

# Written Contribution of Migrant Forum in Asia to the Special Rapporteur on Contemporary Forms of Slavery Thematic Report on Access to Justice and Remedy



## Introduction

Migrant Forum in Asia (MFA)<sup>1</sup> welcomes the decision of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences to write a report on access to justice and remedy that will be presented to the Human Rights Council this year in September 2017.

MFA members and partners identify access to justice and remedy as one of their major concerns. Migration, as a cross-cutting issue and as a complex phenomenon, encompasses the vulnerable situations and circumstances that migrant workers as well as victims of trafficking experience. Undeniably, there are situations that reflect contemporary forms of slavery in all stages of migration such as contract substitution, forced labour, debt bondage and domestic servitude to name a few. Forced labour and labour trafficking happen in many cases which often starts at the recruitment stage.

Linking this situation to trafficking, recruitment agencies routinely deceive migrant workers which, as a result, also put them in trafficked situations. Seeing as how the recruitment process in Asia often subjects a person to pay exorbitant fees and with inconsistent contracts, a person would immensely be indebted and makes it very difficult to deviate such a situation, in addition to the realities that they are often subjected to forced labour. Another factor that contributes to this is the lack or non-existence of legal protection of migrant workers in countries of destination, hence, such abusive situations become systematic. Forced labour and slavery-like practices are not tolerated under the international human rights regime, and are clearly prohibited under Article 11 of the Migrant Workers' Convention. However, the lack of regulation of private recruiters and employers by States make such situations commonplace.

In the context of the Gulf region, reality speaks that migrant domestic workers are one of the most vulnerable to such situations. Migrant domestic workers' rights to freedom of mobility, expression, and association, as well as having a day off, are suppressed in countries of destination. The stress of debt as well as the aforementioned restrictions on mobility and organizing, create conditions that often result in forced labour. Migrant workers who are being exploited try to escape from their situation but are often referred to as "absconding workers"

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<sup>1</sup>Migrant Forum in Asia (MFA) is a network of civil society organizations, trade unions, and individuals in Asia working together to advocate for social justice for migrant workers and members of their families. The network is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equality for all. To date, MFA is represented in 16 nations by 48 civil society and trade union groups, and 6 key partners in the MENA region. The members and partners are also coalitions and networks, bringing MFA membership in Asia close to 200, and growing each year.

or “runaways” in the Gulf region. Under the *Kafala* system<sup>2</sup>, such acts are considered a breach of contract due to the fact that they did not complete the term stated in the contract and leaving without the consent of the employer. With this, they are already considered as undocumented or have “absconded” even when they run for or remain in the shelter due to the *Kafala* system practiced in the Gulf. Even when in abusive and/or inhumane situations, they cannot get out because the burden is given to them and in many cases they are threatened by their employers. This makes it more complicated and more difficult to address their situation as their options are often limited to going back and stay with their employer or be repatriated to their country of origin (COO). Due to the of power dynamics between the migrant domestic workers and employers, migrant domestic workers are always left at the mercy of the employer. Despite the existence of the ILO Convention 189 and international pressure, migrant domestic workers are still being devalued and degraded which often creates a stigma and makes access to justice elusive for them.

As a network, MFA recognizes that often times, victims of trafficking and migrant workers’ perception of access to justice does not often reflect in the policies and mechanisms provided by the States in terms of providing access to justice and remedy.

This report shows a how members and partners have been working on providing assistance and support to victims of trafficking and to migrant workers by way of direct assistance and legal assistance to migrant workers in distress. The report mainly expresses that migrant workers should be allowed to freely return to their country of origin by choice and without the recruiters and/or employers withholding any legal documents. Members and partners have all expressed that the *Kafala* system is a challenge in obtaining access to justice. The tedious and lengthy process of the cases poses a challenge when pushing through with their cases.

MFA has circulated the questionnaire from the office of the Special Rapporteur among our members and partners and collected responses reflective of the situation on the ground. The following members and partners are the contributors to this submission:

- Lawyers Beyond Borders Network
- Legal Support for Children and Women (LSCW), Cambodia
- Center for Indian Migrant Studies (CIMS), India
- National Workers Welfare Trust (NWWT), India
- Caritas Lebanon Migrant Center (CLMC), Lebanon
- Center for Migrant Advocacy (CMA), Philippines
- Transient Workers Count, Too (TWC2), Singapore
- Humanitarian Organization for Migration Economics (HOME), Singapore
- Human Rights and Development Foundation (HRDF), Thailand

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<sup>2</sup> “Reform of the Kafala (Sponsorship System)” [http://mfasia.org/migrantforumasia/wp-content/uploads/2012/07/reformingkafala\\_final.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2012/07/reformingkafala_final.pdf)

## Responses

### Question 1

Please provide information on your organisation and its work on access to justice and remedy<sup>3</sup> for victims of contemporary forms of slavery, including the countries in which you work on this issue.

#### *Lawyers Beyond Borders Network*

Lawyers Beyond Borders<sup>4</sup> (LBB) is an international network of legal experts interested in advocating for the rights of migrant workers, brought together by MFA. LBB was formed out of 4 years of thinking and strategizing by MFA and its various partners who wanted to bring together lawyers who work on the cases of migrant workers, primarily in the Middle East and GCC country context, to move towards impact litigation and policy advocacy in their work. Meeting in Bangkok for the first time in November 2011, a core group of lawyers has coalesced around the following goals: 1) To identify avenues for legal redress in countries of origin and destination; 2) To cooperate and overcome legal challenges; and 3) To secure favourable legal outcomes through impact litigation and policy reforms. LBB also forges important connections among lawyers and grassroots organizations working with migrant workers on the ground through MFA's members and partners, as well as migrant communities in both countries of origin and destination.

The network has been convening regional conferences for the past 4 years to create and review the action plan of the network which mainly includes exchange of information of policies, mechanisms, and practices within and among countries of origin and countries of destination. The network also works on cross-border referral cases of migrant workers in distress with the lawyers in countries of origin and countries of destination. This, in turn, helps them to further develop policy recommendations for their respective countries.

Over the years, the LBB network felt the need to establish local chapters as an initiative to be able to have a more substantive and stronger network at the national level. Local Chapters in Bangladesh, India, Sri Lanka, and the Philippines were then established with more countries following suit.

#### *Cambodia*

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<sup>3</sup> For victims of gross violations of international human rights law, such as slavery and slavery-like practices, full and effective remedy may take the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition

<sup>4</sup> <http://lawyersbeyondborders.mfasia.org/>

MFA's member in Cambodia, Legal Support for Children and Women (LSCW) states that its purpose is to be able to provide legal aid support to victims of human trafficking, labour exploitation, forced labour, and gender based violence. They provide service not just to victims in and from Cambodia but also to other countries such as Thailand, Malaysia, and Indonesia. As an organization that works on children and women, they have been doing work on migrant domestic workers from Cambodia.

### *India*

The Centre for Indian Migrant Studies (CIMS) is a member of MFA based in Kerala, India that aims to safeguard the rights of migrant workers. The forum works on various campaigns to encourage the communities to take action on human rights abuses the migrant workers face in the society. CIMS mainly works in the Gulf States, Malaysia and Singapore. Though many migrants from India in these countries hold white-collar jobs, the majority of expatriate workers are temporary low-income migrants involved in manual labour, such as in construction or agricultural sectors, or as drivers/ domestic workers. These individuals represent the backbone of their economic development as well as our homes. Yet they are undervalued, ignored, exploited and denied their most basic human rights. Labour and comprehensive rights' protections for migrant workers are lacking or unenforced, rendering migrants vulnerable to conditions likened to modern day slavery.

The CIMS was established to help families to locate their missing relatives who migrated from different parts of India into various parts of the world. Another endeavour of the CIMS is to break the silence surrounding the abuses of human rights by challenging these narratives, exposing endemic abuses, and amplifying the voices of migrant workers.

Within a period of 10 years, the CIMS has grown to become a platform to provide more social services like financial assistance for orphaned families; sponsorship for the education of missing person's (migrant) children; repatriation and treatment of accident victims; providing assistance to victims of visa racketeers; campaign against illegal recruitment agents; rescuing victims from the sex rackets, providing consular and financial aid for prisoners to secure their early release; and repatriation of dead bodies.

MFA's member in India, National Workers Welfare Trust (NWWT), works at the grassroots to create awareness on the following areas: safe, informed and legal migration through door to door visit, community level meetings, public meetings, representation at local government officials, the media, and police force among others. NWWT is a trade union of domestic workers that provides direct assistance to migrant domestic workers from India. They also distribute handbills on safe, legal and informed migration among members with contact addresses in source and destinations which they can reach in case of distress. Moreover, case intervention through the Ministry of External Affairs in Aid of Diaspora in Distress (MADAD)<sup>5</sup>

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<sup>5</sup> MADAD ('MEA' in Aid of Diaspora in Distress) is a Consular Grievances Monitoring System by the Government of India, led by the Ministry of External Affairs, to register grievances of Indian migrant workers to the Consular Services offered by the Indian Missions and/or Posts. In Hindu, Madad also means "help"  
<http://www.madad.gov.in/AppConsular/welcomeLink>

and other legal sources are extended to workers in distress to get them back when they encounter crises. NWWT also lobby and advance their advocacies to protect and promote the rights of migrant workers.

### *Lebanon*

As MFA's partner in Lebanon, Caritas Lebanon Migrant Center (CLMC) is working towards protecting migrant rights on different level since 1994: Social, humanitarian, legal, medical, shelter, awareness, lobbying and advocacy. Caritas has a legal department<sup>6</sup> composed of 17 lawyers who are handling the cases of migrants and refugees in and out courts. They represent beneficiaries in all Lebanese courts, during investigations with police and in prisons and in the retention center. They also follow up the cases in courts even after the repatriation of the migrant as well as negotiations with employers and recruitment agencies for amicable solutions.

On governmental level, Caritas Lebanon established the national steering committee which started in 2006. The committee worked on: 1) the unified contract for the migrant domestic workers which entered into force in 2009; 2) the booklets of rights and responsibilities for employers, recruitment agencies and workers, and 3) the draft law for domestic workers. (<http://www.mdwguide.com/>). Caritas has worked also with the Lebanese government in a task force on Migration and trafficking since 2012 which aims to work on the unified referral system between the intergovernmental bodies to combat human trafficking and slavery in coordination with Caritas. All ministries were involved (Interior, Labor, Justice, Economy and trade, Health, Social Affairs, Internal Security forces, General Security). Caritas has worked also in the committee that worked on the anti-trafficking law 164/2011 with UNODC (please refer to Annex 1). In collaboration with MFA, Caritas Lebanon hosted the 1<sup>st</sup> country specific Lawyers Beyond Borders in Lebanon.

### *Philippines*

The Center for Migrant Advocacy Philippines (CMA) is a member of MFA which focuses on the rights and welfare of overseas Filipino workers and the members of their families. The organization does this through policy advocacy, facilitation of concrete assistance to distressed migrants, capacity building for migrant organizations and support groups, research, information, education and networking in the country and abroad where there are Filipino migrants.

CMA works at the national and local/sub-national level policies that promotes and protects the labour and social rights of Filipino migrants. The organization does this by enabling legal and social environments to make the policies<sup>7</sup> effective and responsive to the needs of migrant workers. Furthermore, policies also include studies on the administration of justice through

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<sup>6</sup> Legal Protection for Migrant Workers and Refugees <http://english.caritasmigrant.org.lb/wp-content/uploads/2014/11/Legal-Protection-for-Migrant-Workers-Refugees1.pdf>

<sup>7</sup> Examples given by the CMA are policies which protect migrant domestic workers that include legal rights as stated in the employment contract, monitoring of resolutions of legal and administrative cases filed by migrants against their recruiters.

speedy resolution of cases of relevant government agencies.<sup>8</sup> CMA engages with their national and local government and reaches out to other regional consultative processes such as the Colombo process, Abu Dhabi dialogue and the Association of South East Asian Nations (ASEAN) forums.

### *Singapore*

MFA's member in Singapore, Humanitarian Organization for Migration Economics (HOME), focuses on upholding the rights of migrant workers, victims of human trafficking and forced labour in Singapore. They also focus on advocacy, welfare and empowerment wherein their goal is to create an inclusive society which upholds the principles of equality and non-discrimination. HOME usually helps workers from the Philippines, Indonesia, Thailand, Myanmar, India, China and Bangladesh. As a country of destination, HOME works significantly on migrant domestic workers who are in distressed situations in Singapore.

HOME also conducts legal aid, employment advice, counselling and financial assistance for both domestic and non-domestic migrant workers. The organization represents workers who have experienced injustice or abuse to relevant government authorities. HOME also conducts meditation sessions between workers and related parties and provides shelter facilities for female domestic migrant workers and victims of human trafficking who are undergoing investigations. The organization, with the help of volunteers and partners, also prepares activities, performances, workshops and outings for people housed in their shelters.

Another MFA member in Singapore, Transient Workers Count Too (TWC2) gives services to migrant workers such as providing food for destitute workers, helping them have access to medical attention and raising their complaints to the Ministry of Manpower.<sup>9</sup> TWC2 also provides advice and, when needed, pro bono legal services to migrant workers. They also engage in advocacy and research which includes looking into access to justice and making recommendations on changes to the law and procedures for workers to maximize the protection that they have which TWC2 reports is difficult to access for the workers.

TWC2 has published a report in 2010 called "Justice Delayed, Justice Denied" with another NGO which is about access to justice. They have also published recommendations on changes to the main laws governing migrant worker employment. The organization states that they do not see conditions in Singapore which would be regarded as slavery; however, they do encounter exploitation of workers who may suffer abusive kinds of treatments from their employers.

### *Thailand*

Human Rights and Development Foundation (HRDF)<sup>10</sup> is a non-governmental organization founded in 2000 by human rights activists and lawyers to promote and protect human rights in

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<sup>8</sup> Philippine Overseas Employment Administration, National Labor Relations Commission, and Department of Justice

<sup>9</sup> Main competent government body dealing with migrant workers.

<sup>10</sup> Human Rights and Development Foundation website [http://hrdfoundation.org/?page\\_id=2&lang=en](http://hrdfoundation.org/?page_id=2&lang=en)

Thailand and the Southeast region. Since its inception, HRDF has focused on supporting migrant communities particularly through three key programs in operation: (1) The Labour Law Clinic (LLC) in Tak Province, in operation since 2006; (2) The Migrant Justice Program (MJP) in Chiangmai and Samut Sakorn Provinces, in operation since July 2007; and (3) the Anti-Trafficking Program for migrants in Thailand, in operation since 2009.

HRDF wish to continue to advocate ‘access to justice’ for migrant workers, and pursue redress for violations of their rights as well as empower migrant communities through educational activities, raising awareness, providing opportunities for organizing as well as legal advocacy both on the ground and at the national level. Of particular importance is the legal assistance HRDF provides for migrants addressing cases of discriminatory laws and regulations, labor rights protection, the nationality verification process, and the general access migrants have to their rights even after going through the NV process. One venue to succeed in this regard is to utilize the *rule of law* to empower migrant communities and to challenge the systematic discrimination that currently plagues the system, as well as to provide legal assistance and advocacy to the migrants through test-case litigations and public campaigns.

## **Question 2**

A. Please characterise the legal and/or policy frameworks relevant to access to justice and remedy in place in the country or countries that your organisation works in, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those guaranteeing access to justice and remedy and measures to identify and support victims of contemporary forms of slavery.

### *Cambodia*

MFA’s member in Cambodia, LSCW, shared that there are two legal frameworks relevant to access to justice and remedies in Cambodia wherein they used to assist and support victims of contemporary form of slavery. These provisions are found in the Criminal Code and the Law on Suppression of Trafficking and Sexual Exploitation. The Criminal Code identifies contemporary forms of slavery such as trafficking, sexual or labour exploitation as criminal acts. The Law on Suppression of Trafficking and Sexual Exploitation also criminalizes several offences in relation to trafficking. These laws were adopted in 2008. LSCW reports that victims of contemporary slavery may file a complaint to a judge and ask for a civil compensation.

### *India*

MFA’s member in India identifies the Immoral Traffic (Prevention) Amendment Bill 2006 which amends the Immoral Traffic (Prevention) Act, 1956 and the Prevention of Money Laundering Act, 2002 as legal or policy frameworks relevant to access to justice and remedies in India. The Immoral Traffic (Prevention) Amendment Bill 2006 aims to combat trafficking and sexual exploitation for commercial purposes. On the other hand, the Prevention of Money Laundering Act, 2002 aims to prevent money-laundering and to provide for confiscation of

property derived from, or involved in, money-laundering and to punish those who commit the offence of money laundering.

### *Philippines*

MFA partner in the Philippines, CMA, reports that the Philippines is a State Party to the UN and ILO. CMA identifies Republic Acts 8042, amended by RA 9422, RA 10022, RA 9208 and RA 10364 as national legal frameworks that focus on upholding the rights of migrant workers. RA 9422 centers on the regulatory of the Philippine Overseas Employment Administration particularly the regulation of private recruitment agencies, recruitment costs and fees. RA 10022 centers on improving the standard of protection of migrant workers and their families. This includes protection from recruiters and the sanctions and penalties that would be given. Anti-Trafficking laws are also found in RA 9208 which was amended by RA 10365. Under these Acts, the Philippines can pursue cases against traffickers with or without the consent of trafficked victims and survivors. These Acts also responds to debt bondage, forced labour, involuntary servitude, slavery, and low-waged employees.

### *Singapore*

MFA's members in Singapore report that there are relevant legal frameworks in place and these are the following: first is the Employment Act which covers majority of the workers in Singapore regardless of their citizenship. Second, the Employment of Foreign Manpower Act which migrant workers. According to Transient Workers Count Too (TWC2), this act contains unclear definitions of some of the terms used and that under this act, employers are legally allowed to terminate a worker's employment and repatriate the worker at will without providing any reasons. Third is the Prevention of Human Trafficking Act in 2014 and lastly, the Singapore Penal Code which generally applies to all people present in the country. According to Transient Workers Count Too (TWC2), the Prevention of Human Trafficking Act has a provision on forced labour however the term "forced labour" is not defined. Humanitarian Organization for Migration Economics (HOME) reports that the Penal Code does not provide a definition of a "slave" or "slavery".

Transient Workers Count Too (TWC2) adds that Singapore has also signed the UN Anti-Trafficking Protocol which they are still assessing as to how it is being implemented. On the other hand, Humanitarian Organization for Migration Economics (HOME) adds that other legal frameworks include the Employment Agencies Act and Work Injury Compensation Act.

### *Thailand*

HRDF reports that the Anti-Trafficking in Persons Act was promulgated in 2008. It was a revision of the previous Act on the Prevention and Suppression of Trafficking in Women and Children BE 2540 (1997) since the Act had failed to cover other forms of exploitation. The new law has become more diverse and encompassed forced labour in work or service, forced begging, or other forms of sexual exploitation, among others. Also, Thailand has signed the Parlemo Protocol and was therefore obliged to enact the Anti-Trafficking in Persons Act in compliance with the Protocol.



The Anti-Trafficking in Persons Act was first revised in 2015 because the issues of trafficking in persons in Thailand have been raised more often in terms of problems in the prosecution, and the protection of trafficking survivors. It was also aimed at providing an incentive for the potential informants who might report any information to the inquiry officials. The law provides immunity to the persons who inform the authorities of the case of trafficking in persons and shields them from being held accountable for reporting false information. It has also expanded the power of the competent official to temporarily close down workplaces or seize a boat suspected of being used to perpetuate the crime of trafficking in persons to serve the interest of prosecution. Nevertheless, the amendment of the Act that time failed to address the definition of trafficking offence which was a major challenge legally.

In 2016, the Criminal Court's Division of Trafficking in Person was established in Thailand to enhance the hearing of cases of trafficking in persons making the process more responsive. The Trafficking in Persons Procedure Act BE 2559 (2016) was also enacted to particularly handle trafficking cases. The law has transformed the hearing of trafficking cases in Thailand from the traditional accusatorial system whereby the public prosecutor makes the allegation against the accessed for committing a trafficking offence based on the evidence discovered by the inquiry official to prove the guilt to the inquisitorial system whereby the judge shall be front and center in the hearings and the public prosecution and the defense attorney shall introduce to the Court their evidence to let the judge make the decision. Such system has expanded the role of the judge during the hearings. It is therefore important that the judge has to be knowledgeable about the case prior to the commencement of the hearings. Such system might potentially breach the fair trial principle since the judge might become partial during the hearings since he has to be involved with investigating the guilt of the accused himself. In addition, the Act authorizes the judge to impose punitive damages on the offenders. In other word, the judge may ask the accused to provide for more compensation than what has been asked for by the injured party. Or even in case the injured party has not asked for compensation, the judge may order the accused to provide for it, too.

The Anti-Trafficking in Persons Act was revised at another time, essentially on the improvement of the definition of exploitation which has become a challenge in enforcing the law. The amendment has made it clearer as to the form of exploitation through forced labour in work or services. For example, it includes debt bondage, the withholding of passport or the threat to surrender the person to the authorities for illegal immigration prosecution, and imposes death penalty as the highest sanction.

It will take more time to have the revised law effectively enforced since the competent officials need to learn to comprehend the content of the new law, particularly the revision of the definition of exploitation in the latest draft since it will have a bearing on the screen process of the survivors. Therefore, the officials need to make a serious effort to learn how to enforce the new law. Despite the establishment of the Specialized Court on Trafficking in Persons, but the new Court faces constraints in terms of personnel including the judges, and other officials who are lacking and not able to cope with the sheer number of trafficking cases. As a result, several trafficking cases have to be tried in a normal court. Also, it might take more time to get adjusted

to the transformation of the hearing process to serve the interest of justice of both the injured party and the accused in discovering the truth. It is likely that revision of the law is needed in the future in order to comply with the signing of the ILO P29 on forced labour which touches on forced labour the issue of which is more pervasive than trafficking in persons. It is possible that in the future forced labour would become a separate crime distinct from trafficking in persons.

B. Please include specific references to the source of law when possible.

### *Cambodia*

MFA's member in Cambodia has provided two specific references and these are the following:

1. Criminal Code of Cambodia is a penal code where offences are specified, identifies people who could be held responsible and regulates the penalties for each crime. In Article 188: Crime Against Humanity, it identifies induction into slavery as a crime punishable by life imprisonment.<sup>11</sup>
2. The Law on Suppression of Human Trafficking and Sexual Exploitation was passed by the National Assembly in 2007. It seeks to protect the rights and dignity of human beings, to improve health and welfare of citizens, preserve and enhance good national customs and to implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. It also supplements other international instruments or agreements related to human trafficking that the Kingdom of Cambodia has ratified or signed<sup>12</sup>.

### *Lebanon*

Lebanon currently does not have any law protecting the domestic workers and they are not included in the labor law. In contrary, they are excluded from the Lebanese labor law in its article 7. For any case, Caritas Lebanon refers to the penal code and the labor court. Caritas has worked also in the committee that worked on the anti-trafficking law 164/2011 with UNODC. (Please refer to Annex I). Caritas has launched a study on the access to Justice in 2013<sup>13</sup> which can also be referred to for Question 5, 6.A, 7, 9, and 10.

### *Philippines*

MFA's member in the Philippines reports the following references: Republic Act 8042 amended by RA 9422, and RA 10022. And anti-trafficking laws RA 9208 amended by RA 10364.

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<sup>11</sup> Criminal Code of the Kingdom of Cambodia 2009

[https://www.unodc.org/res/cld/document/khm/criminal\\_code\\_of\\_the\\_kingdom\\_of\\_cambodia\\_html/Cambodia\\_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf](https://www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf)

<sup>12</sup> Law on Suppression of Human Trafficking and Sexual Exploitation

[https://www.unodc.org/res/cld/document/khm/2008/law\\_on\\_suppression\\_of\\_human\\_trafficking\\_and\\_sexual\\_exploitation\\_html/Cambodia\\_03\\_-\\_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf](https://www.unodc.org/res/cld/document/khm/2008/law_on_suppression_of_human_trafficking_and_sexual_exploitation_html/Cambodia_03_-_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf)

<sup>13</sup>Access to Justice for Migrant Domestic Workers in Lebanon [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms\\_247033.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_247033.pdf)

## *Singapore*

MFA's member in Singapore, Humanitarian Organization for Migration Economics (HOME), has provided two references under Singapore's Penal Code Section 370 and 371.<sup>14</sup>

### **Question 3**

Please detail relevant jurisprudence, including any landmark cases, which demonstrate effective access to justice for victims of contemporary forms of slavery, and provide copies of any judgments if possible.

## *Cambodia*

MFA's member in Cambodia has provided assistance to more than 100 Cambodian fishermen who were trafficked into fishing vessels. The Cambodian court punished the licensed private recruitment agency called the Giant Ocean International Fishery Co. Ltd. by handing them 10 years of imprisonment. The court also ordered the perpetrators to pay the victims and the members of their families in USD. However, the compensation for the victims and their families remain unclear because the court proceeding is still on-going. According to LSCW, this is the case where the private recruitment agency was prosecuted under Cambodia's court system on the Law on Suppression of Human Trafficking and Sexual Exploitation.

## *India*

NWWT cites the debate brought upon by the Lalita Kumamanglam, Chairperson of the National Commission of Women, wherein she is pushing for the legalization of sex work which the Supreme Court does not favour. Kumamanglam believes that legalization of sex work would minimize cases of trafficked women and lower incidences of sexually transmitted diseases such as HIV. However, Ravi Kant, Supreme Court lawyer and president of Shakti Vahini does not share the same views with Kumamanglam. He believes that the sex work is a violation of human rights and that more young women could be brought into the sex work industry if ever it is legalized and regulated.

The Supreme Court reiterated that its goal to provide right to life and access to governmental schemes should not be regarded as a means to boost prostitution in the country. Moreover, a bench of justices clarified that the panel would endorse steps to create "conditions conducive for sex workers to live with dignity as per provisions of the Constitution Article 21".

CIMS reports that Jyothish and his friend Santhosh from Calicut, Kerala had gone to Saudi Arabia on 29th Feb 2016 for a salesman job in a supermarket in Riyadh, Saudi Arabia. They paid 1,57,000 INR for this job. However, instead of a salesman job, they were forced to work in a goat farm in Arar, Saudi Arabia without food, water and proper accommodation. They couldn't make contact with their family. One day they managed to use the phone of a co-worker

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<sup>14</sup> Section 370: Buying or disposing of any person as a slave and Section 371: Habitual dealing in slaves.  
<http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=0f037485-b31a-4368-886c-da79ce7659cc;page=0;query=DocId%3A%22025e7646-947b-462c-b557-60aa55dc7b42%22%20Status%3Ainforce%20Depth%3A0;rec=0#pr370-he->

and informed their situation to their family but eventually, the family lost the communication to that number they used. CIMS volunteers managed to find Jyothish from a remote desert farm near Arar. During that time, the Arab sponsor reached the place wherein he caught the CIMS volunteer team in hand. He snatched away the labour cards and other identity documents from the CIMS volunteer team and threatened them that if Jyothish were to escape from his place, he will report this to police and they will be punished.

### *Philippines*

CMA reports that the victory of a migrant worker complainant against a recruitment agency affirms the equal protection clause for all workers, whether national and migrant workers, as found in the provisions under the Constitution and national labor code.<sup>15</sup> CMA also reports that the Supreme Court has issued two decisions where migrant workers are allowed to claim compensation covering the actual unexpired portion of their employment.<sup>16</sup> However, CMA adds that there are instances where compensations are not given to migrant workers due to closure of the employment agencies involved. This is brought upon by the long processing of the National Labor Relations Commission of the migrant workers' cases.

### *Singapore*

TWC2 states that relevant jurisprudence, including landmark cases, would depend on how slavery is defined. The organization adds that there are cases of domestic workers who are not given a time off and have been abused and exploited by their employers. A couple was imprisoned for one year for starving their domestic worker by the Deputy Public Prosecutor. This was in breach of work permit conditions on provision of "adequate food".

### *Thailand*

HRDF states that as issues regarding labour in fisheries have been raised by two main agencies, the government is obliged to overhaul the regulation of labour on fishing boats. It has started with the revision of the Ministerial Regulation no. 10 to make it a Ministerial Regulation for the protection of labour in fisheries in 2014 and to ensure that labour in fisheries are entitled to the 300 baht minimum wage and to enjoy fixed working hours and holidays. The employees have to be registered and employment papers must be made available for inspection. The Port in-Port out centers have been established to monitor the boats prior to their embarking on their fishing trips. Regulations have been put in place to standard inspection of the vessels. Also, the policy has been made to have migrant workers registered through one-stop services centers to make it convenient for both the employer and employee. Undocumented workers have been allowed to work legally and the Anti-Trafficking in Persons Act has been amended to ensure quick and efficient proceedings. Task Forces have been set up to directly address the issue. At

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<sup>15</sup> Sameer Overseas Placement Agency, Inc. v. Joy C. Cabiles, G.R. No. 170139, August 5, 2014: [http://www.lawphil.net/judjuris/juri2014/aug2014/gr\\_170139\\_2014.html](http://www.lawphil.net/judjuris/juri2014/aug2014/gr_170139_2014.html)

<sup>16</sup> Antonio M. Serrano v. Gallant Maritime Services, Inc. And Marlow Navigation Co., Inc. G.R. No. 167614: <http://sc.judiciary.gov.ph/jurisprudence/2009/march2009/167614.htm>

present, 57,141 vessels have reportedly been registered with 78,290 registered workers on board.

#### **Question 4**

Please describe specific support that is in place for victims of contemporary forms of slavery who seek obtain access to justice and fulfil their right to an effective remedy, including but not limited to, shelters, other forms of housing, legal aid, visa support, witness and victim protection measures, livelihood or financial support and counselling in the country or countries that your organisation works. Please also include information about global trends in the provision of such support that you would like to highlight.

Migrant Forum in Asia has published a policy brief on shelters<sup>17</sup> for migrant workers and have recently submitted a report to the Special Rapporteur on Violence against Women for her thematic report on shelters and other remedies<sup>18</sup>.

#### *Cambodia*

MFA's member in Cambodia states that they have only given legal aid as a support for the victims. However, they also mentioned that there are other organizations that have given their support to the victims in order for them to have access to justice. They also mentioned that there are services available to those who returned to their countries of origin. However, LSCW sees access to justice and remedies as a challenge for migrant workers. They also reported that NGOs and CSOs or trade unions have actively provided more services compared to the government.

#### *India*

MFA's member in India, NWWT, provides support for the victims of contemporary forms of slavery through legal aid, shelters, livelihood or financial support and counselling at state level.

#### *Lebanon*

Since 2003, Caritas Lebanon has been providing social, humanitarian, medical and legal assistance to MDWs and refugees victims of gender-based violence, abuse and trafficking in Lebanon, advancing their human rights. *Shelters, humanitarian support and other direct services:* Caritas Lebanon is running 5 shelters for women with protection issues and their children. During their stay in the shelters, women and their children benefit from social, legal, psychological and medical assistance and are provided with basic humanitarian assistance. They are also offered the possibility to follow vocational trainings in order to prepare for the reintegration in the home country. Since 2000, Caritas Lebanon is the only organization authorized by the General Security (GS) to operate inside the Retention Centre for Foreign Detainees around the clock, providing humanitarian and legal assistance to foreign detainees. Caritas Lebanon also works with its partners in the countries of origin on all the stages of the

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<sup>17</sup> Providing Shelter for Distressed Migrant Workers: A Rights-based Approach [http://mfasia.org/migrantforumasia/wp-content/uploads/2017/02/mfa\\_shelterspolicybrief\\_feb2015\\_final.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2017/02/mfa_shelterspolicybrief_feb2015_final.pdf)

<sup>18</sup> MFA Report on Violence Against Women: Shelters <http://mfasia.org/mfa-report-on-violence-against-women-shelters/>

migration cycle : pre departure trainings, reception at Beirut airport and distribution of booklets of rights and responsibilities and linguistic guides by the Caritas trained officers from the General Security, orientation for the migrants and their communities, shelters (with all services mentioned above), preparation on reintegration, referral to the countries of origin and reintegration itself (Nepal, Bangladesh, Sri Lanka, Ethiopia, Philippines, Kenya).

### *Philippines*

MFA's member in the Philippines, CMA, reports that Filipino and other Migrant Workers Resource centers are converted into unofficial and temporary shelters for distressed women migrants in other countries; however distressed male migrants are not allowed to stay in these shelters. Legal assistance is also provided which is managed by the Office of the Undersecretary for Migrant Workers' Affairs under the Department of Foreign Affairs. The funds are generated from the general appropriations fund from the Congress. CMA adds that there is a repatriation provision for migrant workers who are not yet of legal working age.<sup>19</sup>

The Overseas Workers Welfare Administration provides psychosocial and welfare assistance to migrant workers. Social welfare attaches and gender-focal point officers, under the Magna Carta of Women RA 9710, are sent and assigned to countries with high concentration of women migrant workers. Also under the Magna Carta of Women, foreign affairs mission offices must develop gender-sensitive and responsive programs in consideration of the gendered nature of labor migration. According to CMA, there is a provision for compulsory insurance which is paid by the recruiters which covers death benefits and disability benefits.<sup>20</sup> There is also a subsistence allowance, repatriation benefits, money-claim benefits for a maximum of 6 months, medical evacuation and medical repatriation.

### *Singapore*

MFA members in Singapore report that NGOs provide shelters, employment advice and legal aid to migrant workers who are seeking for justice and protection. According to HOME, Singapore has some state-sponsored NGOs that provide these services. HOME states that migrant workers who are prosecution witnesses are allowed to search for another job but only within the industry that they are in. However, TWC2 adds that trafficked women who are in shelters are not able to make a living and lack regular financial support. For male migrant workers, TWC2 states that it is unclear as to what services they might get while awaiting case settlements other than trafficking and that the organization is not familiar with any special provisions relevant for male workers. HOME states that there is no comprehensive or systematic witness programme by the state of NGOs for migrant workers undergoing trial.

## **Question 5**

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<sup>19</sup> i.e. below 18 years old

<sup>20</sup> Under Republic Act 10022: An Act amending RA 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, further improving the standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes.  
[http://www.lawphil.net/statutes/repacts/ra2010/ra\\_10022\\_2010.htm](http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.htm)

Please describe national and/or global measures that you are aware of that allow victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights taking place in national or international supply chains.

MFA in collaboration with Diplomacy Training Program (DTP)<sup>21</sup> has been conducting national capacity building programs on the protection of migrant workers in Asia for the past years in Bangladesh, Sri Lanka, Nepal, and the Philippines. This includes understanding the key issues of migration in their country, the existing human rights mechanisms, policy developments, and access to justice and remedy including cross-border referrals and collaborations with different stakeholders such as lawyers. As a result of the capacity building programs, there has been a mutual outcome on the need for cross-border collaboration. With this, MFA and DTP have conducted capacity building programs in Qatar and will soon be doing in Malaysia as countries of destination.

MFA has also been working with Global Alliance Against Traffic in Women (GAATW) in terms of advocating for migrant workers in the Asia region. GAATW has participated and supported MFA in regional consultations in preparation for the Global Forum on Migration and Development<sup>22</sup>. GAATW has also invited MFA for its programs on labour migration and campaign on domestic workers Convention (ILO C189).

MFA is working with the International Labour Organization (ILO) along with many others in the 50 for Freedom campaign<sup>23</sup> which is a global drive to end forced labour and to encourage 50 countries to ratify ILO's Protocol No. 29—Protocol to the Forced Labour Convention.

The new Protocol obliges state parties to take effective measures to prevent and eliminate use of forced labour; to provide protection to victims and to sanction perpetrators of compulsory labour. Each Member needs to develop a national policy and plan of action for the effective and sustained repression of forced labour in consultation with employers, workers and competent authorities.

The accompanying Recommendation No. 203 on supplementary measures for the effective suppression of forced labour that is not binding gives further guidance for States on how to strengthen their national policies and how to effectively fulfill the obligations involved in the Convention 29. The States should take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as eliminating the charging of recruitment fees to workers, requiring transparency on contracts with employment terms and conditions of work clearly defined, as well existence of adequate and accessible complaint mechanisms, imposing adequate penalties and regulating these services.

### *India*

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<sup>21</sup> Diplomacy Training Program is an Australian NGO that aims to advance human rights and empower civil society in the Asia Pacific region through quality education and capacity building programs. DTP has been a long-time partner of MFA since 2004 to advance the human rights of migrants

<sup>22</sup> Global Forum on Migration and Development is the only inter-governmental process that mainly discusses migration at the global level. More information can be found in [www.gfmd.org](http://www.gfmd.org)

<sup>23</sup> 50 For Freedom Campaign <http://50forfreedom.org/>

According to NWWT, they have listed constitutional provisions, State Human Rights Commission (SHRC), National Human Rights Commission (NHRC), and the Universal Periodic Review (UPR) as a national and/or global measures that they are aware of that allow victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights.

### *Philippines*

MFA member in the Philippines, CMA, reports that the country's national processes include the provisions under Republic Act 8042 where distressed migrant workers are allowed to file complaints against their foreign employers through the National Labor Relations Commission (NLRC) and Republic Act 10022 which provides sanctions according to the level of the committed offense. CMA adds that the Philippine Overseas Employment Administration (POEA) accepts cases of administrative in nature against local recruiters and imposes sanctions such as suspension and/or cancellation of licenses.

### *Singapore*

MFA member in Singapore, Transient Workers Count Too (TWC2), reiterates that it depends on how slavery is defined.

## **Question 6**

A. Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring that victims of contemporary forms of slavery have access to justice? Please also specify any global trends that you are aware of.

The overarching challenges and barriers in countries below and Asia as a region mainly dwells on the prejudice and stigma of migrant workers—most especially migrant domestic workers—from communities both in countries of origin and destination. There have been instances wherein women migrant workers who come home are being shunned by their families and communities for acquiring sexually transmitted diseases and/or are impregnated. It is also with the xenophobia and racism in countries of destination that result into migrant workers being marginalized and stereotyped as low-skilled. Such stigma and stereotypes would often affect a migrant worker's perspective on pursuing justice.

### *Cambodia*

MFA's member in Cambodia has identified 4 main challengers and barriers in their country. First, LSCW states that there is no specific law which focuses mainly on slavery and that laws that are available only apply for trafficking cases. They identify contemporary form of slavery as the grey area between trafficking and labour rights violation. Second, LSCW reports that there is lack of service support for the victims' protection. Consular service supports has been identified by the LSCW as a gap for migrant workers and those who are undocumented. LSCW added that most of the services were provide by NGOs. Third, there is corruption in the judicial



system, and lastly, the complicated and long process in the court system hinders the victim to file for a complaint.

### *India*

MFA member in India, NWWT, states that illiteracy, caste system, ignorance, poverty, and discrimination based on gender, language, region among others are identified as main challenges and barriers. They also added that in the Middle East, the *Kafala* system or the sponsorship system poses a challenge in accessing justice.

According to CIMS, there is no mechanism to save the distressed migrant workers in Gulf except the sending country Embassies. Freedom of association or any form of organisation is prohibited in these countries. With this, CIMS teams such as Diaspora actors are working with fear to intervene any Indian migrant matters. Embassies functions are limited with the usual things and they will advise the complainers to approach Labour courts. Arab courts tend to subjectively side with their natives, while migrant domestic workers are excluded from the labour law. When an issue is raised by employers or recruiters, they need not go through the Labour courts and may approach the local police station in which nationalism sometimes come into play.

### *Philippines*

MFA's member in the Philippines, CMA, states that language barrier, high cost of litigation and its long process are some of the challenges identified by the organization both in the Philippines and to receiving countries. These make migrant workers become hesitant in filing a case because of its arduous process. In Hong Kong, migrant workers are only allowed to stay for a maximum of two weeks if their contract is prematurely terminated. Similar to India's NWWT, CMA also sees the *Kafala* system as a challenge. Moreover, migrant workers are usually subjected to harassment and intimidation by recruiters.

### *Singapore*

MFA's member in Singapore, HOME, states that they have identified the main weaknesses of the Prevention of Human Trafficking Act in 2014. First, there is lack of clear definitions of terms. Second, the Act does not fully cover the scope of exploitation of victims and that there is a lack of a victim-centric approach and inadequate victim support measures. The Ministry of Manpower (MOM) allows some trafficked persons to find employment within the country; however, this is on a case-by-case basis. MOM does not also assist trafficked persons in gaining and keeping their job and that there are no trainings available to help them seek employment. HOME also adds that migrant workers are vulnerable because of how their employment is similar to the *Kafala* system in the Middle East. Victims may be required to stay in the country while their cases are on-going and they may be imprisoned if they are deemed to be complicit. Workers would then have to prove their innocence that they did not have any knowledge over the scheme of their employees in court hearings which is a burden to the workers. The challenges mentioned above makes it harder for the victims to report their cases.

HOME adds that counselling services for victims of contemporary forms of slavery is being provided by the Singapore Mental Health Association. However, there are language barriers because assigned counsellors to victims do not know how to speak in the victims' native languages. Also, interpreters provided by the Singapore Police Force (SPF) during interviews encourage victims to accept charges against them even if these charges are untrue.

TWC2 reports that people trafficked and exploited in the high seas needs to be firmly pinned down. They note that people involved in the exploitation of fishermen should be implicated and subject to prosecution in any relevant country.

B. Please elaborate on any specific challenges faced by vulnerable groups, for example women, children, those living in poverty and/or in rural areas, minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, in obtaining access to justice and fulfilling their right to remedy.

### *Cambodia*

MFA's member in Cambodia, LSCW, reports that the lack of support at the destination countries of migrant workers poses a challenge to access justice. Moreover, law enforcers of receiving countries are not concerned with the vulnerability of migrant workers and they do not identify some cases as contemporary forms of slavery. Immigration acts that criminalize migrant workers are enforced upon them. Another challenge mentioned by the LSCW, which is a point consistently brought up earlier by other members of MFA, is the long and complicated judicial and administrative measures.

### *India*

MFA's member in India, NWWT, reports that groups such as the State Human Rights Commission (SHRC), National Human Rights Commission (NHRC), and the Universal Periodic Review (UPR) face slavery in different forms. They also added that having access to justice can become a reality through education, empowerment, and opportunity in all spears and with participation from the sections mentioned above.

### *Lebanon*

CLMC, as a partner of MFA, reports that Lebanon is a country of destination for many Asian and African migrant domestic workers (MDWs). In 2015, The Ministry of Labor delivered 49,493 new work permits and renewed 105,678 to a total of 155,171 women domestic workers (MDWs) and women working in the non-domestic cleaning business. Largest groups of MDWs and women cleaners are the Ethiopians, the Bangladeshi, the Filipinos, the Sri Lankans, the Kenyan and the Nepalese. However, many migrant domestic workers have an irregular status and are not captured in these official figures. Although there are no reliable statistics on the overall number of MDWs with an illegal status, NGOs and Diplomatic Missions estimate that their number correspond to nearly twice the number of registered MDWs.

In Lebanon, prejudiced and marginalizing behavior towards migrant domestic workers (MDW) and many human rights violations are widespread and tolerated within families and recruitment

agencies. During their employment, many of these women suffer from forced labor and trafficking characterized by the confiscation of passports by employers, unlimited working days and hours, physical abuse, verbal harassment, non-payment of wages, and forced confinement<sup>24</sup>. 65% of MDWs had experienced a situation of forced labor, servitude, or slavery at some point during their time in Lebanon<sup>25</sup>. Lebanese newspapers<sup>26</sup> regularly report about suicides among victims of trafficking who see no way out of their deadlocked situation. Workers that leave the house of their sponsor forfeit their legal status and are not allowed to work to cover their basic needs, which places them at a greater risk of re-trafficking, exploitation and arrest<sup>27</sup>. Many irregular migrant women become easy prey for sex traffickers and are forcibly and unknowingly dragged into illegal prostitution rings<sup>28</sup>.

Since the beginning of the Syrian crisis, MDWs became more vulnerable since the crisis affected the economy and impacted the relationships especially regarding the non - payment of salaries and exploitation. When MDWs are facing problems with their employers, they are leaving the house, here many of them are exploited by mainly Syrian men. They are promising them to find to find another job, they rape them, they got pregnant and they leave them without any resource.

Irregular migrants are detained by the General Security (GS) for irregular status in the Retention Center for Foreign Detainees, in very difficult conditions, with detention periods of up to 7 months<sup>29</sup>. Many countries such as Ethiopia, Nepal, Philippines, Liberia and Madagascar have banned women from travelling to the MENA region as migrant domestic workers, including Lebanon, in order to protect them from these forms of abuses. Unfortunately, this only encourages women to pursue alternative routes to Lebanon via third countries which subjects them to a higher likelihood of trafficking.

MDWs received at Caritas Lebanon shelters arrive in very critical conditions (victims of rape, violence, abuse, etc.), often in a state of shock, pregnant or with their new-born children. During their stay in the shelters, women benefit from social, legal, psychological and medical assistance and are provided with basic humanitarian assistance. However, once these women return to their home country, they generally suffer from social exclusion and ostracism and face reintegration difficulties.

Monitoring and Evaluation Reports of previous projects conducted by CL in shelters showed that women do not use productively the time available in the shelter to learn new skills or plan their new life when back home. Turning the “caring & waiting center” into a “learning center”

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<sup>24</sup> Trafficking of Migrant Domestic Workers in Lebanon, A Legal Analysis. Kafa (enough) Violence & Exploitation. March 2011

<sup>25</sup> Ibid

<sup>26</sup> <http://www.dailystar.com.lb/News/Lebanon-News/2015/Apr-27/295885-domestic-worker-dead-after-fall-through-skylight.ashx>; <http://ethiopiansuicides.blogspot.com/>

<sup>27</sup> Trafficking in Persons Report, US Department of States. 2010

<sup>28</sup> Trafficking of Migrant Domestic Workers in Lebanon, A Legal Analysis. Kafa (enough) Violence & Exploitation. March 2011

<sup>29</sup> According to an assessment conducted by Caritas Lebanon

for women staying in shelters is primordial for their future. In fact, women reported needs for vocational trainings that would improve their professional opportunities in their origin country, and let them take advantage of the time spent at the shelter waiting for the end of the trial procedure, that can sometimes last many years. While staying in the shelters, time should be used helping women design their Reintegration Project. The preparation of a “Life Project”, including the relevant life skills, is an important link in the pre-return phase of the migration cycle.

### *Singapore*

MFA’s member in Singapore, TWC2, reports that even though domestic workers have the right to a weekly day off, their work permit conditions makes them to “voluntarily” give it up in exchange for payment. This makes them vulnerable to more exploitative measures.

Another MFA member, HOME, reports that the services and support offered to victims of sex trafficking and victims of domestic rape cases are different despite of the availability of resources. The organization also adds that there is gender insensitivity because male officers are sometimes assigned to female victims of sex trafficking.

### **Question 7**

A. Please detail any examples of good practice in relation to access to justice and remedy for victims of contemporary forms of slavery.

### *India*

MFA’s member in India, NWWT, states that their organization is working on engaging women workers and making them aware of their rights in sectors such as education, unionisation, lobby and advocacy through leadership and participation.

### *Singapore*

MFA member in Singapore, HOME, states that pro bono legal assistance to people accused of a crime and are financially challenged is provided by the Law Society of Singapore. However, this is not the same case for migrant workers who are eligible for legal aid in relation to the filing of civil claims or when they are charged for offences which are not considered crimes.

B. Please describe any examples of good practice or possible legal and policy measures that you think in your view are effective at overcoming the challenges and barriers referenced above in question 6.

### *India*

CIMS initially mainly worked on missing Indian migrants in the Gulf. Throughout the years, they have been creating awareness about rights violations, reporting migrant abuses in media, create pressure on sending and receiving governments to develop new policies to protect workers from abuses. This includes engaging with the Missions and other ministries as well as utilizing the MADAD grievance system when reporting of cases which are now not limited to

missing migrants. As of July 2016, CIMS has forwarded 236 cases in the MADAD system related to missing migrants, compensation, dispute with employer, detention cases, contract substitution, non-payment of wages, asylum cases, abuse in the workplace, recruiter fraud cases, and repatriation.

### *Philippines*

Migrant workers often miss court trials due to lack of resources. Hence, the proactive intervention on legal cases abroad and provision of lawyers for migrant workers can be effective in overcoming some of the challenges and barriers.

### *Singapore*

The Ministry of Manpower should allow victims to work in other industries and be given the freedom to switch employers. HOME adds that more social services should be given by the government such as fluent staffs which may reduce language barriers. Also, migrant workers and victims of human trafficking should be allowed to return to their home countries to visit their families. HOME believes that this would make them more cooperative in investigations. Lastly, people involved in investigations such as police officers should be trained to be more sensitive to the needs of the victims.

## **Question 8**

Please describe any projects delivered by your organisation or other civil society organisations to ensure access to justice and remedy for victims of contemporary forms of slavery.

### *Cambodia*

According to LSCW, they provide free legal aid to victims of contemporary forms of slavery through the judicial and court system. They also provide education on the contemporary forms of slavery and the rights of the victim.

### *India*

MFA's member in India, NWWT, is working with migrants and advancing their cause at various levels in order to ensure free mobility of women, give the migrant workers the freedom to choose their employment, skills training, provide information on safe and legal travel, and make the migrants aware of their rights at work and the mechanisms needed to redress problems.

CIMS has raised issues on the lack of migrant workers' rights at Indian Parliament and State Assemblies. CIMS also formulates meticulous campaigns to alert the public and migrant workers about their rights and put forward this agenda before the Members of Parliament which yielded positive outcomes. From CIMS' experience, a coordinated effort by law makers, media, and NGOs can bring tremendous changes to the lives of migrant workers and their families. CIMS' strategies include spreading the message through media outlets and alert the parliamentarians against the rights abuses taking place in and outside India.

CIMS team is also helping relatives of the missing migrant workers to seek help from official agencies. MADAD (Help) is one among them instituted by the Government of India. The filing needs brief description about the situation and surroundings that prompt the migrant worker to disappear from his work place and accommodation. CIMS staff and volunteers filed several cases to support the relatives and families to seek help from the Government of India (GOI).

### *Philippines*

MFA's member in the Philippines, CMA, reports that they have a policy research on justice, provides assistance to distressed migrant workers, and assembles conferences with relevant government agencies. The organization was able to address 202 cases of individual migrants and 8 group cases which are mostly labour-related violations. CMA also campaigns for the ratification of the ILO Convention No. 181 on Private Employment Agencies. They have also lobbied for the government and civil society in the Philippines and Japan to look into the Japanese Technical Internship Training Program. This training program prohibits migrant workers from becoming permanent residents in Japan. CMA has also drafted their organization's position for the campaign to ratify ILO Protocol 29 to the Forced Labor Convention. CMA has also submitted their reports to the UN Universal period review for the Philippines (2016) and to the Universal Period Review of the State of Kuwait (2012). The organization has engaged with CEDAW during its 64<sup>th</sup> session. Lastly, CMA has provided their assistance to Prof. Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights, during his visit to Saudi Arabia.<sup>30</sup>

### *Singapore*

MFA's member in Singapore, TWC2, has a helpline and distributes leaflets to migrant workers on a monthly basis. TWC2 also provides services such as finding legal support for the victims and the assistance of social workers. Another MFA member in Singapore, HOME, is focused on providing migrant workers with an easier access to justice.

## **Question 9**

In your view what are the necessary components of a comprehensive human-rights based approach to ensure that victims of contemporary forms of slavery can have access to justice and fulfil their right to an effective remedy?

Migrant Forum in Asia, as a regional network, sees the need to have a multi-stakeholder engagement to have a comprehensive human rights-based approach, ensuring that there is genuine broad participation of, and consultation with, different actors and stakeholders such as migrants groups, NGOs, advocates, lawyers, media, government, private sector, and other stakeholders. This would also ensure the transparency of the actors and to change the migration discourse to a more humane and just process.

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<sup>30</sup> End of mission statement Special Rapporteur on extreme poverty and human rights, Professor Philip Alston on his visit to Saudi Arabia:  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21094&LangID=E#sthash.Xnbt3TRy.dpuf>

With the Lawyers Beyond Borders Network, MFA has been engaging with lawyers in litigate cases of migrant workers which often happens through cross-border referrals. This is in addition to looking at existing policies and coming up with recommendations based on the cases that lawyers from both countries of origin and countries of destination are handling. In this case, there have been opportunities when MFA and LBB have been engaging with Missions looking at the current situation of migration in Asia as well as the existing policies—its gaps and recommendations including what it means for migrant workers when creating space for access to justice and remedy with referral of cases and discussing bilateral agreements. This is being done by MFA's Asian Inter-Parliamentarians' Caucus on Labour Migration.

As media has a vital role in bridging the information to the people, MFA has also been engaging with them through consultations and capacity building programs to look into how substantive and factual information is being disseminated to more people such as the on-going discussions and policy-making process at the national and regional level, which started in South Asia. This is being done in South Asia. In line with this, there is an on-going campaign on recruitment reform which enables spaces to engage with the private sector in pushing for zero recruitment fees, zero contract substitution, and for an ethical recruitment that migrant workers should be able to go through.

#### *Cambodia*

MFA's member in Cambodia states that victim support should be both physical and financial while their case is being processed. Second, there should be an immunity provided to the victim of contemporary forms of slavery wherein they would not be subjected to any charge/s against him or her.

#### *India*

According to NWWT, they view education, awareness, opportunity, choices, legal frameworks, and the system of redressal as necessary components of a comprehensive human-rights based approach to ensure that victims of contemporary forms of slavery can have access to justice and fulfil their right to an effective remedy.

According to CIMS, destination countries as well as sending countries should ratify international conventions for the protection of migrant workers. There should be pre-departure programmes for the intending migrants about the law and civil procedures of their destination. Destination countries should allow sending countries to precede the justice procedure with their laws for migrant workers, who committed criminal offences. Domestic workers and categories coming under that section should be brought under Labour laws, consider them as workers. Also, freedom of association and workers' union should be allowed in all working areas. Judicial proceedings of migrant workers' cases should be under the Missions' designated lawyers and consuls. Foreign lawyers should be allowed to participate in such proceedings given that the current practice in the Gulf is that only local or native lawyers are allowed to represent migrant workers.

### *Philippines*

MFA's member in the Philippines, CMA, reports that there should be a clear legal framework that is rights-based and gender sensitive. Resources for migrant workers should be adequate and promptly given. Receiving countries are also responsible for migrant workers hence they should also be able to provide resources and services. The international community, civil society and trade unions all have a role in providing an environment that would be helpful and beneficial for migrant workers. This would help migrant workers be able to acknowledge their rights as workers.

### *Singapore*

MFA's member in Singapore, TWC2, reports that focusing on the needs of the victims is important in order to understand and be able to attend to the remedial action that they want. TWC2 also adds that victims should have support and protection throughout their cases and that they be returned back to their home countries safely.

### *Thailand*

HRDF states that the effort to address issues concerning labour in fisheries is at its infancy compared to the problems that have accumulated over the past ten years. It is projected that the Thai government will ratify the Convention C188 - Work in Fishing Convention and the Convention C029 - Forced Labour Convention. And right now, the ILO agencies are looking at the laws in Thailand and their compatibility with the Conventions. The process should be completed in 2017. In particular, the Protocol P029 is unique for its distinction between forced labour and trafficking in persons.

Technically, some forms of forced labour might not constitute an act of trafficking in persons. Therefore, victims of forced labour in fisheries should be clearly identified to ensure effective protection of labour rights on fishing boats which can be divided into different categories to help them to have prompt and convenient access to their rights. HRDF's recommendations can be divided into three parts as follows; 1) Law enforcement: It should be made to serve the interest of the protection of labour in fisheries per the names of the laws promulgated. And the state officials should be made aware of the context and the diverse forms of labour rather than relying on literal interpretation of the laws; 2) Fisheries currently serve the need of big corporations for export. Therefore, the corporations that purchase the supplies for export should also be held liable to help solve the problems, not just the state. The corporations must vet their own supply chain expanding its vetting to cover fishing vessels operating inside and outside the Thai waters to ensure that their supplies have been procured through a legal mean and without violating human rights; and 3) General public should change their attitude to depart from viewing the ranking of trafficking in persons or the condemning of Thailand as violating our own domestic laws as a political game meted out by other countries which want to exert their powers over Thailand. All the reports reflect what really happen in Thailand. Some of the fishing supplies that have been consumed by us for over ten years have been made possible by the use of slave labour and forced force in marine fisheries. Even though Thailand is not the



only country where such illegal fishing exists, but is it necessary that we allow such illegal fishing to continue unabated in Thailand.

### **Question 10**

Please provide any research, data or other information that your organisation has produced or is aware of relating to access to justice and remedy for victims of contemporary forms of slavery.

#### *Migrant Forum in Asia Policy Briefs*

- “Providing Shelter for Distressed Migrant Workers: A Rights-based Approach”  
[http://mfasia.org/migrantforumasia/wp-content/uploads/2015/02/mfa\\_shelterspolicybrief\\_feb2015\\_final.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2015/02/mfa_shelterspolicybrief_feb2015_final.pdf)
- “Joint and Several Liability of Recruitment/Placement Agencies with Principal/Employer Under Philippine Laws” [http://mfasia.org/migrantforumasia/wp-content/uploads/2015/06/policybrief\\_jointandseveralliability\\_winter2014.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2015/06/policybrief_jointandseveralliability_winter2014.pdf)
- <http://mfasia.org/mfa-policy-briefs/>

#### *Lebanon*

- “Access to Justice for Migrant Domestic Workers in Lebanon”  
[http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms\\_247033.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_247033.pdf)
- “False Allegation of Theft Commonly Filed by a Lebanese Sponsor/Employer Against ‘Runaway’ Migrant Domestic Worker: A Legal Study” (Please refer to Annex II)

#### *Philippines*

- “Selected Philippines Laws, Rules and Regulations on Overseas Employment”  
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- “Philippine Jurisprudence on Overseas Employment”  
<https://drive.google.com/file/d/0B4mINsxbJiCWUnZKRkZWUIB1cVE/view>
- A Call for Ratification: Philippine Labor Migration and the ILO Private Employment Agencies Convention 1997 (c. 181)

#### *Singapore*

##### HOME:

- <http://www.home.org.sg/wp-content/uploads/2015/06/The-invisible-help.pdf>
- <http://home.org.sg/wp-content/uploads/reports/2014-upr-midterm-review.pdf>
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TWC2:

“Justice Delayed, Justice Denied”: <http://twc2.org.sg/2010/12/15/justice-delayed-justice-denied/>

“Troubled Waters” (report on trafficking of fishermen) can be accessed via:  
<http://twc2.org.sg/2013/01/09/troubled-waters-report-launched/>

“Diluted Justice” (Second report on trafficking of fishermen)  
<http://twc2.org.sg/2016/10/21/diluted-justice-protection-and-redress-for-trafficked-fishermen-in-asia/>

#### *Thailand*

- Newsletter on Access to Justice and Rights Protection for Migrants in Thailand (pp.26-52 for English) <http://hrdfoundation.org/?p=1628&lang=en>

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- “Tricked and Trapped: Human Trafficking in the Middle East”  
[http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_211214.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_211214.pdf)
- “C189 - Domestic Workers Convention, 2011 (No. 189)—Convention concerning decent work for domestic workers”  
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- 50 For Freedom Campaign: A Global Drive to End Forced Labour  
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## **ANNEX I**

Law Number 164/2011

### **Punishment for the Crime of Trafficking in Persons**

The Council of Representatives has approved

And the President of the Republic is promulgating the law whose text follows:

**Article One:** The new following chapter shall be added to Chapter Eight of Book Two of the Penal Code:

#### **Chapter Three: Trafficking in Persons**

**Article 586.1:** Trafficking in Persons is:

- A) luring, transporting, receiving, detaining, or finding shelter for a person;
- B) by using force or threatening to use force against someone who is subject to one's power; by kidnapping or deceiving another person; by using one's power against another person or exploiting that person's vulnerability; by giving or receiving sums of money or benefits; and by utilizing such methods against another person who is subject to perpetrator's authority;
- C) for the purpose of exploiting said other person or facilitating his exploitation by others.

The consent of a victim shall be given no consideration in case any of the methods shown in this Article are utilized.

#### **Victim of Trafficking:**

For the purposes of this law a victim of trafficking means any natural person who was the subject of trafficking in persons or who is reasonably considered by the competent authorities to be a victim of trafficking in persons, regardless of whether the perpetrator of the crime [of trafficking in persons] was identified, arrested, tried, or convicted.

According to the provisions of this Article, compelling a person to participate in any of the following acts shall be considered exploitation:

- A) Acts that are punishable by law;
- B) Prostitution or exploitation of the prostitution of others;
- C) Sexual exploitation;
- D) Begging;
- E) Slavery or practices that resemble slavery;
- F) Forcible or compulsory work;

- G) This includes the forcible or mandatory recruitment of children to use them in armed conflicts;
- H) Forcible involvement in terrorist acts;
- I) Selling organs or tissue from the victim's body.

Consideration shall not be given to the consent that is given by the victim to exploitation that is to be committed and is indicated in this paragraph; nor shall consideration be given to the consent to such exploitation that is given by one of the victim's forefathers, legal guardian, or any other person who exercises legal or actual authority over the victim.

Luring, transporting, receiving, detaining, or providing shelter to victims who are under eighteen years of age for the purpose of exploiting them shall be considered trafficking in persons even if such activities were not accompanied by any of the methods indicated in Paragraph (1) (B) of this Article.

**Article 586.2:** The penalty for [a perpetrator of] the crime stipulated in Article 586.1 shall be according to the following:

- 1- Imprisonment<sup>31</sup> for five years and payment of a fine that can be from one hundred to two hundred times the official minimum wage if these actions were carried out in return for sums of money or any other benefits or the promise to grant or receive such sums or benefits.
- 2- Imprisonment for seven years and payment of a fine that can be from one hundred and fifty times to three hundred times the official minimum wage if these actions were carried out by using deception, violence, harsh acts or threats or by spending money on the victim or on a member of his family.

**Article 586.3:** The penalty for a perpetrator of the crime stipulated in Article 586.1 shall be imprisonment for ten years and payment of a fine that can be from two hundred to four hundred times the official minimum wage if said perpetrator, partner, accomplice, or instigator to the crime is:

- 1- A public official or any person charged with providing a public service, or a director of an employment office or an employee of such an office.
- 2- One of the victim's legal or non-legal forefathers, one of the members of his family, or any person who exercises legal authority or actual direct or indirect authority over the victim.

**Article 586.4:** The penalty for the crime stipulated in Article 586.1 shall be imprisonment for fifteen years and payment of a fine that can be from three hundred to six hundred times the official minimum wage if said crime was committed by:

- 1- A group of two or more persons committing criminal acts in Lebanon or in more than one country.
- 2- If the crime involved more than one victim.

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<sup>31</sup> Translator's Note: The Arabic terms, *i'tiqal* and *habs* appear to be used interchangeably in this law. *i'tiqal* usually refers to arrest, apprehension, or detention; *habs* is usually used to refer to imprisonment. Please note that *i'tiqal* is used in the Arabic text in 586.2.1, 586.2.2, 586.3, 586.4, and 370.2.1. The term, *habs*, is used in the Arabic text in 586.5, 524 (new), and 525 (new).

**Article 586.5:** If any of the following conditions are present, criminal acts that are mentioned in Article 586.1 shall be punishable, and punishment shall be imprisonment from ten to twelve years and payment of a fine that can be from two hundred to four hundred times the official minimum wage:

- A) When the crime involves serious harm to the victim or to another person or when it involves the death of a victim or another person, including death as a result of suicide.
- B) When the crime involves a person who is in a state of special vulnerability, including pregnancy.
- C) When the crime exposes the victim to a life-threatening disease, including the HIV virus and the AIDS virus.
- D) When the victim is physically or mentally disabled.
- E) When the victim is under the age of eighteen.

**Article 586.6:** Penalties shall be waived for anyone who reports to the administrative or judicial authority information about the crimes that are stipulated in this chapter, making it possible for said authority to either uncover the crime before it is committed or arrest the perpetrators, partners, accomplices, or instigators, provided that the person making the report is not the perpetrator of the crime mentioned in Article 586.1.

**Article 586.7:** Anyone who provides the competent authorities with information about the crimes stipulated in this chapter after said crimes were committed shall benefit from the mitigating circumstances clause when the provision of such information would prevent the continuation of said crimes.

**Article 586.8:** A victim who proves that he was compelled to commit acts that are punishable by law or that he was compelled to violate the terms of [his] residency or work [permit] shall be given amnesty from punishment.

The investigating judge or the judge who is hearing the case may issue a decision allowing the victim to reside in Lebanon during the period of time required for the investigation procedures.

**Article 586.9:** The Minister of Justice may enter into agreements with specialized institutions or societies so that they may offer assistance and protection to the victims of the crimes stipulated in this chapter.

The conditions that must be met by these institutions and societies and the principles of offering assistance and protection shall be determined in a statute to be issued by the Council of Ministers based upon a proposal from the Minister of Justice.

**Article 586.10:** Sums of money that are earned from the crimes that are mentioned in this chapter shall be confiscated and deposited in a special account with the Ministry of Social Affairs to assist the victims of these crimes.

Regulations for this account shall be determined by statute to be issued by the Council of Ministers based upon a proposal from the Minister of Social Affairs.

**Article 586.11:** Lebanese courts shall have jurisdiction if any of the acts that constitute the crime is committed on Lebanese territory.

**Article Two:** The texts of Articles 524 and 525 of the Penal Code shall be superseded by the texts of the two following articles:

**Article 524 (new):** A person who, to appease the whims of another, takes action to tempt or lure another person or have him removed or taken away with his consent shall be punished by imprisonment for at least one year and payment of a fine that shall not be less than half the value of the official minimum wage.

**Article 525 (new):** A person who detains another person without his consent in a house of prostitution because of a debt to be paid shall be punished by imprisonment from two months to two years and payment of a fine that could be from one tenth of the official minimum wage to the full value of said wage.

**Article Three:**

- 1- The phrase, "or making him commit it [the crime]," shall be deleted from the text of Articles 508 and 509 of the Penal Code.
- 2- The phrase, "or making him commit it [the crime]," shall be deleted from the text of Article 510 of the Penal Code.

**Article Four:** Persons who are being persecuted before this Law goes into effect shall be punished pursuant to the provisions of Articles 524 and 525 of the Penal Code by imposing upon them the penalties that are stipulated in these two Articles before they were amended pursuant to this Law.

**Article Five:** The following new section shall be added to the Criminal Procedure Law after the Seventh Section of said Law:

**Section Seven *bis***  
**Protection Procedures in the Crime of Trafficking in Persons**

**Article 370.2:** An investigating judge may decide to hear the testimony of a person who is in possession of information and acting as a witness, and he may exclude from the official report information about the identity of the person providing the testimony if the following two conditions are met:

- 1- That the crime of trafficking in persons, which is the subject of the investigation, is one that is punishable by criminal penalties that are not less than imprisonment for a period of five years.
- 2- That there be fears that providing information about the crime could result in a threat to the life or safety of the person who is giving the testimony or to his family or one of his in-laws. The [judge's] decision must show cause and must include the factual and concrete reasons upon which the decision was based.

The identity and the address of the person giving said testimony shall be recorded in a special report that shall not be added to the case file. Said report is to be filed and stored with the public defender at the Court of Cassation.

**Article 370.3:** In accordance with the provisions of the previous Article, a defendant may ask a sitting judge to disclose to him the identity of the person giving the testimony if he considers such a measure fundamental to the rights of the defense.

If the judge determines that the conditions for the request have been met, he shall decide to disclose the identity of the person giving testimony provided said person agrees. The judge may also suppress the written minutes of said testimony in accordance with the provisions of Article 270.2.

**Article 370.4:** A defendant may request that he face the person who gave the testimony in accordance with the provisions of Article 370.2. In this case a judge may decide to seek the assistance of technologies that would make the voice of said person unidentifiable.

The particulars of enforcing the provisions of this Article shall be determined by a statute to be issued by the Council of Ministers based upon a proposal from the Minister of Justice.

**Article 370.5:** Criminalization may not be limited to the testimony provided by the person whose testimony is being heard in accordance with the provisions of Article 370.2.<sup>32</sup>

**Article 370.6:** The penalty for anyone who discloses information about protection measures stipulated in this section shall be imprisonment from two to three years and payment of a fine from twenty million to thirty million Lebanese liras.

**Article Six:** This law shall go into effect upon its publication in the Official Gazette (*Al-Jaridah al-Rasmiyah*).

Ba'abda, August 24, 2011

Signature: Mishal Sulayman

Promulgated by the President of the Republic

The Prime Minister

Signature: Muhammad Najib Miqati

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<sup>32</sup> Translator's Note: The meaning of this sentence in Arabic is not quite clear. A possible meaning could be as follows: "The testimony of the person who is being heard in accordance with the provisions of Article 370.2 may not be the only basis for finding that the crime [of trafficking in persons] was committed."

Prime Minister

Signature: Muhammad Najib Miqati