The Rights to Freedom of Peaceful Assembly and of Association for Disenfranchised Workers

Oct. 2016 thematic report to the UN General Assembly by the Special Rapporteur on the rights to freedom of peaceful assembly and of association

QUESTIONS FOR CIVIL SOCIETY/UNIONS/WORKERS

Migrant Forum in Asia (MFA), a network of 200+ migrant community organizations, migrants’ rights activists, and trade unions across Asia, thanks the Special Rapporteur for his decision to pay particular attention to the right to freedom of association of vulnerable and disenfranchised workers, including migrant workers. With members and partners working in all regions of Asia, MFA has decided to focus its comments on the countries of the GCC and Singapore—in both contexts, particularly harsh restrictions on freedom of association have had severe and lasting impacts on migrant workers and members of their families.

1. What are the challenges to exercising the rights to freedom of peaceful assembly and of association (FOAA rights) for disenfranchised workers in your country or region? Are there specific gender-related or socio-cultural dimensions to any of these challenges? Specific examples are most helpful.

Migrant workers in the GCC countries face many challenges in exercising their rights to freedom of peaceful assembly and association:

- They often work long hours under difficult working conditions, making it difficult to find time to gather, even socially or for cultural or religious celebrations.

- They are often socially and physically isolated, particularly when they live in work camps or, in the case of domestic workers, their employers’ homes. In such cases, the monitoring of their activities by their employers frustrates their ability to freely associate.

- Clampdowns on migrant community associations, as explained below, have eliminated many community organizing hubs and have made community leaders cautious about holding gatherings that may attract the unwanted attention of authorities.

- For many women migrant workers (particularly for domestic workers), patriarchal social structures of both countries of origin and destination actively discourage women from leaving their workplaces independently and socializing in the community. Live-in employment arrangements only serve to amplify these social conventions, and in extreme cases women migrant workers are physically prevented from leaving their workplaces. This presents obvious barriers to
freedom of association.

- Excessive surveillance and the hyper-securitized environment (described in question 4) make it exceedingly difficult for undocumented migrants to freely associate or access any form of community support. Fears of detention and deportation push them underground and make it extremely risky to gather in public.

In Singapore, the most immediate challenge to FOAA rights for disenfranchised workers is legislation enacted by the Singaporean government that restricts workers from participating in public protests and assemblies, requiring permits to even participate in the only location where protests and rallies can be held: Hong Lim Park. Further legislation prevents disenfranchised workers from holding official positions in unions, and the are prevented from forming societies of more than 10 people that are “prejudicial to public peace, welfare or good order.”

The major reason for these restrictions is to preserve racial and religious harmony in our multicultural society. Seditious tendencies that endanger this balance are punishable by law under the Sedition Act. These measures hinder opportunities for disenfranchised workers to access their FOAA rights for fear of creating public unrest.

With regard to gender-related issues, domestic workers in Singapore, who are exclusively women, are allowed a mandatory rest day every week. However, employers retain the option of compensation in lieu if the domestic worker agrees to work on her rest days. It remains unknown if employers abide by this rule or penalize domestic workers who insist on mandatory days off. For those domestic workers who report that they do not get a day off, many report that are unable to express themselves religiously as a result, infringing on their FOAA rights. Employment agencies may also insist that workers abandon their religious practices, such as eating certain foods, to make them more employable.

2. What are the political/legal/structural barriers to realization of FOAA rights for disenfranchised workers in your country? What are the gender-dimensions to these barriers? Please give examples.

GCC Countries:

1 Societies Act (Chapter 311) s 4(2) (b).
2 Sedition Act s3.
According to the ILO, there are approximately 49.5 million\(^5\) migrant workers living and working in the Arab states, the majority of whom occupy low wage positions. To respond to the needs of those workers, there are only 3 formally recognized trade unions, and the activities of those unions are monitored and policed.

In practice, repressive state actions (outlined in question 4) manifest in restrictive monetary and financial regulations that stifle the ability of migrant communities to raise money to support their co-nationals or carry out their activities. These associations are also barred from registering as official entities, hindering their ability to promote their activities within their community or to take on their work openly. Even the embassies of countries of origin have refused to formally recognize the existence of these community groups, taking a hands-off approach to avoid running afoul of the destination country’s regulations. For migrant community organizations to effectively organize, they must be able to register with the competent host country authorities and with their embassy.

**Singapore:**

Legal Barriers: Currently, the Singapore government has a hold over the freedom of peaceful assembly and rights to association via the Public Order Act. The following are examples of laws that present challenges for disenfranchised workers in exercising their FOAA rights in Singapore:

- **Societies Act**
  - Discretion on the part of the Societies Registrar to reject Societies that are, in their discretion, used for unlawful purposes, or prejudicial to public peace, welfare or good order; or contrary to national interest.\(^6\)

- **Public Order Act**
  - Outdoor public processions and assemblies require police permits s5 of the Public Order Act.\(^7\)
  - Protests and rallies conducted at Speaker’s Corner in Hong Lim Park do not need a police permit as long as the topic does not touch on religious or racial issues/ the organizer and speakers are Singapore citizens

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\(^6\) Societies Act s 4(2)(b) and (e).

\(^7\) Public Order Act (Chapter 257A) s5.
Foreigners who are not permanent residents are not permitted to participate/organize a meeting at Hong Lim Park without a police permit. Failure to do so will cause them to breach rule 8(b) of the Speaker’s corners regulations, subjecting them to the risk of prosecution.

Although not legislated, the Ministry of Home Affairs made a statement in 2016 that foreign sponsors would not be allowed to attend Pink Dot (a prominent event supporting LGBT rights) or other events at Speakers’ Corner.

- Trade Unions Act

S30 (3) of the Trade Unions Act prevents non-citizens from holding office in a trade union without approval from the Minister of Manpower. The requirement to seek approval undermines independence of any such union formed, and even if it were allowed, they are deprived of the right to organize and collectively bargain.

Nov 2012 SMRT bus driver strike incident

Workers were unhappy with their monthly basic pay of S $1,075, as compared to their Malaysia counterparts S $1,400 with similar job responsibilities. Also of concern was the living conditions in their dormitories (10-12 workers per dorm). Their grievances had been raised previously but there was no resolution and employers were insensitive to their complaints.

171 drivers initially took part in the strike, out of which 5 were arrested for instigating the strike and sentenced to jail terms between 6 and 7 weeks under s10a of the CLTPA read with s109 of the Penal Code.

- Even if a migrant worker joins a trade union, agreement between Singapore Mass Rapid Transit and National Trade

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10 Humanitarian Organization for Migration Economics and Think Centre, supra n 4.
Workers Union states that only Singaporeans are protected by the union, and it excludes temporary and contract employees.

- Under criminal law (temp provisions) Act, an imprisonable sentence can be meted out. If you are union-protected, prosecution can charge you under the Trade Union Act for a fine of not more than $2,000.

- Political Barriers: The Singapore government maintains that there is a need to maintain racial and religious harmony, and that restrictions on activities that may endanger that balance are necessary.¹³

- Structural Barriers: There currently stands only one location for citizens to freely and physically protest, and that is the Speaker’s corner at Hong Lim Park. However, disenfranchised workers are not granted the right to do so freely and are not given any avenue to voice their opinions freely in public.

3. How do FOAA rights for workers function in practice, both where FOAA rights formally exist and where there is an absence of formal recognition for particular categories of workers such as those described above?

GCC:

There is an acute absence of FOAA rights for migrant workers in the GCC countries. Not only are migrants unable to organize or form associations, but they are socially, physically, and geographically isolated and are in effect discouraged from coming together, even for the most benign of occasions. See more on this in question 4.

Singapore:

- Workers can be trade union and registered society members but are not allowed to hold any executive positions in the unions under the Trade Unions Act.¹⁴

- Workers are not allowed to hold or participate in any public demonstrations or assemblies without a police’s permit. This includes public assembly at Hong Lim Park where citizens of Singapore are allowed to hold public assemblies.

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¹⁴Trade Unions Act (Chapter 333) s 30(3).
• In the absence of such rights workers do not have an avenue for voicing their opinions, only when they encounter personal problems or abuse do they turn to the police, NGOs, or MOM for assistance.

Hong Kong:

• The Employment Ordinance Act\(^\text{15}\) which is the main piece of legislation governing conditions of employment in Hong Kong establishes that all workers, including migrant domestic workers have the right to be a member or an officer of a trade union. All workers have the right to form and register a trade union. Workers who are members or officers of a trade union further have the right to participate in the activities of the union. However, such participation should take place at ‘appropriate time’ – meaning outside the workers’ working hours or anytime within the working hours, provided it is agreed by the employer.

4. Have you experienced closing civic/democratic space in your country or region?
   a. If yes, how has it impacted the exercise of FOAA rights for disenfranchised workers; and
   b. How does the absence of FOAA rights for disenfranchised workers impact space for civil society as a whole?

GCC:

For many years, MFA has worked with a number of community groups in the GCC countries that are working to serve as community hubs and sources of support for migrant workers. Largely made up of expat volunteers from countries of origin, these community groups bring migrant workers together for community celebrations on the national and/or religious holidays of their home countries, assist migrant workers in orienting to their country of destination, and provide moral support / advice as needed. These volunteers, many of whom are higher-income expatriates who have lived and worked in the region for many years, reach out to their co-nationals out of a sense of community welfare.

In the years since the start of the US War on Terror and the Arab Spring uprisings, governments in the region have overtly clamped down on these migrant community associations. Migrant organizations, associations, and trade unions are being restricted in their operations and even shut down entirely. In this context of hyper-surveillance, community leaders are monitored and harassed by officials, creating a climate of fear within migrant communities. Hundreds of community organizations have stopped meeting for fear of being held suspect.

The implications of these restrictions on freedom of association are many and far-reaching.

When migrant workers cannot freely associate, they become isolated and unable to support one another. The psychosocial implications of this kind of isolation should not be underestimated, as the inability to simply gather for cultural celebrations with people of a shared experience and who speak the same language throughout the duration of one’s employment imposes undue stress on already-vulnerable workers. This isolation is particularly acute in the case of live-in migrant domestic workers, who already experience social isolation by virtue of their lack of workplace colleagues. Isolation also means that migrant workers cannot share information about life in the destination country or about resources within the destination country that could be helpful to them in the case of workplace problems.

Clampdowns on migrant community associations have also meant that distress calls from migrant workers go unanswered. Key community volunteers are known to migrant workers, largely through word of mouth, and migrant workers often turn to these community leaders for support when they are in distress. In a climate of fear and intimidation, these community volunteers can no longer safely provide support to those workers. This results in larger caseloads for embassies and consulates, but also means that many migrant workers simply will not receive the assistance that they need.

In recent civil society consultations in response to the Migrants in Countries in Crisis Initiative, our members and partners from the GCC region reported that migrants were being prevented from pooling their resources to provide assistance to other migrants who become injured on the job or for the repatriation of workers or the remains of those who die while in countries of destination. Being prohibited from such activities in ordinary times means that migrants have no experience of such collaboration to apply in emergencies. For example, Filipinos in one GCC country resolved to continue their fundraising efforts to support those affected by Typhoon Haiyan, despite their host state’s prohibition of such activities. In solidarity, the Ambassador of the Philippines attended each fundraising event to provide immediate assistance in case there was any intervention on the part of the host state authorities. Such measures should not be necessary. The inability to form and strengthen migrant community networks in ordinary times breaks down communication and solidarity within migrant communities that could otherwise be activated in times of crisis. Experience informs learning. If the practice of responding in ordinary times is not tolerated, this will be difficult to initiate in crisis mode.
Singapore:

- Currently FOAA rights are restricted under article 14 of the constitution. Recent cases, such as that of Roy Ngerng and Amos Yee, a blogger and YouTuber respectively, were charged for criticizing the government. British journalist Alan Shadrake was convicted in Singapore for scandalizing the Singapore judicial system. He was sentenced to 6 weeks imprisonment and a $20,000 fine.

- Singapore remains famous for the lack of FOAA rights, even for its own citizens, let alone for disenfranchised workers. The lack of action despite constant criticism by authors and organisations just show an already restricted civic and democratic space.

- As such, current legislation, as described above, presents further restrictions to FOAA rights for disenfranchised workers.

- As long as disenfranchised workers do not receive any rights to FOAA, civic space will continue to remain restricted, as there is no freedom to express opinions and ideas.

- Given that Singapore needs migrant workers and skills, along with the instrumentality they offer to the manufacturing, services and construction sectors of our economy, it stands to reason that we should provide some avenue to allow them to voice their opinions.

5. What role does the lack of policy coherence at the national level play in frustrating the exercise of FOAA rights? Do other areas of law pose risks for the exercise of FOAA rights?

GCC:

Lack of policy coherence is evident in migration governance globally, and is clearly seen in the policies of countries of the GCC. On one hand, governments in the region present themselves as being welcoming to migrants as contributors to their national economies. Celebrations of migrants’ days following on from discourses of migrants as heroes of development contrast...
with the actual living and working conditions migrants face on the ground, and the routine labour and human rights violations they face each day.

Across the GCC countries, nationals can form groups, access social services departments, attend cultural events and festivals marketed for tourism, etc. — this all gives the outward impression of free and independent societies where FOAA rights are respected. But restrictions on workers’ mobility through policies that restrict migrants to specific employers and/or to specific geographic regions of the country, the lack of time off from work, their social and cultural isolation, and restrictions on their ability to even interact with their co-nationals through cultural associations contradict this picture.

In such highly securitized states, where authoritarian decrees are passed with few or no broad-based consultations with citizens, let alone migrants, and where migrants do not speak the local language, migrant workers can quickly find themselves in hostile situations.

**Singapore:**

Associations affiliated with the government, such as NTUC and the Consumers Association of Singapore (CASE), have been able to hold public gatherings and rallies, but non-affiliated organisations have not been able to do so. For instance, CASE held a “Walk With CASE” event in 2008 to mark World Consumer Rights Day.¹⁹ This was a public event attended by a large group of supporters. The Singapore Democratic Party’s application to the police for a permit to hold a protest rally outside Parliament House in 2008 for World Consumer Rights Day was rejected.²⁰

Thus, there appears to be double standards applied to state-affiliated associations as compared to non-affiliated organisations with respect to the provision of permits to hold public gatherings. Other examples of this include how the police denied an application by migrant workers’ rights group HOME for a permit to march on Labour Day in 2012.²¹ Likewise in 2013, the police denied a permit for a March for Minimum Wage, organized by filmmaker Martyn See, which was planned for International Human Rights Day.²²

The Public Order Act has also stipulated penalties for its contravention, posing further risks for the exercise of FOAA rights.²³ For example section 16 (1) states that each person who organizes a public assembly or public procession without a permit shall be liable to a fine not exceeding

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²³ (Chapter 257A 2012).
$5,000. Repeat offenders are liable to pay a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months, or both.\textsuperscript{24}

Significantly, foreigners who flout these rules also risk having their work permits or visitors’ passes cancelled, serving as an additional barrier to FOAA. For example, the authorities reviewed the work and visitors’ passes of several Malaysians who illegally gathered at the Merlion Park to protest against the Malaysian elections.\textsuperscript{25}

\textbf{6. How should the state fulfill its duty to protect individuals from FOAA rights violations by non-state actors in global value chains?}

Across countries of origin and destination, migrants are too often treated as commodities rather than as rights holders. This mindset and approach urgently need to change such that their rights will not be violated in global value chains. Disenfranchised migrants often occupy the lowest level jobs in global supply chains, with few rights extended to them and with little access to redress in the case of rights violations. Principles of non-discrimination must be applied to migrant workers in global supply chains; states must oversee the human and labour rights of \textit{all} within their jurisdiction, particularly the right to organize and bargain collectively.

The effectiveness of countries of origin in regulating the role of corporations with regard to FOAA rights varies significantly across Asia. Much of the variation may be attributed to governance standards within the various states and the functionality of the rule of law. Some of the barriers to holding corporations accountable include:

- lack of willingness of Parliament/Executive to respond to alleged human rights violations by corporations
- lack of an independent judiciary
- lack of willingness by the police and prosecuting agencies to enforce human rights standards
- persecution of independent bodies investigating and enforcing human rights standards, including FOAA rights

Countries of destination, including the GCC and Singapore, must consider implementing explicit recognition of the state’s duty to protect both citizens and non-citizens against human rights abuses, including FOAA rights violations, by third parties, including businesses. Protocols must be put in place requiring businesses to avoid causing or contributing to adverse human rights impacts (including FOAA violations) through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products, or services.

\textsuperscript{24} Public Order Act s 16(3).
In the case of Singapore, there are limited opportunities to file complaints for human rights violations at the international level (Singapore has not ratified the Optional Protocols of the Convention to the Rights of the Child or CEDAW, which allow for individual complaints of violations of human rights). Singapore currently does not have a national human rights institution or other national human rights body to monitor the protection and promotion of human rights, including FOAA rights.

**What are the barriers to states holding corporations accountable for transnational harms – in the host country – in the home country? How can they be overcome?**

There are significant barriers to states holding corporations accountable for transnational harms, largely stemming from a lack of policy cooperation and coherence across borders. Gaps in compliance with global labour standards result in significant rights violations for migrant workers. Ensuring that migrant workers have safe and confidential channels to report violations is an important first step.

To ensure that FOAA rights are protected in global value chains, states introduce mechanisms to ensure that corporations and other non-state actors are held accountable for transnational harms. Specifically:

- Formally respond to the UN ‘Protect, Respect and Remedy’ Framework which recognizes the state duty to protect against human rights abuses by third parties, including businesses.

- Establish or strengthen national human rights institutions or other national human rights bodies to monitor the protection and promotion of human rights

- Ratify the Optional Protocols of the Convention to the Rights of the Child and CEDAW, which allow for individuals to file human rights complaints

- Enact legislation explicitly requiring business enterprises to avoid causing or contributing to adverse human rights impacts through their activities

- Ensure that workers have access to effective, efficient, and transnationally portable access to justice mechanisms.

Furthermore, states must:

- Ensure that a migrant worker’s freedom of expression and association, and the right to participate in all aspects of civic and political life are respected

- Ratify ILO C87 and allow migrant workers to form their own unions
What can be done to reverse this trend?

Migrant countries of destination, including those of the GCC and Singapore, need to invest in changes in public perception. Rather than being viewed as (and therefore treated as) mere commodities, migrants must be seen as part of the fabric of society. This does not necessarily mean that all migrants must be given permanent residency or citizenship status — rather, it means that countries receiving migrant workers en masse must be willing and able to build more cohesive societies that do not marginalize migrant workers or physically isolate them into ghettos, away from the rest of society. The ways in which migrants are spoken about and received at the national level sets an important tone for their treatment.

How does the State respond to retaliation practices?

Countries that host migrant workers, including the GCC countries and Singapore, must implement laws to protect workers who seek to exercise their workplace rights against retaliatory measures by employers. It can be very risky for workers to bring forward complaints, even through state-sanctioned channels. To ensure their safety, governments must provide a permit for that worker to continue to work in that state, and the freedom of mobility to change employers immediately and move to another workplace. They must not only be able to continue to work for the remainder of the duration of their original contract, but must also be able to extend their time in the country to make up for time lost. In addition, should the worker decide to return to his/her country of origin, there must be no restrictions on their ability to return to the country of destination for work in the future as a result of their having complained.

7. What actors/forces have been instrumental in weakening laws or preventing laws supporting FOAA rights in your country or region?

In the GCC region, there is no political will to extend FOAA rights to non-citizens, and FOAA rights are severely restricted for citizens as well. For restrictions on non-citizen freedom of association, this stems largely from the fear that organized migrants will engage in discourses that could threaten national security. This is happening at a very large scale across the region.

In Singapore, the dominance of the ruling political party continues to explain why laws support for FOAA rights is weak. The People’s Action Party (PAP) holds more than two-thirds of the elected seats in Parliament (to be precise 83 out of 89 seats) and has formed the Government since 1959.26 The ruling party’s political dominance is further exacerbated by how PAP

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Members of Parliament vote along party lines, ensuring that it can enact primary legislation and constitutional amendments with ease.27

Furthermore, the executive and legislature are fused in Singapore’s Westminster Parliamentary system. This makes it easy for the ruling party to prevent legislative change in liberalising current civil liberties and to introduce laws which weaken FOAA rights. Cabinet members are formed from the legislature and are PAP members. The Cabinet as the primary executive government organ not only directs and controls the government, but also sets the legislative agenda.28

Significantly, the People’s Action Party also has control over the media and how events involving FOAA rights are reported. The government has continuously linked liberal FOAA rights to social chaos. For example, former Minister for Home Affairs Wong Kan Seng said in 2008: “Our experiences in the past have taught us to be very circumspect about outdoor and street protests. The 1950 Maria Hertogh riots and the 1964 race riots, both started as peaceful assemblies, but eventually ended up with 54 dead, 736 injured, and significant damages to property...” Thus, the ruling party uses fearmongering tactics to justify its restriction of FOAA rights.29

8. What obstacles impede workers from exercising FOAA across borders? (i.e. migrant workers, women workers)

Solidarity among migrant communities in the GCC is broken down from the start. These destination countries have a large demand for migrant workers and are well known for systemic disregard for the labour and human rights of those workers. The primary countries of origin find themselves in unhealthy competition with one another, as the labour supply across countries with GDPs dependent on migrant remittances far outstrips demand. This race to the bottom means that migrant workers from different countries receive unequal treatment, with wages and working conditions dependent on the country of origin’s zealosity in demanding that their rights be respected. Embassies have a vested interest in maintaining spaces in the labour market for their workers, making them unlikely to advocate strongly for the protection of the right to freedom of association.

Lacking union representation or any platform to bring workers with like experiences together to advocate for better, and without the backing of their countries of origin, cross-nationality and cross-border solidarity breaks down.

In Singapore, the continued dominance of the People’s Action Party, as well as the fact that trade unions are part of the state structure, hinders active collaboration between trade unions and transnational NGOs. Significantly, the state has also taken a tough stance against workers wishing to protest about issues experienced in their home country in Singapore. This was seen in the case of the 21 Malaysians who were arrested for protesting against the Malaysian elections at Merlion Park in 2013. The Singapore Police Force gave this statement, “While foreigners, including Malaysians, are allowed to work or live here, they have to abide by our laws. They should not import issues from their own countries into Singapore which can disturb public order, as there can be groups with opposing views. The authorities will act firmly, and those who break the law will face action which could include termination of their visa or work passes.”