



**Board of Directors**  
Robert Ruecho', President

**Central Office**

Lee Pliscou, Executive Director  
1218 Capitol Hill  
P.O. Box 5551 CHRB  
Saipan MP 96950  
Tel: 670-322-6472/73  
Fax: 670-322-7101  
E-mail: [lee@mlscnet.org](mailto:lee@mlscnet.org)

**Chuuk Office**

Derensio Konman, Directing Attorney  
P.O. Box D  
Weno, Chuuk FM 96942  
Tel: 691-330-2597/5597  
Fax: 691-330-4445  
E-mail: [derenkonman@mlscnet.org](mailto:derenkonman@mlscnet.org)

**Ebeye Office**

Roseann Muller, Trial Assistant  
P.O. Box 5189  
Ebeye, MH 96970  
Tel: 692-329-5118  
E-mail: [roseann@mlscnet.org](mailto:roseann@mlscnet.org)

**Kosrae Office**

Canney Palsis, Directing Attorney  
P.O. Box 38  
Tofol, Kosrae FM 96944  
Tel: 691-370-3032  
Fax: 691-370-2232  
E-mail: [cpalsis@mlscnet.org](mailto:cpalsis@mlscnet.org)

**Majuro Office**

William Fife III, Directing Attorney  
P.O. Box 198  
Majuro, MH 96960  
Tel: 692-625-8227/28  
Fax: 692-625-5119  
E-mail: [william.fife@mlscnet.org](mailto:william.fife@mlscnet.org)

**Marianas Office**

Jane Mack, Directing Attorney  
P.O. Box 500826  
Saipan MP 96950  
Tel: 670-234-6243/7729  
Fax: 670-235-6101  
E-mail: [janemack@mlscnet.org](mailto:janemack@mlscnet.org)

**Palau Office**

Ron Ledgerwood, Directing Attorney  
P.O. Box 57  
Koror, Palau PW 96940  
Tel: 680-488-2473/74  
Fax: 680-488-1899  
E-mail: [ronledgerwood@mlscnet.org](mailto:ronledgerwood@mlscnet.org)

**Pohnpei Office**

Salomon Saimon, Directing Attorney  
P.O. Box 129  
Kolonias, Pohnpei FM 96941  
Tel: 691-320-2404/3762  
Fax: 691-320-2164  
E-mail: [s.miquelsaimon@mlscnet.org](mailto:s.miquelsaimon@mlscnet.org)

**Yap Office**

John Mootmag, Directing Attorney  
P.O. Box 206  
Colonia, Yap FM 96943  
Tel: 691-350-2193  
Fax: 691-350-2467  
E-mail: [jmootmag@mlscnet.org](mailto:jmootmag@mlscnet.org)

## Human Rights Challenges for the Most Vulnerable Workers in Palau

A report prepared by Micronesian Legal Services Corporation  
for the U.N. Human Rights Council

In response to the 2015 Periodic Report of the Republic of Palau

### MLSC BACKGROUND

This report is submitted by Micronesian Legal Services Corporation (“MLSC”), which is a regional non-profit organization with offices throughout Micronesia and its central headquarters in Saipan, Commonwealth of the Northern Mariana Islands (CNMI). The mission of MLSC is to promote equal access to justice and to provide high quality civil legal assistance to low income people. MLSC believes that government and institutions should be accountable even to the most vulnerable among us; that those who need legal services the most should get the highest quality assistance to better their lives; and that justice and fairness for all, even the poor, should be the standard not only in our courts but in every community.

While MLSC’s work does not explicitly include human rights advocacy, we have become a de facto legal service provider in this area due to the scarcity of other options in Palau, especially with regards to violations of workers’ rights and human trafficking. MLSC is the only organization in Palau that provides free civil legal services and representation to vulnerable populations, including the large foreign worker population.

Based on the foregoing, and in coordination and consultation with other NGOs in Palau that will be providing information on other thematic areas, MLSC submits its feedback specifically on the areas of human trafficking and vulnerable workers.

### INTRODUCTION

1. Since the last reporting period, the government has made great strides in protecting foreign workers by passing a minimum wage law with strong enforcement mechanisms in 2013. However, the effect of this achievement is still being determined. Due to uncertainties regarding the application of this new law, and inconsistent or inadequate enforcement of labor laws generally, MLSC has noticed a high incidence of noncompliance with labor laws in the private sector. Most cases that come to MLSC involve migrant workers. Because of the inability of migrant workers to change employers except in limited circumstances (explained further below), many workers face termination and subsequent repatriation to their country of origin (usually the

Philippines or Bangladesh) if they complain about their work conditions. Some private sector employers who employ migrant workers are able to disregard or manipulate applicable labor laws, and simply fire and repatriate workers who complain and replace them with others.

2. MLSC believes that isolated workers such as farm workers and domestic workers need increased protection against human rights abuses. However, those workers are not covered by the new minimum wage laws, and therefore may face higher levels of abuse and exploitation. Some domestic workers experience economically abusive relationships, where they receive de minimus pay and work long hours. Some employers confiscate workers' passports or use threats of deportation to maintain control over their employees. Although the Constitution of Palau prohibits indentured servitude, many of these workers still suffer these conditions.
3. MLSC commonly sees elements of human and labor trafficking, as defined by the Penal Code, in the labor cases we handle. Many migrant workers have recounted to MLSC that they agreed to employment positions and terms with recruiters in their countries of origin, only to arrive to Palau to find very different terms. Upon arrival, some are housed in isolated conditions and have their passports confiscated by their employers. Some workers, typically women from the Philippines, are required to work in brothel-bars where they are forced to perform sexual acts to earn a livelihood. Migrant workers and victims of trafficking are often not aware of their rights in Palau or how they can seek help upon arrival, and so many remain in abusive and exploitative employment relationships for long periods of time.

## **SPECIFIC FEEDBACK ON UPR RECOMMENDATIONS ACCEPTED IN 2011**

1. **Improve the situation of migrant workers (Rec 61/15,61/36,61/53,61/54,61/55,61/56)**

### ***Minimum Wage Law***

The Labor Code (Title 30 of the Palau National Code) was repealed in 2013 and its provisions re-codified under Title 13 (Citizenship and Immigration) and Title 33 (Public Employment). The most significant inclusion in Title 13 is the minimum wage law, which became effective on October 1, 2013. 13 PNC §1025. This is a significant achievement to improve the situation of migrant workers because it removed the previous exemption which permitted employers to pay migrant workers a lower minimum wage than Resident (Palauan) Workers.

Despite the broad scope of the new law and strong enforcement mechanisms, many employers in the private sector are not in compliance with the minimum wage law. Some employers elect to pay employees a monthly salary with no limit to the hours they require them to work. Other employers have found loopholes to the minimum wage law which sometimes results in employees being paid less than what they were paid prior. For example, employers paying the minimum wage are authorized to take into account and deduct from the employee's wages the reasonable and actual cost of providing food and housing. Currently though, there is

no statutory guidance as to what constitutes “reasonable.” Some employers therefore utilize these legally authorized deductions, along with other unauthorized deductions and/or penalties, in order to unilaterally and freely reduce their employees’ wages.

In addition, the lack of overtime laws and maximum work hour laws mean that employers can require their employees to work excessive hours without additional compensation.

A further concern is that although the minimum wage applies to Palauan workers in the private sector, there is a lack of other general labor protections and laws applicable to Palauan workers. Because the minimum wage law is conflated with immigration laws in Title 13, there is a lack of awareness that it also applies to Palauan workers. Therefore, some Palauans working in the private sector also face exploitation and long work hours.

### ***Concerns Regarding Exceptions to Minimum Wage Law***

There are five explicit exceptions to the minimum wage law. Most concerning of these exceptions are the following: (1) Up to two individuals employed as farmers by a single employer; and (2) Up to two individuals employed as domestic helpers, caretakers, babysitters, or house boys. Based on MLSC’s experience, those working in the second category are predominantly Filipina women.

As such, these categories of workers are subject to the Division of Labor Rules and Regulations, which only require that unskilled workers be paid \$100 net per month (Regs. 7.1(b)). For a typical work schedule of 48 hours per week, this pay results in wages of .48 cents per hour. However, most of these workers work much longer hours- sometimes 14 to 16 hours per day- because they are under the direct and continuous control of their employers. These employees end up earning almost nothing per hour, and have no viable recourse. Employees who complain are most often faced with either threats or actual termination and subsequent repatriation.

Because of the correlation between domestic work and forced labor and exploitation, MLSC recommends that these workers be provided with extra protection and that their minimum salary be increased significantly from \$100 per month.

## **2. Combat human trafficking (focusing on children) (Rec 61/38)**

Please note that MLSC’s feedback does not focus on children because MLSC is unaware of cases involving the trafficking of children.

### ***Legal Achievements***

Palau’s recently updated Penal Code now includes detailed provisions regarding human and labor trafficking, including the following:

- Chapter 20 focuses on labor trafficking, which broadly includes providing or obtaining labor or services through the use of force, extortion, fraud, deception, etc. Labor trafficking also includes requiring labor or services to be performed to repay a real or

alleged debt, if performing the labor or services is the exclusive method allowed to do so (17 PNC §2001(a)(7)).

- Chapter 20 also includes the offense of intentional non-payment of wages (§2005), with a separate offense for each pay period (§2005(c)).
- Chapter 21 codifies the Anti-People Smuggling and Trafficking Act, and contains offences related to the following:
  - People Smuggling, referring to assisting or arranging illegal entry into Palau (17 PNC §3903); and
  - People Trafficking, which broadly includes recruiting, transporting, transferring, harboring or receiving a person for the purposes of exploitation (sexual servitude, prostitution, forced labor or services, or slavery) by threat, use of force, abduction, fraud, deception, etc (17 PNC §3906), including a separate offence for child trafficking (17 PNC §3907).

### *Enforcement Challenges*

MLSC represents many individuals whose experiences contain elements of human and labor trafficking as defined in the Penal Code. For example, in the past year alone, MLSC has represented at least 11 individuals (against two employers) in their claims for labor violations, where there are also trafficking violations. These cases almost uniformly involve women from the Philippines who agreed to work in Palau as waitresses, and then were required to work in brothel bars/gentlemen clubs on arrival in Palau. Many of these employees had their passports confiscated by their employers and were told they had to repay an arrival debt to their employers, and thus had no choice but to remain under their employer's control.

Human trafficking and labor trafficking are codified in the Palau criminal code and thus can only be charged and prosecuted by the Palau government through the Office of the Attorney General. Therefore, in these cases, MLSC has both initiated the criminal charges with the Bureau of Public Safety (BPS) and/or the Attorney General's Office (by accompanying our clients to file the reports), and has closely cooperated with those entities to promote a full investigation.

However, in MLSC's experience, there seems to be obstacles or sometimes a reluctance to pursue and prioritize these cases. Regarding the reports against two employers mentioned above, for one employer the Attorney General's Office notified MLSC in July 2015 that there was insufficient evidence to support a prosecution, despite detailed accounts (including forced sexual acts) from four victims of trafficking made in 2014. For the second employer, MLSC is working closely with the CID (criminal investigation division) to support its pending investigation, in hopes that the employer will be charged under the relevant Penal Code provisions. Given the broad scope of the penal code provisions, MLSC has found ample evidence to support bringing charges. However, the extent of the government's investigation is unclear and it is uncertain whether the Attorney General's Office will bring charges.

3. **Take measures to protect victims of trafficking by providing shelters and facilitate the process in order for victims to be witnesses against traffickers in court (Rec 61/37)**

### ***Lack of Emergency Support Services to Victims of Trafficking***

Victims of trafficking who choose to file claims (either administrative, civil or criminal) are typically terminated by their employer (the alleged trafficker) and therefore no longer have a source of livelihood or a place to stay. Currently in Palau, there are no shelters for these victims or any coordinated emergency support services. These individuals are faced with the challenge of daily survival- often staying with friends in small rooms that house migrant workers- because they are unable to work legally while their civil or criminal case is pending, as described further below.

### **Employment Transfers for Victims of Trafficking and/or Labor Violations**

The biggest obstacle faced by victims and witnesses in trafficking cases is that they are subject to the same stringent employment transfer exception as all other migrant workers. If the allegations of trafficking are against their employer, as they often are, termination and attempted repatriation are nearly certain. In order to stay in Palau, these individuals need to be able to support themselves, and thus require an expedited and streamlined path to transferring their employers.

Foreign workers are permitted to transfer employment in extremely limited circumstances, (RPPL 7-16), and are not entitled to transfer employers if they bring a labor complaint or a civil lawsuit for labor violations, *even if* the Division of Labor or the court finds that the employer was in violation of labor laws. Foreign workers are also not entitled to transfer if they report claims of trafficking to the government or file a civil lawsuit for trafficking. Therefore, their status as witnesses or complainants is tenuous- under the current laws, employees who bring labor claims or trafficking charges against their current employers either get fired and repatriated or, if they are to work at all, still have to work for those employers.

Any employment transfer in these cases is left to the discretion of the Division of Labor and in some MLSC cases, it has taken an extraordinary amount of time and effort to coordinate and advocate for these transfers.

Further, victims of trafficking who are able to transfer are sometimes faced with an ‘occupation change’ fee of \$300 assessed by the Division of Labor, even when their change in occupation is a result of the trafficking they were subjected to. For example, someone might sign a contract in the Philippines to work as a waitress in Palau, but then be trafficked to Palau to work under contract as an ‘entertainer.’ Once the individual is able to transfer employment to actually work as a waitress, that individual would have to pay a fee for the change to the Division of Labor (often through the employer), effectively being punished for being trafficked.

### **RECOMMENDATIONS**

1. A meaningful commitment to raising awareness and education around employment rights of both migrant workers and Palauan workers. As far as MLSC knows, no relevant

government agency distributes any ‘Know your rights’ information or conducts community outreach regarding labor rights or human trafficking.

2. Passing comprehensive labor law reform which includes across the board minimum entitlements, including statutorily set hours of work and entitlements to overtime compensation, annual leave, sick leave, and entitlement to public holidays.
3. The promulgation of updated rules and regulations for the Division of Labor, in accordance with 13 PNC §1034, in consultation with relevant civil society actors such as MLSC and Palau Chamber of Commerce, with a specific focus on improving the rights and conditions of migrant workers. Specifically, the regulations should provide further protections and rights to afford meaningful access to justice for the most vulnerable workers such as farm workers, domestic helpers, and victims of human trafficking. Based on MLSC’s research, the Division of Labor rules and regulations have not been updated since 2005.
4. Review the employment transfer rules and include a new exception to streamline transfers for those who have active labor complaints, civil lawsuits for trafficking offenses, or bona fide reports of trafficking to the Bureau of Public Safety.
5. Establish a national strategy to combat human and labor trafficking as defined by the relevant Penal Code provisions, including:
  - a. Better coordination between the Division of Labor and the Attorney General’s office to identify, investigate and properly prosecute trafficking cases;
  - b. Providing training to Bureau of Public Safety (including police and CID) regarding the new Penal Code provisions addressing human and labor trafficking;
  - c. An active and meaningful effort by the government (such as a dedicated assistant attorney general) to prioritize bringing charges against employers under applicable provisions of the Penal Code and to utilize statutory penalties against employers to deter noncompliance;
  - d. Raising public awareness and discourse around trafficking and human rights issues more generally;
  - e. Providing information to foreign workers upon arrival (while being processed by immigration officials) regarding trafficking and specifically how to seek help and safety if they find themselves subject to trafficking conditions; and
  - f. The creation or coordination of emergency support services for victims of trafficking, including shelter.
6. Ongoing meaningful consultation and coordination with civil society organizations, including more streamlined information sharing and dissemination to civil society organizations to enable participation in subsequent UPR and other human rights reporting processes.

## **SUPPLEMENTAL SOURCES**

Republic of Palau: Desk Review of Labor-related Legislation, Lazar Associates Ltd., September 5, 2014 (prepared for ILO Suva) (hereinafter “ROP Desk Review”), 3