

# BWI Legal Clinic: Report and Recommendations

14 June 2019 | Doha, Qatar



**BWI**  
Building and Wood  
Workers' International  
[www.bwint.org](http://www.bwint.org)

**Mondiaal FNV**



BWI is the Global Union Federation grouping free and democratic unions with members in the Building, Building Materials, Wood, Forestry and Allied sectors.

BWI brings together around 334 trade unions representing around 12 million members in 130 countries. The Headquarters is in Geneva, Switzerland while the Regional Offices are in Panama, Malaysia, and South Africa.

Our mission is to defend and advance workers' rights, and to improve working and living conditions in our sectors. The BWI, above all, has a rights-based approach. We believe that trade union rights are human rights and are based on equality, solidarity and democracy, and that trade unions are indispensable to good governance.

BWI goals include 1) to promote and defend human and trade union rights; 2) to increase trade union strength; 3) to promote a stable and high level of employment in our sectors; and 4) to influence policy and strengthen the capacity of institutions and tripartite structures in our sectors.

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# Introduction

Despite serious efforts by the Government of Qatar to introduce labour reforms – among others the **Wage Protection System**, and **Labour Dispute Settlement mechanism** aimed at improving employment conditions of migrant workers combined with the willingness of relevant support institutions like High Commissions or Embassies of countries of origin of migrant workers to assist, there are still many reported labour law violations. They include delayed or non-payment of salaries, contract substitution and confiscation of passports. The situation is compounded by insufficient systematic mechanisms within the Ministry of Administrative Development of Labour and Social Affairs (ADLSA) to address complaints and cases – from a non-standard complaint form, to the lack of proper documentation, to monitoring and reporting back procedures.

For this reason, the BWI convened a group of lawyers who have expertise in labour and employment laws from the Philippines, Nepal, and India to review the labour policy reforms, in particular the labour disputes settlement system, and assess their implementation. **As part of this assessment, the BWI convened a Legal Clinic on 14 June 2019 in Doha, Qatar to interview workers and examine their complaints. The lawyers were supported by BWI-trained para-legal migrant community leaders.** A total of 47 workers participated in the Legal Clinic.

Particular attention was given to cases where workers' complaints of wage theft and back-wages were found in the following circumstances and evidence: company bankruptcy, case materials from the Wage Protection System, and documentation provided by workers (wage slips, employment contracts, and other materials). Some of the cases reviewed were long-term individual ones and others involved several workers in the same situation in one company. Cases submitted can went back to January 2018.

Through this process, BWI hopes to contribute in the full implementation of the labour policy reforms by identifying the gaps in the labour disputes settlement system. The findings of the review and the Legal Clinic as well as BWI recommendations are outlined in this report. The report is the basis for continued engagement with MADLSA to further improve complaint mechanisms to address migrant workers' complaints in Qatar.

## Executive Summary

Migrant workers are indispensable to the economy of the State of Qatar, and their well-being has enormous implications for their ability to contribute to the Qatari economy and to the welfare of the citizens of Qatar. It is in the interest of the State and society that definitive measures be undertaken to compel all employers to comply with labour standards, the most prevalent violation of which is the failure to pay wages and other monetary benefits. The authoritative, binding enforcement powers of the State must be put to use in order to collect immediately from employers who do not cooperate and ensure that workers are paid promptly.

Almost all of the cases discussed during the Building and Wood Workers' International (BWI) Legal Clinic conducted 14 June 2019 in Doha, Qatar as well as complaints that are referred to the BWI involve non-payment of wages, covering periods where workers rendered unpaid service for as long as four (4) to fourteen (14) months.

These non-payment claims should be resolved at the first instance before the Ministry of Administrative Development Labour and Social Affairs (MADLSA), and, should not be subjected to a tortuous process of appeal or re-litigation at the level of the High Court. Moreover, MADLSA, on its own authority, should be able to issue a writ of execution, and authorise its representative, whose task will be to seize property or garnish bank accounts of employers, take possession of the money or sell the property.

MADLSA should also be able to fully refund back wages to affected workers in accordance with the judgment. These money claims should not even need to reach the higher court. Most cases of non-payment of wages are fairly simple and do not raise complicated issues. If there are cases that are not contested and to the High Court or if MADLSA is not given the necessary authority, decisions should be provided expeditiously. It should never take an intolerably long period of sixteen (16) months to issue a writ of execution.

Aside from the payment of wages and other claims, we also recommend that the employer should be penalised financially. Such a fine or award should be sufficient to discourage this practice.

Communication with the complaining workers and the employers, service of summons, subpoenas, orders, decisions, etc. should be the responsibility of the MADLSA through its own directly-hired employees who will be assigned as process server/bailiff/marshal through: 1] physical service of a hard document, 2] email, and 3] text message (SMS).

The Workers' Support and insurance Fund should be fully operational in December of 2019. It is important that it immediately pay unpaid wages as intended and collect those sums from the offending employers. For the affected workers, justice delayed is justice denied and the long delays faced by workers should be eliminated by the fund. In addition, penalties should be levied against offending employers in an amount sufficient to deter such practices. Such penalties should be awarded to the victims and their families.

The fund should cushion the hardship for affected workers. However, in addition, procedures should be improved whether it is to collect funds for workers or reimburse the fund. These would include the expedition of pending claims, particularly for those workers who return home. In addition, a penalty should be imposed on firms that fail to pay wages or for other wage theft, which should be paid to the affected workers. This should be sufficient to help discourage such behaviour.

## Legal Clinic Participants from all the three (3) countries: Philippines, Nepal, and India

The following individuals from three (3) countries working for different companies attended the 14 June 2019 BWI Legal Clinic. We strongly urge the State of Qatar to place a priority on the resolution of these cases. Non-payment of wages not only causes material hardship, but also insults workers and creates dissatisfaction. It violates their dignity by robbing them of the fruits of their labours.

### **A. Migrant workers from the Philippines who attended the Legal Clinic:**

#### **Mercury Mena**

Forty-four (44) workers of Mercury Mena are in a similar position: they have not received their wages for a period of four (4) to fourteen (14) months. Such blatant violations should have no place in Qatar.

It is a typical case, which is pending execution of judgment before the High Court, which make take as long as sixteen (16) months to issue a writ of execution, and, serves as an example of delay. To expedite justice, as suggested earlier, a writ of execution should be simply be a Ministerial matter. In all of these cases, MADLSA had already made a judgment, so the cases should not have necessitated review by the High Court.

#### **Complainant's Demands:**

- ▶ The intervention of MADLSA or another concerned Qatari government agency to follow-up on the claim.
- ▶ The possibility for the government of Qatar to use the Workers' Fund to rapidly provide justice to the workers.

**The forty-four (44) employees involved include the following who attended the 14 June 2019 BWI Legal Clinic:**

1. Jay Sarmiento Tomeldan
2. Gilbert Baconga Lizardo
3. Rogelio c. de Dios
4. Roseller Iglesias
5. Javier Algas
6. Frederick C. de Lina

## MegaTech

### Junior B. Nabor case:

- ▶ Complainant asked assistance from Philippines Overseas Labour Office (POLO)<sup>1</sup>, which then referred him to MADLSA (2017). He reported to the Labour Relations Department for two (2) hearing scheduled, but the employer did not show up, so the Labour Relations Department referred the case to the Higher Court (Dafna).
- ▶ The final judgement issued by the court was in favour of the complainant: QAR 16,230 + 600 expenses + one-way ticket Doha- Manila.
- ▶ Higher Court (Dafna) advised complainant to go back to the Court on 17 June 2019 for execution.
- ▶ Complainant is waiting for execution of the order.

### B. Migrant workers from Nepal who attended the Legal Clinic

#### The companies involved were as follows:

- ▶ ALMEEDAN ALALMIA Almedan Alalmia
- ▶ AL MEEDAN INTERNATIONAL AI Meedan International
- ▶ DEVELOP DIVISION CONTRACTING Development Division Contracting

#### The complainants are as follows:

1. Sanjay Kumar Tajpuriya from Almedan Alalmia
2. Purna Pariyar from AI Meedan (or Almedan) nternational
3. Hir Bahadur Nepali from Almedan International
4. Bhupal Shrestha from Development Division Contracting
5. Tej Prasad Sharma from Development Division Contracting

They worked for a supply company, albeit without specific work assignments, but were eventually assigned to construction of buildings, stores, and roads.

- ▶ Contract copy: They signed a contract in Nepal, but the employer did not give them copies.
- ▶ Delayed payment of wages: They received a salary only once since they arrived from Nepal, around May or June 2019.
- ▶ Salary: Based on contract signed in Nepal: QAR 700+200 – for one month.
- ▶ Accommodation: Six (6) persons in one room (small room), bunk beds.
- ▶ Qatar ID: Working visa available, but no Qatar ID (Residency Permit) provided.
- ▶ Employer argues that they have yet to complete three (3) months, but others had worked for more than a year, but they continue to not have their Qatar ID.
- ▶ Work hours: Eleven (11) hours of work a day from 6:00 to 17:00, with only two (2) hours considered as compensable overtime work.

#### Recruitment Agency in Nepal:

- ▶ 100,000 Nepali Rupees paid by workers to the agent.

#### What the complainants are seeking:

- ▶ Return home to Nepal.
- ▶ Employer to pay unpaid salary, overtime, gratuity, and the plane ticket.

#### Arjun Bishwakarma from Five Diamond (employer) case:

- ▶ Has not been paid his salaries, not even receiving the food allowance; and
- ▶ Has Qatar ID, but his passport taken by the employer.

<sup>1</sup> POLO is a unit of the Philippines Department of Labour responsible for addressing the needs, concerns, complaints and other issues overseas Filipino workers face.



**C. Complainants from India who attended:**

| Name (as written in passport) | Name of company            |
|-------------------------------|----------------------------|
| MR. MOHAMMAD AZAD ALAM        | AFNAN DECORATION           |
| MR. PRASANTA BARUI HARI DAS   | AFNAN DECORATION           |
| MR. ANIL RAM RAMESH RAM       | AFNAN DECORATION           |
| MR. DEEPAK KUMAR RAM          | AFNAN DECORATION           |
| MR. IMRAN AHMAD JALALUDDIN    | AFNAN DECORATION           |
| MR. OM PRAKASH RAM HARI       | AFNAN DECORATION           |
| MR. DHARMENDRA RAM NAYAN      | AFNAN DECORATION           |
| MR. GOVIND GHANSHYAM SUDAMA   | WADI AL JAMARAT GEN. CONT. |
| MR. MURALI GORLA RAJIAH       | WADI AL JAMARAT GEN. CONT. |
| MR. INDRA BHUKYA              | WADI AL JAMARAT GEN. CONT. |
| MR. NARSAIAH KOLAKADI         | WADI AL JAMARAT GEN. CONT. |
| MR. YELLAIAH PENTA            | WADI AL JAMARAT GEN. CONT. |
| MR. RAJIAH MOKENAPALLI        | WADI AL JAMARAT GEN. CONT. |

**Complaints:**

- Non-availability or cancellation of Qatar Visa;
- No proper accommodation and food allowance; and
- Forced labour.

**Salaries not paid:**

- ▶ Mr. Mohammad Gaffar Ali — Hatem Alkabsh Trad Gen Cont (needs exit permit)
- ▶ Thiru Sangu Olaiyur Kuppusamy — Tu Sud Middle East Llc (Qid penalties charged to worker)

# Recommendations Submitted to the State of Qatar

The Building and Wood Workers' International (BWI) respectfully presents the following recommendations to the State of Qatar.

## General Recommendations



**Expedite enforcement of wage claims, claims for unpaid gratuity, and other money claims.**

The overwhelming majority of cases involve non-payment of wages, gratuity pay, leave pay, and other monetary claims, and they should be resolved quickly as there are no complicated factual issues involved. Writs of execution should be issued and enforced without delay while we cooperate to improve the labour standards enforcement system through definitive systemic reforms.

The workers rendered service, but, did not receive the corresponding remuneration. This is akin to a person selling something to someone, delivering the goods, but, for some reason, being refused payment by the buyer, even after the latter had already consumed and had started using the goods delivered.

### Absence during the hearing:

- ▶ If a worker fails to appear three (3) times, the case should not be finally dismissed, but rather suspended or archived for two (2) years.
- ▶ If the employer fails to appear three (3) times, consecutive or otherwise, it should be declared in default and an award should immediately be issued the worker, based solely on his or her claims.



**Non-payment of wages are simple monetary claims that should be resolved at the first instance, rather than being subject to a tortuous process of appeal or re-litigation.**

The Ministry of Administrative Development, Labour and Social Affairs (MADLSA) should be able to resolve the case at the first instance at this level, and should have the power to issue a writ of execution through which it could garnish promptly the bank account and or levy the properties of the employer and immediately pay the monetary claims of the workers. In other words, this should be no more than a contract enforcement issue at the MADLSA level, and not a court case, which is more litigious in nature.

Wage enforcement or wage collection matters, and all other claims of workers should not be litigious and, in the proceedings before the MADLSA, the Labour Relations Department being, in effect, the High Court, should be able to apply rules of evidence that are fair and reasonable without employing the stringent and procedures of courts of law or equity. The authorities concerned should use every and all reasonable means to ascertain the facts in each claim speedily and objectively and without excessive regard to technicalities of law or procedure, all in the interest of due process and justice.

In any proceeding before such authorities, the worker should be able to represent him or herself, be represented by legal counsel, or be guided by an adviser.

In most cases referred to the legal clinic and/or being followed up by BWI, the MADSLA had already rendered a decision or award in favour of the workers, ordering the employer to pay unpaid wages and other benefits. However, following such action, the MADLSA instructs workers to file with the High Court another case for the issuance of a writ of execution. At the level of the High Court, the case is again litigated, with the worker once more being asked to submit the same documents, he or she had

earlier given to the MADLSA. The parties are asked again to attend hearings, repeating a process that was already finished or at least should have been finished by MADSLA. Unfortunately, employers often refuse to appear in these hearings.

Worse, it takes at least sixteen (16) months to resolve even the issuance of a writ of execution.

That is what is happening in the case of Mercury Mena, where there are final and executory orders, but these have yet to be executed and the judgment satisfied. After a case has become final and executory, the issuance of a writ of execution should be simply ministerial, with no need for further deliberations and proceedings. The writ should be immediately issued.

Internationally, it is a widely accepted principle that a writ of execution be issued by the responsible Ministry following the final judgment. Otherwise, it is not, in fact, final.

As will be explained below, MADLSA itself should have the power to issue the writ and collect the money, and, remit the same to the worker. If this is not possible, then MADLSA should simply give a certified true copy of its order finding that the employer is liable, and, transmit the same to the High Court for the immediate issuance of a writ of execution without the need for re-consideration of the case.



**MADSLA should provide that workers can submit collective claims ("class action") where the resulting decision apply to all affected employees.**

It is cumbersome and time-consuming for workers to file individual complaints and claims on the same issues. Many if not all employees repetitively commit the same violations. In addition, the current process is causing backlogs in mediation and industrial court hearings. Allowing submission of collective complaints and claims will make the process more effective and efficient.



**MADLSA should have the power to issue a writ of execution and enforce it. A direct, regular employee (officer or enforcement personnel) should have the authority to seize assets and garnish employer bank accounts. Resources obtained in that manner could then be devoted to the full satisfaction of judgment.**

The tribunal or body of the first instance, in this case at MADLSA, which should immediately issue the writ of execution of its decision, award, or judgment. In cases where the MADLSA had awarded money claims, there should no need to refer the case to the High Court for execution.

These money claims should not even reach the high court, which may take up to sixteen (16) months to issue a writ of execution.

The processing of such claims should be summary in nature without the need for lawyers. Workers should simply be asked to fill out forms at MADSLA, indicating personal circumstances, type of work, other related information, as well as the name, address, and nature of business of the employer. The amount of wages unpaid and the period covered should both also be indicated.



**In addition to paying wages and other claims, the employer should be made to pay a penalty.**

There should also be a penalty of two percent (2 percent) per month of the total unpaid amount. This would compensate and provide justice to the complainants and their families for the hardships they have suffered, and at the same time serve as a strong warning and deterrent to the offending employers.





**The MADLSA and the Higher Court should pursue corporations, related entities, parent companies, sister companies, and their owners in cases of bankruptcy, employer name change, abscondment, etc.**

The final decision is one thing and the enforcement of it is another, as employers may still try to evade payment by moving to another location or hiding, closing down, changing the business name or corporate name, filing for bankruptcy, hiding assets, etc. This is another reason to issue the award or decision immediately, especially in simple money claims, so that the process will be shortened considerably.

Often the High Court asks the complaining worker to come back to verify if the money is already available and it is often that it is not. Thus, the need to immediately issue a writ of execution and garnish the bank account of the employer.

The workers and the Courts may, in fact, have to try to pierce the veil of corporate entity and also pursue the owners or related corporations, which is a difficult and protracted legal battle. This may be necessary as the corporation may be an entity separate and distinct from its owners, parent company, or sister companies. However, if the corporation is used to evade payment of wages, perpetrate fraud, or hide assets from authorities, the government should be able to disregard its separate legal personality and pursue its owners, parent company, or sister companies.

Piercing the corporate veil is warranted when the separate personality of a corporation is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, or the circumvention of laws, judgments, and orders. It is also warranted where a corporation is an illusion as it is an alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it an instrumentality, agency, conduit or adjunct of another corporation. When the corporate veil is pierced, the corporation and persons who are normally treated as distinct from the corporation are treated as one person, so that, when the corporation is adjudged liable, these persons, too, become liable as if they were the corporation.<sup>2</sup>



**Constructive dismissal should be found in cases where the employer fails to pay for more than two (2) months, and also in all other cases where continuous employment in the company becomes untenable or unbearable.**

Unpaid wages translate into extreme hardship for workers and their families. Workers have already made the sacrifice of leaving their families and home countries to work abroad and provide for their families. Affected workers most often belong to economically disadvantaged families. With few exceptions, they are living without cushions or reserve funds. Under those circumstances, non-payment of wages for two (2) months should be grounds to leave jobs and find other employment in Qatar. The necessary work permits should be given to them in these cases.

In fact, resignation due to non-payment for two (2) months, failure to give work assignments, harassment, and other unjustified and unbearable treatment, should be treated as constructive dismissal.

### **Constructive dismissal<sup>3</sup>**

Constructive dismissal means that you are forced to leave a job against your will because of your employer's conduct.

The reasons you leave your job must be serious, for example, they:

- ▶ do not pay you or suddenly demote you for no reason;

<sup>2</sup> INTERNATIONAL ACADEMY OF MANAGEMENT AND ECONOMICS (I/AME), v. LITTON AND COMPANY, INC., G.R. No. 191525, December 13, 2017 (Philippine Supreme Court Decision)

<sup>3</sup> <https://www.gov.uk/dismissal/unfair-and-constructive-dismissal>

- ▶ force you to accept unreasonable changes to how you work – for example tell you to work night shifts when your contract is only for day work; and
- ▶ let other employees harass or bully you.

In a plethora of cases, constructive dismissal has been defined as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. (Supreme Court of the Philippines G.R. No. 193421; June 4, 2014 MCMER CORPORATION, INC., MACARIO D. ROQUE, JR. and CECILIA R. ALVESTIR. vs. NATIONAL LABOR RELATIONS COMMISSION and FELICIANO C. LIBUNAO, JR., Respondent.)



**Service of summons, subpoenas, orders, decisions or any other legal document should be made by the MADLSA officer or enforcement personnel using three different means: physical service of a hard document, email, and text message (SMS).**

In one of the cases in Mercury Mena, the complainant was asked by the Dispute Settlement Committee to which MADLSA assigned the case, to give a copy of the letter to the employer.

All letters, summons, processes, etc. issued by MADLSA or its Dispute Settlement Committee, or by the Courts should be served by text, by email, and by the usual summons service (document) to the worker and the worker representative, and to the employer.

It should always be the government, whether MADLSA, the High Court, the Labour Relations Department, or the Dispute Committee which serves the letter or the summons to the employer, and not the worker. The reason is simple: the summons, subpoena, order, and other forms are official government documents issued by the authorities in relation to a pending legal claim, and they are duty-bound to serve the same to each of the parties to the case, typically through a court or government employee commonly referred to as process server or bailiff.

It is the government which has the duty to ensure that the parties to the case receive its orders, subpoenas, summons, decisions, and other processes – and at the same time ensure that such receipt or non-receipt or refusal to receive is properly documented so the government and the parties may act accordingly, based on official records. This would also ensure that all of the parties to the case are able to verify what happened to the service of summons, when they were received, and by whom, so that they may file the necessary papers and/or act accordingly.

Thereafter, it is the process server or bailiff who would certify on record, through an official act, what happened to the document he had served on a party: received, refused receipt, not found, moved without forwarding address, closed, etc. The worker has no authority or responsibility to take such actions.

The Post Office is not the ideal medium for sending notices. Each court or office, such as MADLSA, should employ its very own process server or bailiff or marshal. The best-case scenario is that this person works directly with the court or agency and at the same time reports to the judge or agent before whom the case is lodged or before the MADLSA.



**Online updates and follow-ups, especially crucial for those who have already been dismissed from work or have had to leave the State of Qatar.**

There should be an online system to verify the status of the case, which system would also allow the complaining workers and the authorities to correspond with each other. Online updates and follow-ups are crucial, especially for those no longer in Qatar.

This on-line system should be then linked to the specific country labour office of the concerned worker.

Computer portals should be available and accessible (including those in relocation centres, temporary shelters, etc) so that workers can follow-up their cases on -line even when they have no personal internet access.



**Retaliation by employers against complaining workers is a serious matter that needs to be addressed.**

Filing a formal complaint against the employer is a daunting experience for a migrant worker. On several occasions, MADLSA officials have publicly stated that filing a complaint against employers is a right. However, employers often retaliate against workers who file complaints. In one case, one group of workers decided to withdraw their labour complaint when their company management “informed” them that the company will settle the workers’ claims if they do not file a complaint. In addition, they were told that those who file complaints would have to wait for the resolution by the MADLSA; therefore, implying that they will have to wait a long period of time.

Another case involved Maricor Cruz, who wrote to BWI regarding her case. She had received a ticket for home, paid by her company, only to be detained by the CEID (immigration) officials upon check-in because her company had filed a “run-away” case against her. There are also several posts of retaliatory measures by employers circulated via Social media. This renders the labour justice system useless.

Another form of retaliatory action is blacklisting of workers. There is a need for the creation of the Equal Employment opportunity office in MADLSA, perhaps like what exists in the United States. It would be charged to deal specifically with cases of inexplicable rejection of employment applications, where the only plausible explanation is blacklisting.



**Workers’ Support Fund for the immediate payment of unpaid wages.**

The Workers’ Support and insurance Fund should be fully operational in December of 2019. It is important that it immediately pay unpaid wages as intended and collect those sums from the offending employers. Collected funds would reimburse the fund.

However, as important as it is, to use the fund, if necessary, to guarantee swift payment to workers and ensure that the Fund is re-paid, it is not enough. In addition, penalties should be levied against employers that engage in wage theft. It should be fixed in an amount sufficient to deter such practices. Such penalties should be awarded to the victims and their families.

### **Other recommendations**

1. The expedition of pending claims particularly of workers who are forced to return home. These cases can be continued through home country regulatory policies, for example, filing complaints concerning recruitment agencies. Such complaints might, in some cases, be better handled through Qatari embassies.
2. The issuance of General Administrative Orders by the highest authorities to prioritize enforcement of labour standards, require employer cooperation and oblige government instrumentalities and departments to ban the award of government contractors to employers that violate labour laws.
3. Extensive and sustained use of media to explain Government efforts and initiatives to enforce labour standards so that workers, employers, and the public are informed of their rights and responsibilities and of access to remedy.

# **BWI Legal Clinic: Report and Recommendations**

**14 June 2019 | Doha, Qatar**

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