on the participatory approach to research, focus groups, interviews, and data collection should reflect the complexity and variety of the population if data is to be relevant to the different categories that compose it. The disaggregation of data facilitates an understanding of the challenges and struggles faced by each group and is key to identifying specific responses and targeted support for the most vulnerable categories.

3- *Pursue diversified education **through legal sessions** on (a) the rights and legal means available to migrant workers and refugees, and (b) the added value and richness brought by diverse communities to the society at large.*

This can be achieved through periodic seminars and workshops for different members of the communities, with the contribution of legal experts and the participation of stakeholders. These sessions will strengthen the understanding of legal systems; they should include voices of workers and refugees, and their direct experiences, to facilitate an understanding of the reality of legal systems and the commonality of challenges faced.

4- *Build capacity through legal aid by encouraging a community system of support that facilitates early warning and prompt access to legal advice. **Access communities and support mediators and representatives** on the ground to act as a “bridge” between people in need and legal services providers.*

Migrant workers and refugees trained by legal experts on mechanisms to protect rights and access the justice system can be able to arrange periodic and mobile awareness sessions that can facilitate direct contact between people in need and lawyers.

5- *Build effective **partnerships with institutional actors**, lawmakers, policymakers, law-enforcement agents, and international courts of law to be the lead and domestic law and practice to harmoniously give it effect.*

Training and workshops arranged by civil society organizations providing legal support to migrant workers and refugees, in partnership with institutional actors would serve to (a) train agents on the legal status and rights of migrants and refugees, (b) facilitate discussions on advocacy as well as policies that could improve practices on the ground.

6- Reinforce the network of migrant workers and refugees to disseminate information about the legal services they are entitled to.

The strengthening of the migrant workers and refugee network contributes to their ability to make their voices heard by decision-makers and relevant stakeholders in the host country and link them to the global dialogue on relevant UN initiatives (including the Global Compacts).

7- Promote joint advocacy and coordinated efforts with institutional actors and non-governmental organizations to support migrant workers and refugees' access to legal aid.

Propose joint initiatives and campaigns that place the participation of civil society organizations and government institutions with unified, clear messages as a goal, with regard to "what, when, where, and how" concerning migrant workers and refugees' access to legal aid. This may encourage people in need to seek legal aid.

8- Build institutional infrastructures that can facilitate vulnerable people's access to legal aid and support the work of pro bono lawyers.

Access to legal aid and services for migrant workers and refugees should be ensured through accessible physical and organizational structures that take into account their needs and challenges (mobility, working hours, and language).

9- Build effective partnerships with international donors and agencies, to have local ownership of responses to local crises.

Localizing the response to the challenges faced by the vulnerable group is a priority for all stakeholders. Strategies that allow for a major and effective role of local organizations and actors should be developed in partnership with international donors and agencies to assure the sustainable provision of legal services. Equally important is to make sure that legal aid is not a one-off occurrence, and that it is provided in a context where it can be effective and not nullified by the surrounding challenges. Legal aid should be coupled with other measures (e.g., emergency cash assistance) that can be equally essential and life-saving for many refugees and migrant workers.

10- Involve media and social media in promoting a fair account of the reality experienced by refugees and migrant workers, as well as the need to create an environment that helps make legal aid effective.

This can be complemented by informing media professionals about the plight of refugees and migrant workers, guaranteeing the correct dissemination of information, and cooperating in the design of programs and media spaces that enable migrant workers and refugees to share their stories and make their voices heard.

Advancing Haquna (Our rights)

In the context of the joint Haquna initiative, ARDD and Heinrich-Böll-Stiftung Palestine and Jordan (HBS) promote means that guarantee respect for the rights of migrant workers and refugees and raise awareness about ways to improve their living conditions to give rise to peaceful societies

Disclaimer

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