

Worked to Death:

A study on migrant
workers and capital
punishment



MIGRANT CARE

Perhimpunan Indonesia untuk Buruh Migran Berdaulat

REPRIEVE

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About the Authors

Migrant CARE is a civil society organisation based in Indonesia and Kuala Lumpur (Registration number: AHU-0074014.AH.01.07) focusing on advocacy for the rights of Indonesian migrant workers. Migrant CARE was established in 2004 with three focus areas. First: realisation of good governance for safe migration through the implementation of a fair migration policy. Second: encouraging the fulfilment of rights and obtaining justice for Indonesian migrant workers through the provision of legal assistance. Third: developing the study of migration and creating a knowledge centre on migration.

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), with special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned and the rule of law is cast aside. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

Publication date: August 2021

Creative: Design by Maia

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Acknowledgments

We, Migrant CARE would like to thank Reprieve for their collaboration in the drafting of this report. During the drafting process, Migrant CARE was greatly assisted by information, data and confirmation from victims and their families who have been supported by Migrant CARE while facing the death penalty in receiving states. Thank you to the families of Siti Zaenab, Ruyati, Tuti Tursilawati, Satinah, Wilfrida Soik, Siti Aisyah and Darsem. We would also like to thank the Indonesian government for access to information and data during the drafting of this report. The government of Indonesia has been working towards the release of Indonesian migrant workers facing the death penalty abroad, particularly since 2011. This is because prior to 2011, the Indonesian government did not yet have an adequate system of legal and consular assistance to aid the defence of migrant workers facing the death penalty. Migrant CARE continues to encourage the Indonesian government to immediately abolish the death penalty and maximise the protection of Indonesian migrant workers from vulnerability to human rights violations, including the threat of the death penalty.

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Reprieve echoes the thanks of Migrant CARE and is grateful to Anis Hidayah and her dedicated team for their collaboration and expert guidance in producing this report. We also thank Gwawr Thomas for her extensive research and integral foundational work on the report. We express further gratitude to the many experts who generously gave their time and advice in the drafting process: Liva Sreedharan, Madhulika Murali, Lembaga Bantuan Hukum Masyarakat (LBHM), Migrante International, International Women's Rights Action Watch Asia Pacific, Suara Rakyat Malaysia (SUARAM) and the Anti-Death Penalty Asia Network (ADPAN). Our most heartfelt thanks go to the individuals who faced and are facing the death penalty, as well as their families, for allowing us to share their stories in this report.

Maya Foa, Joint Executive Director
Reprieve

1 Executive Summary

Foreign nationals, and within this group migrant workers, are a population that disproportionately faces the death penalty around the world. The data and statistics gathered by Reprieve and Migrant CARE for this report show that migrant workers as a sub-set of the foreign national population are at grave risk of human rights violations related to the death penalty, including arbitrary deprivation of the right to life in the context of unlawful death sentences and executions.

This report focuses on: states that receive migrant workers ('receiving states'), in particular the states that make up the Association of South East Asian Nations or ASEAN ('South East Asian states') and the Gulf Cooperation Council ('Gulf states'), and on states from which migrant workers travel to work ('sending states').

In the Gulf states, foreign nationals are overwhelmingly and disproportionately represented on death rows and are disproportionately executed, particularly for drug offences. Within this group, women are disproportionately represented in some states.

In Malaysia and Indonesia, foreign nationals are similarly disproportionately represented on death rows. In Indonesia over the past 10 years, foreign nationals have been disproportionately executed, particularly for drug offences. 90% of those executed in Indonesia for drug offences in the past decade were foreign nationals.

According to data from the Indonesian Ministry of Foreign Affairs, between 2008 and 2021 there were 583 Indonesian

migrant workers who faced the death penalty in 7 receiving states. 392 of those individuals escaped the death penalty, and 6 have been executed. Legal proceedings are ongoing in 188 of those cases.

Malaysia and Saudi Arabia are the two receiving states with the highest numbers of death penalty cases of Indonesian migrant workers. Migrant CARE's findings show that of the migrants who face the death penalty in Malaysia and Saudi Arabia, 72% are women, of whom 66% are charged with murder, 14% with drug offences and 14% with allegations of witchcraft.

In relation to sending states such as Nigeria and Pakistan our research shows that migrant workers are often not afforded an adequate standard of consular assistance by their home countries in breach of international law. Adequate consular assistance can make the difference between life and death for a foreign national facing the death penalty.

Our research also shows that the disproportionate application of the death penalty to foreign nationals and migrant workers in particular can be attributed to the fact that migrant workers are in a particularly vulnerable position due to various interconnected factors, including a lack of access to legal representation in an unfamiliar jurisdiction, language barriers, socio-economic disadvantage, social isolation, discrimination, and a lack of access to adequate consular assistance due to failings by both receiving and sending states.



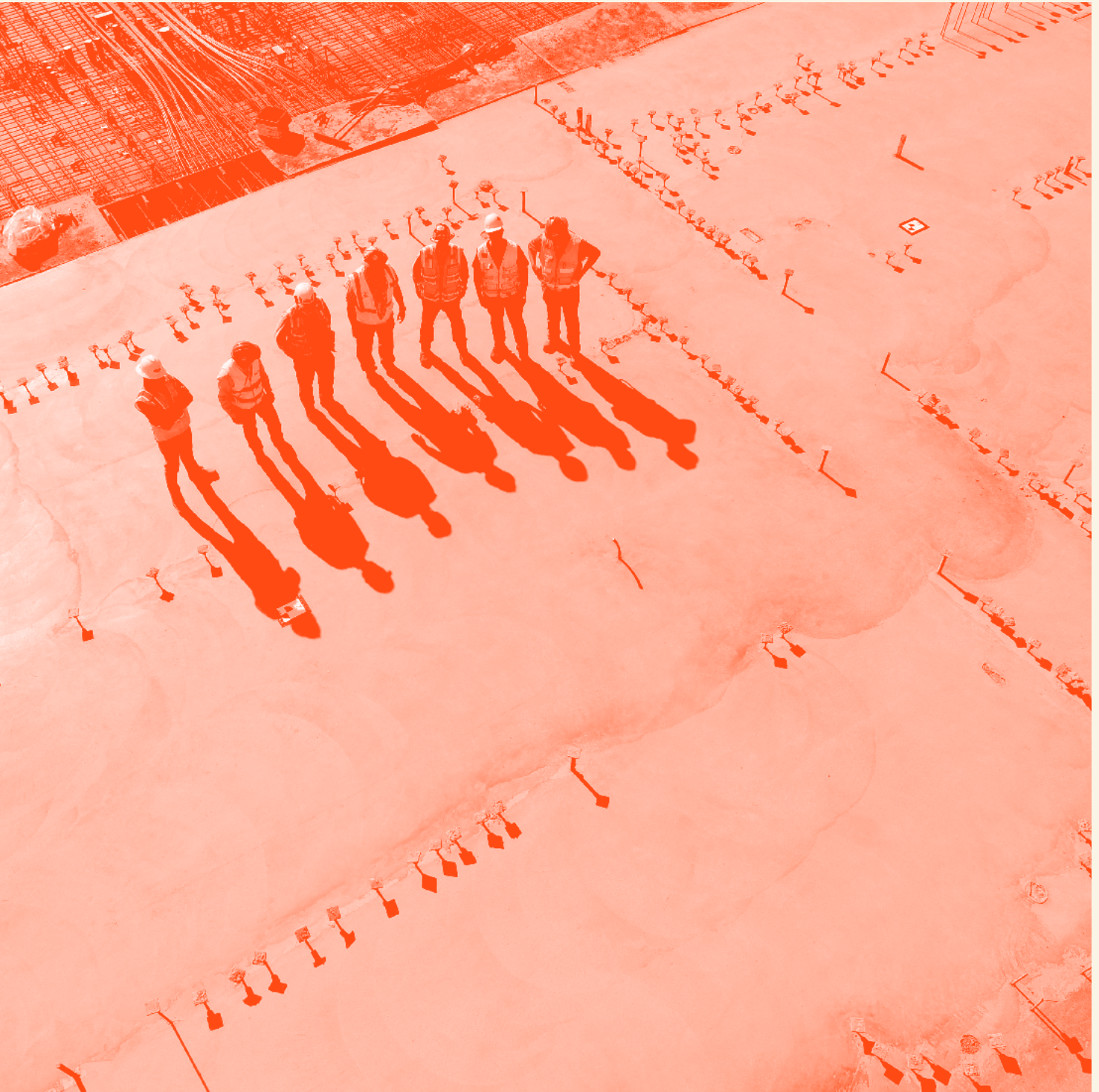
In addition, often having or perceived as having access to passports and therefore the ability to travel internationally, but being typically poor, isolated and without local support networks, migrant workers are vulnerable to becoming victims of trafficking and being coerced into committing crimes which carry sentences of death. This is particularly true for migrant women, a large proportion of whom work in private homes, informal sectors and sectors of work which are mostly unregulated.

There is a legal framework, underpinned by both international law and regional human rights instruments, which is intended to uphold the rights of migrant workers, including the non-punishment principle which is meant to protect victims of human trafficking from being punished for acts that arose from their trafficking. Death sentences for victims of trafficking are the starkest violations of that principle.

The fact that hundreds of foreign nationals, including migrant workers, have been executed in breach of international law in recent years confirms that these protections are not widely adhered to and/or not implemented effectively.

Drawing on examples of best practice by both sending and receiving states, the report concludes by making recommendations on the following issues:

- the obligations of receiving states to notify migrant workers of their right to consular assistance and to provide access to consular assistance; and the obligation of sending states to provide adequate consular assistance to migrant workers facing the death penalty;
- the obligations of sending and receiving states to safeguard against the arbitrary deprivation of the right to life in death penalty cases in line with international law;
- the need for all sending and receiving states to ratify the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to ensure protection from abuse and exploitation by employers of migrant workers and other stakeholders such as recruitment agencies;
- the obligations of sending and receiving states to identify and protect victims of human trafficking and uphold the non-punishment principle; and
- the obligations of sending states to implement rehabilitation programmes for migrant workers who have been released from death row and their family members, and the family members of those who have been executed.



2 Background & key statistics

Migrant workers positively impact the social and economic development of their countries of origin, transit and destination, a fact recognised in the 2030 Agenda for Sustainable Development.¹ In receiving states, they fill labour and skills shortages, contribute to social security schemes, and promote entrepreneurship, whilst sending states benefit from high remittance flows and the importation of critical skills through return migration and transnational community links. It is estimated that in 2020 migrant workers numbered 164 million and contributed USD 689 billion in remittances globally.²

A significant proportion of the world's migrant workers travel from South Asia and South East Asia to work in the Gulf, and between South East Asian states.³ Among the top 20 of the world's receiving states are **Saudi Arabia**, the **United Arab Emirates ('UAE')**, **Thailand** and **Malaysia**. Among the top 20 sending states are the **Philippines**, **Indonesia** and **Myanmar**.⁴ Many of the countries in the Gulf and South East Asia are retentionist,⁵ maintaining the death penalty for a wide range of offences including drug offences, and imposing the death penalty in breach of fair trial protections and through processes tainted by torture.⁶

Most migrant workers in Gulf and South East Asian States are in vulnerable situations. The majority are very poor, have limited social capital, have no support network locally, face gender and racial discrimination and are gravely disadvantaged by virtue of not speaking the language of their host countries. Migrant workers who find themselves on the wrong side of the law are in particularly precarious positions.

All of the Gulf states⁷ and half of all ASEAN states (**Indonesia**, **Thailand**, **Singapore**, **Viet Nam** and **Malaysia**)⁸ retain the death penalty, including for offences which do not meet the threshold of 'most serious crimes' stipulated under Article 6 International Covenant on Civil and Political Rights ('ICCPR'), such as drug offences.⁹ Moreover, as case studies in this report show, the death penalty is routinely imposed in breach of fair trial protections and following processes tainted by torture in these jurisdictions.

International experts have warned that foreign nationals are often in a particularly vulnerable position when facing death penalty charges and have little or no defence against the law enforcement systems of the countries where they find themselves, noting that this is particularly the case with migrant workers.¹⁰

Data gathered by civil society confirms that foreign nationals are disproportionately sentenced to death and executed in Gulf states.

- As of February 2021, Bangladeshi nationals represent nearly 30% (8 out of 26) of the individuals currently on **Bahrain's** death row facing imminent execution.¹¹
- Between 1964 and 2017, **Kuwait** executed 80 people, and of the 79 of these individuals whose nationality is known, 70.8% were foreign nationals.¹²
- Of the at least 184 people executed in **Saudi Arabia** in 2019, the majority (52%) were foreign nationals¹³ and, of the 27 people executed in 2020, 8 were foreign nationals.¹⁴ In 2021 so far, at least another seven foreign nationals have been executed.¹⁵ Based on Migrant CARE's records, between 2008 and 2021, there were five Indonesian migrant worker women who were executed.
- Whilst foreign nationals account for around a third of the population of **Saudi Arabia**, they accounted for almost half of the 2,208 executions recorded between 1985 and 2015.¹⁶ During the reign of King Salman, which began in 2015, foreign nationals have represented 73% of those executed for drug offences.¹⁷
- Although no executions are known to have been carried out in the **UAE** since 2017, courts have continued to issue death sentences, the majority of which have been imposed on foreign nationals.¹⁸ To the knowledge of Migrant CARE, there were four Indonesian migrant workers who faced the death penalty in the UAE between 2007 and 2021.
- Of the approximately 200 people known to be on death row in the **UAE**, only 19 are Emirati nationals.¹⁹ The figures are even starker when considering the female death row population: 8 of the 9 women known to be on death row are foreign nationals.²⁰
- Data collected by Reprieve shows that every single person known to have faced the death penalty for drug offences in the **UAE** since 1998 has been a foreign national.²¹
- The only execution recorded in **Qatar** since 2003 was of Anil Chaudhary - a Nepalese migrant worker executed in May 2020 by firing squad. Although he had been sentenced to death almost three years earlier, the Nepalese embassy was informed of his sentence only the day before his execution.²²

Disaggregated data from South East Asian states is harder to gather. In Singapore, annual reports from the government do not provide data other than the number of executions that have taken place every year.²³ However, there is frequent media reporting on foreign nationals who are sentenced to death in Singapore, particularly from neighbouring states.²⁴ There is also clear evidence of disproportionate representation of foreign nationals on death row in other South East Asian jurisdictions.

- In **Malaysia** in October 2020, Parliament confirmed that just over 40% of the death row population were foreign nationals.²⁵ In February 2019, Amnesty International reported that "[a] startling 44% ... of all those under sentence of death were foreign nationals, from 43 countries." 16% were Indonesian, 15% Indian, 8% from The Philippines and 6% from Thailand.²⁶ The proportion of death row prisoners who are foreign nationals far exceeds the total proportion of foreign nationals in the country, which in 2020 was under 9%.²⁷
- Between 2007 and 2020, there were 213 Indonesian migrant workers who faced the death penalty in **Malaysia**. On 19 January 1990, Basri Masse, an Indonesian migrant worker, was executed in Sabah for drug trafficking.²⁸ On 14 September 1991, Karno Marzuki was executed in Malaysia for murder.²⁹
- There are 49 Philippines nationals facing the death penalty in Malaysia, of a total of 62 Philippines nationals facing the death penalty worldwide. 37% of the total number are facing the death penalty for drug offences, and the majority of this group are women facing the death penalty in **Malaysia**.³⁰
- In **Indonesia**, Reprieve's data collection efforts show that 91 of 445 prisoners known to be on death row are likely to be foreign nationals. Even more worrying is the fact that of the 19 people executed over the last decade in Indonesia for drug offences, almost 90% were foreign nationals.³¹

It is important to note that this data may not be comprehensive and the real figures of death sentences and executions may be much higher. All retentionist states should make data on the death penalty public. The UN General Assembly has repeatedly called on all states that continue to apply the death penalty to “[t]o make available relevant information, disaggregated by sex, age, nationality and race, as applicable, and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal or in which amnesty or pardon has been granted, as well as information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty.”³² Unfortunately, the vast majority of executing states have failed to make any such information available.





3

Why are migrants disproportionately sentenced to death and executed?

International human rights experts have identified that foreign nationals are disproportionately affected by the death penalty. This is due to a number of factors: gender and racial discrimination; lack of familiarity with the legal system, culture, language and environment; lack of awareness of rights on arrest; coerced confessions often written in a language they do not understand; lack of access to an interpreter; and, lack of a support network to help navigate the legal process and secure effective representation.³³

Our ongoing casework and research suggests that the socioeconomic disadvantage and generally abusive work environments endured by many migrant workers in Gulf and South East Asian states render them especially vulnerable to human trafficking and to facing the death penalty for crimes that arise out of their trafficking and exploitation. In many countries in both regions, victims of human trafficking are not identified as such and so are not able to raise their status as victims of human trafficking as a defence or in mitigation of sentence. In many cases, individuals will struggle to recognise that they are a victim of exploitation and trafficking by virtue of their conditioning and traumatising. It is for this reason that international instruments place the burden on states to investigate and identify victims of trafficking, and not on the victims themselves to self-identify.

Other migrants may not meet the threshold of being a victim of human trafficking but have nevertheless been exploited in their workplace. Socioeconomic disadvantage and lack of support in challenging exploitative employers may result in migrant workers becoming embroiled in drug trafficking, making them vulnerable to the death penalty in the Gulf and in several South East Asian states which impose the death penalty on those convicted of non-lethal drug offences, in breach of international law.

This section details the various interconnected factors which put migrant workers in a vulnerable position in relation to the death penalty and the human rights abuses attendant on the use of the death penalty.

3.1 Language barriers

Interpretation or translation services are not routinely made available to foreign national defendants who do not speak the local language, meaning that they cannot effectively exercise their rights at all stages of the criminal justice process.

For example, in Saudi Arabia interpreters are available only at the trial stage.³⁷ Independent interpretation at an early stage in the proceedings is crucial for a fair trial to take place.³⁸ Without it, defendants may be asked to sign confessions in a language that they do not understand and be prevented from participating meaningfully in the preparation of their defence.

Case study

A former client of Reprieve, who was a foreign national detained in Saudi Arabia, was not told of the charges against him until he had been in custody for over a week, and during this time was not offered a lawyer, translator or access to his consulate. He was also made to answer questions without a lawyer present, and sign a document in Arabic, without understanding its contents. This “confession” was used to convict him.³⁴

3.2 Socio-economic disadvantage

Socio-economic precariousness is often the very reason migrant workers choose to go abroad for work. Work overseas provides the opportunity to escape poverty and support families back home. However, our research shows that there is often a deadly cost. For example, migrant workers sentenced to death for drug offences have often acted as drug mules for meagre sums in order to alleviate their dire economic circumstances. Similarly, domestic migrant workers may be at increased risk of facing the death penalty due to exploitative labour conditions and abuse at the hands of their employers.

This lack of economic resources further affects migrant workers’ ability to effectively defend themselves when they are charged with capital offences. The UN Human Rights Council has recognised the inextricable link between poverty and the death penalty, noting that beyond the cost of legal representation, every step of the judicial process can incur expenses – be that for obtaining or copying documents, paying witnesses’ expenses or funding the commissioning of independent experts.³⁵

Many migrant workers in Gulf and South East Asian states are also particularly vulnerable because their lack of financial resources and social and political capital means that they are much less likely to benefit from pardon and compensation.

Of the 104 prisoners who benefited from pardons in Saudi Arabia between 2000 and 2008, just ten were foreign nationals.³⁶

3.3 Discrimination

The UN Human Rights Committee has noted that members of religious, racial or ethnic minorities or foreign nationals are disproportionately likely to face the death penalty, raising grave concerns regarding non-discrimination in the application of the right to life and the right to equality before the law.³⁹ Migrant workers are frequently disadvantaged by anti-immigration sentiments and rhetoric in receiving states, becoming victims of scapegoating and bias by the police, prosecutors and judges.⁴⁰

Case study

Humphrey Jefferson Eleweke (Jeff) was a Nigerian national who lived in Jakarta and ran his own restaurant.⁴¹ Jeff was denied access to a lawyer during his first five months in pre-trial detention and was repeatedly tortured until he 'confessed' to owning drugs police had found in the restaurant. The Court considered that Jeff was likely to have committed the crime based on his nationality and skin colour. In its trial judgment, the District Court said that "black-skinned people from Nigeria" are under police surveillance because they are suspected of drug trafficking. Every witness that testified against Jeff noted that he was black.⁴² A year after Jeff's arrest, the co-owner of the restaurant confessed on his deathbed in front of witnesses to planting the drugs and framing Jeff. Jeff's lawyer filed this exonerating evidence but the courts denied the appeal. Jeff spent 12 years on death row proclaiming his innocence before he was executed without being given the 72 hours' notice to which he was entitled.⁴³ His clemency application was pending when he was executed by firing squad in breach of international law.⁴⁴

In addition, foreign nationals who are from a different religious and cultural background from that of the receiving state may find themselves facing death sentences having inadvertently broken the law. For example:

Case study

Five Indonesian migrant workers in Saudi Arabia were sentenced to death after having been found guilty of practising sorcery: most of them were convicted because they were carrying jimat - traditional amulets carried as good luck charms which are inoffensive to most Indonesian Muslims, but considered to be idolatrous under Saudi Arabian law.⁴⁵

3.4 Unfair trials

International law requires that the right to a fair trial includes the right to effective legal representation.⁴⁶ The UN Human Rights Council has recognised that, in capital cases, the availability and quality of legal representation is a key factor in determining whether a defendant is sentenced to death.⁴⁷

Lacking familiarity with the legal system, language and the culture, people facing criminal proceedings outside their own country face additional challenges in defending themselves. Foreign nationals are often unaware of their rights, such as the right to remain silent and the privilege against self-incrimination.⁴⁸ In such circumstances, timely access to effective legal advice and representation is crucial. Frequently, however, a lack of familiarity with the receiving state's legal system, a lack of financial resources and familial support network close by, and the variable quality of capital defence lawyers means that migrants are sentenced to death without ever having spoken to a lawyer.⁴⁹

Case study

While working as a driver, Hussain Abo al Kheir was stopped whilst crossing the border from Jordan to Saudi Arabia. Following his arrest for possession of drugs found in the car, a forced "confession" was extracted from him following hours of beating. He was sentenced to death in May 2015. His first contact with a lawyer occurred after he had been sentenced to death.⁵⁰

Case study

Siti Zaenab Binti Duhri Rupa was an Indonesian national who was employed as a domestic worker in Saudi Arabia. She suffered from mental illness. In the process of interrogation, she was forced to sign a letter stating that she had killed her employer intentionally, and this was her "confession". Siti Zaenab was provided with neither a lawyer nor an interpreter at her trial.⁵¹ Her mental illness was not taken into account when she was sentenced.⁵² Neither her family nor the Indonesian government were informed in advance of her execution and so were denied the chance to make last minute pleas for clemency before she was executed in April 2015.⁵³ With the support of Migrant CARE, both Siti Zaenab's children have since 2019 worked as staff at the Indonesian Migrant Workers Protection Body (Badan Pelindungan Pekerja Migran Indonesia or BP2MI) in Surabaya.

Case study

Rosa* was a Filipino domestic worker who was sentenced to death in the UAE after having been convicted of murdering her employer. Neither at trial nor at the appeal stage did the court give her an opportunity to be heard and put forward her account of self-defence.⁵⁴

These are by no means isolated cases. In 2018, Human Rights Watch and Justice Project Pakistan surveyed 21 Pakistani defendants, in 19 cases, who had been put on trial in Saudi Arabia. Only one of them had been represented by a lawyer, and only one had had access to court documents.⁵⁵

*In this case study, we have used a pseudonym to protect this person's identity and safety.

3.5 Torture and mistreatment

Many receiving states routinely use torture and mistreatment to secure “confessions” which are relied on to convict and sentence migrants to death. In addition, prison conditions and the treatment of prisoners throughout the Gulf and South East Asian regions are notoriously appalling, and often amount to torture or cruel, inhuman or degrading treatment.

For example, in Malaysia and in high- or maximum-security prisons in Indonesia, death row prisoners are subjected to indefinite solitary confinement⁵⁶ in breach of international standards.⁵⁷ In Thailand, the UN Committee against Torture reported various violations of the Convention against Torture in detention, including allegations of torture by guards, use of shackles, overcrowding and solitary confinement.⁵⁸ In Singapore, Amnesty International reports that death row prisoners are “not permitted to go outside for fresh air or exercise” and “may receive one 20-minute visit per week in a special area where they are separated from visitors by a thick pane of glass and have to communicate via a telephone.”⁵⁹

Foreign nationals are also likely to be targets for brutal violence inflicted by prison guards:

Case study

One Reprieve client imprisoned in Saudi Arabia reported that foreign nationals were “regularly beaten by prison officials”. He once saw foreign nationals “whipped with [an] electrical cord”; and on another occasion, saw “a group of foreign national prisoners being beaten by the prison officials with part of a fire extinguisher... until their legs were black.”⁶⁰

In some cases, lack of medical treatment and/or mistreatment by authorities have led to individuals dying while still on death row, before their executions are carried out.

Case study

Zulfiqar Ali was an innocent Pakistani national who was sentenced to death in Indonesia. He migrated to Indonesia to work in a textiles factory. Zulfiqar was arrested in Indonesia after another person identified him as the supplier of 300g of heroin. Zulfiqar told the court that in the three days following his arrest, he was assaulted repeatedly and threatened with death by police officers until he “confessed”. Nevertheless, the trial court upheld the validity of Zulfiqar’s “confession”. A month after Zulfiqar’s trial, the man who had previously identified Zulfiqar as a heroin supplier gave evidence in court that he had only done so under duress, and signed an affidavit corroborating Zulfiqar’s evidence that the 300g of heroin did not belong to Zulfiqar. The affidavit was dismissed and Zulfiqar’s death sentence remained in place. Crucially, an internal investigation carried out by the Indonesian government found that Zulfiqar was innocent, but was never acted upon.⁶¹

Zulfiqar’s medical records showed that he was in extremely poor health and had life-threatening medical conditions following abuse and mistreatment from state authorities. Several years after his arrest and while Zulfiqar was still suffering from more than one severe medical condition, he was listed for execution. Although Zulfiqar was eventually spared from execution, his health continued to deteriorate in prison without access to adequate medical care. Zulfiqar untimely died in prison after more than a decade on death row from liver cancer.

3.6 Isolation and lack of a support network



The domestic work sector in Gulf and South East Asian states is unique in that many domestic workers work and live full-time in private homes, and therefore have no colleagues or contacts outside the home. The isolated nature of the work means that access to formal support or community groups is limited.⁶² Access to support services is further hampered when employers do not permit migrant workers to leave the household, or to have access to a phone or computer. Many migrant domestic workers live and work in suburban residential areas without public transportation and would struggle to reach their embassy or a shelter without assistance.⁶³ In addition, migrant workers typically send remittances home, providing a vital lifeline to their families. For some, the perceived shame of not having made a success of themselves in the country of employment further prevents their escape.⁶⁴

In these circumstances, individuals who willingly travelled for work are at high risk of becoming victims of human trafficking through the maintenance of an exploitative situation, and conditions tantamount to an involuntary stay. These difficulties disproportionately impact women as the vast majority of domestic workers in Gulf⁶⁵ and South East Asian states are women.⁶⁶ Many of the migrant women on death row in Gulf states are likely to be victims of sexual and other forms of violence.⁶⁷ The live-in model remains the only legal option for domestic workers in all Gulf states except Bahrain and the UAE.⁶⁸

These extremely exploitative and unsafe conditions of employment, coupled with social isolation and lack of support networks, may result in migrant workers commit-

ting violent acts in self-defence, which in some cases then lead to charges carrying the death penalty.

Once facing a capital charge, migrant workers often lack a local support network to help navigate the legal process, assist with securing legal representation, or provide much needed emotional support. Friends who are also foreign nationals may be reluctant to provide support or to testify on behalf of the defence, for fear of jeopardising their own residence.

Case study

Satinah Binti Jumadi Ahmad, was an Indonesian domestic worker convicted of murdering her employer in Saudi Arabia. Satinah, who had been subjected to months of physical and emotional abuse by her employer, confessed to the killing but maintained that she had acted in self defence.⁶⁹ She had been cooking in the kitchen when her employer grabbed her hair in anger and attempted to bang her head into a wall. Satinah defended herself by striking her employer in the neck with a rolling pin.⁷⁰ She was spared execution after the Indonesian government contributed USD 1.8 million to the victims' family (payments such as this are known as "diyya").⁷¹ Satinah returned to Indonesia in September 2015.⁷² Satinah's child works at BP2MI in Semarang.

3.7 Abusive labour conditions

Gulf states host the largest number of women migrant domestic workers in the world. Their population is estimated at around 1.6 million, comprising around 19% of the world's domestic workers.⁷³ Domestic work accounts for the bulk of employment of migrant women in Gulf states, at 62%.⁷⁴

The conditions in which many domestic workers in Gulf states work are deplorable. For example, following a visit to Kuwait in 2016, the Special Rapporteur on trafficking in persons, especially women and children, noted that many domestic workers experience physical and mental abuse ranging from being deprived of food to beatings, sleeping on kitchen floors or balconies, being pushed off apartment balconies, being confined in houses, being prohibited from accessing healthcare and outside communications, harassment, sexual assault and psychological abuse encompassing racism and xenophobic statements.⁷⁵ The Special Rapporteur observed that employers, who incur costs to sponsor domestic workers, see such actions, particularly the withholding of passports, as “guarantees” for getting their money's worth.⁷⁶ Whilst the law prohibits employers from confiscating domestic workers' passports, enforcement is weak, and apart from a one-year ban on sponsoring domestic workers, there are no penalties for passport confiscation.⁷⁷

These systemic problems exist in other Gulf states, most of whom observe the sponsorship system known as the *kafala* system.⁷⁸ Under this system, workers who leave their place of employment without their employer's permission risk being charged with absconding, having their residency status annulled and subsequently being detained and deported. As a result, sponsors may threaten to file false absconding charges to entrap workers in exploitative labour.⁷⁹ Against this background of abuse and exploitation, foreign domestic workers in the Gulf States may face the death penalty following accusations of murdering their employers or their employers' family members.

Case study

Tuti Tursilawati was an Indonesian national who arrived in Saudi Arabia in September 2009 to work as a domestic worker. It was publicly reported that Tuti was sexually abused by her employer for months during her time of employment with him.⁸¹ On 11 May 2010, when her employer attempted to rape her, Tuti hit him with a stick in self-defence and he died. She fled and was arrested by local police. No investigation was reported to have been undertaken into the alleged attempted rape or sexual abuse. Tuti was executed on 29 October 2018.⁸²

Case study

Darsem Binti Dawud Tawar was an Indonesian domestic worker who faced the death penalty in Saudi Arabia. Darsem killed one of her employer's relatives in the course of defending herself from an attempted rape by him.⁸³ Her life was ultimately spared after intervention by the Indonesian government, which raised funds for *diyya* (partly through donations from the public). She had a five year old son.⁸⁴

A similar set of circumstances exist in South East Asian states, where the UN International Labour Organisation (ILO) and the International Organisation on Migration (IOM) report that “many intra-ASEAN migrants are precariously employed in an irregular status. Regardless of their legal status or the documents they hold, migrants ... often face exploitation and abuse because of inadequate protection of labour rights during recruitment and employment. ... Women face additional challenges in accessing safe and legal migration opportunities, with the type of work typically available to them often paying less and affording fewer legal protections”.⁸⁰

Case study

Abdullah* was a migrant worker from Bangladesh who came to Malaysia to work in the service sector. He was not paid the salary he was promised over the course of 2 years' employment. Abdullah filed a case against his employer for failing to pay his wages and won. The employers continued to refuse to pay him his wages. As an intimidation tactic, they sought the assistance of a police officer to conduct a raid on Abdullah's home and falsely arrest him for possession of drugs. Abdullah witnessed the police officers taking a packet of white substance from their own pockets and pretending to find it under his sofa in his home during the raid. After this raid, Abdullah was arrested and charged for drug possession. Due to a lack of evidence, the case against Abdullah was ultimately discharged and he was not convicted of any drug related offences.⁸⁵

*In this case study, we have used a pseudonym to protect this person's identity and safety.

3.8 Vulnerability to becoming victims of human trafficking



Migrant workers are more susceptible to becoming victims of human trafficking as a result of their relative poverty, isolation and the transnational nature of their work. They are often socioeconomically disadvantaged⁸⁶ and lack access to support networks which might protect them from human traffickers.

In cases where migrant workers meet the legal standards to qualify for protection as victims of human trafficking and have been trafficked to commit the crime for which they face the death penalty, a capital sentence will likely violate the non-punishment principle, whereby victims of human trafficking must not be punished for offences in which they were involved as a direct consequence of their situation as trafficked persons.⁸⁷

The international law requirement for individualised sentencing in capital cases also requires that the personal circumstances of the individual facing the death penalty must be considered.⁸⁸ Having been exploited by human traffickers would be a relevant circumstance for the sentencing court to consider even where the trial courts do not consider the person to have met the legal threshold for being a victim of human trafficking.

Our research indicates that migrant workers who are potential victims of human trafficking are not being afforded the protection of the non-punishment principle and their status as victims of human trafficking is not being considered in the legal process.

Drug trafficking is a form of human trafficking to which migrant workers are particularly vulnerable. This contributes to their risk of being sentenced to death as drug offences carry the death penalty in so many Gulf and South East Asian states. Migrant workers are targeted by drug traffickers since they are typically socioeconomically disadvantaged and their work is transnational in nature, and at the same time they are often isolated and do not have local support networks.

Involvement in the transportation of drugs – particularly by women – is often the product of exploitation, coercion, violence, and abuse of their vulnerable position due to their socio-economic circumstances.⁸⁹ The UN Human Rights Council has highlighted the links between poverty, family roles and drug-related offending by women. They often have a secondary role in the commission of the crimes, being expected to perform low level – but high risk – tasks, frequently at the behest of male partners.⁹⁰ Studies have shown that drug traffickers target women as they perceive them to be at lower risk of attracting attention than men. Women are also less likely to have the resources to acquire drugs to sell for profit, which further exposes them to exploitation by traffickers.⁹¹

There are also specific work sectors (such as the sex⁹² and fishing⁹³ industries) in which migrant workers are engaged where there is a high prevalence of drug use either through necessity or through compulsion by employers. These circumstances also bring migrant workers to the attention of drug traffickers and make them vulnerable to exploitation by them.

Case study

In Malaysia, Wilfrida Soik, an Indonesian national who was a victim of human trafficking, spent a decade in prison in Malaysia, having been sentenced to execution for an act of self-defence resulting in the death of her employer. Wilfrida was born in Belu, East Nusa Tenggara on 12 October 1993. At the age of 17, she left for Johor Bahru via Jakarta and Batam. From Johor Bahru, Wilfrida was taken to Kota Bharu in the Malaysian state of Kelantan and was then given work as a domestic worker in the home of Yeoh Meng Tatt. Wilfrida was a teenage victim of human trafficking, taken from Indonesia at 17 for forced domestic labour in Malaysia. Based on information provided by Wilfrida to an officer of the Kuala Lumpur Indonesian embassy at the regional police station in Pasir Mas, Wilfrida's employer was violent and abusive towards her. On 7 December 2010, Wilfrida defended herself against physical attacks by her employer, fighting and pushing her employer, resulting in her employer falling and ultimately dying.⁹⁴

Case study

Merri Utami has spent almost 20 years awaiting execution in Indonesia after being convicted of illegally importing drugs. Merri was in an abusive marriage which she “felt she didn't have the power – or financial means” to leave. Her husband's gambling debts put additional financial strain on her and her two children. She eventually took up work as a caregiver for an elderly woman in Taipei, where she was paid USD 94 per month. Eventually, Merri left her husband and in Taipei, began a romantic relationship with “Jerry”, who supported Merri financially, allowing her to stop working as a caregiver. During their relationship, they went on holiday to Nepal, and Jerry gave Merri a purse as a gift before having to leave Nepal suddenly on “urgent business”. When Merri travelled back to Indonesia alone with the purse, airport officers found heroin in the lining of the bag. Merri had had no idea the bag contained drugs.⁹⁵

4

Failure of states to implement protections for migrant workers

Research and consultation with organisations representing migrant workers and their families suggest that provisions currently exist in international law, which, if properly implemented, would help prevent migrant workers from becoming vulnerable to the abuses attendant on the use of the death penalty.

This section examines these provisions and explores why and how states are failing to implement them, as well as highlights examples of best practice and the positive impact these can have on individual death penalty cases.



4.1 Right to consular notification, access and assistance

Both sending and receiving states have obligations as regards consular assistance. Access to consular assistance is an essential protection which must be afforded to those facing the death penalty overseas. Under Article 36 of the Vienna Convention on Consular Relations and Article 16(7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ('Migrant Workers Convention'), receiving states must without delay inform all foreign detainees of their rights to have their consulate informed of their detention and to communicate with their consular representatives.

The International Court of Justice has clarified that the right to notification and access to consular assistance arises as soon as it is appreciated that the relevant person is a foreign national, or there are grounds to think that the person is probably a foreign national.⁹⁶ Moreover, the rights to consular assistance afforded by the Vienna Convention constitute fair trial rights.⁹⁷ As a result, a failure by the receiving state to promptly inform detained foreign nationals of their right to consular assistance in death penalty cases is a violation of the right to a fair trial and the right to life, in breach of Articles 6 and 14 of the ICCPR.⁹⁸

Consular assistance is an especially vital protection for undocumented migrants and those working in unregulated sectors, a group which may be particularly vulnerable to exploitation because of the precariousness of their circumstances.⁹⁹ This is because courts and international experts have recognized that adequate consular assistance can help mitigate all of the issues that give rise to the vulnerabilities detailed in the previous section, including the fact that domestic workers who are isolated because they live and work in their employers' homes may not be able to access assistance in the likely event of abuse or exploitation.¹⁰⁰ Moreover, consulates are able to ensure effective legal representation and interpretation, which are key to ensuring a fair trial and being able to robustly defend oneself against a death sentence.¹⁰¹

In 2019, the Special Rapporteur on extrajudicial, summary or arbitrary executions confirmed that sending states also have a duty to protect the right to life of their nationals. Data shows that the provision of adequate consular assistance by sending states has a direct influence on their nationals' right to life.¹⁰² Accordingly, the Special Rapporteur has called for states to take all reasonable steps to ensure that their citizens do not face the death penalty overseas.¹⁰³ The Special Rapporteur confirmed that failure of the home state to provide adequate consular assistance, having been notified that one of its nationals is facing the death penalty abroad, amounts to a violation of its responsibility to protect the right to life pursuant to Article 6 of the ICCPR¹⁰⁴ - or as the Special Rapporteur put it, "the

decision to withhold consular assistance makes the home state complicit in an arbitrary killing".¹⁰⁵

The Special Rapporteur also detailed the minimum required steps to ensure that sending states fulfil their international legal obligations to provide adequate consular assistance to nationals facing the death penalty abroad and pointed to a number of good practices by states already providing adequate consular assistance to their nationals facing the death penalty overseas, such as Indonesia.¹⁰⁶ Adequate consular assistance in a death penalty case will include (but is not limited to): securing expert legal representation and other expert assistance as necessary, repeated and high-level representations against the death penalty and in relation to human rights violations in the case, assisting the defence team to prepare the case by supporting defence investigation in the sending state, and attending hearings in the case. Where human rights breaches occur, the sending state must consider all possible forms of consular and political pressure to hold the prosecuting state accountable.¹⁰⁷

There is significant variation between sending countries as to the level of consular support offered to their nationals facing the death penalty abroad.¹⁰⁸

Indonesia has provided a good example of just how impactful adequate consular assistance from a sending state can be.

Case study

The beheading of Ruyati Binti Sapubi in Saudi Arabia in 2011, carried out without notification to the Indonesian authorities and following a trial in which she was denied access to a lawyer, prompted the Indonesian Ministry of Foreign Affairs to establish the Legal Aid and Protection of Indonesian Overseas Unit to protect Indonesians facing criminal charges abroad.¹⁰⁹ The Unit sources and funds legal representation and interpreters for detainees and conducts high-level advocacy with the aim of securing clemency. Following a visit to major destination countries in the Middle East by the Unit, lawyers have been embedded within the Indonesian embassies in several countries to assist migrant workers who face serious legal problems abroad. By 2013, the Unit had helped 110 Indonesians to avoid the death penalty overseas,¹¹⁰ and by 2018, 392 of the 583 Indonesian nationals sentenced to death between 2011 and 2018 had been released.¹¹¹

4.2 Safeguards in the application of the death penalty

International law sets out a number of safeguards which must be respected in death penalty cases. Proper implementation of these safeguards would remove many migrant workers from the risk of the death penalty.



4.2.1 Right to equality and non-discrimination

Any application of the death penalty must be in a manner consistent with all the other provisions of the ICCPR – including the right to equality and non-discrimination.¹¹² Any discriminatory application of the death penalty is an arbitrary deprivation of life and hence a violation of the right to life.¹¹³

States not party to the ICCPR are nevertheless obliged to adhere to this fundamental principle as it has subsequently been reaffirmed by a number of international treaties and mechanisms, including the Convention on the Elimination of All Forms of Discrimination against Women,¹¹⁴ the International Convention on the Elimination of All Forms of Racial Discrimination,¹¹⁵ the Convention on Persons with Disabilities,¹¹⁶ the Convention on the Rights of the Child¹¹⁷ and the Migrant Workers Convention.¹¹⁸ At the regional level, protection against discrimination is enshrined in the Arab Charter¹¹⁹ and in the ASEAN Human Rights Declaration.¹²⁰

As set out above, access to consular assistance, legal representation and interpreters are examples of vital fair trial rights which can help ward against discrimination in death penalty cases.

4.2.2 Right to a fair trial

There are also responsibilities on states to ensure that everyone facing the death penalty is afforded a fair trial. Apart from the fair trial rights enshrined in Article 14 of the ICCPR (a failure to uphold which in death penalty cases would result in arbitrary deprivation of life), the ASEAN Human Rights Declaration safeguards the right to a fair trial in Article 20, and the Arab Charter provides for the same in Article 7.

In its General Comment on the right to life, the UN Human Rights Committee cites numerous examples of violations of the right to a fair trial, including the use of forced confessions, lack of effective representation, lack of suitable interpretation and general lack of fairness of the criminal process.¹²¹ As may be seen from the case studies in this report, such violations are prevalent in Gulf and South East Asian states in the cases of migrant workers facing the death penalty.

4.2.3 Right to clemency

Many countries do not uphold the right of migrants facing the death penalty to seek pardon or commutation. Intervention by the sending state is crucial in guaranteeing this right. The right to pardon is codified in several international instruments, including, notably, Article 6(4) of the ICCPR, which confers the right to seek pardon or commutation of sentence to anyone sentenced to death.

In Bahrain over the past ten years, no pardons or commutations were given to any Bangladeshi nationals who received death sentences in contrast to Bahraini nationals and nationals from the Philippines.¹²²

In states which follow sharia law, the death penalty is available as a punishment for offences involving murder or serious cases of intentional bodily harm, known as qisas. The Quran also makes provisions for an alternative course of action through victim forgiveness and restitution. The Quran encourages the victim (or their family) to forgive the perpetrator, and seek financial compensation (diyya – sometimes called ‘blood money’) as an act of charity or in atonement for sins that serves as an alternative to demanding retribution through execution as an act of charity or in atonement for sins.¹²³

International legal standards generally dictate that clemency or pardon procedures be meaningful, effective,¹²⁴ fair and transparent.¹²⁵ The Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that whilst systems such as diyya payments are not necessarily inconsistent with international human rights law, they must operate in a non-discriminatory manner which does not violate the right to due process, including the right to a final judgment by the court and the right to seek pardon or commutation from state authorities.¹²⁶ However, since diyya depends on the defendant’s family having both the social and political clout to influence victims’ families and the financial means to pay compensation, it is predominantly a privilege for wealthier defendants and is therefore not generally accessible to most migrant workers facing the death penalty.

Therefore, in states which allow victims’ families to accept payment of diyya in lieu of a death sentence, steps must be taken to ensure migrant workers are afforded their right to seek pardon or commutation.

The Indonesian government has gone so far as to raise public funds for the payment of diyya to secure the release of its nationals on death row abroad.

Case study

In the case of one Indonesian domestic worker, a significant sum was raised from a number of sources, including various charitable organisations and local government. As a result, this domestic worker who had been accused of murdering her employer in a Gulf state, was finally released after having spent a number of decades on death row.¹²⁷

4.2.4 The death penalty for drug offences

Imposing the death penalty for drug offences violates the principle under international law that the death penalty should only be imposed for the ‘most serious crimes’, defined as “crimes of extreme gravity, involving intentional killing.”¹²⁸

All Gulf states retain the death penalty for drug offences, including in the situations described above, where a person becomes involved in drug offences against a background of socioeconomic disadvantage, exploitation and human trafficking. The death penalty continues to be imposed for drug offences in both sending and receiving states in South East Asia – including in Indonesia, Malaysia, Singapore and Myanmar.¹²⁹ In the Philippines, alarmingly, twenty-three bills calling for the reinstatement of the death penalty, including for drug offences, have been filed before parliament as of August 2020.¹³⁰

The continued domestic use of capital punishment in drug cases is likely to significantly undermine these countries’ advocacy efforts when their own nationals are facing the death penalty abroad.

Data collected in Singapore in 2017 showed that “in drug trafficking cases, a significant proportion of the prisoners on death row are foreign nationals (23%). Malaysia, the only state which shares a border with Singapore, is the country of foreign nationality mostly represented, while other nationalities frequently represented include Indonesia, Nigeria and Viet Nam.”¹³¹ In Malaysia, 146 women were sentenced to death for drug trafficking between 1985 and 2019, and at least 7 were domestic workers.¹³²

Case study

Christine* is a Philippines national who received a death sentence after she was caught by airport officers in Indonesia, with drugs in her suitcase. Christine had been promised a job in Malaysia by a friend in her village, who was someone she trusted. She had come from a poor family who made their living by collecting and selling plastic and other rubbish, and is the single mother of two young children. At the time, she had just left her job as a domestic worker in a Gulf state, where her employer had attempted to rape her. Christine travelled to Malaysia with only a few clothes in a plastic bag to work in the job she was promised, and during her first few days there, her friend helped her buy new clothes. Subsequently, the friend organised for Christine to go on holiday in Indonesia, and gave her a suitcase for her new clothes. When Christine arrived in Indonesia, customs officers found heroin packed in the inner part of her suitcase after x-raying it. Christine was eventually sentenced to death during court proceedings she did not understand as she did not have a translator who spoke Tagalog, the only language Christine was proficient in at the time.

Of the at least 184 executions carried out in Saudi Arabia in 2019, 84 were for drug-related offences. This was the worst year on record for the country since Harm Reduction International started tracking drug-related executions in 2007. Of these 84 drug-related executions, at least 47 were foreign nationals (at least 28 of them were nationals of Pakistan).¹³³

Reprieve has documented a number of cases in Saudi Arabia where the defendants have acted as a drug mules and are likely to have been victims of human trafficking, but nonetheless were sentenced to death.

Case study

Mohammed Afzal was a mill worker in his home state, Pakistan, before he sought work in Saudi Arabia in 2005. The supposed employment agent whose instructions he followed had him drugged and forced him to ingest heroin capsules, before putting him on the plane to Saudi Arabia. He was arrested on arrival and sentenced to death in 2009.¹³⁹

Whilst no death sentences for drug offences were reported in Qatar in 2019 and 2020, in the first seven months of 2019, 96 Indian nationals were arrested at Doha airport for smuggling drugs. They joined the 200 Indian nationals who were already in Qatari prisons facing drugs charges.¹³⁴ Many of these prisoners report a similar pattern of being propositioned to fly to Qatar for a job interview at the expense of a ‘talent hunter’ and being given bags to carry, which were subsequently found to contain drugs.¹³⁵

Though no executions took place in Kuwait in 2019, at least eight death sentences were handed down by the Kuwaiti courts.¹³⁶ One of the defendants was an Indian migrant worker who, according to media reports, was not legally represented because he was too poor to afford a lawyer.¹³⁷

The imposition of the death penalty for drug offences, particularly in the circumstances experienced by migrant workers charged with these crimes described here, is contrary to the widely upheld international legal standard that the death penalty only be imposed for the ‘most serious crimes’.¹³⁸

*In this case study, we have used a pseudonym to protect this person’s identity and safety.

4.2.5 Prohibition on death sentences for protected groups

As well as restricting the crimes for which the death penalty can be imposed, international standards also prohibit the imposition of death sentences on certain categories of people. Those who were under 18 at the time of committing their crime may not be sentenced to death, let alone executed, regardless of their age at the time of conviction or sentencing.¹⁴⁰ All parties to the Arab Charter are also parties to the Convention on the Rights of the Child, under which they are prohibited from applying the death penalty to anyone under the age of 18. If there is doubt as to an individual's age, they should be presumed to be under 18, unless and until the prosecution proves otherwise.¹⁴¹ Saudi Arabia is a party to the Arab Charter and has publicly promised to end the death penalty for children but continues to sentence to death and execute persons convicted of crimes they committed while under the age of 18.¹⁴²

Case study

Rizana Nafeek was a Sri Lankan domestic worker executed in Saudi Arabia in 2013. She was arrested when the four-month-old baby of her employer died while in her care, and was later convicted of murder without having access to a lawyer or translator. Her execution took place in spite of evidence that she was under the age of 18 at the time of her arrest: "a recruitment agency in Sri Lanka altered the birthdate on [Rizana's] passport to present her as 23 so she could migrate for work, but her birth certificate shows she was 17 [when the baby died]. The High Court in Colombo, Sri Lanka later sentenced two recruitment agents to two years in prison for the falsification of Rizana's travel documents."¹⁴⁷

At the other end of the age spectrum, the UN Economic and Social Council recommends that states establish a maximum age beyond which a person will not be sentenced to death or executed.¹⁴³ As to other protected groups, the death penalty must not be applied to pregnant women,¹⁴⁴ nor may it be carried out on mothers of young children.¹⁴⁵

States must neither sentence to death, nor execute, a person with an intellectual disability or psychosocial disability. This includes those who have developed disabilities after having been sentenced to death.¹⁴⁶ Our casework in the Gulf and in South East Asia confirms that people with psychosocial and intellectual disabilities are not protected from the death penalty as required by international law.

Case study

A former foreign national client of Reprieve, detained in Saudi Arabia, gave this testimony about his interaction with a man, Jerome*, who was executed despite evidence that Jerome was experiencing mental health problems in prison. Jerome was a migrant worker from the Philippines, who was beheaded in 2014 following a murder conviction in Saudi Arabia.¹⁴⁸ Jerome told this client that the offence had occurred during a struggle between Jerome and his employer. Jerome's employer had refused to allow him to see a sick relative, and threatened Jerome with a gun.

I spent time with one foreign national prisoner who was sentenced to death for murder and was eventually executed, [Jerome]. ... [Jerome] appeared to me to have mental health problems – he talked to himself and paced. The other prisoners knew he was about to be beheaded and treated him like he was tainted with death – a dead man walking. The stress of facing death is extreme, [Jerome] was introverted, gibbering. [Jerome] was very afraid, he thought he was going to be executed at any time.¹⁴⁹

*In this case study, we have used a pseudonym to protect this person's identity and safety.

4.3 Protections for migrant workers

In addition to consular assistance and the safeguards in the application of the death penalty outlined above, migrant workers should also be afforded the protection of the rights set out in the Migrant Workers Convention.

The Migrant Workers Convention lists a comprehensive package of rights for migrant workers and their families and sets out guidelines for the promotion of legal and humane migration channels.

As well as explicitly extending to migrant workers those rights enshrined in other UN and ILO instruments, the Migrant Workers Convention provides a number of additional guarantees in light of the particular vulnerabilities of migrant workers. It addresses the working lives of migrants, confirming their entitlement to the same pay and conditions as nationals.¹⁵⁰

The Migrant Workers Convention also sets out many of the same rights enshrined in the ICCPR, and includes the right to non-discrimination;¹⁵¹ the right to life;¹⁵² the right not to be subjected to torture or to cruel, inhuman or degrading punishment;¹⁵³ the right to be treated with humanity and with respect for the inherent dignity of their person when deprived of liberty;¹⁵⁴ the right to a fair trial;¹⁵⁵ the right to equality before the law;¹⁵⁶ the right to consular assistance;¹⁵⁷ and the right to be informed as to their rights, free of charge and in a language which they understand.¹⁵⁸

In addition, the Migrant Workers Convention creates specific obligations on both sending and receiving states to take appropriate measures against the dissemination of misleading information about emigration and immigration,¹⁵⁹ and to provide access to justice to migrant workers whose rights have been violated.¹⁶⁰

Few states have ratified the Migrant Workers Convention, with the rate of ratification being particularly low amongst receiving countries: none of the Gulf states, for example, have done so. Indonesia and The Philippines are sending states who have ratified the Convention.¹⁶¹

In a meeting of the Committee on the Rights of Migrant Workers in April 2021, the Committee raised concerns that the Covid-19 pandemic has placed migrant workers and their families in an even more vulnerable position. In this meeting, the Committee raised the need for ratification and noted that the European Union states and the United States of America have not ratified the treaty, despite being receiving states.¹⁶²

A number of sending countries have entered into memoranda of understanding (MOUs) with various receiving states. However, these MOUs do not serve as an adequate substitute for ratification of the Migrant Workers Convention as they are not always legally binding and those currently in place do not appear to provide robust protection for migrant workers.

A review of MOUs between Indonesia and destination countries carried out by Migrant CARE in 2016 revealed that many make no reference to human rights standards at all. For example, the 2006 MOU between Indonesia and Malaysia contains few provisions addressing migrants' rights, placing greater emphasis instead on mutual benefits.¹⁶³

At a regional level, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers establishes a framework for cooperation between states with a view to protecting and promoting the rights of migrant workers. It sets out a number of fundamental rights to be enjoyed by all migrant workers, including the right to hold their own passports,¹⁶⁴ to equality before the law,¹⁶⁵ to seek assistance from their embassy or consulate,¹⁶⁶ and to fair treatment in the workplace.¹⁶⁷

Our casework and research suggest that these rights are not being upheld, particularly in death penalty cases. Better implementation of the above provisions would result in mitigation of the factors which increase migrant workers' vulnerability to the death penalty outlined above.

4.3.1 Registration, regulation and monitoring of recruitment agencies

Throughout our casework and in the cases profiled in this report, individuals have reported recruitment agencies being involved in the exploitation which has led to their facing the death penalty.

The vast majority of migrant workers are recruited and placed overseas by private agencies, which handle their selection, training and departure.¹⁶⁸ A prospective migrant worker's choice of agency can have a significant impact on their experience. Reported abuses by recruitment agencies include the charging of exorbitant fees, deception about the nature and conditions of work, retention of passports and threats against leaving employers.¹⁶⁹

It is crucial that sending states properly regulate and monitor recruitment agencies' activities so as to prevent their nationals from being abused and exploited. States are encouraged to adopt the ILO's general principles for fair recruitment, which enshrine principles relating to the prohibition of recruitment fees, transparency in the terms and conditions of employment, and the prohibition on confiscating migrant workers' passports.¹⁷⁰

Indonesia has made some positive steps forwards on this. In 2017 it enacted a new law – the Law on the Protection of Indonesian Migrant Workers¹⁷¹ – which, amongst other things, requires recruitment agencies to pay a deposit of at least 1,500,000,000 Rupiah (equivalent to approximately USD 100,000) into a government bank, which stands to be forfeited if they do not fulfil their obligations towards migrant workers.¹⁷² Those obligations include not placing migrant workers in different jobs from those specified in their contracts,¹⁷³ and not placing migrant workers in countries which do not have either legislation to protect foreign national workers, an MOU with the government of Indonesia, or a social security system which makes provision for migrant workers.¹⁷⁴ Under the law, recruitment agencies' operating licences are reviewed every five years, and in the meantime, they are required to submit periodic reports as to their activities to the Ministry of Labour.¹⁷⁵

As the case studies in this report show, migrant workers who commit violence in self-defence are susceptible to being sentenced to death. These scenarios are preventable by laws protecting workers from the abuse giving rise to acts of self-defence. In addition, migrant workers are far less likely to be manipulated, coerced or exploited into becoming drug mules if they have social and financial safety nets in place.

4.3.2 Pre-departure training to educate on risks faced by migrant workers abroad

Research carried out by Migrant CARE in 2016 showed that 80% of Indonesian migrant workers obtained information on overseas employment from sponsors, agents or brokers.¹⁷⁶ Such organisations naturally have a vested interest in promoting the benefits of overseas work, leaving their prospective customers ignorant as to the dangers that they may face. To address this, sending countries should require all prospective migrant workers to undergo training which specifically addresses these risks, so as to enable them to make properly informed decisions as to whether or not to proceed to take up employment abroad.

Training should be accessible, free of cost, and informed by the experiences of returning migrant workers. To be effective, it needs to be delivered at an early stage in the process. Research by MigrantRights.org has shown that pre-departure information often reaches prospective migrant workers too late, by which time decisions have already been reached and financial investments have already been made.¹⁷⁷

Ensuring proper protection against abuse and exploitation would make migrant workers less vulnerable to the death penalty as the death-eligible offences under which they are charged often arise directly out of such abuse and exploitation.

4.4 Protections for victims of trafficking

The significant overlap between the illegal drug trade and human trafficking, the vulnerability of migrant workers to becoming drug mules and the prevalence of death sentences for drug crimes are all factors that together render the protection of migrant workers who are victims of trafficking an essential part of protecting them from the death penalty. International legal provisions protecting victims of trafficking should be enforced, a key principle of which is non-punishment of crimes arising out of trafficking.

4.4.1 International law protecting victims of trafficking

An important instrument protecting victims of trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000, often referred to as the Palermo Protocol, which supplements the UN Convention Against Transnational Organized Crime.¹⁷⁸ Parties to the Palermo Protocol include Bahrain, Mauritania, Oman, Qatar, Saudi Arabia, UAE, Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, and The Philippines.

The Palermo Protocol aims to prevent and combat trafficking in persons, to protect and assist the victims of trafficking with full respect to their human rights, and to promote cooperation amongst states parties in order to meet those objectives.¹⁷⁹ States are required to establish comprehensive policies, programmes and other measures to prevent and combat trafficking.¹⁸⁰

In order to achieve these aims, the UN Working Group on Trafficking in Persons recommended in 2009 that states should establish appropriate procedures for identifying and supporting victims of trafficking.¹⁸¹ The failure to identify migrant workers as victims of human trafficking appears to be a key issue in ensuring they do not face the death penalty for crimes arising out of their trafficking, or that their status as a victim of human trafficking is considered in mitigation.

Recognising that the roots of trafficking lie in social, economic and cultural factors, the Special Rapporteur on trafficking in persons, especially women and children has urged states to target initiatives towards those most at risk¹⁸² and to take action to address the systemic processes or root causes which contribute to trafficking, such as inequality, restrictive immigration policies and unfair labour conditions, particularly for migrant workers.¹⁸³

Obstacles to accessing support identified by the Special Rapporteur include the deportation of migrants who are victims of trafficking due to their having no residence status (or their no longer having residence status), lengthy judicial proceedings, the lack of a 'firewall' between labour inspectors and immigration authorities, insufficient protective measures for victims and witnesses, the inversion of the burden of proof, and compensation being made conditional on cooperation with criminal proceedings.¹⁸⁴

At a regional level, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) was developed in recognition of the growing prevalence of human trafficking within and involving the ASEAN member states.¹⁸⁵ It requires ASEAN members to establish national guidelines or procedures for the proper identification of victims of trafficking;¹⁸⁶ where trafficking takes place in more than one country, ASEAN members are required to respect and recognise another ASEAN member state's identification of a person as a victim of trafficking.¹⁸⁷ Where a victim of trafficking is identified as a national of an ASEAN country, that country must facilitate – with due regard for the victim's safety – their repatriation.¹⁸⁸ Moreover, states parties must adopt legislative or other measures to establish repatriation programmes for those who have been identified as victims of trafficking.¹⁸⁹

Once potential victims of trafficking have been identified, national referral mechanisms are a means of ensuring cooperation across the range of agencies involved in protecting them so as to guarantee that victims are given appropriate support. Whilst it is unobjectionable for states to encourage cooperation from victims of trafficking in the identification and punishment of the perpetrators, protection measures should never be made conditional on such cooperation.

4.4.2 Non-punishment principle

The UN General Assembly has issued a resolution which obliges states to ensure that those who have been trafficked are recognised to be, and treated as, victims of crime. Victims must not be penalised for their own trafficking.¹⁹⁰ Giving effect to this important principle, both the UN Working Group on Trafficking in Persons and the Office of the United Nations High Commissioner for Human Rights have called on states not to punish victims of human trafficking for offences that they were compelled to carry out.¹⁹¹ The non-punishment principle is also explicitly contained within the 2014 Protocol to the International Labour Organisation Forced Labour Convention 1930 (Forced Labour Convention 1930).¹⁹² ACTIP recommends that South East Asian signatory states refrain from holding victims of trafficking criminally liable for unlawful acts committed by them, where those acts are directly related to their status as victims of trafficking.¹⁹³

Of the Gulf and South East Asian states, only Saudi Arabia and Thailand are party to the 2014 Protocol to the Forced Labour Convention 1930, and the non-punishment principle is rarely implemented in Gulf and South East Asian states.

For example, Qatar continues to charge and deport victims of trafficking for contravening Qatari labour and immigration laws, and charged some potential victims of sex trafficking with zina (sex outside wedlock).¹⁹⁴ Meanwhile, diplomats from several sending states have reported that the Saudi authorities frequently detain, fine and jail their nationals – including some unidentified victims of trafficking – for immigration violations as a result of having been subjected to forced labour or sex trafficking.¹⁹⁵ There is clearly an urgent need for training in recognising the indicators of trafficking and forced labour amongst law enforcement authorities and prosecutors, and amongst those tasked with supporting victims.

Sentencing victims of trafficking to death for acts that are a direct consequence of their situation as trafficked persons is clearly in breach of the non-punishment principle and causes them to be victimised twice over. States should therefore implement the non-punishment principle in domestic law.

4.4.3 Public education

In sending states, public education is crucial: raising awareness of the risk of human trafficking needs to start early, so that prospective migrants are able to better recognise the signs of exploitation and those involved in the justice system are better able to ensure victims of human trafficking are afforded their rights.

Positive examples include: pre-departure orientation training programs for potential migrant workers; distribution of textbooks and posters containing information about trafficking risks; protection of high school students in high risk areas; and production of YouTube videos featuring popular personalities and pop songs containing anti forced labour messages.¹⁹⁶ In addition, Malaysia and Nepal have both run workshops for journalists, aimed at sensitising them to the indicators of forced labour and the protections available, with a view to shaping wider public awareness around these issues.¹⁹⁷

4.4.4 Regulation and monitoring

As described above, domestic workers are at particular risk of exploitation and abusive labour conditions, with household inspections rarely being carried out in certain Gulf states even where they are permitted.¹⁹⁸ In order to address this, government officials should proactively seek opportunities to ‘check in’ with domestic workers through a confidential interview, for example whenever a work permit is being renewed. Requiring the migrant worker to attend the embassy during this process means that interviews can take place in a private place, away from the employer. Sending countries can also play an important role in providing spaces where domestic workers can develop a social network and access support.

Under the Migrant Workers and Overseas Filipinos Act, every Philippines embassy in countries where there are large concentrations of migrant workers from the Philippines is required to have a 24 hour Migrant Workers and Other Overseas Filipinos resource centre, providing counselling and legal services, welfare assistance, post-arrival orientation, and gender specific training and activities to support the particular needs of women migrant workers.¹⁹⁹

It should however be noted that no government scheme will fully protect migrants who are undocumented or working in sectors which are not regulated.

5 Conclusion and recommendations

Migrant workers make a huge positive impact on their home countries and the countries they work in. However, as detailed in this report, various interconnected factors leave many migrant workers in situations where they are vulnerable to the death penalty and the multiple grave human rights abuses associated with the use of the death penalty.

Sending and receiving states and the international community must do more to ensure the rights of migrant workers are upheld and that no migrant worker is executed, particularly in the context of repeated and grave human rights abuses as detailed in the case studies throughout this report, and in light of data showing that foreign nationals are being disproportionately sentenced to death and executed around the world.

Reprieve and Migrant CARE, in consultation with a number of migrant worker rights organisations, have developed a number of detailed recommendations for sending and receiving states and the international community, set out below.

1 Adequate consular assistance

Receiving states must notify individuals of their right to consular assistance and allow consular access to all foreign nationals, including migrant workers.

Sending states must provide adequate consular assistance in all cases where their national faces the death penalty.

Adequate consular assistance will include (but is not limited to): securing expert legal representation and other

expert assistance as necessary, repeated and high-level representations against the death penalty and in relation to human rights violations in the case, assisting the defence team to prepare the case by supporting defence investigation in the sending state, and attending hearings in the case. Where human rights breaches occur the sending state must consider all possible forms of consular and political pressure to hold the prosecuting state accountable.

2 Safeguards in the application of the death penalty

Receiving states must implement all the safeguards required by international law in the application of the death penalty, including abolishing the death penalty for drug offences and ensuring the death penalty is not imposed on protected groups.

Additionally, states should ensure individualised sentencing and recognise the impact on culpability of the vulnerabilities and exploitation experienced by migrant workers facing capital charges, by adopting sentencing guidelines which fully reflect the reduced culpabilities of

those whose crimes are the product of vulnerability and exploitation. Sentencing guidelines should also require judges to look carefully at the evidence in any given case to determine the particular role played by the defendant, and the extent of his or her culpability.

Pending implementation of these safeguards, all receiving states should enact a moratorium on executions to avoid the risk of wrongful executions which amount to an arbitrary deprivation of life.

3 Protections for migrant workers

All sending and receiving states (including the UK, the European Union states and the United States of America) must ratify the Migrant Workers Convention.

Sending states must properly regulate and monitor the activities of recruitment agencies and carry out pre-departure training.

Receiving states must properly regulate and monitor working conditions for migrants, including undocumented migrants and those working in unregulated sectors.

4 Protections for victims of human trafficking

Sending and receiving states must identify and protect victims of human trafficking.

Sending and receiving states must ensure that victims of human trafficking are entitled to effective and adequate remedies for violations of their human rights, including those related to the failure to exercise due diligence to prevent, investigate, and prosecute their trafficking.

Sending and receiving states must carry out public education campaigns aimed at the protection of victims of human trafficking

Receiving states must uphold the non-punishment principle and not punish victims of trafficking for crimes they have been trafficked to commit, including by implementing the non-punishment principle in domestic law.

5 Rehabilitation for victims and their families

Sending states must facilitate the rehabilitation and recovery of those who have been spared the death penalty and the families of those who have been executed. This

recovery is important to provide reinforcement and social and economic re-integration for victims and their families, including access to employment.

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“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception or the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”
“Where any of these means have been employed, the consent of the trafficked person to the intended exploitation is irrelevant: individuals who are facing extreme poverty or threats to their security may consent to situations which they know to be exploitative, in order to provide for themselves or their family members. However, to assume that vulnerability equates solely to poverty is to misunderstand the multitude of factors which contribute to trafficking. Rather, vulnerability must be looked at through a broad lens: poverty, migrant status, gender inequality and discrimination based on race, ethnicity or sexual orientation can all render an individual vulnerable to trafficking. Parties to the Palermo Protocol include Bahrain, Mauritania, Oman, Qatar, Saudi Arabia, UAE, Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, and The Philippines.”
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- 185 The Association of Southeast Asian Nations states are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.
- 186 ASEAN Convention Against Trafficking in Persons, Especially Women and Children, art. 14(1), <https://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf>
- 187 Ibid, art. 14(2).
- 188 Ibid, art. 15(1).
- 189 Ibid, art. 15(5).
- 190 United Nations General Assembly (31 January 2001) Resolution A/RES/55/67, Resolution adopted by the General Assembly: Traffic in women and girls, para. 6, <https://undocs.org/en/A/RES/55/67>
- 191 UN Working Group on Trafficking in Persons (21 April 2009) Report on the Meeting of the Working Group on Trafficking in Persons Held in Vienna on 14th and 15th April 2009, CTOC/COP/WG.4/2009/2, para. 12, <https://undocs.org/en/CTOC/COP/WG.4/2009/2>; Office of the High Commissioner for Human Rights (2002) Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline. 4, para. 5 and guideline. 5, para. 5, <https://www.ohchr.org/documents/publications/traffickingen.pdf>
- 192 See Protocol of 2014 to the Forced Labour Convention 1930, art. 4(2), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029, which states that “Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour”.
- 193 ASEAN Convention Against Trafficking in Persons, Especially Women and Children, art. 14(7), <https://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf>
- 194 U.S. Department of State (June 2020) Trafficking in Persons Report, pg. 415, <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>
- 195 Ibid, pg. 430.
- 196 International Labour Organization (2018) Ending forced labour by 2030: A review of policies and programmes, pg. 46, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_653986/lang-en/index.htm#:~:text=policies%20and%20...-,Ending%20forced%20labour%20by%202030%3A%20A%20review%20of%20policies%20and,are%20in%20forced%20labour%20globally.&text=The%20International%20Labour%20Organization%20report,with%20policy%20approaches%20and%20responses
- 197 Ibid.
- 198 International Labour Organization (2017) Domestic Workers and Employers in the Arab States: Promising practices and innovative models for a productive working relationship, pg. 12, https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_619661.pdf
- 199 The Republic Act No. 8042, Migrant Workers and Overseas Filipinos Act of 1995, s. 19