International Labour Organization

Access to labour justice: Judicial institutions and procedures in selected Asian & Pacific countries

Overview of procedural elements for access to labour justice in judicial dispute resolution institutions

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Labour Law and Reform Unit
Governance and Tripartism Department

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Contents

List of figures

Introduction

As the number of individual disputes arising from day-to-day workers' grievances or complaints continues to grow in many parts of the world[1], labour courts are important part of dispute prevention and resolution systems and play a critical role in ensuring access to justice and contributing to equity in industrial relations.

Access to labour justice cannot be understood only as the formal access to labour courts and right to have a claim examined by impartial judges, but also as access to a fair procedural regulation, which enables real conditions of equality before the judiciary.

This report aims at examining labour courts and ordinary courts hearing labour cases and various detailed aspects of their procedures and institutional settings, seeking to identify connections between them or trends in the region which may impact on the level of access to labour justice in the countries examined.

States commonly establish different types of institutions and procedures to resolve individual and collective disputes.

In Asian and Pacific countries labour conflicts may be resolved through different models of judicial or quasi-judicial courts/tribunals, which are empowered to hear cases and, ultimately, determine a binding outcome of a dispute.[2] The following countries systems were examined: Australia, Bangladesh, Cambodia, China, Fiji, India, Indonesia, Japan, Mongolia, New Zealand, Republic of Korea (South Korea), Singapore, Sri Lanka, Thailand and Viet Nam.

For the purpose of this report, these countries are divided in two major models: i) ordinary civil courts with jurisdiction over labour cases (with or without specialized labour branches/divisions or judges), and ii) specialized labour courts, which may or may not be under the direct administration of the Judiciary in first instance.

They may have different compositions, with the presence of professional judges or/and the active participation of lay judges (often called lay judges, associate judges or labour advisors), appointed by employers´ and workers 'representatives. Cases can be heard in a panel or by a single judge.

There may be also a combination of institutions when, for example, decisions taken by specialized labour courts may be appealed to ordinary higher courts.

Courts can also be competent to hear collective and individual cases. In some countries, labour courts may have full jurisdiction over all labour disputes or have their jurisdiction limited to either individual or collective disputes. They may also be competent to hear cases involving public employees or social security (pensions, unemployment).

Different models may involve different organic procedural laws and court procedural rules, depending on the existence of specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under civil jurisdiction.

Countries examined also present differences on the physical distribution of these courts and their availability of services to the public, which may impact on the level of access to labour justice.

To examine the multitude of characteristics of each country and compare them, pertinent national pieces of legislation and official statistics, when available, were examined considering 4 thematic areas: i) institutional structure of courts and

1 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview* / edited by Minawa Ebisui, Sean Cooney, Colin Fenwick; International Labour Office. - Geneva: ILO, 2016. p. 19.

2 For more information in respect to literature review on labour courts, please see Colàs-Neila, E., Yélamos-Bayarri, E. 2020. *Access to Justice: A Literature Review on Labour Courts in Europe and Latin America*, ILO Working Paper 6 (Geneva, ILO).

tribunals, ii) jurisdiction, iii) procedural aspects, and iv) operational and practice.

The institutional structure evaluates how these courts are composed, if they are part of a multiple-tier system under judicial authority, how judges are appointed, what are the governmental bodies responsible for selecting them, and what are the requirements to be met to become a professional judge.

In jurisdiction, the courts hearing labour cases will be classified according to the material jurisdiction, if they can hear cases related to international jurisdiction, and if they can hear both individual and collective cases. Often there is a positive relation between interest disputes and collective disputes and between rights disputes and individual disputes, but this is not a rule.[3]

Collective cases are those arising from disagreements between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests.[4]

By analysing the procedural aspects, this report aims at comparing the procedures by which it is possible to present claims to the judicial or quasi-judicial dispute resolution institutions under examination, and how the procedures themselves are applied to cases[5], including with respect to formal requirements, which may affect directly or indirectly the level of access to labour justice.

Lastly, in operation and practice, the report examines the average distribution of courts and judges to hear cases (supported by official records, if available), who are the parties and actors involved in labour cases, what types of outcomes can be expected, what are the remedies available to deal with these outcomes, and what are the circumstances involving the enforcement or termination of these procedures.

3 Goldman, A. "Settlement of Disputes over Interests and Rights" in *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, edited by Roger Blanpain, 16th edition. 2014. p. 799-800.

4 ITCLO: *Labour dispute systems: guidelines for improved performance*. International Training Centre of the International Labour Organization, 2013. p. 18

5 Such as presentation of evidence and rules of burden of proof, participation of accredited representatives, possibility of appealing the case to higher instances, costs of procedures, possible legal aid, and legal fees.

Methodology

In order to compare models of procedural law and structure of courts in Asian and Pacific countries, pertinent national legislation of each country was examined to collect qualitative data and produce contextual knowledge about the composition of courts hearing labour cases, context of their jurisdiction, procedures and practice of courts. Data collected was divided in several indicators conceived to enable the comparison of countries examined. Given the variety of models and processes, a cross-country quantitative comparison cannot readily be undertaken. Data provided are thus accompanied by descriptions of the specific context.

In respect to statistical data, existing quantitative data was examined, when available by official countries 'websites and their respective agencies and by other official institutions.

This report used updated procedural regulations, updated information provided by official channels of Ministries and courts, and statistics from 2017 to 2021, when available.

Institutional Structure of Courts and Tribunals

Composition of Courts and Tribunals

Models of courts hearing labour cases

In 6 of the 15 countries analysed[6], labour cases are heard only by ordinary/civil courts, meaning that in these countries labour cases do not fall under a special judicial jurisdiction, although in some of them there are specialized branches handling these cases, such as in Australia[7] and Japan[8], or specific procedures are applied. However, in countries where labour courts have been established, their competence over labours cases may not be absolute.

For the purposes of this topic, the report will divide the countries in the ones with and without established labour courts, even if their jurisdiction over labour cases is limited or if these labour courts are branches of ordinary courts. This report also considers quasi-judicial institutions that are called courts or tribunals, if judicial courts are not competent to hear labour cases at all in first instance and if these courts or tribunals allow recourses to the Judiciary.

In Japan[9] and Sri Lanka[10], for example, labour courts are only competent to hear individual cases, once collective cases are directed to specific labour dispute resolution institutions[11]. In Bangladesh, labour courts have full jurisdiction over labour cases.[12] Same in Singapore[13] and Thailand[14].

In Australia, according to the Fair Work Act 2009[15], State and Territory Courts, Federal Court of Australia and the Federal Circuit Courts are competent to hear labour cases, under specific rules of procedures.[16]

In Fiji and New Zealand, specialized labour courts within the Judiciary are fully competent to hear individual and collective labour cases.

In New Zealand, the Employment Court hears and determines cases which include individual and collective disputes and challenges to determinations of the Employment Relations Authority.[17] Recourses against decisions of the Employment Court are to be brought to ordinary Court of Appeal.

In Fiji, a party to proceedings before the Employment Relations Tribunal may present a

6 Australia, Cambodia, China, Mongolia, Republic of Korea and Viet Nam.

7 Fair Work Divisions in Federal Court of Australia and Federal Circuit Courts of Australia.

8 Articles 1 and 2 of Labour Tribunal Act No. 46, 2004.

9 Article 3-8 of Labour Relations Adjustment Act.

10 Section 4 of Industrial Disputes Act.

11 In Japan, collective cases are settled by the Labour Relations Commission. In Malaysia, they are heard by the Industrial Court. In Sri Lanka, collective cases are dealt by Industrial Courts or labour tribunals, and the Commissioner General for Labour.

12 Article 214 and 218 of Labour Act 2006.

13 Division 2, Section 12, Employment Claims Act 2016.

14 Section 8 of Act on Establishment of Labour Courts 1979.

15 The Fair Work Act - Sections 562 – 568, Federal Court of Australia Act 1976- Sections 13 and 14, and Federal Circuit Court of Australia Act 1999.

16 For the purposes of this report, only procedures in place in the Federal Circuit Court and Federal Court of Australia will be considered, once procedures related to State and Territory Courts may suffer small variations depending upon the peculiarities of each Court.

17 Employment Court of New Zealand. See more in https://www.employmentcourt.govt.nz/

recourse against its decision to the Employment Relations Court of Appeal.

In Bangladesh, labour cases are heard by specialized labour courts, including a specialized appellate tribunal. In India, labour courts deal with all types of disputes between employers and employees. The courts are presided by District Judges.[18]

In Japan, the Labour Tribunal Panel tries to resolve labour disputes through mediation, and it proceeds to the adjudication the case and renders a decision in case settlement is not reached. The decision is binding and enforceable unless one of the parties files an objection. If either party objects, the award loses its effect, and the case is automatically referred to a civil court and treated as ordinary civil litigation.[19]

In some countries, the Labour Courts (or Tribunals) are quasi-judicial institutions established by the Governments under the administration of the respective Ministries, which decisions may or may not be appealed to judicial institutions.[20] They are called courts or tribunals but are not supervised by the judiciary in first instance.

China, Mongolia, Republic of Korea and Viet Nam do not have clear specialized judicial labour courts and labour disputes are heard by ordinary civil courts.

In Cambodia, labour cases are heard by judicial ordinary courts, but the establishment of specialized labour branches within these courts to receive individual labour disputes is planned for the end of 2021.[21] **(Chart 1)**

Composition of courts hearing labour cases

Labour courts and ordinary courts hearing labour cases can comprise professional judges and/or representatives of employers, workers and experts in labour markets (often called "lay judges", "labour advisers" or "representatives of people").[22]

In OECD countries, for example, the legitimacy of lay judges appears to be framed by the national industrial relations context, particularly union density, and the public trust afforded to them[23], such as in Japan[24].

In countries examined that are not part of OECD, the responsibility of lay judges also seems to follow the same rational. They can play the role of ancillary or expert judges, like in India[25], Indonesia[26] and Thailand[27].

18 Section 7 of Industrial Disputes Act. In India, according to the Section 6 of the Industrial Disputes Act, the Government may constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute and has the purpose of contributing to the evidence collection and preparation of the main case. This court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

19 Ebisui, M; Cooney, S; Fenwick, C: *Resolving Individual Labour Disputes*, 2016, p. 171.

20 India and Sri Lanka follow this model in first instance.

21 Labour courts (*commercial and labour courts*) in Cambodia are stipulated under articles 5, 14, 25 to 28, 47, and 57 of the Law on Court Organization (2014), by which labour cases must be heard by a panel of professional and lay judges. However, they had not yet been established when the data for this report was collected. According to article 84 of Labour Law of Cambodia, pending the creation of the labour courts, the ordinary court has the jurisdiction over labour cases. See more in https://www.phnompenhpost.com/national/cambodia-set-have-trade-labour-courts-end-2021

22 For this report, these representatives will be called "lay judges".

23 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview.* p. 22.

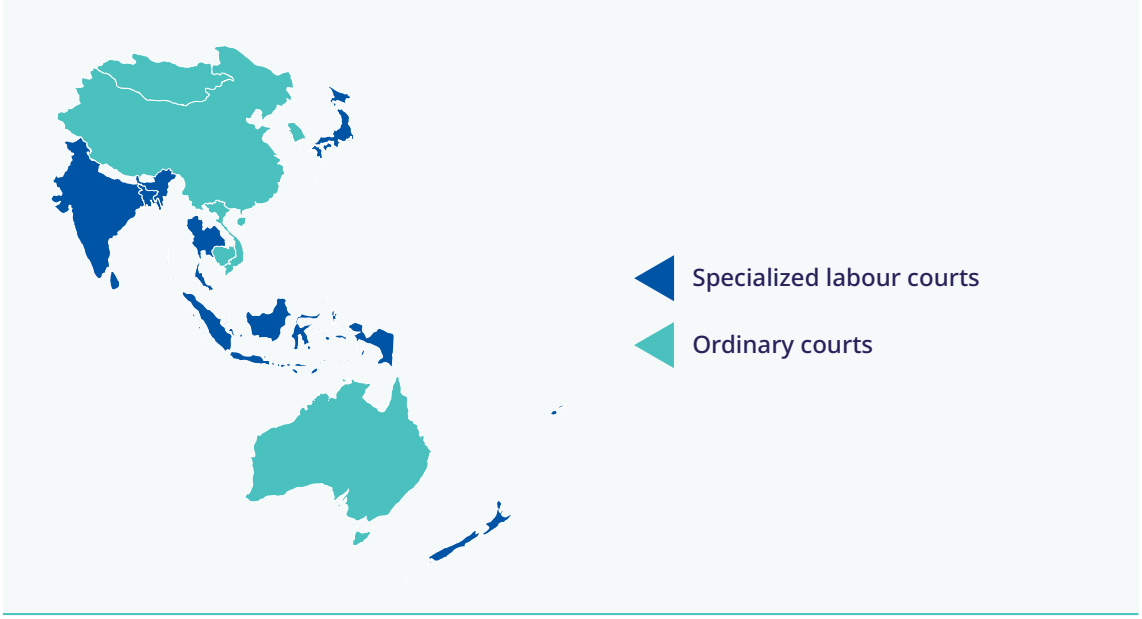
24 Articles 1, 2 and 7 of Labour Tribunal Act N° 46, May 12 2004.

25 Industrial Disputes Act, 2020, Section 44.

26 Article 1 (19) and 61 of Industrial Disputes Act (No. 27 of 1966)

27 Section 11 of Act on Establishment of Labour Courts 1979

Chart 1: Judicial courts of first instance hearing labour cases



New Zealand[28], cases are heard by professional judges. In Fiji[29], they are heard by a panel composed by professional and lay judges. In Australia, Federal Court may be constituted by a single Judge or as a Full Court consisting of three or more professional Judges. In the Federal Circuit Courts, cases are heard by a single professional judge.[30] **(Chart 2)**

In Cambodia, although specialized labour courts within the courts of first instance are not yet established, when adjudicating labour cases, civil courts may consist in professional judge and two labour advisors (lay judges), appointed by workers and employers 'representatives. Moreover, Courts of Appel should have labour chambers to hear recourses against decisions rendered in labour disputes by civil courts, composed by three judges and labour advisors.[31]

In China, generally labour case is adjudicated by a bench of purely professional judges. However, for certain claims involving public or groups interest and major social impact, lay judges called "people's jurors" may be appointed to the collegiate bench to participate in the hearing, which the main role is to conduct fact finding in the trial.[32]

The labour courts in Bangladesh consist of a chairperson and two additional members as advisors, functioning as lay judges. In cases involving the trial of an offence, the court is comprised only of the chairperson.[33]

In India, labour courts shall consist of one person only to be appointed by the Government. The presiding officer of the labour court shall be a Judge of a High Court or have, for a period of not less than three years, been a District Judge or an Additional District Judge.[34]

28 Section 197 of Employment Relations Act 2000.
29 Sections 202 and 219 of Employment Relations Act 2007.
30 Section 11 of Federal Circuit Court Act 1999.
31 Articles 5, 14, 25 to 28, 47, and 57 of Law on Court Organization of 2014.
32 Article 39 of Civil Procedure Law of the People's Republic of China.
33 Section 214 of the Bangladesh Labour Act.
34 Section 7 of Industrial Disputes Act.

Chart 2: Category of judges of first instance hearing labour cases

Labour cases may be decided in first instance by a single judge[35] or by a panel of judges[36], composed by professional and/or lay judges. In some countries the nature of the claim or specific rules on procedures will be decisive to define whether the decision is to be rendered by a single judge or by a panel.[37]

Considering the sample of countries examined, most of them provide mechanisms for the labour cases to be heard in a panel, even if composed only by professional judges and limited by specific rules of procedure or nature of claims. **(Chart 3)**

Selection and qualification of judges

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.[38] The aim of judicial appointment processes should be to provide a reliable means of identifying persons who possess these qualities, and to do so in a manner that is legitimate, to sustain public confidence in the judiciary.[39]

Rules on selection and qualification of judges serve to guarantee their independence and ensure a sufficient degree of expertise and high standards in the qualification. The processes of selection of first instance professional judges

35 Republic of Korea (Article 3 Court Organization Act) and Sri Lanka (Article 31A of Industrial Disputes Act (No. 27 of 1966).

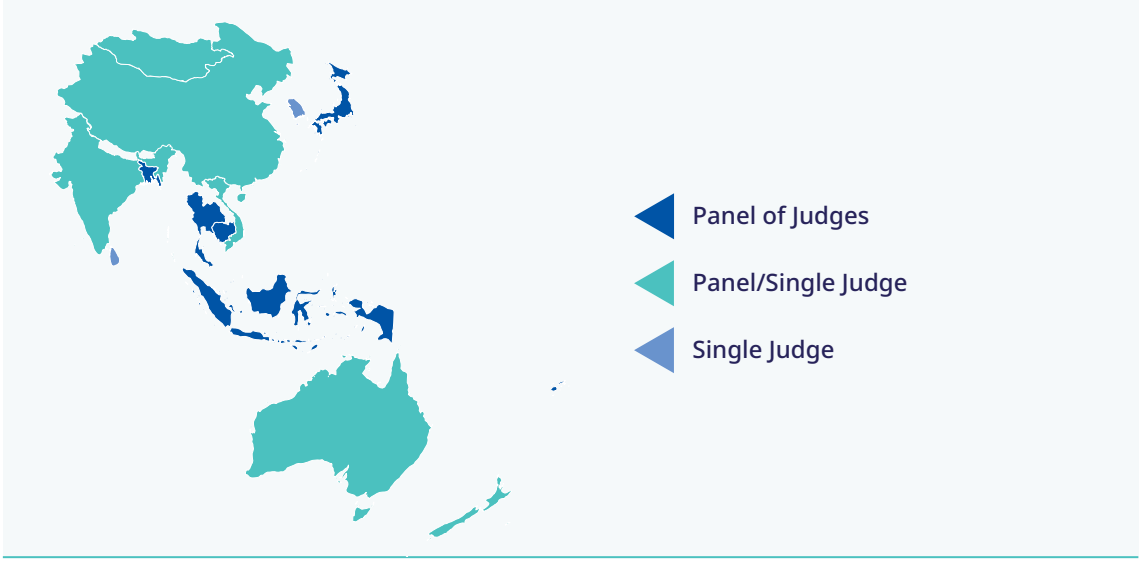
36 Bangladesh, China, Fiji, Japan, Indonesia and New Zealand.

37 Examples include Australia, Mongolia, and Viet Nam.

38 Unites Nations, High Commissioner for Human Rights: Basic Principles on the Independence of the Judiciary. Available here https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx

39 About best practices on appointment and selection of professional judges, please see: J. van Zyl Smi:, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (Report of Research Undertaken by Bingham Centre for the Rule of Law), 2015, p. 17.

▶ Chart 3: Composition of judicial courts of first instance hearing labour cases



and the qualifications required to hold the position are quite different among the countries examined, but specific trends are important to be explored.

Qualification of Judges

Most of the countries examined provide specific legislation in respect to appointment and selection of judges. In some, the pertinent legislation provides that candidates must have proved professional experience in the field of law. Other requirements are linked to citizenship, education (degree in law), age, attendance to training programmes. Some countries also established requirements linked to the reputation, credibility, religious beliefs, and physical and mental fitness for the job.

In Japan, several judges are selected from assistant judges, attorneys, public prosecutors, research law clerks, professors of law, and assistant judges shall be appointed from those who have completed the training as legal apprentices.[40]

In Fiji, lay judges must also have experience in employment relations.[41] Appointment of lay judges in Japan is based on the recommendation of major employers 'and workers 'associations and trade unions, but they are required to have expertise and experience in labour matters.[42]

In Bangladesh, law has not provided any criteria of judicial knowledge, experience or minimum qualification for members except the Chairman (same for civil judges). There is no provision for any prior experience (in dealing with labour law matters) or minimum training for judges before appointing here from lower judiciary.

In Indonesia, one of the requirements refers expressly to religious beliefs.[43] **(Figure 1)**

40 Articles 76 - 82 of Constitution of Japan, 1947, and Articles 41 - 45 Courts Act.

41 Article 205 of Employment Relations Act.

42 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview*. p. 173.

43 Article 64 of Industrial Relations Disputes Act.

▶ **Figure 1: Statutory qualification requirements for professional judges**

Qualification requirements for judges					
Personal			Professional		
Citizenship	**Age**	**Reputation or/ and Health**	**Education (Bachelor`s degree in Law)**	**Training**	**Experience**
Bangladesh, Cambodia, China, India, Indonesia, Mongolia, Thailand, Viet Nam	Cambodia, India, Indonesia, Mongolia, Thailand	Cambodia, China, Indonesia, New Zealand, Republic of Korea, Thailand, Viet Nam	Australia, Bangladesh, Cambodia, China, Fiji, Indonesia, Japan, New Zealand, Republic of Korea, Singapore, Sri Lanka, Thailand	Indonesia, Japan, Republic of Korea, Singapore, Viet Nam	Australia, Bangladesh, China, India, Indonesia, Fiji, Japan, Mongolia, New Zealand, Republic of Korea, Singapore, Sri Lanka, Viet Nam

Selection of Judges

Professional judges are appointed directly by the Governments in a large part of the countries examined and the selection process, in respect to objective and transparent criteria, is not always sufficiently clear in the national legislation.

Several countries, however, provide in their legislation that the appointment by the Government takes place on the recommendation of independent Judicial Commissions, which carry out the selection procedures based on technical evaluations, or other specialized authorities.

In Australia, at the Federal level, judges are appointed by the Governor General, having been selected by Cabinet on the advice of the Attorney-General.[44] Same for New Zealand[45] and Fiji[46].

In Bangladesh, the chairman of the labour court shall be appointed by the Government, through the Ministry of Justice, from amongst the district or additional district judges.[47]

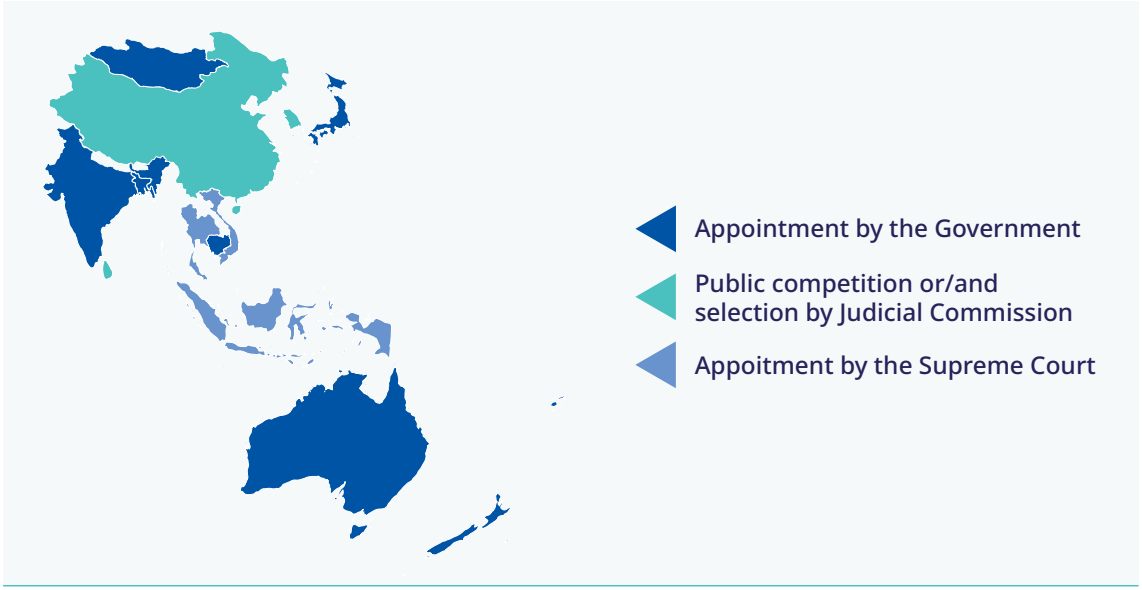
In Sri Lanka, judge in labour tribunal is called the "president". They are appointed by the Judicial Service Commission from among practicing lawyers or from among administrative officers with a degree and experience.[48] In Thailand, the appointment of a judge as a judge-trainee shall be ordered by the President of the Supreme Court through an examination, a test of knowledge or a special selection.[49]

The map below provides an overview of these practices, considering mainly ultimate and common steps of the selection process. **(Chart 4)**

In the Republic of Korea, judges are nominated for their position by the Chief Justice of the Republic and subsequently confirmed by the Supreme Court Justices Council[50]. In Singapore, the Chief

44 Section 72 of Constitution of Australia. See more here https://www.fedcourt.gov.au/about/judges/current-judges-appointment
45 Section 200 of Employment Relations Act.
46 Articles 104 - 107 of Constitution and Articles 204 and 219 Employment Relations Act.
47 Articles 43 (3) and 95 (1) of the Bangladesh Labour Act 2006.
48 Section 31A to 31D of Part IVA of the Industrial Disputes Act.
49 Sections 12-17 of Act on Judicial Service of the Courts of Justice.
50 Articles 101 to 105 of Constitution of Republic of Korea and Articles 20 and 41 of Court Organization Act.

Chart 4: Methods of selection of professional judges



Justice of the Court is responsible for advising the President in respect to candidates[51].

Professional judges in Japan shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court.[52]

In India, appointments of district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.[53] Their appointment to a labour court might be made by the Central Government or State Governments.

Same happens in Mongolia[54], where the role of the Judicial General Council includes submitting proposals to Parliament in respect of the judiciary's budget, personnel and court buildings, and recommending candidates for appointment to the judiciary and organising training courses for judges.

In other countries, like China[55], judges obtain legal professional credentials through professional qualification examination. New judges are selected by means of both tests and evaluations.

In Thailand, appointment of Labour Court Judges is made by the King on the recommendation of the Ministry of Justice.[56] Appointment of lay judges is made by the King from among the list of representatives of employers and workers compiled by Ministry of Labour.[57]

Judges may also be directly nominated by the Supreme Court[58], either by internal selective process or nominations from attorneys, public prosecutors, research law clerks, and professors of law.

51 Section 10 of State Courts Act.

52 Articles 79 and 80 of Constitution of Japan, 1947, and Articles 39 and 40 of Courts Act.

53 Article 233 of Constitution of India and article 184 Financial Act and National Judicial Commission Appointments Act 2014.

54 Article 49 of Constitution of Mongolia.

55 Articles 12 - 14 of Judges Law of the People's Republic of China.

56 Sec 12 of Act on Establishment of Labour Courts 1979.

57 Sec 14 of Act on Establishment of Labour Courts 1979.

58 Examples include Indonesia, Thailand and Viet Nam.

Jurisdiction

Material Scope

Courts dealing with labour cases might also be divided in terms of material and geographical scope.

Courts hearing labour cases might have their jurisdiction shared with other mechanisms of dispute resolution depending on the nature of the claims.

Individual labour disputes might be resolved in the same way as those available for the resolution of collective labour disputes. Collective disputes, in this case, are those between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers[59], over violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment (disputes concerning rights), or future rights and obligations under the employment contract (dispute concerning interests).[60]

In Singapore, Employment Claims Tribunals, under de Judiciary, resolve salary-related disputes and wrongful dismissal disputes. The maximum limit of the claim cannot exceed to USD 22,000.[61] Labour Courts hear cases related to work-related injuries, non-salary related claims and functions under the Ministry of Manpower.[62]

In Republic of Korea, an employee claiming unfair dismissal[63] or a trade union seeking relief for unfair labour practices[64] must file a claim with the Regional Labour Relations Commission.

In Sri Lanka, Labour Tribunals have jurisdiction over cases involving individual cases related to termination of employment, however complaints related to minimum wages or other conditions of employment are referred to the Department of Inspections and may not be referred directly to a labour tribunal.[65]

In India, labour courts have jurisdiction over issues related to orders of employers and conditions of employment, dismissals, and reinstatement of workers. Collective disputes may be handled by labour courts since do not involve more 100 workers and when the dispute relates to any matter specified in the Third Schedule of the Industrial Disputes Act. Otherwise, jurisdiction is not defined in terms of number of workers.[66] **(Figure 2)**

59 ITCLO: *Labour dispute systems: guidelines for improved performance.* p. 18.

60 ITCLO: *Labour dispute systems: guidelines for improved performance.* p. 18.

61 Section 12 Employment Claims Act 2016. $30,000 (Singapore Dollars). See more here https://www.statecourts.gov.sg/cws/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-(ECT).aspx

62 Section 18A of the Employment Act: claims for workmen's compensation and claims for non-salary related disputes are heard at the Labour Court.

63 Labour Standards Act, Article 28(2).

64 Trade Union and Labour Relations Adjustment Act, Article 82(2).

65 Section 41, 31B, of Industrial Disputes Act.

66 Cases related to wages, including the period and mode of payment, compensatory and other allowances, hours of work and rest intervals, leave with wages and holidays, bonus, profit sharing, provident fund and gratuity, shift working otherwise than in accordance with standing orders, rules of discipline, retrenchment of workmen and closure of establishments, among others. Other collective disputes are dealt by the Industrial Tribunals, constituted by the Section 7A of Industrial Disputes Act.

▶ Figure 2: Material scope of judicial courts hearing labour cases

Labour & Employment Relations Disputes			
Individual & Collective		Individual	
Labour Courts	Ordinary Courts	Labour Courts	Ordinary Courts
Bangladesh, Fiji, India, Indonesia, New Zealand, Singapore, Thailand	Australia	Japan, Sri Lanka	Cambodia, China, Mongolia, Republic of Korea, Viet Nam

Geographical Scope

Cases involving foreign workers and enforcing foreign decisions

Courts hearing labour cases might be competent to enforce decisions rendered by foreign courts or render decisions on labour cases involving foreign workers providing services in national territory, depending on the reach of national legislation on this regard.

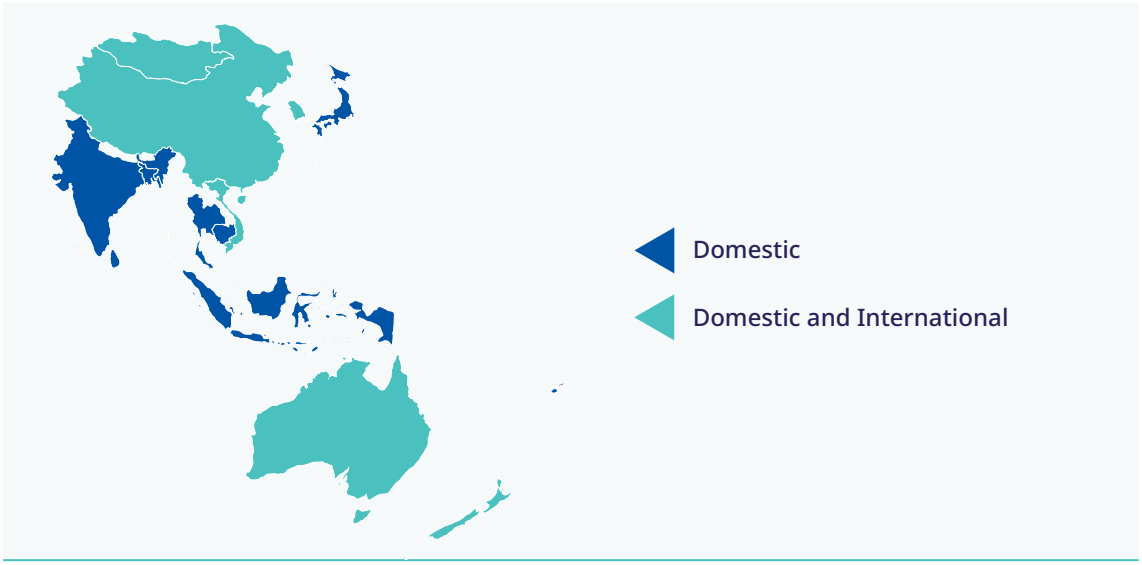
A number of countries examined do not provide specific or clear regulation in respect to Labour Courts to enforce decisions rendered by foreign courts, which does not mean it is not allowed but probably objective of the respective Superior Courts 'decisions in this respect. **(Chart 5)**

In 1987, it came into force the Reciprocal Enforcement Commonwealth Act in Australia, New Zealand, Sri Lanka and India (together with other countries in the region and the United Kingdom) to streamline the process for enforcing foreign decisions in civil lawsuits, limited to decisions issued up to 1997.[67]

In the same line, in 2013, the Trans-Tasman Proceedings Act[68] came into force in Australia and New Zealand, following the Trans-Tasman Agreement concluded between both countries in 2008. The Act was enacted to improve the process for resolving certain Trans-Tasman civil proceedings and minimise existing impediments to enforcing judgments[69], which is also applied in labour cases.

67 See more in https://sso.agc.gov.sg/Act/RECJA1921.
68 See more in http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2013/32.html
69 Part 7 of Trans-Tasman Proceedings Act.

Chart 5: Geographical jurisdiction of judicial courts hearing labour cases



Procedural Aspects

Procedural Rules

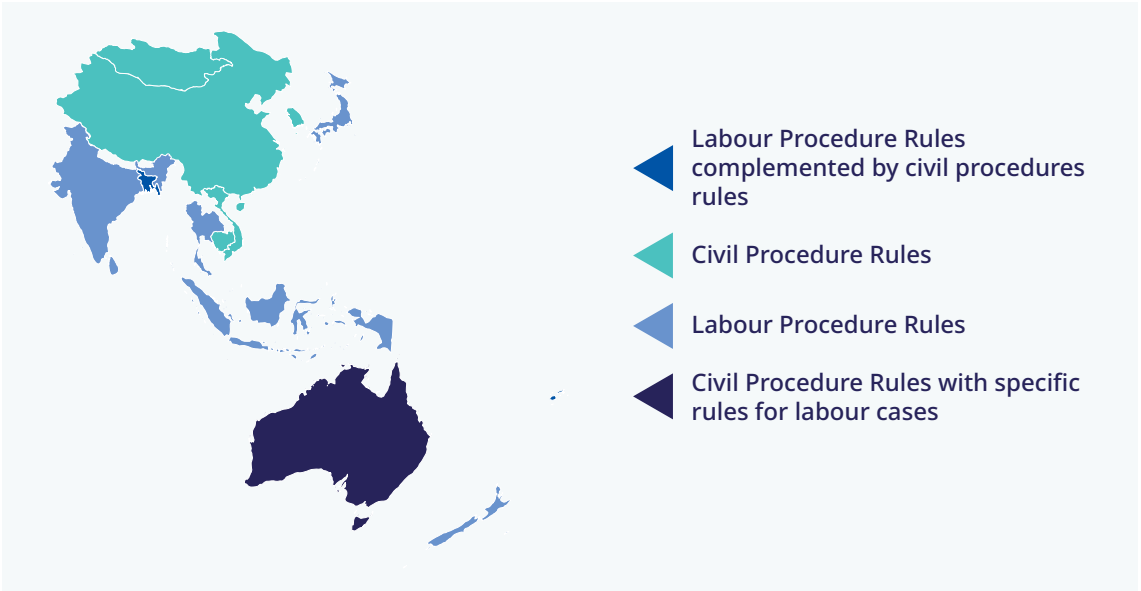
Procedures adopted by courts hearing labour cases[70] may follow specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under the jurisdiction of ordinary courts.

Some countries examined have special procedures intended to ensure the application of expertise in complex employment and labour legislation, particularly in first instance[71]. These procedures intend to make the system less formal and legalistic, faster, and more accessible, in order to adjust an unequal power relationship between the parties to labour disputes.[72]

Other countries adopt general codes of civil procedures with adaptations to labour cases.[73] And there were also countries in which labour cases are heard under civil procedures[74] or labour procedures rules are complemented by civil procedures rules in aspects such as evidence collection.[75]

However, regardless which rules are applied to first instance procedures of investigation and decision of the case, most of the countries rely totally or partially on general or specific civil procedures rules for enforcing decisions involving monetary claims. **(Chart 6)**

Chart 6: Procedural rules applicable to labour cases



70 For this study, only specific procedures for labour cases or ordinary civil procedures applied to labour cases have been considered.

71 Examples include India, Japan, Sri Lanka, New Zealand, and Singapore.

72 Ebisui, M; Cooney, S; Fenwick, C. p. 18.

73 Australia, Cambodia and Fiji.

74 China, Indonesia, Mongolia, Viet Nam, Republic of Korea and Thailand.

75 The case of Bangladesh.

Legal Aid, Court Fees & Costs with reports and experts

An important aspect for the right of access to justice is the presence of judicial fees. A costly procedure may prevent people from requesting the services of courts, particularly those in more precarious economic situations.[76] Exemptions from paying legal fees are common in most countries examined, as well as provisions guaranteeing legal aid.

The report examined access to legal aid, payment of administrative costs (court fees) and costs with external reports and experts, and payment of legal fees.

All countries examined have provisions in law granting legal aid to access the judiciary and which can be applied to labour cases. Initial fees to present a claim do not apply to most countries, nevertheless, some countries have clear provisions on the payment of initial fees to present a claim, which may be exempted in case of parties beneficiaries of legal aid.[77]

Courts fees in labour courts and ordinary courts hearing labour cases in Asia and Pacific region are either fully supported by the State or shared by the parties according to the outcomes of the cases, in which case beneficiaries of legal aid are exempted of paying them.

Most of the countries which have provisions determining the payment of courts fees distribute the burden of responsibility to pay such costs according to the claims granted. This means that in cases in which there has been presentation of a counterclaims, workers might also be sentenced to pay a share of court fees in case the decision finds counterclaims justified. **(Chart 7)**

In Japan, when conciliation is successful, each party is to bear, among the costs that the party has incurred, those for which there are no provisions on the burden of costs in the terms of conciliation in Labour Tribunal Act. In case it is unsuccessful, the Labour Tribunal may issue an order to bear the costs for the proceedings.[78]

In Indonesia, for example, the parties in the legal proceeding are not charged any costs for the

Chart 7: Responsibility for the payment of court fees

76 Colàs-Neila, E., Yélamos-Bayarri , E. p. 20.
77 Australia, Bangladesh, Cambodia, China, New Zealand, Singapore, Republic of Korea and Viet Nam.
78 Article 18 of Labour Tribunal Act.

▶ Chart 8: Responsibility for the payment of costs with external reports and experts

Yes, to be paid to the State and shared by the parties, according to claims that have been granted. Benficiaries of legal aid are exempted.

No, the costs are fully supported by the State

trial process at the Industrial Relations Court, including the execution costs which value of suit is below USD 10,000 (Rp. 150,000,000.00 - one hundred fifty million rupiah).[79]

Court fees might also include fees to appeal. In this case, legal aid beneficiaries are normally exempted to pay, even if the appeal is not successful.[80]

Same rules apply in respect to costs with external reports and experts, which may be summoned to present reports on issues related to assessment of workplace to evaluate occupational health and safety conditions, medical evaluations on occupational illnesses and accidents, judicial inspections, and investigation of possible fraud in documents.

In all the countries examined, these costs follow the same rules of administrative court fees, which means that the losing party of a certain claim shall be responsible for the payment of the expert fees responsible for settling the matter. **(Chart 8)**

In respect to the responsibility over payment of legal fees, in most cases, national legislations suggest that each party should support the legal fees of their own attorneys and other experts hired, even if it is possible to claim compensation for that against the losing part. Only Cambodia[81] and Republic of Korea[82] have clear statutory provisions by which legal fees are shared in the proportion of claims granted.

First instance procedures

First instance procedures applied for labour cases, either in labour or ordinary courts, are similar, regardless of specific procedures provided by law. However, certain trends have been observed in cross-case analysis.

Precautionary Measures

Prior to the presentation of a statement of claim or petition to initiate a labour lawsuit, parties can

79 Article 58 of Law No. 2 of 2004.

80 Examples include Cambodia, India and New Zealand.

81 Article 69 of Code of Civil Procedures.

82 Article 109 of Civil Procedure Act.

present a petition to the Court for precautionary measures. Precautionary measures are an essential procedural law institution, once they often have a direct impact on the effectiveness of the future judgment and are fundamental to secure evidence and means to enforce the decision.

It was not possible to find solid information in respect to the possibility of precautionary measures in labour cases in India and Singapore. **(Chart 9)**

In some countries, preliminary mandatory attempt of conciliation is one of the conditions to be able to have a case heard by judicial courts. This happens, for example, in Australia[83], Fiji[84], Indonesia[85], Japan[86], Singapore[87] and Thailand[88], where the preliminary proceedings of conciliation or mediation take place in the same or at different alternative dispute resolution institutions before the case is presented to the court or tribunal.

Administration of documents and evidence

The search for instruments to shorten the time taken to resolve disputes also motivates many legal reforms and the introduction of specific mechanisms to present statements of claims, documents, evidence, and pleas in electronic form. Most countries examined have regulations providing formal requirements, such as written statements of claims (or specific forms to be filed), to initiate the procedures, even though admit oral petitions, particularly during hearings. Only Australia, Cambodia, Singapore and Thailand provide statutory possibility of oral statements of claim to initiate labour cases.

Countries have already adopted measures that enable digitalisation of proceedings and electronic forms of presenting documents, evidence, and petitions.[89] In Australia, New Zealand, Fiji, and Singapore claims must be presented in specific forms or follow specific guidelines, but this can be done online.

In Singapore, filling of statements of claim and documents can be done online via the State Courts website's Community Justice and Tribunals System (CJTS).[90]

During the Covid-19 pandemic, several courts also accelerated the use of technological solutions to ensure the continuation of services provided, which may not have been yet reflected in national legislation in this respect.[91] However, access to such technological improvements may be uneven in the region.[92] **(Chart 10)**

Litigants and parties

In countries examined, the range of litigants which may be part of a labour dispute in court rarely varies. In most of countries, workers, employers, public prosecutors, trade unions, third parties indirectly involved, associations, heirs in case of death of one of the parties, and legal representatives, in case of incapacity of any of the parties, are allowed to take part in the proceedings.

In cases of individual disputes, trade unions may also intervene as interested party if they are signatories to a collective bargaining agreement applicable to the employee who initiated the

83 The Fair Work Act - Sections 562 – 568.

84 Sections 202 and 219 of Employment Relations Act 2007.

85 Article 83 (1) of Law No. 2 of 2004.

86 Articles 1, 2 and 7 of Labour Tribunal Act.

87 See more in https://www.statecourts.gov.sg/cws/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-(ECT).aspx

88 Section 38 of the Act on Establishment of and Procedure for Labour Courts.

89 Examples include Australia, Japan, New Zealand, Republic of Korea, Viet Nam.

90 Section 22 of Employment Claims Tribunal Act.

91 Examples include Australia, China, Japan, New Zealand, Singapore and Sri Lanka.

92 Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic. International Labour Organization – ILO, 2021, p. 16-19. Available in https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/labour-law/WCMS_828628/lang--en/index.htm.

Chart 9: Possibility of precautionary measures

- No information available
- to ensure availability of evidence, availability of assets and to anticipate future decisions to avoid irreparable damages from violation of the right in question
- only to ensure availability of assets to guarantee a future payment
- to anticipate the effects of a future decision, if the case requires to avoid irreparable damages from violation of the right in question

Chart 10: Administration of documents and evidence

- Physical and copy of original documents, which authenticity is attested by a public servant
- Electronic or physical copy of documents and proceedings, in which case possible fraud must be raised the judges or contrary party
- Physical and original documents, given back to the parties at some point
- Electronic or physical copy of documents and proceedings, in which case possible fraud must be raised the judges or contrary party

dispute and if the outcome of the case may be of collective interest to the members of the trade union.[93]

Representation of parties

In respect to legal representation of parties in Court, labour and ordinary courts hearing labour cases have different approaches to admit representation.

In individual labour disputes, many of the countries provide regulations admitting self-representation in specific cases.

In Singapore, parties are only allowed to appear in court by themselves. No accredited lawyer or third representative can represent parties in the Employment Claims Tribunal. [94]

In India, parties may only be self-represented or be represented by Trade Unions. Lawyers also cannot be involved in conciliation boards and courts of first instance unless it is agreed by both parties and by the court.[95]

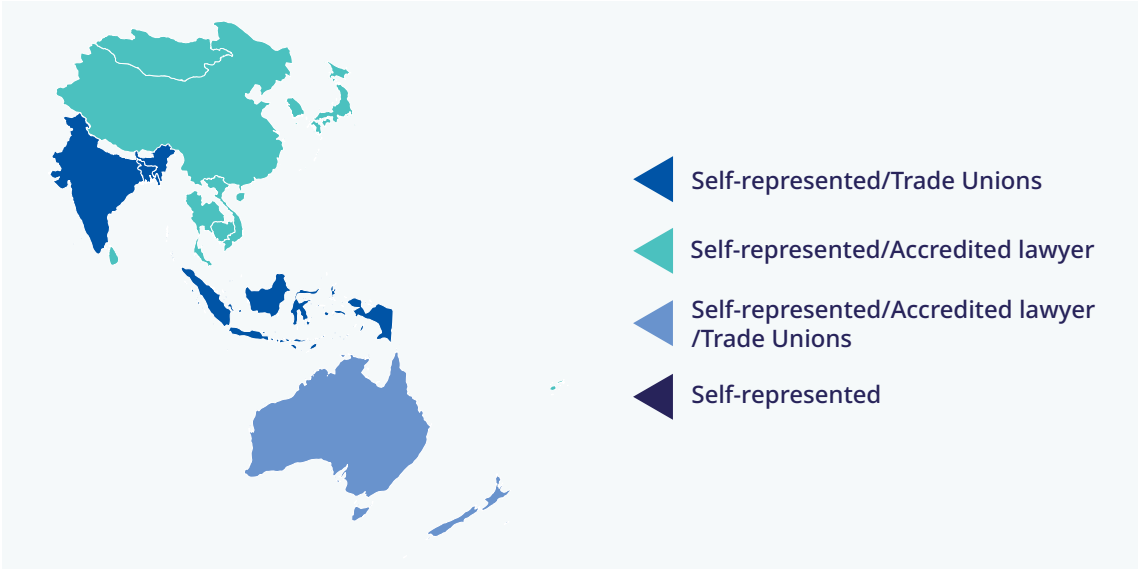
In Thailand, workers and employers can be represented by employers' associations and trade unions, apart from accredited lawyers.[96] **(Chart 11)**

Presentation of statement of claims and responses

In general, statements of claims might include information about the parties, facts and legal grounds of claims, and evidence that will support the claims or a request to secure or produce evidence for this purpose. In some countries, it is possible to hold a preliminary hearing before the presentation of defence, depending on the case, for mediation and conciliation.[97]

Upon the receipt of the claim, the court, whether with a single judge or a panel, evaluates its appropriateness and adequacy to the requirements of

Chart 11: Representation of parties



93 Examples include Bangladesh, Indonesia and New Zealand.
94 Section 19 of Employment Claims Act 2016.
95 Section 36 of Industrial Disputes Act.
96 Section 36 of the Labour Courts Act.
97 Examples include Bangladesh, India, Japan, and Thailand.

the national procedural law. As a result, opposite parties will either be served with the statement of claim or will be called for a first hearing where they can present their arguments. Parties can be served by the post office, via bailiffs, or by the plaintiff[98]. Defences and counterclaims[99] may be presented at the first hearing[100] or before.[101]

In Australia, counterclaims may be conducted separately from the main case.[102]

In Cambodia, legislation provides for preparatory proceedings before the first hearing, which aims at presenting the case. These preparatory proceedings include the essence of the ultimate facts alleged and the offering of evidence, as well as admission or denial of the factual allegations of the other party and of the authenticity of documents.[103]

In general, amendments to the complaint may be authorised if agreed by the defendant and plurality of claims against the same defendant are allowed in all countries examined, depending on the material jurisdiction of the Court. Parties may also exchange pleas.

Evidence and arguments phase

After received pleas from parties, documents, and requests to assist with the presentation of further evidence, courts may schedule a hearing aiming at trying a conciliation between parties and solve most of issues related to continuation of proceedings. This hearing may also delimit the facts and legal grounds of the claims and decide on matters related to evidence that needs the assistance of the court. As said before, in some countries this hearing will also serve to receive defence or counterclaims.

Matters that are not controversial or have not been contested might be judged immediately.[104]

Default judgements are also possible in case parties do not appear before the main hearing without reasonable justification, such as in Cambodia.[105] In Indonesia, if in the first court session it is proven that the employer is not complying with the obligations prescribed by Manpower Act, the court might anticipate the judgment of issues in this respect and determine the employer to fulfil the obligations in a decision called "*interval verdict*".[106]

In China, parties shall prepare the case with application for evidence collection and production before the scheduling of hearing.[107] In India, a report from the conciliation board is submitted to one of the courts of inquiry, which is responsible for investigating the whole dispute and to produce an accurate report, analysing documents and further evidence before the trial of the case.[108]

In Viet Nam, during the period of preparation of the case, the Courts may schedule intermediary hearings with the purpose of handling evidence and mediation.[109]

98 Example of Singapore.

99 Example of Australia, China, Mongolia, Republic of Korea, Viet Nam.

100 Examples include Japan, Sri Lanka and Thailand.

101 Examples include China, Mongolia, Republic of Korea, and Viet Nam.

102 Employment and Industrial Relations Practice Note (E&IR-1) and Practice Note: National Court Framework and Case Management (CPN-1).

103 Articles 110 and 111 of Code of Civil Procedure.

104 Examples include Australia and Republic of Korea.

105 Article 200 of Code of Civil Procedures.

106 Article 96 of Industrial Relations Dispute Act.

107 Articles 61-68 of Code of Civil Procedure.

108 Schedules II and III of Industrial Disputes Act.

109 Chapter XIII Code of Civil Procedure.

Burden of Proof

Preliminary hearing may also decide on burden of proof. Burden of proof in the countries examined in respect to labour cases may follow different rules from country to country, but normally take into consideration the possibility and opportunity of parties to present evidence.

The countries examined show two slightly different trends. In some of them, burden of proof is generally distributed according to the facts alleged by parties, and exceptions to that are mainly object of judges' discretion.[110] In others, national legislations examined are clearer in respect to distribution of burden of proof considering the capacity of parties to produce evidence and corroborate their allegations.[111] **(Chart 12)**

For example, according to their respective national legislations, in Mongolia[112]parties shall be obliged to submit and collect evidence on the circumstances that are the basis for their claims and objections, and, in Australia facts must be proved on the balance of probabilities.[113]

Admissibility and presentation of evidence

In respect to admissibility of evidence, all countries examined provide rules conditioned to deadlines for presentation of evidence and lawfulness of different types of evidence presented. However, they may differ in respect to the need of accord of parties.

Irrespective of the documentation enclosed with the initial statement of claim and defence and counterclaims presented, parties may request, in general, presentation of evidence such as hearing of parties and witnesses, elaboration of technical reports by experts, judicial inspections and presentation of public and private documents in the possession of an interested and third parties.

In New Zealand, each party to proceedings in the court has access to the relevant documents of the other parties. In the preparation of the case, parties may request for disclose and make available for inspection any documents which are in the opposing party's possession, custody, or control, and which are relevant to any disputed matter in the proceedings.[114]

In Australia[115] and Singapore[116], evidence, such as witnesses' statements, may be presented through certificated affidavits to streamline the procedures.

Also, in a number of countries[117], the Court itself might, regardless request of parties, take actions to conduct investigations and produce evidence, if it deems necessary for the settlement of the case. **(Chart 13)**

In China, when the people's court examines the application for evidence submitted by the parties, it shall provide the opportunity to the parties to discuss the pertinence of the evidence. In case the evidence is to be produced by an expert, both parties shall determine a qualified expert through negotiation, which in case it results in a deadlock, the people's court shall designate an expert.[118]

During the main hearing, parties might be obliged to appear. In all countries examined, the absence without valid grounds might lead to disadvantage in weighing the evidence of the case. Postponements of hearings are allowed in all countries, provided that reasonable justifications are presented.

110 Examples include Bangladesh, Cambodia, Fiji, Indonesia, Japan, Mongolia, New Zealand, Republic of Korea, Singapore and Sri Lanka.

111 Examples include Australia, China and India.

112 Section 38.1 of Code of Civil Procedure.

113 Commonwealth Evidence Act.

114 Section 40 of Employment Court Rules.

115 Employment and Industrial Relations Practice Note (E&IR-1).

116 Rules of the Court, Supreme Court of Judicature Act, Chapter 322, Section 80.

117 Examples include India, Indonesia, Mongolia, Thailand.

118 Articles 120-148 of Code of Civil Procedure and Provisions on Evidence in Civil Litigation by the Supreme People's Court.

Chart 12: Rules on distribution of burden of proof

- In support of their claims, the parties have the burden of alleging the facts on which they are based
- Belongs to the part that initiates the proceedings just for claims that constitute a right and to the defendant for claims that imply changes in a constituted right

Chart 13: Rules on Admissibility of Evidence

- Admissibility conditioned by legal deadlines, lawfulness of evidence and judge discretion
- Admissibility conditioned by legal deadlines, lawfulness of evidence, judge discretion and accord of parties
- Admissibility conditioned by legal deadlines and lawfulness of evidence

The overview below provides a short description of common procedural measures and acts that might be adopted during first instance procedures in courts hearing labour cases in Asia and Pacific. Important to bear in mind that they may occur in different ways depending on the type of procedure applied to the labour lawsuit.[119] Also, the order in which they happen can change from

119 In some countries, depending on the amount involved, if the claims are monetary, or according to the nature of the claim, the proceedings may follow a faster or detailed (ordinary) procedures, which may affect the occurrence of certain acts. For the purpose of this report, only ordinary procedures were considered.

country to country, and, sometimes, depending on the dynamics of the case itself and under the discretion of some courts.[120]

That said, main steps in first instance may consider: presentation of the statement of claim, reception and acceptance of the statement of claim, notification of opposite parties, preliminary hearings to attempt conciliation, collection and production of evidence, main hearings (when also evidence can be collected, such as witnesses and parties' testimonials), judgement and notification of the decision, and amendments to the final decision in specific circumstances under first instance jurisdiction.[121]

Preliminary measures or injunctions, although in many cases serve to guarantee or secure presentation of evidence in advance, may happen in a separate proceeding before or during the main case, on provisional basis. They may also be requested in different instances and the way they are operationalized differ from country to country. For these reasons, they will not be part of the following steps.

Judgement phase

Concluded evidence phase, parties may have the opportunity to present final considerations orally or in writing, depending on the discretion of the presiding court.

The court will render a judgement, by a single judge or in majority, in case of a panel of judges. Judgement may be rendered in total or partially at the end of the main hearing or within a reasonable deadline after that, when parties shall be notified.

Decisions may comprise merit decisions to decide on inexistence of a right, a credit or relationship. They can also be condemnatory, constitutive of a right, and executive, either of a sum or an obligation to fil.

Recourses and appeals against final decisions might attack all aspects of the merits (facts and legal grounds) or might be limited only to points of law and specific grounds provided by the law. All countries examined provide limited or broad possibility of appealing against first instance decisions.

In Indonesia, for example, recourses are very limited. Only the decision of the Industrial Relations Court on the dispute of rights and termination of employment can be appealed before the Supreme Court.[122] **(Figure 3)**

Recourses and appeals to higher instances

The examined systems may accept more than one type of recourse against decisions rendered during the proceedings. There have been observed recourses against final decisions, which may attack merits, points of law or seek annulment of decisions, and against interlocutory decisions which may influence the final judgement, such as decisions granting precautionary measures or secure of assets and evidence, as well as accepting or denying requests related to admissibility of statements of claims, defences, and other pleas.

Recourses may also vary from country to country. However, for the purposes of this report, proceedings in second instance will be considered in respect to recourses which attack the merits of the case, even if the name of the recourse is not necessarily appeal.

All countries provide possibility to re-examination of labour cases decided by first instance courts. However, in many cases, it is necessary to grant a leave to present the recourse or grounds to do it are limited.

120 Different stages of hearings or exchange of arguments may follow the principle of orality, which may change the order of acts or length of proceedings. In countries which follow only or mainly labour procedural rules, proceedings tend to be less complex than in countries where labour cases are heard under general procedural rules.

121 Preliminary hearings and amendments to the decision seem to be present in most of the countries, however in some of them it is not entirely clear if they are possible in all cases.

122 Article 56 and article 109 of the Act 2 of 2004.

▶ **Figure 3: Overview of first instance phases**

General overview of first instances phases
Presentation of statement of claim: Statements of claims can be presented in oral and written forms, normally directly at the Registrar of Courts. In some countries, this procedure can also be carried out in electronic forms or online. Parties may have to pay initial fees.
Parties: Workers, employers, public prosecutors, trade unions, third parties indirectly involved, associations, heirs in case of death of one of the parties, and legal representatives, in case of incapacity of any of the parties, may take part in the proceedings.
Representation: Parties may be self-represented, represented by accredited lawyers or authorized representatives (such as Trade Unions or Employers and Employees 'Organizations).
Admissibility of the claim and responses: The judge/panel examines the statement of claim and decides whether to accept it, reject it, or summon the plaintiff to adequate it. In case of acceptance, the defendant will be notified and can present a defence or/and counterclaim.
Initial evaluation of the cases and delimitation of facts and legal grounds: After received pleas from parties, documents, and requests to assist with the presentation of further evidence, the Court may: i) decide on a preliminary hearing to attempt conciliation between parties, ii) delimit the facts and legal grounds of the claims, iii) distribute the burden of proof, and iv) determine admissibility of evidence and production of evidence from third persons.
Evidence: Preparation of case. Procedures in respect to summoning of experts and witnesses are likely to take place during this phase. Parties may present technical questions to experts appointed by the Court or indicate their own experts´ assistants. Determination of judicial inspections may take place. Authenticity or validity of evidence may be argued in written pleas.
Hearing of the case (main hearing): Parties summoned to attend the hearing might only be absent in specific cases. The absence without justification might cause the disregard of the party´s arguments related to facts. New attempt of conciliation. Evidence produced is examined. Parties and witnesses, including experts, may be heard.
Final arguments and judgement: Concluded evidence examination, parties may present their final arguments. The Court may retire itself to discuss the case (in case of panel) and render the decision on the merits, in which case parties are notified immediately. Decisions may also be rendered after the hearing, within a deadline, and parties notified.
Clarification of decision and granting of appeal: The Court usually can, upon request of parties or on its own discretion, clarify obscure, vague, or contradictory points of the decision, as well as obvious formal mistakes. The decision might also establish the possibility of appeal, if allowed by the law. Appeals might be presented by the interested parties at first instance or directly to higher instances.

The presentation of recourses against decisions on the merits of the case may have court fees or, in cases of decisions determining payment of sums in monetary claims, demand a deposit of an amount which may be converted in payment in case the decision stands.[123]

The respective recourse might be presented to the same Court which rendered the decision or directly to the immediate higher instance. If presented to the Court the rendered the decision, its admissibility will be assessed in first instance.

Regardless of in which court the recourse is lodged, the opposite parties must be notified by the Court to present a response or to join the recourse with their own allegations, in case there is interest. If received by the first instance, proceedings must be sent to immediate Higher Instance.

123 Examples include India, Mongolia, Sri Lanka, and New Zealand.

The Court of Appeals[124] may be a specialised labour court of appeal[125], or an ordinary Court of Appeal which hear labour cases in Civil chambers[126].

Below there is an overview of the main common steps of presentation of appeals in these different appealing jurisdictions. **(Figure 4)**

In Japan, if the court of second instance dismisses the recourse because the interested party has filed the recourse exclusively for the purpose of delaying the conclusion of the litigation, a heavy fine can be applied.[127]

In Bangladesh, a recourse may be presented to the Appellate Tribunal. The decision of the Tribunal is final.

In Indonesia[128], Singapore[129] and Thailand[130], recourses are only admitted if discussing a point of law or in certain types of disputes.

In Australia, recourses are only allowed if the interested party convinces the Court that the first instance decision contains error of law and that the error was of such significance that the decision should be overturned.[131]

Figure 4: Overview of main steps of presentation of recourses against final decisions of first instance

Overview of main steps of presentation of recourses and appeals against final decisions of first instance.
Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the higher instance where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse or/and a joint recourse.
Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Court of Appeal/Higher Court, in which it will be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel.
3. Re-examination of the case: Parties may have the opportunity to present their arguments in written form before the trial. New evidence or evidence rejected by the previous instance may or may not be admitted, depending on its relevance. Parties may be summoned to a hearing, in which the case will be examined.
4. Hearing and Judgement: The hearing begins with the judge's rapporteur briefly presenting the status of the case. The Court examines the first-instance judgment within the limits of the grounds specified in the recourse. During the hearing, parties may be heard, as well as new evidence may be examined. The Court decides about the merits of the recourse in a panel and the decision is rendered according to the majority. Decisions may comprise: i) reform of the previous decision; ii) annulment of the decision and replacement with a new one; iii) annulment of the decision and determination of a new trial in first instance.

124 Or immediate higher instance competent to hear the recourse.
125 Examples include Bangladesh (Labour Appellate Court) and Fiji (Employment Court, which has the same status of the Higher Court).
126 Examples include China, Japan, Mongolia, New Zealand, Republic of Korea, and Viet Nam.
127 Article 303 of Code of Civil Procedure.
128 Articles 109 and 110 of Industrial Relations Disputes Act.
129 Section 25 of Employment Claims Court Act.
130 Section 54 on Act on the Establishment of and Procedure for Labour Court, B. E. 2522 (1979).
131 Section 33 of Federal Court of Australia Act 1976 and of Part 36 Federal Court Rules 2011.

Supreme Court Phase

In many countries[132], a Supreme or Superior Court is the highest instance in the judiciary to hear recourses in labour related cases, including many in respect for constitutional matters. In most of the times, labour cases do not go that far due to the limitations to further discuss evidence and facts.

On the other hand, in most of the countries in which a Constitutional Court has been established, recourses of cassation or appeals against decisions rendered in labour cases are not under the competences of such Court[133], which has the sole purpose of evaluate whether laws, ordinances and decrees violate articles of Constitutions. They may also have jurisdiction over questions concerning members of the Houses of Representatives and on any other case concerning government authorities.

In all other countries examined, the Supreme Court (also called High Courts in Australia and New Zealand and Cassation Court in Viet Nam) is the responsible for resolution of conflicts involving constitutional matters.

Proceedings at the Supreme Courts are remarkably similar to proceedings of Court of Appeals, particularly concerning the designation formation of a panel of judges and few possibilities to present recourses, due to more strict requirements to be met. In most cases, only matters on point of law can be re-examined at this stage. Some formalities, however, differ from country to country. **(Figure 5)**

▶ **Figure 5: Overview of main steps of presentation of recourses to Superior instances**

Overview of main steps of presentation of recourses to Superior instances
Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the Supreme Court where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse. Incidental or joint recourses are rarely allowed.
Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Supreme Court, in which it will be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel.
Examination of reasons of the recourse: Parties may have the opportunity to present their arguments in written form before the trial. New evidence or evidence rejected by the previous instance is generally rejected, except when in support of the allegations related to violation of specific point of the allegations of the recourse. Parties may be summoned to a hearing, in which the case will be examined. A bench, with 3 or more judges will analyse the case. Parties may be summoned to appear in the trial hearing.
Judgement: Decision may i) Adopt a resolution to dismiss the recourse and leave the decision unchanged; ii) Adopt a resolution on full or partial cancellation of the decision and refer the case for new proceedings to trial or appeal; iii) Adopt a resolution to abolish the decision and keep in force a judicial court of first instance that was standing before; iv) abolish judicial decisions and to close the proceedings in the case or leave the application without consideration; v) Reverse and adopt a new decision or change the decision.

132 Only Bangladesh and Singapore do not seem to foresee possibility of recourse to the Supreme Court in labour cases.

133 Examples include Mongolia and Republic of Korea.

Enforcement phase

Final decisions might be enforceable immediately according to express statutory provisions, regardless of presentation of recourses. Examples include Indonesia[134], Japan (only on the matters that have not been subject to a recourse)[135], Sri Lanka[136] and Thailand[137].

In most of the countries examined, enforcement proceedings are either regulated by specific legislation[138] or by the general civil procedures.[139] **(Figure 6)**

In all countries examined, national legislation provides for the possibility of seizure of assets in case of enforcement in respect to monetary claims, but differ in respect to the steps to be taken before that to happen. In countries in which labour courts hold competencies over collective claims or related to collective bargaining agreements, this authorization has not been observed once there are no provisions in respect to enforcement due to the nature of decisions.

Regardless the type of procedural law regulating enforcement, proceedings are similar, but may vary in respect to which court or person is the responsible for carrying out the enforcement proceedings. In a number of countries, the court which issued the decision in first instance is competent to move forward with its execution.[140]

In addition, in general, enforcement proceedings are carried out by bailiffs, court clerks or execution officers[141], enforcement agencies[142] and sheriffs[143].

Enforcement may be initiated upon a request of the interested party[144]. The competent court will, upon the request and with the presentation of proof of the last decision standing, as well as of indication of means to promote the execution against the debtor (such as indication of assets, properties, addresses, etc), issue an enforcement order (often called writ of execution).

Debtors may present measures to contest the execution, but most of them are only accepted if specific requirements are met. If no opposition is presented and the debtor does not comply with the obligation voluntarily, enforcement measures may be taken, such as seizure of assets and restriction of rights.[145]

According to the Civil Execution Act, in Republic of Korea, the court, pursuant to the creditor's request, makes inquiries to institutions which keep information on the debtor's properties or financial assets in the form of electronic data, and orders them to submit such information. The creditor, then, can make use of information submitted by the institutions and move forward with the enforcement procedures.[146]

134 Article 108 of Industrial Relations Disputes Act.

135 Article 294 of Code of Civil Procedures.

136 Section 31 (c) (4) of Industrial Disputes Act.

137 Section 55 of Labour Courts Act. A party lodging the recourse may apply to the labour court, which gave the judgement, by motion setting forth reasonable grounds for the application in order to have the Supreme Court order to stay the execution.

138 Examples include Indonesia, Japan, and Republic of Korea.

139 Examples Australia, Bangladesh, Cambodia, China, Fiji, New Zealand, Singapore, Thailand, Viet Nam.

140 Examples include Australia, China, Mongolia, New Zealand (only for non-monetary claims), Republic of Korea, Viet Nam.

141 Examples include Australia, China, Japan and Fiji.

142 Viet Nam. Chapter XXX, Part 7, of Code of Civil Procedure.

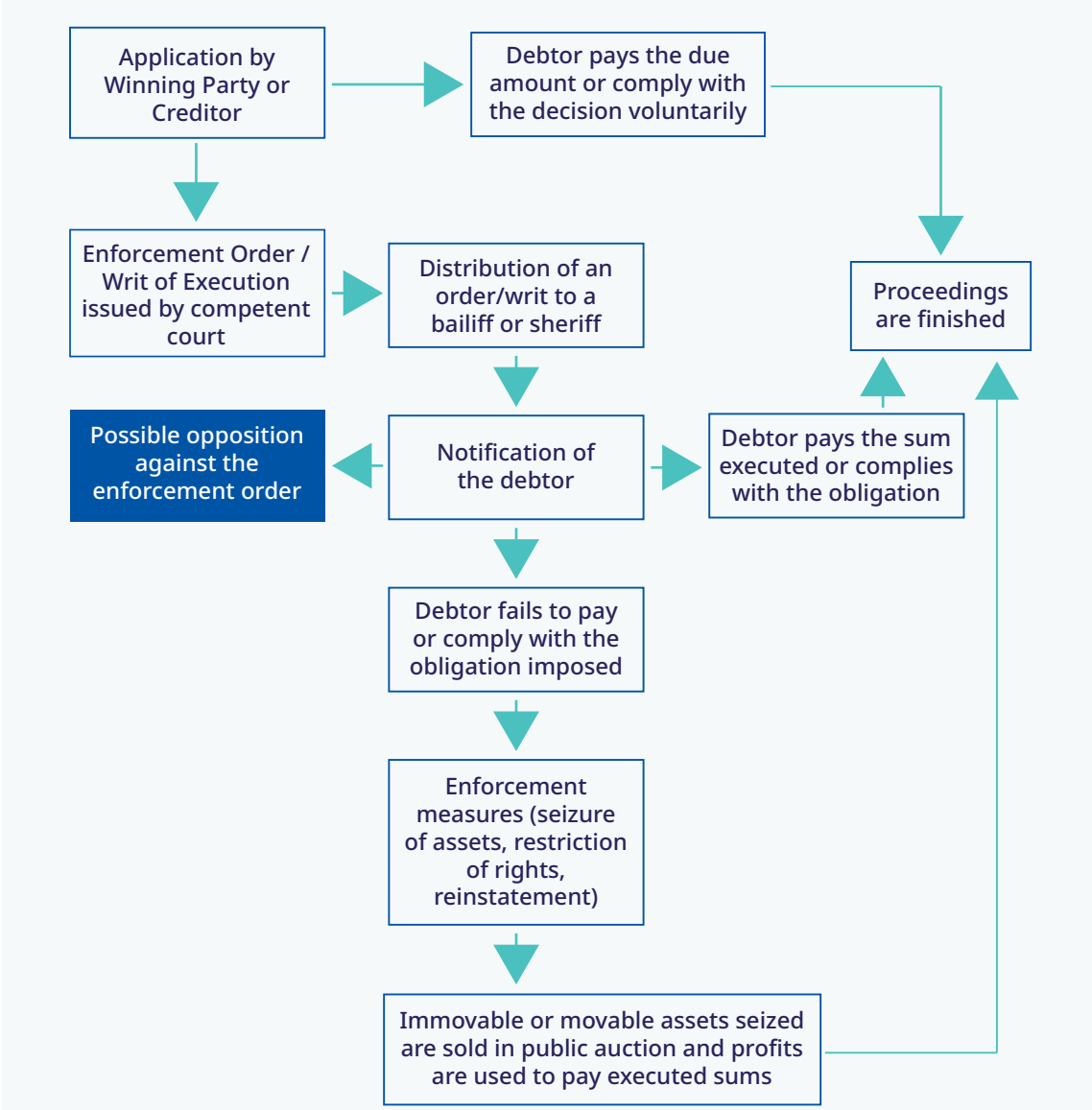
143 New Zealand: Section 141 ERA: Any order made or judgment given under any of the Acts referred to in section 223(1) by the Authority or the court (including an order imposing a fine) may be filed in the District Court, and is then enforceable in the same manner as an order made or judgment given by the District Court.

144 No information in respect to ex officio enforcement has been found.

145 Although national legislation in these countries provide for the possibility of seizure of assets, the execution of this measure is rare, particularly in developing countries in the region.

146 Article 73 of Civil Execution Act.

▶ Figure 6: Common steps in procedures for enforcement of decisions



In terms of assets that can be arrested, most of the countries have express provisions in this regard, authorizing seizure of movable and immovable assets to enable the payment of monetary claims.[147]

Possibility of conciliation and mediation during judicial proceedings

In all countries examined, there is no indication that courts cannot refer cases to conciliation and mediation at any time. Ratification of the Court seem to be mandatory in case agreements are

147 In Fiji it is prohibited to seize personal belongings such as clothing, essential furniture, and tools. See more in https://judiciary.gov.fj/courts/magistrates-court/civil/#magistrates

reached during the proceedings in course in all countries.

In Japan, if there is no success in the negotiation of the preliminary hearing, the panel of judges may present proposals to an agreement at the beginning of the main hearing, after examining what has been demonstrated in the proceedings that far.[148]

If conciliation or mediation is successful during the enforcement phase, agreements may not comprise waiving of claims granted by the final decision, unless the enforcement is temporary, and the case is pending trial of a recourse. **(Chart 14)**

Procedural phases

Depending on the judicial tiers established in a country and the possibilities of review of final decisions set forth in the procedural law, the number of procedural phases may drastically vary from country to country. Most of the countries examined have normally 4 procedural phases: i) first instance; ii) second instance (appeal); iii) third instance (Supreme Court); and iv) enforcement phase.

In some countries, such as Indonesia, India, Singapore and Thailand, although recourses against first instance decisions are possible, it is extremely unlike for individual labour cases to reach Superior Courts.[149]

Therefore, due to limitation of presentation of recourses in some countries or the existence of Constitutional Courts which allow the possibility of discussing the constitutionality of decisions directly, possible procedural phases may vary. **(Chart 15)**

In some countries examined, it is possible to present recourses against interlocutory and final decisions.

In China, it is possible to present a recourse for a retrial of the case, when the appeal is no longer possible [150]. In Bangladesh, recourses of review

Chart 14: Conciliation and mediation of labour cases during the judicial proceedings

- Yes, during every phase of the proceedings, regardless any unappealable decision, but submitted to judge´s ratification
- Yes, during every phase of the proceedings, regardless any unappealable decision, but submitted to judge´s ratification
- Yes, but only possible during the hearings or specific situations and submitted to judge´s ratification

148 Ebisui, M; Cooney, S; Fenwick, C: Resolving individual labour disputes: a comparative overview. p. 171.
149 In India and Indonesia, however, collective disputes often reach the Supreme Court.
150 Article 198 of Code of Civil Procedure.

Chart 15: Number of procedural phases

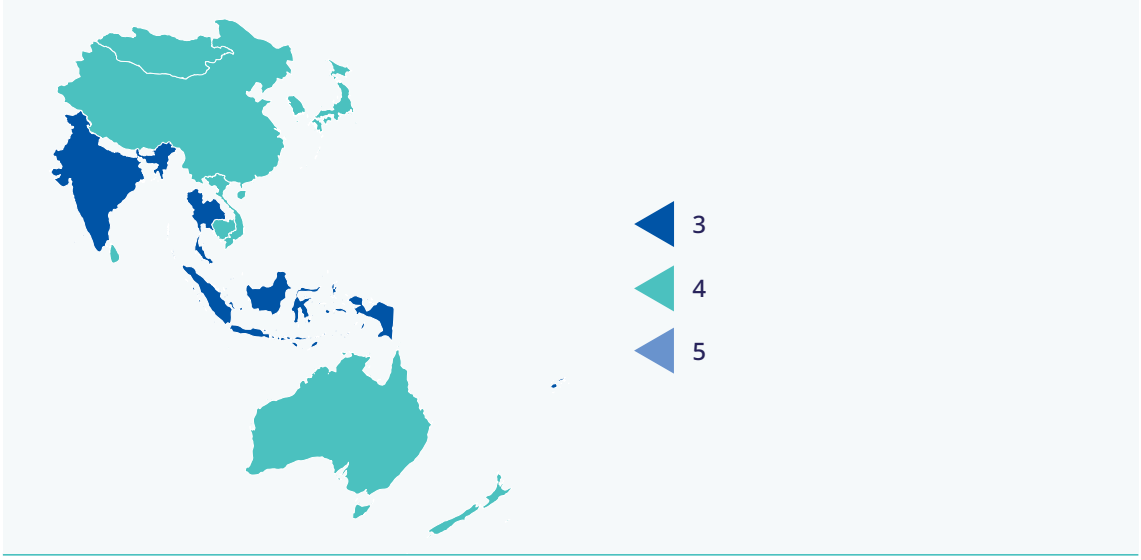
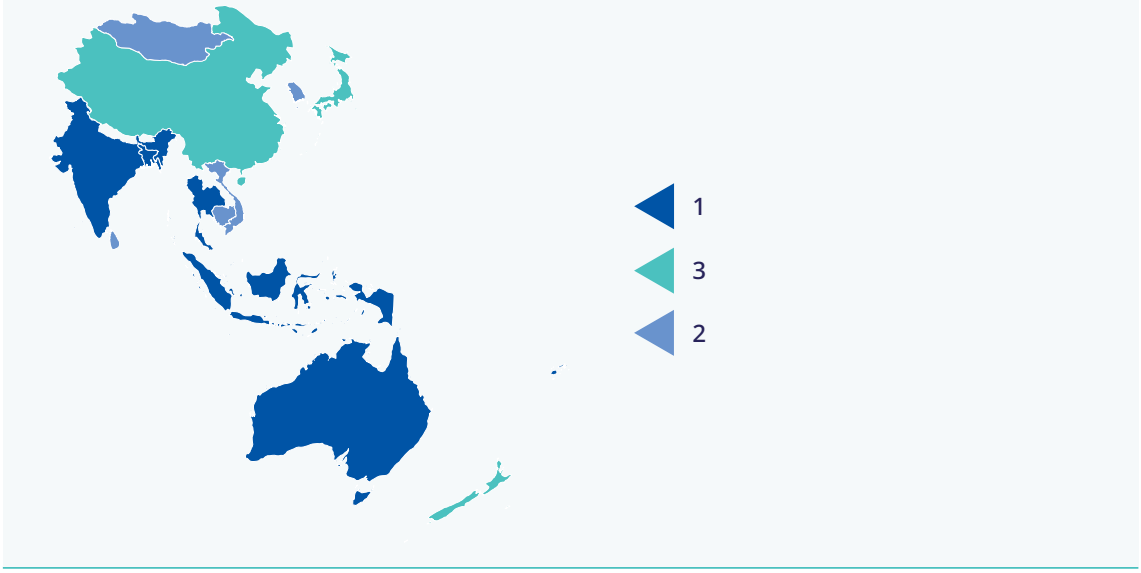


Chart 16: Possible recourses to present in a labour procedure



and revision are admissible in cases in which appeal is not[151]. **(Chart 16)**

In Japan, appeals against interlocutory decisions are allowed.[152] Moreover, an immediate appeal may be filed against the ruling that determine a retrial.[153]

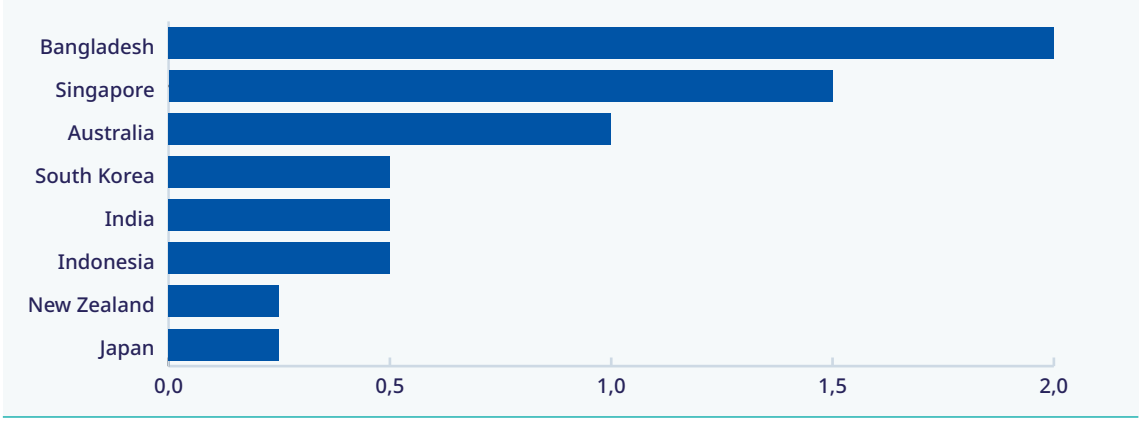
Average duration of procedures

There is little official information or few statistics on average duration of procedures in courts hearing labour cases. Official information has been obtained from the OECD[154], Federal Circuit Court of Australia[155], Supreme Court of Indonesia[156], Employment Court of New Zealand[157]. In other countries examined, although there are few statutory provisions in respect to length of trial, no statistical information is available.[158]

In Viet Nam, law provides that cases in first instance must take from 2 to 4 months to be resolved, depending upon the complexity. However, no official statistics have been found to back up this length of trial. [159]

The information below provides average duration of proceedings in first instance, once the duration of phases may vary within the same country due to different proceedings applied. **(Chart 17)**

▶ **Chart 17: Average duration of proceedings in first instance (in years)**



151 Articles 114 and 115 of Code of Appeal.
152 Article 328 of Code of Civil Procedure.
153 Article 347 of Code of Civil Procedure.
154 OECD: Judicial performance and its determinants: a cross-country perspective. Available in https://www.oecd.org/economy/growth/judicial-performance.htm
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158 Cambodia, China, Fiji, Mongolia, Singapore, Thailand, Viet Nam.
159 Article 203 of Code of Civil Procedure.

Operation & Practice

Average distribution of courts

It is not particularly easy to find statistics on distribution of courts to hear labour cases within the examined countries. This information does not seem to be available or updated in several countries' official websites.

In Bangladesh, there are only 7 Labour Courts across the country (3 in Dhaka, 2 in Chittagong, and 1 each in Rajshahi and Khulna). There is only one Labour Appellate Tribunal in Dhaka.[160]

In Japan, Labour Tribunal Panels function inside the District Courts, which are currently 50 courts with 203 branches.[161]

In Mongolia, there are currently 90 courts of first instance.[162]

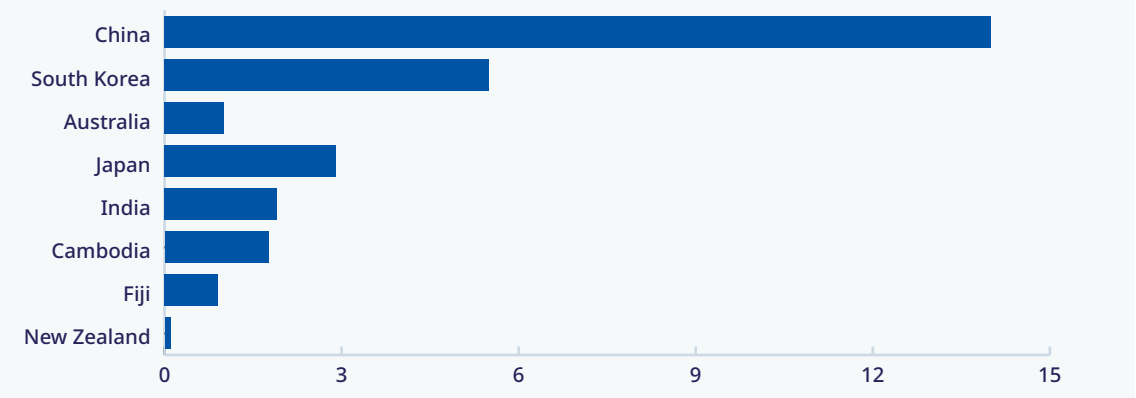
There is only one Labour Tribunal in Fiji[163] and two Employment Courts in New Zealand[164]. In Australia, Federal Courts[165] are distributed in Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia.

Professional Judges per 100.000 people

Similar difficulties are found in respect to statistics on the availability of judges to hear labour cases. Most of labour and ordinary courts do not provide information on how many judges, professional and lay, are available per 100,000 habitants only for labour cases. Few countries have statistics on this matter and none of them offer individualization of judges responsible for hearing labour cases.

No data was found in respect to Bangladesh, Cambodia, Indonesia, Singapore, Sri Lanka, Thailand and Viet Nam. **(Chart 18)**

Chart 18: Judges hearing labour cases per 100.000 people



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