A picture containing drawing

Description automatically generatedWritten Contribution of Migrant Forum in Asia to CMW General Comment No. 5 Migrants’ Rights to Liberty and Freedom from Arbitrary Detention

October 2020

# Introduction

Migrant Forum in Asia (MFA)[[1]](#footnote-1) welcomes the decision of the Committee on Migrant Worker to elaborate a new general comment (No.5) on migrants’ right to liberty and freedom from arbitrary detention.  
The practice of arbitrary arrest and detention is considered a violation with the most basic human right to liberty. In international covenants such as the International Convention for the Protection of Migrant Workers and their Families and the International Convention of Civil and Political Rights (Art. 9,7,10,14) , while the practice of detention is not entirely opposed, the arbitrary nature of the deprivation of liberty that occurs during this process is. For migrant workers, refugees and stateless persons and their families, the event of being detained and the procedures while in detention are unfortunately defined by this very arbitrariness. The current socio-political climate in relation to irregular migration has mandated that progress on the prevention of arbitrary detention be focused largely upon the cause of children.

The Global Compact on Migration has several objectives that mention arbitrary detention and the rights to be accorded in the case of detained migrants. Objective 13 of the Global Compact on Migration explicitly states that migration detention must be used only as a measure of last resort and urges member states to work towards alternatives. It states, in particular, that detention must follow due process, be non-arbitrary, be based on law, necessity, proportionality and individual assessments, is carried out by authorized officials, and for the shortest possible period of time. It further has several provisions that emphasise the involvement and engagement of signatories in enabling a rights-based approach to detention of migrants. These include improvement of monitoring mechanisms, data collection, policy and legislation revision, provision of access to justice, information dissemination, mitigate long-term effects on migrant well-being – all from a rights-based approach. Other relevant objective that address actions to be taken with regards to detention include Objective 10 on the prevention and eradication of trafficking and Objective 8 regarding missing migrants.

In the context of migration, detained persons largely include undocumented and irregular migrants and refugees. Root causes of irregularity are inefficient and ineffective migration governance systems that fail to recognise the irregular migrant as a human being deserving their right to work, documentation and grievance redressal. Unfortunate consequences of detention and deportation however are borne by the migrant, whether their irregularity was through any fault of their own. In several host countries or countries of destination, the threat of detention and deportation looms large upon migrants in irregular situations – it has, in fact, become a default legal and policy response on administrative as well as criminal grounds (especially in countries where non-documentation and irregularity is criminalized).

While certain host countries have attempted to deal with the systems that perpetuate irregularity within their borders, migrants may continue to remain vulnerable due to nature of work (e.g: domestic work), documentation status (e.g: undocumented or irregular, with or without valid work permit) and in some cases, ethnicity or nationality. These vulnerabilities that have been set over years of lack of well-governed migration, were seen as worsening during the COVID-19 pandemic. Arbitrary arrests and detention were carried out with impunity and based upon xenophobic undertones in host countries. Migrants returning to authoritarian regimes at home faced further alienation due to their ‘failed’ migration journey. For instance, returnee migrants in Bangladesh who were deported from host countries of Qatar, Kuwait and Bahrain for administrative infractions including irregularity, were arbitrarily detained in Bangladesh for ‘conspiring and tarnishing the image of Bangladesh abroad’. This furthers the marginalization of migrants, seen as “illegals” who are threats to their host societies, rather than as important contributors to their countries of origin and destination.

Decision-making regarding detention and deportation are carried out unilaterally by immigration authorities, with little to no cooperation with labour and human resources departments. In many cases, migrant workers need to be informed beforehand of raids or similar actions to check their status, which does not commonly occur. Host governments have also failed to ensure a coordinated approach in ensuring justice as well as access to it. Migrant workers in such instances require fast-track processing and release by judicial authorities- this would further help prevent losses to business owners. Refugees are also detained during these sweeping raids, with verification only conducted later during the process of case management – clearly demonstrating unilateral decision-making and lack of inter-governmental cooperation.

From civil society and non-governmental organisations, the body of evidence and data collection have dislodged the arguments in support of detention as a deterrence practice. For instance, detention and deportation are justified as deterring irregularity in migration; migrant workers do weigh in the prospect of detention into their migration decision yet are willing to take the inherent risk involved. Therefore, the need is to look at root causes and understand irregularity indepth and consequently, disregard detention as a deterrence tactic. In other situations, inaccessible visas and the practise of deportation (and possible remigration) has in fact increased reliance upon global connections and lead to unfortunate trends of smuggling and trafficking of migrants.

Detention is also not cost-effective as funding detention centres and prisons are a costly affair for governments - during the period of the pandemic, state willingness to allow for amnesties and the repatriation of detained migrants (such as in Kuwait and Malaysia) were seen as health, migration and economic policy decisions.in time of pandemic, it goes to the extreme of human rights violations and inhuman conditions an treatment like in KSA. – brings out the very worst of Moreover, this further proved that given the choice, migrants would choose for voluntary repatriation rather than stay undocumented in the host country.

As civil society, MFA considers detention as a practice that violates basic human rights, the abusive conditions being symptomatic of unsatisfactory migration governance , and its majorly arbitrary nature a symbol of a blatant disregard for rights-based governance. Without checks and balances in the form of human rights monitors, the legalistic and practical approach to the practice of detention allows for blind faith in authoritarian systems and its ignorance of social justice. Hence, civil society considers the rights-based approach as both the foundational as well as aspirational basis for migrant-focused initiatives and endeavours in advocating for the basis to be significantly represented in migration governance.

# When Does Detention Become Arbitrary?

Detention with respect to migrants take different forms depending upon contextual pathways of migration and policy decisions of host countries. However, situations of detaining migrants are used as a method to govern migration as well as a socio-political tool in societies of host countries. As mentioned earlier, it is considered by host countries to ‘deter’ irregular forms of migration.

In Asia, detention centres, also take the form of holding centres or transferring centres and are used at the port of entry (in the case of cross-border migrants and refugees) as well as to hold migrants prior to deportation. Detaining migrants are widely publicised by media in an effort to depict the government’s efforts at curbing ‘illegal’ migration, promoting xenophobia and increased isolation of migrants in public rhetoric. Sweeping arrests and raids are conducted arbitrarily (without an established process), at odd hours at public areas or from migrant accommodation – the migrant is not informed of the reason for detention nor is provided access to justice prior to detention – this is regardless of their documentation and employment status. In fact, civil society advocates report that the issue of irregular migrants within host countries are highlighted and massive raids are conducted upon migrant accommodations to deflect from other political pressures, such as unemployment among nationals, lack of control over crime, etc.

The underlying issue is that when detention as a practice is incorporated within the justice system, **the interpretation of the practice** needs to be clearly defined, particularly in its applicability, types, and its necessity within migration governance. Hence, arbitrariness within the practice is at the discretion of the authority carrying out the arrest as well as conditions at the detention facility. For instance, raids may be carried out by police or immigration authorities (and in some cases, community securitization authorities) and conditions at detention facilities are not allowed to be monitored by any other stakeholder apart from governmental authorities and Missions. In Saudi Arabia, recent cases of migrants requesting repatriation during COVID-19 from detention centres with dismal conditions were discovered by civil society, which were clearly not monitored by these same authorities – detainees further reported being detained arbitrarily and some were of regular status but their cases had not been resolved by the process.

Arbitrariness is also observed through **implementation of the case resolution process** - the act of detention becomes arbitrary depending upon the necessity (i.e whether the act of detention is required for the offence committed), the duration of detention (uncertainty in duration or a lack of adhering to existing standards and procedure), the predictability of the law process (the implementation of existing SOP or the lack of SOP), and the available pathways to access justice for the migrant . CSOs report that detained migrants, who may not speak the language of host countries, are not informed of the reason of detention in their own languages. Missions also report delayed communication from immigration authorities of detained migrants from their country – CSOs added that Missions may also be informed after the case has been resolved and when the migrant needs to be deported, effectively barring any access to legal aid the migrant could have accessed prior. Considering all these factors, civil society report that a majority of cases of migrant detention on the basis of administrative offences, such as documentation, is arbitrary or has arbitrary elements that lead to gross violations of migrant rights.

**Authority as a tool:** In terms of authorities in charge, these may be police and immigration staff but in certain host countries, also include elements of community policing. Residents and nationals in host countries are asked to remain ‘vigilant’ against irregular and/or undocumented migrants and to ensure reporting regarding the same. In community policing measures, employers, nationals and bodies such as ‘neighbourhood watch groups’ are bestowed with the authority to report and file cases against ‘absconding’ workers. The use of authority and providing legitimacy to such measures is indeed weaponised as a socio-political tool against marginalised groups in communities where xenophobia is common. Authority is hence abused when there is an underlying power dynamic between different groups or communities, leading to discriminatory practices. The powerplay between authorities and their sub-groups further emphasise this form of discrimination.

**Unclear process :** In situations where migrants are held for irregularly residing in the host country or due to expiry of documentation, they may be detained without a warrant, they may not be accorded their right to counsel nor would they be provided information regarding the reason their liberty has been deprived. Migrants may not be given opportunity to explain their situation prior to detention and would have to rely on representation by their Missions for the same; Missions are again limited by resource and personnel constraints – they may also be informed at a late stage for legal interventions or to provide basic support. This falls in contradiction with Article 36 of Vienna Convention on Consular Relations[[2]](#endnote-1). In situations where they are unfamiliar with the language and have no one to represent them, migrant workers may be asked to sign their case files with poor translation or none – this is again an arbitrary practice that has led to false charges upon migrants and lead to their incarceration. Instead of becoming regularised, cases mostly result in deportation.

Certain countries require migrants to request for access to consular or legal services, so it is subject to approval of detention authorities. Only embassy authorities, embassy-appointed personnel (including social workers, religious leaders), and ministry officials are allowed to visit migrants in detention centers and so civil society members are also restricted in the nature of aid they can provide the detainee. Overall, there is an absence of proactive engagement between missions and detention authorities. For the migrants themselves, in many cases they are required to fund their own legal proceedings and the costs associated with these (in cases where there are no lawyers to work pro-bono) deter migrants from attempting to gain access to justice.

**Duration of detention :** The legitimacy of the practice of detention also comes into question when considering the duration of detention. There also may be a significant time that passes before the migrant is brought before a Court to determine their case resolution. Although countries are said to have specified time period before deportation of the migrant during which their case is processed, civil society advocates constantly report of situations where migrants have been held for months and even years in the detention centre. Deportation largely depends upon the migrant’s ability to clear any dues/fines and fund their travel back home – however, Missions and community organisations attempt to do so but are largely hindered by their limited financial capabilities.

In the Asian context, irregular migration corridors are dependent upon historical ties as well as socio-economic contexts. Porous borders and the flexible nature of seasonal migration is a prominent example of irregular migration in migrant labour-heavy industries such as agriculture and construction. Climate change and related natural disasters have also led to significant strains of irregular migration within Asia. Economic boom in regions such as the Middle East, North East and ASEAN regions continue to contribute labour migration – however irregular migration occurs at the host country rather than as part of the migration process. Nonetheless, in a broader sense, the characteristics of migration regimes also need to be considered.

**Political economies of host countries** enable the weaponization of the practice of detention as a threat of punishment, rather than an exercise of administration – the nature of labour migration in these regimes foster precariousness among migrant workers, creating conditions for exploitation and lack of accountability on part of the employer. Migrants, particularly migrant workers, are affected by this feature of the labour migration – regardless of their awareness of the practice. In a majority of host countries in Asia, the responsibility of validity and verification of the documentation of labour, particularly migrant labour, is dependent upon the employers. The control over the migrant’s residence, conditions of stay and work, and overall life that employers have, common in sponsorship-based employment systems can lead to conditions similar to detention as well (refer to ‘authority as a tool’ above). In recent years, we have also seen large-scale changes in sponsorship systems certain host countries such as Qatar and UAE. States have attempted to remove indicators of employer control over mobility in the labour market, wages, and other forms of migrant protection. However as per prominent civil society advocates, migrants still rely upon employers to facilitate their entry, residence and employment.

Despite proclamations of legal change, confiscation of documents is still widespread and recruitment practices are yet to entirely improve depending on the origin country. There continue to be pathways for a migrant to be come undocumented through no fault of their own, to be declared ‘absconding’ following which they still may be detained and deported from the host country. Not only is their detention compounded by fines and a ban on re-entry, they would also leave without being provided any reparations, remaining dues or wages as required. Instead of ensuring employer accountability, the consequences of irregularity hang as a threat over the heads of migrants. This becomes exemplified in the case of domestic workers, whose labour rights are separated from other migrant labour in host countries – this is primarily due to the joint nature of their residence and workplace. They face limited mobility, limited pathways to access redressal and are wholly dependent upon the employer to accommodate their rights within their living and working conditions.

The impact of detention on migrant women is yet to be entirely recognised within migration governance – their situation moves from bad to worse when detained, due to the sheer harassment and abuse faced at the hands of arresting officers and detention authorities. The vulnerabilities faced by migrant domestic workers in their right to communication and expression also affect them detrimentally. In such situations, the lack of tracing by Missions also affects their access to justice and they are commonly dependent upon community organisations for their repatriation. Furthermore the complete ignorance displayed by the state in the sexual and reproductive rights of migrant domestic workers have led to detention and deportation when they report cases of sexual abuse (commonly twisted as ‘adultery’) and when they are found to be pregnant. Detained migrant domestic workers that are deported, return to their home countries facing grave effects upon their physical and psychological health.

While the documentation of migrants (and the lack thereof) are serious concerns for host countries, the conditions by which they may be detained, held and deported are arbitrary and used to subdue the migrant population. The concern of civil society currently is largely focused upon reforming elements that make up an arbitrary system of detention of migrants, addressing root causes of irregularity in labour migration and focusing upon the legitimacy and proportionality of the objectives of detention.

## Detention during COVID-19

The COVID-19 pandemic caused widespread changes within the migration scenario. States were forced to respond to take immediate, short-term measures to tide over the disease while gearing up for structural changes due to economic and social effects within their countries. Meanwhile, the biggest challenges that migrants faced during the pandemic has been in relation to basic foundational issues such as access to health services, food, and wages. Migrants turned irregular due to unexpected job losses and cancellation of their visas and work permits, without compensation or due wages being provided.

In a distasteful show of xenophobia, migrants were also made scapegoats during the pandemic, with prominent rhetoric based upon being ‘spreaders’ of the disease, particularly within Malaysia (where undocumented migrants where sweepingly arrested and detained in order to ‘contain the spread of the virus’) as well as Kuwait (that passed the ‘expat quota bill’ to restrict the number of migrants in the country). Mass media and social media were used as a tool to gather support of the local populace to endorse detention and deportation in increasingly polarising discourses. In Malaysia, this reached toxic proportions as human rights defenders and civil society practitioners were trolled online for their work and advocacy during COVID-19, particularly with irregular migrants and refugees. However, state and media discourse lay in direct contradiction to ground realities, where the largest section of essential workers was migrant labour, particularly within the sectors of logistics, sanitation, security, and domestic workers as well.

In the face of impending economic downturn, host countries also attempted to provide amnesties (Kuwait) and visa extensions (UAE) to deal with the ‘problem’ of irregular and undocumented migrants. Despite overstay fees being waived and free flights offered, these initiatives were also criticised by civil society as, due to the pandemic, workers access to grievance redressal and justice mechanisms were limited; compensation and due wages due to unexpected job losses were not recorded nor provided; and there were barely any attempts at regularising migrants. There were also significant efforts at repatriating detained migrants – through concerted efforts by civil societies in origin countries (such as Nepal, Bangladesh, India) and their Missions in host countries.

During the pandemic, several host countries attempted to reduce the population within detention centres to limit infection among detainees and authorities through arrangement of special deportation measures. In many cases, detainees remained confined in crowded situations where health protocols cannot be maintained. Civil society further reported that undocumented migrants were detained, criminalised and not treated as separate from those that are imprisoned for crimes – migrants were also detained due to the inability to follow health precautions (in living conditions as provided by the employer).

Shocking instances of detention and deportation were reported in host countries such as Malaysia, Saudi Arabia. After declaring lockdown, Malaysian authorities conducted large-scale raids upon migrant worker accommodations, and detention of migrants – publicly accusing them of spreading the disease. Those arrested included migrant labour, children and Rohingya refugees. In Saudi Arabia, investigations by media and civil society revealed inhumane conditions and torture suffered by migrants in detention centres. Conditions at detention centres were observed to be unsanitary and insufficient for detainees; they further suffered from a lack of access to redressal mechanisms and communication services – in fact, few Missions knew the existence of the detention centres reported. Detainees consisted of those undocumented migrants who were arbitrarily rounded up from their accommodations and listed for deportations to ‘contain the spread’ of the virus. These migrants were quickly and effectively repatriated after international pressure by civil society and countries of origin.

Needless to say, the arbitrary process of arrest and detention, the punitive nature of holding migrants in these facilities and the complete disregard for human rights were exacerbated by the pandemic – this could be argued as being facilitated by a weak monitoring system, lack of political accountability to address migrant issues, and an opaque migration system based upon feeble foundations. States also need to primarily reconsider the objectives and relevance of administrative detention of migrants (with the assumption that the pandemic will stay for a long time) – and work to address structural gaps in migration governance that lead to arbitrary detention. This should necessarily include considering alternatives to detention and clarifying the elements, process, and procedure of detention as a practice.

# Alternatives to Detention

“…Detention should never be mandatory or automatic. It should only ever be a last resort, for the shortest period of time possible, and only when no less restrictive measures are available.” - Dr. François Crépeau, Special Rapporteur on the Human Rights of Migrants (Report to the UN Human Rights Council, 21 June 2012)

**‘Placing the carrot before the stick’**

As mentioned earlier, detention and deportation do not necessarily fulfil the expected causes for which they have been instituted. Per se, detention has not been able to ‘deter’ irregularity in migration. Migration continues to occur, and the intended consequences of detention do not entirely make a difference to the decision to migrate for most migrants. Moreover, migrants are also more generally unaware that they may be detained for administrative offences. These two inconsistent expectations allow governments to administer detention as a punitive rather than a preventive measure in most countries.

Nonetheless, pursuing detention as a practice before the provision of more lenient, humane methods that provide incentive for regular pathways, is similar to placing the stick before the carrot -in this case, the stick is far more visible and automatically pursued, than the carrot. Migrants and refugees may also knowingly pursue irregular methods due to, among other factors, inaccessible visa, and work regimes at the host country – this has led to the continued existence of trafficking and smuggling routes, ripe with exploitation and abuse. In fact, detainees are found more likely to remigrate through informal routes to the host country or remigrate to other host countries – in either case, the actual requirement of them migrating safely and with awareness goes unaddressed.

**‘Costly to finances and social fabric’**

The process of arrest, detention and deportation require the involvement and engagement of several governmental authorities and institutions. Significant time and money are expended in clerical, administrative and judicial processes for the detainee. Within Asia, developing countries that face irregular migration trends and carry out detention as a measure usually pay dearly from the government exchequer. The ensuing costs for detention are why detainees are put in prison facilities rather than establishing separate detention facilities. It is also why deportation for the detainees occurs months or even years after the person has been detained unless they are able to fund their own way out. Moreover, the practices of detention and deportation is an “out of sight, out of mind” approach that further commodifies and marginalizes an already vulnerable community. Such policies also serve to perpetuate xenophobia and racism against migrant communities. Detention and deportation result in dangerous stereotypes and deny the fundamental right to freedom of mobility for migrants.

**Addressing root causes**

Since, it is considered as a punishment, detention due to irregularity does not facilitate state participation into case resolution for the migrant. The migrant remains unaware, and moreover, detention as a practice has already violated their human rights and affected their physical, mental, and financial health and well-being. Their liberty has been deprived due to their irregularity which is through no fault of their own. Detention fails to address root causes of such movements and clearly is only intended to be a penalty or to reprimand the migrant for becoming irregular at the host country. In such cases, detention as an administrative measure is only meant to be used in the short-term period but never meant to be used if procedures are being fast-tracked.

**‘Humane efforts, Wholesome perspective’**

The need, hence, is for alternatives to detention that are less expensive, take into account the health and well-being of the migrant, do not deprive the migrant of their basic human rights, provide reparation to the migrant and facilitates secure and regular migration through non-arbitrary case resolution processes. Alternatives to detention are **focused upon the migrant rather than the enforcement of law** – that is, priority needs to be placed on engaging with the migrant and addressing the gaps in their migration journey. Engagement with migrant communities in this regard has been shown to improve and benefit both authorities and the migrants. Alternatives are also found to be more effective and cheaper than detention – civil society argues that if provided with basic needs, appropriate access to legal redressal and protection from refoulement, migrants will comply with decisions and are less likely to abscond prior to the determination of their case.

Alternatives to detention offer a way to restructure migration systems based on **recognising migrants as active agents** who make their own decisions. The practice of detention needs to be considered on a case-by-case basis to prevent arbitrariness and migrants need to be provided with multiple avenues of support to achieve case resolution. This may be based upon legal obligations of the state, the identity and vulnerability of the migrant, individual case factors and the context of the community within which they may be placed.

Particularly with regard to migrants that have become undocumented at the country of destination as well as refuges, arbitrary forms of detention can be prevented, and the root causes of irregularity may be addressed through mutual cooperation between host and origin countries. Effective migration governance systems understand motivations and needs of undocumented migrants, refugees, asylum seekers, stateless persons and other citizens without legal status and provide specialised services for varieties of migrant experiences. These may include regularisation programs, humanitarian or protection visas, other permanent visas, short-term ‘bridging’ visas, departure to a third country, return to a different area of the country of citizenship, and additional resources to support sustainable return. Nonetheless, providing increased pathways to regularisation, although highly recommended, is only one tool in improving rights-based migration governance.

Actions to be taken to prevent and reform arbitrary detention include :

* **Prioritizing reform of access to justice** 
  + Any alternatives must be based on accessible, efficient, effective justice mechanism where the following are established clearly or revisited and revised, with monitoring mechanisms:
    - Language of procedures and detention-related documents need to be provided in the migrant workers language or a familiar one.
    - Fees of legal aid and services during the process
    - Duration of the period of detention
    - Costs to the physical and mental health of the migrant
  + Acknowledging existing ecosystems of support and improving engagement with them as well as instituting new bodies in case of gaps.
* **Case management-based alternatives to detention**
  + Detention as a ‘last resort’ rather than as a default response, determined on a case-by-case basis, with due process and adequate consideration of the reasons for the migrant’s status.
  + Fair and timely case resolution by constructive dialogue between NGOs and governments that focuses upon the impact of alternatives on detention upon the migrant’s rights and ability to comply with migration decisions.
  + Shelters for undocumented and irregular migrants that have limited restrictions following screening and assessment of their case. CSO’s, NGOs, community organizations may be considered to reduce the use of detention facilities and improve migrants-rights based conditions within shelters.
  + Constant engagement with missions and quasi-governmental authorities on updates and practice review.
* **Reforming the practice of arbitrary detention** 
  + Ensure that victims of trafficking are protected against detention and deportation by implementing systematic, proactive screening and identification procedures, and providing appropriate shelters for victims.
  + Prohibit the detention of vulnerable migrants such as domestic workers, refugees and/or stateless persons, pregnant women, and those with mental/physical illnesses.
  + Verify cases of ‘absconding’ migrants who have been held and ensure access to legal counsel and alternate paths to regularisation instead of detention and deportation.
  + Ensure that no worker is deported without receiving any remaining dues, compensation or wages.
  + Inclusion of a provision to retract statement of the migrant if obtained under duress or without undergoing due process of the law.
  + Relaxing financial obligations of the migrant that overstayed through no fault of their own.
  + Detention must be of limited duration and must not be considered in cases that are being fast-tracked.
  + Enabling human practices by providing detainees with
    - Access to information in a language they understand
    - Access to communication with Missions and their families
    - Access to pro-bono legal counsel and right to remedy
    - Access to basic needs of sanitation, healthcare, clothing, food and outdoor activity.
* **Reforming labour migration systems** 
  + Holding employers responsible and improving employer accountability measures for irregularity due to visa and work permit related offences.
  + Ensure that migrant domestic workers are included within labour law protection.
  + Institute firewalls between immigration authorities and essential service providers
  + Decriminalize the act of abscondence and allow migrants to renew their documentation on their own capacity.
  + Adopt legislation that prohibits document confiscation
  + Ensure effective monitoring through provision of grievance redressal systems and usage of websites and apps that are created for storage of documentation.
  + At origin countries, ensure that deported migrant workers upon arrival must be given the opportunity to inform relevant authorities, including National Human Rights Institutions of any grievances or injustices experienced in the host country
* **Address the practice of detention during COVID-19**
  + Ensure detained populations have access to healthcare as well as testing and treatment for virus.
  + Monitor detention centres to to ensure that COVID-19 related safeguards are possible and if they are not, ensure that detainees (particularly those that are undocumented) are progressively released from these facilities to improve hygiene in them while providing necessary assistance to people who are released.
  + Reconsider the necessity of the practice of detention as well as available alternatives to detention depending upon the availability and conditions of facilities, justice mechanisms, support services from Missions and CSOs.

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1. MFA is a network of civil society organizations, trade unions, and individuals in Asia working together to advocate for social justice for migrant workers and members of their families. Formally organized in 1994, it has since grown into a strong migrants’ rights advocacy network in Asia. To date, MFA is represented in 19 countries by 53 civil society and trade union groups, and 7 key partners in the MENA region [↑](#footnote-ref-1)
2. Article 36 of the Vienna Convention on Consular Relations: “Article 36 addresses communications between consular officers and nationals of the sending state. The Convention provides that "consular officers shall be free to communicate with nationals of the sending State and to have access to them." Foreign nationals who are arrested or detained be given notice "without delay" of their right to have their embassy or consulate notified of that arrest, and "consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.". [↑](#endnote-ref-1)