



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

**ADVISORY ON THE INCREASED VULNERABILITY OF
WOMEN MIGRANT WORKERS ON DEATH ROW**

CHR (V) A2021-005

I. OVERVIEW

The Commission on Human Rights of the Philippines issues this advisory to bring the Philippines' attention to the heightened vulnerabilities of women Overseas Filipino Workers (OFWs). This phenomenon is not unique to the Philippines and is reflective of the wider plight of migrant workers, particularly those from neighboring Southeast Asian countries. Many women OFWs obtain employment as domestic workers, particularly in the Gulf states, which have perpetually failed to adequately protect the labor rights and human rights of both migrant workers and women alike. This compounded disadvantage by way of gender and migrant status can place women OFWs in precarious positions with respect to their employment.

Egregious and unsafe working conditions place women OFWs at risk of physical, sexual, and emotional abuse by their employers. In countries that retain the death penalty, this culture of labor rights abuse and exploitation is especially dangerous, and may contribute to women OFWs inadvertently and forcibly committing crimes, either in self-defense or as a result of human trafficking.

With regard to offenses committed in the course of employment, poverty, low literacy, and cultural barriers may preclude women OFWs from obtaining a fair capital trial, as they will often lack the resources and education to adequately defend their case. This has already resulted in women OFWs being sentenced to death, thereby trapping them in a foreign legal system they may struggle to understand.

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On countless occasions, the Philippines has demonstrated its commitment to campaigning for the rights of OFWs, particularly those on death row. In order to continue protecting the rights of vulnerable OFWs, the Philippines should not reintroduce the death penalty. By remaining an abolitionist state, the Philippines will maintain its established reputation and legitimacy in fighting for the rights of OFWs sentenced to death in foreign jurisdictions.

II. BACKGROUND

A. Key Statistics and Context

According to the International Labor Organization, there are approximately 11.5 million migrant domestic workers globally,¹ with at least one in four being a Filipina.² The migration of Filipino workers for employment forms a significant part of the Philippines' economic and social development. Of the 2.2 million OFWs who travelled between April and September 2019, women constituted 56% of OFWs, with 62.5% of women OFWs seeking work in elementary occupations.³ There is a higher proportion of Filipinas who migrate for employment each year compared to the global average of 44.3%.⁴

However, women OFWs face 'particular vulnerabilities',⁵ including a heightened risk of being trafficked, used for or enticed into drug trafficking, and being subjected to physical or sexual abuse. They may be impeded by linguistic issues and barriers to legal representation. Consequently, women OFWs may be at a disproportionate risk of receiving the death penalty. The leading destinations for women OFWs, including Saudi Arabia, the United Arab Emirates (UAE) and Qatar, retain and actively apply the death penalty. So, although women constitute less than 5% of the world's death row inmates,⁶ approximately 25% of Filipinos on death row overseas are women.⁷

B. The Philippines' Efforts in Upholding the Rights of Female Workers

¹ Labour Migration Branch, International Labor Organisation, *ILO Global Estimates on Migrant Workers: Results and Methodology* (Report, 2015) xi. (Hereinafter '*Global Estimates on Migrant Workers*').

² Corinne Redfern, "I Want to Go Home": Filipina Domestic Workers Face Exploitative Conditions, *THEGUARDIAN*, 27 January 2021, available at <https://www.theguardian.com/world/2021/jan/27/domestic-workers-philippines-coronavirus-conditions> (last accessed 10 August 2021).

³ Philippine Statistics Authority, 'Total Number of OFWs Estimated at 2.2 Million' (Press Release No 2020-099, 4 June 2020), available at <https://psa.gov.ph/content/total-number-ofws-estimated-22-million> (last accessed 10 August 2021).

⁴ GLOBAL ESTIMATES ON MIGRANT WORKERS, *supra* note 1 at xi.

⁵ An Act Amending Republic Act No. 8042, Otherwise Known As The Migrant Workers And Overseas Filipinos Act Of 1995, As Amended, Further Improving The Standard Of Protection And Promotion Of The Welfare Of Migrant Workers, Their Families And Overseas Filipinos In Distress, And For Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 10022, § 2(d) (2010).

⁶ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, September 2018, at 9 (hereinafter '*Judged for More Than Her Crime*').

⁷ Arianne Merez, '130 Filipinos in Death Row Overseas, Nearly 4,000 in Jail', *ABSCBNNEWS*, 19 September 2017, available at <https://news.abs-cbn.com/focus/09/19/17/130-filipinos-in-death-row-overseas-nearly-4000-in-jail-recto> (last accessed 10 August 2021).

The Philippine government has been particularly proactive in recognizing the elevated threat of exploitation overseas and pursuing strategies to improve the rights and working conditions of OFWs. As one of the first States to ratify the *ILO Domestic Workers' Convention 2011*,⁸ and subsequently passing the *Domestic Workers Law 2013*, the Philippines has served as a regional and global model in advocating for the protection of migrant workers' rights.⁹ This is also evidenced by the Philippines' ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.¹⁰

In the domestic sphere, the Philippine government has enacted a range of legislative instruments to help remedy the plight of women OFWs. The most notable example is Republic Act No. 8042, also known as the *Migrant Workers and Overseas Filipinos Act of 1995* ('*MWOFA*'), which mandates gender-specific programs and services,¹¹ and explicitly acknowledges the 'significant role of women in nation building' and their 'particular vulnerabilities' as OFWs.¹²

The *MWOFA* has been subsequently amended by Republic Act No. 9422 and Republic Act No. 10022, both of which have reinforced the existing protection measures afforded to OFWs. Republic Act No. 9422, for example, compels the Philippine Overseas Employment Administration (POEA) to inform migrant workers of their respective rights and appropriate avenues of redress.¹³ Similarly, Republic Act No. 10022, sometimes referred to as the *Amended Migrant Workers Act of 2010* ('*AMWA*'), empowers the POEA to deliver mandated Pre-Employment Orientation Seminars on topics such as 'gender-sensitivity'.¹⁴

This statutory regime is further complemented by Republic Act No. 9710—the 'Magna Carta of Women'.¹⁵ The Act, which is modeled from the *Convention on the Elimination of All Forms of Violence Against Women* (CEDAW),¹⁶ imposes specific duties on the State and its agencies to protect and promote the rights of migrant women, regardless of their work status,¹⁷ and to provide employment opportunities and skills training for returning women OFWs.¹⁸

⁸ International Labour Organization (ILO), Convention Concerning Decent Work for Domestic Workers, 16 June 2011, PRNo.15A, available at <https://www.refworld.org/docid/4e0d784e2.html> (last accessed 10 August 2021).

⁹ 'Civil Society Forum on ILO Domestic Workers' Convention, 2011 (No 189)', *International Labour Organization*, 1 July 2014, available at https://www.ilo.org/asia/events/WCMS_242011/lang-en/index.htm#:~:text=The%20Philippines%20played%20a%20lead,Domestic%20Workers%20Law%20in%202013. (last accessed 10 August 2021).

¹⁰ International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, *opened for signature* 18 December 1990, 2220 U.N.T.S. 3 [hereinafter ICMW] (entered into force 1 July 2003).

¹¹ Migrant Workers and Overseas Filipinos Act of 1995, § 19(f).

¹² *Id.*, § 2(d).

¹³ An Act To Strengthen The Regulatory Functions Of The Philippine Overseas Employment Administration (POEA), Amending For This Purpose Republic Act No. 8042, Otherwise Known As The "Migrant Workers And Overseas Filipinos Act Of 1995", Republic Act No. 9422, § 1 (2007).

¹⁴ Migrant Workers and Overseas Filipinos Act of 1995, § 14.

¹⁵ An Act Providing For The Magna Carta Of Women [The Magna Carta of Women], Republic Act No. 9710, (2009).

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* 18 December 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW] (entered into force 3 September 1981).

¹⁷ The Magna Carta of Women, § 22(4)(c).

¹⁸ *Id.* § 23(c), 24(a).

However, the Philippine government's efforts in safeguarding the rights of women OFWs, and OFWs more generally, have not been beyond reproach. Despite a 2017 legal review finding a general 'high level of compliance' with CEDAW by the Philippines,¹⁹ the CEDAW Committee has nevertheless expressed concern over the continued and widespread 'exploitation and abuse of Filipina migrant workers working abroad', and the 'insufficient support' provided by the State to reintegrate those who return.²⁰

Indeed, the latest CEDAW-based legal review, conducted in 2016, also found deficiencies within the Philippines' legislative framework that amounted to 'non-compliance' with the Convention. This included a failure by the *MWOFA* to mandate the provision of legal services 'in order to avert a breach or a violation of a right',²¹ and a lack of mechanisms designed to protect or monitor women OFWs who find jobs 'independently of recruitment agencies or via informal channels'.²² *Partial* compliance was also declared in areas such as repatriation, which was unduly confined to where there had been termination of employment.²³

Initiatives by the current administration have likewise attracted criticism. The approval of House Bill No. 5832, which proposes to create a new department dedicated to protecting the welfare of OFWs, has been described as 'encouraging the export of Filipino manpower' and a 'poor substitute' for the guarantee of living wages and secure employment within the Philippines.²⁴ Furthermore, migration bans, including the ban on the passage of domestic workers to Kuwait in January 2018 following the murder of Joanna Demafelis, a woman OFW,²⁵ have arguably violated the rights of women OFWs under international law. Such restrictions not only disproportionately target the women-dominated sector of domestic work, but also push vulnerable women OFWs into irregular migration channels.²⁶ By discriminating against women and impeding their freedom of movement and right to work, government-issued migration bans arguably violate CEDAW and the ILO's *Domestic Workers' Convention*.²⁷

¹⁹ UN Women, *Women's Labour Migration: An Overview from Mexico, Moldova and the Philippines* (Policy Brief, 31 July 2017) 6 available at <https://www.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2016/10/cedaw%20based%20legal%20review%20final.pdf?la=en&vs=2448> (last accessed 10 August 2021).

²⁰ UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined 7th and 8th Periodic Reports of the Philippines* at 11, CEDAW/C/PHL/CO/7-8 (25 July 2016) available at <https://digitallibrary.un.org/record/841795?ln=en> (last accessed 10 August 2021).

²¹ UN Women, *CEDAW-Based Legal Review of Migration and Anti-Trafficking Laws in the Philippines* (Policy Brief, 2016) 24-25 available at https://www.unwomen.org/-/media/field_office_eseasia/docs/publications/2016/10/cedaw_based_legal_review_final.pdf?la=en&vs=2448 (last accessed 10 August 2021).

²² *Id.* at 26.

²³ *Id.* at 31.

²⁴ Mara Cepeda, 'House Oks bill creating Department of Filipinos Overseas and Foreign Employment', *RAPPLER*, 11 March 2020, available at <https://www.rappler.com/nation/house-bill-third-reading-department-filipinos-overseas-foreign-employment> (last accessed 10 August 2021); Michelle Abad, 'Labor group: Proposed OFW department formalises migrant exportation', *RAPPLER*, 15 May 2021, available at <https://www.rappler.com/nation/labor-group-proposed-ofw-department-formalizes-migrant-exportation> (last accessed 10 August 2021).

²⁵ Joshua Brlinger and Jinky Jorgio, 'Killing Prompts Return of Philippines Workers from Kuwait', *CNNWORLD*, 17 February 2018, available at <https://www.cnn.com/2018/02/13/asia/philippines-domestic-workers-intl/index.html> (last accessed 10 August 2021).

²⁶ Sophie Henderson, 'State-Sanctioned Structural Violence: Women Migrant Domestic Workers in the Philippines and Sri Lanka,' 26(12) *VAW* 1598, 1604 (2019).

²⁷ *Id.*

Taking the country's achievements and criticisms into account, the Philippines should continue to uphold and improve these standards to retain its position to advocate for the rights and better working conditions of women OFWs.

III. PLIGHT OF WOMEN MIGRANT WORKERS

A. Working Conditions & Lack of Labor Rights

The 2011 report by the Committee on Overseas Workers' Affairs by the Philippines House of Representatives elucidated the plight of women OFWs, particularly domestic workers, who are 'cast into very oppressive conditions of work, where physical abuse and rape are rampant'.²⁸ Furthermore, it has been found that 2.4 million domestic workers in the Gulf region are working in conditions of slavery.²⁹ It is common for OFWs to endure 18-hour work days with no overtime pay or rest days, and be deprived from contacting their families.³⁰

The *kafala* sponsorship system in the Gulf states ensures the visas of foreign workers are inextricably tied to their employers for the duration of the employment. This restricts OFWs from leaving their jobs or the country without their employer's permission.³¹ Additionally, domestic workers can be exploited financially. Globally, employers of domestic workers save PHP 382.9 billion per year by withholding wages.³²

Although Philippine domestic laws mandate that the human rights of OFWs are to be respected in the countries in which they work,³³ in practice, this is not guaranteed.

The Philippines, as a sending country, maintains a more proactive and prominent role in comparison to other nations in protecting the rights of its OFWs. Notably, the Philippines requires OFWs to be paid the highest minimum wage, approximately \$400USD per month for overseas work in the domestic service sector,³⁴ and provides shelter to women seeking to escape abusive employment.³⁵ However, countless OFWs are still subjected to unreported instances of long working hours coupled with physical, sexual, and psychological abuse. Despite this

²⁸ People's Dispatch, 'Execution of Filipino Woman Points to Saudi Arabia's Appalling Record on Work Conditions, Executions,' PEOPLES DISPATCH, 2 February 2019, available at <https://peoplesdispatch.org/2019/02/02/execution-of-filipino-woman-points-to-saudi-arabias-appalling-record-on-work-conditions-executions/> (last accessed 10 August 2021).

²⁹ International Trade Union Confederation, *Facilitating Exploitation: A Review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Countries* (Legal and Policy Brief, November 2014) 20, 29 available at https://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers_final_text_clean_282_29.pdf (last accessed 10 August 2021), cited in Annie Kelly and Hazel Thompson, 'The Vanished: the Filipino domestic workers who disappear behind closed doors', THE GUARDIAN, 24 October 2015 available at <https://www.theguardian.com/global-development/2015/oct/24/the-vanished-filipino-domestic-workers-working-abroad> (last accessed 10 August 2021).

³⁰ People's Dispatch, *supra* note 29.

³¹ Kelly and Thompson, *supra* note 30.

³² National Domestic Workers Alliance, *Beyond survival: organizing to end human trafficking of domestic workers*, January 2015, available at <https://idwfed.org/en/resources/beyond-survival-organizing-to-end-human-trafficking-of-domestic-workers> (last accessed 10 August 2021).

³³ Migrant Workers and Overseas Filipinos Act of 1995 § 4, 22.

³⁴ David McKenzie, Caroline Theoharides, and Dean Yang, 'Distortions in the International Migrant Labor Market: Evidence from Filipino Migration and Wage Responses to Destination Country Economic Shocks,' 6(2) AM. ECON. J. APPL. ECON. 1, 19 (2014).

³⁵ Kelly and Thompson, *supra* note 30.

inherent and acute risk to their health and safety, the allure of an income to support their families leads many Filipinos to continue travelling overseas for work.

Abusive employers largely escape conviction for their crimes due to inadequate migrant worker protections. Meanwhile, OFWs are disproportionately punished not only for allegedly committing crimes of a similar gravity, but also for making complaints about their abusive treatment. If they report employers' exploitative practices, OFWs may be dealt counter-accusations for capital offenses,³⁶ including crimes of witchcraft, theft or adultery ('*zina*' under Islamic law),³⁷ precluding redress of their complaint and fair legal proceedings. For example, two migrant domestic workers in Saudi Arabia were convicted of *zina* while pregnant,³⁸ and their punishments varied according to their marital status – further evincing the unequal treatment of women in the Middle East, compounded by migrant worker status. The unmarried domestic worker was sentenced to 100 lashes, while the married worker was sentenced to death by stoning.³⁹

IV. DISPROPORTIONATE IMPACT OF FOREIGN LEGAL SYSTEMS

A. Vulnerability Due to Gender

Although women represent under 5% of death row inmates globally,⁴⁰ there are unique challenges faced by women charged with capital offenses in foreign jurisdictions. Researchers have found that 'women who are seen as violating entrenched norms of gender behavior may be sentenced more harshly'⁴¹ than men in similar factual situations. The report also established that criminal justice systems frequently 'see women as victims and survivors rather than as perpetrators of crime',⁴² and thus the capital trials of women may be flagrantly prejudiced because the accused deviate from their perceived societal role as caregivers.⁴³

All migrant workers face difficulties interacting with incomprehensible foreign legal systems, but women OFWs may face compounded disadvantage. As discussed, women OFWs often endure egregious working conditions which may contribute to the inadvertent commission of capital crimes such as murder or drug trafficking.

Ultimately, this state of vulnerability places OFWs in a precarious position, not only concerning crimes committed in response to abuse but also regarding their treatment in the criminal justice system.

Murder

³⁶ Judged for More Than Her Crime, *supra* note 6 at 17.

³⁷ People's Dispatch, *supra* note 29.

³⁸ Judged for More Than Her Crime, *supra* note 6 at 17.

³⁹ *Id.*

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 6.

⁴² *Id.*

⁴³ *Id.* at 7.

Globally, most women on death row, including domestic and foreign prisoners, have been sentenced to death for murder. Many of these cases involve gender-based violence and domestic abuse.⁴⁴ Jennifer Delaquez, an OFW, was convicted of murdering her employer in the UAE under circumstances of abuse. Delaquez pleaded self-defense, claiming the crime was committed when her employer attempted to rape her at knifepoint in December 2014.⁴⁵ Nevertheless, Delaquez was sentenced to death in May 2015, spending two years on death row in Abu Dhabi before being acquitted of murder by an appellate court in June 2017.⁴⁶ Similarly, in late 2018, Indonesian domestic worker Tuti Tursilawati, working in Saudi Arabia, was sentenced to death for allegedly killing her employer after he attempted to rape her.⁴⁷

Foreign criminal justice systems often fail to account for the unique circumstances of abuse leading to the commission of crimes by migrant workers. This lack of understanding may place migrant workers at a disproportionate risk of being administered the death penalty.

Drug Offenses

Globally, women drug offenders represent the fastest-growing prison population.⁴⁸ Women migrant workers are targeted by human traffickers to unwittingly become drug mules⁴⁹ on account of their 'layered vulnerabilities'⁵⁰ of poverty and illiteracy. Under international law, trafficked individuals should not be charged with crimes committed directly as a result of being trafficked, as their commission of the offence lacked voluntariness or autonomy.⁵¹ Furthermore, drug offenses do not meet the threshold of 'most serious crime' as stipulated in the *International Covenant on Civil and Political Rights*⁵² and therefore, drug offenders should not be sentenced to death.⁵³

Female convictions for drug offenses are the product of 'gender disempowerment and marginalization' in South-East Asia.⁵⁴ For example, as of February 2019, there

⁴⁴ *Id.* at 11.

⁴⁵ Dexter Cabalza, 'OFW Who Killed Boss to Avoid Rape Home from UAE Death Row', INQUIRER.NET, 3 November 2018, available at <https://globalnation.inquirer.net/170762/ofw-who-killed-boss-to-avoid-rape-home-from-uae-death-row#ixzz6ql2yaBXC> (last accessed 10 August 2021).

⁴⁶ *Id.*

⁴⁷ People's Dispatch, *supra* note 29.

⁴⁸ Jocelyn Hutton and Lucy Harry, 'International Women's Day 2021: Women, Drug Trafficking and the Death Penalty in Southeast Asia', UNIVERSITY OF OXFORD FACULTY OF LAW, 8 March 2021, available at <https://www.law.ox.ac.uk/centres-institutes/centre-criminology/blog/2021/03/international-womens-day-2021-women-drug> (last accessed 10 August 2021).

⁴⁹ Judged for More Than Her Crime, *supra* note 6 at 12.

⁵⁰ Office of the United Nations High Commissioner for Human Rights Regional Office of South-East Asia, Drug-related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia, May 2019, at 14, available at <http://fileserv.idpc.net/library/drug-offences-death-penalty-in-south-east-asia.pdf> (last accessed .

⁵¹ Felicity Gerry and Narelle Sherwill, 'Human Trafficking, Drug Trafficking, and the Death Penalty,' 3 INDONES. LAW REV. 265, 274 (2016).

⁵² International Covenant on Civil and Political Rights, *opened for signature* 16 December 1966, 999 U.N.T.S. 171 [hereinafter 'ICCPR'] (entered into force on 23 March 1976).

⁵³ Lucy Harry, 'Rethinking the Relationship Between Women, Crime and Economic Factors: The Case Study of Women Sentenced to Death for Drug Trafficking in Malaysia,' 10(9) *Laws* 1, 2 (2021).

⁵⁴ Judged for More Than Her Crime, *supra* note 6 at 12.

were 1281 people—1140 men and 141 women— on death row in Malaysia.⁵⁵ The majority of those on death row in Malaysia have been convicted of drug trafficking: 73% of the men on death row, and an alarming 95% of women.⁵⁶ Moreover, there is a higher proportion of women who have been sentenced to death predominantly coming from neighboring countries; the Philippines, Indonesia and Thailand.⁵⁷ Notably, domestic workers are particularly vulnerable to being targeted by drug syndicates,⁵⁸ as they are able to travel on a working visa, and are usually from conditions of poverty, potentially providing financial incentive to traffic drugs.⁵⁹

Furthermore, Indonesia has one of the highest rates of women incarcerated for drug offenses, with an increase of 114% from 2011 to 2018.⁶⁰ In the past five years, three foreign national women were sentenced to death for drug-related offenses.⁶¹ Reports suggest that all foreign national women are sentenced to death for non-violent crimes, including drug-related offenses, in Indonesia, even though the death penalty is reserved for ‘most serious crimes’.⁶² Mary Jane Veloso, an OFW sentenced to death in 2010 for trafficking heroin into Indonesia, represents one notable example. Importantly, her status as a woman migrant worker not only made her susceptible to alleged human trafficking by her recruiters, but hindered her ability to meaningfully advocate for herself during proceedings, and was a factor which ultimately bore upon her sentence.⁶³

In conjunction with the abovementioned statistics, Mary Jane’s case is representative of the particular vulnerability women OFWs face, as well as their higher likelihood of becoming victims of drug trafficking offenses. This leads to disproportionate rates of incarceration or capital punishment of women migrant workers, regardless of their nationality or working status.

B. Vulnerability Due to Human Trafficking

Human trafficking is defined as the ‘recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion’.⁶⁴ Numerous OFWs are also victims of human trafficking, and it has been recognized that the ‘feminization of migration’⁶⁵ has allowed for

⁵⁵ Amnesty International, *Fatally flawed: why Malaysia must abolish the death penalty*, 2019, available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT5010782019ENGLISH.pdf> (last accessed 10 August 2021) at 19.

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 12.

⁵⁸ *Judged for More Than Her Crime*, *supra* note 6 at 5.

⁵⁹ *Id.* at 12.

⁶⁰ Hutton and Harry, *supra* note 48.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Valerie Francisco-Menchavez, ‘*Save Mary Jane Veloso: Solidarity and Global Migrant Activism in the Filipino Labor Diaspora*,’ 17(1) PERSPECT. GLOB. DEV. TECHNOL. 202, 208 (2018).

⁶⁴ United Nations Convention against Transnational Organised Crime, opened for signature 12 to 15 December 2000, 2225 U.N.T.S. 209, annex II (‘*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*’) art. 3.

⁶⁵ Migrante International, ‘*Joint Submission of Migrante International and the Asia Pacific Mission for Migrants to the United Nations Committee on Migrant Workers*,’ Joint Submission to the United Nations Committee on Migrant Workers, April 2014, 3.

‘Filipinos, mostly women and children...being trafficked for labor and/or sexual trade’⁶⁶ to various countries under the guise of employment and financial stability.

For example, in 2019, several women OFWs, who had been falsely recruited by an agency to work in UAE, were held hostage until their working visa expired and later taken to Syria to be sold as maids. These women were subjected to slavery-like conditions, being denied wages, freedom, and safe living and working conditions.⁶⁷ More recently, in 2021, immigration officials prevented two Qatar-bound women OFWs from boarding a plane after that it emerged that their overseas employment certificates had been falsified by their recruiter.⁶⁸

It ought to be noted, however, that this is a mutual struggle faced by migrant workers from several countries – it is not an issue isolated to OFWs. It is estimated that globally there are approximately 40 million individuals living in conditions of modern slavery.⁶⁹ Given that in many countries there is minimal regulation for recruiters, these legal loopholes may be exploited to the detriment of migrant workers through practices such as debt bondage,⁷⁰ tied visas,⁷¹ domestic or sexual servitude,⁷² and in some cases, forced marriages.⁷³

The Philippine government has been particularly proactive among the ASEAN states in meeting its international obligations to combat trafficking, being classified as a Tier 1 State in 2020.⁷⁴ In particular, the Philippines increased its protection efforts, identifying 6,772 potential Filipino trafficking victims, and allocating PHP 24.4 million to a recovery and reintegration program.⁷⁵ However, the proposed application of the death penalty in the Philippines ‘to a range of personnel who are not the principal offenders, [expands] the scope for the death penalty for what would otherwise be conduct which was not heinous by way of accessory liability.’⁷⁶ This may result in a less coordinated anti-trafficking strategy, as victims may be more reluctant to seek help due to fear of prosecution for crimes they committed whilst trafficked.

⁶⁶ *Id.* at 10.

⁶⁷ Katie McQue, ‘Sold into Syrian Servitude, Filipina Workers Tell of Abuse, Rape and Imprisonment’, THE WASHINGTON POST, 25 January 2021, available at https://www.washingtonpost.com/world/middle-east/trafficking-migrant-workers-syria-uae/2021/01/24/1d79e43c-3f0d-11eb-b58b-1623f6267960_story.html (last accessed 10 August 2021).

⁶⁸ Jun Ramirez, ‘Two Qatar-bound human trafficking victims stopped from boarding plane’, MANILA BULLETIN, 22 April 2021, available at <https://mb.com.ph/2021/04/22/two-qatar-bound-human-trafficking-victims-stopped-from-boarding-plane/> (last accessed 10 August 2021).

⁶⁹ Fiona David, Katharine Bryant and Jacqueline Larsen, *Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour*, 2019, available at https://reliefweb.int/sites/reliefweb.int/files/resources/migrants_and_their_vulnerability.pdf (last accessed 10 August 2021) at 4.

⁷⁰ *Id.* at 109.

⁷¹ International Labour Organization and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, (2017), available at https://reliefweb.int/sites/reliefweb.int/files/resources/wcms_575479.pdf (last accessed 10 August 2021) at 33.

⁷² *Id.* at 5.

⁷³ *Id.*

⁷⁴ US Department of State, 2020 Trafficking in Persons Report: Philippines, 2020, available at [https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/#:~:text=The%20government%20convicted%2089%20traffickers.trafficking%20\(three%20in%202018\)](https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/#:~:text=The%20government%20convicted%2089%20traffickers.trafficking%20(three%20in%202018)) (last accessed 10 August 2021).

⁷⁵ *Id.*

⁷⁶ Felicity Gerry et al, ‘Human Trafficking and the Proposed Reintroduction of the Death Penalty’, INTERNATIONAL BAR ASSOCIATION (online at July 2020) available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=1F1659DA-6FAD-4296-9614-38D4CF90D2B6> (last accessed 10 August 2021).

V. RECOMMENDATIONS

1. In general, the Philippines should advocate for gender-sensitive sentencing guidelines in countries that welcome its OFWs. Criminal justice systems need to understand the gender-based challenges migrant women face and comprehensively consider all relevant mitigating factors prior to giving judgements.
2. It is recommended that the Philippine government continues its diligent advocacy for the rights of OFWs, particularly those on death row overseas, by providing adequate support and legal representation. Gender-based violence and entrenched gender norms continue to prejudice capital trials of women across the globe. The consular support offered by the Philippines should acknowledge this disadvantage, but also strive to eradicate the compounded vulnerability of OFWs resulting from their gender, migrant worker status, poverty and illiteracy.
3. States, including the Philippines, should endeavor to create, clarify or codify gender-specific defenses and mitigation in their domestic criminal law.⁷⁷ By enabling trials and sentencing to account for the unique experiences of women regarding poverty, gender-based violence, trauma and sexual offenses, the law may more adequately prevent the death penalty being misapplied on vulnerable persons.
4. In the Philippines, judicial training should consider the vulnerable circumstances of female defendants that may impact their trials, particularly in relation to gender-based violence and discrimination, domestic violence, and the influence of coercive control.⁷⁸ The Philippines should advocate for foreign jurisdictions to likewise recognize gendered vulnerabilities, so that the capital trials of Filipino women in foreign jurisdictions are not inherently prejudiced.
5. When women OFWs are on capital trials in foreign jurisdictions, authorities should ensure these Filipina defendants are adequately legally represented and able to acquire expert testimony on the impact of their personal circumstances on the commission of their crime, such as in relation to mental illness, intellectual disability, domestic violence, or postpartum depression.⁷⁹
6. States should follow the Philippines' lead in maintaining a particular standard of reporting, recording, and protecting victims of human trafficking, to ensure they are not unjustly convicted of crimes they were coerced to perform.⁸⁰

⁷⁷ *Id.* at 35.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Gerry and Sherwill, *supra* note 52 at 267.

Meanwhile, the Philippines can continuously improve the systems for reporting human trafficking.

7. The Philippines should work alongside receiving countries of OFWs to identify and not punish victims of human trafficking, particularly those who may have committed drug offenses. Furthermore, the Philippines should direct its efforts toward identifying and punishing perpetrators—including those who pose as ‘legitimate’ recruiters or even licensed recruitment agencies—that covertly operate as drug-smuggling syndicates.⁸¹
8. The Philippines should maintain and improve its educational programs for OFWs prior to their departure from the Philippines, to inform them on the laws of their receiving country, their rights as a migrant worker and the avenues of support offered by the Philippines.

ISSUED this 10th day of September 2021, Quezon City, Philippines.



JOSE LUIS MARTIN C. GASCON
Chairperson



KAREN S. GOMEZ/DUMPIT
Commissioner

GWENDOLYN LL. PIMENTEL-GANA
Commissioner

LEAH C. TANODRA-ARMAMENTO
Commissioner



ROBERTO EUGENIO T. CADIZ
Commissioner

⁸¹ Migrant International, ‘A Written Submission to the UN Human Rights Council’, September 2016, https://www.upr-info.org/sites/default/files/document/philippines/session_27_-_may_2017/migrante_upr27_phl_e_main.pdf (last accessed 10 August 2021) at 2.

VI. APPENDICES

APPENDIX A: KEY STATISTICS ABOUT OFWs

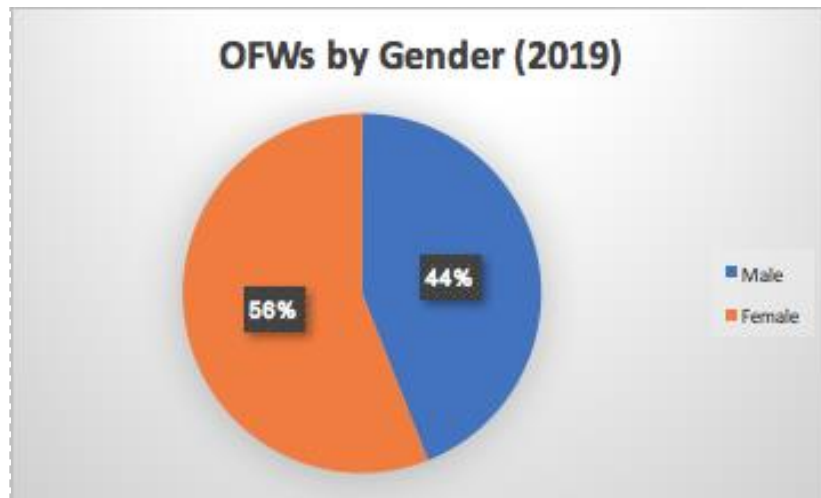


Fig 1: OFW Gender Breakdown⁸²

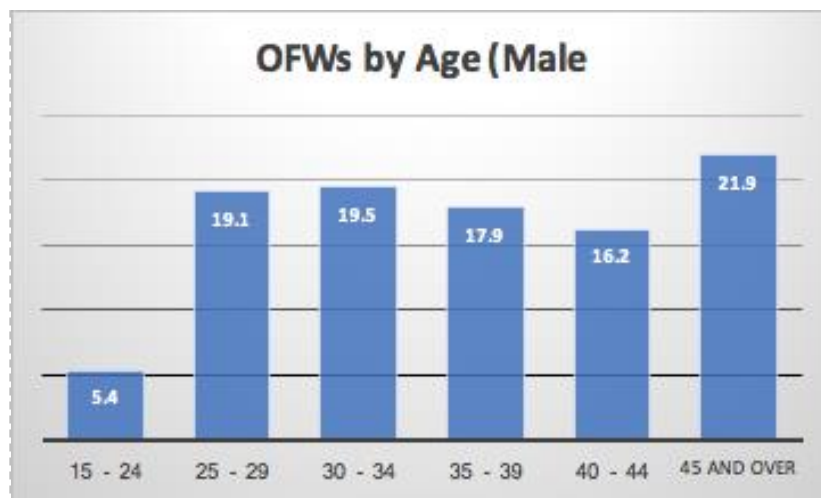


Fig 2: OFWs by Age (Male)⁸³

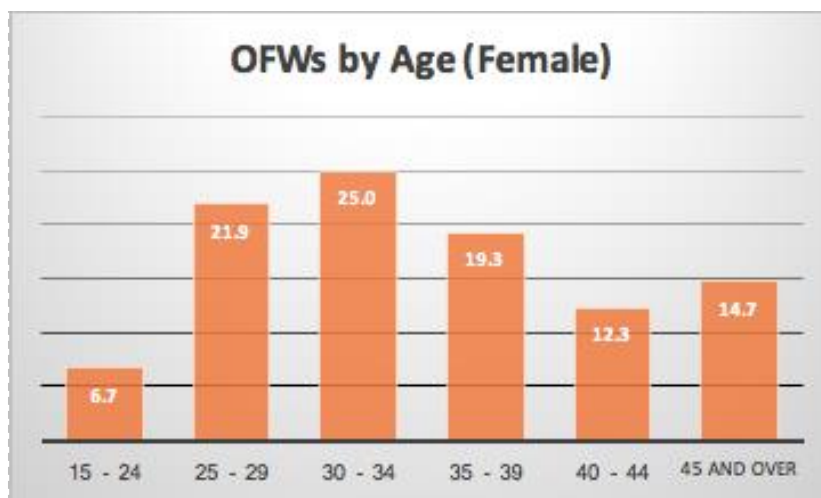


Fig 3: OFWs by Age (Female)⁸⁴

⁸² Philippine Statistics Authority, *supra* note 3.

⁸³ *Id.*

⁸⁴ *Id.*

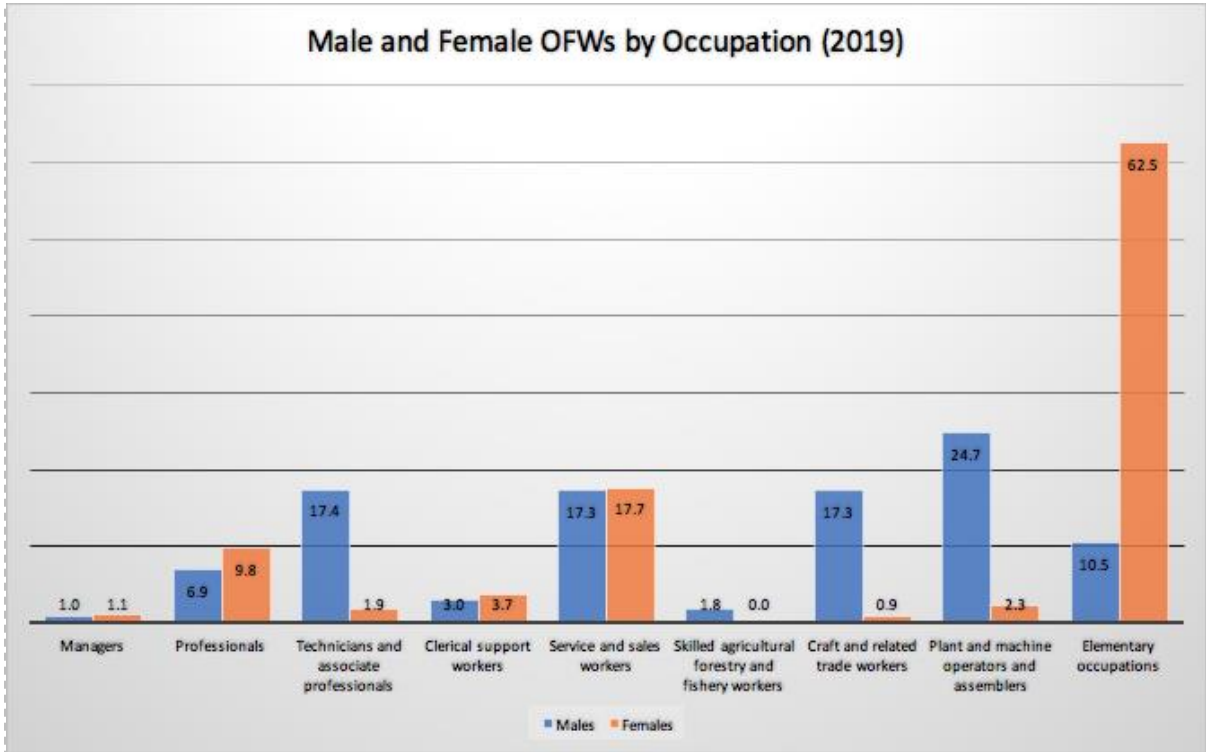


Fig 4: Most Common OFW Occupations⁸⁵

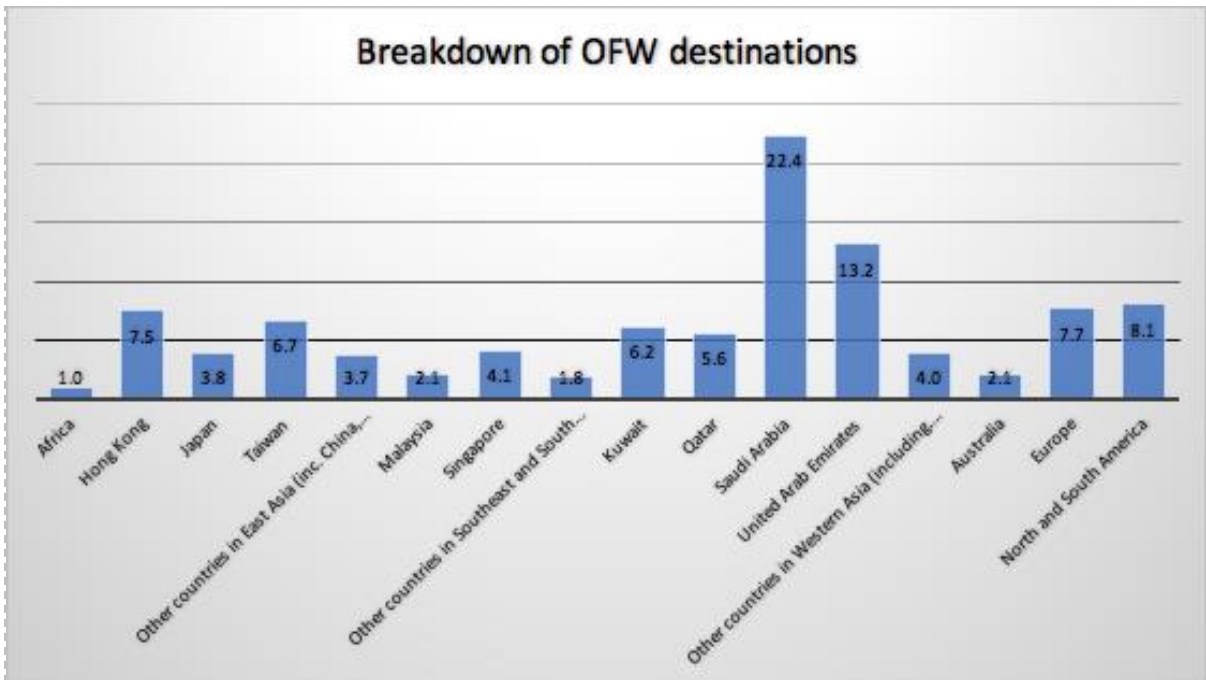


Fig 5: Most Common OFW Destinations⁸⁶

⁸⁵ *Id.*

⁸⁶ *Id.*

APPENDIX B – ILLUSTRATIVE TIMELINE AND CASE STUDIES ABOUT FOREIGN WORKING CONDITIONS

These tables predominantly focus on OFWs, but accounts of some migrant workers of similar nationalities have been included for illustrative purposes. Additionally, these tables account for very few cases, particularly those reported in the media. It should be noted that many instances of poor working conditions and abuse are not reported, and only a small fraction of those that are reported are contained in media sources.

	Year	Name	Age	Gender	Nationality	Country of Employment	Occupation
	2010	Sumiati Binti Mustapa	23	Female	Indonesian	Saudi Arabia	Domestic Worker
Incident	Sumiati Binti Mustapa was burnt with a hot iron by her employer and mutilated with scissors. Despite inflicting visible physical injuries, breaking numerous bones and causing Sumiati to bleed internally, her employer argued Sumiati had beaten herself and was acquitted on appeal.						
	2011	Terril Atienza	34	Female	Filipina	Mongolia	Domestic Worker
	Terril Atienza was reported to have committed suicide one week before she was to return home. When she had complained about her working conditions in Singapore, she was sent to work in Mongolia, and four months later, she was alleged to have committed suicide. However, when Terril's body returned to the Philippines, it was discovered to be battered, wounded and bruised. Each wrist was severely bruised, and upon an autopsy being conducted, it was revealed her heart was missing and the cavity filled with rags.						
	2014			Female	Sri Lankan	Saudi Arabia	
	When returning to Sri Lanka from Saudi Arabia, the woman was found to have 24 nails inside her body that her employer had allegedly plunged into her skin as torture.						
	June 2014	Marilyn Restor		Female	Filipina	Saudi Arabia	Domestic Worker
	Marilyn Restor went missing while working as a domestic worker in a Saudi royal household. It was discovered that Marilyn had been kidnapped and forced to work for another Saudi royal, before eventually being reported deceased, believed to be from being pushed off a roof – leaving behind three devastated children.						
	2015			Female	Indian	Saudi Arabia	Domestic Worker
	Had her hand cut off by her Saudi employer when she tried to “escape the daily harassment, torture and abysmal work conditions” to which she was subjected.						
	2015			Female	Nepalese	India	Domestic Worker
	Two female Nepalese domestic workers in India were held captive and repeatedly raped by their employer, a Saudi diplomat, over a period of at least 15 days.						
	Year	Name	Age	Gender	Nationality	Country of Employment	Occupation

	2016	Piang Ngaih Don	24	Female	Burmese	Singapore	Domestic Worker
Incident	<p>Piang Ngaih Don was repeatedly subjected to physical abuse on almost daily basis, including being punched, kicked, pushed and stamped on by her employer, Gaiyathiri Murugayan. Her employer routinely grabbed Piang by her hair while pushing her violently or lifting her off the ground and shaking her. On one occasion, Piang's employer pressed a hot iron against her forehead and her forearm. She was starved to the point she only weighed 24kg. Piang only slept approximately five hours per night and was not afforded any privacy - she was forced to shower and use the toilet while her employer watched. On 25-26 July 2016, Piang was physically assaulted by her employer, resulting in her death. Piang's employer stamped on her head and neck, before then lifting Piang up by pulling her hair - as a result, Piang's neck was jerked backwards and fatally strangled her. Piang ultimately died of a brain injury (hypoxic ischaemic encephalopathy) and severe blunt trauma to the neck. The autopsy also found Piang's body covered in 31 recently inflicted scars and 47 external injuries. It was also concluded that Piang was so emaciated that if her employer had continued to starve her, she would have died soon after. On 23 February 2021, the employer, Gaiyathiri Murugayan pleaded guilty to 28 charges in respect of the abuse and death of Piang, and a further 87 charges were to be considered in sentencing.</p>						
	2017						
	<p>The Philippine ambassador to Kuwait, Renato Villa, claimed to have received approximately 6,000 reports of abuse towards Filipino workers.</p>						
	February 2018	Joanne Demafelis		Female	Filipina	Kuwait	Domestic Worker
	<p>In February 2018, Filipina domestic worker Joanne Demafelis was discovered in the freezer in her employer's premises in Kuwait. She had been murdered. In response to this case, President Duterte expressed abhorrence towards the treatment of Filipina workers by Arab employers, including routine rape, forced labor for 21 hours a day, and being fed food scraps.</p>						

Year	Name	Age	Gender	Nationality	Country of Employment	Occupation
2018						
	<p>In early 2018, the Philippines declared that OFWs were temporarily forbidden from working in Kuwait following the murder of Joanne Demafelis and reports of four female OFWs having committed suicide due to their exploitative working conditions.</p>					
2019						

	In 2019, Human Rights Watch reported that migrant workers have continued to be exploited and abused in their conditions of work in Saudi Arabia. The visas of migrant workers in Saudi Arabia are intrinsically bound to their sponsoring employers, thereby rendering them vulnerable to the caprices and cruelty of their employers – including forced labour, physical, sexual and psychological abuse, food deprivation, restricted movement and withheld wages.						
	2018-2019		24	Female	Indonesia	Singapore	Domestic Worker
	Over the course of late 2018 to early 2019, an Indonesian domestic worker was routinely physically assaulted by her employer, Tan Hui Mei. The employer, Tan, forced the domestic worker to eat a piece of dirty cotton wool on one occasion, and eat hair on the toilet floor on another occasion. Tan Hui Mei was sentenced to eight weeks' imprisonment, commencing 5 May 2021.						
	22 October 2019			Males & Females	Vietnam	UK	Various
	On 22 October 2020, 39 Vietnamese migrant workers, being illegally trafficked into the United Kingdom (UK) from Zeebrugge, were found dead in a freight container. The migrant workers had paid traffickers to smuggle them into the UK in the hopes of finding employment, particularly in the hospitality industry. All 39 migrant workers tragically died when the temperature in the container rose dangerously high to 38.5C and they ran out of oxygen. They were trapped for nine hours and unable to break themselves out.						
	February - October 2020	Sugiyem Samad Radimah	49	Female	Indonesia	Singapore	Domestic Worker
	On several occasions between February and October 2020, domestic worker Sugiyem Samad Radimah was assaulted by her employer, Umami Kalsum Ali. Physical abuse included slapping Sugiyem's face and ears and pressing a hot iron to her forearm. Sugiyem now faces permanent sight damage, as her employer repeatedly punched or hit her eyes with objects, such as coat hangers. In addition, Sugiyem did not receive payment of her monthly salary between January and September 2020. Umami Kalsum Ali was being tried on 10 charges as of 28 April 2021, which may result in up to 24 months' imprisonment if convicted.						
Year Name Age Gender Nationality Country of Employment Occupation							
	December 2020	Jeanelyn Villavende		Female	Filipina	Kuwait	Domestic Worker
	Jeanelyn Villavende was sexually abused and murdered by her female employer in Kuwait. She died of acute failure of her heart and respiration following shock and multiple injuries to her vascular nervous system. Her female employer was sentenced to death, but her employer's husband was only sentenced to four years' imprisonment for failing to report the crime.						
	January 2021	'Rowena'	54	Female	Filipina	Bahrain	Domestic Worker

	<p>'Rowena' commenced employment for her Bahraini employer in April 2019. Her working conditions were poor, including sleeping on only a pile of blankets. Several times a week Rowena was sexually assaulted by her male employer, who would attempt to grope her if he found her alone in her pyjamas. When the COVID-19 pandemic developed in early 2020, her employer refused to continue paying her monthly salary of 120 Bahraini dinar. Rowena and three other migrant domestic workers were only given 10 Bahraini dinar per fortnight to share between them for food. By September 2020, this food allowance ceased, and being trapped in Bahrain (her repatriation flight was cancelled), Rowena had no job or money. In July 2020, Rowena requested help from the Philippine Overseas Foreign Workers Help Office, and applied for financial support from the Philippine Department of Labor and Employment. However, after many months she still had not received a reply or any support, leaving her stranded.</p>						
	January 2021	Josephine Tawaging	33	Female	Filipina	Syria	Domestic Worker
	<p>Josephine Tawaging was a victim of human trafficking. After leaving the Philippines in 2019, under assurances of work in the UAE, Josephine's recruitment agency imprisoned her in the UAE until her 30-day tourist visa expired. She was then trafficked into Syria to be sold as a domestic worker. When she resisted being transported to Damascus, Josephine was slapped in the face and told, "If you don't go, we'll kill you." Josephine worked as a domestic worker in a Syrian household until she escaped after her employer attempted to rape her. As of January 2021, Josephine was still trapped in Syria at the Philippine embassy, away from her two young children at home in the Philippines.</p>						
	January 2021	Flordeliza Arejola		Female	Filipina	Syria	Domestic Worker
	<p>In 2018 Flordeliza Arejola was trafficked to Syria and sold as a domestic worker. Flordeliza escaped her employment after nine months of relentless abuse by her employer, which included being slapped, having her head put into a wall, and never receiving a salary. However, as of January 2021, Flordeliza still remained trapped in Syria, remaining at the Philippine embassy and not yet having been repatriated.</p>						
	Year	Name	Age	Gender	Nationality	Country of Employment	Occupation
	January 2021	Joymalyn Dy	26	Female	Filipina	Syria	Domestic Worker
	<p>Joymalyn Dy was trafficked to Syria. Joymalyn claimed her agency boss "wanted to sleep beside me and touch me", prior to her being sold to her employer. Joymalyn was also told by recruiters to "be good, so I won't get raped and hurt".</p>						
	January 2021	Geraldine Pahigon	30	Female	Filipina	Syria	Domestic Worker
	<p>Geraldine Pahigon was trafficked to Syria, where she faced physical abuse by her employer for four months, including being slapped, kicked and bitten repeatedly. Geraldine never received a salary.</p>						
	January 2021	Lailanis Abduljaber	15	Female	Filipina	Syria	Domestic Worker

	<p>In 2018, Lailanis Abduljaber was trafficked to Syria when she was only 12 years old. Her employers knew her age. Lailanis left in the hope of providing for her impoverished family. Lailanis' brother died in the Philippines several months into her employment, and her work suffered as she coped with her grief. However, rather than being empathetic, her employer refused to feed her and physically assaulted her. Her employer left her at the Philippine embassy when she pleaded to be permitted to go back home, where she has remained since April 2019. As at January 2021, Lailanis had been living at the embassy for 20 months, describing her conditions to be like that of a "prisoner".</p>						
December 2020				Female	Filipina	Syria	Domestic Workers
<p>In December 2020, there were 35 female trafficking victims staying at the embassy, some of whom had been living there for over two years as they could not afford to fly back to the Philippines or obtain a Syrian exit visa. Some victims also reported having been pressured by embassy staff to return to the abusive Syrian household from which they had escaped.</p>							
Unknown	Marina Sarno			Female	Filipina	UAE	Domestic Worker
<p>Marina Sarno, a former Filipina domestic worker, reported being overworked for 22 hours a day, sleep deprived and malnourished at the hands of her UAE employer, who she claimed treated her like a "slave". This ultimately resulted in her becoming extremely disorientated, and she lost sensation in her hands and right side of her body. Marina's phone and passport were confiscated and she was prohibited from contacting her family, who after several months without hearing from her became terrified for her wellbeing and filed a request for repatriation. When Marina's employer discovered the repatriation request, Marina's employer threatened to imprison or kill her, attempted to poison her, threatened to beat her, and locked her in a hot room without food or water for three days. Marina eventually managed to escape by hiding a note in a hollowed-out potato that she threw onto the road, which was found by an Indonesian domestic worker and passed on to the Philippine embassy.</p>							

APPENDIX C – THE RELATIONSHIP BETWEEN HUMAN TRAFFICKING AND DRUG TRAFFICKING

	Year of Conviction	Name	Age	Gender	Nationality	Country of Conviction	Offence
	2010	Mary Jane Veloso		Female	Filipina	Indonesia	Drug Smuggling
Incident	<p>In 2010, Filipina Mary Jane Veloso, was convicted of drug smuggling in Indonesia and sentenced to death. Mary Jane had formerly worked in Dubai as a domestic worker, which she claimed to have escaped after her employer attempted to rape her.</p> <p>During her escape journey, she alleged she was targeted by a human trafficking ring, who promised her work in Malaysia, but first required her to fly to Indonesia. She did so, and unwittingly smuggled 2.6 kilograms of heroin into Indonesia in luggage she had been given by her recruiter.</p> <p>Despite being a vulnerable and exploited drug mule rather than a leader of the trafficking syndicate, Mary Jane received the death penalty for drug trafficking.</p>						
	2002	Merri Utami		Female	Indonesian	Indonesia	Domestic Worker
	<p>Indonesian woman Merri Utami has been on death row for 19 years, following her arrest for drug smuggling into Indonesia after returning from overseas. She was a victim of a human trafficking ring.</p> <p>While working in Taipei as a domestic worker, Merri was introduced to a Canadian businessman, Jerry, with whom she commenced a relationship. Under promises of marriage, Jerry took her on a holiday to Nepal. Jerry left the holiday early, claiming he had to return for work, but left her with a parting gift of a new bag.</p> <p>Merri unwittingly carried that 'gift' back into Indonesia, where she was arrested for drug smuggling as it was found that the bag was lined with heroin.</p>						

APPENDIX D – DISADVANTAGE IN THE LEGAL SYSTEM DUE TO SOCIO-ECONOMIC BACKGROUND

	Year of Conviction	Name	Age	Gender	Nationality	Country of Conviction	Offence
	2002	Merri Utami		Female	Indonesian	Indonesia	Domestic Worker
Incident	<p>Merri Utami, an Indonesian national tried in Indonesia, was denied procedural fairness when tried for drug smuggling. Unable to afford her own lawyer, Utami was assigned one by the Indonesian government, who was wholly incompetent, failing to adduce evidence of Utami’s background of poverty and exploitation as a migrant worker, nor calling upon any witnesses or experts to testify on her behalf.</p> <p>The inherent lack of fairness in her trial ultimately led to her being sentenced to death on 20 May 2002, and she still remains on death row today, her requests for clemency unanswered by President Widodo. Recollecting on her predicament, Utami has stated, <i>“I want to be alive sharing my experience so that no other vulnerable women [will] be manipulated”</i>.</p> <p>Merri was not even in a foreign legal system at the time, but rather one to which she was native and spoke the language. Had Merri been a migrant worker to Indonesia rather than a national, she likely would have faced even greater disadvantage of linguistic barriers in conjunction with her existing low socio-economic class.</p>						

APPENDIX E – WOMEN OFWS AND THE DEATH PENALTY

	Year of Conviction	Name	Age	Gender	Nationality	Country of Conviction	Offence
	2013	Rose Policarpio	31	Female	Filipina	Saudi Arabia	Food Server
Incident	<p>Rose Policarpio travelled to Riyadh in 2013 to work as a food server. Just a few days after her arrival, she was sent to jail after being accused of killing her employer.</p> <p>Rose was imprisoned for almost six years and, at one point, was on death row. After receiving legal assistance from the Philippine Department of Foreign Affairs, she was eventually found not guilty by a lower court which was sustained on appeal.</p> <p>Following this legal battle, Rose was released from detention and repatriated to the Philippines in September 2020.</p>						
	2019		39	Female	Filipina	Saudi Arabia	Domestic Worker
Incident	<p>In 2019, a Filipina maid was executed in Saudi Arabia after being found guilty of murder. No further information was provided about the executed woman, or the details about the murder she was convicted of.⁸⁷</p>						

⁸⁷ Al Jazeera, Filipina domestic worker executed in Saudi Arabia, **ALJAZEERA**, 19 January 2019, available at <https://www.aljazeera.com/news/2019/1/31/filipina-domestic-worker-executed-in-saudi-arabia> (last accessed 8 September 2021).