IS PORTABLE JUSTICE A UNIVERSALLY AVAILABLE TOOL?
- A Comparative Study

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Thesis in International Humanitarian Law, 30 HE credits
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Stockholm, Spring term 2015
“Where globalization means, as it so often does, that the rich and powerful now have new means to further enrich and empower themselves at the cost of the poorer and weaker, we have a responsibility to protest in the name of universal freedom”\textsuperscript{1}.

- Nelson Mandela

\textsuperscript{1} Nelson Mandela from, \textit{Speech on Receiving the Freedom Award from the National Civil Rights Museum}, November 2000.
ABSTRACT

A university professor of mine, Dr. Laura Carlson, introduced me to the concept of portable justice a few years ago when I took her class in Comparative Law. In my thesis I wanted to combine the idea of portable justice with ongoing events of international importance in the areas of labor law and human rights, but at the same time give the analysis a comparative nature. As the preparations for the FIFA 2022 football World Cup in Qatar continue, I find it very disturbing to see the lack of rights and protection the foreign work force has to endure and overcome. I believe that portable justice could be the solution for these and other transnational migrant workers in their strife for fair treatment and justice.
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<tr>
<td>BGB</td>
<td>German civil code from 1881</td>
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<tr>
<td>CA</td>
<td>Constituent Assembly (Nepal)</td>
</tr>
<tr>
<td>DHS</td>
<td>Department of Homeland Security (United States)</td>
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<tr>
<td>FEA</td>
<td>Foreign Employment Act 2007 (Nepal)</td>
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<tr>
<td>FIFA</td>
<td>Fédération Internationale de Football Association</td>
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<tr>
<td>FLSA</td>
<td>Fair Labor Standards Act (United States)</td>
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<tr>
<td>GDP</td>
<td>Gross domestic product</td>
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<tr>
<td>GNI</td>
<td>Gross national income (per capita per Year)</td>
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<tr>
<td>GWJA</td>
<td>Global Workers Justice Alliance (United States)</td>
</tr>
<tr>
<td>HDI</td>
<td>Human Development Index (United Nations)</td>
</tr>
<tr>
<td>HTTCA</td>
<td>Human Trafficking and Transportation (Control) Act 2007(Nepal)</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention on Elimination of all Forms of Racial Discrimination</td>
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<tr>
<td>IJC</td>
<td>Immigrant Justice Clinic at University Washington College of Law</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>ISI</td>
<td>International Statistical Institute</td>
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<tr>
<td>ITUC</td>
<td>International Trade Union Confederation</td>
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<td>LO</td>
<td>Swedish Trade Union Confederation</td>
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<tr>
<td>MSPA</td>
<td>Migrant &amp; Seasonal Agricultural Worker Protection Act (U.S.)</td>
</tr>
<tr>
<td>NLRA</td>
<td>National Labor Relations Act (United States)</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>PAN</td>
<td>National Action Party (Mexico)</td>
</tr>
<tr>
<td>PPP</td>
<td>Purchasing-Power-Parity</td>
</tr>
<tr>
<td>PRI</td>
<td>Institutional Revolutionary Party (Mexico)</td>
</tr>
<tr>
<td>QFMS</td>
<td>Qatar Foundation Mandatory Standards</td>
</tr>
<tr>
<td>QSL</td>
<td>Qatar Sponsorship Law</td>
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<tr>
<td>SCWWS</td>
<td>Supreme Committee Workers’ Welfare Standards (Qatar)</td>
</tr>
<tr>
<td>SKAF</td>
<td>Swedish Municipal Workers’ Union</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights from 1948</td>
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</table>
• **Customary law** – when a traditional common rule or practice has become an elemental part of the acknowledged and wonted behavior in a profession, or in the community, and is treated as a legal necessity it can be seen as customary law.

• **De lege ferenda (Latin)** – “what the law ought to be in the future”.

• **Due process** – a constitutional assurance that laws should not be arbitrary, and a fundamental legal requirement that all legal rights owed to an individual must be respected by the state in all legal proceedings.

• **Functional equivalence** – “the hypothesis that mental imagery functions in the same way as the physical perception”.

• **Kafala system** – foreign workers are bound to the sponsorship of a specific employer once in Qatar, and the system allows the employer to have almost total control over the migrant workers’ movement, legal status and rights.

• **Migrant worker** – a person, who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

• **Majlis as-Shura** – the unicameral Advisory Council of Qatar (legislative branch).

• **Muluki Ain** – the first Nepalese codified law from 1854 (the Country Code).

• **Napoleonic Code** – the French civil code established under Napoléon I in 1804

• **Shari’a** – Islamic religious law.

• **Stare decisis (Latin)** – “to stand by that which is decided”.

• **Unskilled labor** – daily production work with no or little requirement for specific experience or education that can be learned within a month and is often distinguished by low wages.
CHAPTER 1 - Background

1.1 Introduction

Migrant labor attorney Cathleen Caron is the brain behind the fairly new and innovative idea of portable justice and she describes it as “the right and ability of transnational migrant workers to access justice in the destination countries after they return to their home countries”\(^2\). According to Article 2.1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:

“The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”\(^3\).

Cathleen began her initiative in 2005 and the primary focus of her work has been to expand legal access and legal frameworks. Cathleen Caron is the founder and executive director of the Global Workers Justice Alliance (GWJA) which runs programs in Mexico, Central America, Canada and the United States\(^4\). By promoting portable justice for transnational migrant workers, through a transnational network of resources and worker advocates, the GWJA’s mission is to fight worker exploitation\(^5\). The main task of the GWJA is to support and train a Defender Network of human rights advocates in the migrant sending countries to work in cooperation with advocates in the countries of employment. The GWJA also educates migrant workers on their rights before departure and provides referral and advice for cases around the world. Numerous labor law cases in which Latin American citizens working in the United States have been able to access justice, with the help of the GWJA, after returning to their respective home countries are a very strong indicator that portable justice may serve as an efficient tool in battling injustices in other parts of the world as well\(^6\). As an example of the impact the GWJA has had, a Guatemalan man with a temporary work visa for the United States was offered a high wage and a secure job, but was instead trafficked. His passport was

\(^3\) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.
\(^4\) Cathleen Caron, Founder and Executive Director of the Global Workers Justice Alliance, Video from Greenwich Retired Men’s Assoc., October 11, 2013.
\(^5\) http://www.globalworkers.org/
taken from him and he was threatened and forced to sleep on the floor, only working for a very low salary. He finally escaped and made it back to Guatemala where he luckily located a Global Workers advocate. In this case the sending country, Guatemala, assured the assistance. The Global Workers expeditiously assembled a legal team and also liberated thirteen remaining workers who are now protected under trafficking laws and allowed to remain in the United States for continued work\(^7\). What trafficking in persons mean is defined in Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol).

> “Article 3 (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”\(^8\).

As the FIFA\(^9\) 2022 football World Cup in Qatar approaches it has become clear that migrant work force has had to suffer an extremely high death toll over the last few years\(^10\). In a Special Report named *The Case against Qatar, Host of the FIFA 2022 World Cup*, from the *International Trade Union Confederation* (ITUC) from March 2014 it is conservatively estimated that more than 4,000 migrant workers will lose their life before the start of the World Cup. The numbers can be read on page fourteen of the report and are based solely on statistics from the embassies of Nepal and India, two countries that make up about 50% of the total migrant workforce in Qatar\(^11\). If football as a sport can interest millions of people worldwide every year, so should the working conditions and destinies of the hundreds of thousands of workers, making a huge sports event as the 2022 World Cup possible in the first place. The author want to make his contribution through this paper by further raising awareness of the situation and hopefully also by making people want to become a part of

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\(^8\) Trafficking Protocol of 2003.

\(^9\) [http://www.fifa.com/](http://www.fifa.com/)


the solution to the problems in Qatar, and in other countries faced with similar issues. It is a disgrace to mankind that any kind of slavery or comparable situation can exist in the year 2015 and it is every one’s responsibility to invoke change for the better. The countries compared in this study were firstly chosen on the basis of the author’s introduction to the concept of portable justice, thus providing the United States and unskilled workers from several Latin American countries. Current events of global interest, namely the preparations for the FIFA 2022 World Cup in Qatar and the working conditions of the Nepalese construction workers highlighted in international media, gave the second object of comparison. Thirdly and finally the author also wanted his point of departure for this paper to include his native country of Sweden and he chose Thailand as the counterpart because of national media coverage of Thai berry pickers in the north of Sweden, not getting paid and working under terrible conditions.

Crudely, the United States and Nepal can be placed under Common Law legal systems, Qatar under an Islamic legal system and finally Mexico, Central America, Sweden and Thailand under various Civil Law legal systems. Part of this paper will shortly explain and compare the different legal systems as such however the main focus will be to examine the possibility for portable justice within the legal systems of the employing countries, the United States, Qatar and Sweden. The effectiveness of present national labor laws of the tree countries will be tested against international laws and conventions and case law. International migrant labor cases of similar nature from the three different countries will be compared in light of the legal system they belong to, in order to test the universality of portable justice. National labor laws of the migrant sending countries will also be looked at if they can assist in the use of portable justice. Below is a schematic look of the author’s view on what portable justice is and what it can be used for. The accessibility to justice consists of two components, the right of the worker and ability of the worker. These two in combination can serve as a solution against injustices already suffered, but not if one of them is lacking in some way. The author would like to take the whole concept of portable justice one step further than Cathleen Caron has and argue that it could also be a catalyst for law reforms and harder sanctions against unscrupulous and exploitative employers.

1.2 Purpose Statement

The aim of this paper is to determine if portable justice already today is available as a universal tool to help transnational migrant workers get justice and to end exploitation and modern day slavery. The nature of the topic requires the use of a comparative analysis of the relevant legal systems in order to fulfill the objective. The main comparative inquiry will comprise twenty six labor cases or combined cases primarily dealing with issues of contract violations, health, injuries and deaths, recruitment frauds, slavery and imprisonment, trafficking, wages and civil claims against employers for workers native to three developing countries/areas, working in three industrialized countries, specifically Latin American unskilled workers in the United States, Nepalese construction workers in Qatar and Thai berry pickers in Sweden. The potential of existing national labor laws of the industrialized countries to enable the use of portable justice will be scrutinized through the presentation of, and comparison against, international labor laws and conventions and international labor cases. Additionally historic, economic, social and political structures of the different countries will be examined when needed and facts from international organizations will be used throughout the paper. Naturally a de lege ferenda discussion might become part of the final analysis if it turns out that portable justice lacks universality to some degree at the present time because of inadequate national laws.

13 Scheme created by author.
14 Definition unskilled labor. Available at: http://www.investopedia.com/terms/u/unskilled-labor.asp
15 Definition de lege ferenda. Available at: http://unterm.un.org/dgaacs/unterm.nsf/8fa942046ff7601c85256983007ca4d8/5ab065a083f125cb85256e70053075f?OpenDocument
1.3 Hypothesis

It is assumed that portable justice can be used directly as an efficient universal tool in battling injustices that millions of transnational migrant workers face every year globally. It is also assumed that portable justice is accessible for everyone worldwide. The intention is to provide enough information to prove that portable justice is indeed a universal device that can be used not only against injustices already suffered, but that it can also function as a stimulant for law reforms thus creating preventive measures against further exploitation. In order to successfully prove the hypothesis the following questions will be asked and answered in the final analysis.

Main question:

• Since portable justice has been successfully implemented in several labor law cases involving Latin American workers working in the United States, how can it also be used as triumphantly in other areas of the world in similar cases but involving different legal systems16?

Supporting questions:

1. How can national labor law reforms and increased sanctions against exploitative employers promote the universal use of portable justice?
2. How can international labor conventions promote the universal use of portable justice?
3. Are there any other measures that need to be taken to ensure that transnational migrant workers worldwide can realize their right and ability to achieve portable justice when needed?

1.3.1 Conclusion

Fundamental human rights and labor rights should be guaranteed for all migrant workers globally. A lack of access to portable justice is a violation of those very rights. Unfortunately portable justice is not nearly as available as it should be, because the national legal right of the accessibility to portable justice is largely shut down for the majority of migrant workers

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in this study, due to infirm or non-existent enforcement of existing national labor laws. Out of the three developed countries Sweden has the least extensive but most potent national labor framework for portable justice to be served to the category of migrant workers studied, while Qatar’s comprehensive legislation in the same area echo conspicuously hollow. Additionally many of the most crucial international protective instruments for migrant workers, like the Migrant Worker Convention, still lack ratifications from all the developed countries compared in this paper. The United States’ national labor laws have many exclusions for domestic and agricultural workers, but through hard work the Global Workers Justice Alliance have found a way around this problem and help hundreds of Latin American migrant workers each year to achieve portable justice, by overcoming practical obstacles that would have otherwise ruled out any chance for redress. The GWJA’s main goal is to bolster legal access by expanding legal networks through the Defender Network. The author believes this is the game plan to be adopted worldwide. Globalization calls for increased transnational collaboration between lawyers, human rights organizations and governments in order to secure the protection and rights of future migrant workers.

1.4 Methodology

To facilitate the understanding of the national labor laws and case comparisons in this paper it is helpful to have a basic understanding of the difference in legal systems of the compared countries, hence a more thorough explanation will follow in Chapters 2-4. In short, common law systems are legal systems founded on judge-made laws based on prior judicial pronouncements rather than on legislative enactments. Common law can be seen as uncodified. Being of religious nature, Islamic law systems are autonomous law systems largely based on the Koran. Contrary to the common law systems, the civil law systems are built on Roman law and give precedence to the written law with systematic codifications. In the world civil law systems are the most outspread. Below is a world map of the different legal families/systems in the world. In a simplified arrangement the countries under comparison could be labeled:

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17 Definition common law. Available at: http://legal-dictionary.thefreedictionary.com/Common+law
18 Definition Islamic law. Available at: http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-musulman.php
19 Definition civil law. Available at: https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html
20 Map taken from ChartsBin. Available at: http://chartsbin.com/view/aq2
The type of comparative study to be conducted is on a micro level with a specific topic concerning several legal systems. However, there are many types of comparative methods to choose from. For example, the author believes that the three-stage approach of W.J. Kamba in the process of comparison with its descriptive phase, identification phase and explanatory phase is not suitable when writing comparative papers, since it does not emphasize explicit comparison. This three-stage approach is too ineffective and simple for the topic under analysis. Instead, the basic principles of comparative method according to John C. Reitz are preferred. Like Reitz, the author thinks that every section of a paper, as far as achievable, should be comparative. The possibility for portable justice in the separate legal systems of the United States, Qatar, and Sweden will be elucidated and compared through comparisons of available national labor laws versus international labor laws and conventions and labor cases. By categorizing labor cases of similar nature from the three

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23 Edward Carmody Professor of Law and Director of Graduate Programs and Visiting Scholars at University of Iowa and Director of the American Society of Comparative Law.
different countries, the aim is to look at the subject in smaller units that are important to the analysis and to then describe each country's law in light of that unit with a direct comparison. The overall conclusion will be constituted by the contrasts found in each compared section.

1.4.1 The Author’s use of the Comparative Method of Reitz

Comparative law is not just a study of foreign law but involves drawing explicit comparisons by paying careful attention to the similarities and differences of the legal systems being compared but also functional equivalence needs to be taken into account. Functional equivalence can be described as “the hypothesis that mental imagery functions in the same way as the physical perception”. For that reason the author will use a self-critical approach towards personal conclusions and the newfound knowledge of similarities and differences. Since the paper takes its start in a real-life problem, it is very easy to without any further reflection use the ideals of one’s own system as the normative measuring stick for all the legal systems being compared, but the author will try to avoid that and stay as objective as possible. Ideas of domestic law reforms can often be uncovered using the comparative method, but in order for a foreign model of law or rule to be successfully adopted the reform has to be made in terms of normative claims acceptable within the domestic legal system. Since almost all legal systems have certain unique features, any foreign law or rule likely need to undergo serious modification to fit into the domestic system. In a more and more “globalized” world of human connections and transactions the need for lawyers of different legal systems to be able to communicate adequately and understand each other is ever so important. Interest in harmonizing law is thus increasing. Comparative method will further help the author to transcend the borders of the discipline of law and force him to widen the global comparison to also include similarities and differences in historic, economic, social and political structures by evaluating the cultural importance of the different legal systems for each respective country when required.

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1.4.2 Information and Materials

Since the topic deals with recent events of global interest and the concept of portable justice is fairly new, information from textbooks and scholarly comments will be limited. Instead the main sources of information for this paper will be national labor laws, international labor standards and conventions, migrant worker cases and statistical facts from international organizations such as the Global Workers Justice Alliance, the Central Intelligence Agency, the International Labour Organization and the United Nations. Several tables, schemes and spreadsheets made by the author will also be included. Additionally materials in articles, newspapers, publications and reports from reliable sources like the International Trade Union Confederation, the Guardian and the BBC will be used. Swedish cases of Thai berry pickers will contain information primarily from sources in Swedish but naturally any facts used will be translated into English. A majority of the sources will be hyperlinked in the bibliography.

1.5 Delimitation

Due to the limited space in this paper, and the limited timeframe, the comparative aspect of the legal systems in the United States, Mexico, countries in Central America, Nepal, Qatar, Thailand and Sweden will not be on a macro level with in depth comparisons of the entire legal systems. A brief overview of the legal systems will instead be presented with shorter comparisons. The most significant comparisons in this paper will rather be exploring the necessary conditions in each system for portable justice to exist and flourish. Historic, economic, social and political structures of the different countries will be commented on when they can aid in explaining why a certain legal system looks the way it does, and how that might be relevant in relation to potential portable justice. The labor cases compared will be limited to certain professions and only include legal visa workers. Focus will be on Latin American unskilled workers in the United States, Nepalese construction workers in Qatar and Thai berry pickers in Sweden. Obviously, to truly test the universality of portable justice one would have to compare all the countries in the world and their respective migrant work forces but that is of course not possible within the boundaries of this study. Instead the idea is to give at least some clue on where portable justice stands today by selecting and comparing three countries with very different legal systems and backgrounds.
1.6 Analytic Structure

This paper serves as an introduction to the concept of portable justice, and as a test of its universality and accessibility in helping transnational migrant workers worldwide to get justice and to end modern day slavery and exploitation, using a comparative approach. Aimed mainly at persons with some legal background and basic understanding of national and international human rights law this paper could also be of interest for anyone with a concern for labor law and human rights in general. In the following chapter the common law legal systems of the United States and Nepal will be introduced and compared. In Chapter 3 the Islamic legal system of Qatar will be presented. Chapter 4 will examine and compare the civil law legal systems of Mexico, Central America, Sweden and Thailand. In the end of Chapter 4 all legal systems will be compared and the ten countries included in this study will be ranked as either developed or developing countries. Chapter 5 will illustrate the groundbreaking work of the Global Workers Justice alliance based in New York, from the start in 2005 up till 2015, and their programs aimed at achieving portable justice and ending migrant worker exploitation. In Chapter 6 national labor laws will be exposed to show the legal rights of transnational migrant workers and the idea of portable justice will be further explained. Chapter 7 will add to the legal rights of migrant workers through an elucidation of relevant international conventions. The chapter will also point out the worst countries in the world to work in through a review of the Global Rights Index created by the International Trade Union Confederation. Both the legal rights and practical ability of migrant workers to achieve portable justice will be evaluated in Chapter 8 through the presentation and comparison of in total twenty six different cases or combined cases. Chapter 9 will comprise the final analysis of this study and concluding personal reflections of the author and Chapter 10 will point out recommendations and possible future solutions for global accessibility to portable justice.
CHAPTER 2 - Common Law

2.1 Common Law in the United States

The United States federal court system is based on English common law. English common law is also the base for the individual legal systems of each state, except for Louisiana’s legal system which has its roots in the *Napoleonic Code*. In the United States common law and case law are essentially synonymous. In the glossary of the United States courts, case law is defined as:

“The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and judicial decisions”.

Case law from court systems countrywide builds the body of the common law. Unless overruled by a higher court or superseded by newer law from the legislature the case law is legally enforceable. United States law is comprised of the Constitution, statutes and case law, where the Constitution is considered “supreme law of the land” both at state and federal levels. Case law or common law fills the gap in legal situations where the Constitution and statutes, because of their openness to interpretation of their meaning, fails to answer a legal question. The separation of powers between the legislative, executive and judicial branches creates a balance, where no branch has too much authority. The legislative branch is made up by the two houses of congress, the House of Representatives and the Senate, and their main obligation is to make laws. The executive branch consists of the President, the Vice President and the Cabinet and their primary assignment is to make laws official. The judicial branch contains the Supreme Court and other lower courts and their principal duty is to evaluate laws.

The doctrine of *stare decisis*, which in Latin means “to stand by and adhere to decisions and not disturb what is settled”, binds the case law. Case law is made when judges interpret or refine the Constitution or statues by applying general laws to specific cases. The case law is binding for all courts lower or at the same level within that jurisdiction.

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26 http://chartsbin.com/view/aq2
27 Definition case law, Available at: http://www.uscourts.gov/Common/Glossary.aspx
29 http://www.usa.gov/Agencies/federal.shtml
30 Definition stare decisis, Available at: http://legal-dictionary.thefreedictionary.com/stare+decisis
2.2 Common Law in Nepal

Just like the United States the Nepalese legal system is based on English common law, but also has a mixture of customary law in the form of Hindu legal concepts. When a traditional common rule or practice has become an elemental part of the acknowledged and wonted behavior in a profession, or in the community, and is treated as a legal necessity it can be seen as customary law. Before 1951 domestic religious rules and customary practices were used to administer the justice system under the first Nepalese codified law, Muluki Ain (the Country code). The Muluki Ain was declared by the King Surendra Bir Bikram Shah in 1854.

The Nepalese people started to adhere to legal rules from the West in the early 1950’s. Some democratic values where incorporated in the Government of Nepal Act of 1948 but the act never came into effect, and instead the Interim Government Nepal Act was promulgated right after the revolution of 1951, which saw the end of the absolute monarchy and an institution of a cabinet system of government. The Constitutions of 1959, 1962 and 1990 all acknowledged the apex court’s precedents as sources of binding law. Any

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31 Table taken from Gonzaga University School of Law. Available at: http://libguides.law.gonzaga.edu/case-law
33 Definition customary law. Available at: http://www.businessdictionary.com/definition/customary-law.html
inconsistency with the Constitution also gave the court allowance to review executive actions and parliamentary enactments. A multiparty democracy was formed within the framework of a constitutional monarchy in 1990.

A Maoist rebellion broke out in February, 1996 which started a 10-year civil war with the government forces. On June 1, 2001 King Birendra Bir Bikram Shah Dev, and several family members were shot to death in the royal palace in Kathmandu by Birendra’s oldest son Dipendra. Dipendra also shot himself and ended up in a three day coma before dying on June 4, 2001. Birendra's brother Gyanendra then became king and democracy was dissolved during this period. Gyanendra dissolved the cabinet and parliament in February, 2005 and assumed all powers himself. After several weeks of mass protesting from the people, Gyanendra declared on April 21, 2006 that parliamentary powers were to be reinforced. At the end of 2006, after months of peace talks between Maoist and the government, an interim constitution was drafted. The Interim Constitution of Nepal from 2007 supports three levels of court, namely the Supreme Court of Nepal (the Apex Court) which has all justice related powers, the Court of Appeal and the District Courts. The only court not under the Supreme Court is the Constituent Assembly Court. There is no distinction between civil and criminal court. The Constitution also allows for special types of courts in special cases of law. After national elections in Nepal in 2008 the newly formed Constituent Assembly (CA) declared Nepal to be a secular state and most of the King’s constitutional powers were suspended. Nepal’s official name is now the Federal Democratic Republic of Nepal.

“As an independent, indivisible, sovereign, secular, inclusive and a fully democratic State (art. 4(1), the Interim Constitution), the country is a Federal Democratic Republic since May 2008.”

Four different coalition governments saw the light of day between 2008 and 2011, but when the CA did not manage to create a new constitution before the Supreme Court deadline of May 2012, the Prime Minister dissolved the CA. Nepali Congress gained the biggest number

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38 Central Intelligence Agency (CIA), The World Factbook, Nepal, 2015.
40 Central Intelligence Agency (CIA), The World Factbook, Nepal, 2015.
42 http://www.helplinelaw.com/article/nepal/85
43 http://www.nyulawglobal.org/globalex/Nepal.htm
of seats in the CA after elections in November 2013, to form an interim government\textsuperscript{44}. The unicameral CA makes up Nepal’s legislative branch. The executive branch consists of the President (chief of state), the Prime Minister (head of government) and the Cabinet. The Supreme Court of Nepal, the Court of Appeal and the District Courts make up the judicial branch\textsuperscript{45}.

### 2.3 Common Law Legal Systems Compared

Where the United States has a long legal tradition of common law the mixed common law system of Nepal is only in its infancy because of the last few decades of political instability and civil war. The separation of powers between the courts and the legislature that creates a balance in the United States’ legal system does not have the same history in the common law of Nepal. Over the last 150 year or so Nepal has many times experienced absolute royal power or a system where the Supreme Court has had judiciary, executive and legislative power. Since Nepal has only been the Federal Democratic Republic of Nepal since May, 2008 the case law of the country is not nearly as abundant as the case law of the United States. The United States Constitution is the second oldest constitution in the world still in use and came into force on September 17, 1789\textsuperscript{46}. So far 27 amendments have been made to the Constitution.\textsuperscript{47} Again, compared to the United States, the Interim Constitution of Nepal from 2007 is a very young one and as the name demonstrates it is only supposed to be in place until a permanent constitution can be drafted and executed, something that the CA failed to accomplish before the Supreme Court deadline of May 12, 2012. How this might affect Nepal’s labor laws, and relevant rights for migrant workers to access justice, will be more closely examined in Chapter 6.

\textsuperscript{44} Central Intelligence Agency (CIA), *The World Factbook*, Nepal, 2015.
\textsuperscript{45} Ibid.
\textsuperscript{46} http://www.history.com/topics/constitution
\textsuperscript{47} http://constitution.findlaw.com/amendments.html
CHAPTER 3 - Islamic Law

3.1 Islamic Law in Qatar

The legal system in Qatar is based on Islamic Law and jurisprudence but has adopted many ideas from the Napoleonic Civil Code. The legal system of Qatar also has some common law and customary law components, mainly influenced from Egypt, and can thus be seen as a mixed legal system. Qatar became a British protectorate in 1916 and soon thereafter the British set up their own court system. These colonial civil courts enforced English laws, while a legal system based on Shari’ā (Islamic religious law) dictated the work of the local courts. This dual court system was changed in 2003.

Dual Court System of Qatar until 2003

49 http://www.qatarlaw.com/background-legal-system-in-qatar
With the establishment of the *Official Gazette* and *Law No. 1* in 1961 the modern legislative process in Qatar began. Since then numerous social, economic and administrative laws have been declared. Qatar gained its independence from the British on September 3, 1971. The judicial system of Qatar was revolutionized in 2003 with the enactment of a new constitution, *Judicial Law No. 10*. The constitution came into effect on June 9 of 2005.

According to Article 1:

“Qatar is an Arab State, sovereign and independent. Its religion is Islam, and the Islamic Law is the main source of its legislations. Its system is democratic, and its official language is the Arabic language. The people of Qatar are part of the Arab Nation.”

The Constitution provides that Qatar is to be governed by Al-Thani family, and by male successors of Sheikh Hamad Bin Khalifa Al-Thani. According to the Constitution comprehensive legislative authority is granted to the unicameral Majlis as-Shura (the Advisory Council). Executive power belongs to the Emir (chief of state), the Prime Minister (head of government) and the Cabinet consisting of the Council of Ministers, appointed by the Emir. Judges are to be independent in their work and the judicial power is given to the courts. This can be read in Article 129:

“Supremacy of the law is the basis of governing in the State. The honor of the Judiciary and the integrity of Judges and their justice are the guarantee of rights and freedoms.”

However the Qatari legal system is a discretionary system where the Emir has the final say in enactments and drafting of laws. Since the enforcement of the Constitution of 2003, the courts in Qatar are divided into three levels, the courts of first instance, the courts of appeal and the courts of cassation. The courts can also be divided by type as criminal courts, civil courts dealing with civil, insurance, banking, maritime and commercial matters, and Shari’a courts that have exclusive jurisdiction in all family related issues.

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57 [http://chartsbin.com/view/aq2](http://chartsbin.com/view/aq2)  
CHAPTER 4 - Civil Law

4.1 Civil Law in Central America and Mexico

Mexico is part of North America and Guatemala, Nicaragua, Honduras and El Salvador are all part of which is called Central America. All five countries are based on civil law systems with some variations.

![Map of Central America](http://www.destination360.com/central-america/central-america-map)

Guatemala’s legal system is a civil law system with judicial review of legislative acts. Corte Suprema de Justicia (the Supreme Court of Justice) and Corte de Constitucionalidad (the Constitutional Court) make up the highest courts of the judicial branch. The Legislative branch of Guatemala is the unicameral Congreso de la Republica (the Congress of the

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61 Map taken from Destination360. Available at: http://www.destination360.com/central-america/central-america-map
Republic), and the executive power is in the hands of the President, who is both chief of state and head of government, and the cabinet which is appointed by the President. Nicaragua has a civil law legal system where administrative acts may be reviewed by Corte Suprema de Justicia (the Supreme Court), which is divided into constitutional, criminal, civil and administrative chambers. The unicameral Asamblea Nacional (the National Assembly) makes up the legislative branch. The executive branch has the same form as that of Guatemala. Honduras’ legislative authority is the unicameral Congreso Nacional (the National Congress) and the judicial and executive branches follow the same model as both Guatemala and Nicaragua. The unicameral Asamblea Legislativa (the Legislative Assembly) has El Salvador’s legislative control. Once again, judicial and executive branches have the same division as in Guatemala, Nicaragua and Honduras. Mexico also has a civil law legal system with judicial review of legislative acts, but the system is also influenced by United States constitutional law theory. Unlike Guatemala, Nicaragua, Honduras and El Salvador, Mexico has a bicameral system. Congreso de la Union (the National Congress) is comprised of Camara de Diputados (the Chamber of Deputies) and Camara de Senadores (the Senate). Just as the Central American countries the President hold the executive power as both chief of state and head of government. When it comes to the judicial branch the highest court in Mexico is Corte de Justicia de la Nacion (the Supreme Court of Justice). All five countries have several subordinate courts and in Mexico there are both state level and district level courts. The federal courts in Mexico include unitary, collegiate, and circuit courts and Tribunal Electoral. Guatemala has several first instance and appellate courts, and Nicaragua has first instance military, criminal and civil courts as well as appeals courts. Honduras has peace courts, courts of first instance and courts of appeal, while El Salvador’s subordinate courts are made up of peace courts, courts of first instance and courts and chambers of second instance.

62 Central Intelligence Agency (CIA), The World Factbook, Guatemala, 2015.
63 Central Intelligence Agency (CIA), The World Factbook, Nicaragua, 2015.
64 Central Intelligence Agency (CIA), The World Factbook, Honduras, 2015.
65 Central Intelligence Agency (CIA), The World Factbook, El Salvador, 2015.
66 Central Intelligence Agency (CIA), The World Factbook, Mexico, 2015.
67 Central Intelligence Agency (CIA), The World Factbook, Guatemala, 2015.
68 Central Intelligence Agency (CIA), The World Factbook, Nicaragua, 2015.
69 Central Intelligence Agency (CIA), The World Factbook, Honduras, 2015.
70 Central Intelligence Agency (CIA), The World Factbook, El Salvador, 2015.
4.2 Civil Law in Sweden

The Swedish legal system is a civil law system with influences from customary law and Roman-Germanic law, but it belongs to neither the Romanistic nor Germanic legal systems, and does not have the same extensive codification as the Code Napoleon or the German Civil Code (BGB). Instead Sweden’s civil law is part of the third civil law legal family together with Denmark, Norway, Finland and Iceland, that is called the Nordic legal family because of the history of collaboration between the Nordic countries. Many even argue that the Nordic family can be seen as an intermediate legal family, somewhere between civil law and common law systems. The Swedish legal system depends on case law to a greater extent than the Romanistic and Germanic legal systems but in a way that differs from Anglo-American common law legal systems. With no comprehensive legislative codes, in some areas of Swedish law like sakrätt (perfecting security interests in chattels) case law is the only existing law. The law in Sweden is also classified into private law controlling the relations between two private parties and public law controlling the relations between private individuals and the state. In most cases private law has a gap-filling function whereas public law is mandatory.

Sweden does not have a constitutional court. The judicial branch in Sweden is divided into two parallel court systems, the general courts and the administrative courts. The general courts are made up of tingsrätterna (the trial courts), hovrätterna (the courts of appeal) and Högsta domstolen (the Supreme Court), and deal with civil and criminal cases. The primary task and duty of the Supreme Court is to try cases of precedential character, in order to develop the law. When similar cases are tried in the lower courts, Supreme Court decisions serve as guidance, but these decisions are not binding on the lower courts. The administrative courts consist of förvaltningsrätterna (the administrative trial courts), kammarrätterna (the administrative courts of appeal) and Högsta förvaltningsdomstolen (the Supreme Administrative Court). In addition there are several independent courts and tribunals established in Sweden, to hear specific cases in special legal areas. Some of the

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72 http://www.nyulawglobal.org/globalex/Sweden1.htm
74 http://www.hogstadomstolen.se/Funktioner/English/The-Swedish-courts/
independent courts include the Market Court, the Labor Court, the Court of Patent Appeals, environmental courts and migration courts etc. The general goal of the judicial branch in Sweden is due process\textsuperscript{76}. Due process is a constitutional assurance that laws should not be arbitrary, and a fundamental legal requirement that all legal rights owed to an individual must be respected by the state in all legal proceedings\textsuperscript{77}. The executive branch in Sweden consists of the Prime Minister (head of government) and the Cabinet, appointed by the Prime Minister\textsuperscript{78}. Chief of State is King Karl XVI Gustaf, who has no formal powers or political affinity in accordance with the Constitution of 1974, but rather only representative and ceremonial duties\textsuperscript{79}. Unicameral Riksdagen (the Parliament) makes up Sweden’s national legislative body\textsuperscript{80}.

### 4.3 Civil Law in Thailand

The Kingdom of Thailand has been a constitutional monarchy since 1932, and is considered a civil law country with strong common law influences\textsuperscript{81}. Thai politics are dominated by the tension between the army, the democratically elected government and the King. Since the 1930’s the army has had a strong influence over the governance of the country and under the pretense of protecting the monarchy, the army has numerous times overthrown democratically elected governments. The King has often intervened and acted as a mediator. Businessman Thaksin Shinawatra came to power in 2001 and through large rural reforms he became greatly popular in underdeveloped and poor areas of Thailand. However he caused discontent among the people along the coasts and was ousted from the government in a military coup in 2006. Since then political turmoil between Thaksin’s followers and nemeses has been seen both in the parliament and on the streets\textsuperscript{82}. From 2011 Thaksin’s sister, Yingluck Shinawattra, led a coalition government as the first female Prime Minister in Thailand\textsuperscript{83}. This caretaker government was however overthrown in a military coup by the Royal Thai Army in May, 2014 and The Constitutional Court removed sitting Prime Minister

\textsuperscript{76} http://www.hogstandomstolen.se/Funktioner/English/The-Swedish-courts/
\textsuperscript{77} Definition due process. Available at: http://legal-dictionary.thefreedictionary.com/Due+Process+of+Law
\textsuperscript{78} Central Intelligence Agency (CIA), The World Factbook, Sweden, 2015.
\textsuperscript{79} https://sweden.se/society/the-swedish-monarchy/
\textsuperscript{80} http://ox.libguides.com/content.php?pid=276582&sid=2279057
\textsuperscript{81} http://www.nyulawglobal.org/globalex/Thailand.htm
\textsuperscript{82} http://www.infoplease.com/encyclopedia/world/thailand-history.html
\textsuperscript{83} Central Intelligence Agency (CIA), The World Factbook, Thailand, 2015.
Yingluck Shinawatra, and installed the leader of the Royal Thai Army as Prime Minister in August, 2014. To outline a new constitution and to promote reform, various interim institutions where constructed by the interim military government\(^84\). The 2014 military coup was the twelfth since the end of the absolute monarchy in 1932\(^85\).

The executive branch in Thailand is made up of the King (chief of state), Bhumibol Adulyadej, who appoints the Prime Minister (head of government), and the cabinet consisting of the Council of Ministers\(^86\). Because of the latest military coup in Thailand, the country’s current constitution is an interim constitution released on July 22, 2014. The legislative branch of Thailand is also in transition and the bicameral National Assembly was replaced by Sapha Nitibanyat (the National Legislative Assembly)\(^87\). The court structure of Thailand is parallel with four different self-contained systems. The highest courts of the judicial branch are the Constitutional Court, the Supreme Court of Justice, the Supreme Administrative Court and the Supreme Military Court\(^88\). The lower courts can also be seen in the table below.

**Court System under the Constitution of the Kingdom of Thailand\(^89\)**

<table>
<thead>
<tr>
<th></th>
<th>Courts of Justice</th>
<th>Administrative Courts</th>
<th>Military Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Court</td>
<td>Supreme Court</td>
<td>Supreme Administrative Court</td>
<td>Supreme Military Court</td>
</tr>
<tr>
<td></td>
<td>(↑) Court of Appeals</td>
<td>(↑) Intermediate Military Court</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(↑) Courts of First Instance</td>
<td>(↑) Administrative Courts of First Instance</td>
<td>(↑) Military Courts of First Instance</td>
</tr>
</tbody>
</table>


\(^{86}\) [http://www.nyulawglobal.org/globalex/Thailand.htm](http://www.nyulawglobal.org/globalex/Thailand.htm)


\(^{88}\) [http://www.nyulawglobal.org/globalex/Thailand.htm](http://www.nyulawglobal.org/globalex/Thailand.htm)

\(^{89}\) Table created by author.
4.4 Civil Law Legal Systems Compared

Mexico is a constitutional federal republic, Guatemala and Honduras are constitutional democratic republics, and Nicaragua and El Salvador are both representative democratic republics. In all five countries the President is both head of state and head of government. Sweden on the other hand is a constitutional monarchy with a parliamentary system, with the Prime Minister as head of government and the King as head of state. Thailand is also a constitutional monarchy with the Prime Minister as head of government and the King as head of state. The big difference between Thailand and Sweden is that the Thai King has executive powers, since he appoints the Prime Minister of the Country. Historically the Thai Monarch has also played a vital role as mediator since 1932. All Central American countries as well as Mexico, Sweden and Thailand have a similar court structure with three levels including first instance or trial courts, second instance or appellate courts and some form of a Supreme Court.

4.4.1 Developed or Developing Country: All Legal Systems Compared

In 2013 Thailand ranked as number 10 in most competitive economies in Asia\textsuperscript{90}, but the country was only in 89\textsuperscript{th} place in the world out of 187 according to the United Nations 2014 Human Development Index (HDI)\textsuperscript{91}. Therefore, in comparison with Sweden ranking in 12\textsuperscript{th} place in the same index, Thailand will in this study be considered as less developed overall than Sweden\textsuperscript{92}. The list of developing countries by the International Statistical Institute (ISI) under the year 2015 also includes Thailand as well as Mexico, Guatemala, Honduras, Nicaragua and El Salvador. Developing countries are defined by their Gross National Income (GNI) per capita per year\textsuperscript{93}. As specified by the World Bank in 2013, countries with a GNI equal to or less than $11,905 are defined as developing\textsuperscript{94}. Out of the seven civil law countries in this study Sweden is the only country considered to be a developed country.

\textsuperscript{90} Thierry Geiger for World Economic Forum, Top 10 Most Competitive Economies in Asia Pacific, Agenda, September 2, 2014.
\textsuperscript{91} United Nations Development Programme (UNDP), 2014 Human Development Index (HDI).
\textsuperscript{92} Aashima Singh at Listovative, Top 15 Most Developed Countries in the World, March 2014.
\textsuperscript{93} Definition developing country. Available at: http://www.isi-web.org/component/content/article/5-root/root/81-developing
\textsuperscript{94} Definition GNI per capita. Available at: http://data.worldbank.org/indicator/NY.GNP.PCAP.CD
Nepal with its common law legal system is too in the list of developing countries in 2015 according to the ISI\textsuperscript{95}. Again looking at the United Nations 2014 HDI, common law country United States is holding spot number 5 and Qatar with an Islamic legal system is situated in place number 31 in the world\textsuperscript{96}. By looking at the \textit{gross domestic product} (GDP) based on \textit{purchasing-power-parity} (PPP) per capita one can instead list the countries in the world by estimating their respective wealth. The benefit of using a PPP basis when comparing differences in income in the world is that it also takes into account inflation rates and the relative cost of living, and not only exchange rates. Using this system, the countries in this study are ranked by their position in the world from the years 2009-2013, starting with the richest country in the world 2013, as shown in the table below. The total amount of countries in the list was originally 184, but the table has been modified to only include the countries of interest for this paper\textsuperscript{97}. Looking at the rankings it is easy to understand why some nations are migrants sending countries, while others are destination countries for these workers.

### The Richest Countries in the World as of 2013 in $U.S. (GDP based on PPP)\textsuperscript{98}

<table>
<thead>
<tr>
<th>Country</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Estimates Start After</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Qatar</td>
<td>$77,445.61</td>
<td>$88,313.13</td>
<td>$97,987.01</td>
<td>$102,211.00</td>
<td>$105,091.42</td>
</tr>
<tr>
<td>7</td>
<td>United States</td>
<td>$45,461.43</td>
<td>$46,811.06</td>
<td>$48,328.25</td>
<td>$49,922.11</td>
<td>$51,248.21</td>
</tr>
<tr>
<td>15</td>
<td>Sweden</td>
<td>$35,787.73</td>
<td>$38,230.34</td>
<td>$40,228.87</td>
<td>$41,191.47</td>
<td>$42,037.48</td>
</tr>
<tr>
<td>64</td>
<td>Mexico</td>
<td>$13,265.43</td>
<td>$13,945.35</td>
<td>$14,616.14</td>
<td>$15,311.77</td>
<td>$15,931.75</td>
</tr>
<tr>
<td>85</td>
<td>Thailand</td>
<td>$8,482.04</td>
<td>$9,215.49</td>
<td>$9,390.12</td>
<td>$10,125.58</td>
<td>$10,848.74</td>
</tr>
<tr>
<td>103</td>
<td>El Salvador</td>
<td>$6,805.30</td>
<td>$6,962.90</td>
<td>$7,222.11</td>
<td>$7,437.93</td>
<td>$7,648.21</td>
</tr>
<tr>
<td>120</td>
<td>Guatemala</td>
<td>$4,823.08</td>
<td>$4,907.30</td>
<td>$5,092.57</td>
<td>$5,208.96</td>
<td>$5,335.95</td>
</tr>
<tr>
<td>126</td>
<td>Honduras</td>
<td>$4,188.74</td>
<td>$4,313.15</td>
<td>$4,475.32</td>
<td>$4,609.60</td>
<td>$4,741.16</td>
</tr>
<tr>
<td>128</td>
<td>Nicaragua</td>
<td>$3,830.59</td>
<td>$3,975.03</td>
<td>$4,228.43</td>
<td>$4,458.43</td>
<td>$4,641.61</td>
</tr>
<tr>
<td>166</td>
<td>Nepal</td>
<td>$1,148.06</td>
<td>$1,198.00</td>
<td>$1,249.11</td>
<td>$1,308.07</td>
<td>$1,347.62</td>
</tr>
</tbody>
</table>

\textsuperscript{95} Definition developing country. Available at: http://www.isi-web.org/component/content/article/5-root/root/81-developing

\textsuperscript{96} United Nations Development Programme (UNDP), \textit{2014 Human Development Index (HDI)}.

\textsuperscript{97} Global Finance, \textit{The Richest Countries in the World}, 2013.

\textsuperscript{98} Table taken from Global Finance, Available at: https://www.gfmag.com/global-data/economic-data/richest-countries-in-the-world
CHAPTER 5 - Global Workers Justice Alliance

5.1 The Start of the GWJA

Before law school Cathleen Caron lived for more than three years in Guatemala where she helped Guatemalan lawyers with domestic human rights cases. As she saw these human rights lawyers risking their life to help others get justice, she grew a profound admiration and respect for their efforts. Inspired, Cathleen started to believe in the idea of introducing advocates from both sending countries and destination countries to each other, in order to help workers get justice. Cathleen repeatedly also saw the denial of justice as she started out as an attorney helping migrant workers in Florida. After winning a tough case against an especially exploitive south Florida farm she was deeply disturbed to find that most of the two thousand workers never received the wages owed to them legally, just because they had left Florida for Guatemala. Any legal action for migrant workers was severely circumscribed by the crossing of borders. Shortly after Cathleen devised and launched a human trafficking project in East Timor, only to find the same denial of transnational justice. She now coined the expression “portable justice” after realizing that the need for it was global. Cathleen Caron recognized that migrant workers who had suffered abuse and returned home to their native countries were being excluded from the justice system after rejoining with their families. To address this developing crisis in the globalizing economy she founded the Global Workers Justice Alliance from a small apartment in New York. Today Global Workers Alliance is a flourishing organization helping thousands of migrant workers directly and indirectly.

99 http://www.globalworkers.org/about-us/our-team
100 http://www.globalworkers.org/about-us/our-story
101 http://www.globalworkers.org/about-us/our-team
102 http://www.globalworkers.org/about-us/our-story
103 http://www.globalworkers.org/about-us/our-story
5.2 Programs of the GWJA

The challenge is that both workers and businesses are global, but that justice is not. The goal of the GWJA is therefore to realize border crossing workers the right to pursue justice regardless of work destination\(^\text{104}\). According to the *International Labour Organization* (ILO), in the year 2013, there were an estimated 232 million migrant workers worldwide or little over 3 percent of the total population in the world\(^\text{105}\). About half of these 232 million were actual workers but with families included they made up over 90 percent of all international migration\(^\text{106}\). It is estimated that at least 21 million workers are being trafficked globally every year and working under forced labor\(^\text{107}\). Due to income differences, climate change, conflicts, demographic shifts and globalization more people than ever before cross national borders in search of employment\(^\text{108}\). However these migrant workers are extremely exposed to exploitation because they often lack awareness of local rights and means, as well as a lack in language skills. As a result they fall prey to unscrupulous employers in trafficking arrangements, get injured, and are cheated of wages. To make matters worse, it is even harder to obtain justice once the workers return to their home country, both from a legal and practical standpoint. Legitimate claims are more often than not deserted, leaving millions of global workers without global justice\(^\text{109}\).

5.2.1 Global Workers Defender Network: Portable Justice in Action

The Global Workers Defender Network is at the moment functioning in Mexico, Guatemala, El Salvador, Honduras and Nicaragua but the goal is to expand to other countries as well\(^\text{110}\). Before this expansion takes place Global Workers will still assist in cases in other parts of the world\(^\text{111}\). The Defender Network was first started in Chiapas, Mexico in April 2008. The Defenders learned about human trafficking, international law, United States civil procedure

\(^{104}\) http://www.globalworkers.org/our-work/our-programs  
\(^{106}\) *International Labour Organization* (ILO), *Mainstreaming of Migration in Development Policy and Integrating Migration in the Post-2015 UN Development Agenda*.  
\(^{109}\) http://www.globalworkers.org/our-work/our-programs  
\(^{110}\) http://www.globalworkers.org/sites/default/files/2014_GWJA-YIR_FINAL.pdf  
\(^{111}\) http://www.globalworkers.org/advocates/advocate-services
and United States employment-related law. The Defender Network is made up of already existing human rights organizations in the migrant sending countries which through empowerment become an effective resource for justice for returning migrant workers. Global Workers also continue to support and train the Defenders, who are individual human rights advocates in the sending countries, to assist the progress in legal cases for migrant workers in cooperation with advocates in the countries of employment. In addition the Defenders educate and inform migrants on their labor rights before crossing the borders, and also find new labor exploitation cases.

5.2.2 Supporting Advocates

The Advocate in the country of employment will be partnered with a Defender from a migrant sending country in order to be more capable in helping transnational migrant workers get justice in specific labor exploitation cases. Global Workers calls this case facilitation since the procedure does not involve direct representation. Some of the services that Global Workers provide after clients have returned to their home countries include locating clients, helping injured workers find medical aid and arranging for depositions. With the use of questionnaires Defenders can also finish interrogatories. Also in cases where the migrant worker is still located in the country of employment he or she might need backing from the home country. Defenders can in these instances step in and assist with finding documents, such as birth certificates, and local witnesses to abuse occurring prior to departure. Frequent abuses include trafficking, retribution from employers following complaints from workers and various kinds of threats.

112 http://www.globalworkers.org/advocates/defender-network
113 http://www.globalworkers.org/our-work/our-programs
114 http://www.globalworkers.org/advocates/advocate-services
115 Ibid.
CHAPTER 6 - National Labor Laws

6.1 Portable Justice: Components

As a reminder, Cathleen Caron’s definition of portable justice is “the right and ability of transnational migrant workers to access justice in the destination countries after they return to their home countries”\(^{116}\). To further elaborate on the idea of what portable justice is the author will again use the model introduced in Chapter 1.1, but with some additions (see next page). The accessibility to portable justice depends on the right of the worker, which the author sees as the *legal right* to justice. Hence existing national labor laws, international labor laws and international conventions decide this right. The accessibility also depends on the ability of the worker. This is understood as being the *practical ability* to get justice. Practical obstacles can include the lack of knowledge of domestic rights, laws and resources of the country of employment, lack in language skills and geographical remoteness to court hearings due to the return to the home country. For example, the United States legal system relies legally and practically on the litigant being available and physically present on at least four separate occasions to benefit from any court award or negotiated settlement\(^{117}\). When a transnational migrant worker’s right and ability are both present accessibility is achieved and any exploitative harm suffered can then be redressed. Additionally the author believes that national labor laws and rules, if sufficiently drafted and enacted, should deter any employer to even think of exploiting hired migrant workers. Sanctions, in form of penalties and high fines, would have a preventive effect on exploitation. If current sanctions are not deterrent enough for the employers, reformation of the existing statues should be highest priority. In the following sections of Chapter 6 national labor laws will be closely examined to determine what legal rights they provide for migrant workers, at least in text. In Chapter 7 international conventions and international labor laws will be reviewed to possibly further add to the legal rights of migrant workers. In Chapter 8 real life situations of the migrant workers, i.e. cases will show whether or not national and international laws and conventions really live up to their literal meaning and intended purposes.

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In the author’s assessment the most urgent situation for inspection seem to be in the relationship between Qatar and Nepal, firstly because of the vast amount of Nepalese migrant workers in Qatar compared to Mexican and Central American migrant workers in the United States and Thai migrant workers in Sweden, and secondly because of the conspicuously high death rates of the Nepalese workers, one death in every two days in 2014. In December of 2014 it was estimated that more than 400,000 workers native to Nepal were working in Qatar. This number can be compared to the 2011 statistics of issued work visas (non-immigrant visas) for the United States as shown in the figures below, and the Swedish Migration Agency’s issuance of 6,198 visas for Thai berry pickers in 2013 and only 3,339 visas in 2014.

Issued Migrant Work Visas for the United States 2011

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118 Scheme created by author.
121 Figures taken from Global Workers. Available at: http://www.globalworkers.org/visa-pages
6.2 Labor Laws in the United States, Mexico and Central America

Since Global Workers Justice Alliance already has an up and running organization with a successful history of assisting in the litigation of labor cases ending in the favor of the exploited migrant workers, it is assumed that the GWJA with the help of the home country Defenders, already have in depth knowledge of domestic labor laws in the United States, Mexico and Central America. In section 6.2 the author of this paper will trace the steps of the GWJA since their start in 2005 and give a retrospective glance at some of the legal situations from that time up till present day 2015, in order to give a better understanding of the development of portable justice in the United States, Mexico and Central America over the last decade. In section 6.3, Labor Laws in Qatar and Nepal, and section 6.4, Labor Laws in Sweden and Thailand, the author will not do the same thorough historical inquiry but instead focus more on existing national labor laws of the four countries.

6.2.1 The Legal Situation in 2005

On behalf of the GWJA, Cathleen Caron submitted a document on October 30, 2005, for The Committee on Migrant Workers Day of General Discussion with the title Global Workers Require Global Justice: The Portability of Justice Challenge for Migrants in the USA. In the document several problematic issues for migrant workers were first elucidated, such as litigant unavailability, lack of understanding of local laws and resources and inadequate language skills.\(^{122}\) Already at this point the problems were seen as global.\(^{123}\) The importance of domestic laws and treaties for dealing with migrant rights were also recognized, and where the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Worker Convention) only stipulates general principles, each nation must also effectively apply them. The GWJA furthermore recommended to the Committee on Migrant Workers to “define the transnational right to enforcement of migrant worker rights and how State obligations under the Migrant Worker Convention are affected by it”\(^{124}\).

\(^{122}\) Cathleen Caron, Global Workers Require Global Justice: The Portability of Justice Challenge for Migrants in the USA, October 2005, p. 3, Prepared for The Committee on Migrant Workers Day of General Discussion.

\(^{123}\) Ibid, p. 1.

\(^{124}\) Ibid, p. 11.
6.2.2 The Legal Situation in 2007

On May 12, 2007, Cathleen Caron again representing the GWJA submitted a statement to the United Nations Special Rapporteur on Migrants called United States Guest Worker Program – Operates with Impunity in the Sending Countries. The private employer-administered program the United States Guest Worker imported around 160,000 migrant workers in 2006, but the United States government had very little insight or overview of the program. The Government’s managerial control was essentially restricted to the issuance of temporary work visas and making sure that no United States workers would be disadvantaged by the program. Domestic labor laws in El Salvador, Guatemala and Mexico require for foreign recruitment companies to register any contracts with their citizens to work abroad, with the Ministries of Labor. These statues also demand for the foreign recruitment companies to pay all transportation and visa costs for the migrant workers. La Lay de Organizacion Y Funciones Del Sector Trabajo Y Prevision Social (the Law of Organization and Functions of the Work and Social Prevention Sector) from 1996, Article 74 (El Salvador), la Ley Federal del Trabajo (the Federal Labor Law) from 1970, Article 28 (Mexico) and el Código de Trabajo (the Labor Code) from 1947 and amended in 1992, Article 34 (Guatemala) all provide these demands. According to the GWJA the United States Guest Worker program affected the whole system by blatantly disregarding these rules, and as a result many migrant workers ended up being abused and exploited by the recruitment companies even before leaving their respective home countries. The GWJA then suggested that the program should not be able to recruit foreign nationals for work in the United States covertly, but rather that it should function in full collaboration with the Ministries of Labor of the migrant sending countries. Conformity of recruiter management with domestic laws could be helped if the Ministries of Labor were provided with the names of the local recruiters by the United States consulates. The GWJA requested for the Special Rapporteur to demand for the United States government to run the Guest Worker Program in accordance with the labor laws of the migrant sending countries and to end the freedom to exploit.\footnote{Cathleen Caron, United States Guest Worker Program - Operates with Impunity in the Sending Countries, Statement Submitted by Cathleen Caron, Executive Director, Global Workers Justice Alliance to the United Nations Special Rapporteur on Migrants, May 12, 2007, New York.}
6.2.3 The Legal Situation in 2010

In October, 2010, the GWJA released *Changes to Improve the Protections of H-2 Workers in the Recruitment Process*. The following twelve points were the suggestions made by the GWJA:

1. "Tracking recruiters to improve Department of Labor enforcement.
2. Publishing recruiter names to reduce trafficking and fraud.
3. End H-2 over-recruitment by verifying true labor necessity.
4. End United States worker under-recruitment.
5. Complaining about abuses from abroad.
7. Prohibit the practice of H-2 workers paying the fees and costs of the program.
8. Compliance with sending country laws.
9. Pre-departure education.
12. Only allow end-user beneficiaries to petition for foreign workers, visa portability visas to remain in the United States while challenging labor abuses, exempt H-2 workers from federal, state and local taxes, and federal-funded legal services must be available to all foreign H2-B workers”\(^{126}\).

Several migrant rights organizations, including the GWJA, wrote the United States submission to the United Nations, *Universal Periodic Review 9th Session*, for 22 November-3 December 2010 as a cluster group. Their concern was that many national labor and employment statues in place to protect, in several ways excluded agricultural and domestic workers. Minimum standards for wages set by the *Fair Labor Standards Act* (FLSA) and workers’ right to join or form labor unions assured by the *National Labor Relations Act* (NLRA) included such exclusions. The most important federal protective rule for farmworkers, the *Migrant and Seasonal Agricultural Worker Protection Act* 29 U.S.C. Section 1802(8)(8)(2) excluded agricultural workers with H-2A visas\(^{127}\). As a group the migrant rights organizations also came up with the following recommendations on what should be done by the United States government:


“i. Ensure compliance with the requirement under international law of equality and nondiscrimination in the rights and remedies afforded to workers, regardless of migration status.

a. Expand the legal and legislative framework to ensure that labor protections and post-separation remedies are available to migrant workers regardless of immigration status.

b. Amend laws, policies and jurisprudence to comport with international obligations to apply workplace protections in a nondiscriminatory manner and protect the freedom of association of all workers.

c. Enact comprehensive legislation that would prohibit a distinction in federal or state law between employment and labor rights based on immigration status.

d. Instruct state and federal courts to prohibit employer inquiries into the immigration status of a worker asserting his or her employment and labor rights to avoid chilling and discouraging attempts by undocumented workers to enforce their rights through litigation and complaints to administrative bodies.

e. Make available temporary work visas so that migrant workers may return to the United States to pursue non-frivolous legal cases combating exploitation and abuse.

f. Extend statutes of limitations for issues involving migrant workers.

ii. Ensure adequate protections and enforce fair regulations for all workers from the point and place of recruitment onward to prevent border deaths, exploitation of guest workers, and recruitment of child laborers and victims of trafficking.

a. Examine the continued presence and completion of the administrative process that provide endorsement of the victim for the purpose of a T-visa.

b. Continue to promote state anti-trafficking legislation in a victim-centered approach and training for state and local law enforcement on human trafficking.

c. Enhance recognition, and ability to meet the needs, of all trafficking victims, regardless of national origin, including exploration of intensive case management practices for both foreign citizens and U.S. citizens.

d. Take actions to combat the use of child labor through support for legislation such as Pass the Children’s Act for Responsible Employment (CARE), which would prohibit large numbers of 12- and 13-year-olds from working for wages in the agriculture industry under trying and dangerous conditions, while preserving the family farm exemption to permit farmers to pass on work skills to their own children.
iii. Take further steps to enforce internal firewalls between immigration enforcement and labor and employment law protections.

   a. Encourage and gather complaints from migrant workers who have suffered discrimination in the workplace and make the information public for private actions against scofflaw employers.
   b. Provide multi-lingual education at the time visas are issued and at the worksite to assist with information collection.
   c. Provide migrant workers who have faced discrimination an opportunity to seek other employment and be given extended legal status in the U.S. to pursue claims.
   d. Investigate and prosecute aggressively employers who are discriminating in the workplace.
   e. Modify the current H-2a and H-2b guest worker program to allow for visa portability. The current system only allows guest workers to work for the employers whose names appear in the immigration document, which makes it very risky if not impossible for guest workers to leave their original employers.
   f. Expand the criminal liability from those individuals who actually assisted in recruiting guest workers into situations of forced labor, indentured servitude or slavery to all whom profit from their labor.

iv. The US should take a leadership role before the international community in signing and seeking from Congress ratification of the U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families128.

6.2.4 The Legal Situation in 2011

In March, 2011, the GWJA, in conjunction with the Immigrant Justice Clinic (IJC) at American University Washington College of Law, submitted their view regarding the list of issues to be adopted for Mexico’s second periodic review, to the U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The GWJA and the IJC presented two issues that they wanted included, the United States administered H-2 visa program and the absence of portable justice for Mexican migrant workers. Mexico had at this time many programs helping workers who had migrated to Mexico, but not much help available for Mexican migrant workers, working abroad, and returning home129.

129 Global Workers Justice Alliance, in conjunction with the Immigrant Justice Clinic at American University Washington College of Law, Submission to the UN Committee on Migrant Workers Regarding the List of Issues to be Adopted for Mexico’s Second Periodic Review, March 2011.
6.2.5 The Legal Situation in 2012 and 2014

In an executive summary from 2012, the GWJA asked the question if Article 28 of Mexico’s Federal Labor Law of 1970 protects Mexican workers abroad. The latest “reformative” labor legislation in Mexico was from March, 2011, proposed by Partido Revolucionario Institucional (PRI)(Institutional Revolutionary Party) and backed by Partido Acción Nacional (PAN)(National Action Party), with ideas of promoting outsourcing, subcontracting, training contracts and legalization of renuncia en blanco (blank resignation). Employers would also have permission to set unilateral wages and completely control the assignments and hours of the workers. Furthermore these reforms would lessen the redress for workers if wrongfully terminated. At this time many Mexican employers already started using the reforms even though they had not yet become part of Mexican labor law. In the author’s opinion these “reforms” could certainly be a major reason for the majority of the Mexican migrant workers in the United States to go in the first place.

The Department of Homeland Security (DHS) in the United States asked the public for ideas on how to change their existing rules in a retrospective review process at the end of every three years, and the GWJA replied in March, 2014 that changes should be made to guarantee portable justice for migrant workers and the avoidance of recruitment fraud.

6.2.6 Existing Labor Laws in 2015

The U.S. Code: Title 29 – Labor, has 31 chapters. Chapter 20 - Migrant and Seasonal Agricultural Worker Protection Act (MSPA), of the U.S. Code 29, is the chapter of interest for this particular study and also the most important national statue for migrant workers in the United States. Chapter 20 consists of the following sections:

- § 1801. Congressional statement of purpose
- § 1802. Definitions
- § 1803. Applicability of chapter

132 https://www.law.cornell.edu/uscode/text/29
133 https://www.law.cornell.edu/uscode/text/29/chapter-20
• Subchapter I – Farm Labor Contractors (§§ 1811–1816)
• Subchapter II – Migrant Agricultural Worker Protections (§§ 1821–1823)
• Subchapter III – Seasonal Agricultural Worker Protections (§§ 1831–1832)
• Subchapter IV – Further Protections For Migrant and Seasonal Agricultural Workers (§§ 1841–1844)
• Subchapter V – General Provisions (§§ 1851–1872)

United States submission to the United Nations, *Universal Periodic Review 9th Session*, for 22 November - 3 December 2010, highlighted the problem that many national labor statutes excluded domestic and agricultural workers. One of them was the main federal protective statute, MSPA 29 U.S.C. Section 1802(8)(B)(2) that still has not been changed. “(B) The term “migrant agricultural worker” does not include - (i) any immediate family member of an agricultural employee or a farm labor contractor; or (ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101 (a)(15)(H)(ii)(a) and 1184 (c) of title 8”\(^{134}\). Other labor statutes yet to be amended, to also include domestic and agricultural workers, are §213 of the FLSA on standards for minimum wages\(^{135}\) and the employee right of the NLRA to join or form labor unions\(^{136}\). For migrant and seasonal agricultural workers, the so called *Immigration and Nationality Act* (INA) is also applicable for H-2A and H-2B visas\(^{137}\). United States employers are required by the INA to get a labor certificate from the *Employment and Training Administration* that guarantees there are no qualified, adequate and willing United States workers to perform the job at hand, before they hire migrant temporary workers on H-2A visas. The *Wage and Hour Division* of the United States Department of Labor administrates the MSPA, the FLSA and the INA\(^{138}\).


\(^{134}\) https://www.law.cornell.edu/uscode/text/29/1802

\(^{135}\) Fair Labor Standards Act of 1938.

\(^{136}\) National Labor Relations Act of 1935.

\(^{137}\) http://www.dol.gov/whd/immigration/

\(^{138}\) http://www.dol.gov/opa/aboutdol/lawsprog.htm#migrant
34 (Guatemala) are all still in use and as the GWJA pointed out in their critic against the United States Guest Worker program in 2007, all the statues require for foreign recruitment companies to pay visa and transportation costs and register work contracts with the Ministries of Labor. The Law of Organization and Functions of the Work and Social Prevention Sector in El Salvador was amended on April 4, 2012 but it did not affect Article 74.\(^{139}\)

### 6.3 Labor Laws in Qatar and Nepal 2015

The Qatari *Labour Law No. 14* of 2004 commands employment contracts to be written in Arabic and if any other language is used as well, the Arabic text abounds.\(^{140}\) Unless more favorable to the employee any agreement going against the rules of the Labour Law is void.\(^{141}\) A huge problem with the Qatari Law No. 14 of 2004 is that some migrant workers are unequivocally excluded from its scope and therefore have no rights at all according to Article 3, like domestic workers 3(4) and casual workers 3(3).\(^{142}\) However since a casual worker is a person who has a temporary, as opposed to regular or permanent, employment the author would classify very few Nepalese construction workers in Qatar as casual workers with jobs shorter than four weeks as defined in Article 1(18).\(^{143}\) Instead they will be viewed as workers (unskilled or skilled) hence Law No. 14 will be applicable to them in their relationship with any non-government employer and the Law will prescribe their rights and obligations.\(^{144}\) Maximum amount of working hours per day is stipulated to be eight and a working week allows for six days.\(^{145}\) Article 65 and 66 state that wages should be specified in the work contract and to be paid once a month.\(^{146}\) Several other provisions of Law No. 14 that affect migrant workers’ rights once they are out on the job site include requirements by the employer such as: registration of workplace injuries, provision of good hygiene and

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\(^{139}\) [http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-organizacion-y-funciones-del-sector-trabajo-y-prevision-social](http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-organizacion-y-funciones-del-sector-trabajo-y-prevision-social)


\(^{142}\) *Ibid*, Article 3(3) and 3(4).

\(^{143}\) *Ibid*, Article 1(18).

\(^{144}\) *Ibid*, Article 2.

\(^{145}\) *Ibid*, Article 73.


\(^{147}\) *Ibid*, Article 48(4).
drainage, portable water, good ventilation and appropriate lighting\textsuperscript{148}, periodical medical check-ups\textsuperscript{149}, provision of transportation, drinkable water and food for workers on sites distant from the cities\textsuperscript{150}, immediate notification of worker deaths\textsuperscript{151} and provide statistics of workplace related injuries every six months\textsuperscript{152}.

To assure that migrant workers in Qatar are treated correctly and are ensured basic human rights and labor rights, the \textit{Supreme Committee Workers' Welfare Standards} (SCWWS, updated in 2014)\textsuperscript{153} and the \textit{Qatar Foundation Mandatory Standards} (QFMS) came into force in 2013. The mission statement of the QFMS is that “Qatar Foundation firmly believes that dignified living and working conditions are essential to unlocking human potential and indispensable to its mission of raising the quality of life for all”\textsuperscript{154}.

Following \textit{Law No. 4 of 2009 Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship} (Qatar Sponsorship Law, QSL) foreign workers are bound to the sponsorship of a specific employer once in Qatar. This system is also referred to as the \textit{Kafala system} and it allows the employers to have almost total control over the migrant workers’ movement, legal status and rights\textsuperscript{155}. An employed worker is not allowed to change employer without permission and it’s a criminal offence to leave your sponsor and it leads to detention and deportation. The employer must also approve any renewal of residence permits and the migrant worker is not allowed to leave the country without the authorization of the sponsor employer. Article 9 of Law No. 4 of 2009 states:

“Any expatriate entering the state for residence shall first obtain the relevant visa from the competent authority. The sponsor shall accomplish the residence procedures and its renewal, provided that such renewal shall be done within 90 (ninety) days from the expiry date of the Visa. The sponsor shall deliver the passport or travel document to the sponsored person once the procedures for issuing or renewing the residence permit are accomplished”\textsuperscript{156}.

\textsuperscript{148} \textit{Ibid}, Article 103.
\textsuperscript{149} \textit{Ibid}, Article 105.
\textsuperscript{150} \textit{Ibid}, Article 106.
\textsuperscript{151} \textit{Ibid}, Article 108.
\textsuperscript{152} \textit{Ibid}, Article 115.
\textsuperscript{153} Supreme Committee Workers' Welfare Standards of 2014.
\textsuperscript{154} Qatar Foundation Mandatory Standards of 2013.
\textsuperscript{155} Law No. 4 of 2009, Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship.
\textsuperscript{156} \textit{Ibid}, Article 9.
The national legal framework of Nepal does provide several statues in support of transnational Nepalese migrant workers in their quest for justice. The conversion from a constitutional monarchy to a federal republic was initiated when the Interim Constitution of Nepal came into force on January 15, 2007. As of May, 2015 the Interim Constitution is still in effect, since no permanent new constitution has been drafted and finalized by the CA. Rights that can be of interest for migrant workers are found in Part 3 of the Interim Constitution under “Fundamental Rights”. The following rights have been identified by the author of this paper but there might be other Articles that come into play as well:

“Article 13(1-2). Right to equality:
(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.
(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these.\textsuperscript{157}

“Article 18. Right relating to employment and social security:
(1) Every citizen shall have the right to employment, as provided in law.
(2) The women, labor, aged, disabled, incapacitated and helpless citizens shall have the right to social security, as provided in law.
(3) Every citizen shall have the right to food sovereignty, as provided in law.\textsuperscript{158}

“Article 24(10). Right relating to justice:
(10) Any incapable party shall have the right to free legal aid, as provided in law.\textsuperscript{159}

“Article 29. Right against exploitation:
(1) Every person shall have the right against exploitation.
(2) No one shall be exploited in the name of any custom, tradition and usage or in any manner whatsoever.
(3) No one shall be trafficked in nor shall one be held in slavery or in servitude.
(4) No one shall be required to perform forced labor.
Provided that nothing in this clause shall be deemed to prevent the making of law which requires citizens to perform compulsory service for public purposes.\textsuperscript{160}

“Article 32. Right to constitutional remedies:
The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred by this Part is guaranteed.\textsuperscript{161}

\textsuperscript{157} The Interim Constitution of Nepal, 2063 (2007), Article 13(1) and 13(2).
\textsuperscript{158} Ibid, Article 18.
\textsuperscript{159} Ibid, Article 24(10).
\textsuperscript{160} Ibid, Article 29.
The *Foreign Employment Act (FEA)* from 2007, supplemented by the *Foreign Employment Rules* from 2008, was enacted in Nepal on September 5, 2007 and is the most relevant law for Nepalese migrant workers. It is “An Act Made to Amend and Consolidate Laws Relating to foreign employment”. The idea is to “make foreign employment business safe, managed and decent and protect the rights and interests” of migrant workers and recruitment companies. For the most part the FEA manages the industry of foreign employment by setting up rules for private parties, government agencies and recruitment companies. This creates an overview and facilitates supervision of the whole industry. Some sections in the FEA are expressly directed to migrant workers and their rights like Sections 7-9.

“Section 7. Prohibition on sending a minor for employment:
Any minor who has not completed eighteen years of age shall not be sent for foreign employment”.

“Section 8. Prohibition on gender discrimination:
No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act. Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand”.

“Section 9. To provide special facility and reservation:
(1) The Government of Nepal may provide special facility to the women, Dalit, indigenous nationalities, oppressed, victims of natural calamities and people of remote areas who go for foreign employment
(2) In sending workers for foreign employment, any institution shall provide reservation to the women, Dalit, indigenous nationalities, oppressed class, backward area and class and people of remote areas in the number as prescribed by the Government of Nepal.”

Many other Sections provide protection even before the workers leave Nepal. Since they are very long in text the author will give a few of them as examples but only write out the caption. Section 18: Approval required to take passports to the abroad, Section 20: To send for foreign employment, Section 25: Foreign employment contract to be made, Section 26: Insurance to be procured, Section 27: Training to be taken, Section 43: Punishment to be imposed in the event of carrying on foreign employment business without license, Section

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165 *Ibid*, Section 8.
44: Punishment to be imposed in the event of sending workers by licensee without obtaining permission, Section 53: Punishment to be imposed in the event of collecting visa fees, service charges and promotional costs in excess and Section 55: Punishment to be imposed in the event of doing or causing to be done act contrary to contract\textsuperscript{167}.

A few months prior to the FEA and the Foreign Employment Rules, The Human Trafficking and Transportation (Control) Act (HTTCA) of 2007 came into force in Nepal on July 24, 2007. Section 4(2), “Acts considered as Human Trafficking and Transportation”, could possibly be read in a way that would also include Nepalese migrant workers\textsuperscript{168}.

6.4 Labor Laws in Sweden and Thailand 2015

For a Swedish employer to be able to hire workers from a foreign country there needed to be a deficit of available labor in that particular field or profession. This was before December of 2008. On December 15, 2008 the Swedish government put into force the Government Bill 2007/08:147 that changed the rules for migrant workers coming to Sweden. The purpose of the new law was to establish a more effective and flexible system for labor migration and to ease the recruitment of labor from countries outside of Sweden and the European Union (third countries). The new law gives the Migration Board more ways to approve applications for work permits. The most significant change is the abrogation of the so called labor market test\textsuperscript{169}. The new rules give the right to determine if there is a shortage of labor and from what third country to recruit to the employers, rather than to the public authorities, which was the case prior to the enactment of the law. The reform furthermore revoked the explicit rules for seasonal work and this labor group is now just like any other in terms of application. Additionally restrictions on categories of workers and skill levels are abolished\textsuperscript{170}. In a report from the Organisation for Economic Co-operation and Development (OECD) from 2011 the conclusion was that the Swedish labor migration reform from 2008 worked well but needed more monitoring, and that Sweden now has one of the most open labor migration systems in all of the OECD\textsuperscript{171}. As of spring 2011 the Swedish Migration Board adopted new policies.

\textsuperscript{167} Ibid, Sections 18, 20, 25-27, 43, 44, 53 and 55.
\textsuperscript{168} Human Trafficking and Transportation (Control) Act of Nepal, 2064 (2007).
\textsuperscript{169} Government Bill 2007/08:147.
\textsuperscript{170} http://www.government.se/sb/d/3083/a/114169
\textsuperscript{171} http://www.oecd.org/newsroom/swedishlabourmigration/reformworkingwellbutneedsmoremonitoringsaysoecd.htm
for third country nationals who wished to come as migrant workers to pick berries in
Sweden. Guaranteed salary for the workers, regardless of the availability of berries, and
demands on foreign recruitment companies to register an outlet or branch in Sweden with
available contact persons connected to the employer were some of the new rules. Updates
and amendments have been made since to further protect the rights of the berry pickers. A
third country berry picker and anyone supporting the worker, such as an interpreter, needs a
work permit to enter Sweden that specifies the profession and the employer. Applications
are made prior to departure and the work permit must have been granted and issued before
the migrant worker can come into Sweden\textsuperscript{172}. A berry picker from Thailand is also required
to apply for a visa if the projected work in Sweden exceeds three months\textsuperscript{173}. There are
several requirements for anyone who wants to employ a Thai migrant worker in the berry
picking industry:

1. “Offer terms of employment that are at least on the same level as Swedish collective
   agreements or that which is customary in your occupation or industry.
2. Offer a monthly pretax salary of at least SEK 13,000.
3. Fill out an offer of employment.
4. Give the trade union concerned the opportunity to state its opinion about the terms of
   employment.
5. Prove that you paid salaries if you have previously employed or engaged berry pickers.
6. Show that your company can afford to pay the monthly salary (gross salary plus any social
   security contributions) even if the berry harvest is poor or the employee is unable to pick the
   required number of berries.
7. Show that you are able to provide guidance to the people you employ or hire in their work and
   organize transport, room, board and other practical matters in a manner that is customary for
   the industry and describe your planning in writing.
8. Present all costs for which the person you employ or hire is liable.
9. Produce documentation that you have informed about the job, the terms of employment
   offered, legal right of access to private land and traffic regulations in Sweden.
10. Notify the Tax Agency\textsuperscript{174}.

\textsuperscript{172} Swedish Migration Board, Special Rules For Certain Occupations and Citizens of Certain Countries, Berry
    Pickers.
\textsuperscript{173} http://www.government.se/sb/d/12386/a/241031
\textsuperscript{174} Swedish Migration Board, Special Rules For Certain Occupations and Citizens of Certain Countries, Berry
    Pickers.
The Swedish Trade Union Confederation (LO)\textsuperscript{175} has pronounced that issues concerning contractual law and the right for third country berry pickers to join labor unions are the duties of the Swedish Municipal Workers’ Union (SKAF)\textsuperscript{176}. The framework agreement with the Federation of Swedish Forestry and Agricultural Employers is the collective agreement that applies any full time berry pickers employed by a company that operates in Sweden\textsuperscript{177}. During the process of recruitment in Thailand departing migrant workers enjoy protection from the Recruitment and Job-Seekers Protection Act of 1985 (revised in 1994 and 2001)\textsuperscript{178}, which was enacted because of the growing number of foreign recruitment companies and the repeated cases of fraud. The main purposes of the Recruitment and Job-Seekers Protection Act is to provide free employment services for workers by setting up government employment offices and to increase protection for job-seeking workers by guaranteeing justice and suitable help. Furthermore the law allows licensed employment agencies to offer services for departing Thai migrant workers, while limiting private agencies\textsuperscript{179}.

6.5 National Statutory Prerequisites for Portable Justice: All Countries Compared

After looking at the national laws of the three industrialized countries, the United States, Qatar and Sweden, it can be concluded that only Sweden has specific protective rules in place for the type of migrant workers under examination in this study. After the enforcement of the Government Bill 2007/08:147 to set up a more effective and flexible system for labor migration, the OECD in 2011 reported that Sweden had one of the most open systems of all countries in the OECD. The new policies from the Swedish Migration Board in 2011 with later updates exclusively addressed the vulnerable situation for berry pickers from third countries. In Qatar migrant workers are included in the protection of Labour Law No. 14, but the Kafala system under the QSL seem to be breaking many statutes of the Law. To insure migrant workers’ labor rights and basic human rights the Qatari government created the QFMS and the SCWWS in 2013-2014. It remains to be seen if they are abided by as intended. The United States explicitly exclude the category of workers this

\textsuperscript{175} http://www.lo.se/english/startpage
\textsuperscript{176} http://www.kommunal.se/Kommunal/Globala-lankar/Languages/languages/English/Page-in-English/#.VUtwn2d03lU
\textsuperscript{177} Swedish Migration Board, Special Rules For Certain Occupations and Citizens of Certain Countries, Berry Pickers.
\textsuperscript{178} Employment And Job-Seeker Protection Act of Thailand, B.E. 2528 (1985).
\textsuperscript{179} http://www.mol.go.th/en/anonymouse/labour_law#2
paper investigates. In the United States the federal protective statute, MSPA 29 U.S.C. Section 1802(8)(B)(2), §213 of the FLSA and the employee right of the NLRA to join or form labor unions all ignore domestic and agricultural workers. Evidently the Global Workers Justice Alliance somehow found a way to get their clients portable justice despite existing United States national statutes on migrant workers. The question is whether or not the same thing could be done for Nepalese construction workers in Qatar and Thai berry pickers in Sweden? Right off the bat it seems like the chance for portable justice in Sweden is higher than for portable justice in Qatar with existing national laws.

Also the migration sending countries have protective statues for their outbound workers. Especially Nepal has very extensive legislation to make foreign employment business safe and to protect the interests and rights of Nepalese migrant workers, through Part 3 “Fundamental Rights of the Interim Constitution of 2007, the FEA of 2007 and the Foreign Employment Rules of 2008. Thailand has the Recruitment and Job-Seekers Protection Act of 1985 that regulates the activities of domestic recruitment companies and assures departing workers assistance via government employment offices. Finally, many Central American countries have regulations through their Ministries of Labor that require foreign recruitment companies to register employment contracts with the Ministries and to pay migrant workers transportation and visa expenses. These rules are found in the Federal Labor Law of 1970 Article 28 in Mexico, the Law of Organization and Functions of the Work and Social Prevention Sector of 1996 Article 74 in El Salvador and the Labor Code of 1947 (amended 1992) Article 34 in Guatemala. As the GWJA pointed out in 2007 the United States Guest Worker program did not at all follow these national labor statutes of Mexico, El Salvador and Guatemala.
CHAPTER 7 - International: Standards, Conventions and Organizations

7.1 ILO: International Labor Standards

The International Labour Organization (ILO) has managed and cultivated an international labor standards system since 1919. The ambition has been to develop and encourage opportunities for both men and women to acquire fruitful and respectable jobs under circumstances of safety, decency, equity and freedom. International labor standards play a significant role in making sure that the ever growing number of international transactions of today’s globalized economy benefit all human beings. On the social dimension of globalization the World Commission had the following to say in 2004:

"The rules of the global economy should be aimed at improving the rights, livelihoods, security, and opportunities of people, families and communities around the world".

International labor standards provide a wide range of advantages for transnational migrant workers including, “a path to decent work, an international legal framework for fair and stable globalization, a level playing field, a means of improving economic performance, a safety net in times of economic crisis, a strategy for reducing poverty and the sum of international experience and knowledge”.

7.1.1 ILO: Conventions and Recommendations

International labor standards are legal instruments created by the ILO and are either nonbinding recommendation used for guidance or legally binding international treaties in the form of conventions. A convention usually provide basic principles to be enforced by countries through ratification, and recommendations serve as more detailed supplements to the convention or are independent. Both types of instruments are drafted by employers, workers and government representatives in collaboration and member states are mandated to submit an adopted standard to their respective country authority for consideration or

ratification. Once a country has ratified a convention it is legally bound to apply it in national law. The Governing Body of the ILO has recognized eight of the conventions as “fundamental”: *Freedom of Association and Protection of the Right to Organise Convention of 1948* (No. 87), *Right to Organise and Collective Bargaining Convention of 1949* (No. 98), *Forced Labour Convention of 1930* (No. 29), *Abolition of Forced Labour Convention of 1957* (No. 105), *Minimum Age Convention of 1973* (No. 138), *Worst Forms of Child Labour Convention of 1999* (No. 182), *Equal Remuneration Convention of 1951* (No. 100) and *Discrimination (Employment and Occupation) Convention of 1958* (No. 111). The total number of countries in the below list was originally 138, but the table has been modified to only include the countries of interest for this paper.

Ratifications of Fundamental Conventions

<table>
<thead>
<tr>
<th>Country</th>
<th>Freedom of association</th>
<th>Forced labor</th>
<th>Discrimination</th>
<th>Child labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>El Salvador</td>
<td>C087</td>
<td>C098</td>
<td>C029</td>
<td>C100</td>
</tr>
<tr>
<td>United States</td>
<td></td>
<td>1991</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

184 Table taken from ILO, Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F
Especially relevant ILO labor standards instruments for migrant workers are *Migration for Employment Convention (Revised)* of 1949 (No. 97) and *Migrant Workers (Supplementary Provisions) Convention* of 1975 (No. 143)\(^{185}\). C097 only has forty nine ratifications in total and out of the ten countries in this study only Guatemala is a ratifying state (13 Feb 1952)\(^{186}\). When it comes to C143 it is even worse with just twenty three ratifications and Sweden as sole ratifying state out of the ten nations (28 Dec 1982)\(^{187}\). ILO has also established international standards for regulation of private employment agencies through *Private Employment Agencies Convention* of 1997 (No. 181)\(^{188}\), with a total of twenty nine ratifications to date but not including any of the ten countries in this paper\(^{189}\).

### 7.2 United Nations: Conventions on Human Rights

The United Nations have drafted several Conventions that are applicable to transnational migrant workers in different ways. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* from 1990 (Migrant Worker Convention) is the primary United Nations instrument governing the rights of migrant workers and came into force on 3 July, 2003 after getting twenty ratifications\(^{190}\). The number of parties to the Convention is at the moment forty seven including Honduras, El Salvador, Guatemala, Mexico and Nicaragua but with the latter four countries having some reservations\(^{191}\). As Cathleen Caron pointed out in 2005, none of the articles in the Migrant Worker Convention expressly address the topic of portable justice, but many articles relate to the subject such as Article 22.6 that states\(^{192}\):

> “In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities”.

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\(^{190}\) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

\(^{191}\) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (Ratifications).

Pre-departure information about the job should be given by the employing state to regular migrant workers (Articles 33 and 37) and they must be treated as equals to nationals of the country of employment in issues of payment (Articles 25, 54.1 and 55) and in front of the court (Article 18)\(^\text{193}\). Cathleen further called attention to the fact that the United States are not a party to the Migrant Worker Convention but that they are still obliged to respect the access to justice (portable justice) because of other instruments for human rights, such as the Universal Declaration of Human Rights from 1948 (UDHR)\(^\text{194}\). The UDHR provides several obligations for states to fulfill against discrimination based on migration status, for example Article 23(4) stating that “Everyone has the right to form and to join trade unions for the protection of his interests”, and Article 2 that declares:

> “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”\(^\text{195}\).

Also the *International Convention on the Elimination of all Forms of racial Discrimination* (ICERD) of 1965 provides under Article 5(e)(ii) “The right to form and join trade unions”\(^\text{196}\), and the same goes for the *International Covenant on Civil and Political Rights* (ICCPR) of 1966, Article 22\(^\text{197}\). According to Article 8(1) of ICCPR “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited”\(^\text{198}\). Additionally Article 3, “Everyone has the right to life, liberty and security of person”, Article 4, “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” and Article 5, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” are all relevant protective statues of the UDHR for transnational migrant workers\(^\text{199}\). The Trafficking Protocol of 2003 has been ratified by all countries in this study except Nepal\(^\text{200}\). Furthermore the GWJA’s response to the “Call for Comments” on the

\(^{193}\) Ibid.
\(^{194}\) Ibid, p. 10.
\(^{195}\) Universal Declaration of Human Rights of 1948.
\(^{197}\) International Covenant on Civil and Political Rights of 1966.
\(^{198}\) Ibid.
\(^{199}\) Universal Declaration of Human Rights of 1948.
\(^{200}\) Trafficking Protocol of 2003 (Ratifications).
United Nations Secretary-General’s Report on International Migration and Development, June 30, 2006, highlighted that only Paragraph 261 of the Report dealt with procedural issues of making migrant rights available and only discussed the problem in a national context. In addition, according to Paragraph 66 of the Report:

“The benefits of international migration, not only for migrants themselves, but equally for receiving societies, are contingent on the protection of migrant rights. Labour rights are the mainstay in the prevention of exploitation and ought to be fiercely safeguarded.”

7.3 ITUC: Global Rights Index 2014

The International Trade Union Confederation (ITUC) has created the Global Rights Index, consisting of 139 countries, in order to expand the transparency and visibility of national records on workers’ rights. The countries are rated on a 1-5 scale based on the level of respect they show for workers’ rights with 1 being the most shown respect. Using the index the worst countries in the world to work in are highlighted. The index is based on the ITUC Survey, which is the largest database on violation of workers’ rights, and it covers both practical and legal violations. The Global Rights Index covers fundamental labor standards internationally acknowledged such as the access to due process rights, civil rights, the right to strike, the right to free association and the right to collective bargaining. Also migrant workers are included in the index. Only detailed and well documented violation reports are used. A new edition of the Global Rights Index is released yearly and covers the period from April-March the following year. Out of the ten countries examined in this paper only Nicaragua is missing from the ratings. Of the nine remaining countries only Sweden has an acceptable rating of 1, while El Salvador, Honduras, Mexico, Nepal, United States and Thailand all have a rating of 4 with systematic violation of rights. In Guatemala and Qatar the situation is even worse and workers have no guarantee of rights at all, hence giving both nations a rating of 5.

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201 Global Workers Justice Alliance responds to the “Call for Comments” on the United Nations Secretary-General’s Report on International Migration and Development, June 30 2006, Submitted by Cathleen Caron, Executive Director, Global Workers Justice Alliance.

1. “Irregular violation of rights (Sweden)
Collective labour rights are generally guaranteed. Workers can freely associate and defend their rights collectively with the government and/or companies and can improve their working conditions through collective bargaining. Violations against workers are not absent but do not occur on a regular basis.

2. Repeated violation of rights
Countries with a rating of 2 have slightly weaker collective labour rights than those with the rating 1. Certain rights have come under repeated attacks by governments and/or companies and have undermined the struggle for better working conditions.

3. Regular violation of rights
Governments and/or companies are regularly interfering in collective labour rights or are failing to fully guarantee important aspects of these rights. There are deficiencies in laws and/or certain practices which make frequent violations possible.

4. Systematic violation of rights (El Salvador, Honduras, Mexico, Nepal, United States, Thailand)
Workers in countries with the rating 4 have reported systematic violations. The government and/or companies are engaged in serious efforts to crush the collective voice of workers putting fundamental rights under threat.

5. No guarantee of rights (Guatemala, Qatar)
Countries with the rating of 5 are the worst countries in the world to work in. While the legislation may spell out certain rights workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices.

5.i No guarantee of rights due to the breakdown of the rule of law
Workers in countries with the rating 5+ have equally limited rights as countries with the rating 5. However, in countries with the rating 5+ this is linked to dysfunctional institutions as a result of internal conflict and/or military occupation. In such cases, the country is assigned the rating of 5+ by default”.

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CHAPTER 8 - Migrant Worker Cases

8.1 Real Life Cases

Chapter 6 and 7 presented migrant workers’ legal rights to justice in a hypothetical setting by presenting national labor laws and international conventions as they are written. In this chapter these statutes will be tested in actual cases to see if they live up to their objectives and give transnational migrant workers protection. In all the following cases both the legal rights and the practical ability of the migrant workers to get portable justice will be evaluated to see if real-life accessibility is fulfilled or if one or more elements are missing, making the chances for redress slim to none. The author’s ambition is to categorize the different cases by their respective main exploitative harm or harms, but several cases will overlap or consist of more than one problem. For the United States cases involving Mexican and Central American unskilled migrant workers the source of information will primarily be the GWJA’s homepage and their success stories highlighted in the yearly reviews. The ITUC Special Report from March 2014 (The Case against Qatar, Host of the FIFA 2022 World Cup) will provide three of the Qatari cases involving Nepalese workers, but in order to protect their identities their names have been changed\textsuperscript{204}. When it comes to the Swedish cases concerning Thai berry pickers the sources of information will predominantly be in Swedish but of course any facts used are translated into English in the paper. In total twenty six different cases or combined cases will be reviewed. Additionally the author of this paper has created an Excel-spreadsheet pointing out the different harms suffered by the migrant workers in each case, highlighting the main exploitative harm or harms and if redress has been obtained. The spreadsheet can be seen below.

\textsuperscript{204} International Trade Union Confederation, The Case against Qatar, Host of the FIFA 2022 World Cup, ITUC Special Report, March 2014, p. 7.
### 8.1.1 Spreadsheet of Cases Categorized

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Year</th>
<th>Developing Country</th>
<th>Developed Country</th>
<th>Redress or Compensation</th>
<th>Civil Claims</th>
<th>Contract Violation</th>
<th>Forcible Labor</th>
<th>Health, Injury or Death</th>
<th>Insurance Issues</th>
<th>Recruitment Fraud</th>
<th>Trafficking</th>
<th>Slavery or Imprisonment</th>
<th>Unsanitary Living</th>
<th>Wage Issues</th>
<th>Confinement Visa/Passport</th>
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</thead>
<tbody>
<tr>
<td>8.2.1 Nepalese Construction Worker MK</td>
<td>2010</td>
<td>Qatar</td>
<td>Nepal</td>
<td>NO</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>8.2.2 Nepalese Construction Worker RM</td>
<td>2010</td>
<td>Qatar</td>
<td>Nepal</td>
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<td>X</td>
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<td>X</td>
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<td>8.2.3 Nepalese Construction Worker RS</td>
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<td>Nepal</td>
<td>NO</td>
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<td>X</td>
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<tr>
<td>8.2.4 Nepalese Workers Striking</td>
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<td>Qatar</td>
<td>Nepal</td>
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<tr>
<td>8.3.1 Guatemalan Landscaper Eric</td>
<td>2006</td>
<td>USA</td>
<td>Guatemala</td>
<td>YES</td>
<td>X</td>
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<tr>
<td>8.3.2 Workplace Injuries (3 cases)</td>
<td>2008</td>
<td>USA</td>
<td>Guat./Mex.</td>
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<td>X</td>
<td>X</td>
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<tr>
<td>8.3.3 Guatemalan Mushroom Picker</td>
<td>2010</td>
<td>USA</td>
<td>Guatemala</td>
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<td>X</td>
<td>X</td>
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<tr>
<td>8.3.4 El Salvadorian Visitor</td>
<td>2011</td>
<td>USA</td>
<td>El Salvador</td>
<td>YES</td>
<td>X</td>
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<tr>
<td>8.3.5 Thai Berry Pickers in Sweden II</td>
<td>2011</td>
<td>Sweden</td>
<td>Thailand</td>
<td>UNKNOWN</td>
<td>X</td>
<td>X</td>
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<tr>
<td>8.3.6 Nepalese Carpenter &quot;Raju&quot;</td>
<td>2013</td>
<td>Qatar</td>
<td>Nepal</td>
<td>PENDING</td>
<td>X</td>
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<tr>
<td>8.3.7 Nepalese Workers Deaths in Qatar I</td>
<td>2012</td>
<td>Qatar</td>
<td>Nepal</td>
<td>UNKNOWN</td>
<td>X</td>
<td>X</td>
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<td>8.3.8 Nepalese Workers Deaths in Qatar II</td>
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<td>Qatar</td>
<td>Nepal</td>
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<tr>
<td>8.3.9 Nepalese Workers Deaths in Qatar III</td>
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<td>Nepal</td>
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<td>8.3.10 Nepalese Workers Deaths in Qatar IV</td>
<td>2014</td>
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<td>Nepal</td>
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<tr>
<td>8.4.1 Domestic Help</td>
<td>2009</td>
<td>USA</td>
<td>Guatemala</td>
<td>PENDING</td>
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<td>8.4.2 Recruitment Fraud</td>
<td>2014</td>
<td>USA</td>
<td>Honduras</td>
<td>PENDING</td>
<td>X</td>
<td>X</td>
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<tr>
<td>8.4.3 Thai Berry Pickers in Sweden V</td>
<td>2014</td>
<td>Sweden</td>
<td>Thailand</td>
<td>SOME</td>
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<td>8.5.1 Construction Worker &quot;Ayush&quot;</td>
<td>2014</td>
<td>Qatar</td>
<td>Nepal</td>
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<td>8.6.1 A. Aguilar v. Imperial Nurseries</td>
<td>2006</td>
<td>USA</td>
<td>Guatemala</td>
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<td>8.6.2 Human Trafficking</td>
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<td>USA</td>
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<td>8.7.1 H2-B Workers</td>
<td>2008</td>
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<td>8.7.2 Reclaiming Stolen Wages</td>
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<td>8.7.3 Mexican Restaurant Worker</td>
<td>2011</td>
<td>USA</td>
<td>Mexico</td>
<td>YES</td>
<td>X</td>
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<tr>
<td>8.7.4 Thai Berry Pickers in Sweden I</td>
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<td>Thailand</td>
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<tr>
<td>8.7.5 Thai Berry Pickers in Sweden III</td>
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<td>Sweden</td>
<td>Thailand</td>
<td>YES</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.7.6 Thai Berry Pickers in Sweden IV</td>
<td>2013</td>
<td>Sweden</td>
<td>Thailand</td>
<td>SOME</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<td>X</td>
</tr>
</tbody>
</table>

205 Spreadsheet created by author.
8.2 Main Exploitative Harm: Contract Violation

8.2.1 Nepalese Construction Worker MK (2010)

On December 5 of 2010 Amnesty International interviewed twenty-nine-year-old MK in Kailali, Nepal. He worked as a construction worker in Qatar for two years before returning to Nepal in October 2010. MK was only paid QAR 500 (approximately US$ 140 at the time) randomly and the wage was much lower than stated in his original contract. He had the following to say:

“Two hours before my flight, I received my contract, which was written in Arabic. My agent verbally translated it for me. The salary listed was QAR 900 (US$250) per month. He then gave me another contract and told me to sign it. In this version, my salary was only QAR 500 (US$140) and the company name was different. The agent instructed me to show the first contract to the Nepalese immigration officer and the other version was for Qatar”\(^{206}\).

8.2.2 Nepalese Construction Worker RM (2010)

On September 23 of 2010 Amnesty International interviewed twenty-year-old RK in Dhanusa, Nepal. He only worked as a construction worker in Qatar between January and March 2010 and ended up receiving just 2/3 of the stipulated minimum monthly wage according to Nepalese laws. RM complained to his agent in Kathmandu and was promised the difference in contracted salary and actual pay but never received it. RM explained:

“I am illiterate so my colleagues told me that according to my contract, I would receive a monthly salary of QAR 600 (US$165), but in reality, the company only paid me QAR 400 (US$110)”\(^{207}\).

8.2.3 Nepalese Construction Worker RS (2010)

On December 5 of 2010 Amnesty International interviewed twenty-seven-year-old RS in Kailali, Nepal. The specific job he was promised never materialized as he was tricked by a job broker in his own village. RS commented on his working situation in Qatar:

\(^{206}\) Amnesty International, False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers, Dec 2011, p. 44.
“In Nepal, my broker promised that I would work as an electrician after training in Qatar, but there was none and I only worked as a laborer. I was also promised work indoors but I had to work outside at a construction site. Due to the extreme heat, I felt sick. I had chronic cough due to the dust, headaches and felt dizzy all the time."

8.2.4 Nepalese Workers Striking (2014)

Over a few days around 800 migrant construction workers from Nepal, Bangladesh, India and Sri Lanka went on strike in Qatar protesting against low wages and breaches of employment contracts. The contracts they signed in their home countries were torn up and their passport were confiscated as they arrived in Doha. The workers were employed by two subcontracting companies, Qatar Middle East Co and Qatar Freelance Trading and Contracting, and only received 2/3 of the wage promised. About 100 of the migrant workers were arrested to be deported from Qatar because of the strike. According to witnesses the men were attacked with a plastic pipe by a construction site supervisor as the police arrived, and the arrested men were most likely going to be held isolated for a long time in the infamous Doha Detention Center.

8.2.5 Conclusion: Contract Violation

First looking at the legal rights of the migrant workers’ accessibility to portable justice it can be concluded that all four cases involve a clear violation of the Nepalese Foreign Employment Act (FEA) from 2007, Article 55 that expressly states the responsibility of the recruiter:

“Punishment to be imposed in the event of doing or causing to be done act contrary to contract: “If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower that that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in worker for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities”.

209 ITUC, Qatar Arrests 100 Striking Workers for Deportation, Human and Trade Union Right News, Qatar, November 26, 2014.
As of 2015 the minimum monthly wage for Nepalese migrant workers to work in Qatar is QAR900 according to Nepalese laws. Even with the lower minimum back in 2010 all the workers received wages significantly lower than first promised and written in their contracts. The need for a foreign employment contract to be made is stated in Article 25 FEA. Article 22.6 of the Migrant Worker Convention declares that: “In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities”. Unfortunately neither Qatar nor Nepal is a party to the Convention. Article 65 and 66 of the Qatari Labour Law No. 14 of 2004 state that wages should be specified in the work contract and to be paid once a month. All the mentioned cases violate these statutes. Clearly there are legal rights in place to protect the Nepalese migrant workers, mainly in the form of national statutes in the national labor laws, however these rules are completely disregarded and therefore accessibility to portable justice in the four cases is not achieved even though the right is on the side of the workers. Practical problems that might have played a contributing part to the shortcomings of portable justice in the four cases are lack of knowledge of Qatari laws and legal resources, as well as language deficiencies. As a result all the migrant workers were cheated of wages without any redress. Also nine other of the twenty six cases involve contract violation issues.

8.3 Main Exploitative Harm: Health, Injury or Death

8.3.1 Guatemalan Landscaper Eric (2006)

Guatemalan guest worker Eric, with an H-2B visa, worked as a landscaper in The United States in 2006 when he severely injured his knee and ended up disabled. The company Eric worked for finally got him medical aid through workers’ compensation and he underwent knee surgery. Abiding the law Eric returned to his home country Guatemala when his guest worker visa expired. The insurance company in Guatemala denied him help and Eric could not afford continued treatment for his knee. Because of his condition he was not granted a new visa for work in the United States but had to take a low wage construction job in Guatemala that only made his disability worse. Eric struggled to support his family when he
found Global Workers and things turned around for the better. The GWJA turned his case over to a law school clinic and got him sufficient medical care\textsuperscript{210}.

8.3.2 Workplace Injuries (2008)

Another Guatemalan worker who had severely broken his arm while working in a factory known for its hazardous environment was deported with pins still embedded in his arm. Because he had left the United States the insurer declined the man medical treatment, but Global Workers stepped in and through speedy work they got the man medical care in Guatemala. A Mexican migrant worker who was paralyzed after a vehicle accident in the United States returned to his countryside home in Chiapas, Mexico. His New Jersey lawyer could not reach him but through a visit at his home from the Global Workers Defenders the right documents could be obtained from the man to help him receive medical support. Another Mexican migrant worker was trimming trees in Rhode Island when his face was sliced by the chainsaw. The employer had not paid his workplace insurance as the law dictates, something the man became aware of when he sought medical assistance. The man was deported on the day of his court hearing after being arrested outside the courthouse, after instructions from his vengeful employer\textsuperscript{211}.

8.3.3 Guatemalan Mushroom Picker (2010)

A United States lawyer tried for months to help the widow of a Guatemalan mushroom picker, who had been killed while working in Pennsylvania, to recover more than $200,000. When he was unable to transfer the money to Guatemala to the ill, elderly, and extremely poor widow who was the mother of nine children, he contacted Global Workers. The local Defender in Guatemala then assisted to make the transfer happen\textsuperscript{212}.

\textsuperscript{210}http://www.globalworkers.org/content/securing-medical-care-abroad
\textsuperscript{211}http://www.globalworkers.org/content/2008-glance
\textsuperscript{212}http://www.globalworkers.org/our-work/successes/2010-glance
8.3.4 El Salvadorian Visitor (2011)

When a man native to El Salvador but with a United States citizenship was murdered outside his parents’ residence in El Salvador, the man’s employer tried for years to find the family and give them insurance money. After many unsuccessful attempts Global Workers were contacted and within weeks the family was detected and given the money which ultimately helped the murdered mans’ children to go to school213.

8.3.5 Thai Berry Pickers in Sweden II (2011)

In 2011 there were a total of 2280 berry pickers from Thailand working in Sweden214. In the early fall of 2011 two car accidents involving Thai berry pickers occurred. The first accident happened in September and two berry pickers were injured as they were driven around the Swedish woods to find areas with an abundance of berries. In the second accident on September 17 a minivan containing eight Thai berry pickers flipped over and landed on the roof. Two of the pickers were seriously injured. Since the pickers themselves have to pay for the transport to get to the berries they often times fill the old minivans with too many people and as a result many do not wear seatbelts, increasing the risk for grave harm. The Thai pickers in these cases were employed by recruitment companies but working for berry picking companies. Since they were employed they were also insured by the employer and likely received some form of compensation215.

8.3.6 Nepalese Carpenter “Raju” (2013)

When twenty-seven-year-old Nepalese carpenter Raju was hit in the eye with a nail on a rainy day of work it became clear how much collective bargaining agreements are needed in Qatar. Raju who had been in Qatar for four years described the work as very fast that day but that none of the workers had safety glasses. He was taken back to the labor camp and later to the emergency room. Raju’s retina in his left eye was damaged and he was unable to see out of the eye, sidelining him for work for ten days. However his Pakistani doctor was very helpful saying he should get compensation for the injury, and Raju has been back to the

hospital for check-ups. To make a case at the Labour Court it took him almost six months to get the correct paperwork filled out as he was bounced between the doctor, the police station and the High Court. Raju had to pay for the translation of the papers but only received an oral translation to Nepalese from Arabic but nothing written\textsuperscript{216}.

\textbf{8.3.7 Nepalese Driver “Bhupendra” (2013)}

While trying to jumpstart another vehicle with starting cables Bhupendra’s water tanker was struck by another vehicle from behind. Bhupendra who was knocked unconscious woke up in the hospital while a metal frame was being inserted into his leg. Even at the risk of amputation the Qatari company did not help at all and his wounds got worse since he could not change dressings every day because of the long trip to hospital. Bhupendra was dependent on his friends to get money for transportation. He fought for compensation for two years in the Qatari Labour Court\textsuperscript{217}.

\textbf{8.3.8 Nepalese Workers Deaths in Qatar I (2012)}

According to the Nepalese Government 169 Nepalese construction workers died in the year 2012 due to appalling working conditions. The causes of death varied from accidents on the workplace, cardiac arrests from working long hours exposed to the sun, to diseases due to unhygienic and cramped living situations in labor camps\textsuperscript{218}.

\textbf{8.3.9 Nepalese Workers Deaths in Qatar II (2013)}

According to the Nepalese Government another 191 Nepalese construction workers died in the year 2013 again due to terrible working conditions. Since it became clear that Qatar was to host the 2022 World Cup, back in 2010 and up till March of 2014, more than 400 Nepalese migrant construction workers have died in the country\textsuperscript{219}.

\textsuperscript{216} International Trade Union Confederation, \textit{The Case against Qatar, Host of the FIFA 2022 World Cup, ITUC Special Report}, March 2014, p. 13.
\textsuperscript{217} International Trade Union Confederation, \textit{The Case against Qatar, Host of the FIFA 2022 World Cup, ITUC Special Report}, March 2014, p. 15.
\textsuperscript{218} International Trade Union Confederation, \textit{The Case against Qatar, Host of the FIFA 2022 World Cup, ITUC Special Report}, March 2014, p. 14.
8.3.10 Nepalese Workers Deaths in Qatar III (2014)

The high death toll of Nepalese migrant construction workers in Qatar continued in 2014 and in December the Nepalese Foreign Employment Promotion Board had recorded 34 deaths due to workplace accidents, 8 deaths due to heart attacks and 67 due to sudden cardiac arrest\(^\text{220}\).

8.3.11 Conclusion: Health, Injury or Death

Again starting with the legal rights of the migrant workers’ accessibility to portable justice the national labor laws of the United States provide very little help for migrant workers because of the exclusion of agricultural and domestic workers in MSPA 29 U.S.C. Section 1802(8)(B)(2) and the lack of ratification from the United States of the Migrant Worker Convention. Since the United States is the employing country in cases 8.3.1 to 8.3.4 it does not matter that El Salvador, Guatemala and Mexico are all parties to the Convention. Nonetheless, in the cases of the workplace injures (see section 8.3.2) and the case of landscaper Eric all migrant workers except the man injured by a chainsaw had redress despite initial insurance problems. The accessibility to portable justice was secured by the GWJA’s realization of the practical ability of the workers and therefore they could receive compensation for their injuries and sufficient medical help. Also the widow of the deceased Guatemalan Mushroom Picker who had no practical ability herself to receive the insurance payout was helped by the GWJA, as well as the family of the murdered El Salvadorian man. Article 5 of the UDHR could probably be applicable in some of these cases as the text reads: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Deporting a seriously injured person could easily translate to the wording of the statute.

In the spring of 2011, mainly because of the Lomsjö Bår AB scandal (see section 8.7.3) the year before, the Swedish Migration Board adopted new policies for third country nationals with issued visas who wished to come as migrant workers to pick berries in Sweden. Guaranteed salary for the workers, regardless of the availability of berries, and demands on foreign recruitment companies to register an outlet or branch in Sweden with available

contact persons connected to the employer were enforced. Despite the efforts to better the situation for Thai berry pickers several workers were injured during the year in car accidents and it is unclear whether or not they got compensated after returning home to Thailand.

Out of the cases of Nepalese workers in Qatar only driver Bhupendray had some compensation for his injuries, but it took him very long to secure his rights and he received no help from the Qatari company who employed him. Carpenter Raju possibly also received some form of compensation after returning to Nepal. As for the staggering number of deaths of Nepalese construction workers in Qatar from 2012 to 2014 there seem to be numerous grave violations of both national and international labor laws. The Qatar Sponsorship Law or QSL is what supports the Kafala system, giving Qatari employers almost total control over the migrant workers’ rights, movement and legal status. The QFMS and the SCWWS of 2013 and 2014 seem to have added absolutely nothing to help migrant workers and the mission statement of the QFMS, “Qatar Foundation firmly believes that dignified living and working conditions are essential to unlocking human potential and indispensable to its mission of raising the quality of life for all”, seem like a bad joke. The high death toll also indicates violations of Qatari Labour Law No. 14 of 2004, Articles 48(4), 103, 105, 106, 108 and 115. Additionally the Forced Labour Convention of 1930 (No. 29) and Article 5 of the UDHR that Qatar has ratified seem to have been violated.

8.4 Main Exploitative Harm: Recruitment Fraud

8.4.1 Domestic Help (2009)

A recruiter in Guatemala had promised more than 50 Guatemalan workers jobs in the United States, but when the work opportunity did not materialize he denied giving back passports, thousands of dollars and pawned official documents that shows who legally owns a building or a piece of land. For the first time the Defenders collected evidence and brought the recruiter to court in Guatemala to retrieve the stolen possessions.\footnote{http://www.globalworkers.org/content/2009-glance}
8.4.2 Recruitment Fraud (2014)

Two workers in Honduras contacted the local Global Workers Defender to help verify the validity of a labor recruitment company. After close communication with the Global Workers legal team in the United States it was concluded that the recruitment company was most likely a fraud and the team took legal measures. The labor recruitment company had charged almost $2,000 per head for hundreds of workers to get visas to go work in the United States but the jobs never became a reality. The case is still pending but the migrant workers should retrieve the money spent and the company should lose its license\textsuperscript{222}.

8.4.3 Thai Berry Pickers in Sweden V (2014)

For the 2014 berry picking season in Sweden the Swedish Migration Board issued 3339 work permits and visas for Thai pickers which was almost half the number of the previous year\textsuperscript{223}. One of the berry picking companies, Polvision in Västerbotten, that applied to use Thai laborers for the 2014 season were declined permission to do so by the Swedish Migration Board because they planned to sell the picked berries to the same wholesaler that was involved in the 2013 scandal of unpaid wages, Latvian company Sparlats. However the Thai recruitment company Kontana which had been contracted by Polvision to supply Thai berry pickers had already recruited more than 200 workers while waiting for the Swedish Migration Board’s decision. The workers had all taken loans of SEK 2,500 per person to pay for visa applications to the recruitment company but when Polvision was declined to hire the Thai pickers the recruitment company Kontana refused to repay the money\textsuperscript{224}.

8.4.4 Conclusion: Recruitment Fraud

Both the Guatemalan and the Honduran cases are examples of portable justice served at home after help from the GWJA to do the practical work of gathering evidence and taking the cases to court. Even though the cases were pending at the time the prospect for redress was good.

\textsuperscript{222} http://www.globalworkers.org/our-work/successes/2014-year-review
\textsuperscript{223} Mats Wingborg, Villkoren för utländska bärplockare säsongen 2014, Arena Idé, November 2014, p. 10.
\textsuperscript{224} Mats Wingborg, Villkoren för utländska bärplockare säsongen 2014, Arena Idé, November 2014, p. 12.
Commercial berry picking in Sweden differs greatly from other trades because anyone in the country can pick berries for free due to _allemansrätten_ (the right of public access to the woods). The industry is divided into two systems with visa employed pickers and free pickers\(^\text{225}\). This paper only deals with visa employed Thai pickers. Since employed pickers are hired by a Thai recruitment company and not directly by the Swedish berry picking company, they do not have to pay any taxes in Sweden\(^\text{226}\). Swedish blueberries contain very high levels of antioxidants and have become a highly priced commodity in the cosmetics and health supplement businesses\(^\text{227}\). The chain in the berry picking industry looks as follows: Asian (Thai) recruitment companies ➤ Swedish berry picking companies ➤ Wholesalers ➤ Asian producers of cosmetics and health supplement\(^\text{228}\). Several contracts are signed along the way with the first one being between the Thai recruitment company and the Thai migrant worker. This contract needs to be approved by the _Thai Department of Employment_ (DOE). Contract two is signed between the Thai recruitment company and the Swedish berry picking company. The third and final contract is signed between the Thai recruitment company and The Swedish Municipal Workers’ Union\(^\text{229}\). The Swedish Municipal Workers’ Union enforced some new rules for 2014 including a guaranteed monthly wage of SEK 19,335, monthly payouts and that the berry picking company is to pay for fuel when the berry pickers are driven around the woods in search of berries. The reasons for the decline in number of Thai berry pickers compared to 2013 were both the stricter reviews by the Migration Board of applications and the fact that there were still a lot of frozen berries in storage from the 2013 season\(^\text{230}\). Despite efforts to help Thai berry pickers with further regulations in Sweden many actually got exploited pre-departure because of the new rules and lost money to Thai recruitment company Kontana. Polvision reimbursed the workers some of the money but all of them ended up in debt without even setting foot in Sweden\(^\text{231}\). Partial portable justice was served.

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\(^{227}\) Mats Wingborg, _Mors Lilla Olle - Så exploateras asiatiska bärplockare i de svenska skogarna_, Swedwatch rapport #41, June 2011, p. 19.

\(^{228}\) Mats Wingborg, _Mors Lilla Olle - Så exploateras asiatiska bärplockare i de svenska skogarna_, Swedwatch rapport #41, June 2011, p. 31.


8.5 Main Exploitative Harm: Slavery or Imprisonment

8.5.1 Construction Worker “Ayush” (2014)

Thirty-one-year-old Ayush and nine other Nepalese construction workers all want to go back to Nepal but are stuck in Qatar because the Indian construction subcontractor who employed them has not been paid yet for one of his contracts with a Qatari construction company. Hence the subcontractor himself is trapped and not able to pay salaries dating back one to three months, the tickets back home to Nepal or the end of contract benefits he owes the ten men. Treated like animals they are all stuck in poor housing with bad food and non-potable water to drink232.

8.5.2 Conclusion: Slavery or Imprisonment

The case of construction worker Ayush and his nine colleagues clearly involve issues of contract violation, wages and benefits, confiscation or withholding of documents and unsanitary living. In reality, since the ten men cannot go back to Nepal, they are imprisoned like slaves in Qatar. Starting with national laws this situation is a severe violation of Qatari Labour Law No. 14 of 2004, Articles 65 and 66 concerning wages and Article 103 concerning provisions of good hygiene, good ventilation and drinkable water. The Qatar Foundation Mandatory Standards (QFMS) of Migrant Workers’ Welfare for Contractors Sub-Contractors of 2013 is obviously violated in several sections including: section 10. Fundamental Principles, section 12.4 Personal Documents, and section 13. Accommodation. Also the SCWWS is violated in section 10. "Payment of Workers and in section 11. Termination, Completion of Employment and Repatriation. In addition the case demonstrates violations of some of the most fundamental rights of the UDHR including Article 4 and the prohibition of slavery and Article 5 stating that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The practical ability to gain portable justice is clearly non-existent in this case since the men cannot even leave Qatar for Nepal. Also the case of the Nepalese workers striking in section 8.2.4 of the paper indicates unlawful imprisonment.

### 8.6 Main Exploitative Harm: Trafficking


In the introduction of this paper a case of a trafficked Guatemalan man was mentioned. His name is Leopoldo Santos Catu and together with eleven other men he was recruited in Guatemala in 2006 and granted a guest worker visa to plant pine trees in North Carolina for a United States Company for a good wage. The men were packed into a van after arriving and instead driven to Connecticut only to end up in forced labor for one of the biggest retailers of bushes and plants in the United States, Imperial Nurseries. The men were forced to work almost 80 hours per week for minimal wages and they were denied medical care. They had to live in a shack without beds and their passports were confiscated to prevent escape. Additionally threats of deportation and jail were made if the men complained about the situation. After fleeing back to Guatemala without his passport, Leopold contacted a Global Workers advocate who helped to put together a legal team within two days to free the other workers as well. In the end all the workers won damages for an undisclosed amount and gained permanent visas to stay in the United States. All six claims in the lawsuit were settled as shown below.

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<th>Claim Result</th>
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<td>Migrant and Seasonal Agricultural Worker Protection Act (MSPA)</td>
<td>Settled</td>
</tr>
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</table>

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236 [http://www.globalworkers.org/content/assisting-trafficking-victims](http://www.globalworkers.org/content/assisting-trafficking-victims)
237 Table created by author.
8.6.2 Human Trafficking (2008)

A mother who had been trafficked to New York was frantic to make sure her daughter back in Mexico did not fall in the hands of the same human traffickers that had victimized her. The mother and daughter were close to reunification in 2008 after several years apart, through the help of Mexican family law experts\(^{238}\).

8.6.3 Conclusion: Trafficking

The mother who had been trafficked to New York had yet to be reunited with her daughter back in Mexico and had not received any redress for her ordeal. Only with the practical help of Mexican legal experts was her situation changed. The case shows violation of the Trafficking Protocol. As for Alexander Aguilar v. Imperial Nurseries several exploitative harms due to trafficking where experienced by the twelve men including contract violation, forced labor and slavery like conditions, injuries and lack of medical aid, unsanitary living, confiscation of passport and wage issues. Luckily with the practical help of the GWJA all the men won their civil claims of monetary compensation and also obtained permanent visas through the settlement. In this case national United States laws were sufficient in providing portable justice as shown in the table.

8.7 Main Exploitative Harm: Wage Issues

8.7.1 H2-B Workers (2008)

Hundreds of Guatemalan landscapers working in the United States in the guest worker program with H-2B visas had their wages stolen. A law school human rights clinic went to Guatemala to work in collaboration with Global Workers Defenders in Chiquimula and together they helped the migrant workers, who many times lived in remote parts of the country, to retrieve the money stolen from them. Through local knowledge the Defenders in Oaxaca, Mexico also helped a larger number of Mexican H2-B apple pickers who had been working in Washington State to get unpaid wages owed to them\(^{239}\).

\(^{238}\) http://www.globalworkers.org/content/2008-glance
\(^{239}\) http://www.globalworkers.org/content/2008-glance
8.7.2 Reclaiming Stolen Wages (2009)

United States advocates asked for assistance from Global Workers Defenders in several cases during 2009. The Defenders traveled through rural and mountainous parts of Guatemala and Mexico to obtain testimonies and fill out forms for claims of recovered stolen wages and high illegal fees paid prior to departure to the United States. Through this transnational cooperation migrant workers who had trimmed lawns in Washington, cleaned floors in Philadelphia and planted pines in forest in the south of the United States all recovered overtime and minimum wages they lawfully owned\textsuperscript{240}.

8.7.3 Mexican Restaurant Worker (2011)

A Mexican woman working for a restaurant in the United States was not receiving her wages. A legal service organization that was trying to help the woman could not reach her after she returned to Mexico despite endless attempts. After contacting Global Workers the organization was introduced to the local Defender in Mexico and the woman could finally receive the tens of thousands of dollars the restaurant owed her\textsuperscript{241}.

8.7.4 Thai Berry Pickers in Sweden I (2010)

In October of 2010 the Swedish berry picking company Lomsjö Bär AB went bankrupt after the owners had emptied the company accounts and fled abroad, without paying the employed 156 Thai migrant berry pickers their wages\textsuperscript{242}. Kommunal (the Swedish Municipal Workers’ Union) who had organized some of the workers litigated the case and for the first time ever the state guarantee of salaries in bankruptcies was used in a case involving foreign berry pickers. The Thai berry pickers were assured two monthly wages each amounting to SEK 36,000 (approximately $4,300) in total, based on a 40-hour working week. However no overtime wages were paid even though many pickers had worked more than twelve hours a day, six to seven days a week. The Swedish state paid out more than SEK 5.6 million. The

\textsuperscript{240} http://www.globalworkers.org/content/2009-glance

\textsuperscript{241} http://www.globalworkers.org/our-work/successes/2011-highlights

\textsuperscript{242} Mats Wingborg, Villkoren för utländska bärplockare säsongen 2014, Arena Idé, November 2014, p. 12.
Swedish Embassy in Bangkok got the responsibility to also reimburse some of the 156 Thai berry pickers who had already went back to Thailand.243

8.7.5 Thai berry Pickers in Sweden III (2012)

In 2012 there were a total of 5760 issued work permits from the Swedish Migration Board for berry picking in Sweden and all applications came from Thai nationals.244 After the 2012 season one of the berry picking companies, Polarica, had their ombudsman make a review of the past year by asking the Thai berry pickers themselves. The season provided fewer berries than normal and aside from the pricing of the berries more than half of the pickers thought they had been given sufficient information about the job before leaving Thailand. Most pickers were also happy with the treatment upon arrival in Sweden and agreed that the housing and services were much better than previous years. The review also showed that 96 percent of the Thai pickers had made enough money to pay off any debts, to buy machines to use in the rice fields back in Thailand, to invest in their local businesses and to renovate or build new houses. As many as 92 percent of the questioned berry pickers said they planned to go back and work for the same company again in for the 2013 season.245

8.7.6 Thai Berry Pickers in Sweden IV (2013)

In 2013 there were a total of 6198 issued work permits and visas from the Swedish Migration Board for Thai workers berry picking in Sweden. The season proved to be a huge disappointment for many pickers as a new scandal in Lesjöfors and Hällnäs was revealed. Much alike the scandal in the 2010 season (see section 8.7.4) the Thai pickers had been cheated off their wages. They were employed by the Thai recruitment company Phoenix Enterprise who performed the picking for the company Ståhl Plantering & Röjning AB. Buyer of the berries was Latvian wholesaler Sparlats. At the end of the season some Thai pickers were accused of selling berries to another buyer and as a result a notice was put up where the pickers were housed with the message “We renounce all responsibility for your loans and money, since you have violated the contract”. As a result all the workers went to Umeå

243 Mats Wingborg, Mors Lilla Olle - Så exploateras asiatiska bärplockare i de svenska skogarna, Swedwatch rapport #41, June 2011, p. 18.
and set up camp on a parking lot outside the local office of the Swedish Municipal Workers’ Union. One of the Thai pickers committed suicide fearing a return to Thailand with huge debts. Once back in Thailand 263 of the deceived pickers started a legal process and the Swedish Municipal Workers’ Union also started a process in Sweden for 46 of the Thai workers who had joined them. The Thai pickers said they had not gotten paid at all, while Phoenix Enterprise said they had been paid they could not provide any documentation proving the payout of wages. Instead the company threatened the workers they would have lifelong debts unless they renounced any claims of unpaid wages. In a settlement all debts were eliminated and a few workers also had a smaller amount paid to them. According to the Thai pickers’ representative in Thailand around SEK 5 million in unpaid wages “disappeared”\textsuperscript{246}.

8.7.7 Conclusion: Wage Issues

All the migrant workers in the cases under section 8.7.1 to 8.7.3 had lawful claims of stolen or unpaid wages. Their accessibility to portable justice was achieved when the GWJA’s ability to locate exploited migrant workers, in remote parts of Guatemala and Mexico, once again proved to be the essential practical key. All the workers finally got the wages they had earned.

Before the 2012 berry picking season the new policies the Swedish Migration Board adopted in 2011 were updated. As an employer you now had to: “Show that you are able to provide guidance to the people you employ or hire in their work and organize transport, room, board and other practical matters in a manner that is customary for the industry and describe your planning in writing, present all costs for which the person you employ or hire is liable and produce documentation that you have informed about the job, the terms of employment offered, legal right of access to private land and traffic regulations in Sweden”. The Swedish Migration Board also started cooperating with Arbetsmiljöverket (the Swedish Work Environment Authority), Skatteverket (the Swedish Tax Agency) and Polisen (the Swedish Police)\textsuperscript{247}. Looking at the reviews from the Thai berry pickers working for Polarica, the new updates of policies from the Swedish Migration Board seem to have a good impact on the

\textsuperscript{246} Mats Wingborg, Villkoren för utländska bärplockare säsongen 2014, Arena Idé, November 2014, pp. 13-14.
working situation for the pickers. Almost all of the pickers were able to pay back loans and other debts as well as investing in agricultural machines and local businesses and building houses in Thailand. It can be concluded that it was a good year for the Polarica pickers and nearly all of them intended to go back again the following year.

In contrast, both the 2010 and 2013 berry picking season proved to be disastrous for many Thai berry pickers. Although not receiving all the money they had earned since overtime wages were not included, the 156 cheated pickers from the Lomsjö scandal, luckily got substantial help from the Swedish Municipal Workers' Union and the Swedish State and were in the end reimbursed with SEK 36,000 per person. Also pickers who had already returned to Thailand were located by the Swedish Embassy in Bangkok to receive their money and obtain portable justice. The new scandal in Lesjöfors and Hällnäs in 2013 did not have the same happy ending as the Thai recruitment company, Phoenix Enterprise, stole SEK 5 million from their employed pickers and in the end only cleared the pickers’ debts. Despite a good year for most pickers in the 2012 season the updated policies from Swedish Migration Board were still toothless against the exploitative manners of Phoenix Enterprise in 2013. Thai national laws could not help the pickers either. Even more saddening was the suicide committed by one of the pickers whilst still in Sweden. In the end the 156 Thai pickers of 2010 got portable justice through an unusual legal move by the Swedish State and the practical help from both the State and the Swedish Municipal Workers' Union. Only partial portable justice was served for the 2013 pickers.
CHAPTER 9 - Final Analysis and Conclusions

9.1 Accessibility to Portable Justice Today

The assumption made in the first chapter was that portable justice is accessible for everyone globally and that it can be used to battle the injustices millions of migrant workers are exposed to yearly. The application of portable justice was expected to have both a retroactive and a proactive side, working to secure redress for exploitation already experienced as well as pushing for precautionary measures in the shape of legal reforms and heavier sanctions against deceitful and cruel employers. The two-sided nature of portable justice was illustrated through the presentation of cases in the previous chapter, but unfortunately the author’s confident belief of present global accessibility to portable justice was turned into a somewhat anticlimactic realization, as the presentation progressed, that portable justice is not nearly as available as it ought to be.

9.2 National Legal Rights

All three developed countries in the study have significantly different national statutes and rules in place to help and protect migrant workers and assure them basic human rights and labor rights. Qatar with its Labour Law No. 14 and the recently drafted Supreme Committee Workers’ Welfare Standards and the Qatar Foundation Mandatory Standards appear to have a remarkably stable and potent framework for protecting migrant workers. The immense number of dead Nepalese construction workers in Qatar in the last few years tells a different story. The hollowness of the Qatari national labor laws is at best disheartening if not frightening in a human rights perspective. Both the SCWWS and the QFMS are fairly new additions and seem to have been drafted only to serve as a facade to alleviate some recent pressure from the world community and to mollify the temper of the World Cup 2022 critics. Either way, the soaring fatality rate of Nepalese migrant construction workers in Qatar preceded both charters hence they are not the root of the problem but rather just cloaking quick fixes. The real villain is the Kafala system guarded by Law No. 4, the Qatar Sponsorship Law. Tying the migrant workers to a specific employer and taking total control of their rights, legal status and movement is as close to modern day slavery as one can come. Just to show the contrast, Article 34-39 of the Qatari Constitution of 2004 provides (at least in text)
protection of basic human and civil rights and all citizens are equal in rights and duties of general nature. There should be no discrimination based on religion, language, ethnic origin or gender and everyone has the right to family privacy and individual privacy. “Innocent until proven guilty” is the motto in criminal cases. Personal freedom is also inviolable and citizens cannot be deported from the Country, nor banned to return to Qatar. In a country with about 2 million inhabitants and Qatari nationals only making up 10 percent of the population and migrant workers around 80 percent, protective laws based solely on citizenship are really a mockery to the vast majority. The fact that Qatar is the richest country in the world when looking at the gross domestic product based on purchasing-power-parity per capita leaves a bitter taste in ones’ mouth when contrasted with the International Trade Union Confederation’s Global Rights Index ratings of 2014. With a rating of 5 Qatar falls in the category of countries where there is no guarantee of rights, thus making it one of the worst countries in the world to work in.

The Foreign Employment Act and the Foreign Employment Rules of Nepal appear to provide effective tools for enforcing migrant workers’ rights but just like the Qatari laws there are glitches, even though not nearly as severe as in Qatar. The biggest problems seem to be in the relationship between the workers and the recruitment companies and both the FEA of 2007 and the Rules of 2008 are rather ambiguous. The recruitment business needs to be better regulated. The Nepalese government must take responsibility for the widespread unemployment in Nepal that forces so many of its nationals to seek employment abroad. The situation in Nepal must be acutely dire for so many to leave, something that the International Statistical Institute’s list over developing countries highlights. Where the gross domestic product based on purchasing-power-parity per capita puts Qatar on top as the richest country in 2013, Nepal finds itself in spot 166 out of 184 countries. With an average yearly income of only $1,347.62, or remarkably low 11.3 percent of the $11,905 Gross National Income per capita per year set forth by the World Bank in 2013 as the number which determines if a country is developed or developing, many Nepalese workers must live in extreme poverty to prefer facing the highly probable risk of exploitation in Qatar. A strange fact about both the FEA of 2007 and the Rules of 2008 is that they are noticeably “responsibility-centered” and declare what the different parties can and cannot do, but they fail to mention the rights of the workers except in the preamble.
The national labor law framework in Sweden concerning third country migrant berry pickers has been progressively updated since the abolition of the labor market test in December 2008 and the introduction of Government Bill 2007/08:147 to facilitate the recruitment of labor from third countries and to make the labor migration system more effective and flexible. The case of the 156 Thai berry pickers in the 2010 Lomsjö scandal had a somewhat satisfactory outcome for the pickers as the Swedish State stepped in and for the first time paid third country berry pickers through state guarantee of salaries in bankruptcies. Missing out on overtime wages the pickers still received SEK 36,000 per head, including pickers who had already returned to Thailand. The 2010 incident creative the incentive for the 2011 adoption of new policies for third country berry pickers by the Swedish Migration Board, like guaranteed salaries and obligation on foreign recruitment companies to register local branches in Sweden. Updates of the 2011 policies in 2012 included several obligations for employers and the Swedish Migration Board started collaborations with the Swedish Work Environment Authority, the Swedish Tax Agency and the Swedish Police, providing for a good year for the Thai berry pickers as many of them declared in the yearly review from berry picking company Polarica. Despite the 2011 and 2012 efforts to ensure and expand the rights of Thai berry pickers, the 2013 season saw Thai recruitment company Phoenix Enterprise cheat their employees of SEK 5 million in unpaid wages. There was a sharp descent in number of issued work permits and visas for Thai berry pickers in the 2014 season (3339) compared to the 2013 season (6198). Reasons mentioned in Chapter 8 for this plunge were stricter reviews of application by the Migration Board as well as a surplus of frozen berries from 2013. The author believes that at least two more reasons played a role in the descent, the first being the deterrent effect of the 2013 scandal to even go to Sweden for berry picking, and the second being the stricter rules of 2014 for the berry picking companies to pay guaranteed monthly wages of SEK 19,335 with monthly payouts and to pay for fuel. Increased cost for employers equals less incentive to hire foreign workers since they are not as cheap labor as before. In the International Trade Union Confederation’s Global Rights Index ratings of 2014 Sweden scores a rating of 1, with only irregular violations of collective labor rights and comes in at spot fifteen in wealthiest countries in the world as of 2013 with an average yearly income of $42,037.48. The primary inducement for Thai berry pickers to go to Sweden is that the picking season is in between harvesting seasons in Thailand and therefore gives a chance for extra income.
It is very hard to overview the national labor laws of the United States since all the different states have their own regulations. What can be concluded however is that the main federal protective statute MSPA 29 U.S.C. Section 1802(8)(B)(2), §213 of the Fair Labor Standards Act on standards for minimum wages and the employee right of the National Labor Relations Act to join or form labor unions all exclude domestic and agricultural workers. For migrant and seasonal agricultural workers, the so called Immigration and Nationality Act is also applicable for H-2A and H-2B visas. The national labor laws of El Salvador, Guatemala and Mexico all demand for foreign recruitment companies to pay visa and transportation costs and register work contracts with the Ministries of Labor, but there are implications of systematic violations against these rules in the United States Guest Worker program. Unfortunately the United States show a similar pattern of income versus the Global Rights Index as Qatar, with a seventh place in the world 2013 and an average yearly income of $51,248.21, but a rating of 4 in the Index with systematic violations of rights. The reason why 90 percent of the 65,345 issued H2-A migrant work visas for agricultural workers and 73 percent of the 50,009 issued H2-B migrant work visas for non-agricultural workers for the United States in 2011 belonged to Mexican nationals can most likely be explained by the “reformative” labor legislation in Mexico from March the same year.

1. **How can national labor law reforms and increased sanctions against exploitative employers promote the universal use of portable justice?**

This was the first supporting question of the hypothesis in this paper and the answer is strikingly simple: By following the new law! Even though Qatar, Sweden and the United States have notably different legal backgrounds and great variances in historic, economic, social and political structures, the court systems are still similar in their construction with three levels of instances. The major difference of Qatar contrasted with the United States and Sweden is the discretionary system where the Emir has the final say in enactments and drafting of laws. New laws are only effective if they are enforceable! As the International Trade Union Confederation concluded in their Special Report, The Case against Qatar, Host of the FIFA 2022 World Cup, the SCWWS depend on self-audits by the contractors and have safety and health regulations impossible to implement. Also the QFMS is impossible to enforce. The Foreign Employment Act and the Foreign Employment Rules of Nepal also give the impression of ineffective mechanisms for enforcement. In Sweden the law and policy
makers for berry picking by third country nationals appear to be exceedingly reactive in their approach rather than proactive. Despite exploitative occurrences, with only a ten point list of obligations for anyone who wish to employ Thai berry pickers, the system in Sweden still appears much more satisfactory than that of Qatar with its extensive but unenforceable regulations. The Swedish State has also showed care and responsibility for cheated Thai berry pickers, like in the Lomsjö case back in 2010, compared to the complete disregard for migrant workers’ welfare shown by the Qatari government. The Thai Recruitment and Job-Seekers Protection Act seems outdated or weakly enforced and most likely need an update.

The national legal right of the accessibility to portable justice is largely shut down for the majority of migrant workers in this study due to infirm or non-existent enforcement of existing national labor laws. The author does not believe that a certain rule or law successful in one legal system or country necessarily can or should be adopted by another country or legal system. However the intended result and actual effectiveness of a specific statute in one country could definitely be copied in terms of normative claims acceptable within the domestic legal system of the second country. Any necessary modifications of a statue to fit into the second country’s unique domestic legal system are welcomed, i.e. draft whatever laws you like but make sure to enforce them with the intended result as the outcome. In the same way updated sanctions, with for example higher fines and withdrawn business licenses in case of violation, are only effective if the employers know they will be enforced. Weak implementation of such rules will erase the efficacy of the intended preventive effect.

### 9.3 International Legal Rights

2. How can international labor conventions promote the universal use of portable justice?

This was the second supporting question of the hypothesis in this paper and the answer is very similar to that of question one: By following the statutes of the convention! However there is a big difference between a national law that should be enforced automatically and a convention that needs ratification to legally bind a country to apply it. International labor standards by the International Labour Organization are either nonbinding recommendation used for guidance or legally binding international treaties in the form of ratified conventions.
Herein lies the problem. Unratified conventions are just as toothless as the recommendations since they do not obligate a country to act a certain way. The most eye-opening fact in section 7.1.1 of this paper might be that the United States has only ratified two of the eight conventions the Governing Body of the ILO has recognized as fundamental. Another problem is the almost complete lack of ratifications by the countries in this paper of the particularly relevant Migration for Employment Convention and Migrant Workers (Supplementary Provisions) Convention. Guatemala has ratified the first convention and Sweden the second. Just like a national labor law, a convention can only have a preventive effect on migrant worker exploitation if the enforcement can be secured. The first crucial step is ratification. The particularly important Migrant Worker Convention from the United Nations is only ratified by Honduras, El Salvador, Guatemala, Mexico and Nicaragua. On the good side is that all countries compared in this paper are parties to the Universal Declaration of Human Rights as well as the Trafficking Protocol with the exception of Nepal for the latter.

9.4 Practical Ability

3. Are there any other measures that need to be taken to ensure that transnational migrant workers worldwide can realize their right and ability to achieve portable justice when needed?

The third and final supporting question of the hypothesis in this paper is probably the most complex and involves overcoming practical obstacles like lack of knowledge of local rights and means, lack in language skills and return to the country of origin for the migrant workers. Lacking the mentioned skills and not being able to attend the court in the country of employment often times lead to exploitation like the different issues mentioned in the cases in Chapter 8. Under the condition that there is either an enforceable national statute or an enforceable international convention or protocol, the accessibility to portable justice can be achieved through the realization of the practical ability of the migrant workers. The GWJA’s main goal is to bolster legal access by expanding legal networks through the Defender Network. The author believes this is the game plan to be adopted worldwide. Globalization calls for increased transnational collaboration between lawyers, human rights organizations and governments in order to secure the protection and rights of future migrant workers.
CHAPTER 10 - Recommendations for Future Portable Justice

10.1 General Recommendations

The main question of the hypothesis in this paper was: Since portable justice has been successfully implemented in several labor law cases involving Latin American workers working in the United States, how can it also be used as triumphantly in other areas of the world in similar cases but involving different legal systems? The author believes that the answer is to update and review national labor laws and rules and to ensure their enforceability, as well as enabling help for migrant workers to overcome practical obstacles through pre-departure education on rights and additional support from human rights organizations and governments. All countries in this study need to have cooperation between lawyers of the country of employment and lawyers of the migrant sending countries. Additionally lawyers in the sending countries need to learn about relevant national labor law in the country of employment like the Defenders and Advocates in the GWJA’s Defender Network. International conventions also need to be ratified and enforced.

10.2 Specific Recommendations

Qatar

- Redraft the Constitution of Qatar to also include all migrant workers and not only its citizens. There should be no differentiation or categorization of people when it comes to human rights and everyone in Qatar should enjoy the same protection.

- Abolish the Kafala system.

- Redraft the SCWWS and the QFMS in unenforceable parts and enforce both charters.

- Create an international monitoring system for both the SCWWS and the QFMS.

- Have Qatar ratify the Freedom of Association and Protection of the Right to Organise Convention of 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention of 1949 (No. 98).
Nepal

- Oversee the FEA of 2007 and the Rules of 2008 to clean up the recruitment industry and to ensure protection for migrant workers both pre-departure and after returning to Nepal.

Sweden

- To avoid the situation of Thai berry pickers indebting themselves like in the 2014 season even before they go to Sweden there should be rules preventing the Thai recruitment companies to demand money before the workers receive their issued work permits.

- To avoid the situation of Thai berry pickers being cheated of wages like in the 2010 and 2013 season, wages should be locked secure in a Swedish bank account until they have been paid out.

Thailand

- Oversee The Thai Recruitment and Job-Seekers Protection Act for a possible new revision and better enforcement (last revision 2001).

The United States, Mexico and Central America

- Provide the Ministries of Labor in the migrant sending countries with the names of local recruiters.

- Increase the knowledge of migrant workers’ about the H2-A and H2-B visa programs through pre-departure education.

- Increase the United States Government’s control over the United States Guest Worker Program.

CHAPTER 11 - Bibliography

11.1 Articles


- **60** Roy Georgiades for Al Tamimi & CO, The Court Structure in Qatar, September 2012.


  Available at: [https://agenda.weforum.org/2014/09/top-10-competitive-economies-asia-pacific/](https://agenda.weforum.org/2014/09/top-10-competitive-economies-asia-pacific/)

- **92** Aashima Singh at Listovative, Top 15 Most Developed Countries in the World, March 2014.


11.2 Author’s Creations

- **13** Scheme created by author (Portable Justice)

- **89** Table created by author (Thai Court System)

- **118** Scheme created by author (Portable Justice Developed)
Spreadsheet created by author (Cases Categorized)

Table created by author (Alexander Aguilar v. Imperial Nurseries).

11.3 Books


11.3.1 Central Intelligence Agency (CIA)


• 78 Central Intelligence Agency (CIA), *The World Factbook, Sweden*, 2015.
Available at: https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_sw.pdf

Available at: https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_th.pdf

11.4 Case


• 234 http://www.law.umich.edu/clinical/HutrafficCases/Pages/CaseDisp.aspx?caseID=429

11.5 Definitions

• 14 Definition unskilled labor.
Available at: http://www.investopedia.com/terms/u/unskilled-labor.asp

• 15 Definition de lege ferenda.
Available at:
http://unterm.un.org/dgaacs/unterm.nsf/8fa942046ff7601c85256983007ca4d8/5ab065a083f125cb85256e700053075f?OpenDocument

• 17 Definition common law.
Available at: http://legal-dictionary.thefreedictionary.com/Common+law

• 18 Definition Islamic law.
Available at: http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-musulman.php

• 19 Definition civil law.
Available at: https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html

• 25 Definition functional equivalence.
Available at: http://medicaldictionary.thefreedictionary.com/functional+equivalence

• 27 Definition case law.
Available at: http://www.uscourts.gov/Common/Glossary.aspx
• 30 Definition stare decisis.
   Available at: http://legal-dictionary.thefreedictionary.com/stare+decisis

• 33 Definition customary law.
   Available at: http://www.businessdictionary.com/definition/customary-law.html

• 77 Definition due process.
   Available at: http://legal-dictionary.thefreedictionary.com/Due+Process+of+Law

• 93,95 Definition developing country.
   Available at: http://www.isi-web.org/component/content/article/5-root/root/81-developing

• 94 Definition GNI per capita
   Available at: http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

11.6 Global Workers Justice Alliance (GWJA)

• 1 http://www.globalworkers.org/

• 99,101 http://www.globalworkers.org/about-us/our-team

• 100,102,103 http://www.globalworkers.org/about-us/our-story

• 104,106,113 http://www.globalworkers.org/our-work/our-programs

• 110 http://www.globalworkers.org/sites/default/files/2014_GWJA-YIR_FINAL.pdf

• 111,114,115 http://www.globalworkers.org/advocates/advocate-services

• 112 http://www.globalworkers.org/advocates/defender-network

• 210 http://www.globalworkers.org/content/securing-medical-care-abroad

• 211,238,239 http://www.globalworkers.org/content/2008-glance

• 212 http://www.globalworkers.org/our-work/successes/2010-glance

http://www.globalworkers.org/content/2009-glance


http://www.globalworkers.org/content/assisting-trafficking-victims


Figures taken from Global Workers.
Available at: http://www.globalworkers.org/visa-pages


Global Workers Justice Alliance, in conjunction with the Immigrant Justice Clinic at American University Washington College of Law, *Submission to the UN Committee on Migrant Workers Regarding the List of Issues to be Adopted for Mexico’s Second Periodic Review*, March 2011.


• 201 Global Workers Justice Alliance responds to the “Call for Comments” on the United Nations Secretary-General’s Report on International Migration and Development, June 30 2006, Submitted by Cathleen Caron, Executive Director, Global Workers Justice Alliance.

11.7 International Statutes

11.7.1 United Nations (UN)

• 3,190 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.
  Available at: http://www2.ohchr.org/english/bodies/cmw/cmw.htm

• 191 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (Ratifications).
  Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en


  Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en

• 195,199 Universal Declaration of Human Rights (UDHR) of 1948.
  Available at: http://www.un.org/en/documents/udhr/

  Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx
• **International Covenant on Civil and Political Rights (ICCPR) of 1966.**

11.7.2 International Labour Organization (ILO)


• **Eight Fundamental Conventions.**

• **Table taken from ILO, Eight Fundamental Conventions (Ratifications).**
  Available at:


11.8 Legal Systems

- 9 http://www.fifa.com/

- 20 Map taken from ChartsBin. 
  Available at: http://chartsbin.com/view/aq2

- 26, 57 http://chartsbin.com/view/aq2


- 29 http://www.usa.gov/Agencies/federal.shtml

- 31 Table taken from Gonzaga University School of Law. 
  Available at: http://libguides.law.gonzaga.edu/case-law


- 42 http://www.helplinelaw.com/article/nepal/85

- 43 http://www.nyulawglobal.org/globalex/Nepal.htm

- 46 http://www.history.com/topics/constitution

- 47 http://constitution.findlaw.com/amendments.html


- 61 Map taken from Destination360. 
  Available at: http://www.destination360.com/central-america/central-america-map
11.9 National Statutes

- **Qatar’s Constitution of 2003.**
  
  Available at: https://www.constituteproject.org/constitution/Qatar_2003.pdf

- **Fair Labor Standards Act of 1938.**
  
  Available at: http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf

- **National Labor Relations Act of 1935.**
  
  Available at: https://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17_Final.pdf

- http://www.dol.gov/whd/immigration/

- http://www.dol.gov/opa/aboutdol/lawsprog.htm#migrant
• 139 http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-organizacion-y-funciones-del-sector-trabajo-y-prevision-social

  Available at: http://dohape.dfa.gov.ph/images/Logo/forms/LABOUR-LAW-STATE-OF-QATAR.pdf

• 153 Supreme Committee Workers' Welfare Standards of 2014.

• 154 Qatar Foundation Mandatory Standards of 2013.
  Available at: http://www.qf.org.qa/app/media/2379

• 155,156 Law No. 4 of 2009, Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship.
  Available at: http://www.brasembdoha.com.qa/files/Law_No%204-2009_%20Lawyer_translation.pdf


• 170 http://www.government.se/sb/d/3083/a/114169

• 172,174,177 Swedish Migration Board, Special Rules For Certain Occupations and Citizens of Certain Countries, Berry Pickers.
  Available at: http://www.migrationsverket.se/English/Other-operators-English/Employers/Special-rules-for-certain-occupations-and-citizens-of-certain-countries/Berry-pickers.html

• 173 http://www.government.se/sb/d/12386/a/241031
11.10 Newspapers


11.11 Publications


11.12 Reports


- http://www.oecd.org/newsroom/swedishlabourmigrationreformworkingwellbutneedsmoremonitoringsaysoecd.htm


Available at: http://www.ituc-csi.org/IMG/pdf/survey_ra_2014_eng_v2.pdf


Available at: http://www.refworld.org/pdfid/4ee9b1e12.pdf

11.13 Sources in Swedish

Available at: http://www.svensktnaringsliv.se/migration_catalog/rapport-guld-i-grona-skogar_533541.html/binary/Rapport:%20Guld%20i%20gr%C3%B6na%20skogar

Available at: http://www.regeringen.se/content/1/c6/10/43/28/9e8dd282.pdf

Available at: http://www.swedwatch.org/sites/default/files/swedwatch_-_mors_lilla_olle_2.pdf


Available at: http://www.swedwatch.org/sites/default/files/swedwatch_-_mors_lilla_olle.pdf

11.14 Speech, Video and Scholars

1 Nelson Mandela from, *Speech on Receiving the Freedom Award from the National Civil Rights Museum*, November 2000.
Transcript available at:
http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS919&txtstr=22%20November
• 4 Cathleen Caron, Founder and Executive Director of the Global Workers Justice Alliance, Video from Greenwich Retired Men’s Assoc., October 11, 2013. Video available at: https://vimeo.com/76738730

• 21 W.J. Kamba, Lecturer in Comparative Law at University of Dundee.

• 23 John C. Reitz, Edward Carmody Professor of Law and Director of Graduate Programs and Visiting Scholars at University of Iowa and Director of the American Society of Comparative Law.