

ENABLING ACCESS TO JUSTICE

A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East



Global Alliance Against Traffic in Women

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The Global Alliance Against Traffic in Women (GAATW) is an international alliance of more than 80 civil society organisations in 40 countries that works to promote and protect the rights of trafficked persons and migrant workers. GAATW understands the phenomenon of human trafficking as intrinsically rooted in the context of migration for labour. Therefore, the Alliance promotes and defends the human rights of migrants and their families against the threat of exploitation in a globalised labour market. It also advocates for safer migration and labour protections in all employment sectors in which slavery-like conditions exist.

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EXECUTIVE SUMMARY

In 2015-2016, the Global Alliance Against Traffic in Women's (GAATW) International Secretariat undertook a project called the 'South Asia – Middle East Access to Justice Project' (SAME A2J Project) as part of a larger initiative, 'Addressing Labour Trafficking of South Asian Migrant Workers in the Middle East.' The objective of the SAME A2J Project was to identify cases in which migrant workers who had travelled to the Middle East as temporary labour migrants were trafficked, and to identify the barriers those workers faced accessing justice. The rationale for the project was a perception within GAATW that migrant workers from South Asia who were coerced, defrauded or deceived into situations of severe exploitation were rarely treated as trafficked persons and rarely received an adequate remedy.

A total of thirteen partner organisations from seven countries (Bangladesh, India, Jordan, Lebanon, Kuwait, Nepal and Sri Lanka) participated in the project. All offer support to migrant workers and their families. They attended workshops to discuss the dynamics of trafficking in the context of labour migration, to share case examples, and to discuss barriers to justice. They continued to provide ongoing input and reflections on access to justice through email correspondence and in-person meetings with GAATW-IS staff.

This report aims to capture one area of learning that emerged from the project: the barriers that project partners experience or observe when supporting migrant workers to access justice. Although specific barriers to justice may differ between countries, and even regions within countries, project partners identified many in common. The following categories are used in this report:

- **Legal Barriers**, including ambiguous definitions of trafficking that may not cover all forms of trafficking, an emphasis in the laws on sexual exploitation, and exclusions of domestic workers and undocumented migrants from key protections.
- **Enforcement and Operational Barriers**, including a lack of understanding of trafficking in the context of labour migration among police and prosecutors, corruption or perceptions of corruption, bureaucratic overlap, and insufficient funding to migrant assistance programmes.
- **Practical Barriers**, including physical isolation, language and educational barriers, high costs, a lack of awareness of rights and where to find assistance, and challenges gathering evidence across borders.
- **Social and Cultural Barriers**, including stigmatisation of trafficked migrant workers, discrimination on the basis of gender, race or class, and a general mistrust of government.
- **Organisational Barriers**, including insecure funding, an overwhelming number of cases, staff turnover and lack of trained lawyers with expertise in trafficking and migration.

The report concludes with reflections on the lessons learnt by the GAATW-IS about the obstacles to justice for migrant workers, but also for organisations seeking to assist migrant workers and the effort required to overcome those barriers. It is not intended to dissuade civil society organisations or legal service providers from working to improve access to justice for migrant workers, but rather to highlight the complexity of human trafficking, and the many challenges along the road to justice.

The report recommends to civil society organisations, donors, researchers and others:

1. To continue conducting research highlighting exploitation and abuse in the context of labour migration and the extent to which trafficked migrant workers are able to access justice;
2. To offer targeted education and training to migrant worker organisations, anti-trafficking organisations, governments, embassies, law enforcement and communities regarding trafficking in the context of labour migration and the rights of migrant workers;
3. To develop standardised indicators and guidelines for identifying and handling trafficking cases;
4. To increase the funding available for organisations providing legal services to migrant workers;
5. To enhance collaboration between organisations in source and destination countries for the purposes of building relationships, and build a broader understanding of rights and redress mechanisms;
6. To support community and diaspora groups in countries of work that can advise and assist migrant workers in distress to file cases and gather evidence.

1. Introduction



Image 1: Bangladeshi women in one of the Pre-Departure Trainings for Domestic Workers in Bangladesh

In 2015-2016, the Global Alliance Against Traffic in Women (GAATW) International Secretariat undertook a project called ‘Addressing Labour Trafficking of South Asian Migrant Workers in the Middle East.’ The objective of the project was to make the case that trafficking was taking place ‘in the context of labour migration, with a special focus on female migrant workers.’¹

The impetus for this project was a perception among GAATW members and allies that trafficking was occurring in the context of government-sponsored temporary labour migration programmes, but that such cases were not receiving sufficient attention from governments or the anti-trafficking community. GAATW members in South Asia were reporting large numbers of cases in which migrant workers were coerced into migrating or deceived about the conditions or nature of the work that awaited them in Middle East countries and then found themselves in situations of severe exploitation. Governments, however, were not acknowledging such cases as trafficking, and the victims of trafficking were not receiving essential services and protections.

One component of the larger project was understanding and improving access to justice for trafficked migrant workers, called the ‘South Asia – Middle East Access to Justice Project’ (SAME A2J Project). The GAATW-IS partnered with migrant worker support organisations in seven countries (four in South Asia and three in the Middle East) to identify cases that may constitute trafficking, to follow efforts to seek

¹ Global Alliance Against Traffic in Women International Secretariat, ‘Addressing Labour Trafficking of South Asian Migrant Workers in the Middle East,’ April 2014, submitted to the Swiss Agency for Development and Cooperation (SDC).

justice in these cases, and to identify obstacles to migrant workers obtaining redress. Ultimately, the project sought to strengthen the capacity of partner organisations to handle cases of trafficking by understanding the challenges they face and by working together to develop solutions.

This report is the culmination of the work done over the two years of the project. It draws from the extensive conversations and meetings with project partners and allies as well as from workshops in three countries with service providers and legal experts. It provides a unique view of anti-trafficking work from those on the front line of migrant worker assistance, handling cases every day brought by migrants in distress and their families, often with few financial and human resources.

It is hoped that this report will enable organisations new to anti-trafficking work to learn from the experiences of the project partners about the need for comprehensive legal assistance to migrant workers who have been victims of serious exploitation. It is also hoped that it will serve as a resource for donors considering projects to improve access to justice for migrants, to understand the challenges and possibilities and to lay the groundwork for future collaboration and strategic alliance building.

GAATW's Access to Justice Programme

GAATW is an international alliance of more than 80 civil society organisations in 40 countries that works to promote and protect the rights of trafficked persons and migrant workers. GAATW understands the phenomenon of human trafficking as intrinsically rooted in the context of migration. Therefore, the Alliance promotes and defends the human rights of migrants and their families against the threat of exploitation in a globalised labour market. It advocates for safer migration and protections in all employment sectors in which slavery-like conditions exist. The GAATW International Secretariat, based in Bangkok, supports Alliance members and partner organisations with research, advocacy, networking and capacity building.

The GAATW-IS has had a programme on access to justice for trafficked persons since 2006. This programme was born out of a recognition that access to justice was often the forgotten aspect of the prevention-protection-prosecution anti-trafficking triad. Whereas significant resources were being put into prevention of trafficking and immediate protection, little attention was given to the experiences of trafficked persons who participated in trafficking prosecutions or who were seeking to access other remedies such as compensation or return of unpaid wages. Thus, the programme emphasises the centring of the needs and desires of trafficked persons during prosecution and other legal processes.

The Access to Justice Programme aims to:

- Increase and broaden the spaces within which trafficked persons can enforce their rights and obtain compensation, accountability of wrongdoers or other remedies;
- Design and implement projects to support member organisations and partners assisting trafficked persons and migrant workers to access justice; and
- Produce comprehensive, critical, bottom-up analyses of anti-trafficking frameworks, the ways in

which trafficked people view justice, the hurdles they must overcome, the legal frameworks and services available to them, and laws, policies and programming initiatives attempting to ensure that they are able to access justice and their human rights.

Programme activities have included international and national consultations with members, trafficked persons and actors in the justice sector, research projects to understand the needs and perspectives of trafficked persons and those who support them, awareness raising activities within the membership and advocacy for more and better national efforts to promote access to justice in trafficking cases.

The SAME A2J Project

The SAME A2J Project, undertaken between 2015 and 2016, built on these earlier efforts by looking at access to justice in the transnational context along the South Asia to Middle East migration corridor.

Partnerships were key to this project. Rather than partnering only with GAATW member organisations, which by-and-large work with identified trafficked persons, the project also engaged with outside that support migrant workers and their families. This was done to reach those organisations that have most contact with migrant workers in distress but that may not be familiar with anti-trafficking frameworks, . Further, the project sought partners in both origin and destination countries to understand the challenges to seeking justice at all stages, and to build relationships between organisations across borders.

The thirteen project partners were organisations based in South Asia or the Middle East that provide assistance to migrant workers (see Table 1).

Table 1: Organisations participating in the SAME-A2J Project by country

Country	Partners
South Asia	
Bangladesh	Ovibashi Karmi Unnayan Program (OKUP) Bangladeshi Ovhibashi Mohila Sramik Association (BOMSA)
India	National Domestic Workers Movement (NDWM) National Workers Welfare Trust (NWWT)
Nepal	Pourakhi People Forum Women’s Rehabilitation Centre (WOREC)
Sri Lanka	Center for Human Rights and Development (CHRD)
Middle East	
Jordan	Tamkeen Fields for Aid Solidarity Center Arab Network for Migrant Rights
Kuwait	Kuwait Society for Human Right
Lebanon	Kafa (enough) Violence & Exploitation

All of the partners provide some legal assistance to migrant workers, including advice about legal rights and options and negotiation with recruiters, agents and employers. The partners ranged, however, in size and focus. Two – People Forum and Tamkeen Fields for Aid – are legal aid organisations. They have practicing lawyers on staff and provide legal representation to clients in court and tribunal proceedings. The remaining organisations provide general assistance to migrant workers and family members, including legal advice and support, but do not offer formal legal representation.

In addition, the level of involvement of partners in the SAME A2J Project varied over the period of the project. All partners were engaged during the case analysis workshops (see below) and some were deeply involved in follow-up activities. The organisation from Sri Lanka had to end its participation partway through the project due to funding limitations.

Box 1: What is ‘Access to Justice’?

For the SAME A2J project, and this report, ‘access to justice’ is defined as the ability to access, in practice, a just remedy to an individual harm, obtained through a fair, efficient and transparent legal process. What constitutes a ‘just remedy’ depends on the nature of the harm and the wishes of the individual migrant worker. Project participants described the following remedies that they seek for their clients:

- Punishment of offenders through a criminal investigation and prosecution;
- Compensation for unpaid wages and migration costs;
- Compensation for other physical and financial harms, losses, or pain and suffering;
- Compensation for families of deceased migrant workers;
- Penalties imposed on recruitment agencies to remove bad actors, such as blacklisting, bans, or closures; and
- Immigration relief – for example the ability to stay in the country of work to bring a case, or to change employers. Alternatively, the ability to return home with payment of large exit fees.

Trafficking cases can involve numerous and serious harms. Justice may require seeking several remedies simultaneously. This may in turn require turning to various institutions, including criminal courts, civil courts, labour tribunals, or other institutions. It also may include informal processes, such as negotiation with recruitment agencies for a settlement.

Several things were not included within the scope of access to justice for this project: rescue from trafficking situations, repatriation, medical care, shelter and food, counselling, or other care. These protections and support services are essential and often a necessary precursor to accessing justice, but were not in themselves considered redress for rights violations.

Second, both migrant workers and partner organisations pointed to the need for larger social and policy changes to truly address the harms workers suffer. They called for fairer and more transparent laws, changes in social attitudes to be more supportive of women migrant workers, and more advocacy from origin country governments to protect their citizens abroad. While not a focus of the SAME A2J Project, these structural issues were discussed in the November 2016 civil society consultation.

Project Activities

The main activity of the SAME A2J Project was a series of case documentation workshops: one in Bangkok for partners from South Asia, and two in the Middle East (Jordan and Lebanon). Participants in these workshops presented possible trafficking cases that they had handled, and the steps they had taken to provide a remedy to the workers involved.

Participants at the workshops requested support to improve identification and documentation of trafficking cases. Follow-up activities included developing a list of indicators and draft intake forms to identify trafficking cases and gathering case data on trafficking cases identified. The GAATW-IS also arranged an exposure trip to Kuwait for partners from India to strengthen cross-border relationships.

To conclude the SAME A2J Project, in November 2016, the GAATW-IS organised an international workshop, entitled 'Rights and Justice in the Context of Labour Migration: A civil society consultation'. All project partners attended, as well as other NGOs, funders, journalists and experts in trafficking and labour migration. This consultation linked individual cases presented by project partners with larger movements for justice – social justice, economic justice, and gender justice. Participants discussed the social forces contributing to labour migration and a lack of access to justice and how working within different movements could overcome some of the barriers to justice that migrant workers face.

A complete list of project activities and participants are included in Annex 1 to this report.

This Report

This report aims to capture the barriers to access to justice as experienced and understood by organisations working directly with exploited and trafficked migrant workers. Although the specific barriers may differ between countries and even regions within countries, project partners identified many barriers commonly shared by partners, including:

- Legal Barriers
- Enforcement and Operational Barriers
- Practical Barriers
- Social and Cultural Barriers, and
- Organisational Barriers within Service Providing Organisations.

The report concludes with reflections on the lessons learnt by the GAATW-IS about the obstacles to justice for migrant workers, and for organisations seeking to assist trafficked migrant workers.

The main sources of content for this report are annotated discussions of the workshops, notes of other meetings in both regions, and of conversations between the GAATW-IS and partner organisations. Partners in Nepal and in Bangladesh also drafted internal joint reports summarising some of their own

learnings from the project, which have been quoted in this report.²

The report also includes a sample of the cases handled by partners to provide concrete examples of the challenges. In addition, where GAATW-IS staff noted positive examples or strategies for improving access to justice, these have been included. Some desk research has been incorporated to give additional context, but the GAATW-IS did not undertake additional field research for this report.

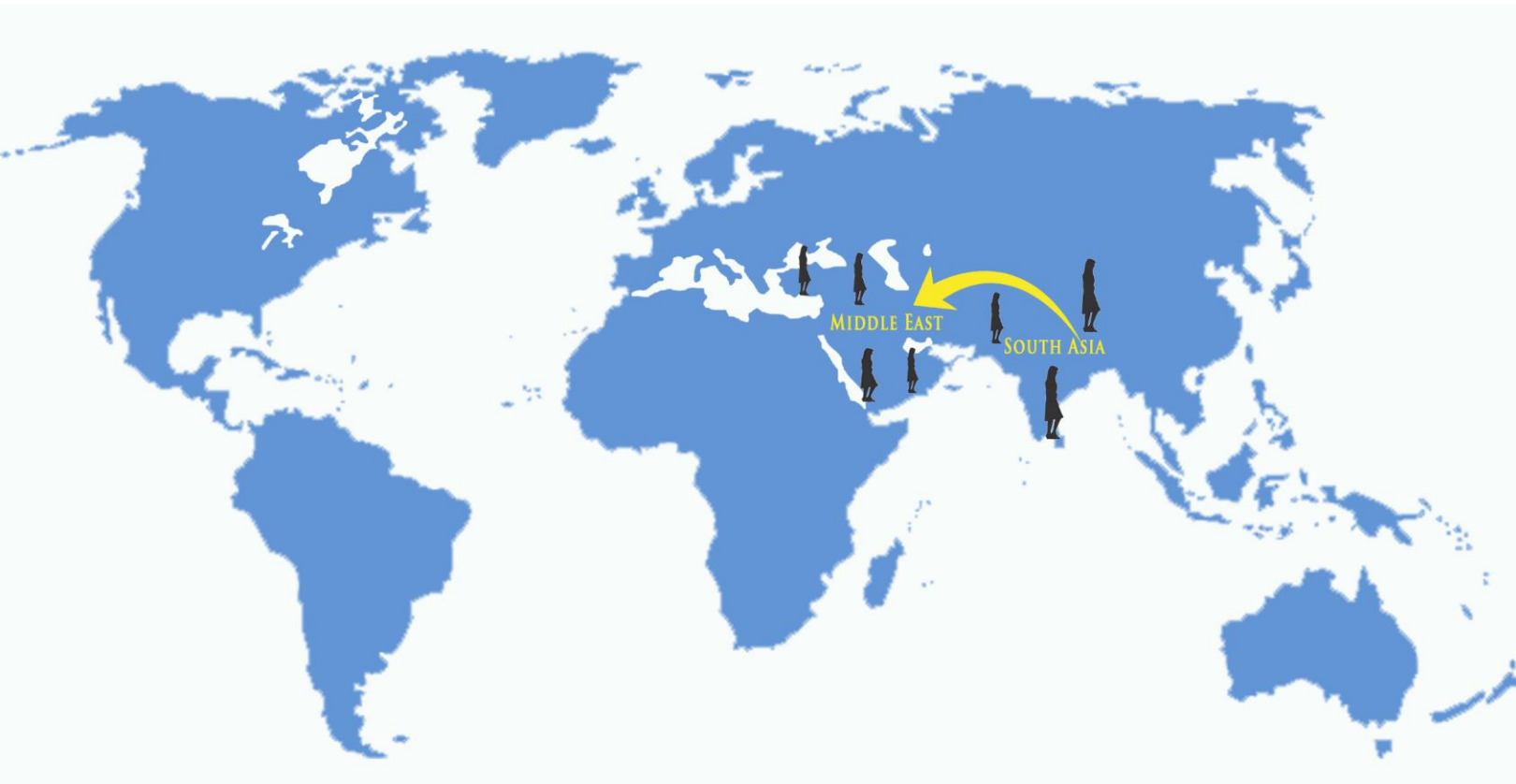
To protect the identities of migrant workers, all names and identifying details have been changed. Furthermore, all the project workshops followed Chatham House Rules and quotes woven throughout the report are not attributed to specific speakers; rather, citations are limited to the country in which the speaker works and the event at which the statement was made.

This report should be read with several limitations in mind. Most notably, by focusing on the perspectives of migrant worker support organisations, the report has not included the views of the various law enforcement officers and government agencies engaged in resolving migrant worker complaints or allegations of trafficking. Further, trafficked migrant workers themselves were not interviewed and it is possible they would identify more or different barriers than those that the partner organisations have highlighted. Migrant domestic workers shared their perspectives at various meetings in the Middle East and these have been included where possible. The views and experiences of both of these other groups would be useful for future research.

² Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016; Joint report by OKUP and BOMSA, submitted to GAATW as part of the SAME A2J Project, November 2016.

2. Background and Context

Migrant Workers from South Asia to the Middle East



The Middle East relies on large numbers of temporary migrant workers. The International Labour Organisation (ILO) estimated in 2016 that over a tenth of the world's migrant workers were in the Middle East and that 35.6 per cent of all workers in the region are migrants.³ In some Gulf countries, the percentage is significantly higher. For example, non-citizens comprised 83 per cent of the labour force in Kuwait in 2013.⁴

Many of these workers come from South Asia. Over 1.5 million migrants from Bangladesh, India, Nepal and Sri Lanka were working in Jordan, Kuwait and Lebanon (the SAME A2J Project countries) in 2015 (see Table 2). Virtually all migrant workers from India and Sri Lanka, and between a half and two-thirds of migrant workers from Bangladesh and Nepal, travel to the Middle East to work (see Table 3).

³ International Labour Organisation (ILO), 'ILO Global estimates of migrant workers and migrant domestic workers: results and methodology', 2015, available at: http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm

⁴ Public Authority for Civil Information as compiled by Gulf Labour Markets and Migration, available at <http://gulfmigration.eu/labour-force-by-nationality-kuwaiti-non-kuwaiti-activity-sector-and-sector-of-economic-activity-male-workers-2013/>

Table 2: Number of migrants from four South Asian countries in Jordan, Kuwait and Lebanon, 2015⁵

Country of Origin	Reported number of migrants in Jordan	Reported number of migrants in Kuwait	Reported number of migrants in Lebanon	Total
Bangladesh	12,266	350,299	3,046	365,611
India	6,237	1,061,758	1,548	1,069,543
Nepal	197	22,687	0	22,884
Sri Lanka	13,175	36,556	3,271	53,002
Total	31,875	1,471,300	7,865	1,511,040

Table 3: Percentage of all migrant workers employed in the Middle East by country⁶

Country of Origin, year of latest available statistics	Percentage of migrant workers deployed to Middle East
Bangladesh (2009)	65%
India (2012)	97%
Nepal (2009/10)	58%
Sri Lanka (2012)	95%

Most migrant workers from South Asia work in low-wage jobs, usually described in government data as ‘low-skilled’ or ‘unskilled’. Seventy-four percent of migrant workers from Nepal and Bangladesh, and 64 percent of workers from Sri Lanka are registered as working in ‘unskilled’ positions.⁷ The specific industries employing low-wage migrants differ between the three countries, depending on their economy and local population. The most common occupation is domestic work (see next section), but migrant workers also undertake a variety of other low-wage work. In Jordan, for example, migrant workers are employed in commercial cleaning, manual labour, agriculture, services, manufacturing and construction (see Table 4). The garment factory sector ‘employs a 75-80 per cent migrant workforce – some 30,000 people from Bangladesh, Sri Lanka, India and elsewhere’.⁸

⁵ United Nations, Department of Economic and Social Affairs, ‘Trends in International Migrant Stock: Migrants by Destination and Origin’, 2015. *NB:* The Department of Economic and Social Affairs does not disaggregate data based on reasons for migration (i.e. distinguishing between forced migration and migration for labour). However, these numbers still give an indication of the size of migration between these sets of countries.

⁶ UNESCAP, ‘Asia-Pacific Migration Report 2015’, 29 February 2016, available at: <http://www.unescap.org/resources/asia-pacific-migration-report-2015>.

⁷ 2013/2014, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and International Labour Organisation, ‘Analysis of Labour Market and Migration Trends in Nepal’, 2015, available at: http://ceslam.org/mediastorage/files/Labour%20market%20n%20migration_gizver%203.pdf; Bangladesh data Constructed by the Asia Development Bank, using data from the Bureau of Manpower, Employment and Training, and reported in ‘ABD Briefs: Overseas Employment of Bangladeshi Workers: Trends, Prospects, and challenges,’ 2016, available at: <https://www.adb.org/sites/default/files/publication/190600/overseas-employment-ban-workers.pdf>; Sri Lanka data compiled from United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), ‘Asia-Pacific Migration Report 2015’, 29 February 2016, available at: <http://www.unescap.org/resources/asia-pacific-migration-report-2015>.

⁸ ILO, ‘Migrant workers in Jordan are making their voices heard,’ 2012, available at: http://www.oit.org/global/about-the-ilo/newsroom/features/WCMS_195584/lang--en/index.htm

Table 4: Percentage of migrant workers in Jordan employed in key employment sectors⁹

Sector	Percentage of Migrant Workers in Jordan
Cleaning, services, loading and unloading: domestic workers, street cleaners, and manual labour	30.8%
Agricultural	28.1%
Social and personal services	25.3%
Manufacturing	21.5%
Retail and hospitality	13%
Construction	8.9%

The reasons for migration from South Asian countries vary between individuals. In general, project partners believed that migrant workers are ‘pushed’ by limited opportunities for employment at home and limited access to education and skills training as well as personal and family circumstances and attributes such as sex, gender, race, ethnicity, class and caste.

Macroeconomic policies also impact individual decision-making. Migration experts at the November workshop discussed how privatisation, structural adjustment programmes and cuts to social welfare schemes have increased poverty and pushed people out of rural areas into cities or into overseas migration. Other factors contribute to a lack of decent work options such as corruption, trade deals, and increasing informalisation of labour, which lowers wages and conditions. These policies have increased economic insecurity and the precarity of labour, making migration abroad one of the only opportunities for advancement.

Gender and Migration

All project partners assist both male and female migrant workers, but the trafficking cases presented in the case analysis workshops all involved women migrants. This is likely due both to the larger number of women who migrate abroad for work, as well as the greater precariousness of women’s migration.

As noted above, the largest employment sector in all three countries for migrant workers is domestic work. In Kuwait, for example, over ninety per cent of households together employ around 600,000 migrant domestic workers.¹⁰ Similarly in Jordan, forty percent of migrant workers are domestic workers or cleaning services, and one organisation estimated that 50,000 registered migrant workers and 30,000 irregular workers are employed in this sector.¹¹ In Lebanon, domestic workers comprised 75 percent of

⁹ 2010 Statistics from Tamkeen Fields for Aid, ‘Jordanian Labour Market: Needs for migrant workers and the views of its employers’, available at: <http://tamkeen-jo.org/publications/>

¹⁰ Migrant-rights.org, <https://www.migrant-rights.org/statistic/domesticworkers/> and Public Authority for Civil Information as compiled by <http://gulfmigration.eu/labour-force-by-nationality-kuwaiti-non-kuwaiti-activity-sector-and-sector-of-economic-activity-male-workers-2013/>

¹¹ 2010 Statistics from Tamkeen Fields for Aid, ‘Jordanian Labour Market: Needs for migrant workers and the views of its employers’, available at: <http://tamkeen-jo.org/publications/>; Tamkeen Fields for Aid, ‘Invisible Women: The Working and Living Conditions of Irregular Migrant Domestic Workers in Jordan’, 2015, available at: <http://tamkeen-jo.org/download/Invisible%20Women%20English%20.pdf>

the 189,373 work permits issued to foreign workers in 2012.¹² If undocumented migrant domestic workers are included, the number of migrant domestic workers in Lebanon was estimated in 2016 to be around 250,000.¹³

The higher demand for female workers was explained by partners in the Middle East as a result of the oil crisis, which had led to fewer employment opportunities in construction and agriculture – typical sectors for male workers. In addition, aging populations and increased numbers of women seeking work outside the home have created demand for female domestic workers to fill the reproductive labour gap. This includes care for children, caring for aging parents, and maintaining a household.

As with other traditionally female work, domestic work is under-valued and referred to by governments as ‘unskilled’. For example, Sri Lanka (one of the few countries in the region to share data disaggregated by sex) reports 39 per cent of male migrant workers are ‘semi-skilled’ or ‘unskilled’ workers while 93 per cent of female migrants are ‘unskilled’ domestic workers.¹⁴

In South Asia, partners noted that the shift in demand from male to female migrant workers has placed pressure on women to migrate abroad for work but also created resentment of women who are now the main earners in the family. One organisation from Nepal, explained, for example:

‘If you migrate you are stigmatised: you’re a woman but you’re leaving your family to go out to work? But if you don’t migrate you’re stigmatised: you’re educated and yet not contributing to family income.’¹⁵

Migration into domestic work is inherently high-risk, because the workers are isolated and under the control of their employers. The vulnerability of women domestic workers has been heightened by government policies that, for example, restrict women’s migration to protect them from abuse.¹⁶ These restrictions forced women to migrate through irregular channels, for example by falsifying documents, leaving from airports that are not authorised departure points for migrant workers, or relying on unregistered agents and agencies. Nepali scholars estimate that ‘nearly 80 per cent of the women departing Nepal for employment are undocumented.’¹⁷ It is also estimated that of migrants from Nepal

¹² ILO and Caritas Lebanon Migrant Center (CLMC), ‘Access to Justice for Migrant Domestic Workers in Lebanon’, 2014, available at: http://www.ilo.org/beirut/publications/WCMS_395802/lang--en/index.htm

It is important to note that while domestic work is the largest sector of documented migrant work, Lebanon’s refugee populations (with increased numbers of Syrians now, as well as a long-term Palestinian population) are also part of the migrant workforce but do not or cannot apply for work permits, making it difficult to analyse the full scope of migrant labour. As Syrians or other refugees may be filling positions in common migrant labour sectors like construction, manufacturing, retail or hospitality, the refugee population may have an impact on the types of labour opportunities open to South Asian (or other) migrant workers.

¹³ ILO, ‘A study of the Employers of Migrant Domestic Workers in Lebanon: Intertwined’, 2016, available at: http://www.oit.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524149.pdf

¹⁴ United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), ‘Asia-Pacific Migration Report 2015’, 29 February 2016, available at: <http://www.unescap.org/resources/asia-pacific-migration-report-2015>

¹⁵ *Rights and Justice in the Context of Labour Migration: a civil society consultation, 3-5 November 2016, Bangkok, Thailand.*

¹⁶ South Asian countries have imposed so-called ‘bans’ on migration at various times. Nepal, for example, forbade women under 25 from traveling to the Middle East to undertake domestic work between 2012 and 2015. See ILO, Labour Migration Branch, Fundamental Principles and Rights at Work Branch, *No Easy Exit: Migration Bans Affecting Women From Nepal*, 2015, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_428686.pdf

¹⁷ United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), ‘Asia-Pacific Migration Report 2015’, 29 February 2016, available at: <http://www.unescap.org/resources/asia-pacific-migration-report-2015>, citing C Rana, ‘Foreign employment: Issues of

using irregular channels, up to 90 per cent are women. Irregular migration puts women at greater vulnerability to deception and exploitation because they cannot independently verify the promises made by agents, and are afraid to seek assistance from authorities.¹⁸

The Structure of Labour Migration Programmes

Both origin and destination countries in the South Asia – Middle East migration corridor have formal programmes for sending and receiving migrant workers. Programmes differ between countries, and it is not within the scope of this report to undertake a thorough examination of labour migration programmes, but a brief overview provides context to discussions of access to justice.

In origin countries, labour migration programmes usually require payment of certain fees to obtain government approvals to migrate abroad, passing of a medical examination, and attendance at pre-departure trainings or orientations. Private actors usually play a large role in origin country programmes, such as managing recruitment and placement, managing training centres, providing medical screenings, and offering loans and insurance and other services. These industries are regulated to varying extents by national and local authorities.

In destination countries, temporary migration programmes limit the numbers of workers that can arrive each year and the sectors into which they can be placed. Prospective employers must obtain certain government permissions to recruit and employ overseas workers and maintain responsibility for those workers after they arrive. In some Middle Eastern countries, employer sponsorship is referred to as the *kafala* system, and it essentially bonds the worker to the employer, preventing the worker from changing employers or from leaving the country without the employer's permission. These 'controls' on foreigners are also intended to protect local cultures by making it impossible for migrant workers to settle permanently in the country of work.¹⁹

In both origin and destination countries, the complexity of rules and regulations governing migration and the difficulty in recruiting or job-seeking across borders have created a dependence on intermediaries. These range from large recruitment or outsourcing agencies, to individual 'facilitators', commonly called agents, who link hopeful migrants to recruitment agencies and manage migrants in the country of destination. Reliance on these intermediaries also introduces a requirement to pay large service fees, for which many migrant workers must borrow money from family, money-lenders or the agents themselves.

The structure of temporary labour migration programmes makes the migration experience inherently

Nepalese women migrants', in *Migration from Nepal: Policy and Reality*, 2013; G Gurung (ed.), Kathmandu: First National Conference on Migration Organizing Committee.

¹⁸ P Ghimire, 'Review of migration and development policies and programmes and their impact on economic and social development, and identification of relevant priorities in view of the preparation of the post-2015 development framework', Nepal Country Statement on Agenda Item 5, Asia Pacific Regional preparatory meeting for UN General Assembly High-level Dialogue on International Migration and Development, Bangkok, 29–31 May 2013.

¹⁹ N Lori, 'Temporary Workers or Permanent Migrants? The Kafala System and Contestations over Residency in the Arab Gulf States,' *Institut français des relations internationales* (Ifri), November 2012.

disempowering for migrant workers. Dependence on recruiters and agents places migrant workers in a deeply unequal negotiating position, as they are usually unable to independently seek positions abroad or to independently verify promises about the nature or conditions of work. In the country of work, formal dependence on the employer through the *kafala* system, and debt obligations arising from migration costs, make it extremely difficult for workers to challenge exploitative conditions or seek new employment. This creates an environment conducive to severe exploitation and trafficking in persons.

Trafficking between South Asia and the Middle East

Given the precariousness of labour migration, migrant workers are vulnerable to abuses by various agents, agencies and employers. Where workers are forced to work, the situation may constitute forced labour. Where the forced labour was preceded by organised deception, fraud or coercion, the case may constitute trafficking in persons under international law (see below).

Abuses vary depending on the country, labour sector, and gender, but common problems include:

- Non-payment or under-payment of wages, or illegal deductions;
- Excessively long hours of work with no ability to request reduced hours or days off, and no vacation time;
- Physical, psychological and sexual abuse;
- Control over movement, communications, personal documents such as passports, and bank accounts;
- Unsanitary and inadequate living conditions;
- Inadequate food and medical care;
- Unsafe working conditions, leading to injuries or even death.

The ILO estimated that approximately 600,000 people were in situations of forced labour in the Middle East in 2013.²⁰ It identified factors that make migrant workers vulnerable to forced labour as the sponsorship immigration system, labour laws that do not protect migrant workers and impunity for employers and recruitment agents who abuse migrant workers.²¹

Nevertheless, despite these large numbers, project partners indicated that their governments have been slow to recognise the link between internal and overseas labour migration and human trafficking. They theorised that this is due to a narrow understanding of trafficking as equivalent to exploitation in the sex industry, and an unwillingness to highlight exploitation in the highly profitable migrant labour sector.

²⁰ ILO, *Tricked and Trapped*, p 14; The Global Slavery Index (which is widely criticised for its estimation methodology) found that there are over 2.9 million people 'enslaved' in the Middle East and North Africa region (see the Global Slavery Index 2016, available at <http://www.globalslaveryindex.org/download/>).

²¹ International Labour Organization, *Tricked and Trapped: Human Trafficking in the Middle East*, 2013, p. 14.

Legal Responses to Trafficking in Persons

Anti-Trafficking Laws

In all seven countries included in the SAME A2J Project, trafficking in persons is a criminal offense. Five countries (Bangladesh, Nepal, Jordan, Kuwait and Lebanon) have stand-alone legislation criminalising trafficking and defining penalties. Two countries— India and Sri Lanka – have amended their penal codes to criminalise trafficking, but do not have stand-alone anti-trafficking legislation.

Stand-alone statutes usually detail, in addition to crimes and penalties, responsibilities for implementation, and measures for protection and assistance to trafficked persons. In Bangladesh, for example, *the Prevention and Suppression of Human Trafficking Act (2012)* includes chapters on filing and investigating trafficking complaints, the establishment of an Anti-Trafficking Offence Tribunal and provisions for assistance, protection and rehabilitation. Nepal’s *Human Trafficking and Transportation (Control) Act (2007)* similarly includes provisions regarding investigation, victim rights, ‘rescue, rehabilitation and reconciliation’. Although Lebanon’s *Law No. 164 Punishment for the Crime of Trafficking in Persons, 2011* is less comprehensive, it still includes key provisions for witness protection and for the establishment of ‘agreements with specialized institutions or societies so that they may offer assistance and protection to the victims of [trafficking]’ among other protections.²²

Labour, Contract and Other Criminal Laws

All seven countries also have other laws that can address the harms migrant workers experience. It is not within the scope of this report to examine all potential legal protections for migrant workers, but relevant areas of law mentioned by partners include:

- Contract law – for making and enforcing contracts with employers and agencies;
- Criminal laws – for prosecuting physical and sexual abuse, fraud, or certain labour violations;
- Labour laws – for enforcing labour standards and seeking compensation for violations at work;
- Foreign employment laws – for seeking compensation from agents and agencies and, potentially, removing bad actors.

²² *Law No. 164 Punishment for the Crime of Trafficking in Persons, 2011, Article 586.9 and Section Seven.*

Box 2: International and Regional Commitments to Combat Trafficking

International and regional commitments provide a legal and normative framework for addressing trafficking. The definitions of trafficking and exploitation, in particular, frame debates on the nature of exploitation, and who should be considered a ‘victim of trafficking’ or forced labour.

The UN Trafficking Protocol: All but two of the countries involved in this project, Nepal and Bangladesh, have ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (UN Trafficking Protocol).²³ The UN Trafficking Protocol provides an international definition of trafficking in persons that includes all forms of exploitation, including exploitation in the context of labour migration.²⁴

Forced Labour Convention, 1930: This convention is widely ratified, including by all project countries. It defines forced labour and States’ corresponding obligations ‘to suppress the use of forced or compulsory labour in all its forms.’²⁵

Protocol of 2014 to the Forced Labour Convention 1930: modernises the Forced Labour Convention 1930 ‘to address practices such as human trafficking.’²⁶ The Protocol defines the conditions that make labour exploitative or forced in any sector. It sets out obligations ‘to prevent forced labour, to protect victims and to provide access to a remedy, such as compensation, and to protect all workers, particularly migrant workers, from fraudulent recruitment.’ However, as of February 2017, none of the project countries had signed or ratified the 2014 Protocol.

Regional Protections: All four project countries in South Asia are party to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002 (the SAARC Convention). The SAARC Convention defines trafficking as applying only to ‘the moving, selling or buying of women and children for prostitution’ and applies ‘with or without the consent of the person subjected to trafficking’. It does not address trafficking into domestic work or into sectors that employ mostly men. Some GAATW partners have advocated for amending the SAARC Convention to take a broader view of trafficking, however they also believe the agreement reflects regional attitudes towards trafficking, equating trafficking with sexual exploitation of women and girls, and favouring protectionist policies that restrict women’s movement and to autonomy over their bodies.²⁷

²³ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html>

²⁴ See e.g. J Bhabha, ‘Looking Back, Looking Forward: The UN Trafficking Protocol at Fifteen’, *Anti-Trafficking Review*, issue 4, 2015, pp. 3–12, www.antitraffickingreview.org

²⁵ International Labour Organisation, no. 29: Forced Labour Convention, 1930 (Entry into force: 01 May 1932).

²⁶ International Labour Organisation, P029: Protocol of 2014 to the Forced Labour Convention, 1930 (Entry into force: 09 Nov 2016) and ILO, ‘Press Release: ILO adopts new Protocol to tackle modern forms of forced labour,’ 11 June 2014, available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_246549/lang--en/index.htm. For further analysis on the intersection and distinctions between trafficking, forced labour, and slavery and the role such terminology is playing in contemporary anti-trafficking discourse, see *Anti-Trafficking Review*, ‘Forced Labour and Human Trafficking,’ issue 5, 2015, www.antitraffickingreview.org, and specifically N Piper, M Segrave & R N Moore, ‘Editorial: What’s in a Name? Distinguishing forced labour, trafficking and slavery’, *Anti-Trafficking Review*, issue 5, 2015, pp. 1–9.

²⁷ WOREC, Press Release: ‘Revisiting SAARC Convention against Trafficking to Strengthen its Comprehensiveness and Effectiveness’, <http://www.worecnepal.org/index.php/2015/12/01/revisiting-saarc-convention-against-trafficking-to-strengthen-its-comprehensiveness-and-effectiveness/>

3. Legal Barriers: Gaps in laws and regulations

The partner organisations did not provide extensive critiques of the laws governing trafficking and forced labour in their countries and identified problems more in the implementation of those laws (see next chapter). However, several concerns with anti-trafficking and other laws were identified, which deserve mention.

Ambiguous Definitions of Trafficking in Persons

The first legal barrier partners mentioned is a lack of clarity in anti-trafficking laws about what constitutes trafficking and exploitation. Partners suggested that for exploitation in the context of labour migration to be clearly identified as trafficking, the definitions of trafficking and exploitation should refer to forced labour, labour exploitation, or something similar.

India and Nepal are two countries where no mention of forced labour is made in provisions criminalising trafficking. Although it may be possible for courts to interpret the law as including cases of forced labour, partners noted that this will take a courageous prosecutor interested in testing the scope of the law. Thus, very few labour exploitation cases are prosecuted as trafficking.

Even where forced labour or similar term is used, it may have ambiguity at the local level. For example, the Jordanian anti-trafficking law defines exploitation as including ‘abusing people by forcing them to work without charge and under coercion,’ (see table 5 above).²⁸ Tamkeen Fields for Aid explained that forced labour is an international law term that is not understood in the same way in Jordan, making the law, ‘broad, vague and imprecise since it lacks accuracy due to the absence of clear phrases or terms.’²⁹ Tamkeen also noted that the law is relatively new and has not been interpreted by the courts, and that unfortunately the situation may not change soon, as ‘[u]ltimately, these interpretations may not be inconsistent with the interpretations of these terms on the international level.’³⁰



²⁸ Tamkeen Fields for Aid, ‘An Analytical Review of Jordanian Legislation Related to Anti-trafficking,’ available at: <http://www.tipheroes.org/media/1534/an-analytic-review-of-jordanian-legislation-related-to-anti-trafficking.pdf>

²⁹ Ibid., p. 18-20.

³⁰ Ibid., p. 20.

Even where forced labour is mentioned, definitions of trafficking in all countries refer explicitly to sexual exploitation and prostitution, in some cases highlighting that prostitution itself is equivalent to human trafficking (see Table 5). This can reinforce common associations of trafficking with prostitution, which can in turn both stigmatise trafficked persons, and make it more difficult for those trafficked into other sectors to have their cases taken seriously (see next chapter).

Table 5: Anti-trafficking legislation and definition of ‘exploitation’ by country

Country	Law/Legal Provision	Definition of ‘exploitation’ in the law
SOUTH ASIA		
Bangladesh	<i>The Prevention and Suppression of Human Trafficking Act, 20 February 2012</i>	Section 2 (15): ‘exploitation’ or ‘oppression’ means, but shall not be limited to, the following actions done against any person with or without his or her consent: (a) exploitation or oppression of any person through prostitution or sexual exploitation or oppression; (b) taking benefits from any person engaging the person in the prostitution or production or distribution of pornographic materials; (c) receiving forced labour or service; (d) debt-bondage, slavery or servitude, practices similar to slavery, or servitude in household; (e) exploitation or oppression through fraudulent marriage; (f)forcibly engaging any person in the amusement trade; (g) forcibly engaging any person in begging; and (h) maiming any person or the removal of organs for the purpose of trade
India	<i>The Immoral Traffic (Prevention) Act, 1956 Criminal Law (Amendment) Act, 2013 amends Penal Code Section 370 to define trafficking.</i>	Section 370: ‘...for the purposes of exploitation... Explanation 1. – The expression ‘exploitation’ shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs...’
Nepal	<i>Human Trafficking and Transportation (Control) Act (2007)</i>	Article 4: (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking: (a) To sell or purchase a person for any purpose, (b) To use someone into prostitution, with or without any benefit, (c) To extract human organ except otherwise determined by law, (d) To go for in prostitution. (2) If anyone commits any of the following acts, that

		<p>shall be deemed to have committed human transportation:</p> <p>(a) To take a person out of the country for the purpose of buying and selling,</p> <p>(b) To take anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into one's custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.'</p>
Sri Lanka	<i>Penal Code (Amendment) Act, No. 16 of 2006</i> amends Article 360(c) to criminalize trafficking.	'...for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law...'
MIDDLE EAST		
Jordan	<i>Prevention of Trafficking in Persons, 2009</i>	'[E]xploitation' shall mean: abusing people by forcing them to work without charge and under coercion, slavery, servitude, removal of organs, prostitution or any other form of sexual exploitation.'
Kuwait	<i>Anti-Trafficking Law, 2013</i>	'...for the purpose of exploitation which includes the exploitation of the prostitution of others or any form of sexual exploitation, or forced labor or services, slavery or practices similar to slavery or the removal of members of the body.'
Lebanon	<i>Law No. 164 Punishment for the Crime of Trafficking in Persons, 2011</i>	<p>'According to the provisions of this Article, compelling a person to participate in any of the following acts shall be considered exploitation:</p> <p>A) Acts that are punishable by law;</p> <p>B) Prostitution or exploitation of the prostitution of others;</p> <p>C) Sexual exploitation;</p> <p>D) Begging;</p> <p>E) Slavery or practices that resemble slavery;</p> <p>F) Forcible or compulsory work;</p> <p>G) This includes the forcible or mandatory recruitment of children to use them in armed conflicts;</p> <p>H) Forcible involvement in terrorist acts;</p> <p>I) Selling organs or tissue from the victim's body.</p>

Lack of Protections from Exploitation in Other Laws

As noted in the previous chapter, anti-trafficking laws are not the only legal options for trafficked migrant workers. Workers may also be entitled to report other criminal offenses, such as physical abuse, or seek compensation under employment laws, foreign employment laws, contract law, personal injury laws and others.

Non-trafficking focused laws have their own advantages. For example, labour, contract and personal injury laws result in financial compensation, which can be essential for many workers who have debts and other obligations at home. Administrative mechanisms, where available, tend to be faster and less formal than the criminal courts. In Nepal, for example, the partners mainly rely on the Foreign Employment Act 2007 (FEA) to challenge exploitative agencies. It allows for payment of compensation directly to the migrant worker, as well as prosecution of offenders. Further, unlike the anti-trafficking and other criminal laws – it does not require proof of intent. The FEA also has its own arbitration process at the Department of Foreign Employment, and the Foreign Employment Tribunal ('FET').

However, partners believed that prosecution under anti-trafficking laws is still important. Anti-trafficking cases recognise the gravity of the exploitation suffered by the victims of crime, and emphasise accountability. Further, most other laws do not include provisions for supporting the victim of trafficking, such as shelters, psychosocial services, or legal aid, which are essential for many trafficked persons to be able to seek justice. This means partners must cobble together resources, referrals or requests under other social welfare laws to meet these needs, in addition to supporting the on-going case. For Hema's case, Tamkeen's broad range of services enabled the lawyers to focus on her case while caseworkers assisted with her other basic needs but challenges asserting a trafficking claim prevented Tamkeen's social workers from accessing the assistance available by law for trafficked persons.

A concern of partner organisations is that trafficked migrant workers can effectively fall through the cracks in the system. They may not clearly be considered a victim of trafficking under the definition of trafficking in persons, but claims for compensation under other laws may not address the seriousness of the harms. Foreign employment laws may compensate a worker for fraudulently obtained recruitment fees, for example, but will not compensate for pain and suffering. Similarly, labour laws in destination countries may result in the return of unpaid wages and sanctioning of the employer, but not accountability for severely exploiting the worker, as in Hema's case.

Hema's Case³¹

Hema left her home in Sri Lanka in 2010 to travel to work in Jordan as a domestic worker. Because she was only fifteen, she used a falsified passport to obtain the position and enter Jordan. For five years, she worked from 6:30am until midnight, without a day off. Her employers forbade her from calling her family or from leaving the house. They also denied her sufficient food so that she was constantly hungry, and refused to take her to see a doctor when she was ill. On one occasion the employers' 15-year-old son punished Hema by burning her hand because she refused to have sex with him. In addition, the employers did not pay her any wages.

Hema had tried to leave the position after one year after her employers falsely accused her of stealing and beat her to force a confession. She found her way to the embassy of Sri Lanka and embassy staff negotiated with her employers to pay the unpaid wages to date, but they did not address the physical abuse. Indeed, after her employers paid a portion of the owed wages, the embassy sent her back to the employers, who beat her again for running away. After this experience, Hema felt she had no option but to stay. Even when her contract and work visa had expired, her employers refused to send her home, making her undocumented in Jordan. When she asked to leave, they would threaten to withhold her passport and ATM card.

Finally, in March 2016, Hema ran away from her employers again and contacted Tamkeen. Tamkeen immediately filed a suit in court to recover the unpaid wages. However, on the day of the hearing the judge refused to hear the case on the basis that Tamkeen had not brought a Sri Lankan – Arabic interpreter, even though it is the court's responsibility to provide interpreters. After this and other delays, Hema began to feel discouraged, and asked Tamkeen to drop the lawsuit. Tamkeen's lawyer negotiated a settlement with the employers for a portion of the owed wages, the overstay fees and a return flight ticket, in return for Hema waiving her right to future litigation.

In addition to the private lawsuit, Tamkeen reported the employer to the police. The employer was found guilty of labour law violations, but was fined only USD 70. Tamkeen did not push for charges under the trafficking law because it believed the evidence was insufficient to prove trafficking.

Exclusion of Domestic Workers and Undocumented Migrants from Legal Protections

Partners pointed to two other common aspects in their legal frameworks that can stymie efforts to seek justice. First, most Middle East countries exclude domestic workers from labour protections. For example, partners in Lebanon explained that domestic workers do not have the same protections as other workers, such as maximum work hours, a minimum wage or other benefits. Domestic workers are unable to bring labour claims, for example, for unpaid overtime or illegal deductions. Participants at the Lebanon workshop argued that this exclusion points to a broader perception that domestic work is not

³¹ Shared by Tamkeen Fields for Aid, presented at *Rights and Justice in the Context of Labour Migration: A civil society consultation*, 3-5 November 2016, Bangkok, Thailand

'real' work and that disputes are merely a 'private matter' and should be resolved privately.

Second, redress mechanisms in both origin and destination countries often exclude irregular migrants. In Middle Eastern countries, illegal entry or overstaying the period of a visa are criminal offenses. Thus, undocumented workers are liable to be arrested and prosecuted if they approach police to report abuse. Fear of the police only increases the control that traffickers have over trafficked workers. In origin countries, workers who depart through irregular channels may be excluded from state protections. In Nepal, for example, migrants who travel irregularly cannot access state compensation and insurance.³² Given that women make up most irregular migrants from Nepal, this exclusion has a disproportionate impact on women migrant workers.

³² For more information, see Paoletti, Taylor-Nicholson, Sijapati and Farbenblum, 'Migrant Workers Access to Justice at Home: Nepal', Open Society Foundations, New York, 2014, p. 106-107, 120-22; and International Labour Organization, 'No Easy Exit: Migration bans affecting women from Nepal,' 2015, p 43.

4. Enforcement and Operational Barriers



A recurring theme in all of the workshops and meetings was the difficulty in enforcing the laws that are already in place. This included a lack of clarity about how laws are to be implemented, failures by state authorities to understand and implement the law, as well as challenges of bureaucracy and overlap.

Lack of Implementing Regulations and Policies

In some cases, although laws exist on paper, responsible agencies have not adopted the necessary regulations or policies to instruct officials on how to implement the laws.

In Bangladesh, the Overseas Employment and Migrants Act 2013 includes provisions for arbitration of disputes between migrant workers and recruitment agencies or brokers, including granting migrant workers the right to file a complaint against any person who has defrauded them.³³ However, Bangladeshi partners noted that the responsible agencies have not yet published implementing regulations, so complaints brought to the Bureau for Manpower, Employment and Training (BMET) are handled at the discretion of individual government officers. Cases are handled and decided, therefore, unpredictably. Without clear guidance, partners felt unable to challenge arbitrary and unfair decision-making. Their only option, they felt, was to use outside pressure, such as personal connections or media stories, to ensure that cases move forward, which is time-consuming and does not lead to a transparent and fair system.

Similarly, partners in India shared that, although state governments have passed laws regulating recruitment agencies, they have not established any kind of mechanism to monitor the agencies and ensure proper compliance with the law. The lack of implementation of recruitment laws prevents partner organisations from using such provisions to protect the rights of migrant workers or to seek compensation or redress from recruitment agencies involved in trafficking, exploitation or fraud. Further, as recruitment agencies know that the law will not be enforced, partners said they have little leverage to negotiate directly with agencies for repayment of fees or other expenses.

³³ The Overseas Employment and Migrants Act 2013, Bangladesh

The Public/Private Divide and Lack of Government Monitoring of Workplaces

Partners in destination countries all advocated for stronger labour monitoring of workplaces and enforcement of employment laws. They call for better resourced labour inspectors to prevent workplace abuses as well as meaningful employment of the law. An effective inspections and enforcement regime would prevent abuses, give workers evidence in their own claims, and improve the system overall. However, they reported that monitoring still happens only on an ad hoc basis or in a non-transparent manner.

Advocating for more government oversight of worker treatment can be particularly difficult for domestic worker organisations. The partners explained that the local cultures view activities in a person's private home to be off limits for law enforcement, even if the person is an employer and sponsor of a live-in domestic worker. This private/public divide is a structural barrier that must be overcome through increasing recognition of the professionalisation of domestic workers as workers. Different countries are responding to the challenge in different ways. Kuwait has led reform efforts in the region with a 2015 law to grant labour rights to domestic workers, and to reform the domestic worker recruitment system.³⁴

Official Reluctance to Identify Labour Cases as Trafficking

Partners from both origin and destination countries consistently mentioned the difficulty in having trafficking cases taken seriously by enforcement authorities. Police usually present the first barrier. All partners shared common experiences of police refusing to describe a migrant worker's situation as trafficking, or refusing to investigate criminal complaints against alleged traffickers. Prosecutors also presented roadblocks by refusing to file charges against traffickers of migrant workers.

This reluctance from law enforcement was explained as a lack of awareness about the definition of trafficking, and a misperception that trafficking was equated with sexual exploitation. A common response from law enforcement to case workers reporting trafficking of migrant workers is that migrant labour cases are better handled by administrative procedures that regulate recruitment agencies and/or fraud, or are private matters to be resolved through contract negotiation.

For example, WOREC from Nepal explained, 'It is difficult for the police because they see human trafficking and labour trafficking as different things. With confusion about whether labour trafficking is included in the [anti-trafficking] law, migrant worker cases have to be filed first with the Department of Foreign Employment and then referred by them to the police for the case to be really pursued.'³⁵

A participant in the Beirut Workshop complained, 'There is a general problem with lack of awareness of what constitutes trafficking in judiciary or prosecutor's office so many cases are filed only under other frameworks instead of the anti-trafficking law. Right now, there are not many trafficking cases and

³⁴ Human Rights Watch, 'Kuwait: New Law a Breakthrough for Domestic Workers', June 30, 2015.

³⁵ WOREC, via email communication, February 2017.

judges don't really understand the trafficking framework.³⁶

In another instance, an organisation described the case of an Indian migrant worker who was beaten by her employer, denied wages, and forced to work in exploitative conditions. The organisation argued strongly to prosecutors that this qualified as trafficking under Jordanian law, however, the public prosecutor insisted it was a civil contract case because it dealt with a disagreement between an employer and employee. The woman's caseworker emphasised that she hears these types of explanations from prosecutors regularly.

Some partners noted that frontline police and general prosecutors do not receive sufficient training about trafficking and related offenses. Partners in Jordan, for example, noted that the Counter Trafficking Unit has a thorough understanding of trafficking, but that other law enforcement and government officials do not receive any training, which is problematic because they are the frontline responders when migrant workers have complaints.

Partners in Nepal also pointed to a lack of funding for efforts to identify and prosecute trafficking of labour migrants. They explained:

*'The principal institutions charged with assisting migrant workers are underfunded and under-resourced. There is lack of specialised training for personnel charged with solving cases, which raises questions about the capacity of the authorities and judicial staff to appropriately resolve cases. This lack of awareness and training creates a barrier in access to justice.'*³⁷

Indian partners explained that government officials have an awareness of the problems facing migrant workers, especially the vulnerability of migrant domestic workers to exploitation, as in Danvi's case described below. However, NDWM noted that government officials do not consider these cases to be trafficking, nor as issues inherent to the migrant labour programme. Rather, in Danvi's case, they provide assistance as charity to a vulnerable woman. NDWM suggested that better training of such officials could shift assistance to migrant workers like Danvi away from ad hoc aid to more systematic programming.

In a group exercise, participants recommended that the judiciary should establish a special panel to handle migrant cases, which would receive comprehensive training on exploitation and abuse. They also recommended a specialised prosecutor be appointed to assist with the identification of trafficking cases.

Without proper identification of potential trafficking cases, the likely outcome in destination countries is that the worker will be immediately detained after leaving the exploitative employer and deported. Participants from Kuwait were particularly concerned that lack of identification forecloses any ability to seek redress, whether under the trafficking law or other frameworks.

³⁶ The Lebanon Documentation and Identification Tool Workshop, 24-25 August 2015, Beirut, Lebanon.

³⁷ Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

Another reason partners gave for police refusing to investigate migrant worker cases as trafficking in persons is that trafficking investigations are complex and time-consuming, and police are reluctant to spend the time. Partners noted that police are under pressure to close cases quickly. One organisation stated, 'Police and law enforcement have bias towards closing cases as quickly as possible resulting in a lack of full investigation and therefore the prosecutor and judiciary don't receive enough evidence to properly pursue trafficking cases.'³⁸

Assisting Danvi: Filling in the gaps through direct appeals to local governments³⁹

Danvi, the sole earner in her family, migrated from India to Saudi Arabia to support her two small children and her mother. Unregistered agents from Mumbai and Chennai took advantage of Danvi's lack of knowledge of the migration system to persuade her to migrate without a written employment contract and through irregular channels.

Upon arrival, she was placed in a home to care for five children, ranging in age from 10 months to 16 years, as well as two elderly family members. The family also required her to cook, wash clothes, and clean the house. Each day she worked for twenty hours, was given little food to eat, and was prohibited from leaving the apartment. When she asked her employer for better conditions or to return home, she was told that they had 'bought' her for INR 350,000 (USD 5300) and that they couldn't afford to waste that money by sending her home early. Following this conversation, she was beaten regularly by both the parents and children.

In desperation, Danvi tried to escape by jumping from the balcony. The fall broke her spinal cord. Seeing her attempted escape, the employer and his wife beat and kicked her in punishment and then left her without calling for medical help. After several hours, the employer's brother took pity on her and took her to the hospital.

Danvi was treated at the hospital by an Indian physician and she told him what had happened. The physician referred her to a social worker, who facilitated her return to India but was not able to provide legal advice or to assist her to file a complaint against the employer. After returning to India, Danvi went to the government hospital for further treatment. Learning of her story, a local official requested the National Domestic Workers Movement (NDWM) to meet with Danvi to help her to file a report about her experience abroad for the consideration of government agencies responsible for the welfare of individuals in vulnerable situations.

Various agencies brought Danvi's case all the way up to the attention of the Chief Minister of Tamil Nadu. The Chief Minister announced that the state government would give Danvi a one-time charitable amount of INR 1,000,000 (approx. USD 15,000), which was placed in a savings fund, allowing her to live on the interest. The state declined, however, to pursue a case against the recruiters or the employers, despite requests from both NDWM and Danvi.

NDWM reflected that the money was appreciated but was only available because Danvi garnered special attention from local officials. It is not complete redress for Danvi, it does not hold the wrongdoers

³⁸ *The Lebanon Documentation and Identification Tool Workshop, 24-25 August 2015, Beirut, Lebanon.*

³⁹ *Shared by National Domestic Workers Movement, presented at the Rights and Justice in the Context of Labour Migration: A civil society consultation, 3-5 November 2016, Bangkok, Thailand*

accountable or prevent them trafficking other women, and it is not an option for most other migrant women who return home following exploitation abroad.

Corruption or Perceptions of Corruption

Another reason that law enforcement and other stage actors may decline to take migrant trafficking cases seriously is corruption and collusion with recruitment agencies and employers. This was particularly a concern among South Asian partners who described the recruitment industry as large and influential, and law enforcement as corruptible.

Partners in all four South Asian countries believed that corruption often led to police declining to investigate migrant worker cases properly, and for allowing known dishonest recruiters to continue to operate with impunity. For example, when describing obstacles to working with the police, a partner in Bangladesh shared:

*'Local police and prosecutors are the gatekeepers to the criminal justice system ... but police don't want to file the case in most of the [trafficking] cases. Sometimes they demand huge amount of money to file cases. Meanwhile, they also take biased decisions in favour of perpetrators by taking a bribe. In this situation, as an organisation it's become tough to make the responsible officials accountable.'*⁴⁰

Another participant from India was frustrated that 'the recruitment agents play an active role in trafficking and exploitation but no one gets punished and even the cases are not filed at the preliminary level at police stations and courts because of alleged corruption and bribery.'⁴¹

Similarly, the Nepali partners shared:

*'Corruption has been found in foreign employment both in the private and public sectors. The private sector (recruitment agencies and brokers) is engaged in corruption through public-private collusion to speed up the migration/recruitment process (including forged work permits and bribery of officials) and purely public-sector-driven activities (such as nepotism and favouritism in the application of foreign employment rules). The political affiliations of recruitment agencies are even affecting law reform efforts and enforcement of the law. Many of the recruitment agencies have direct connection with high level officials, which leads to influence in many aspects including changes or amendments to the law.'*⁴²

Partners also found that widespread community perceptions of official corruption, whether valid or not, dissuaded migrant workers who had returned from abroad from seeking justice. They assumed that the

⁴⁰ Joint report by OKUP and BOMSA, submitted to GAATW as part of the SAME A2J Project, November 2016.

⁴¹ An independent lawyer working in collaboration with the National Domestic Worker Movement, email communication, October 2016.

⁴² Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

recruitment agency would bribe decision-makers and they would inevitably lose the case.

Bureaucratic Inefficiency and Overlap

Trafficking and migrant labour both involve government departments responsible for labour, immigration, foreign labour, foreign affairs, women, children, health, and others. All agencies have a different function and may have different roles at local regional and national levels in providing documentation, support and justice to victims of trafficking. Often, areas of responsibility overlap or are contested.

Migrant workers, their families or assisting organisations, may have to interact with an array of government agencies multiple times at each step of the process, in order for their case to move forward. These offices may be in a different city or region. This adds time, complexity and costs that can make seeking justice a daunting prospect.

Partners in Nepal explained that:

‘There are different institutions that deal with the matters of foreign employment cases, including labour trafficking cases, like local law enforcement and district courts, the Department of Foreign Employment, the Foreign Employment Promotion Board, the Foreign Employment Tribunal and the Consular Department. Victims must bear additional pressures, as they have to move from one place to another to accomplish simple tasks. Some victims leave their cases because of these complexities.’⁴³

Ana’s story, set out below, is an example of the many challenges migrant workers and their families face when filing a complaint against a trafficker or pursuing a case through the court system. Although the case was eventually investigated and the recruitment agency and brokers charged with trafficking, Ana’s father told OKUP that his initial requests to the police to assist Ana and investigate the perpetrators were ignored. They told him that her case did not involve trafficking and that he should complain to the Bureau of Manpower, Employment and Training (BMET) about the recruitment agency. It was not until he sought the intervention of the local government chairman that the case progressed.

Even after the Criminal Investigation Department took up Ana’s case, OKUP had to engage with many different government departments to arrange for Ana’s repatriation. OKUP explained:

‘The responsible ministry has no mechanism to support migrant workers who become victims of deception, exploitation, abuse or human trafficking. In the case of Ana, BMET filed a case under the Human Trafficking Act 2012 on the basis of the investigation report provided by the Criminal Investigation Department. However, the BMET never followed up the case; they neither attended the hearings nor informed

⁴³ Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

*Ana or her family about the hearing dates in the court. The Public Prosecutor was also in the dark about Ana. Hence, the perpetrator got bail without any protest. Then the perpetrator threatened Ana and her family to withdraw the case. Being threatened with death, Ana's family left their home and is facing many hardships. Neither the ministry nor the BMET nor anybody else can protect the rights of a trafficked victim!*⁴⁴

Assisting Ana: Pursing Justice through Complicated Processes in Bangladesh⁴⁵

Ana is a single mother from a rural area in Bangladesh. In March 2014 she migrated to Lebanon to work as a domestic worker to support her family. She paid a broker and recruitment agency to find the position and they promised her a good salary, safe and reasonable work conditions, and regular time off. When she arrived in Lebanon, Ana found that she was expected to work long hours for little pay, she was deprived of food and was subjected to severe and repeated physical, mental, and sexual abuse by her employer's son-in-law. Ana soon attempted to flee and seek help from the local agent, but the agent returned her to her employer, who took her to a hotel and forced her to provide sexual services for customers. A couple assisted Ana to leave and found her a new position cooking at a mess hall for male migrant workers, but she was again subjected to physical and sexual abuse.

Eventually, Ana contacted her father in Bangladesh. Ana's father sought her repatriation, and the investigation and punishment of the Bangladeshi recruiters. He first sought help from the local police and Deputy Commissioner, who then referred him to the government agencies that handle overseas employment: The District Employment and Manpower Office (DEMO) and the Ministry of Expatriate Welfare and Overseas Employment. Ana's father sought OKUP's help repatriating Ana after visiting OKUP's nearby field office, because DEMO did not have the authority or resources to assist with repatriation. OKUP contacted a civil society organisation in Lebanon, the Caritas Lebanon Migration Center (CLMC), which helped Ana leave the mess hall and moved her to their shelter. OKUP also contacted the Bangladeshi Embassy in Lebanon, through the Bureau of Manpower, Employment and Training (BMET), and the embassy paid for her flight and the fine that she was levied for breaking her contract. In June 2014, Ana arrived home.

Ana's father had also reported the case, through DEMO, to the Criminal Investigation Department (CID), which opened an investigation. Nine months later, the CID charged the broker and his associates with human trafficking. At the end of 2016, more than two and a half years after Ana first sought help, the case remained pending in the local court. OKUP has supported the family by liaising with DEMO, CID and the court, which was necessary as Ana and her family are not well educated and found it difficult to manage the case on their own.

Insufficient Support from Embassies

All partners agreed that embassies in destination countries have the potential to provide vital assistance to their citizens working abroad who suffer abuse and exploitation. They can provide legal advice,

⁴⁴ OKUP, via email communication, February 2017

⁴⁵ Shared by OKUP, presented at the *Rights and Justice in the Context of Labour Migration: A civil society consultation*, 3-5 November 2016, Bangkok, Thailand

shelter, referral of cases to the police or community-based services, advocating for their nationals with destination country government agencies and sometimes negotiating with employers. Embassies have the advantage of having a common language with the migrant worker (in most cases), and having an understanding of the legal and political contexts in both countries.

However, partners believed that in practice embassies often proved to be more of a barrier than a source of assistance. Several of the cases in this report describe migrant workers seeking assistance at their embassies but embassy staff denying aid or sending them back to their employer (see Hema and Ana's stories above). In Ana's case, OKUP explained:

*'The embassy didn't give importance to Ana's appeal [for help], as usually happens. Only after they had received a repatriation request from the Welfare Board through OKUP's assistance, did the embassy take the case seriously and take necessary actions. This is how the government's support services are for migrant workers abroad.'*⁴⁶

Partners from Nepal shared:

*'Diplomatic agencies have a weak role in assisting migrant workers as they do not adequately support migrant workers to access justice in destination countries. They don't have adequate resources, training and influence to genuinely assist workers when their rights are violated.'*⁴⁷

During the exposure trip to Kuwait, the Indian partners similarly reflected that the staff of the Indian embassy appeared overworked and under-resourced. One embassy official expressed concern that the Indian government did not allocate sufficient funding to embassies to provide citizens with comprehensive services.

Partners believed that embassy staff often discouraged migrant workers who wished to report their case to the police or file a complaint. Instead, they encouraged workers to accept less than they were owed by employers, and then to return home. Very rarely do embassies, in their view, assist migrant workers to bring formal cases against the employers and recruitment agents who exploit them. Various theories were given for this, ranging from a lack of resources at embassies to handle the number of cases arriving on their doorstep, to a concern that the country's workers may be seen as 'troublesome', leading to a decline in demand for the country's workers. Underlying these theories was a sense that poor migrants, especially women migrants, should feel grateful to have had any assistance at all and should not complain.

⁴⁶ OKUP, email communication, February 2017

⁴⁷ Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

5. Practical Barriers to Accessing Justice

Severe practical barriers to filing cases or claims and in following a case to completion compound challenges in the law and its implementation.

All plaintiffs or victims of crime experience practical obstacles to some extent, including the time and costs required to bring a case and the emotional strain of litigation or testifying in criminal proceedings.

The barriers listed below, however, are over and above the usual stress inherent in seeking justice. Rather, they are linked to the dynamics of international labour trafficking itself, namely the lack of autonomy and control that migrant workers have in countries of destination, and the complexity of cases that occur across borders and may involve multiple perpetrators. Isolation of victims, lack of resources, language gaps, lack of evidence, and lack of awareness are serious hindrances to access to justice.



Isolation and Control

Partner organisations in the Middle East frequently mentioned the physical isolation in which many migrant workers live and work in their countries. Workers are often confined to the workplace or a residential compound and cannot easily leave and seek assistance, even on their day off. For example, garment factory workers in Jordan are restricted to the factory compound with limited opportunities to visit other parts of the city. Organisations can try to reach these workers directly but must negotiate with factory owners to access worker barracks or communal spaces. Without permission, many organisations struggle to find ways to assist those communities or to conduct investigations into allegations of abuse or exploitation by those who have left the compound and are seeking to file a complaint or other remedies.

Domestic workers are even more isolated and controlled, in that they work in private homes and may be the only domestic help in the residence. In Leena's case, described below, the Embassy told the National Workers Welfare Trust that they did not have the authority to assist Leena while she was still in the employer's home and that she would have to escape before anything further could happen.

Often, domestic workers are not told the address of the home or acquainted with the neighbourhood, so if they manage to leave, they have no idea where to go or how to get there, a terrifying proposition. Some employers also prevent their domestic employees from maintaining contact with their family at home by confiscating their phones and not allowing access to the internet. These forms of isolation inevitably prevent domestic workers from seeking assistance if they are in distress.

Domestic workers in the Kuwait shelter for distressed migrants explained that when their employers (and then later embassies and the shelter itself) withheld their mobile phones, they could not discuss their working conditions with family or others. They also described how isolation in the employer's home meant they could not call or meet with anyone to help them change employers, return home, or file complaints against the employer when they were abused or not paid. Even upon leaving the exploitative situation, many described not knowing where their embassy was or how to get help from the Kuwait government because they had not met many other migrant workers from their home communities and no local migrant rights organisations.

Leena's isolation⁴⁸

Leena, a former child bride in India, was widowed at the age of eleven and then married again to a much older man. Her second husband could not earn an income and she felt she had no choice but to travel abroad to provide for her two children. In early 2016, Leena went to work in Qatar with the help of a relative. Leena entered Qatar on a tourist visa, and then obtained a work visa after arrival.

In Qatar, Leena was employed as a domestic worker by an elderly couple. Her employers paid her less than she had been promised, did not give her enough food, and forced her to work for four or five households. She was beaten regularly for minor mistakes, and was not allowed access to her mobile phone to communicate with her family. Miserable, Leena asked to leave, but her employers beat her and refused to let her go.

Eventually, Leena was able to contact the National Workers Welfare Trust through another domestic worker in a neighbouring home. NWWT filed a complaint via an online mechanism initiated by the Indian Ministry of External Affairs (MEA), which simultaneously sent a report of the complaint to MEA, the Indian Embassy in Qatar and a Non-resident Indian group.

NWWT called the Indian Embassy in Qatar to follow up on the complaint. The embassy advised NWWT that Leena had to sneak out of the house at night on her own because they do not have the power to enter a private house and therefore cannot help her until she reached the embassy in person. Taking their advice, Leena decided on a risky escape from the employer after a month of abuse and was picked up by the embassy.

⁴⁸ Shared by National Workers Welfare Trust, presented at *Rights and Justice in the Context of Labour Migration: A civil society consultation*, 3-5 November 2016, Bangkok, Thailand

Strategies for Reducing Isolation: Migrant Worker Organising and National and Religious Communities

Throughout the project, partners and others described strategies for overcoming one of the greatest barriers that migrant workers in countries of destination face in accessing justice - physical and social isolation. Domestic workers in the Middle East are particularly isolated because of the circumstances of their work and state restrictions on labour organising for domestic workers.⁴⁹

One strategy used in Amman, Jordan was informal gatherings of domestic workers able to leave their workplaces through the Domestic Workers Network. This network facilitated meetings and discussions among domestic workers from many countries to share information and experiences. In early 2016, the GAATW- IS and Solidarity Center co-hosted a meeting of the network, to which more than 40 women from Sri Lanka, Bangladesh, Indonesia and the Philippines attended. Participants discussed how they advocate for better rights and sources of assistance. Filipina domestic workers described a new training on home healthcare skills sponsored by the Embassy of the Philippines, which inspired the other women to reflect on the services their governments provided.

Diaspora community groups also provide a space for sharing advice because the participants share a common language. The GAATW-IS held a private focus group discussion with Bangladeshi women domestic workers in Kuwait, and the participants swapped stories of getting help despite being confined to an employer's home. For example, one woman shared a story of a domestic worker who asked for help to leave her exploitative employer by dropping notes written in Bangla from her employer's balcony, hoping other domestic workers in the neighbouring apartments would find it and come to her aid. Other participants shared stories of secretly speaking between balconies while washing clothes when they didn't have mobile phones or the freedom to meet in communal areas.

For domestic workers in Kuwait, religious institutions play an important role in overcoming isolation. During a trip to Kuwait, GAATW-IS staff and staff of the India partner organisations saw how a popular Christian church hosted two or three weekend services simultaneously for different linguistic, cultural, religious and ethnic communities. A group of Indian women at the church explained that the services were their only time away from their employers and thus their only opportunity to share information. Pastors and members of the church leadership were often the first place migrant workers sought advice. The Indian partners reflected that religious institutions could be a place for building services and suggested training the church leadership on Kuwait labour laws and simple paralegal assistance to increase Indian migrant workers' opportunities for seeking justice and assistance.

The High Cost of Justice

Plaintiffs in any civil or administrative proceedings may face high costs to bring the case, including court and other filing fees, legal fees, expenses for gathering documents and records, travelling to and from courtrooms, food and accommodation while a case is on-going and other incidental costs. Some

⁴⁹ For more information, see International Labour Organization, ILO Regional Office for Arab States, 'Cooperating out of isolation: the case of migrant domestic workers in Kuwait, Lebanon, and Jordan: working paper,' 2015, available at http://www.ilo.org/wcmsp5/groups/public/--arabstates/---ro-beirut/documents/publication/wcms_325243.pdf

organisations can assist migrant workers with these expenses by using money from their project budgets, but this is not always possible. Without access to financial resources, migrant workers and assisting organisations may never reach a courtroom or judge, let alone receive a decision in their favour.

Costs are particularly high in destination countries where migrant workers usually cannot work and must remain in the country illegally while they pursue a case. Partners told us that most migrant workers cannot afford to pay the fees of a lawyer, the public notary or any of the other costs or fees of the lawsuit given the low wages migrants are paid, especially because most cases involve withheld salaries. In addition, the high costs and restrictive immigration laws force most migrant workers to return home, and then cases usually fail because the main witness is not present to testify.

Even after returning home, the costs of seeking justice can be prohibitive if the migrant worker does not live close to the courts or other redress mechanisms. In Nepal, the foreign employment system, including all licensed recruitment agencies, as well as the redress mechanisms that specialise in foreign employment are based in Kathmandu, meaning that workers from anywhere else in the country must travel and pay for accommodation in the capital. Corruption in the police and courts can also impose further costs. A partner in Bangladesh recalled cases in which prosecutors demanded payment to proceed with a case against an exploitative agent.

Delays in proceedings can increase costs and uncertainty, and in both origin and destination countries, partners spoke of employers and agents deliberately delaying cases to force the migrant to withdraw. In Ana's case, described above, the accused traffickers repeatedly sought extensions of the case while simultaneously threatening Ana's family to force them to drop the case before it was decided. One Indian partner described similar tactics being used to discourage cases from reaching settlement. He believed that some employers in the Middle East purposefully ignored summons by courts in order to force the prosecutors to go through multiple legal requirements to alert the person of the case before it could be decided *in absentia*. Others spoke of employers and agents refusing to comply with judgements against them, forcing additional time and expense for enforcement proceedings. During these delays, many migrant workers either leave the country or find other jobs and are unable to dedicate time or resources to pursue the case once it finally reaches the court.

Pursuing a case also has secondary costs, which are unlikely to be included in a settlement or court order. By staying in one location to pursue a case, trafficked persons are not being able to take up other work or travel on a new contract. In the home country, the need to travel to the capital can also require the worker to pay for work that is not being attended to or for childcare.

Language Barriers

Language barriers abroad and at home that cause many problems. In the destination country, language can be the first hurdle to finding help after a violation has taken place. Many migrant workers first (and

sometimes only) seek assistance from their embassies in countries of destination because embassies are one of the few places likely to speak their language. The embassy may or may not inform the migrant worker of local organisations who can help with additional services, such as legal aid, shelter, food or other counselling – prerequisites to seeking justice. Even when migrant workers learn of local organisations, the organisation may not have staff who speak all of the languages of the communities that migrate to the country. Translation services and community translation (friends translating for each other or local leaders from the country of origin such as migrants in managerial positions or religious positions) may fill that gap where possible.

Language is also a barrier in the courtroom. Many countries do not have the financial resources to provide interpretation even when required by local regulations or laws. For example, in Hema's case, described in Chapter 3, Tamkeen was required to provide a Tamil to Arabic translator even though, by law, courts should provide the translator and even though the organisation had already tried to be additionally helpful by providing a Tamil to English translator. This extra cost and requirement delayed Hema's case and discouraged her from continuing.

In countries of origin, non-government organisations and even the justice system may have difficulties assisting migrant workers from small ethnic communities. The Nepali partners explained, '123 Nepalese languages are spoken as a mother tongue in Nepal. But the official language is Nepali. In this situation, the victims with a different mother tongue do not understand the language of court and redress mechanism.'⁵⁰

Similarly, Indian migrant rights groups struggle with the diversity of languages spoken in India. During the trip to the Kuwait distressed migrant shelter, staff from Indian partner organisations met with women from many different communities in India and who spoke little or no Arabic, English or Hindi. Fortunately, because the partners spoke multiple languages, they were able to speak to over twenty women. Even the Indian embassy struggles with language challenges – some migrant workers complained that there was no one at the Indian embassy who spoke a language they understood.

Lastly, language also encompasses educational barriers. Migrant rights organisations expressed the challenge of explaining complex legal issues or court procedures to migrants in a language that is spoken by the migrant worker and in a manner that will be understood, especially those who do not read and write. Similarly, translating the experiences of the migrant worker into language (level and literal) that will be understood by the court or administrative body. The legal system can feel foreign and overwhelming to migrants who are unfamiliar with formal legal processes or who are traumatised, leading them to feel discouraged and give up.

⁵⁰ Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

Overcoming language barriers: opportunities for information sharing and referrals through local multilingual community leaders in Kuwait

The Indian diaspora groups in Kuwait receive calls from migrant workers needing information and assistance to leave exploitative situations. However, even though many diaspora group leaders want to provide such services for their communities, especially when they speak English or Arabic, they shared that they simply did not know what to do or how to proceed. They requested that the Indian partner organisations help increase service provision to Indian migrants by returning to Kuwait and training the local community groups, including religious groups as described above, on migrant rights and opportunities for justice or assistance. Through such training, these groups could overcome some of the intersecting problems in the Middle East of lack of information sharing as well as the linguistic barriers to information and to assistance. By playing an intermediary role, local community groups could increase access to services abroad and hopefully share referrals to organisations in the home country.

Lack of evidence

Difficulty gathering sufficient evidence to prove exploitation was mentioned by project partners in both regions as a barrier to accessing justice. According to the Nepal partners,

‘Lack of adequate evidence during the labour migration process is another barrier for us. Illegal recruitment agencies and brokers deceive migrant workers and leave no evidence in the hands of victims. This lack of evidence hinders access to justice because migrant workers frequently do not have the necessary evidentiary documents to bring claims through formal redress mechanisms due to failures on the part of recruitment agencies to provide workers with required documents, and oversight failures by government. Many migrant workers also have their documents confiscated by employers abroad and are not able to recover them if they leave in distress. Lack of proper investigation mechanisms to collect and share evidence across regions also contributes to this barrier.’⁵¹

When exploitation takes place in private homes or in places of work not open to the public (factories, construction sites, etc.), it is difficult to find witnesses to violence or coercion that are not directly involved. The most likely witnesses are other members of the family or other employees, who cannot afford to antagonise the employer for fear of their own safety or security. For example, in Danvi’s case, described in Chapter 4, the employer’s brother was the key witness to the physical violence and to the family’s horrible abuse of Danvi after she tried to escape. Although he was willing to help her get medical treatment, familial obligations would have likely prevented him from providing testimony if Danvi had tried to seek justice before returning to India. Similarly, partners explained that the isolation of migrant workers, discussed above, makes it difficult to prove that abuse or trafficking has taken place. One participant summarised the situation for domestic workers as,

⁵¹ Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

‘Witnesses are part of the employer’s family so they won’t help or sometimes the only witnesses are the employers themselves. For cases in factories, witnesses may be other migrant workers who will lose their job if they participate. This means we have no outside testimony to support the victim’s claims and the case may not go forward or will not succeed.’⁵²

Another barrier to collecting evidence, especially of physical violence, is the lack of medical assistance accessible by migrant workers. Partners shared that migrant workers would come to them weeks or more after an employer was violent and thus no longer have any visible evidence of the abuse. One partner shared,

‘When [the domestic worker] is subject to beating or rape or anything like that at the employer’s home, we have a problem finding evidence, the proof. In other cases, when a woman is beaten, she might have been seen by a forensic expert. For domestic workers, they usually do not get this kind of treatment and we cannot prove she was beaten without a medical certificate.’⁵³

The partners therefore emphasised the need to increase access to medical services, especially those trained to recognise violence and abuse and properly document evidence of such violence. Medical certificates, for example, could be compelling evidence in cases alleging forced labour but without such documented proof, many judges struggle to decide between competing ‘stories’ of what happened between the employer and migrant worker.

In the Middle East, the sponsorship system for migration management allows employers to control migrant workers’ documents and records and prevent them from being used as evidence. A partner in Lebanon shared that some employers opened bank accounts for the migrant workers they sponsored to have documented proof of paid salaries if there is a dispute, but the sponsor has complete control over the account and identity cards. Claiming this is within their rights as a sponsor, the employer uses control of the accounts to guarantee the sponsored workers do not ‘abscond’ and to also arbitrarily charge the employees high fees for things like housing, food, and transportation so that the final amount paid is significantly lower than the agreed upon salary.

Partners also shared that many migrant workers do not receive real contracts, are given documents in languages they do not speak, or they are tricked into using fake documents – all of which results in arguments in court of one person’s word versus the other’s. These practices are especially problematic as the partners believe that the courts tend to be biased in favour of the local employer over the migrant worker because of cultural opinions of foreigners, namely xenophobia, distrust, and stereotypes of foreigners as thieves and cheats. As such, finding legitimate, admissible and compelling evidence to prove exploitation or trafficking is a significant hurdle to seeking justice through formal mechanisms like courts and administrative arbitration.

⁵² The Jordan and Kuwait Labour Trafficking Case Analysis and Documentation Workshop, 31 August – 1 September 2015, Amman, Jordan

⁵³ The Lebanon Documentation and Identification Tool Workshop, 24-25 August 2015, Beirut, Lebanon.

John's case⁵⁴

John is a professional electrician from Tamil-Nadu in India. In 2015 he decided to migrate abroad and found a job in Dubai as an electrician for a monthly wage of AED 1,000 (approx. USD 270). He agreed to pay a recruitment fee of INR 65,000 (approx. USD 1000), and took out a loan to cover these costs.

However, after his arrival, John was told that he would be working as a mason and construction worker for around half the promised wage. He worked more than 11 hours per day without overtime pay, and his passport was held by his agent so he could not leave the job. After six months, the manager stopped paying John at all and took his labour card, his only form of identification. He could not withdraw money from his bank account and was liable to arrest. When John complained, his manager beat him and demanded an additional INR 150,000 to let him leave.

John eventually sought help at a local church and the pastor introduced him to an Indian lawyer that provided pro bono assistance to Indian migrant workers. The lawyer assisted him to file a case with the Ministry of Labour for unpaid wages and compensation for recruitment fees and his flight.

At the same time, a lawyer in India submitted a petition with the Union Minister for External Affairs against the recruitment company. The local police began investigating the recruitment agency.

At the time of writing, the complaints in both countries were ongoing. John remained in Dubai working illegally, waiting for his case to be resolved. The company manager delayed resolution of the claim at the Ministry of Labour for several months by refusing to respond to the summons. During such trips, John took unpaid leave from his new job and travelled several hours to reach the court. In the end, John's lawyer convinced the Ministry of Labour to make a decision in the employer's absence. No steps have been taken in Dubai against the company manager to hold him criminally accountable for the violent abuse of John.

John's lawyer in Dubai noted that the company manager should have been subject to criminal prosecution for his physical abuse of John. However, John had not reported the case to the police when the physical evidence of the beating was visible, because he did not know where the police station was and he did not speak English or Arabic. By the time John was met the lawyer, the lawyer believed that the evidence was not sufficient to prove the case.

Failures to Adequately Inform Migrant Workers of their Rights

Organisations in destination countries shared that migrant workers 'did not know their rights' and thus did not know where to go to seek help. On further reflection, it was acknowledged that little effort is put into informing migrant workers of their rights. Indeed, recruitment agencies and employers may prefer to work with migrants who are not well-informed about migration procedures and their contractual and statutory rights to maintain a submissive work force.

⁵⁴ Shared by National Domestic Worker Movement, presented at *Rights and Justice in the Context of Labour Migration: A civil society consultation*, 3-5 November 2016, Bangkok, Thailand

Partners in origin countries similarly shared frustration with government pre-departure orientations and trainings for their failure to properly prepare migrant workers. In all four origin countries, partners described the trainings as poorly designed, underfunded, and easy to avoid. They believed that the training programmes are not practical and do not inform migrant workers about rights at work, how to assert one's rights with employers, and where to go if rights are violated. Also, many of these programmes are not country-specific and so do not ensure trainees will have locally relevant information.

Partners in Nepal and Bangladesh both reported examples where recruitment agencies gave migrant workers fake training certificates or sent them to incomplete programmes. Bangladeshi domestic workers shared that none of them had gone to a full pre-departure training programme as required by law and that they did not know of many women who had received a full training. As a result, the only source they knew of to seek information once they were in Kuwait was the Bangladeshi embassy, and many further shared that they were not sure what their rights were regarding duration of contract, salary, weekly time off or daily hours so they would try to accept whatever their employers required of them.

In the destination country, embassies often have very limited information about rights and responsibilities in the country. Destination country governments also do not conduct outreach to new migrant worker arrivals to explain the system to them, and where to go if they are in distress.

6. Structural, Social and Cultural Barriers



Image 2: GAATW-IS conducted a focus group discussion with migrant domestic workers in Jordan

Beyond practical barriers in terms of time, money and access, migrant workers must also overcome social and cultural norms that discourage them from speaking out and demanding restitution. Discrimination, stigma and the normalisation and minimisation of abuses by recruiters and employers all serve to put pressure on migrants to simply accept their experience and keep silent.

Gender, Class and Racial Discrimination

Discrimination against migrant workers, based on gender, class, race, ethnicity, religion or other grounds permeated all discussions on access to justice for migrant workers. Low-wage migrant workers, especially undocumented or female migrant workers, face discrimination on multiple levels. South Asian partners noted that in the Middle East their clients are second-class citizens who should be grateful for any kind of employment. Yet even in origin countries migrant workers may be from a lower social status or a marginalised group, and can find speaking up against more powerful actors exceptionally difficult.

Discriminatory attitudes can not only prevent workers from making complaints but also from their complaints being taken seriously. A domestic worker described her experience in Lebanon as:

*'We are tricked and treated like dogs – we do have rights – my right is to live like any other person but we cannot address anyone [in the country of destination] like an equal. We cannot even go to the police for help. No one here listens to us or helps us.'*⁵⁵

The Nepali partners also explained how migrant workers feel the little regard with which they are viewed, which can feel very hard and dissuade them from going forward:

*'Migrant workers have dissatisfaction towards redress mechanisms. The main reason behind this dissatisfaction is the lengthy bureaucratic procedure that takes place in the court and quasi-judicial bodies to solve the case and the behaviour that the governmental bodies and institution shows towards the victim.'*⁵⁶

Similarly, the National Workers Welfare Trust summarised this as, 'most low and semi-skilled migrants are impoverished, illiterate and uncertified of the skills, which makes them more vulnerable to exploitation and often times there is no political will to address such situations.'⁵⁷

Stigma

Social attitudes that stigmatise migrant workers, especially women, were repeatedly mentioned by project partners. In home countries, this stigma emerges from social suspicion of young women who choose to leave their homes to earn money abroad. One partner noted that women face pressure from their families and communities to leave and earn money to support their family. At the same time, the independence suggested by migrating for work abroad, away from parents or husbands, left women open to suspicion of 'immoral' behaviour. One partner summarised the cycle of social stigma as:

*'If you migrate, and you come home with money you must have been engaged in sexual activities to earn that money; if you come home without money then you must have been sexually exploited and that's why you don't have money. No matter what path a woman chooses, she's a victim but also a violator of the moral code of the community.'*⁵⁸

These pressures prevent women from speaking up about exploitation or abuse abroad, for fear of being accused of having been sexually exploited, a source of deep shame for women in many communities. The partners in Bangladesh expressed this as:

'At the local level, people are still having a negative mindset about migrant workers, especially female migrant workers who face severe stigma after their return. Most of the time, migrant women avoid taking any legal action for the fear of being publicly

⁵⁵ *The Lebanon Documentation and Identification Tool Workshop, 24-25 August 2015, Beirut, Lebanon.*

⁵⁶ Joint report by Pourakhi, WOREC, and People Forum, submitted to GAATW as part of the SAME A2J Project, November 2016.

⁵⁷ National Worker Welfare Trust, email communication, October 2016.

⁵⁸ *Rights and Justice in the Context of Labour Migration: a civil society consultation, 3-5 November 2016, Bangkok, Thailand*

*labelled as raped women.*⁵⁹

Cases against local recruitment agencies or brokers, for example, may reveal that the woman's migration was troubled, leading to assumptions that the woman was sexually abused. Such assumptions could harm her reputation, her family relationships, her marriage prospects, and her employment prospects at home. Public trials in which women had to detail the harms suffered could only exacerbate individual and family shame. As a result, partners shared that many women migrants chose to pretend nothing had happened to them and to not seek any form of remedy.

Social stigma also affects men. Male migrant workers rarely want it known in their families or communities that they were abused or cheated because of a sense of shame that they failed to support their families, or had failed to defend themselves.

Normalisation of Abuses of Power

Finally, and related to the above, fraud by recruiters and abuse by employers has become so common as to be almost expected by migrant workers. Partners reflected that hundreds or thousands of men return from abroad to the same communities and have common stories of abuse, violence, exploitation or forced labour but few stories of redress, compensation or justice.

One result of this normalisation of abuse, partners believed, is that migrant workers frequently minimise the extent of the harms suffered. They may not internalise that they have rights or that the violations that they have suffered are worthy of concern. This may make them reluctant to involve themselves in legal actions to defend their rights.

The Bangladeshi partners shared:

*'In many cases victims are not willing to take any legal actions. Though there are many concerning facts that influence their decisions, it's very important to make people aware of their rights. When a worker has migrated to a new place, it's very important to make them aware of the legal rights that apply to them in a situation of crisis. The individual's empowerment and agency need to be strengthened to claim the legal entitlement of each migrant worker. When an organisation works for migrants, if the workers themselves are not willing to proceed, it's hard to ensure their access to justice.'*⁶⁰

Another perspective offered by partners is that migrant workers from regions where poverty, structural inequality, corruption and other factors conspire to deny them justice in their home communities, are frequently sceptical whether they will be supported to assert their rights. This scepticism is compounded by reports of failures by government and other actors charged with protecting migrant workers. One

⁵⁹ Joint report by OKUP and BOMSA, submitted to GAATW as part of the SAME A2J Project, November 2016.

⁶⁰ Joint report by OKUP and BOMSA, submitted to GAATW as part of the SAME A2J Project, November 2016.

partner from India explained that:

*'Women have heard of embassy officials or local government officers pushing migrant workers back into exploitative situations, asking them for bribes, or abusing women in the shelters. They are afraid to go to these people for help and instead try to find other migrant workers who can help them or try to call their family back home to find help.'*⁶¹

Without faith in the system, migrant workers are reluctant to proceed with a case, preferring a quick settlement or simply a ticket home. Some partners expressed frustration about cases where they believed the exploited migrant worker should have reported his or her treatment to the police or cooperated with a criminal prosecution, but the worker declined or accepted a small amount of compensation. Throughout the project, partners discussed how to balance respect for a person's wishes and encouraging the person not to settle for less than they are owed.

As a result, partners described struggling with how to advise migrant workers before they left about what was acceptable and legal behaviour, and with encouraging migrants to stand up if their rights have been violated. Trying to convince someone that their experience was a violation of their rights and deserving of redress can be very difficult.

⁶¹ National Workers Welfare Trust, during exposure trip to Kuwait, May 2016.

7. Organisational Barriers: Challenges for Access to Justice programming



Image 3: GAATW-IS and NDWM field visit in Kuwait

In all seven countries included in this project, the state provides little, if any, support and assistance to migrant workers who have been trafficked to access justice. Thus, the burden for aiding these vulnerable individuals falls on civil society organisations.

As well as legal advice and, in some cases, representation, these organisations provide the additional support that makes seeking justice possible: gathering documents and evidence, liaising with government agencies, assisting with rescues and repatriations, communicating with family members, making referrals to health and psycho-social services, and sometimes providing food and shelter. While migrant workers have, and can pursue justice on their own, legal aid, service provision and access to well-educated and well-trained mediators, paralegals, caseworkers and lawyers can make workers more informed and supported throughout the process.

All partner organisations in this project, regardless of their size, reported that operational and organisational difficulties limited the number of workers they could help and the depth of assistance they could provide. These difficulties are described here.

Overwhelming Number of Cases

Several of the partners described feeling overwhelmed by the sheer number of migrant workers and families in distress that needed assistance. The assistance ranged from advice, to support with rescue and rehabilitation abroad, to filing cases or claims.

For smaller organisations, the constant demand for assistance meant staff had little time or inclination to establish formal structures or protocols. Each case was handled in an ad hoc manner, whereby the organisation would interview the migrant worker or her/his family and provide whatever assistance they could. Such assistance met the immediate needs of the migrant worker, but the staff often did not have the capacity to do significant follow-up work or to support the migrant worker throughout a case.

For all organisations, the number of cases posed challenges in fully documenting cases, including conducting thorough intakes and documenting follow-up. In most cases staff members took informal notes, but some did not use an intake form or other systematic way of evaluating cases, which meant the frontline staff member was responsible for assessing the full needs and available opportunities for a given case without systemic guidance. While this does not necessarily mean that their clients received poor service, it opens the possibility that not all issues in a case are fully documented and not all legal options explored. Partners reflected that documentation systems with stronger emphasis on the indicators of trafficking could better trigger internal analysis of whether the case should be filed with the police as trafficking or what other avenues would be available.

Complexity of Cases

As well as the large number of cases, trafficking cases can be complex, involving multiple perpetrators, evidence across borders, and potentially multiple areas of law.

Smaller organisations, particularly in origin countries, said they found it difficult to feel confident operating across different areas of law and to follow legal developments. Many of the organisations were staffed by dedicated activists not trained in law or skills such as negotiation and mediation. It was also difficult to ensure frontline staff could correctly identify trafficking cases and provide comprehensive advice. Trainings provided by outside organisations often are given only to upper level staff, who could not always pass on the training materials to frontline workers in the field.

A common hurdle for project participants was the limited number of staff members with formal legal training on migration or anti-trafficking laws and a resulting reliance on paralegals in their place. As evidenced by much of the work done by project partners, non-lawyers are able to provide extensive and effective advice to trafficked migrant workers but more trained legal professionals are still needed to assist with the more technical elements of a case. However, several barriers prevent partner organisations from hiring enough lawyers to meet their legal needs. For example, the lack of funding to pay the expected salary for staff attorneys, lack of local, government-sponsored legal aid programmes,

and lack of legal education related to migration, human rights, or trafficking.

As a result of the gaps in legal expertise, many partner organisations focused on only one or two assistance strategies, such as filing a case at a specific forum, negotiating directly with agents or employers, facilitating redress from government agencies, or relying on personal connections. They rarely had the scope or the staffing to support migrant workers to take multiple avenues to redress. In South Asia, few had the capacity to push, for example, for more migrant worker cases to be taken up as trafficking cases.

A Lack of Sufficient, Consistent Funding

A consistent challenge for all partners was secure and consistent funding. All partner organisations relied on charitable grants to fund their work and received limited or no state funding. Reliance on grants, particularly project-based funding, is inherently insecure for all non-profit organisations. Nevertheless, it presents challenges for organisations that support migrant workers to seek justice.

First, assisting migrant workers to access justice can be expensive, and the costs are not always foreseeable. As well as overhead costs, staff-members travel to rural communities to gather evidence and take testimonies, meet with the migrant worker and travel to arrange meetings with government or other agencies, and pay disbursements for lawyers. Financial support for the migrant worker to travel to and stay in a major city for hearings or meetings may need to come out of programme budgets. In addition, organisations must cover costs associated with legal processes if the migrant worker cannot afford them, like filing fees, administrative costs (printing, mailing, and notarising), fees for lawyers and legal expenses. The National Domestic Worker Movement in India described:

‘To help an exploited migrant domestic worker, we often have to first meet her family to hear the full story and get copies of their documents – it is very difficult to get this information over the phone or by mail and many families do not trust strangers in an organisation far away to help without meeting first. This meant myself and the lawyer have to travel overnight by bus and cover our own food and transportation costs. Then once we have enough information to request the government to help someone to return to India, we may have to pay around INR 10000 (approx. USD 150) for travel, communication, lawyer charges, copying, and other such expenses. Even once the person is home, it costs money to help them go from the airport to their village and possibly back and forth if there is a case filed in a district court or higher court.’⁶²

Second, the timeline of a case does not follow the timeline of a grant, and is dependent on courts, the other party and the time needed to gather evidence. Thus, a grant can expire before a case is resolved and a new grant obtained. In some cases, upper level staff of smaller organisations said that they

⁶² National Domestic Worker Movement, email communication, February 2017.

frequently had to use their own personal finances to ensure programmes continue between grants.

Finally, donor funding is subject to changing donor priorities and agendas. Without referring to any specific donor, organisations noted that priorities may shift between ‘target’ populations, such as domestic workers, women and children, or minorities, depriving resources for other groups (men, workers of different income level or labour sector). Or it may shift from protection work and assisting workers to file cases, to increasing prevention and pre-departure training, or from settlement to promoting test cases in the courts. For example, one organisation expressed concern that donor-driven agendas will ‘make us into service delivery entities instead of advocates for change, especially in an increasingly apolitical funder environment.’⁶³ Adjusting existing programmes to suit changing donor priorities was described as a constant challenge.

Challenges to Organisational Collaboration

The need for collaboration was a recurring theme throughout the SAME A2J Project. Partners often expressed that collaboration would support case-handling, evidence gathering, sharing updates and changes to the law, and for referrals.

However, even with consensus on the need and opportunities for collaboration, organisations continue to struggle to implement collaborative projects or case-handling. Collaboration is difficult without a common language between organisations in countries of origin and destination. Although all the partners had at least one staff member fluent in English, many work predominately in local languages and may not have the capacity to conduct extensive work in non-local languages.

Second, relationship building across borders can be difficult without regular opportunities to meet and share perspectives, and with different social and legal cultures. While many organisations are trying to use online platforms to strengthen their relationships with partners in other regions, in-person meetings remain the preferred method for establishing trust and understanding. The partners from India who attended the week-long exposure trip to Kuwait during the project reflected:

‘After our visit to Kuwait in May, from June to December 2016, we had fifteen cases from Kuwait including six cases of domestic workers and eight other cases related to men. The visit paved a way to build relationship with the local Indian community. The Tamil group helps us and informs us whenever they have cases. This is only possible because we were able to meet so many people and get to know one another. Through that relationship, we have seen more assistance made available to distressed migrant workers.’⁶⁴

⁶³ *Rights and Justice in the Context of Labour Migration: A civil society consultation*, 3-5 August 2017, Bangkok, Thailand

⁶⁴ National Domestic Worker Movement, email communication, February 2017.

CONCLUSIONS AND RECOMMENDATIONS

The SAME A2J Project sought to address the lack of access to justice for trafficked migrant workers. The project was undertaken by the GAATW-IS in partnership with thirteen organisations in seven countries that assist migrant workers in distress. The organisations identified cases that could be considered human trafficking or forced labour and through various workshops and discussions, explored the barriers that trafficked persons face accessing justice. The GAATW-IS facilitated discussions to understand the challenges to bringing trafficking cases in the migrant labour context, and to support each other to overcome these challenges.

Discussions among project partners revealed that the structure, complexity and costs of labour migration programmes not only make migrant workers vulnerable to abuse but also make seeking redress exceedingly difficult. Reliance on recruitment agencies, high fees, employer sponsorship systems, and strict immigration regimes place migrant workers in a disadvantaged position with little control over their situations. The wealth and power of recruitment agents and employers further exacerbates this situation by making perpetrators nearly immune from prosecution or mediation as their place within local communities almost guarantees them increased protection by law enforcement, the judiciary and other similar stakeholders who have an interest in perpetuating the status quo.

Trafficking cases themselves are complex to prosecute and prove, especially if the evidence must be gathered across borders and the migrant workers involved are traumatised and reluctant to participate. Legal barriers, enforcement challenges, practical barriers, social and cultural barriers, and the obstacles to migrant worker organisations providing comprehensive legal support all make seeking justice difficult.

Yet, many threads of hope also ran throughout our discussions. At the outset, partners acknowledged that efforts to combat trafficking are relatively new, but that there is a growing realisation at national and international levels that migrant workers can and are trafficked into situations of severe exploitation. Migrant workers and diaspora networks in some countries are starting to organise and provide support to each other. And organisations in origin and destination countries are building alliances to better understand and address the dynamics of both trafficking and migrant labour, and to build their own legal experience and case-handling systems.

As more organisations recognise the intersection of trafficking and migrant labour, evidence-based advocacy will also become possible. Partners are beginning to turn the multitude of information they have on hand into evidence. Although time and resource limitations have made such advocacy difficult in the past, the willingness expressed by the partners to share resources and to do collaborative analysis of cases gives hope to future efforts to work together at international, regional, and local levels to advocate for meaningful change and improve the accessibility of justice for trafficked migrant workers.

To continue these steps forward, the GAATW-IS makes the following recommendations:

1. Continue research highlighting exploitation and abuse in the context of labour migration and the extent to which trafficked migrant workers access justice or fall through the cracks;
2. Offer targeted education and training to migrant worker organisations, anti-trafficking organisations, government, embassies, law enforcement and communities regarding trafficking in the context of labour migration;
3. Develop standardised indicators and guidelines for identifying and handling trafficking cases;
4. Increase funding for organisations providing legal services to migrant workers;
5. Enhance collaboration between organisations within and between countries for the purposes of building contacts, understanding the redress mechanisms in other countries and support in gathering evidence;
6. Support community and diaspora groups in countries of work that can advise and support migrant workers in distress to file cases and gather evidence.

ANNEX 1: DETAILS OF ACTIVITIES UNDER THE SAME A2J PROJECT

The Bangkok Labour Trafficking Case Analysis Workshop ('the Bangkok Workshop'), 31 July – 3 August, 2015 in Bangkok

The first workshop, and the first major activity in the SAME A2J Project brought together representatives of 12 partner organisations from four South Asian countries – India, Bangladesh, Nepal and Sri Lanka. The participants were mostly heads of organisations with long experiences in assisting migrant workers and taking migrant worker cases. Participating organisations included:

- AP Domestic Workers Welfare Trust, India
- Bangladeshi Ovhibashi Mohila Sramik Association (BOMSA), Bangladesh
- Center for Human Rights and Development, Sri Lanka
- Commission for Legal Education, Advocacy and Research on Community Development (CLEARCD), India
- DanChurchAid (DCA), Nepal
- HELVETAS Swiss Intercooperation, Sri Lanka
- Legal Support for Children and Women (LSCW), Cambodia
- National Domestic Workers Movement - Tamil Nadu, India
- OKUP (Ovibashi Karmi Unnayan Program), Bangladesh
- People Forum, Nepal
- Pourakhi, Nepal
- Women's Rehabilitation Centre (WOREC), Nepal

The Lebanon Documentation and Identification Tool Workshop⁶⁵, 24-25 August 2015 in Beirut, Lebanon ('The Beirut Workshop')

This workshop brought together 20 people from seven migrant rights and legal aid organisations in Lebanon. Unlike the other workshops, this workshop focused specifically on domestic workers and included participants who were migrant workers themselves. Participating organisations included:

- KAFA (enough) Violence & Exploitation,
- Caritas Lebanon Migrant Center,
- Insan Association,
- Amel Association,
- Domestic Worker's Union/Fenasol,
- Nari (Group of Nepalese Feminists in Lebanon), and

⁶⁵ Unlike the Bangkok and Amman Workshops, the Lebanon workshop was originally designed with the intention to create an identification tool to assist Lebanese participants to better identify trafficking cases; hence the slightly different workshop title. The workshop, however, generally focused on the same questions and issues as identified above.

- Swiss Agency for Development and Cooperation (SDC).

The Jordan and Kuwait Labour Trafficking Case Analysis and Documentation Workshop,⁶⁶ 31 August – 1 September 2015 in Amman, Jordan ('The Amman Workshop')

The third and final case documentation workshop brought together 18 people from nine organisations from Jordan and Kuwait. This workshop included some participants from government agencies that handle trafficking cases. Participating organisations included:

- Tamkeen Fields for Aid
- Jordanian Women's Union
- Adaleh Center
- ARDD Legal Aid
- Kuwait Society for Human Rights
- Kuwaiti Labor Observatory
- Ministry of Justice of Jordan
- Counter Trafficking Unit
- Swiss Agency for Development and Cooperation (SDC).

Action Planning Meeting with partners in Nepal and Bangladesh, December 2015 and January 2016, Kathmandu, Nepal and Dhaka, Bangladesh

After the Bangkok case documentation workshop, GAATW-IS staff visited partners in Nepal and Bangladesh to better understand their work and develop action plans to implement the workshop recommendations. These trips allowed for extensive discussions of access to justice in the national context, and specific barriers faced by the organisations.

Meeting with the Domestic Workers Network, 26 February 2016 in Amman, Jordan

The GAATW-IS partnered with Solidarity Center to hold a meeting of the Domestic Workers Network, which includes women migrant domestic workers from Bangladesh, Sri Lanka, Indonesia, and the Philippines. The larger meeting was followed by a focus group discussion with ten Bangladeshi migrant domestic workers.

Meeting on 'Trafficking and its Impact on Kuwait Society' and exposure trip with partners from India, May 2016, Kuwait City

This visit was coordinated with the Kuwait Society for Human Rights and the Arab Migrant Rights Network. GAATW-IS brought representatives and lawyers from two Indian organisations: The National Domestic Workers Movement and National Workers Welfare Trust. A multi-stakeholder workshop was held, followed by a weeklong exposure trip to meet with Kuwaiti migrant rights organisations, Indian

⁶⁶ Similarly the Beirut Workshop, the Amman Workshop was tailored to the needs of the participants and included an additional focus on better documentation and referral of cases between participants. Like the Beirut Workshop, the majority of the discussions focused on the same questions and issues as identified above.

diaspora groups and Indian migrant workers, including some whose cases had been supported from India.

Case Analysis Meetings and Joint Country Reports, May – July 2016, Kathmandu, Nepal and Dhaka, Bangladesh

Between May and July 2016, partners in Nepal and Bangladesh held six country case analysis meetings, three of which GAATW-IS staff attended. The meetings were based on case examples shared by partner organisations and aimed to increase collaborative analysis of the barriers facing victims of trafficking and forced labour. Partners also brainstormed strategies and methods for moving the cases forward. These discussions formed the basis of internal joint country reports by the Nepal and Bangladesh partners on their experiences handling trafficking cases, barriers they encounter, and their recommendations for future collaborative advocacy.

International consultation on Rights and Justice in the Context of Labour Migration, 3-5 November 2016, Bangkok, Thailand

To conclude the project and to connect its work with other elements of the GAATW's work, the GAATW-IS hosted a consultation with civil society organisations as well as key donor partners, members of the media, and representatives of other alliances. The consultation aimed to interrogate the barriers to, and identify opportunities for, access to justice for migrant workers; to build strategic alliances between partners and members from South and Southeast Asia and the Middle East; to enable and encourage the identification of key recommendations for advocacy; and to explore opportunities for future collaboration and interventions by GAATW's members, partners and allies.

Personal Communications with Partners

Throughout the project, partners exchanged emails and phone calls with the GAATW-IS staff on case examples, questions about trafficking, and for the compilation of information about the access to justice situation in each country. Additionally, partners shared information in preparation for the workshops and meetings, including by answering questionnaires, exchanging reports, and sharing other similar materials.

International Advocacy for Access to Justice

The GAATW-IS used the knowledge gained from the project to prepare different communication and advocacy materials and share its learnings. These included an [op-ed](#) ahead of the 19th SAARC Summit in 2016, a [blog post](#) from the focus group with Bangladeshi migrant domestic workers in Jordan, and [another one](#) for International Domestic Workers Day 2016, two side events at the Global Forum on Migration and Development in Dhaka in December 2016, a [statement](#) for International Women's Day in 2017 and a joint submission on access to justice and remedies to the UN Special Rapporteur on Contemporary Forms of Slavery in 2017.

ANNEX 2: RATIFICATION OF THE UN TRAFFICKING PROTOCOL BY MIDDLE EAST AND SOUTH ASIAN COUNTRIES

Country	Date of Ratification or Accession to the UN Trafficking Protocol
 Bahrain	7 Jun 2004
 Egypt	5 Mar 2004
 Iran	Is not a party
 Iraq	9 Feb 2009
 Israel	23 Jul 2008
 Jordan	11 Jun 2009
 Kuwait	12 May 2006
 Lebanon	5 Oct 2005
 Oman	13 May 2005
 Palestinian territories	Is not a party
 Qatar	29 May 2009
 Saudi Arabia	20 Jul 2007
 Syria	8 Apr 2009
 Turkey	25 Mar 2003
 United Arab Emirates	21 Jan 2009
 Yemen	Is not a party
 Afghanistan	15 August 2014
 Bangladesh	-
 Bhutan	-
 India	5 May 2011
 Nepal	-
 Maldives	14 September 2016
 Pakistan	-
 Sri Lanka	15 June 2015



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