

# Lawyers Beyond Borders: Building Partnerships to Bring Justice for Migrant Workers and Members of their Families



**Migrant Forum in Asia**

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# **Lawyers Beyond Borders: Building Partnerships to Bring Justice for Migrant Workers and Members of their Families**

## **Introduction**

This narrative presents a brief history of a network thriving to bring justice for migrant workers and members of their families. The Lawyers Beyond Borders (LBB) is a transnational network established by Migrant Forum in Asia (MFA) in 2011 in response to the crucial need for more fair and adequate legal redress mechanisms for migrant workers and members of their families, and increased coordination among lawyers, legal aid practitioners, civil society and State and non-State actors in countries of origin and destination. Members of the network focus on migrant workers' rights violation cases in Asia, initially and particularly West Asia, and then later on expanded to include other migration corridors of the continent.

The Lawyers Beyond Borders Network 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. The strengths of the network members are diverse which include traditional litigation, case management, provision of legal advice, paralegal services, impact litigation, and rights advocacy. The members acknowledge these array of strengths and see value in being part of a network that can exchange information, tap each other's approaches and learn from them and apply them in their respective work if and when applicable. The network is not defined by one expertise alone, is organic, and the members can raise issues that they want to take up and focus on. As the Secretariat of the LBB network, MFA facilitates the coming together of lawyers, legal aid practitioners, civil society, State actors and other stakeholders to advance justice for migrant workers and member of their families.

LBB is rooted and has visibly emerged from a long and steady history of efforts by grassroots groups, self-organized migrant workers, their families and individual advocates – the frontliners - who work on the ground and collaborate to achieve the realization of the rights of all migrant workers and members of their families. The initiatives of the frontliners to resolve migrants' rights violations and social issues were possible even with humble resources. LBB provides strategic opportunities for the grassroots to push for greater concerted actions on building and strengthening capacities of network members and partners on provision of legal assistance and rights advocacy, bridging access to justice for migrant workers and members of their families, and empowering the latter through the rule of law.

This narrative illustrates how LBB has evolved through the years but it also shows how it is part of a vast continuum of the advocacy of the MFA network for the promotion and protection of the rights of migrant workers and members of their families in Asia, and the potential influence the network can bring beyond the region.

## The context

Violations against the human rights and labor rights of migrant workers and members of their families and the social costs of migration have been the major concerns of grassroots organizations, migrant workers and families themselves who are directly affected and are primarily confronting such issues. In 1990, groups of migrant workers and migrants rights advocates in Hong Kong conceived a network that would facilitate the collective agenda to promote and protect the rights of migrant workers and members of their families in Asia. Four years later in 1994, a forum was held in Taiwan entitled “Living and Working Together with Migrants in Asia.” It was in this forum that the Migrant Forum in Asia (MFA) network was formally established. From its founding, MFA has gradually grown to be the broadest and most representative regional migrants’ advocacy network in Asia that works towards the promotion and protection of the rights of all migrant workers and members of their families. Its members and partners comprise of grassroots organizations, trade unions, faith-based groups, migrants and their families and individual advocates in Asia working together for social justice for migrant workers and members of their families. MFA has thrived into a formidable migrants’ rights advocacy network in Asia, affecting significant influence to other networks and processes on the globe. To date, MFA is represented in 26 countries in Asia and the Pacific. MFA members and partners are also coalitions and networks, bringing the membership in the region close to 260, and growing each year.

MFA network members and partners include civil society organizations with staff and volunteer lawyers, legal aid practitioners and social workers who provide pro bono support to aggrieved migrant workers and members of their families. They are based in countries of origin and destination. They initially started working independently on rights violation cases but after seeing the value of collaborating efforts in resolving cases through the network, members pushed for closely linking initiatives between organizations in both origin and destination countries, and encouraged enhancing their respective skills and capacities through sustained trainings, learning exchange and actual dialogues with States and relevant stakeholders.



The human rights and labor rights situations of migrant workers in West Asia are matters of great interest to migrants rights advocates. West Asia is a sub-region in Asia comprising mainly of countries “receiving” mostly semi- and low-skilled migrant workers.<sup>1</sup> Grassroots organizations in the countries of origin in Asia are constantly attending to a considerable number of reports, cases distressed calls of migrants’ rights abuses from this sub-region. At the same time, migrant support groups in West Asia accommodate migrant workers who

approach them for help. These support groups in the destination countries are composed of local residents, expatriates and members of the diaspora who have set up informal associations and legal aid organizations to respond to the growing need of providing assistance to migrants in distress. Organizations both in countries of origin and in West Asia recognize that close

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<sup>1</sup> In this definition, West Asia includes the six Gulf Cooperation Council Countries (GCC) namely: Bahrain, Kuwait, Qatar, Oman, UAE, and Saudi Arabia; plus the Mashreq countries of Jordan and Lebanon.



collaboration through a network is one of the effective mechanisms to holistically address migrants rights violations and situations.

Hence in 2004, at the 9<sup>th</sup> Regional Conference on Migration and General Assembly of the MFA network, members and partners recommended the formation of the “West Asia Task Force,” convened by members and partners from the GCC States and the Mashreq region of Lebanon and Jordan, and countries of origin in South Asia and South East Asia.<sup>2</sup> Since the articulation of focus in West Asia, MFA has increased the coordination of relevant stakeholders in the sub-region. MFA through the West Asia Task Force conducted its first field visits in Bahrain, Jordan and the UAE in 2004-2005 and subsequent visits and meetings in the sub-region until 2010 were instrumental in identifying and developing partnerships with civil society and support groups in West Asia whose humanitarian and advocacy endeavors are akin to MFA’s vision and mission.



MFA delegation at the 99<sup>th</sup> Session of the International Labour Conference, Geneva, Switzerland, June 2010.  
Photo courtesy of ITUC.

In the first few years of the operation of the West Asia Task Force, MFA focused on trust building among network partners and possible partners in the sub-region. Trust building was done by inviting the partners to participate in the programs of MFA, involving them in campaigns and policy advocacy activities at the regional and international levels. As a significant example, MFA was able to support a delegation of West Asia partners to the 99<sup>th</sup> Session of the International Labour Conference in 2010, where it paved way for dialogue with governments in West Asia to support the ILO Convention on Domestic Work. MFA was also able to facilitate the

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<sup>2</sup> MFA West Asia Task Force was initially composed of MFA members from the countries of origin which have a considerable number of their citizens working in West Asia as migrant workers: Bangladesh, Indonesia, the Philippines and Sri Lanka. Later on, members from Nepal and partners from the countries of destination became part of the Task Force. Throughout the report, West Asia / West Asia Task Force is used when referring to participation of MFA members and partners in rights advocacy and capacity building activities. LBB network members and partners from West Asia who are active in both the Task Force and LBB are the participants consistently involved in MFA activities.

involvement of the West Asia Task Force members in both online and face consultations in relation to the campaign on decent work for domestic workers.



From left: Dr. Chowhury Abrar of RMMRU (Bangladesh), Nisha Varia of Human Rights Watch, and William Gois of the Migrant Forum in Asia at the first Abu Dhabi Dialogue in 2008

As part of trust building and cementing partnerships with organizations and individual advocates in West Asia, MFA also participated in the activities of the partners in the sub-region. In a number of occasions MFA took part in partners meetings organized by the Middle East Council of Churches as well as Caritas Lebanon. Field visits were organized in the GCC States particularly in Oman and the UAE wherein network members from countries of origin came to dialogue with civil society and government representatives in those States. A notable space for MFA to advance rights advocacy was the 1<sup>st</sup> Abu Dhabi Dialogue<sup>3</sup> in 2008 in which MFA was one of the few civil society representatives and a panelist in the inter-governmental session.

MFA's initial outreach in West Asia has led the network to expand its partnerships with organizations and individuals in Bahrain, Kuwait, Oman, Saudi Arabia, UAE, Jordan, and Lebanon and most recently Qatar. This engagement has resulted in the creation of a database of individuals and groups, including formal and informal civil society organizations, trade unions, individual lawyers and social workers, government officials, and others relevant to migration and human rights in the sub-region. This established contact allowed MFA to facilitate the communication within the network, provide capacity building opportunities and offer space for groups to come together and share strategies.

While the outreach of the network in West Asia is being progressively strengthened through the years, MFA is simultaneously enriching and consolidating the efforts of the network in the rest of Asia. One of those efforts is the Migrant Rights Violation Reporting System (MRVRS). The MRVRS is an online advocacy tool developed to help document migrants' rights violations with the end in view of using the data gathered for critical analysis of the situation of migrant workers especially in Asia. The MRVRS works through information contributed by MFA members and partners from the cases they handle. The system was developed by the MFA network in 2004. It complements network members' and partners' rapid response, case management and documentation mechanisms, helping to ensure that on-the-ground actions are elevated to regional and international advocacy levels where documented evidence can help bring about policy changes and improved implementation of human rights and labor rights policies for migrant workers and their families.

In the course of moving forward the migrants rights agenda, the network distinguished the key roles of lawyers, paralegals and social workers and their collaboration with grassroots organizations in bringing justice to migrant workers and members of their families. In recognition of their pivotal functions, MFA members and partners including Center for Migrant Advocacy

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<sup>3</sup> Refer to annex for a brief description of the Abu Dhabi Dialogue and MFA's engagements with regional consultative processes and multilateral spaces.

(Philippines), Kav LaOved (Israel)<sup>4</sup>, the International Labour Organization (ILO), the UN Committee on the Rights of Migrant Workers and individual lawyers throughout Asia suggested a lawyers network that would impact rights advocacy by specifically convening lawyers and relevant actors to collectively look into the issues of access to justice, situate and understand migrants rights in the context of national and international laws, at the same time use the network as space to exchange strategies, information and advice on resolving rights violation cases.

The MFA network persisted in collectively developing and strategizing on the concept of a lawyers network at the same time they continued to strengthen their initiatives in West Asia, thriving all the while even with meager financial resources. Their expertise were being noticed, such as when the National Legal Aid Association of Vietnam invited the participation of MFA to the International Workshop on Legal Aid for Migrant Workers, held in Da Nang, Vietnam in 2008.



MFA members from Nepal huddled for a discussion on MRVRS and RRM at a program in Manila in 2010

The pressing need for a more coordinated action among lawyers and legal aid providers surfaced again in the sidelines of the Rapid Response Mechanism program<sup>5</sup> organized by MFA in 2010. Lawyers and relevant stakeholders in countries of origin and countries of destination – with West Asia emphasized as the focus area, felt that they should converge in one space that would allow close collaboration.

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<sup>4</sup> CMA and Kav LaOved are among the conveners of the West Asia Task Force.

<sup>5</sup> Rapid Response Mechanism (RRM) for MFA is a step-by-step process which member-organizations and partners have adopted to respond to migrants' cases brought to their attention, either by the migrant or his/her family or a concerned third party and needing immediate, urgent response. MFA members and partners respond as rapidly as possible to migrants rights violations such as when a worker escapes from a physically abusive employer who puts his/her life in danger or when left stranded in a foreign airport due to fake documents.

## Lawyers Beyond Borders emerging in 2011

As the West Asia Task Force of the MFA network has gone through the trust-building phase, the succeeding steps to implement advocacy on migrants rights in West Asia are to build and improve capacities of the members and partners and strengthen networking. MFA envisioned a much stronger network and greater engagement for rights advocacy in the next five years. This vision involved the component of honing the skills and enhancing the initiatives of the West Asia Task Force through developing transnational alliances for rights promotion and protection in the sub-region. Dialogues with Missions in the countries of destination as well as information sharing and collaboration for advocacy among targeted groups mainly lawyers and legal aid providers have been the action points of this vision. MFA also envisioned increased abilities of the West Asia Task Force to more effectively dialogue with governments and other relevant stakeholders in the global governance of migration. The vision has been set into motion by the network maximizing spaces for regional and international advocacy, provided by the regional consultative processes, human rights mechanisms of the United Nations and the ILO, and the Global Forum on Migration and Development.



MFA delegates at the parallel process to the fourth Colombo Process in Dhaka, Bangladesh, 2011

The onset of the “Arab uprising” in 2011 exposed several layers of injustice and human rights abuses. The situations of migrant workers and members of their families were among that was uncovered and revealed an unprecedented challenge to receiving and sending States and migrants rights advocates. It demonstrated that much needs to be done with respect to the protection and promotion of migrant rights in West Asia.

The emerging yet unstable geo-political context in West Asia as well as the current status quo of migration management in the region further propelled the network to put its vision more vigorously into action. The MFA network in

countries of origin and countries of destination heavily affected by the Arab uprising were not only proactive in the humanitarian response to the crisis in West Asia, but were also unyielding in its advocacy with States, governments and other stakeholders to influence development of sound measures on evacuation, reception, repatriation, and comprehensive, meaningful and sustainable reintegration of migrant workers. The invitation extended to MFA at the 4th Colombo Process<sup>6</sup> in Dhaka, Bangladesh in April 2011 gave opportunities for civil society delegates<sup>7</sup> from West Asia and the countries of origin to engage with Colombo Process member and observer States and reiterate calls for a rights-based approach to migration and development. In the discussions with States, civil society delegates advocated for a standardized contract and reference wage for migrant domestic workers, reforms in the Kafala System, and sustainable repatriation and reintegration programs for migrants in distress.

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<sup>6</sup> Refer to annex

<sup>7</sup> MFA delegates came from the following countries: Bahrain, Bangladesh, India, Indonesia, Kuwait, Lebanon, Nepal, Oman, Pakistan, Philippines, Sri Lanka, Switzerland, UAE, and the United States.





Delegates from governments, employers, trade unions and civil society at the 100<sup>th</sup> Session of the ILC, Geneva, Switzerland, June 2011.

The West Asia Task Force<sup>8</sup> followed through the discussions held at the Colombo Process by continuing the dialogues at the 100<sup>th</sup> Session of the International Labour Conference in Geneva, Switzerland in June 2011, where a historic milestone was reached: the adoption of ILO Convention 189 on Domestic Work and its subsequent Recommendation 201, on 16 June 2011 MFA was a driving force in the Asian region and globally, in partnership with other domestic worker networks and movements, in pushing for the adoption of ILO C189. Migrant domestic workers, lawyers, and social workers who work on rights abuse cases, and grassroots organizations in countries of origin and destination played pivotal roles in lobbying with governments to support the adoption of C189. States in West Asia unanimously voted in favor of the Convention.

There is a considerable amount of time and energy being poured into understanding the issues of migrant workers at the global level. Much work is happening in international institutions around this thematic area. For instance, the Global Forum on Migration and Development took place in Geneva, at which governments came together for the 5th consecutive year to talk about the linkages between migration policy and development policy<sup>9</sup>. The parallel civil society event, the People's Global Action on Migration, Development and Human Rights, also took place in Geneva, bringing together grassroots organizations and migrant communities to look at the ways in which the Global Forum's discourse impacts the human rights of migrant workers—and this is just one space in which these kinds of discussions are happening.

<sup>8</sup> MFA delegation at the 100<sup>th</sup> ILC included members from Bahrain, Cambodia, Hong Kong, India, Indonesia, Israel, Jordan, Lebanon, Nepal, Oman, Philippines, Singapore, Taiwan and the UAE.

<sup>9</sup> 186 CS delegates were invited into the GFMD CSD and 200 CS delegates joined the PGA. This enhanced knowledge building and networking amongst CSOs. MFA partners from the West Asia Task Force participated in this process. During dialogues with government delegates, they raised the issue of domestic workers in the countries of destination, particularly in the Middle East and highlighted the abuses faced by the workers. The MFA Regional Coordinator was the Chair of the Civil Society Days of the GFMD and delivered the civil society statement: <http://www.mfasia.org/home/420-statement-of-the-2011-civil-society-days>

In spite of a considerable amount of international and regional activity among States on this thematic, the challenge of migrants rights advocates has been to understand how this rhetoric at the global level is translated on the ground in terms of better protection of the rights of migrant workers and members of their families. MFA has recognized for some time that lawyers who deal with cases of migrant workers on a day-to-day basis would be a good barometer for understanding how much change is really happening on the ground. Do lawyers see new spaces in which to advocate for their clients? What kinds of legal obstacles exist?

Finally in November 2011, MFA and network member and local organizing partner, Human Rights and Development Foundation (HRDF), with support from the Open Society Foundations (OSF), organized “Lawyers Beyond Borders: Building Partnerships for Justice for Migrant Workers” in Bangkok, Thailand. The conference was the first of its kind, bringing together 31 lawyers from the West Asia, South Asia, and Southeast Asia who specialize in cases involving migrant workers. In addition to the lawyers were civil society activists in the area of migrants’ rights and observers from OSF. There were 48 participants in all.<sup>10</sup>



William Gois, Regional Coordinator of MFA, facilitating a session at the 1<sup>st</sup> LBB Conference in Bangkok, Thailand, 2011.

This program was also looked at as a means of beginning to forge important connections between lawyers and grassroots organizations working with migrant workers on the ground, as well as migrant communities in both countries of origin and destination. MFA is looking to engage with lawyers as a part of its movement building process, and the program was designed to find ways to collaborate and determine ways to move forward in defense of migrants’ rights. This program was a successful first step in that direction.

Through a series of sessions on the relevance of International Law and the conventions related to migrant workers, Islamic Jurisprudence, and bilateral agreements (BAs) and memoranda of understanding (MOUs), the lawyers engaged in discussions on the impact (both legal and political) of these instruments on their work.

Individual cases were also presented and discussed with respect to the challenges encountered by both sending and receiving country lawyers in litigating and in achieving fair and adequate redress for their clients. A variety of themes were drawn from these cases, including the importance of “going on the offensive” in advocating for clients, and moving towards impact litigation with a view to influencing policy change and public opinion.

An action plan was drawn up collaboratively on the final day of the workshop. The plan included a series of projects that would be undertaken collectively, including: drawing up plans for paralegal training sessions that will better connect civil society and foreign missions to the work of lawyers, and to help them to assist migrant worker communities with their legal needs; compiling resources that will be of use to lawyers, migrant worker advocates, and migrant communities; supporting advocacy campaigns (e.g. the ratification of the UN Migrant Workers

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<sup>10</sup> See annex for full report

Convention and ILO Convention 189 on Domestic Work); supporting one another through effective networking and information sharing.



Participants at the 1<sup>st</sup> Lawyers Beyond Borders Conference, Bangkok, Thailand, November 2011

The action plan would later on be carried out successfully by the LBB network, with MFA as the designated Secretariat. Shortly after the conference, an email listserv ([lawyersbeyondborders@yahoogroups.com](mailto:lawyersbeyondborders@yahoogroups.com)) was created which included email addresses of conference participants and MFA West Asia Task Force members who expressed interest to be part of the LBB network. The listserv facilitated online discussions among the members – generating ideas to go about the action plan, and exchanging information relevant to the work of lawyers and legal aid providers for migrants rights. In the early phase of 2012, the LBB network website was launched (<http://lawyersbeyondborders.mfasia.org>), which became the main portal of news and resources of lawyers interested on migrants rights advocacy in West Asia. The discussions in the email listserv have contributed to and still inform the content of the website.

This initial networking of lawyers has spawned independent programs initiated by the lawyers themselves, in Sri Lanka and in the Philippines, as well as an MFA-organized paralegal training workshop in Oman for Indian migrant support organizations and informal dialogue with the Indian Embassy in February 2012.

The LBB network, in its nascent stages has shown great promise in carrying the vision of the migrants rights movement. Its members have contributed to a number of policy advocacy deliberations including MFA's first three policy briefs published in early 2012:

[Standardised Employment Contract for Migrant Domestic Workers](#)

[Reform of the Kafala \(Sponsorship\) System](#)

[A Reference Wage for Domestic Workers](#)

MFA presented these policy briefs to government delegations attending the 2<sup>nd</sup> Abu Dhabi Dialogue in Manila, Philippines in April 2012. A parallel civil society consultation on the Abu



Dhabi Dialogue was organized by MFA, in which members of both the West Asia Task Force and the LBB took part and advanced civil society's calls for rights-based migration policies.

Two more policy briefs were published in mid-2012, in which the experiences of LBB members were among the main sources of information:

[Detention of Undocumented Migrant Workers in Asia](#)

[Stranded Migrants](#)

These policy briefs in addition to civil society [written submission](#), have contributed to the thematic report of the Special Rapporteur on the rights of migrants on detention of migrants in irregular situations.



## **Lawyers Beyond Borders and Strategic engagement with the Missions in 2012 - 2013**

Beginning in 2012, the LBB network members, particularly the relatively new members from West Asia, engaged with the broader advocacy activities of MFA. Their participation allowed them to immerse in the challenges and opportunities confronted by the grassroots in countries of origin in South Asia and South East Asia and countries of destination in West Asia.

MFA's engagement with Missions was conceived as a direct result of the grassroots work of MFA members and partners on the ground, who collaborate on a regular basis with embassy and consular officials in the destination countries, and together provide humanitarian actions against the challenging situations being faced by migrant workers and members of their families. In countries of destination, migrant support groups organized by expatriates and migrant workers link up with their respective missions and their civil society counterparts in the countries of origin, to facilitate programs and services for migrant workers and their families. Day to day work usually focus on case management and grievance redressal, which require immediate and coordinated efforts between missions and civil society, and even including agencies in the destination countries. Missions have designate lawyers to represent migrant workers in administrative and legal proceedings of their cases. These lawyers are usually expatriates, but local lawyers also coordinate with the Embassies and act in defense of their migrant worker clients.

Documented evidence of rights violations have been crucial in successfully engaging Missions and agencies at countries of destination to take proactive measures to resolve cases of abuse against migrant workers and members of their families. One to one, informal meetings and courtesy visits in the Missions provide dedicated platforms to touch base and collectively look in to existing practices and gaps – practices that work or need improvement, and brainstorm on ways to move forward with humanitarian activities and rights advocacy. Such meetings with and visits to the Missions are held by MFA in cooperation with MFA partners and migrant support groups based in the countries of destination, and likewise by civil society members from the origin countries. Missions of Bangladesh, India, Indonesia, Nepal, the Philippines and Sri Lanka that are present in Jordan, Lebanon, Malaysia, the Maldives, Oman, Qatar and the UAE consistently meet with MFA members and partners.



Diplomacy Training Program in Beirut, Lebanon in 2012 was the first training program on the human rights of migrant workers, organized in West Asia

2012 was a breakthrough year in establishing the presence of a more coordinated migrants rights advocacy in West Asia. The human rights training on the rights of migrant workers were conducted for the first time in Lebanon (May 2012) and Qatar (October 2012). The trainings were implemented through the annual MFA and Diplomacy Training Program (DTP of the University of New South Wales in Australia) with local organizing partners Caritas Lebanon Migrant Center and the National Human Rights Committee (NHRC) of Qatar. The human rights training programs aimed to develop the capacities of civil society including lawyers, national human rights institutions and individual advocates from West Asia as well as countries of origin of migrant workers, in understanding human rights mechanisms for migrants rights and how they can apply the learning in their day to day work. Informal dialogues with Missions were organized in the sidelines of the human rights training programs in Lebanon and Qatar.

MFA held two sessions in Doha, Qatar in October 2012 to promote dialogue between origin and destination countries' civil society groups (CSO), government officials, media personnel, national human rights institutions (NHRIs) and Missions in the country. The first session, "The Role of Diplomats and Labour Attachés", was held during the Diplomacy Training Program (DTP) in the Qatar National Human Rights Committee office. Mission representatives included the Bangladesh First Secretary and Labour Attaché, the Iranian Labour Attaché and the Philippines Ambassador. In this session the three representatives discussed their on-going initiatives, challenges they are experiencing in providing adequate services to their citizens, and what opportunities for collaboration they could foresee. CSOs, government, media, and NHRI representatives<sup>11</sup> from Afghanistan, Bangladesh, India, Jordan, Kuwait, Lebanon, Nepal, Oman,

<sup>11</sup> Organizations, ministries and bodies that were represented include: Afghanistan (Afghanistan Independent Human Rights Commission), Bangladesh (Bureau of Manpower, Employment, and Training, Prothom Alo, Warbe Development Foundation, NHRC, Refugee and Migratory Movements Research Unit), India (Center for Indian Migrants Studies, NHRC), Jordan (Tamkeen for Legal Aid and Human Rights, NHRC), Kuwait (Kuwait Trade Union Federation), Lebanon (Caritas Lebanon Migration Center, Insan Association, KAFA Enough Violence), Nepal [NHRC,

Pakistan, the Philippines, Qatar, Sri Lanka, Thailand, and the United Arab Emirates (UAE) were then invited to ask questions to the panelists.



Diplomacy Training Program in Doha Qatar in 2012 was the first of its kind in the GCC.

The Philippine Embassy organized an informal dialogue between origin country missions, CSOs, NHRIs, media, and government representatives shortly after the DTP in October 2012. In attendance were nine government representatives, civil society, media, and NHRI representatives from Bangladesh, India, Nepal and the Philippines<sup>12</sup>. Mission representatives included the Bangladeshi First Secretary and Labour Attaché, the Indian First Secretary, the Indonesian Third Secretary and Labor Attaché, the Nepali Minister Counselor, and the Philippines' Ambassador, Third Secretary, and Labor Attaché.



A roundtable discussion at the Missions program in Amman, Jordan in October 2012.

The sessions resulted in a comprehensive list of initiatives that reflect the collaborative efforts of the missions, NGOs, trade unions, media, and government officials who took part in the discussions. Each initiative is designed to promote the rights of migrant workers.

It was also in 2012 when a more visible program with the Missions were organized in West Asia. In October 2012, MFA in collaboration with ILO Jordan

conducted a capacity building program with the Missions as main participants, to raise common understanding of the issues and concerns of migrant workers in Jordan. The program participants included

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Pravasi Nepali Coordination Committee (PNCC)], Oman (Times of Oman, NHRC), Pakistan (Pakistan Rural Workers Social Welfare Organization), Philippines [Kaagapay OFW Resource and Service Center, Center for Migrant Advocacy (CMA)], Qatar (NHRC), Sri Lanka (American Center for International Labor, NHRC), Thailand (NHRC), and the United Arab Emirates (Ministry of Labor) .

<sup>12</sup> Organizations represented include the Bureau of Manpower, Employment, and Training, Prothom Alo, and the NHRC from Bangladesh, the Center for Indian Migrants Studies and Times of Oman from India, PNCC from Nepal, Kaagapay and CMA from the Philippines, and MFA.

representatives of foreign missions, consulates and government agencies, national human rights institutions, trade unions, legal support institutions, civil society and recruitment agencies in Jordan. The program enabled MFA to establish a working relationship with missions from Bangladesh, Indonesia, the Philippines and Sri Lanka.

Meanwhile, the civil society initiatives in the migration corridor of India and Oman were more enhanced in 2011 and pressed on to 2012 with the aforementioned paralegal training and in September 2012, an access to health workshop was held in Muscat. The workshop brought together medical practitioners, health insurance providers, officials from the Indian Embassy, lawyers and social workers in Oman as well as migrants rights advocates and trade unions from countries of origin who are working with migrants in destination country. The program came up with recommendations to progress on the right to health agenda for migrant workers in Oman, which can be applicable to the rest of the Gulf region.



Paralegal training in Muscat, Oman in February 2012.

Closely linking migrants rights networks and contributing to the empowerment of social movements are one of the key strengths of MFA. In 2011, the International Committee of the World Social Forum on Migrations approved the hosting of the 5<sup>th</sup> WSFM in Metro Manila, Philippines in November 2012, with MFA as the technical secretariat. MFA was involved in the international mobilization, local organizing, resource mobilization and overall program of the WSFM throughout 2011 and 2012. The WSFM aimed to provide space for democratic debates, reflection, sharing of ideas, networking, enhancing solidarity and consensus building on migration and mobility related issues. Around 80 MFA members and partners participated in the WSFM, with members of the West Asia Task Force and the LBB network acting as resource speakers in several workshops and side events.<sup>13</sup>

MFA bridged its capacity building work with the LBB network and with the Missions in 2012 and extended it to 2013. The success of the series of Missions dialogues inspired the need for continued engagement with sending country representatives in West Asia. Two countries were identified for more keen dialogues: Qatar and the United Arab Emirates.

Qatar was prioritized due to MFA's formal partnership with the National Human Rights Committee (NHRC) of Qatar. In 2012 MFA signed an MOU with the NHRC to advance migrant workers' rights through capacity building and awareness raising. The MOU enabled MFA to implement the training on the human rights of migrant workers together with the Diplomacy Training Program in 2012 and again in 2013. The human rights trainings also opened avenues for MFA to connect with local and migrants' organizations in Qatar as well as with the Missions.

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<sup>13</sup> MFA members and partners included the Caritas Lebanon, Insan Migrants Center (Lebanon), Bahrain Human Rights Foundation, Indian Social Club of Oman, Representative from the Times of Oman, T' Amneh Law Firm (Jordan) and faith-based groups from the UAE.



الحويل: نجاح كبير لبرنامج الدوحة التدريبي

## دول الخليج تطور تشريعات حقوق المهاجرين



« الدوحة - قنا »

اختتمت بالدوحة فعاليات البرنامج التدريبي حول حقوق الإنسان وحقوق العمال المهاجرين وحمايتهم في دول الخليج، الذي نظّمته اللجنة الوطنية لحقوق الإنسان بالتعاون مع برنامج التدريب الدبلوماسي، ومنتدى المهاجرين في آسيا، ومنتدى آسيا، ومنتدى الآسيا باسفيك للمؤسسات الوطنية لحقوق الإنسان.

وأكد السيد جابر الحويل مدير إدارة الشؤون القانونية باللجنة الوطنية لحقوق الإنسان «لقد كان الاحتفاء كان نجاحاً واتسم

Second Diplomacy Training Program in Qatar, November 2013.

When the human rights training was organized again in Qatar with the DTP and NHRC in November 2013, MFA took the opportunity to conduct another dialogue with the missions in the country to reexamine issues and recommendations from the 2012 missions visit and provide updates on the status of migrant workers in Qatar. MFA utilized the assistance of the Philippine Mission and requested that they organize the informal dialogue on 15 November 2013. Diplomatic and consular officials from Bangladesh, India, Nepal, Indonesia, Philippines, and Egypt were present for the dialogue together with selected civil society participants from the DTP.

The training was unique in the way that the invited representatives had the chance to revisit their original objectives set out in 2012. Notably, the first secretary of the Indian mission, and the third secretary to the Indonesian Mission attended the 2012 and 2013 dialogues. The challenges to migrant workers discussed in 2012 were reaffirmed as continued barriers to human rights for migrant workers in Qatar. Also cited was the lack of shelters available for migrant workers seeking to escape abusive employers.

The UAE was identified as another priority country for Missions engagement due to MFA's working relationship with the Ministry of Labour, migrant communities and faith based organizations in the country. In 2012, MFA was able to facilitate the participation of civil society and representative from the Ministry of Labour in the UAE in a number of MFA programs. MFA has also done continuous follow-up with migrant support groups in the country by facilitating their participation in MFA regional activities in West Asia as well as facilitating their online contribution to MFA position papers.

While recognizing that receiving governments have chief responsibility in ensuring the rights of migrant workers whilst in destination, governments from countries of origin have an equal responsibility in providing assistance to their nationals under the mandates of their missions.



The missions program in the UAE was held in conjunction with the Dialogue with Stakeholders, a program of MFA on India and Oman. This was held in December 2013 in Dubai, UAE

The missions program in Qatar and the UAE recap the informal dialogue process, as a movement-building space and way forward in advancing the rights of migrant workers.

The missions' dialogue in the UAE was held in December 2013 in conjunction with MFA's program in India and Oman. The dialogue cited the recruitment industry as a major concern for migrant workers migrating from countries of origin such as India to the Gulf. The exploitative practices of unscrupulous agencies in both India and the UAE can lead migrant workers in debt bondage which can in turn lead to instances of forced labor in the UAE.

On January and April 2014 in the UAE, the MFA regional coordinator together with a small team of MFA members met with LBB members based in the UAE and officials from India, Philippines and Thailand Missions (January 2014) and from Bangladesh, India and Nepali Missions (April 2014). The Philippine Mission based in Abu Dhabi coordinated the small dialogues in January 2014. These dialogues were done individually, rather than in a group setting. Given the political situation in the GCC, the diplomatic and consular officials felt that a group, or panel, meeting may bring unwanted attention to their work in relation to migrant worker rights. The April 2014 dialogues followed up on the January discussions.

The engagements of LBB members were not only aligned with MFA's subregional and regional advocacy initiatives, but also were connected to the wider efforts of the migrants rights network on international governance of migration and development.

One of these wider efforts is the UN High-Level Dialogue on Migration and Development.<sup>14</sup> The ["Civil Society Proposal for a Negotiated Outcome in the Form of a 5-Year Action Plan Emerging from the 2013 UN High Level Dialogue on Migration & Development" \(7 point, 5 year civil society action agenda\)](#) was developed in 2012 and endorsed by over a hundred organizations in preparation for civil society engagement with the UNHLD. The Global Coalition on Migration (GCM), in which MFA is instrumental and an active member, spearheaded the development of the 7 point, 5 year civil society action agenda. It has recently evolved in to an "8 point, five year civil society action agenda. Civil society's 8 points offer concrete policy recommendations that can be worked on collaboratively with governments in five years to address the complexity of migration related issues

<sup>14</sup> Refer to annex for MFA's engagements with regional consultative processes and multilateral spaces.

The 8 point, 5 year civil society action agenda was submitted to the UN Secretariat, the members of the UN General Assembly's Second Committee, other New York-based UN missions, the Population Dynamics and Post 2015 Agenda consultation in Geneva, regional consultations of the UN and ultimately tabled at the 2013 UNHLD on 3-4 October 2013. This document was the main reference of civil society for all its engagements with States concerning migrant-centered and rights-based approaches to migration and development.



Civil society and trade union participants gather for a group photo at the Asia-Pacific Regional Civil Society Consultation on the 2nd UNHLD, 27-28 May 2013. MFA and BWI organized the first regional consultation in Asia.

MFA together with its network partners organized two regional civil society consultations in preparation for the second UNHLD. MFA and Building and Wood Workers International hosted the Asia-Pacific Regional Consultation on 27-28 May 2013 in Bangkok, Thailand. The consultation brought together 60 trade unionists, civil society organizations, and independent activists representing 43 organizations and 17 countries in the Asia Pacific region. The two day sessions were structured as writeshops, whereby participants revisited and reworked past policy recommendations related to each of the 7 points of the 5-year civil society agenda. A version of the final outcome document was presented by six of the consultation's participants at the UNESCAP-led Asia-Pacific Regional Preparatory Meeting for the General Assembly High-level Dialogue on International Migration and Development 2013.

On 2-3 July 2013, MFA, the ILO and Daem Observatory for Consultation & Training organized, facilitated and gathered together forty-three representatives of civil society, trade unions, and academia particularly from the West Asia region. The aim of the gathering was for civil society active on migrants' rights and migrant protection in the region to provide inputs into the seven-point, five-year civil society action agenda.



A breakout session at the West Asia CSO consultation

The combined outcome document from the Asia Pacific and West Asia Regional Civil Society Consultations was the chief advocacy document used by the MFA network in its dialogues with representatives of UN Member States and embassies that attended the UNHLD in New York in October. Read the outcome document in full [here](#).





MFA delegation in New York making final preparations for the week of engagements at the UNHLD and PGA, 30 September -4 October 2013

At the UN High Level Dialogue on Migration and Development in October 2013 in New York, civil society representatives from West Asia joined the 30- member delegation of MFA to dialogue with governments and relevant stakeholders. Prior to the official UN process, MFA members and partners converged for a two-day internal workshop to exchange information and update one another on their respective organization's initiatives for migrant workers' rights. The MFA network also used the space of the two day workshop to make final preparations and strategize for the week's engagements at the UN and related side events.

The united voices of migrant workers and migrant workers rights advocates, not just from Asia but from around the world were raised at the plenary session of the UNHLD on 3<sup>rd</sup> October, and the four roundtables where civil society and unions took part as panellists and presenters during the open interventions.

The two new policy briefs of MFA at that time were disseminated to States represented at the UNHLD. The policy briefs gathered the collective thinking of the network on the issues of right to health and social protection. These two issues came up time and again in the discussions with the Missions, and the access to health consultation held in Oman:

[Right to health of low-skilled migrant workers](#)

[Social protection for low-skilled migrant workers and their families](#)

In its 7<sup>th</sup> year on May 2014, the Global Forum on Migration and Development (GFMD), chaired by the government of Sweden and hosted in Stockholm, gathered 900 delegates around the world to continue the deliberation on migration and development. An inter-governmental process outside the UN system, The GFMD this year led discussions on *"unlocking the potential of migration through inclusive development."*



MFA network members and partners took advantage of the spaces at the GFMD to move forward the outcomes of the UNHLD, particularly the [8-point, 5 year civil society action agenda](#).

A big delegation of MFA including members and partners from West Asia contributed to several discussions convened at the Civil Society Days of the GFMD. The regional coordinator of the MFA network not only represented the migrants' rights movement in Asia, but also the global civil society movement, during the 12 May 2014 opening / morning plenary of the Civil Society Days, "[Civil society's 5-year](#)



Morning plenary of the GFMD Civil Society Days, William Gois providing insights on the Civil Society Action Agenda, May 2014

[8 point Action Agenda for collaboration and change and the HLD Declaration - where are we now?"](#) (1 hour, 5 minutes in to the video, 1:05)

The regional coordinator also chaired a thematic discussion on recruitment. The report is available here:

<http://gfmddcivilsociety.org/wp-content/uploads/2014/06/1.B-recruitment.docx>

The Chairs of the Civil Society Days consolidated all of the results of the two-day program in a report,

<http://gfmddcivilsociety.org/wp-content/uploads/2014/05/GFMD-CSD-Chairs-report-2014.pdf> , where it highlighted four key issues that “define the realities faced by migrants throughout the world and where changes are needed in policies and practices.”

- Migrants in distress
- Labor
- Children in the context of migration
- Post-2015 agenda

Civil society was also engaged in the deliberations on the post-2015 development agenda. The target date to achieve the Millennium Development Goals is fast approaching in 2015. The UN system, governments, and relevant stakeholders began debates as early as 2010 on the contents and form of the post -2015 agenda.

Civil society advocates for the *“integration of migration into the post-2015 development agenda to address not only the contributions that migrants make to development in countries of origin and destination, but also the possibilities for better policy planning and coherence that can make migration more genuinely a choice and not a necessity, and greater gain than drain. This development agenda would work to affirm both the right to migrate and the right to remain at home with decent work and human security. As such, it links migration to United Nations*

*development concerns regarding poverty, health, gender equality, financing for development and sustainable development, and to future development goals.”<sup>15</sup>*

The “Civil Society Stockholm Agenda” is a document resulting from several civil society processes on Post-2015, including deliberations from the 8<sup>th</sup> Peoples Global Action on Migration, Development and Human Rights (PGA)<sup>16</sup> and the 7<sup>th</sup> GFMD. The document puts forward migrant-specific goals and targets for the “new” Sustainable Development Goals (SDGs) post 2015.

<http://gfmdcivilsociety.org/wp-content/uploads/2014/06/Civil-Society-Migration-Stockholm-Agenda-June-2014.pdf>

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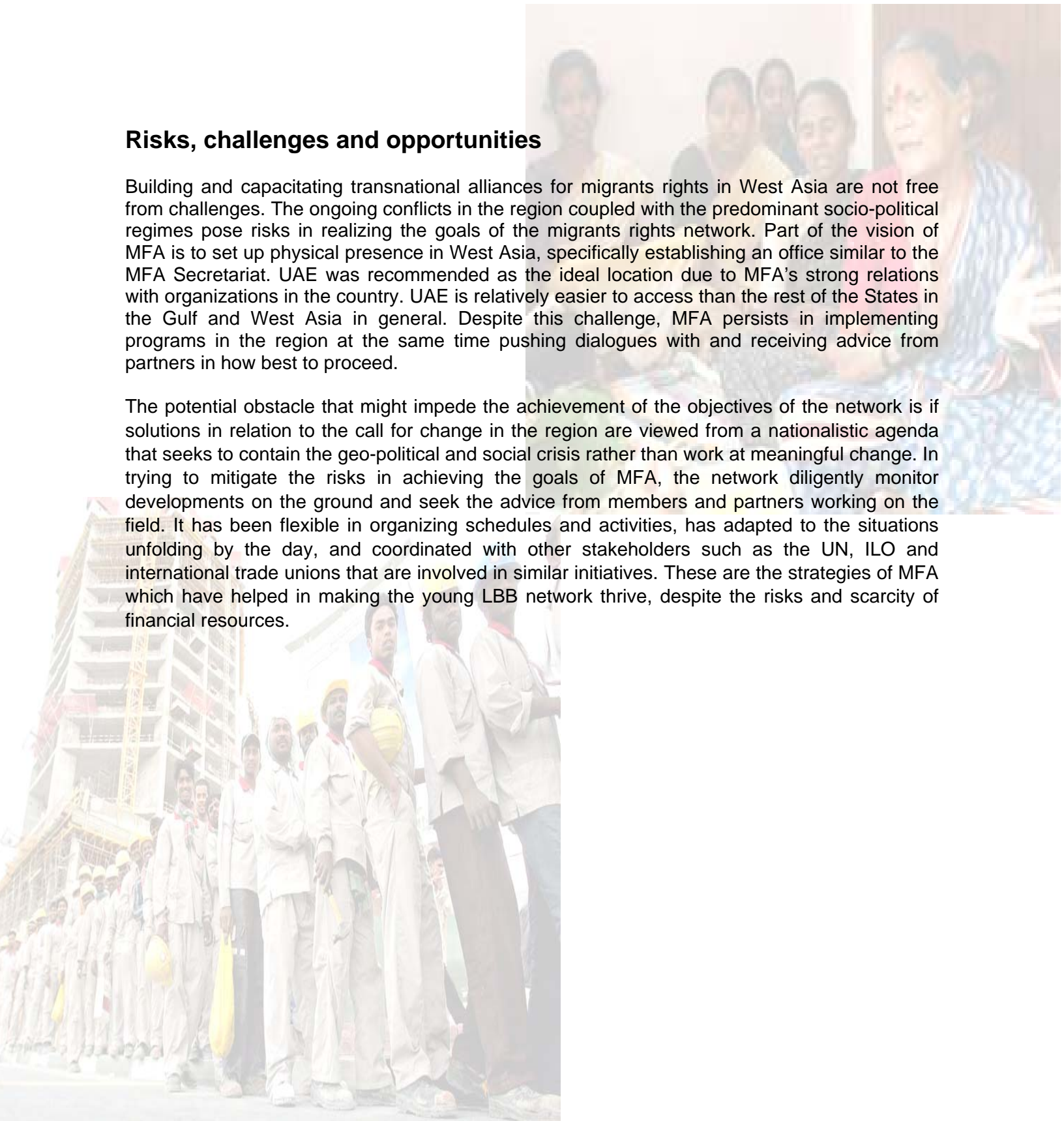
<sup>15</sup> Point 1 on the 8-point 5 year civil society action agenda, <http://gfmdcivilsociety.org/wp-content/uploads/2014/01/The-5-year-Action-Plan-EN.pdf>

<sup>16</sup> The Peoples’ Global Action on Migration, Development and Human Rights (PGA) is an independent civil society event parallel to the states-led GFMD process. In collaboration with the GFMD's Civil Society Days (CSD), the PGA brings together migrant associations, migrant rights organizations, trade unions, faith groups, academia and others from around the world to share information, dialogue, strengthen analyses and develop joint positions on current and emerging issues related to migration. The PGA provides the essential space to enable civil society to critically engage the governments' GFMD process and to challenge states to undertake migration and development policy-making from a human rights framework, as well as hold governments accountable to their international human rights and development commitments. The PGA also paves the way for capacity building and the development of movements and networks. MFA as a member of Migrants Rights International actively facilitates the PGA since its beginning in 2006.

## Risks, challenges and opportunities

Building and capacitating transnational alliances for migrants rights in West Asia are not free from challenges. The ongoing conflicts in the region coupled with the predominant socio-political regimes pose risks in realizing the goals of the migrants rights network. Part of the vision of MFA is to set up physical presence in West Asia, specifically establishing an office similar to the MFA Secretariat. UAE was recommended as the ideal location due to MFA's strong relations with organizations in the country. UAE is relatively easier to access than the rest of the States in the Gulf and West Asia in general. Despite this challenge, MFA persists in implementing programs in the region at the same time pushing dialogues with and receiving advice from partners in how best to proceed.

The potential obstacle that might impede the achievement of the objectives of the network is if solutions in relation to the call for change in the region are viewed from a nationalistic agenda that seeks to contain the geo-political and social crisis rather than work at meaningful change. In trying to mitigate the risks in achieving the goals of MFA, the network diligently monitor developments on the ground and seek the advice from members and partners working on the field. It has been flexible in organizing schedules and activities, has adapted to the situations unfolding by the day, and coordinated with other stakeholders such as the UN, ILO and international trade unions that are involved in similar initiatives. These are the strategies of MFA which have helped in making the young LBB network thrive, despite the risks and scarcity of financial resources.



## Second convening of the Lawyers Beyond Borders in 2014

2014 witnessed the regrouping of the LBB network, after two years of strengthening capacities of the members to more effectively engage with the larger migrants rights movement in Asia.

At the beginning of the first semester of 2014, a project coordinator joined the MFA Regional Secretariat to specifically facilitate the work of the Lawyers Beyond Borders network. Atty. Henry Rojas who is the legal counsel of Center for Migrant Advocacy in the Philippines assumed the responsibility.

Since the joining of the project coordinator, MFA has encouraged the LBB membership to revitalize its collaboration and networking. The yahoo groups listserv was revived as a busy hub of exchange of information and updates on members' respective activities related to case management, litigation and developments in their regions. By the end of 2014, there were 16 new members of the listserv bringing the total listserv membership to 71. They are human rights lawyers, case workers, and staff of civil society organizations primarily looking at and assisting in the grievance redressal of migrant workers' rights violations. They are old members from the first convening of LBB and new additions from the renewed calls of MFA for network participation. MFA partners who are lawyers from Malaysia and the Maldives became official members of the LBB.

While preparing for the second convening of the LBB network, MFA carried on with increasing its field presence in West Asia through visits and advocacy and capacity building programs. Such activities were held in Lebanon, the UAE, Kuwait and Jordan.

Through the MFA regional coordinator and partners in the UAE, strategies were strengthened to continue the protection and promotion of the rights of migrant workers and members of their families in the country and nearby States. MFA members with the facilitation of the Secretariat organized dialogues with embassies and consulates, and meetings with migrants' rights support groups and private agencies in Dubai and Abu Dhabi. This program

falls in line with MFA's ongoing engagement with Missions and support groups in destination countries, where it aims to further strengthen mutual support for and coordination with the missions, civil society, national human rights institutions and international organizations in the countries of origin and destination.



Some of the participants taking a break for a photo at the Regional Workshop on Ethical Business and Recruitment Practices in Labour Migration, Dubai, UAE, May 2014

The sustained visits in the UAE paved way to a highly relevant program for lawyers and legal aid providers. In May 2014 in Dubai, MFA held a lawyers' caucus as a major part of the



Regional Workshop on Ethical Business and Recruitment Practices in Labour Migration in the Middle-East, North Africa and Asia. This was a training program for practitioners held in partnership with the Middle East Centre for Training and Development and the Diplomacy Training Program (DTP).

Thirty-two participants from 13 countries<sup>17</sup>, including 2 lawyers from India, 1 lawyer from the Philippines and 7 lawyers from West Asia together with social workers, members of civil society, national human rights institutions and private agencies, deliberated for four days on highly significant topics:

- The right to access remedy – for migrant workers
- Accountability and Access to Remedy – What remedy and redress mechanisms exist – and can be accessed by migrant workers; What access to remedy is offered by OECD Guidelines – Industry Standards and Codes of Conduct and ILO Conventions, NHRIs, Courts
- The UN Guiding Principles on Business and Human Rights and beyond
- The state and private sector – the Dhaka Principles, OECD Guidelines, Codes of Conduct, Litigation
- The State Duty to Protect Human Rights and the Right to Remedy
- Human Rights, Migrant Workers and Recruitment Agencies - Identifying the Gaps Between (Guiding) Principles and Practice
- Key Challenges in monitoring and regulating recruitment in the private sector – Can the GPs/DPs/OECD Guidelines/Codes Help
- The Corporate Responsibility to Respect – Key Challenges for the Recruitment Industry and Employers in Countries of Origin and Destination. Can the (Guiding/Dhaka) Principles Help
- Engaging With Business on the Rights of Migrants – The Why and How – Practical Session with Advocates

The training program equipped the practitioners with approaches to further understanding ethical business and recruitment practices, related frameworks and how they affect the rights of migrant workers and members of their families. Through role-playing and breakout sessions, the lawyers and representatives of migrant rights organizations were able to do run-throughs of probable responses to rights violation cases. Strengthening collaboration with the lawyers and paralegal workers can help migrant workers, members of their families and migrants rights advocates to fully comprehend the legal systems and empower them to navigate and access redress mechanisms.

In November 2014 in Dubai, MFA together with the Diplomacy Training Program and the Dubai-based Middle East Centre for Training and Development organized, hosted and gathered twenty-two participants, majority of whom were DTP partners and trainers, representing civil society, grassroots groups, trade unions, the ILO and OHCHR, for the “Lessons Learned and Strategy Development Workshop.” Several of the civil society participants are members of the MFA network from all over Asia, who are also active in the advocacy initiatives in West Asia, including LBB.

The workshop allowed for reflection to advance the cause of migrant workers’ rights through the capacity building of advocates in the Middle East and Asia. There was a valuable discussion on

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<sup>17</sup> GCC countries were represented – Kuwait, Oman, Qatar, and the UAE and Mashreq – Jordan and Lebanon.

the value to migrant workers of international human rights standards and human rights mechanisms and the ways that these have been used to promote and protect their rights.

Priorities identified in these discussions included:

- The need and opportunities to build greater collaboration between trade unions and NGOs/CSOs
- The need for more strategic and systematic engagement by advocates with the UN human rights system
- The need to train media professionals and to train civil society to engage effectively with the media as part of their advocacy strategies
- The need to focus on the roles and responsibilities of the private sector and to influence its impacts, including support for models of ethical recruitment consistent with human rights
- The need for case studies to be developed – to educate and to inspire



Emerging spontaneously from the discussions was an agreement that the 25<sup>th</sup> anniversary of the Convention on the Rights of Migrant Workers provided a valuable opportunity for promoting awareness of the rights of migrant workers in 2015. This discussion resulted in the emergence of *Step It Up: Dignity, Rights, Development*, a the global campaign launched by the Migrant Forum in Asia network and affiliated civil society organizations, trade unions, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, and the International Labour Organization, which highlights the significance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

(CMW / UN Migrant Workers Convention). 18 December 2015 marks the 25th anniversary of the adoption of the Convention that specifically guarantees the rights of all migrant workers and members of their families. The Step It Up campaign encourages all stakeholders – States parties, trade unions, employers' organizations, civil society organizations, migrant workers and members of their families to take part in this year long global initiative, beginning on 18 December 2014 to 18 December 2015. Activities relating to the promotion of the human rights of migrant workers and members of their families as well as engagements with States to ratify the CMW finds space in the online platform of the campaign: [www.cmw25.org](http://www.cmw25.org) . The Step It Up campaign was officially launched on the eve International Migrants Day on 18 December 2014.

Exploratory visits lend support in the strengthening of network coordination in the UAE and in West Asia in general, at the same time assist in the preparation for engagement of civil society and unions with regional consultative processes (RCP) in the region. This has been exemplified in the third Abu Dhabi Dialogue, which took place on 26-27 November 2014, in Kuwait City, under the chairmanship of Kuwait. As part of on-going initiatives related to this process, MFA



Open Working Group on Recruitment Reform meeting, Amman, Jordan, December 2014

was part of the core steering group who worked in setting up a dialogue with stakeholders attending this specific RCP in 2014. Human Rights Watch, International Trade Union Confederation (ITUC), Amnesty International, and the International Domestic Workers Network (IDWN) were part of the core group. One of the outcomes of this effort was a roundtable, “Rights of Domestic Workers in the Gulf States” on 23 November 2014 in Othman Abdul Malik Theatre of the Kuwait University Law School. An overwhelming number of 200 participants joined in which included students, academics, television and print journalists, human rights activists and staff from the Ministry of Awqaf and Islamic Affairs. The roundtable invited insightful conversations, questions and answers about the GCC domestic work contract and lack of labor law protection, country specific situations in relation to the bigger structural issues like the kafala system and exit visas that affect both construction and domestic workers,

On the eve of the roundtable, the organizers of the roundtable released a [statement](#) calling on the Gulf and Asian countries to improve labor law protection, reform abusive immigration policies, and increase dialogue with trade unions and nongovernmental groups. MFA Regional Coordinator William Gois was quoted in the statement, *“The meetings over the next few days provide a key opportunity to promote regional minimum standards that would avoid a counterproductive race to the bottom in labor conditions...the governments should develop a concrete action plan, in consultation with migrant workers themselves and the organizations that represent them, with benchmarks to monitor its progress.”*

Finally, the Capacity Building Program on Human Rights Advocacy and Migrant Workers in the Middle East was held in Kuwait on 26-30 November 2014. Organized by the Diplomacy Training Program (DTP) and Migrant Forum Asia (MFA), and hosted by the Kuwait Society for Human Rights (KSHR), the program focused on assisting individuals and organizations committed to promoting and protecting the rights of migrant workers in the States of the Gulf Cooperation Council (GCC), Middle East and North Africa. It sought to build the knowledge, skills and networks of these individuals and organizations

Connected to the work of the LBB network is the Recruitment Reform campaign launched by MFA in mid-2014. Recruitment Reform is an initiative of the civil society Open Working Group

on Labour Migration and Recruitment. With members from civil society organizations across the world, the Open Working Group is committed to knowledge sharing and collective advocacy to reform migrant labor recruitment practices globally. Building upon years of civil society advocacy on labor migration, human rights, and recruitment reform, the Open Working Group was initiated in May 2014 by MFA and the Global Coalition on Migration (GCM) together with other civil society organizations. The Working Group is coordinated by MFA and forms part of the Migration and Development Civil Society Network (MADE). The Open Working Group currently runs an online platform ([www.recruitmentreform.org](http://www.recruitmentreform.org)) to aggregate current news, research, campaigns, and policy initiatives on international labor migration and recruitment.

Members of the LBB network contributed to the policy advocacy initiatives of Recruitment Reform, particularly in the [Civil Society Contributions to the Special Rapporteur's Report to the UN Human Rights Council on Migrant Labour Recruitment](#) and the [online forums on recruitment fees](#). Inputs gathered from the online forums form part of policy briefs being developed by MFA.

In December 2014, MFA, in partnership with Tamkeen Fields for Aid, the Global Coalition on Migration (GCM), and the Migration & Development Civil Society Network (MADE) convened the first international meeting of the Open Working Group on Labour Migration & Recruitment in Amman, Jordan. The conference brought together 40 participants from across Asia, Europe, and North America to define a common program of action and to develop the campaign for Recruitment Reform.

Throughout the two-day conference, a number of key themes were explored, including the International Labour Organization's Fair Recruitment initiative, ethical recruitment initiatives headed up by private recruitment agencies, and the merits and drawbacks of bilateral agreements and memoranda of understanding in regulating migrant labor recruitment regimes. Substantive discussions took place on potential campaigns, including zero tolerance for recruitment fees and engaging the private sector on ethical recruitment standards, and on the need to enhance knowledge within the working group on the various recruitment regimes in place internationally. The conference resulted in the formulation of a common action plan, setting out our next steps for action as a working group.

The planned visits in Lebanon in the first half of 2014 met with challenges because of the ongoing conflicts in the neighboring countries. Although visits were difficult to organize, MFA was able to meet and strategize with the partners through the DTP in Dubai, UAE (May 2014), at the Peoples Global Action on Migration, Development and Human Rights (PGA) / GFMD Civil Society Days in Stockholm, Sweden on May 2014, and during the Human Rights Council sessions in Geneva, Switzerland in June 2014. Partners from Lebanon were part of the MFA delegation in these regional and international capacity building and advocacy spaces.

Finally in September 2014, MFA and local organizing partner, Caritas Lebanon Migrants Center, in partnership with OSF, hosted the second Lawyers Beyond Borders convening in Beirut, Lebanon. This conference gathered together 21 lawyers from the Middle East, the Gulf region, South Asia, and Southeast Asia who specialize in cases involving migrant workers.<sup>18</sup>

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<sup>18</sup> See annex for the full report.





The three-day conference provided a platform for important discussions on the legal state of affairs and the situation of migrant workers across the countries of origin and destination represented. Conversations on the prospects for the use of such legal tools as constitutional challenges and Public Interest Litigation challenged conference participants to consider new ways of ensuring access to justice for migrant workers and to consider how important legal changes might occur outside of the slow process of policy change.

As a network, MFA decided at its initiation that it would not view migrants as a separate sector to be dealt with in isolation. Migrants are like all other people looking for work and should be treated as such. This understanding gave rise to MFA's multi-sectoral approach of engaging any groups involved in people's struggles. However, MFA is increasingly faced with the framing of the migrant as the "other"—even in the work of people's struggles—who should be afforded a separate set of rights or seen in a different way under the law. This othering sets migrants apart, making it easier to forget that they have communities, families, and lives, and that they are not "illegal" people or "illegal" migrants, but people who fall within the legal system and who should have access to rights.

Ensuring that migrants have equal access to justice is increasingly becoming an uphill battle. The aim of the Lawyers Beyond Borders meeting in Beirut was to see how we can actualize this understanding through casework, collaboration, and strategy, and to draw a clear path forward for the network, which is still in its infancy. It was decided to hold the meeting in Beirut, because the secretariat felt it was important to engage in these conversations in a host country. At the time of the meeting, the security situation in Lebanon was uncertain, which is an ongoing struggle for migrant workers and those who support them and advocate on their behalf.

The last day of the conference focused on developing a two year program of action for the Lawyers Beyond Borders network. The program of action included the formation of a lawyers'

network on migration with office bearers in each country (LBB chapters). In the Philippines, this action was initiated through the establishment of the Lawyers Beyond Borders – Philippines. “LBB-Philippines” is envisioned to be a national network of Filipino lawyers who provide pro bono legal assistance to Filipino migrant workers and members of their families. The launch of the national network happened on 15 November 2014, which was well attended by 27 participants, 16 of which are lawyers from major regions of the country. The administrative process to formally establish the network was organized in December 2014, and it is expected that the planned activities of the lawyers’ group will be in full swing in 2015.

Bangladesh, India and Nepal signified interest in creating national chapters. Such promising chapters will be followed up on with the LBB Network members in 2015.

The preparations leading up to the regional conference also produced resource materials that are relevant in continuing the collaboration of law practitioners to protect the rights of migrant workers and members of their families:

[Policy briefs on the role of missions and shelters](#)

The Lawyers Beyond Borders [website](#) is updated with important legal documents and reports shared by the listserv members.

## Lawyers Beyond Borders: Present / Future

For 2015 and into the foreseeable future, the LBB network aims to uphold its vision it has perceived in 2011, and carries it forward through concrete objectives. The following objectives and activities are part of the responses identified by the network in addressing the needs of migrant workers in West Asia and other migration corridors in the region.

- Strengthen and expand the lawyers beyond borders network through national chapters and engagement with national bar councils
- Increase access to justice by providing support to migrants and families through legal assistance and network case referral
- Continue communication and research activities of the LBB network in line with promoting cross learning and discussions of strategies to overcome legal challenges in both countries of origin and destination

### *Strengthen and expand the lawyers beyond borders network through national chapters and engagement with national bar councils*

The LBB network, working with MFA as its Secretariat will consolidate and continue to strengthen the network. This will be done through inviting new lawyers to be part of the network and encouraging members to establish national chapters.

The national chapters of LBB will bring together lawyers who are willing to provide assistance to migrant workers and members of their families. The national chapter will develop a mechanism for the referral of cases among LBB members. The referral system will include legal and psycho social interventions in cooperation with civil society partners. Based on the discussions in the 2014 Beirut conference of the LBB network, these countries can be venues for the national chapters: Philippines; Nepal; Jordan; Sri Lanka; India -State level; Lebanon; and Malaysia

These countries consist of lawyers who are more active members in the network, and thus can potentially take forward the aims of the national chapters. During the conference, lawyers from these countries indicated their interest. The Philippine members of the LBB network have in fact recently established a national chapter, called Lawyers Beyond Borders – Philippines (LBB PH), which was launched on 15 November 2014. LBB Philippines are already implementing their national program of action for the LBB Philippines, one of which is a Compendium that will be a collection of laws passed by Philippine Congress and precedent-setting cases decided by the Supreme Court on migrant workers' issues for the period 1995-2015. This LBB PH project is in partnership with MFA, Center for Migrant Advocacy, Inc., Kanlungan Centre Foundation, Inc. and the Developmental Legal Advocacy Clinic of the College of Law, De La Salle University.

The first output of the compendium will consist of laws and cases for the period 2006-2015 and will be published and launched on or before 05 July 2015 – the 20th year anniversary of the ratification by the Philippine Senate the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The same process will be repeated for the second output, covering the period 1995-2005. A consolidated output will be published and launched on or before 18 December 2015.

In line with strengthening the network, the LBB will also engage bar council to encourage bar councils to provide assistance to migrant workers and members of their families. The LBB will look into developing MOUs with Bar councils in countries of destination and LBB chapters in countries of origin. Among the possible areas of cooperation that is currently being explored is an MOU between the LBB Philippine chapter and the Malaysian Bar council. The proposed MOU will aim to formalize the referral of cases of Filipino migrant workers in Malaysia.

The LBB network will continue to facilitate field visits among members in countries of destination and origin. The field visits will be encouraged among members who are working on specific cases. Possible field visits will also be organized among national chapters and bar councils to develop cooperation in line with case referral and providing assistance to migrant workers and members of their families. As discussed above, the LBB network aims establish a working relationship with bar councils in to facilitate referral of cases of migrant workers.

*Increase access to justice by providing support to migrants and families through legal assistance and network case referral*

Documentation of cases is critical to the work of the LBB network and analysis of such documentation can assist in targeting particular rights issues and influencing implementation of rights based policies. The LBB members will carry on with their work on case referrals and documentation of cases. Case referrals will be strictly confidential and with the consent of migrant workers. The standards to be use in handling cases should be in accordance with the organizational principle of the network. Rights-based approach and developmental legal advocacy will form part of the case management process. The case referral system will include the following:

- Case profile of the migrant worker which will include basic information about her case
- A standard intake form /sheet should be provided which will enumerate the violations and possible legal actions to be made.
- Copies of pertinent documents that is necessary in handling the case which includes the following;
  - Copy of the contract
  - All documents relative to their migration like visa, plane ticket
  - An affidavit of the Migrant worker either prepare by the case handler or the migrants themselves.
- Any other interventions needed by the migrant worker in pursuing the case
- Steps taken or an update of what actions have been taken so far for the case
- Information on Government assistance both in the sending and destination countries if there are .
- The referral system must be anchored in international accepted standards like principle of confidentiality

Among the activities discussed in the 2<sup>nd</sup> LBB regional conference was Public Interest Litigation. The LBB network will explore the possibility of using Public Interest Litigation to bring awareness to cases of migrant workers. Among the proposals from the partners was to use public interest litigation to define the roles of missions / embassies in protecting the rights of migrant workers.



The LBB network will continue to use the existing LBB listserv (yahoogroups) to exchange information on existing cases, research and articles related to access to justice for migrant workers. Members of the network will be encouraged to share summaries of their cases through online discussions. Members who also write articles for publication concerning migrant workers can share their articles through the listserv.

The existing LBB website is regularly updated by the Secretariat with articles and activities related to the LBB program, as well as existing policies related to migrant workers in countries of origin and destination. The website also now features an online directory of lawyers who can provide pro-bono assistance for migrant workers and migrant families.

*Continue outreach to other constituencies and stakeholders (parliamentarians, grassroots communities, government ministries, etc.)*

The LBB program will continue on organizing the regional conference of the Lawyers Beyond Borders network. The regional conference will focus on affecting policy change through strategic litigation. It will also be the venue to share updates on the activities of the members of the network, progress of the national LBB chapters, engagement with Bar Councils and good practices on case referrals. The annual meeting will also review the progress of the work plan and 2014 program of action agreed upon at the second LBB Conference in Beirut, Lebanon.

The regional conference will be held back to back with the MFA annual Asian Inter-Parliamentary Caucus on Labour Migration. The Asian Inter-Parliamentary Caucus aims to promote the cause of migrant workers in respective national parliaments, collectively engage at the regional and international levels in the development of rights-based agreements and legislation. A one day dialogue among lawyers and parliamentarians will be organized to promote sharing of experiences and good practices.

The LBB program will also explore partnerships with government ministries / institutions in line with providing legal assistance for migrant workers. Government institutions will include missions and government agencies in countries of origin providing assistance to migrant workers in distress.

The 2014 program of action forged by the LBB network in Lebanon is the foundation of the activities of the members in the next two years. The 2011-2014 engagements of LBB members in MFA's overall rights advocacy strategies allowed them to become immersed in and get the full picture of the discourse on migration, development and human rights. This immersion has advanced their capacities to respond to not only just the resolution of cases of migrants rights violations at the individual level but also consciously approach and connect migrants' struggles to a much broader issue of social justice.

# Annex I: Multilateral Spaces for Engagement

## Regional Consultative Processes

### The Colombo Process:

The Colombo Process is an RCP for countries of origin, in which member states share experiences, discuss issues, and identify steps towards the protection of vulnerable migrants and provision of support services; optimizing benefits of organized labour migration; capacity building; data collection; and interstate cooperation. The first ministerial consultation took place in Colombo in 2003 and since then convened in Bali, Manila and Dhaka in 2004, 2005 and 2011 respectively.

### The Abu Dhabi Dialogue:

The Abu Dhabi Dialogue was one of the key outcomes of Colombo Process. Convened by the UAE, this RCP consists of the destination countries in the Gulf, Malaysia, Singapore, Thailand, and countries of origin in Asia. The first Abu Dhabi Dialogue happened in the capital of the UAE in 2008, in which particular focus was placed on promoting the welfare and well-being of workers, on the development of both origin and destination countries through labour mobility, and on fostering greater inter-governmental cooperation and collaboration. In 2012, the Member States met for the second ministerial consultation in Manila where a Framework for Regional Collaboration was adopted. Kuwait hosted the third convening of Member States on November 2014.

Regional consultative processes such as the Colombo Process and the Abu Dhabi Dialogue are exclusive to governments of origin and destination countries which tend to leave out the important voices of civil society, trade unions, academia and media in the deliberation of workers' rights. Migrant workers and members of their families are at the heart of migration policy discussions that is why civil society such as MFA and its trade union partners remain vigilant and committed to taking part in these spaces. One of the means to put a rights-based perspective on the agenda of RCPs is to actively engage and collaborate with stakeholders directly involved in such processes. MFA has engaged with the RCPs through parallel consultations as well as direct interventions at the official processes.<sup>19</sup>

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<sup>19</sup> MFA participated as panelist during the 1st Abu Dhabi Dialogue – on 23-24 January 2008 in the UAE capital of Abu Dhabi. MFA was among the few civil society representatives. In the last quarter of 2010, MFA met with the IOM office in Bangladesh and engaged in discussions on how to advance the direct participation of civil society organizations in the Colombo Process. On 18-19 January 2011, MFA participated in the Workshop on Recruitment of Workers for Overseas Employment, in Dubai organized by the Ministry of Labor. On 17-18 April 2011, a civil society consultation was organized by MFA and its members in Bangladesh on 17-18 April 2011, in Dhaka, Bangladesh, parallel to the Colombo Process. A press conference on 19 April was held together with Human Rights Watch. The MFA statement, [Asian Migrants Demand Rights, Dignity and Solidarity Statement for the 4th Colombo Process](#) and [Protecting Asian Migrants' Rights: Recommendations to Governments of the Colombo Process](#), a joint statement with Human Rights Watch and CARAM Asia, were released at the press conference. On 20-21 April 2011, MFA was invited in the plenary and roundtable talks of the 4th Colombo Process Ministerial Conference in Dhaka, Bangladesh, where MFA delivered its statement and recommendations for the Colombo Process governments. On 17-19 April 2012, MFA held the Civil Society Parallel Process on the 2nd Abu Dhabi Dialogue. A [press release](#) written in collaboration with Human Rights Watch was circulated prior to the opening of both the parallel process and the Abu Dhabi Dialogue (Annex 1). Abu Dhabi Dialogue organizers invited three delegates of MFA to be observers in the official process, but with no speaking roles. On 19 April, a ten-member delegation of MFA came to listen to the speech of the President of the Philippines. MFA delegates distributed the [Civil Society Conference Declaration to the 2<sup>nd</sup> Abu Dhabi Dialogue](#). On 7 May 2014, civil society representatives to the Senior Officials Meeting of the Colombo Process Countries released a [statement](#). On 23 November 2014,

## **Regional Groupings**

### Association of South East Asian Nations (ASEAN):

Formed in 1967, ASEAN is a geopolitical bloc comprised of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. During its 12th Summit in the Philippines in 2007, ASEAN members signed the Declaration on the Protection and Promotion of the Rights of Migrant Workers. This was affirmed in the 2009-2015 Roadmap for an ASEAN Community, and with the establishment of the ASEAN Committee on Migrant Workers (ACMW) to develop an instrument that will implement this commitment. ASEAN is organized and institutionalized in terms of developing regional policies, although its emphasis on non-interference and its sensitivity to openly discussing human rights and labour migration issues impede progress in translating the bloc's commitments into good practices. Nonetheless, ASEAN projects an example of inclusivity and consensus building with stakeholders such as civil society and trade unions. The ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant, once finalized and implemented, can address the challenges to the rights of a significant number of workers in the region.

MFA is an active member of the Task Force on ASEAN Migrant Workers (TFAMW), comprised of trade unions, human rights and migrant rights NGOs, and migrant worker associations. The Task Force aims to support the development of a rights-based framework for the protection and promotion of the rights of migrant workers, in line with ASEAN's Vientiane Action Plan. In the process of developing an ASEAN Framework for Migrant Workers - which focuses on implementing core labor rights, terms of employment, and specific rights related to migrant workers and their families, national and regional consultations among CSOs, trade unions, and migrant organizations have been organized by the TFAMW. The Task Force has now finalized the framework and is currently lobbying for the ASEAN Committee on migrant workers to adopt the framework. This committee is responsible for the implementation of the 2007 ASEAN Declaration for the Protection and Promotion of the Rights of Migrant Workers

### South Asian Association for Regional Cooperation (SAARC):

Established in 1985, SAARC is a geopolitical bloc comprised of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. SAARC has held 18 summits, where heads of state convene to deliberate on developments and critical matters for the region. Outcomes of these gatherings take the form of Summit Declarations, which provide directives and mandates for regional cooperation. The last summit was held in Kathmandu, Nepal in November 2014. Although the SAARC has moved its agenda on trade, investment, and securitization in the region, it is making slow progress in including migration and labour mobility issues as part of its agenda.

SAARC is one such significant inter-governmental process where civil society continues its involvement, in terms of advocating for a more transparent, people- and rights-oriented South Asia. While there are incremental reforms on labor migration policies and governance in each of the member States and regionally, violations against the labor and human rights of migrant

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Human Rights Watch released a press statement for the 3<sup>rd</sup> Abu Dhabi Dialogue held in Kuwait. MFA members signed on to the statement and MFA's regional coordinator was quoted in the press release.

workers from South Asia and within the region persist. A comprehensive policy framework with human rights at its core should be pursued to effectively address ongoing abuse. At the most recent SAARC Summit held in Kathmandu, Nepal in November 2014, the MFA network organized and successfully engaged with SAARC States. [Migration issues were finally included in the SAARC Declaration.](#)

## **UN High Level Dialogue on Migration and Development and the Global Forum on Migration and Development**

Led by then UN Secretary General Kofi Annan, the first UN High Level Dialogue on Migration and Development (UNHLD) aimed to discuss the multidimensional aspects of international migration and development and identify appropriate ways to maximize its development benefits and minimize its negative impacts. The UNHLD as well had strong focus on policy issues, including the challenge of achieving internationally agreed development goals, including the Millennium Development Goals (MDGs).

Among the recommendations of the UNHLD was the creation of the permanent forum on migration. The UN Secretary General Kofi Annan was a vigorous supporter of the HLD and believed that it should mark the beginning of inter-governmental discussions about migration and development. From the UN led process which was the HLD came the Global Forum on Migration and Development (GFMD). The GFMD is no longer a UN led process but a non-binding intergovernmental forum that looks at developing a practical agenda on maximizing the gains from migration and development. At the 2006 UNHLD, the Government of Belgium signified its intention to host the first GFMD in 2007. To date, there are seven GFMDs<sup>20</sup> held that were hosted by different country governments. In 2015, Turkey will host the 8<sup>th</sup> GFMD, while Bangladesh will chair the 9<sup>th</sup> GFMD.

The MFA network believes that better governance of migration can only be achieved if there is transparency in the process of in the development of policies and programs that impact the rights of migrants and members of their families. Thus part of the core work of MFA is the critical engagement of inter-governmental processes and bringing the voices of the affected communities at the forefront of the dialogue on migrants' rights. Inter-governmental processes such as the UNHLD and GFMD determine the global discourse on migration and future policies that will impact the lives of migrants and members of their families. The MFA network was present in the first UNHLD in 2006 and engaged Member States in critical dialogue on issues of migrants' rights. The MFA network also monitored and continues to monitor the discussions and deliberations at the GFMD.

The MFA network's engagement with the 2nd UNHLD started in 2012 when MFA collaborated with global CSOs in developing a proposal to Member States for a [5 year action agenda on key issues affecting migrant workers and members of their families.](#) The 5 year action agenda was endorsed by more than a hundred organizations and used as an advocacy tool by CSOs actively engaging the 2nd UNHLD. MFA in support of a unified global CSO strategy used the 5 year action agenda as basis for its dialogue with governments in preparation for the 2nd UNHLD and the 7<sup>th</sup> GFMD.

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<sup>20</sup> Philippines (2008); Greece (2009); Mexico (2010); Switzerland (2011); Mauritius (2012); Sweden (2014).



The People's Global Action on Migration, Development and Human Rights (PGA) is another example of the advocacy, capacity building and outside strategy of MFA. MFA, acting in its capacity as Migrants Rights International's (MRI) Asian member, has been instrumental in the planning and development of the PGA since the UN High Level Dialogue on Migration and Development (UNHLD) in 2006. The PGA process was established with the aim of positioning a human rights framework as fundamental to the migration and development discourse. In addition, the PGA seeks to assert the voices of migrants, civil society and social movements not represented in the GFMD.

## **Annex II:**

### **I. First Conference of the Lawyers Beyond Borders**

**23-25 November 2011- Bangkok, Thailand**

### **II. Second Conference of the Lawyers Beyond Borders**

**5-7 September 2014 – Beirut, Lebanon**

# LAWYERS BEYOND BORDERS

Building Partnerships for Justice for Migrant Workers

23-25 November 2011- Bangkok, Thailand

[lawyersbeyondborders@yahooogroups.com](mailto:lawyersbeyondborders@yahooogroups.com)



## Summary

From 23-25 November 2011, Migrant Forum in Asia (MFA) and local organizing partner, Human Rights and Development Foundation (HRDF), in partnership with Open Society Foundations (OSF), hosted “Lawyers Beyond Borders: Building Partnerships for Justice for Migrant Workers” in Bangkok, Thailand. The conference was the first of its kind, bringing together 31 lawyers from the Middle East, South Asia, and Southeast Asia who specialize in cases involving migrant workers. In addition to the lawyers were civil society activists in the area of migrants’ rights and observers from OSF. There were 48 participants in all.

This convening of lawyers was the result of 4 years of thinking and strategizing by MFA and its various partners, including Center for Migrant Advocacy (Philippines), the International Labour Organization (ILO), Kav LaOved (Israel), the UN Migrant Workers Committee, and individual lawyers throughout Asia. It was designed in response to the recognized need for collaboration among lawyers who work on the cases of migrant workers in order to move towards impact litigation and policy advocacy in their work. This program was also looked at as a means of beginning to forge important connections between lawyers and grassroots organizations working with migrant workers on the ground, as well as migrant communities in both countries of origin and destination.

Through a series of sessions on the relevance of International Law and the conventions related to migrant workers, Islamic Jurisprudence, and bilateral agreements (BAs) and memoranda of understanding (MOUs), the lawyers engaged in discussions on the impact (both legal and political) of these instruments on their work. Individual cases were also presented and discussed with respect to the challenges encountered by both sending and receiving country lawyers in litigating and in achieving fair and adequate redress for their clients. A variety of themes were drawn from these cases, including the importance of “going on the offensive” in advocating for clients, and moving towards impact litigation with a view to influencing policy change and public opinion.

An action plan was drawn up collaboratively on the final day of the workshop. The plan includes a series of projects that will be undertaken collectively, including: drawing up plans for paralegal training sessions that will better connect civil society and foreign missions to the work of lawyers, and to help them to assist migrant worker communities with their legal needs; compiling resources that will be of use to lawyers, migrant worker advocates, and migrant communities; supporting advocacy campaigns (e.g. the ratification of ILO Convention 189 on Decent Work for Domestic Workers); supporting one another through effective networking and information sharing.

## Context

Currently, there is a considerable amount of time and energy being poured into understanding the issues of migrant workers at the global level. Much work is happening in international institutions around this thematic area. As recently as the end of November, the Global Forum on Migration and Development took place in Geneva, at which governments came together for the 5<sup>th</sup> consecutive year to talk about the linkages between migration policy and development policy. The parallel civil society event, the People’s Global Action on Migration, Development and Human Rights, also took place in Geneva, bringing together grassroots organizations and migrant communities to look at the ways in which the Global Forum’s discourse impacts the human rights of migrant workers—and this is just one space in which these kinds of discussions are happening.

Relevant to the Middle East context, the Gulf Forum on Temporary Contractual Labour was first initiated by the UAE in 2008, and in January 2011 there was a follow-up session. There will be a second Gulf Forum in 2012.

The Middle East is often subject to harsh criticism and scrutiny with respect to migrants' rights, and countless instances of abuse have been reported from this region. However, there have been some positive policy developments coming out of the UAE and Jordan in recent years, as was explored during the conference.

In spite of a considerable amount of international and regional activity among states on this thematic, the challenge of migrants rights advocates has been to understand how this rhetoric at the global level is translated on the ground in terms of better protection of the rights of migrant workers and members of their families. MFA has recognized for some time that lawyers who deal with cases of migrant workers on a day-to-day basis would be a good barometer for understanding how much change is really happening on the ground. Do lawyers see new spaces in which to advocate for their clients? What kinds of legal obstacles exist? MFA is looking to engage with lawyers as a part of its movement building process, and the program was designed to find ways to collaborate and determine ways to move forward in defense of migrants' rights. This program was a successful first step in that direction.

## Migration & International Law

Dean Merlin Magallona, former Dean of the University of the Philippines Law School, and Nizar Kochery of Kocheries Legal Consultants LLP (Qatar) spoke on the first panel to provide an overview of international migration law and the role of bilateral agreements and memoranda of understanding on labour migration. The aim of the session was to explore the legal provisions outside of national legal systems that can be invoked in the defense of migrants' rights, and to evaluate the role and effectiveness of such instruments. The following summarizes the key themes drawn out by the panelists, and that emerged from the ensuing discussions with the conference participants.

### *International Migration Law*

Dean Magallona outlined various instruments in (and principles of) International Law that can be applied to migrants' rights. He narrowed down "International Migration Law" to include soft law (MOUs, BAs, recommendations of the UN General Assembly and the ILO – i.e. those non-binding instruments that inform policy and the creation of positive law, and that mix political and international interests) and positive law (generally taken to be customary law, or those conventions that are binding, most of which are based on the UN Charter and the principle of non-discrimination as codified in various international instruments).

### *Principle of Non-Discrimination*

As explained by Dean Magallona, the UN Charter sets out clearly the fundamental principle of non-discrimination, which is among the most (if not *the* most) relevant to discussions of migrants' rights. The non-discrimination principle provides "a basket of provisions that create the conditions for the universal application of human rights." Non-discrimination is at the core of international human rights law, and is elaborated in the Universal Declaration of Human rights, the International Covenant of Civil & Political Rights, among most other international human rights instruments. The intention of the principle is to extend the obligation of states to respect the human rights of all persons, solely on the grounds that they are human beings. It is this principle that should create the obligation to eliminate distinctions between documented and undocumented migrants, which is included in the framework of the Migrant Workers' Convention (MWC). The same holds for the most recent ILO Convention, C189 on Decent Work for Domestic Workers, which is to apply to all workers, regardless of nationality or immigration status.



## *Diplomatic Protection*

It is widely held that citizens outside of their state have the right to the consular protection of their nation states. However, Dean Magallona clarified that, under Article 36 of the Vienna Convention on Consular Relations, that in fact it is the right of the state to give diplomatic protection to its nationals. This differs, in that it is not a right held by the *individual*, but rather one that is held by the *state* – i.e. it is the state's right to provide protection (or to not provide protection); there is some doubt over whether or not the individual can claim a right to said protection.

That said, the International Court of Justice (ICJ) has ruled in the past that Article 36 should be interpreted as providing a duty on the part of the consular post of the sending state to give consular protection to the nationals in the receiving state who are under arrest, in the custody of authorities, or who are in detention.

### Landmark Case on Diplomatic Protection

Two German brothers in the United States were arrested, indicted, tried, and ultimately executed for a crime. The US Government of the time did not inform the German Consular Officer or the Ambassador that their nationals had been arrested.

Prior to the execution, the Embassy made a complaint to the ICJ arguing that the execution should be delayed on the grounds that they had not been informed of their arrest.

The Americans argued that any decision of the ICJ on this matter would not affect its decision to execute the prisoners.

The ICJ ruled that the US had failed to comply with Article 36 of the Vienna Convention on Consular Protection. The US failed in its duty to inform the Embassy, and had also failed to inform the brothers of their rights under Article 36.

This case was a landmark in the interpretation of an international convention, extending rights not only to states parties, but also to individuals. This is a significant departure from the traditional formulation of the doctrine of international conventions.

## *Migrant Workers' Convention*

The basic problem of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Migrant Workers' Convention – MWC) is that not many countries have ratified, and those who have are predominantly sending states. As Dean Magallona put it, the Convention is an “international law that operates on one side.”

The MWC establishes categories among migrants: *all migrants* (in part 3) and *documented migrants* (in part 4). The preamble stipulates that the convention should apply to undocumented workers, but in the policy statement at the end of the document, it is indicated that state parties should work towards phasing out undocumented workers. The result is that there is somewhat of a bifurcation between the rights of documented and undocumented migrant workers. This opens the question of how the principle of non-discrimination should apply.

## *Bilateral Agreements & Memoranda of Understanding*

As explained by Nizar Kochery, Bilateral Agreements (legally binding) and Memoranda of Understanding (not legally binding) form a part of international law, but fall on the side of politics and diplomacy. Generally, these agreements are drawn up to promote cooperation between countries that are engaging in government-to-government management of labour migration, i.e. to facilitate the supply of labour power

by the sending state to the receiving state, with a view to minimizing undocumented border crossings and human trafficking.

The agreements that are put into place primarily cover proper procedures for recruitment and deployment, and do little to provide protections for migrant workers. According to Mr. Kochery, such agreements are formal, action-oriented, promote orderly placement, and are focused on labour markets and industries. Sending states often insist on provisions that will ensure the safety of their nationals, but pursue such agreements primarily as a means of securing space within the receiving country's labour market for their nationals, with a view to decreasing domestic unemployment and encouraging foreign exchange. MOUs are typically easier to negotiate, because they are flexible and non-binding, and are therefore preferred by states.

According to Mr. Kochery's analysis, BAs and MOUs are weak and lack effectiveness. They are political exercises that do not provide true protections for migrant workers. International conventions, however, are much more effective in spite of the obvious limitations of such instruments (i.e. reservations made by states, enforceability, willingness of states to implement provisions, etc.). Conventions are more effective, because they hold states accountable for their actions under law, and are subject to monitoring and evaluation by the international community.

From the floor, the question was raised as to whether or not MOUs have been used as a basis to file a legal action or to protect citizens that have experienced an injustice (in an Indian context). The response from Mr. Kochery was that in reality there is no grounds for the use of BAs or MOUs in court, and as such this has not occurred to the best of his knowledge.

#### Merits of the Migrant Workers' Convention

According to Nizar Kochery, the MWC is favourable to BAs and MOUs on the grounds that it sets out rights that BAs and MOUs often do not. The MWC,

- considers at all phases of the migration process
- covers all categories of migrant workers (seasonal, undocumented, etc.)
- considers recruitment practices
- legal protection is ensured
- right to life of migrant workers and members of their families are protected by law
- stipulates that no migrant worker or member of his/her family should be subject to degrading treatment or punishment
- disallows forced/compulsory labour
- allows for freedom of thought, religion, expression
- provides for the protection of assets
- liberty/security guaranteed
- right of consular protection is included
- respects right to equal treatment with nationals
- provides right to access medical care

#### *Application of International Law in National Contexts*

Dean Magallona indicated that the fundamental problem in ensuring rights for migrant workers under international law is the conflict between the supremacy of the sovereignty of nation states and the transnationalization of human mobility. People are crossing borders to work and live, the result of which is that the nationals of one migrant-sending country may end up working under a broad range of legal systems; he illustrated this by citing statistics from 2002-03 of Overseas Filipino Workers (OFWs), who at the time were working under the legal systems of 15 Middle Eastern countries, 30 Asian countries, 39 European countries, 35 countries in the Americas, and 5 in Oceania. This presents considerable challenges for sending states in navigating legal protections and negotiating between national and international provisions.

Each country has its own set of rules for how international laws (conventions ratified and customary laws) are translated into national legislation. For example:

- Philippines: the Constitution requires that customary norms of international law, as well as laws made by convention, must become part of the law of the land in the Philippines through an enactment of Congress.
- Oman: upon ratification, international conventions immediately become part of the law of the land in Oman.  
Ahmed Al-Mukhaini (Oman) observed that because of this system, lawyers are often unaware of the international conventions that could be of use to their clients; these new laws are not included in the national gazette. In countries in which parliaments need to reenact the conventions in order to incorporate the provisions into their national laws, lawyers may be more aware of such developments.

Erwin Puhawan (Philippines) observed that in many cases, for lawyers it is more practical to take concrete steps to assist migrant workers than to rely on the principle-based abstractions of international legal instruments. He cited the case of an OFW who was sentenced to beheading in Saudi Arabia, indicating that paying blood money was the immediate and practical course of action to take in order to prevent the client's execution. However, he maintained that international conventions play an important political role, as they express the state's willingness to comply and to be held accountable, and as such ratification of the MWC and other international instruments should be encouraged.

#### *Adoption of and Compliance with International Legal Instruments*

Considerable discussion took place on the issue of compliance with international instruments, customary law, and treaties. The political dimensions of international law were highlighted in the presentation of Mr. Kochery, as well as in comments from the floor.

Mr. Zhakour and Dean Magallona both made the point that individual advocates are responsible for defending their clients strongly and securing favourable outcomes. Dean Magallona pointed to the importance of individual advocacy in generating jurisprudence that would contribute to the transformation of rules into customary law. He pointed out that the decisions of national courts become state practice, which in turn motivates the state's diplomacy. *Lawyers should bear the burden of litigation to advocate progressively, particularly in relation to the prevailing laws and norms within the country.*

### Islamic Jurisprudence

Having established the relevance and role of international migration law in advocating for migrants' rights, Ahmed Al-Mukhaini (Oman) and Hamood Said Hammed Al Rawahi (Oman) continued the discussion by providing an overview of how international law operates in the specific social/cultural context of Islamic Jurisprudence. They focused on the spaces within this legal context in which arguments can be made for the protection of the rights of migrant workers, and called attention to Islamic principles that could perhaps be used to reinterpret existing systems.

#### *Kafalah System*

According to Mr. Al-Mukhaini, the Kafalah system, so closely associated with Islam and the practices of the states in the Middle East, is often over-emphasized. Kafalah is used by the state as a means of gathering statistics, as a means of regulating entry and exit (i.e. related to national security concerns), and to regulate the labour market due to high unemployment rates among nationals (especially in Oman, Bahrain, and Saudi Arabia).

Mr. Al-Mukhaini began his presentation with an overview of Islamic Jurisprudence, the sources of which are as follows:

Formative Period:

Agreed Sources	Disputed Sources
Qur'ân (the holy book)	Istihsân (equity)
Sunna (traditions of the prophet)	al-Maslih al-Mursalah (public utility or interest)
Ijmâ (unanimous consensus)	Urf (custom)
Oiyâs (analogy)	

Post-Formative Period:

Ijtihâd (independent interpretation)  
Taqlîd (following precedent)

The agreed sources were created in the formative years of Sharia and the disputed sources followed. Under the disputed sources, Isthisân presents an option for jurists to opt out of Ijmâ; that is, if he/she finds that unanimous consensus might not deliver justice, likely due to a change of context or circumstances, the jurist can opt out and follow his/her own interpretation. Public utility/interest was introduced at a later stage of the development of Islamic Jurisprudence, and is useful for jurists now in reconciling between Islamic Jurisprudence and international migration law. The challenge that some lawyers face is that there are lawyers who subscribe to Taqlîd, i.e. they are not interested in pursuing further interpretation of the law, believing that Sharia has been canonized. Reformers, however call for reinterpretations of what has been achieved through Oiyâs and Ijmâ.

### *Understanding Work in the Islamic Context*

Mr. Al-Mukhaini looked at work in the Islamic context from 4 perspectives:

- (1) *Work as a form of Worship*: In Islam, the concept of 'self' or 'dignity' is tied to work, and work is a form of worship. The concept of work moves beyond sustenance, as to realize one's dignity, one must have work or access to work. By assisting someone to work efficiently, you are assisting that person to do his/her duty to god. From a human rights perspective, migration is an obligation for those who wish to challenge injustice.
- (2) *From the perspective of income*: Sources of income in Islam are Effort (intellectual endeavours that receive payment, or *fees*), Work (payment for physical/manual work, or *wages*), and Risk-taking (payment on investment, or *returns*). Risk is the main difference between usury in conventional economics and Islamic economics.
- (3) *Role of State/Employer*: The responsibility of the state/employer is to ensure that proper working conditions, equitable access to the judicial system, bona fide employer-worker relationship, and fair compensation are extended to all workers, including migrant workers. This duty is both *religious* and *temporal*.
- (4) *Vulnerable Groups in Islam*: Forced migrants, i.e. those fleeing for political, economic, religious reasons, should be protected under Islam, even if they are of a different faith. Islam establishes an obligation to provide asylum, and to provide safeguards for education, healthcare, and assistance with repatriation.

However, this is all a value-laden system with no specific, comprehensive codes that have been codified as law. It would be good to create a compendium of fatawas that have received consensus in order to compare these with national laws in order to find ways to better sell these protections to countries in which Sharia is a source of law.

### *Contentious Issues*

In GCC countries, Sharia forms the basis for legislation, however many laws are not compliant with Sharia. As such, Sharia is not binding. There is also a problem reconciling national law and international law. Many things need to be sorted out with respect to terminology.

The challenge is to reconcile Sharia principles and laws. This can potentially be accomplished by resolving issues of terminology. For example, 'Diyah' (Blood Money) in Sharia law can be translated to 'civil compensation' in national laws, and in national legislation the compensation can be made equal for men and women, whereas under Diyah, the compensation is twice as much for men as it is for women.

A similar principle can be held for terminology with respect to migrants. Government agencies, particularly those governments of the GCC, always make a distinction between *temporary* workers and *migrant* workers. Rather than trying to sell the idea of 'migrants,' we can look for terms that resemble 'people in transition,' as this relates to similar concepts in Islam: "dhimmis" and "wayfarers." "Dhimmis" are a special category of citizen. "Wayfarers" have, by the law of the Qur'ân, have access to state funds. Through this concept, we can solve the issue of access to social security for migrant workers.

The GCC countries are sensitive to issues of migration in large part due to demographics, as large percentages of the labour force are made up of migrant workers. This can be the source of social unrest over concerns of local unemployment, but also due to concerns about influences on culture and ideology.

#### Discussion Points on Islamic Jurisprudence/Sharia Law

The following summarizes questions that were raised on Sharia Law and its implementation in migrant worker cases.

Adib Zhakour (Lebanon) pointed to the difficulties of adopting international laws in a context in which Sharia Law is applied in addition to the labour code or the penal code. In response Ahmed Al-Mukhaini indicated that general reservations from these countries on international conventions usually come up in 3 areas:

- (1) arbitration – countries refuse to be subject to the international arbitration of the ICJ
- (2) entry/exit rights – states reserve their rights to sovereignty
- (3) migrants' freedom of movement within the host country

That said, there are specific reservations with respect to Sharia, though most Muslim countries are withdrawing this reservations, in large part because this would potentially give Islam a bad name; they do not want Islam to be associated with anti-human rights or anti-freedom sentiments.

Linda Al-Kalash (Jordan) expressed concern over the multiple dimensions of Sharia and the ways in which it could be implemented in labour cases for migrants. Her position is that the relationship between employer and employee should be governed by labour laws. Hanan Ayadi (Jordan) called attention to the problem that many people accept Sharia's principles, but that their actions contradict these principles. She reaffirmed the sentiment that civil or penal courts should be the primary arbiters of disputes.

Ahmed Al-Mukhaini replied that it would be very difficult to eliminate the kafalah system, because it would be difficult to interact with countries that practice it. Instead reformulations of kafalah should be explored in order to ensure that employers and employees have more equal standing. He agreed that sometimes principles and actions are inconsistent, but insisted that this is at the individual level, and that engaging Sharia discourse often leads to a confusion of personal and normative behaviour. What is needed is a yardstick by which to measure the behaviour of the employer. The objective should not be to replace civil code with Sharia (or vice versa), but rather to find those elements within Sharia that can be used for the benefit of the employee or for the public interest, and to codify those elements.



International treaties, in spite of their weaknesses, should be pursued. Ratification should be encouraged, because treaties pertaining to migrant workers' rights can fill the gaps in Islamic law.

3 Paradigms within Islam that can be used to reinterpret the Kafalah System to the benefit of migrant workers:

- (1) *Reworking Kafalah to be a usufruct style of agreement*: This was initially used to regulate the sale of rights, and later was applied almost exclusively to land. Perhaps the old meaning can be resurrected as a means of reinterpreting kafalah, such that migrant labour is based on a usufruct agreement. The risks for the employer and employee would need to be established and assigned values. As is the case in Islamic Jurisprudence, income should not be a fixed allowance, but should be determined on the basis of ratios/percentages.
- (2) *Mudharabah*: Similar to usufruct, this would be way of managing risks and benefits. Someone with money would provide support for another, taking on the risks and sharing the benefits. It's important in Mudharabah to specify what should happen if the benefits do not accrue; should there be a penalty for the employee?
- (3) *Gharar Contracts*: Any contract that is about the abuse of one party to the other, and where there is uncertainty of return or benefit of the exchange. If we are to use this to reinterpret Kafalah, we must decide on the yardstick to decide whether or not the contract is Gharar or not.

### **Litigation in Migrant Worker Cases**

A series of migrant worker cases were presented by the conference participants for discussion on the themes of impact litigation and policy change, the value of cooperation between host and sending country lawyers, and links with civil society for effective advocacy.

#### *Impact Litigation*

Adib Zhakour (Lebanon) and Kathleen Hamill (Lebanon/USA) presented the case of "Nona," a Filipina domestic worker in Lebanon who was subject to continual battery and abuse (physical and psychological) at the hands of her employer. Her employer claimed that she was mentally unstable and that her injuries were self-inflicted. This was refuted by a forensic medical examiner. This case is still being pursued.

Nizar Kochery (Qatar) presented the case of an Indian worker who was denied end of service benefits upon being released from his job of 22 years, without having been given a reason for his dismissal. The court found in his favour (on appeal), awarding him end of service benefits on the grounds of non-discrimination, and due to the fact that his original contract was unclear with respect to the awarding of benefits. This landmark ruling affirmed the principle that if the law can be interpreted in two ways, it should be interpreted to the benefit of the less privileged.

These cases highlighted the importance of taking on an offensive strategy in advocating for migrant worker clients. Mr. Zhakour's approach was to stay within the law, but to locate the gaps and look for areas that could strengthen his argument, and perhaps establish new precedent in the process.

According to Ms. Hamill, in order to pursue an offensive approach, lawyers must:

- Obtain solid evidence and forensics
- Adequately prepare the groundwork for police investigations, providing counsel to the worker and remaining persistent in advocacy
- Involve Consular representation in cases, ensuring that the appropriate officials are informed of the facts
- Ensure that proper translation/ interpretation services are available during all phases of the case
- Anticipate obstacles (e.g. objections of family members of the accused)
- Prevent recruitment agencies from intervening (e.g. insisting that the employee be reassigned to a new employer)
- Counsel the worker to assign power of attorney to his/her lawyer
- Develop a strategy to put the employer on the defensive, and put society on notice that justice will be upheld

### *Policy Change*

The case of policy changes in the UAE and in Jordan were presented on this panel by Andrew Chegvidden (UAE) and Linda Al-Kalash (Jordan), as a means of examining how the migrants rights agenda is being pushed forward in the Middle East. Analysis focused on the actual gains on the ground, and those elements that might be mere cosmetic changes that have little impact.

Mr. Chegvidden discussed changes that have recently been made to the kafalah system in the UAE. Under the kafalah system, workers needed the consent of both sponsors in order to leave or change their employers, at the risk of receiving a 6-month employment ban should this consent not be obtained. This gave nearly absolute control over lawful employment to the employers. However, a new Ministerial Resolution entered into force in January 2011, granting employees the right to obtain a new work permit without being restricted by the 6-month requirement in the case that the employer has failed to uphold his/her side of the employment relationship, or if you fall into a high enough skill category. This sends a clear message that if you are wronged by your employer, you do not need to obtain consent to change your employer. That said, the formulation of the resolution is that the labour ministry “may” grant a new permit, indicating that it remains within the ministry’s right to withhold the permit.

However, in practice it seems that the principle of the resolution is being upheld.

Some legal uncertainty remains, however. Because the Ministerial Resolution falls under (and is given its force by) UAE Labour Law, employers can challenge this resolution by focusing on Article 128 of the Labour Law, which says that if an employee leaves his/her position without a valid reason before the expiration of the contract, he/she may not, even with consent, take up other employment for the period of 1 year, and it shall be unlawful to hire someone in such a situation. The Ministerial Resolution stipulates that it should not be read to contradict Labour Law, as the Labour Law empowers the resolution.

With respect to changes in labour recruitment policies, this remains a highly regulated area. Ministerial Resolution 1283 came into force in February 2011, attempting to improve the regime by overcoming loopholes. Most significant is Article 6b, which prohibits agencies from receiving fees. This is an attempt to stop

#### Sponsorship Systems in the GCC

- ☐ UAE sponsorship system underwent considerable reform in January, 2011, loosening requirements for consent to change employers
- ☐ Bahrain was the first to abolish the sponsorship system, standing as a leading example in the GCC
- ☐ Oman has taken some positive steps in that employees still need consent with no objection from their previous employer to transfer, but it is now the right of the employee to receive such consent under the appropriate conditions
- ☐ Kuwait announced in September 2010 that it would abolish sponsorship in February 2011, but this has not happened

recruitment agencies from collaborating with recruiters in sending countries, and sets penalties for cross - border transactions of that kind. Under Article 6d, the agency must not deal with people or agencies inside the state to recruit workers unless that person or agency is licensed. However, a significant gap remains in that employers can recruit directly, without the agency intermediary on the receiving side.

Ms. Al-Kalash pointed out a series of new laws for the protection of migrant workers in Jordan:

- 2003: establishment of a unified contract – Jordan was the first country to implement this
- 2006: registration of all domestic workers coming to Jordan
- 2008: inclusion of domestic workers under the labour code
- 2009: anti-trafficking law initiated

However, in spite of the implementation of all of this legislation, domestic workers continually face abuses. They are confined to the homes of their employers, they have no privacy, wages go unpaid, they are subject to verbal/sexual abuse. “Runaways” (or “freedom-seekers”) are detained. The hotline set up for their assistance is unstaffed. Domestic workers and garment workers, most of whom are migrants, are exempted from minimum wage legislation. Laws are in place, but personnel tasked with enforcing these laws are not trained, and do not know how to deal with the cases they encounter. Migrant workers bear the burden of the state’s inability to protect them.

#### *Host/Sending Country Lawyer Cooperation*

Two cases of Filipina domestic workers were presented by sending country lawyers. These cases illustrated the challenges of seeking redress from the country of origin, and the need for lawyers in sending and receiving countries to collaborate.

The case presented by Henry Rojas (Philippines) involved a Filipina domestic worker in Dubai who was the victim of contract substitution. She was overworked and given tasks that were not included in her original contract, and she was not paid her salary. She was ultimately transferred to a new employer, who repeatedly raped her and her Indonesian colleagues. Upon escaping and securing the assistance of her embassy, she was found to have an ectopic pregnancy and amassed several medical bills for her treatment.

This case demonstrated the use of the Philippine system of ‘joint and solidary liability,’ which holds that because the employer is beyond the jurisdiction of Philippine courts, responsibility lies with the recruitment agency. This serves as a motivation for recruiters to deal with good employers. The client in Mr. Rojas’ case was able to return to the Philippines and pursue her case against her recruiter. She also assigned power of attorney to a Filipina friend in Dubai to carry forward her rape case.

Mr. Rojas also called attention to the way in which the Philippine system of overseas deployment is set up. The system is based on the Middle Eastern sponsorship model, and as such, Kafalah is radically changed or abolished, some elements of the Philippine system will no longer operate properly. New models would need to be looked at to address problems in the recruitment regime.

Erwin Puhawan (Philippines) presented a case that clearly illustrated the need for stronger lines of communications among advocates across borders. By coincidence, Salah Jaber, another participant of the conference, had worked on the same case on the Jordanian side, though neither were aware of the activities of the other.

The case presented was one in which a Filipina domestic worker was thrown from the 4<sup>th</sup> storey window of her employer’s home in a dispute over the confiscation of a mobile phone. The woman was comatose for some time, was paralyzed, and eventually died as a result of her injuries. On the Philippine side, Mr. Puhawan and his organization, Kanlungan, pursued the recruitment agency under the joint and solidary provisions for redress and to claim restitution for her medical expenses. On the Jordanian side, Mr. Jaber was

involved in the prosecution of the woman accused of throwing her from the window. This case is still in the appeals court, as there is insufficient evidence to prove that the employer was the one responsible for throwing her from the window. There were inconsistencies in the statement made by the Indonesian domestic worker, which is part of what is causing the delay in the proceedings.

An issue raised with the concept of joint and solidarity liability is that, as a result of this provision, the Philippine embassies often encourage their nationals to quickly return to the Philippines to file their cases, whether or not this is in the best interest of their cases. This procedure is more practical and cost efficient for the embassies and consular offices.

### *Linking with Civil Society*

Migrant worker cases involving links with civil society were presented by Latheesh Bharathan (Bahrain), Yada Hatthatummanoon and Siwanoot Soitong (Thailand), and Henry Rojas (Philippines). Their cases demonstrated the important role that civil society can play with respect to offering support to those who are pursuing their cases, and in terms of broader advocacy and impact litigation. It was emphasized that a multi-stakeholder approach to such cases can be beneficial in raising the profile of the cases and for achieving favourable outcomes in both the short and long term.

In the case presented by Mr. Bharathan, an Indian domestic worker was tortured by her employer's wife, and was fired and thrown out of her employer's home. She was brought by a social worker to the Indian embassy and filed a case with the police. Her employer claimed that she was mentally unhinged and was making false accusations. The courts found in favour of the migrant worker, however she received minimal compensation for her wrongful termination. An additional compensation claim will be made for her injuries. With respect to the role of civil society, the Migrant Worker Protection Society in Bahrain assisted the migrant worker by providing her with shelter, and for assisting her in filing her claims and working through the legal system in Bahrain.

Ms. Hatthatummanoon and Ms. Soitong presented the work of Human Rights & Development Foundation (HRDF), Thailand with respect to cases of impact litigation for migrant workers and trafficked persons, primarily from Burma, Cambodia, and Laos. They discussed the methods HRDF uses for legal empowerment of migrant communities (training of paralegals and providing legal resources / legal aid), and pushing for policy change through litigation. The specific case of impact litigation they presented was of a Burmese man who suffered a workplace accident and who was severely injured. He was detained in hospital (chained to the bed), pending deportation, because he lost his identity documents in the accident. A complaint was filed by HRDF in order to release him from legal custody. Ms. Hatthatummanoon invoked her client's constitutional rights with respect to illegal detention in order to pursue this case – this was the first time this provision had been used – and the case was successful. This was a landmark case in Thailand in defense of migrants' rights.

This case was also elevated to the ILO, with the assistance of Thai trade unions, and resulted in media attention and a letter being sent from the Special Rapporteur for Migrants to the Thai Government to demand an explanation for the client's detention. While the government has been silent on this case, it is a good example of how links with civil society and impact litigation can result in increased pressure on governments to take appropriate steps to protect the rights and welfare of migrant workers.

Mr. Rojas' case pertained to 4 Filipino Workers in Saudi Arabia who worked as cargo handlers at the airport. They were arrested and charged with stealing a van of laptops, worth \$27,000. They were convicted on the basis of a confession written in a language they did not understand that they signed. They were not informed of the proceedings of the courts, and were not offered legal assistance of any kind. After years of struggle on the case, a human rights activist and former member of the National Commission for Human Rights learned of

their problem and intervened in subsequent hearings on their behalf. The workers were also assisted by the Center for Migrant Advocacy in the Philippines and VICTIM, a Filipino expat organization in Saudi Arabia that assists Filipino workers in distress. In the end, the case was resolved in their favour. The case demonstrates positive elements of the involvement of human rights activists and civil society organizations in both the receiving and sending countries.

#### Potential for Collaboration with Human Rights Defenders

In her presentation of casework, Mr. Hatthatummanoon drew attention to the strategies used by her organization, HRDF, in strategic litigation. HRDF chooses cases that link up with their ongoing campaigns (e.g. their workers' compensation campaign), and work through various channels to not only achieve a positive outcome for their clients, but to push for policy change. They do this by taking on a multi-stakeholder approach, in which they involve Thai labour unions, migrant communities, the media, various government ministries (when applicable) – any individuals, offices, or organizations that will further the case and pressure the government for policy change.

In the open discussions, Mr. Gois (MFA) asked how these support systems could be tapped, and whether or not a strategy of linking up with the Human Rights Council and the UPR processes would be viable. This would entail a linking up of the work of lawyers with that of Human Rights Defenders.

Mr. Zhakour (Lebanon) agreed that an international approach would be beneficial, and that it would be good to push forward national-level migrant worker cases to extend the work. Legal strategies on cases should involve lawyers and advocates of both the sending and receiving country.

Mr. Al-Mukhaini raised the point that to bring a case before international tribunals such as the ICJ and the ICC, it is usually a requirement that all national legal mechanisms be exhausted, with the exception of life-threatening situations. He also pointed out that there is an online registry of Human Rights Defenders called Frontline that might be of interest to those looking to connect with Human Rights Defenders

Ms. Hatthatummanoon responded to Mr. Al-Mukhaini's concern about the exhaustion of local remedies by elaborating on HRDF's strategy. For the first case taken to the UN/ILO on a particular matter, local remedies will first be exhausted. However, for subsequent cases of a similar (or identical) nature, they will not move forward with local processes, as these will have predictable outcomes. They will submit these cases immediately to the appropriate international bodies, as there is no sense in taking it to the local courts if their petitions have already been denied.

### **Challenges in Obtaining Justice for Migrant Workers**

The cases presented, and the subsequent discussions, brought forward some common challenges/frustrations in working on migrant worker cases in a Middle Eastern context.

#### *Obstacles Preventing Migrant Workers from Gaining Access to Justice*

Adib Zhakour presented, quite succinctly, 9 difficulties that are encountered by migrant workers seeking swift and proper access to justice. Some of these were discussed in more detail in relation to the other case presentations.

- (1) Lack of knowledge of laws on the part of migrant workers
- (2) Difficulties in hiring a lawyer
- (3) Lack of financial resources
- (4) Employers often forbid employees (in the case of domestic workers) to leave the house
- (5) False accusations leading to false arrests
- (6) Language barriers



- (7) Lack of communication/coordination between migrant workers and their embassies in following up on complaints
- (8) Insufficient number of NGOs working on these cases
- (9) Most importantly, the main cause of the failure to obtain justice is the lack of perseverance of lawyers representing workers in distress

#### *Need for Shelters/Accommodation*

This point was first brought up by Prasad MK, an Indian Embassy lawyer based in Oman, and was affirmed by most of the conference participants. For those migrant workers, particularly domestic workers, who flee from their places of employment, it becomes difficult to sustain themselves, as they have nowhere to live and no income. Embassies are often asked to take in these migrants, and this can be considerably costly over the long term. There is also the legal issue of providing shelter for those who are deemed to be 'undocumented' in the eyes of the host government, though the embassy's claim to the extended sovereignty of their embassy could potentially resolve this matter. Other problems with embassy-run shelters is that, because of the lack of funds, they are often over-crowded and inhospitable places that are unsuitable and ill-equipped to handle large numbers of those in need of assistance.

It was suggested by Mr. Zakhour that state-run shelters be opened for migrant workers. Mr. Al-Makhaini indicated that such an operation exists in Oman under the purview of the Ministry of Social Development, however its primary focus is on Omanis suffering from violence (especially gender-based violence), and as such the shelter is only open to female migrant workers. He also pointed out that the embassies of the Philippines, Bangladesh, India, and Sri Lanka all run embassy-based shelters, which are very useful at times when general amnesties are announced.

Simon Cox (UK) called attention to some of the downfalls of embassy-run shelters, namely that they often disallow freedom of movement, particularly for women. Locked shelters are purportedly for the safety, security, and wellbeing of those housed there, however there is a tension between our ideas on free movement and agency, and the idea of closed shelters.

Ellene Sana (Philippines) elaborated on the resource difficulties faced by embassies in opening shelters, drawing attention to the 'multipurpose resource centres' operated by the Philippine Embassies that have turned into de facto shelters out of necessity. An alternative arrangement would be for embassies to make arrangements with local NGOs to run shelters, similar to the Caritas Lebanon model.

#### *The Need for Translators/Interpreters*

Mr. Altaf raised the point that not only are translators/interpreters necessary, but some way to gage the quality of their translations is needed. A lawyer cannot ensure that their client fully understands the details of the case without access to proper translation. Mr. Zakhour also pointed to the need to have flawless translation available during every step of the case, from the initial report of the case, throughout the investigation, and during court proceedings. This problem was affirmed by many of the lawyers with respect to the cases they have undertaken.

#### *Problems with Embassies*

It was agreed that in all cases, coordination with embassies is essential. Mr. Zakhour recalled Dean Magallona's discussion on Article 36 of the Vienna Convention on Consular Relations, invoking the right of the citizens to consular assistance, but indicating that in too many cases the embassies disregard the importance of the cases taken to them for support. The fact of the Philippine Embassy (as was the example raised in case discussions) encouraging their nationals to return home before following through on their cases was decried by Mr. Zakhour

as irresponsible and unconscionable, and this sentiment was reflected in the statements of other participants in various discussions throughout the sessions. It seemed to be the consensus that in most cases, it is better to follow through on cases in the host country.

Thomas Aschauer drew attention to the challenges that embassies face in resolving the problems of their workers, noting that many will prefer to see their nationals quickly repatriated due to the practical difficulties (logistically and cost-wise) of keeping them in the host country. He noted that a useful practice is for embassies to retain a lawfirm to which migrant worker cases can be referred, as these firms will then be able to employ lawyers who can speak the language of that particular country and will have a clear understanding of the legal system.

## ILO Convention 189: Decent Work for Domestic Workers

As many of the cases presented dealt with migrant domestic workers, a discussion on the newest ILO Convention, C189: Decent Work for Domestic Workers, was held. William Gois (MFA) explained the process through which the Convention came to be, and how it came to cover migrant domestic workers, the relevance for the Middle East, and the campaign for ratification.

The challenge faced by migrants' rights advocates going into the ILO deliberations in 2009 was that there was confusion about whether or not a convention for domestic workers should apply to migrant workers, or local domestic workers *only*. This created a split in the mobilization around the Convention. The ILO finally stepped in to assert that the new convention would be for *all* domestic workers, regardless of citizenship or legal status.

To come out with the convention, the ILO had a double debate, convening in both 2010 and 2011 for debate and discussion of draft texts. In 2010, the Arab states clearly stated that no convention was necessary, and that they would support a recommendation only. The Arab countries, engaging as a bloc, were led by Saudi Arabia in 2010. However, when the states reconvened in 2011, they voted once again as a bloc, this time led by the UAE, in support of a Convention. In fact, after Australia, the UAE logged the largest number of interventions in favour of the Convention during the 2011 proceedings. After the deliberations, 396 states voted in favour of the convention, 16 against, and 63 abstained.

Many factors can offer explanations for the change in position among the Arab states, but it is clear that the issue of migrant rights' protection and advocacy on this issue had an impact, as the region's domestic workers are predominantly migrant labourers. Between 2010 and 2011, there were many engagements with government officials, dialogues at the global level and the regional level, etc. In one year, migrants' rights advocates were able to push the position that the Arab states should support this Convention. Article 8 of the convention marked a considerable victory, as it provides a legal basis in international law to end contract substitution, a significant problem faced by migrant domestic workers. This article was introduced to the convention through the interventions of civil society on the floor during the debates, and was backed by the US and Australian representatives.

With respect to ratification, the civil society ratification campaign is moving forward full force. Only 2 ratifications are necessary for the Convention to enter into force, and it looks as though the Philippines may be the first to ratify. Uruguay is also looking seriously at ratification. Different ways are being considered to progressively move forward with the ratification campaign, and momentum is building.

In response to Mr. Gois' presentation, some interventions from the floor indicated a general unease with the effectiveness of Conventions, in that governments do not seem to take them seriously. Maysoon Qara (Jordan) pointed out that the Jordanian representatives who attended the ILC in 2010 rarely attended the proceedings, and the Ministry of Labour seemed unaware of the Convention. Problems of this kind were also seen with the representatives of the Philippines, Sri Lanka and Cambodia.

However, Mr. Gois recommended that rather than calling attention to this point, governments should be held to account on the commitments they have made. If they have agreed to the Convention, they should be reminded of this agreement and pressured to make progress towards ratification and implementation. If they have not agreed to the Convention, they should be challenged/pressured to sign and/or to justify their decision not to be included among the supporting states.

Ms. Hatthatummanoon also indicated that Conventions and international mechanisms/institutions can be bureaucratic, and do not act as “magic wands” to solve the problems of the various constituencies that fall under them. However, they are tools that can be used alongside many other tools to hold governments accountable and to create pressure for the upholding of minimum standards.

## Community-Based Paralegal Programs

The potential contribution of paralegals was brought up as a topic of discussion in many of the sessions, and forms the basis of one of the action points of the lawyers for moving forward. To provide some context and discussion points on how to develop such programs, Sumaiya Islam of the Open Society Foundation’s Justice Initiative presented the OSF’s model, the Global Legal Empowerment Initiative.

According to Ms. Islam, the Global Legal Empowerment Initiative focuses on developing the legal capacities of local communities, with a view to assisting countries/people who are marginalized to access justice affordably. Their model is laid out in the Justice Initiative’s Community Legal Practitioners’ Guide.

The paralegal framework translates specialized knowledge into language that those working with communities at the grassroots level can understand and put into action. The focus is the empowerment of the community, rather than a focus on clients. Paralegals are used to improve access to government services, to assist in filing complaints, and to provide information to their communities on how the legal system works. Paralegals are beneficial because lawyers are expensive and can be inaccessible to communities. Paralegals, especially in remote areas, are useful allies in improving citizen participation.

Paralegal programs can be set up under the supervision of existing NGOs, newly-established NGOs for the purpose of working with paralegals, or legal clinics (e.g. within university law faculties). The supervisory body will be responsible for the work of the paralegals, and any advice they dispense. Whatever the arrangement, preliminary work must be done, including a situational analysis through field research, and obtaining a solid understanding of the legal/judicial environment. In recruiting paralegals, supervisors must recognize that some skills are trainable, while others are not (e.g. willingness to serve). Paralegals must be monitored and supported in their work.

Some conference participants expressed concern that paralegals and their activities should not be seen as on par with that of lawyers, as this could be dangerous and might harm the client. However, on the whole the potential contribution that paralegals could make, in terms of access to local community, expanded access to lawyers and the legal system, and broader empowerment of migrant communities, seemed to be accepted by the group.

# LAWYERS BEYOND BORDERS

Building Partnerships for Justice for Migrant Workers

5-7 September 2014 – Beirut, Lebanon  
LawyersBeyondBorders.MFAsia.org



## Summary

From 5-7 September 2014, Migrant Forum in Asia (MFA) and local organizing partner, Caritas Lebanon Migrants Center, in partnership with Open Society Foundations (OSF), hosted the second Lawyers Beyond Borders convening in Beirut, Lebanon. This conference gathered together 21 lawyers from the Middle East, the Gulf region, South Asia, and Southeast Asia who specialize in cases involving migrant workers. The first Lawyers Beyond Borders conference was held in 2011 in Bangkok, Thailand.

The Lawyers Beyond Borders network was formed in response to the recognized need for collaboration among lawyers who work on the cases of migrant workers to move towards impact litigation and judicial advocacy in their work. In 2014, the network secretariat, MFA, appointed Henry Rojas, lawyer for the Center for Migrant Advocacy (Philippines) to serve as network coordinator and to advise the secretariat.

The three-day conference provided a platform for important discussions on the legal state of affairs and the situation of migrant workers across the countries of origin and destination represented. Conversations on the prospects for the use of such legal tools as constitutional challenges and Public Interest Litigation challenged conference participants to consider new ways of ensuring access to justice for migrant workers and to consider how important legal changes might occur outside of the slow process of policy change.

## Context

For many years, but particularly over the last 2-3 months, the MFA secretariat, its members, and partners have remarked at the large numbers of cases of migrant workers detained in foreign prisons—some for a very long time. Reports increasingly surface in the global media of migrant deaths at borders (some at sea), as people try to reach their destination in hopes of securing a better future.

As a network, MFA decided at its initiation that it would not view migrants as a separate sector to be dealt with in isolation. Migrants are like all other people looking for work and should be treated as such. This understanding gave rise to MFA's multi-sectoral approach of engaging any groups involved in people's struggles. However, MFA is increasingly faced with the framing of the migrant as the "other"—even in the work of people's struggles—who should be afforded a separate set of rights or seen in a different way under the law. This othering sets migrants apart, making it easier to forget that they have communities, families, and lives, and that they are not "illegal" people or "illegal" migrants, but people who fall within the legal system and who should have access to rights.

Ensuring that migrants have equal access to justice is increasingly becoming an uphill battle. The aim of the Lawyers Beyond Borders meeting in Beirut was to see how we can actualize this understanding through casework, collaboration, and strategy, and to draw a clear path forward for the network, which is still in its infancy.

It was decided to hold the meeting in Beirut, because the secretariat felt it was important to engage in these conversations in a host country. At the time of the meeting, the security situation in Lebanon was uncertain, which is an ongoing struggle for migrant workers and those who support them and advocate on their behalf.

Speaker: Colin Gonsalves, Senior Advocate for the Supreme Court of India

Moderator: Linda Al-Kalash, Tamkeen Fields for Aid

### *Using the Legal System for Change*

Colin Gonsalves brought to the discussion the perspective of his work with India's Supreme Court, where he and his colleagues engage in Public Interest Litigation (PIL) on behalf of many of the country's most vulnerable groups. He argued that the use of PIL in countries with constitutions could advance respect for the rights of migrants more quickly than through efforts to achieve legal change through government. He cited India, Pakistan, and Nepal as countries with particularly strong PIL provisions in their legal systems.

Countries with written constitutions almost always include articles against discrimination, and many countries in the developing world recognize collective rights, while western countries only consider individual rights. Nepal, Sri Lanka, Bangladesh, Pakistan, and Afghanistan are all countries that allow for PIL—i.e., cases can be brought forward on behalf of large groups of people, as in the Right to Food case in India in which 350 million people were represented. While jurists and pundits in the west criticize such a system, it allows for access to justice for a large number of people. This could be an extremely powerful tool for migrant workers. In PIL, anyone can file a case on behalf of the wronged person(s); it does not have to be brought forward by the person directly affected.

### *Examples Demonstrating Potential of PIL (for countries with constitutions)*

- (1) Migrant workers in conflict zones and forced migration due to corporate take-overs of lands (backed by the state)

A challenge was brought to India's Supreme Court when 300,000 tribal people were displaced across state boundaries (internal migration) due to the activities of corporations on their lands. In its judgement, the Supreme Court found that the terrible conditions of the migrants were the direct result of the activities of the state, and supporting the activities of the World Bank and International Monetary Fund were characterized as obnoxious to human rights.

- (2) Migration for Domestic Work

The Indian Supreme Court is currently considering the human rights abuses that occur in the migrant labour recruitment process for Indian domestic workers. They are considering scenarios in which sub-agents hand off prospective migrants to placement agencies, and are then moved into work having their contact broken with their families, often resulting in sex work and other forms of exploitation. The court is considering issues around informed consent and criminalizing the activities of the recruiter and placement agencies.

- (3) Migrant Workers in the Construction Industry

Until recently, no legislation covered construction workers. There is currently legislation in place, but implementation is weak. Under the new rules, 3% of the cost of construction must go directly to the government for the welfare of the workers, the education of their children, etc. The Supreme Court has

#### Principles of Public Interest Law

The court will intervene whenever there is a violation of human rights.

Such court interventions will take precedence over every other matter.

Anyone with a founded claim can approach the court.

It does not matter if there are significant financial repercussions to a finding that a human right has been violated.

The state is duty bound to implement fundamental human rights above all else.

Burden of collecting data on the case **does not** rest with the petitioner; the court must collect information on the grievance.

International conventions are automatically enforceable (as is the case in Nepal).



ordered the implementation of this rule, finding non-compliant states to be in contempt of court, forcing implementation at the state level.

### *Potential of PIL for Rights Violations in International Migration*

PIL can be a powerful weapon to control the actions of the governments of countries of origin. Currently, there seems to be a general sense of helplessness: if something happens in the Middle East, the embassy is not terribly responsive, and there is nothing more that lawyers and advocates can do than write letters of appeal; this is far from the truth. Embassies are controllable by the courts. Given that there is an existing regime of rights, although it is not so developed, duties of the state are enforceable. Embassies are duty bound to assist and officials are punishable for inaction. Every case develops the law, and in India and other countries with similar legal systems, the court can issue guidelines that have the status of law. Such efforts should be undertaken by lawyers to force states to comply with their obligations to their nationals abroad.

### *Reactions*

Bonded labour and trafficking cases: It can be difficult to convince police to prosecute employers and labour brokers when such cases arise. However, there have been some judgments in which labourers have been compensated and prosecutions of those who have kept them in bondage in the Indian context. In trafficking cases, India's National Human Rights Commission published a report on trafficking from Nepal, concluding that Indian police are complicit in these cases; however, the conditions of state-run "rehabilitation" centres were worse than the brothels to which the women were trafficked, causing some of the trafficked persons to storm the courts demanding that they be allowed to return to their work. Many cases have resulted in repatriations, but likely only catching 1-2% of the existing cases.

Role of foreign missions: In Bahrain, human rights violations are often brought to the embassies, but diplomatic staff find it difficult to approach the courts directly, opting instead to work via the Ministry of Foreign Affairs, which is a very slow process. How can lawyers working in Bahrain prompt the embassy to act? In such cases, perhaps PIL outside of Bahrain can help to define the role of the embassy, laying down guidelines for their functions and commitments. Malaysia has seen similar challenges with embassies, where the bar council has asked the embassy to enter into litigation, but instead discourage court cases, focusing on direct negotiations with employers and repatriations. This is an anti-poor attitude.

On burden of proof for PIL: If the burden of proof is not held by those bringing forward the case, how are the merits of the case substantiated? In Indian PIL, the court is required to establish a commission to collect information and research the merits of the complaint. Those bringing cases forward should bring as much information and evidence as possible, but it is the court's responsibility to use its resources to substantiate their claims.

Need for minimum standards across countries of origin: Sending countries have not established alliances for migrants' rights protections. Lawyers should build links with parliamentarians to examine laws/policies, determine where discussions are taking place (nationally, regionally, internationally) and intervene to address policy gaps.

## **Access to Justice in Jordan & Lebanon**

Speakers: Linda Al-Kalash, Tamkeen Fields for Aid (Jordan), Wissam, Caritas Migrant Centre (Lebanon)

Moderator: Hélène Haroff-Tavel (ILO)

*Under the Lebanese labour code, domestic workers are excluded. What challenges have Caritas lawyers faced in trying to defend migrant domestic workers who have filed complaints?*

The relationship between domestic workers and employers is governed by civil law, so civil courts are tasked with investigating complaints. Because it is a civil matter, it is difficult for labour tribunals to take on these

cases. One area in which some change has occurred is on issues of non-payment of salaries, which can be considered a criminal offense based on a ruling of the court of appeal on the grounds that it is a breach of contract. In 2009, Lebanon saw its first ruling providing compensation for dismissal and non-payment of wages of a migrant domestic worker.

*Why does the labour tribunal only focus on cases of non-payment of wages? Why not other important problems or breaches of contracts for migrant domestic workers?*

Labour tribunals have not expanded to issues other than non-payment of wages for two reasons:

- (1) Until 2009, there was no unified contract for domestic workers in Lebanon. Contracts did not consistently explain the nature of the work of domestic workers, and they were generally excluded from the scope of labour law.
- (2) Different communities have different views on the role of domestic workers, and labour tribunals continue to debate whether or not they are competent to study domestic worker/employer disputes. It takes time to work out these issues, and the result is that the tribunal role has not moved beyond wage payment issues.

*The context of Jordan offers a contrast; it is the only country in the region that has adopted legislation recognizing domestic workers as workers. Do you think this recognition of domestic workers in law has made any difference in the lives of domestic workers who have been exploited and seek justice?*

In Jordan, both domestic workers and farmworkers are included under labour law. Lawyers have a basis in law to claim rights on behalf of their clients. Unfortunately, judges are strict and limit the rights of domestic workers to that which comes under the regulation only. While there is positive discrimination in the law for housing, fees, permits, etc., nothing is mentioned about additional hours of work or other sources of abuse and exploitation. Also, the 2003 unified contract was in place before the migrant domestic worker laws were implemented; rights are included in the contract that are not included in the law. For application in courts, the inconsistencies between the contract and the law become problematic. Another problem is the ignorance on the part of judges that domestic workers now fall under the protection of the law. Also, it is expensive to retain lawyers and file claims, even when domestic workers know their rights, weakening access to justice. The problems of multiple regulations and treating domestic workers separately from other workers can create confusion. Workers advocate for a reform of the whole labour law system to ensure their inclusion, rather than creating new regulations specific to their constituency.

*Deception is problematic when it comes to working and living conditions. Workers sign contracts in countries of origin, and then are asked to sign new contracts on arrival. When a problem arises, judges tend not to accept the explanation of deception, because the workers have signed these contracts. Do you agree with this position?*

Panelist recommendations to improve access to justice for migrant workers and migrant domestic workers in Jordan and Lebanon

- (1) A Public Prosecutor's office specializing in human rights should be established. Judges are not always aware of new laws. A special office would be able to deal quickly with such cases, which now take far too long to resolve.
- (2) More connections are needed between countries of origin and destination. For example, interpreters and language assistance through embassies would be very helpful. Cooperation among governments for the benefit of both the employer and employee is needed. We need to strengthen the role of consulates and embassies as another way to support workers.
- (3) Workers need to be empowered to claim their rights. This work needs to start before they reach the destination country.
- (4) Laws need to be revisited and tested to ensure they are enforceable and then to implement them properly.
- (5) CSOs across destination and origin countries need to be better connected to seek solutions.

There is insufficient coordination between origin and destination countries in overseeing the migration process and regulating recruitment agencies. There is often collusion between officials and recruitment agencies, and workers often do not even have copies of their contracts. There is so much money involved in the process—ILO estimates \$150 billion.

*If there are two contracts signed, and the contract in the country of origin offers more protections, are you able to use the original contract in Lebanese law to build your case?*

Where there are two contracts, one signed in country of origin and one in country of destination, this is considered to be human trafficking. In Lebanon, we generally consider the most recent contract signed. However, in the end the contract considered is at the judge's discretion.

*A victim/criminal duality exists in many cases, preventing workers from filing cases. On one hand, they have been exploited, but on the other hand they leave their employer without permission/release. Can you explain this duality and its impact on migrant domestic workers?*

The term “runaway” is pervasive, but it is extremely problematic. When workers leave, the fastest recourse for employers is to charge them with theft, which results in imprisonment. The threat of being charged with theft often prevents workers from raising complaints. Many workers charged with theft are imprisoned and do not even know why they have been detained. They become victims of injustice twice, and are punished severely.

Theft is an important concept for migrant workers in the region. Caritas Lebanon looked at the numbers of theft cases involving migrant workers; of 1,215 cases reviewed, only 12% were found to be real cases of theft. Of the 136 cases that reached final judgement, only 10 migrant domestic workers were convicted. Nonetheless, theft is systematically used to exploit migrant workers.

*All governments like to show that they are taking action to combat human trafficking, with many governments passing national legislation on this issue, training law enforcement, opening shelters, etc. But on the ground, this reality can be challenged. What response is necessary?*

In Jordan, human trafficking legislation has become one of the best means to protect workers, because governments are keen to work on this. However, Jordanian trafficking law was adopted very quickly and was essentially a copy/paste of the Palermo Protocol. Judges don't understand what trafficking is, because Jordanian law is wide and vague. Words like “exploitation” are not clearly defined.

## *Reactions*

On violence against women: While cases of wage theft are important, a pressing concern is sexual exploitation and rape. Gender-based violence is a major complaint of returnee migrants, but these allegations are difficult to prove in court. In Lebanon, courts refer to “commencement de preuve” (beginning of a proof)—where plaintiffs do not necessarily have enough evidence for a judge to issue a ruling. This is not necessarily a failure of the legal system; if you are going to court you need to prove your claim.

On media, bureaucrats, businesses, and other actors: How do other constituencies view legal work on these issues? Media support is necessary, although often it is skewed towards sensationalist cases or when celebrities or high-profile people are involved. Work with embassies/consulates is also crucial, as these actors have an interest in intervening. Embassies can provide interpretation support and can support the individual in their process of repatriation. Also, working with someone from their own nationality helps the worker to trust the process and their supporters.

Speakers: Elizabeth Frantz, Program Officer for Asia, Open Society Foundation & Simon Cox, Migration Lawyer, Open Society Foundation

Elizabeth Frantz and Simon Cox discussed the work and reporting of the Open Society Foundation (OSF) on access to justice and migrant workers' rights violations in Indonesia and Nepal. OSF's research focused on mapping the legal framework and policy mechanisms available in each of these countries.

OSF's findings mirrored much of what was said by representatives throughout the LBB program. For instance, they highlighted the violations that occur prior to a migrant worker's departure due to the activities of recruitment agencies and private brokers, ranging from fraud and misrepresentation to overcharging of fees and withholding of documents.

While there are extensive policies designed to regulate labour migration in both Indonesia and Nepal, migrants remain unable to properly access legal redress for rights violations. OSF's researchers posit that the problem is not the policies, but the implementation of those policies. Also, migrant workers lack awareness of their rights and are often misled and misinformed by unregistered agents.

OSF's research also revealed particular challenges for women migrant workers and undocumented workers. Bans on female migration to countries in West Asia lead to further exploitation of women and worker abuse.

Recommendations from the two country reports include:

- Increase resources for redress mechanisms
- Expand and coordinate research efforts on redress mechanisms
- Provide greater procedural clarity to embassies and departments of foreign affairs
- Provide additional education and information to migrant workers on their rights
- Increase regulation of recruitment agencies and village level brokers

With respect to the legal regimes under which migrant workers should seek redress, policies are unclear and migrant workers lack awareness of these policies. Many countries, including Indonesia and Nepal, have underdeveloped communities of legal practice, with no means for legal practitioners to share information with one another. Where there is space created, it is not often taken up because legal practitioners do not have a culture of information sharing. Likewise, there are few written materials or training manuals for lawyers who want to work with migrants. Lawyers need guidance and training for this specialized area of work, with a focus on how to use laws properly in migrant worker cases. Stronger cooperation is also needed between lawyers and CSOs.

### *Reactions*

On regulating recruiters: It is difficult to regulate village brokers and subagents. How can we expect governments do this effectively? In Nepal there is a system of registration for brokers, and linking labour brokers and recruiters via the foreign employment board. This is one way to start working on this.

On engaging foreign missions for access to justice: Perhaps a study is needed to assess the role of embassies in implementing available supports. Most embassies are not as engaged in protecting migrants' rights as perhaps they should be, as they are dealing with other business. LBB should think about how to engage this. Simon responded that this is the realm of CSOs, and that we should proceed with caution in what we demand from embassies, because they also have limited resources. However, other lawyers expressed support for the idea of working on embassy mandates.

On recruitment bans: There was a small debate on the issue of recruitment bans and their effectiveness in rights protection. One participant argued that while bans are not a good policy tool, if a country implements a ban then the host country should also respect that ban in the issuance of work permits. Others disagreed, indicating that bans are a race to the bottom for rights protection and merely result in risky undocumented migration.

## Access to Justice through Constitutional Law Remedies & People's Tribunals

Speaker: Colin Gonsalves, Senior Advocate for the Supreme Court of India

Moderator: Renuka Balasubramaniam, Malaysia

### *Part 1: Grounds for constitutional cases: the right to life*

In part 1 of this session, Colin Gonsalves revisited in more detail an idea he presented in his first session: the potential for the use of constitutional law to grant remedies and change laws to favour the rights of migrant workers. He argued that in countries with constitutions, considerable legal change is possible via constitutional challenges.

Virtually all constitutions enshrine an inalienable right to life in one way or another, and right to life clauses are not generally restricted to citizens, thereby extending this right to foreigners also. Migrant workers in such countries have their right to life enshrined in the law as a result. For lawyers, often our vision is limited by regulations and rules; this has the crippling effect of making us think we are working in a box. However, dreaming is possible.

Constitutions are vast in their application. Countries with constitutions have constitutional supremacy, not parliamentary supremacy. In countries with parliamentary supremacy, rule is by the majority and minority rights can fall by the wayside. In countries with constitutional supremacy, minority rights do not have to be articulated by parliament, as they reside in the constitution. What follows is that laws made by regulations, policies, and practices can be found illegal or unconstitutional in the courts. As such, the constitution can materially alter what the government says.

To take on a constitutional action, a great deal of documentation and facts are required. For migrant workers, much of what has been presented in the country presentations of this conference could be used – e.g., the suffering of the workers, the way the government uses theft to terminate contracts and justify imprisonment, etc. We already have the foundation to launch a constitutional challenge. On that basis, we need to articulate the demands of such a constitutional challenge.

One of the best ways to document material for a case is to consider best practices / best judgments that have come from the courts. Thus, the first step would be to document judgments of the courts of different countries; this would be the foundation for Public Interest Litigation.

A potential next action would be to get constitutional lawyers as allies in each country; they may not have expertise on migrants' issues, but they will understand how to use constitutional law in their respective countries to take on such a task.

An important forum could be judicial colloquia — in a judicial colloquium, we bring together judges, chief justices, or former chief justices from different countries for a 2-day discussion on a specific subject. In such a forum, it would be possible to create a judicial environment in which judges are open to looking at these issues, the complex web of laws governing migrant workers, and to get their opinions and advice in a pre-PIL stage. Such meetings could be held in two or three countries, so that when cases come to their courts, their minds are already open to the issues.

This proposal is a different way of thinking, pushing the boundaries of law, and moving beyond the boxes and confines of statutes and policy. It is a melding of dreaming and practicality.



## *Reactions*

Challenges for this strategy: How can progressive interpretations of the right to life be expected in the Gulf? How can lawyers respond when the courts ask for particular regulations when citing “right to life? The strategy would not be pursued in the Gulf. It would be more likely to be effective in countries of origin, as sending their workers abroad is part of the sovereign activities of the state, and the state is duty bound to protect them while they are abroad. We can perhaps improve the conditions for workers in Qatar by taking constitutional court actions in their country of origin.

To make the argument, lawyers must take the human rights approach to constitutional law. Human rights law combines legal approaches with resistance. Change is not won by brilliant arguments, but because of protests and resistance. There must be an interaction between lawyers and movement people, in a common discourse, not in the confines of an academic environment. Judges will move when they realize that people will not accept the judgments they deliver. To change the way judges think, you have to mobilize instead of resigning yourself to conservatism.

On the idea of judicial colloquia: Pakistan holds judicial academies where judge training happens regularly. Perhaps we can collaborate with them on this to include migrant workers. There could be funding support for such an initiative from the ILO or other organizations.

## *Part 2: Using public interest litigation to define the role of embassies*

One strategy that could be developed would be the formulation of guidelines to be issued by supreme courts for the protection of migrant workers. Such guidelines would have the status of law, and would thus be binding. It would be a pronouncement about what the Supreme Court should do to protect migrant workers abroad.

In the current situation, protection measures are left to governments, with the embassy as the last authority. If the government does not listen, there is seemingly nothing left to do and the migrant worker is abandoned.

Question: Can a country govern by the right to life in the constitution and discard its workers in the country of destination? Can a country say there is no law to help in these cases? No. There is a constitution that requires the government to be proactive. So our question is, what should the court tell the government, and what should the government tell its foreign missions to do? We need to go beyond calling for “protection,” and be specific about what this means. What are the practical problems that migrant workers face that should be addressed and related to the duties of governments? If we decide what we want, then we can ask the courts.

PIL in such a case would be historic: what the executive can't achieve, the courts can.

## *Reactions:*

Complicating factors: PIL is taken up against the person who is directly causing the problem (e.g., torture cases taken up against police, labour rights cases taken up against employers). The bad actors driving exploitation will not be the direct defendants in these cases, because they are recruitment sub-agents or corrupt officials. We would essentially be asking the courts to do a better job regulating how agents behave rather than taking a bad agent to court. We need to be realistic about what governments can do; some countries have very few resources for their embassies. We need to change the behaviour of actors, e.g., employers and recruiters.

While it is true that PIL cases are enormously complicated, it would make a significant difference for embassies to have scrutiny under Supreme Court guidelines. This does not mean we cannot also ask for prosecutions of corrupt agents; this is also a real possibility.

Speaker: Torsten Schackel, Senior International Labour Standards Specialist, ILO

When we speak of rights in international law, we are not talking about specialized rights that apply to migrants but the fundamental rights for all. In human rights treaties, some can be defined as citizens' rights that do not apply to migrants, but there are very few in this category (political rights only). Instruments dealing with migrant rights may not be helpful in practical application, because ratification record is weak (only countries of origin ratifying), but that does not mean there is no action to be taken in relation to these instruments.

There are four important instruments dealing with migrant issues directly:

(1) UN Migrant Workers Convention

Adopted in the General Assembly, but ratifications lag (only 47 states, and no EU or Gulf Countries). It covers the rights of undocumented migrants as well as documented migrants. However there is too much detail in the convention, which may have precluded some states from ratifying.

(2) ILO C143

This convention states that all governments must respect the rights of all migrant workers, and provides non-discrimination provisions.

(3) ILO C97

This convention speaks to the human rights of migrants who are not in an irregular situation. Provisions are in place to ensure that migrant workers can claim benefits and present their cases to competent bodies. It has seen only limited use, with only one ratification in Asia. Italy, Norway, and Sweden are the only receiving countries that have ratified.

(4) ILO C189

This is the domestic workers convention, applying also to migrants. It is only 2 years old, and has 14 ratifications, so the impact is unknown as yet.

Overall, there are a number of human rights conventions that can also be applied to migrants:

(1) ICCPR and ICESCR are the two primary human rights conventions

(2) CRC, CERD and CEDAW can also be used in specific cases.

In Asia, governments have been cautious about ratifying some of the important human rights instruments, and advocacy for ratification may be needed. Many rights are included in these instruments regardless of ratification. However, where ratifications have exist, it is possible to use the treaties to support migrants' rights via regular reporting to treaty bodies (shadow reports) and through individual complaints procedures.

In addition to treaty-based mechanisms, there are special procedures:

(1) Send a letter of allegation of a rights breach or request for urgent action

(2) Report to the Special Rapporteur on the Human Rights of Migrants or any of the other relevant SRs

(3) Use UPR mechanisms

For labour rights, there are 4 fundamental types:

(1) Freedom of Association

(2) Elimination of Forced Labour

(3) Abolition of Child Labour

#### (4) Elimination of Discrimination in Respect of Employment

These rights apply regardless of the ratification of ILO treaties for any states that are members of the ILO. The ILO's complaints procedures should not be underestimated. While they are not so visible, this mechanism should not be ruled out. Three cases are brought forward each year, and all deliberations are available online.

#### *Reactions*

Advocacy for ratification: How can we pressure Gulf countries to ratify? The ILO and UN reminds states of the existence of these treaties, host workshops to introduce the concepts and encourage to ratify. The more states that ratify, the stronger the argument for ratification becomes.

Suggestion: It would be useful to migrants' rights advocates of the ILO were to publish a volume dedicated to migrant worker cases heard by the ILO standards committee.

#### Action Plan & Next Steps (as identified in workshop session)

Objectives for 2015-2016	<ul style="list-style-type: none"> <li>• Increase the number of lawyers in the network</li> <li>• Strengthen relationship between CSOs and LBB by establishing a common action plan to defend the rights of migrant workers with a clear advocacy strategy</li> <li>• Use the LBB network to build capacity and empower migrant workers</li> </ul>
Focus issues for LBB	<ul style="list-style-type: none"> <li>• Ratification of international instruments</li> <li>• Need for pre-departure orientations</li> <li>• Gender violence/sexual abuse</li> <li>• Withholding of passports and identity documents</li> <li>• Need for recruitment reform/regulation</li> <li>• Support for lawyers working on migrant issues in cases of defamation actions or other means of suppressing their work</li> </ul>
Areas of cooperation between LBB lawyers in countries of origin and destination	<ul style="list-style-type: none"> <li>• Cross-border cases</li> <li>• Legal assistance and case referral network/system</li> <li>• Evidence, documentation, translation</li> <li>• Unified digest of migrant cases in various regions</li> <li>• Strategic litigation</li> <li>• Trial monitoring</li> </ul>
Suggested activities for the next 2 years	<p><u>To Build/Strengthen the Network</u></p> <ul style="list-style-type: none"> <li>• Form a lawyers network on migration with office bearers in each country (LBB chapters)</li> <li>• Conduct exchange field visits among LBB members</li> <li>• Hold regular LBB meetings, regional and national, with regular reports from each region</li> <li>• Establish an advisory council for LBB to be active in coordination</li> </ul> <p><u>To Support Access to Justice</u></p> <ul style="list-style-type: none"> <li>• Institute a legal assistance and case referral network/system</li> <li>• Explore potential for constitutional law challenges (in countries where applicable)</li> <li>• Identify PIL opportunities</li> <li>• Work with judges to raise awareness of issues migrant workers face (e.g., judicial colloquia)</li> </ul>

	<p><u>Communications &amp; Research / Online Activities</u></p> <ul style="list-style-type: none"> <li>• Research, writing of articles – on migrants rights' and access to justice, legislation concerning migrant workers, descriptions of applicable laws in a broad/general sense</li> <li>• Create a database of cases, with online monitoring of cases and judgments</li> <li>• Create a database on legal systems of various countries of origin and destination</li> <li>• Create an online directory of those providing services to migrants (mapping service providers on the website)</li> <li>• Continue information sharing/exchange via listserv/website</li> <li>• Create a LBB Facebook Page to promote ongoing exchanges</li> </ul> <p><u>Outreach to Other Constituencies and Stakeholders</u></p> <ul style="list-style-type: none"> <li>• Build links between LBB network and parliamentarians</li> <li>• Promote work on migrant worker issues within bar councils</li> <li>• Engage in capacity building for grassroots organizations to navigate legal systems for cases they are working on</li> <li>• Look for possibilities for regional advocacy engagement (e.g., SAARC, ASEAN, GCC)</li> <li>• Form partnerships with government institutions</li> <li>• Conduct training for labour attachés on access to justice, rights, legal systems, etc.</li> </ul>
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**\*Note: For PowerPoint Presentations from country presentations, visit <http://lawyersbeyondborders.mfasia.org>**