



Training on the Protection of Migrant Workers Abroad: PROTECTING HUMAN RIGHTS

PARTICIPANTS MANUAL

ILO AND DEPLU
TRAINING ON THE PROTECTION OF
MIGRANT WORKERS ABROAD:
PROTECTING HUMAN RIGHTS

PARTICIPANTS MANUAL

FOREWORD

The cooperation between the Center for Education and Training of the Department of Foreign Affairs of the Republic of Indonesia and the International Labor Organization (I.L.O.) Office in Indonesia on the Training for the Protection of Migrant Workers is indeed a significant milestone towards protection of the rights of Migrant Workers. While strengthening the responses of the Indonesian Embassies and its Consular staff in their country of assignment, it also provides the adequate legal tools required for these operations.

The six modules on the Protection of Migrant Workers prepared by the I.L.O. comprehensively cover all aspects regarding the issues faced by Migrant Workers, and has proven to be instantly applicable on an operational level. The 3-day Regional Workshop in Kuala Lumpur has been considered highly beneficial by the Indonesian Embassies and Consulates involved. Therefore, we are increasingly eager to further equip more Foreign Service personnel with these enriching I.L.O. training materials.

Training modules on the protection of Indonesian nationals and migrant workers have always been offered at the Center for Education and Training of the Department of Foreign Affairs, integrated into the Junior Diplomatic Course, Mid-Career Diplomatic Course, as well as the Senior Diplomatic Course. However, for the first time this year, these existing curricula will be further enriched with I.L.O. training material to create what we believe to be the most updated and empowering Module on the Protection of Migrant Workers and Nationals to date.

This project has been supported by the I.L.O. Office in Jakarta. I am looking forward to explore future opportunities to once again cooperate with the I.L.O., keeping in mind that protection of Migrant Workers is a serious issue that we have to deal with on a daily basis. Yet with the help and support from the I.L.O., I am confident this will be a challenge which we are all able to resolve and prevent successfully.

Jakarta, 1 March 2006

(signed)

Nadjib Riphat

Head of the Center for Education & Training
Department of Foreign Affairs
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INTRODUCTION

This training curriculum has the broader goal of trying to prevent exploitation of domestic workers in Asian destination countries, by ensuring they have access to swift and sensitive support and assistance from their embassies. The Philippines and Indonesian Governments have requested a training curriculum be developed to strengthen the response mechanisms available to domestic workers in destination countries by ensuring embassy officials are well-trained and have a comprehensive understanding of the issues.

The training is a practical tool so that embassy officials can better understand the complex situations that migrant domestic workers face, and know best how to respond to these situations, especially how to protect them from trafficking and forced labour.

Aims:

The training curriculum aims to:

- Strengthen the response of embassies to nationals who are domestic workers and find themselves in trafficking, forced labour and other abusive situations in the country of destination.
- Equip Foreign Service personnel with the tools to deal effectively with specific cases and situations as well to engage in more long-term measures to prevent trafficking and forced labour from occurring.
- Raise awareness of embassy and consular staff as to:
 - ◆ human and labour rights of domestic workers and how those rights are violated including gender, trafficking and forced labour issues
 - ◆ possible existing laws protecting these rights at destination and origin
 - ◆ Short and longer term measures embassies can and should take to protect domestic workers, especially those in situations of forced labour and trafficking.

Participants:

The course is aimed at both Indonesian and Philippine Foreign Service personnel, who are currently working in/or are about to be posted to, countries with a high number of domestic worker nationals. Specifically those posted to Hong Kong SAR, Malaysia and Singapore will be the first target for the curriculum, though the curriculum should also be useful to those posted to other countries such as in the Middle East. 'Local hires' engaged by the embassies at the destination will also be encouraged to undertake this training by the self-taught CD Rom. It is envisaged each participant will undertake the training on a 'once-off' basis.

Mode of Delivery:

Each country (i.e. Philippines or Indonesia) is responsible for training its own embassy staff; there are no joint trainings between Philippines-Indonesia envisaged. For Indonesian participants, the course will be delivered in a 3 day training workshop for approximately 10 -15 participants (over 3 consecutive days).

Methodology:

The training course will be participatory and use learner-centred approaches to achieve course objectives. In Indonesia, the course will be administered by a core trainer (facilitator) and various subject area specialists will deliver relevant modules. These specialists include Deplu officials, returned embassy personnel, NGOs from sending and receiving countries and returned migrant workers. The trainer is responsible for the learning process while the Specialist is responsible for the content. The core trainer (facilitator) will be from the Deplu Centre for Education and Training (?)

Administration:

The Deplu Centre for Education and Training will take overall responsibility for the administration of this course in Indonesia.

Assessment:

The course will be assessed at the end of each module through a brief multiple choice test/quiz that will test the main learning objectives. In order to be able to move onto the next module, the participant must be able to answer all the questions correctly. If they answer incorrectly, they must understand what the correct response is and why. Participants must pass each aspect of the course to reach the next module. At the end of the training, participants who are successful will receive a certification of completion.

Acknowledgements:

We would like to express thanks to Asian Migrant Centre, Asia Pacific Mission for Migrants, Indonesian Migrant Worker's Union and Kotkiho as well as the various returned domestic workers and NGOs in Indonesia and the Philippines who assisted us by sharing their experiences working abroad, especially their experiences at embassies. To protect the confidentiality of those involved, we do not identify each case by organisation or by country. , The International Catholic Migration Committee and ACILS kindly shared key documents and training materials with us which we have reproduced in this curriculum. We would also like to thank Christian Action Domestic Workers Programme for providing information pertaining to the laws of Hong Kong.

Thank you very much to those consular and diplomatic officials in Hong Kong and Singapore and returned officials working in Philippines and Indonesia who shared their time and experiences.

DESCRIPTION OF MODULES

Factual case studies

Each of the case studies mentioned in this training curriculum is based on true factual narratives as told to us by domestic workers, embassy staff, government officials and non-governmental organisations.

Module 1: Context: The situation of migrant domestic workers in Asia and FSO responsibilities

Module Rationale

This module begins by setting out the problems migrant domestic workers have in receiving countries. Domestic workers facing such problems will usually contact their embassy for information, advice and assistance. Participants are reminded of their obligations under international standards and foreign policy to protect and assist all nationals, especially those in need.

The module asks participants to think deeply about where migrant domestic workers come from, why they travel abroad, the kind of work they do and why they might face difficulties, such as abuse, trafficking and forced labour at destination. Reminded of these issues, participants should be better equipped to serve domestic workers as clients in the embassy.

Summary of Aims

The module aims to:

- Ground participants as to the reality of the problems migrant domestic workers face abroad
- Explain why domestic workers are vulnerable to suffering exploitation and abuse in different ways
- Reinforce the responsibility to provide assistance to all nationals, including domestic workers and especially victims of abuse.

Module 2: Trafficking, forced labour and exploitation faced by domestic workers

Module Rationale:

This module introduces the definition of human trafficking under the UN Trafficking Protocol. It is essential for participants to understand this definition and the distinctions between trafficking, smuggling, debt bondage and forced labour before they can successfully complete other modules.

The module asks participants to consider various vulnerabilities and problems domestic workers face, particularly in destination countries, by looking at case studies. Participants are invited to consider the problems as human rights violations for which States, both host and sending governments, are accountable. Therefore, as representatives of the State, participants should recognize their own role in protecting human rights of domestic workers.

Summary of Aims:

The module aims to:

- o Explain and distinguish between domestic workers who are trafficked, smuggled, held in forced labour, debt bondage or otherwise exploited
- o Explain the various types of human rights violations faced by domestic workers during the migration process
- o Describe how the State is responsible for protecting domestic workers from such violations, both the origin and destination country

Module 3: Rights in the law

Module Rationale:

After recognising trafficking and other abuses of domestic workers as human rights violations, Module 3 introduces participants to a rights-based approach to combat trafficking. Participants are introduced to the 4 'P's in any comprehensive anti-trafficking strategy. They are then invited to consider what laws can be used to prosecute traffickers and protect victims of trafficking and migrant domestic workers generally, in countries of origin and destination. The module aims to show how legal frameworks are an important part of the anti-trafficking response and why FSP should make themselves aware of the relevant laws of destination and origin. This is so that FSP can assist migrant domestic workers in a faster, more effective manner, especially those who suffer from trafficking and forced labour.

Module Objectives:

- Ground participants in a rights-based approach, so as to know the impact of human rights in laws and policies affecting migrant workers
- Aid in identification of various laws and policies that can protect migrant domestic workers in sending and receiving countries
- Explain laws that can be used to prosecute trafficking and prevent abuses of domestic workers

Module 4: Immediate assistance: Short term strategies that protect human rights

Module Rationale:

This module gives participants an opportunity to reflect on their own work, and how to apply the principles learnt in Modules 1-3 in the assistance they give to domestic workers. Participants are invited to critique different approaches and responses by FSP to domestic workers, from a rights-based perspective. Participants are also given guidance on appropriate interview techniques and procedures to follow when dealing with victims of severe exploitation, such as trafficking, forced labour and sexual exploitation. The module stresses the importance of networking with others and suggests how FSP can involve others to deal effectively with the various needs of domestic workers who are leaving abusive situations.

Module Objectives:

- To know what kind of assistance is required by nationals and how best to provide it
- To understand the special needs of victims of abuse and trafficking and deal with all migrant workers sensitively

- To understand the importance of working with others to provide immediate assistance

Module 5: Long term strategies to protect human rights

Module Rationale:

This module asks participants to think about the longer term solutions to the trafficking problem, and what steps they can take to alleviate trafficking and other abuses of domestic workers through recommending appropriate policy changes, monitoring legislation and working with others such as the Host Government, other embassies and NGOs. Participants should understand the role NGOs and trade unions can play in protecting domestic workers and see them as allies rather than foes. This module will also look at some considerations in the return of migrant domestic workers to provide economic security in the long term and decrease the risk of trafficking upon return.

Module Objectives:

- To understand what kind of long term strategies embassy staff can be involved in to protect migrant workers rights
- To know who are partners of the embassy at destination to develop these strategies
- To know different ways of working with the host government to bring about change

Module 6 and Implementation of Learning

Module Rationale

The Learning Implementation Plans for Day 1, 2 and 3 ask participants to think critically and deeply about how they will apply what they are learning in their job/post. The learning implementation plans and later learning assessment plans will be a core monitoring mechanism to evaluate the effectiveness of the training. In Module 6, summarised learning plans are shared with participants to consider feasibility, obstacles, resource implications and indicators to measure successful implementation of the learning. In addition, a monitoring form is suggested for embassy staff to apply in post and report quarterly using quantitative indicators to measure assistance provided to domestic workers.

Module Objectives

- To apply what is learnt in the training to jobs in the field and have a clear and specific plan of action with measurable objectives.
- To monitor the level of impact of the training in the medium-term on the work practices of embassy staff.

AGENDA

Day 1		
8.30 - 9.00	Registration	30 min
9.00 – 10.00	Introduction to training	60 min
10.00 – 10.45	Module 1: Context: The situation of migrant domestic workers in Asia and FSO responsibilities (Video presentation)	45 min
10.45 – 11.00	Break	15 min
11.00 – 12.00	Module 1: Context: The situation of migrant domestic workers in Asia and FSO responsibilities	60 min
12.00 – 1.00	Lunch	60 min
1.30 – 2.30	Module 2: Trafficking, forced labour and other forms of exploitation faced by domestic workers	60 min
2.30 – 2.45	Break	15 min
2.45 – 4.00	Module 2: Trafficking, forced labour and other forms of exploitation faced by domestic workers (cont)	75 min

Day 2		
9.00 – 9.30	Recap of Day One	30 min
9.30 – 10.45	Module 3	75 min
10.45 – 11.00	Break	15 min
11.00 – 12.00	Module 3 (cont)	60 min
12.00 – 1.00	Lunch	60 min
1.00 – 2.30	Module 4:	90 min
2.30 – 2.45	Break	15 min
2.45 – 4.00	Module 4:	45 min
4.00 – 5.00:	Questions and Implementing our Learning (see Module 6)	60 min

Day 3		
9.00 – 9.30	Recap of Day One and Two	30 min
9.30 – 10.45	Module 5	75 min
10.45 – 11.00	Break	15 min
11.00 – 12.00	Module 5 (cont)	60 min
12.00 – 1.00	Lunch	60 min
1.00 – 1.30	Module 5: Knowledge Review	60 min
1.30 – 3.00	Module 6: Monitoring, follow up and implementation	90 min
3.00 – 3.15	Break	15 min
3.15 – 3.45	Finalising learning implementation form	30 min
3.45 – 4.30	Evaluation of training and close	45 min

HOW TO USE THIS MANUAL

This Manual follows the chronological sequence of various exercises in the course, module by module. The Manual contains all the information you need for the 3 day course. Annexes after each Module consist of the essential and recommended reading to be done prior to completing the module.

This manual is a loose-leaf file because during the course you will receive some handouts which should be inserted into the relevant module.

The manual is colour-coded:

- White – curriculum documents
- Blue – annexes (reading materials)
- Yellow – handouts (answers to the exercises)

INTRODUCTORY SESSION

Timeframe: 60 minutes

1. Icebreaker and Partner Introduction
2. Objectives of this Training
3. Expectations and Resources:
4. Rules to be observed during the training:
 - ♦ No Smoking
 - ♦ No Mobile telephones switched on
 - ♦ Please be punctual
 - ♦ Do not engage in side discussions
 - ♦ Do not fall asleep
 - ♦ Don't monopolise the conversation
 - ♦ Everyone should participate
 - ♦ Value other people's opinions
 - ♦ Treat each other with respect
 - ♦ Anything else?

MODULE 1: Context: The situation of migrant domestic workers in Asia and FSP responsibilities

Timeframe: 1 hr 45 minutes

Module learning outcomes

By the end of this module, the participant will be able to:

- Understand domestic workers are sometimes victims of abuse and therefore needs special protection from embassies.
- Explain why women migrate to work as domestic workers
- State at least 3 reasons why domestic workers are especially vulnerable to exploitation
- Identify the standards under which Foreign Service Personnel (FSP) have a responsibility to protect domestic workers abroad

Outline of Module:

1. PowerPoint presentation - Aims of module 1 [5 min]
2. Video presentation– ACILS (20) and IOM Power to Choose (20) [40 min]
[Break]
3. Small group discussion (15 min)
4. Feedback in plenary (10 min)
5. PowerPoint presentation on who goes, push and pull factors, feminization of migration, why vulnerable to exploitation and why relevant to FSP (10 min)
6. Myth or reality exercise [10 min]
7. Quiz on reviewing responsibilities (15 min)
8. Knowledge review [homework]

Annex 1:

Essential reading:

1. Responsibilities under the Vienna Conventions on Diplomatic and Consular Relations
2. Responsibilities under Indonesian foreign policy
3. Case of Maria Fe
4. ILO, An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers, GENPROM, Booklet 1, Geneva, 2002, 1, pp.9-22.

Aims:

- ♦ Why do domestic workers need of protection from embassies?
- ♦ Why do women migrate to work as domestic workers?
- ♦ Why are domestic workers especially vulnerable to exploitation and abuse?
- ♦ How do Foreign Service Personnel (FSP) have a responsibility to protect domestic workers abroad?

Video Presentation

Read Maria Fe's case. Consider video and case study before answering the following questions:

Group work:

- ♦ Where do migrant domestic workers come from in Indonesia?
- ♦ Why do they go abroad?
- ♦ Why are they vulnerable to exploitation and abuse?
- ♦ What is our role to help them?
- ♦ Imagine if what happened in the video happened to you daughter or your sister. What would you do? How would you feel? Do you think the problems they have are their fault? Why/not?

(15 minutes)

Who works as a migrant domestic worker?

According to research study about Indonesian domestic workers in Hong Kong*:

- ♦ Average age is 26 years (tough a previous study found that most Indonesian workers were 21 years)
- ♦ 58% are single, 34% are married and 5% widowed
- ♦ 54% have no children
- ♦ 47% have completed junior high school levels of education only
- ♦ 34% have completed high school
- ♦ Only one of 1,017 respondents has graduated from university
- ♦ 45% have worked abroad before
- ♦ Most have worked in Hong Kong for 2.5 years and the majority (68%) for one only one employer

* carried out by the Asian Migrant Centre in 2005

Why do they go?

SUPPLY FACTORS:

- ♦ Poverty
- ♦ Better income abroad
- ♦ Need to support family
- ♦ Gender discrimination at home
- ♦ Adventure/new experience
- ♦ Lack of employment opportunities at home
- ♦ Lack of education for other jobs
- ♦ Civil unrest or disaster
- ♦ Escaping domestic violence

Why do they go?

DEMAND FACTORS OF RECEIVING COUNTRIES:

- ♦ Unavailable local labour supply for informal sector jobs
- ♦ Developed and growing economy
- ♦ Restrictive migration policy allow migrant women access to certain unskilled and low-paid areas of the job market
- ♦ More women in developed countries are working full time

Feminisation of migration

- ♦ More women migrate than men
- ♦ Experiences for men and women migrants are different due to gender discrimination and inequality
- ♦ Women lack same work opportunities as men
- ♦ Women are more vulnerable to violence
- ♦ Women often lack protection of their labour rights

Why are domestic workers vulnerable to exploitation?

- ♦ Hidden nature of work. They usually live and work in the employer's home (they have little access to outside help)
- ♦ As women (compared with men). Women are often discriminated against in various destination countries. For example, they lack equal rights to men and may have less access to information or services or equal protection under the law
- ♦ Lack of legal protection of domestic work. Domestic work is often unvalued and in many countries lacks the same protection under laws and policies as other formal sectors of work
- ♦ As migrants (compared with nationals). Migrants suffer discrimination which is sometimes expressly allowed by the State

Why is this important?

- ♦ Since many domestic workers are poor, they may be more likely to submit to exploitative or abusive working conditions
- ♦ Those who do come to the embassy for assistance generally do so either after some thinking of their options or because the situation is truly intolerable
- ♦ Domestic workers often want practical advice on how to improve their situation, not in all cases as it necessary for them to escape from it
- ♦ It is our job as embassy personnel to protect and assist domestic workers who need help.

Myth of reality?

- ♦ Domestic work is women's work
- ♦ Domestic work does not involve much responsibility
- ♦ More women migrate than men these days
- ♦ Since the supply of workers is larger than the demand, it is impossible to provide migrant workers sufficient protection of their rights
- ♦ Migrant domestic workers are better off than if they stayed in Indonesia, therefore they should not complain about underpayment or other problems

Law 39 on Placement of Indonesian workers abroad: embassy's duty to ensure migrant workers' rights to fair pay are protected in line with the destination country's law and international standards.

Quiz on Responsibilities of Foreign Service Personnel under international and national standards

1. Which of the following international instruments specify that embassies and/or consulates are obliged to protect nationals: (Tick all that apply)
 - a. Vienna Convention on Diplomatic Relations
 - b. Convention on Protection of Migrant Workers and Members of their Families
 - c. ILO Convention No 97 On Migration for Employment
 - d. Vienna Convention on Consular Relations
 - e. Convention on the Elimination of all forms of Discrimination Against Women
2. Under the Vienna Convention on Diplomatic Relations the functions of a diplomatic mission are to: (Tick all that apply)
 - a. Represent the sending State in the receiving State;
 - b. Protect the interests of bodies corporate of the sending State by all means
 - c. Protect the interests of nationals of the sending State by all means
 - d. Protect the interests of the sending State and its nationals in the receiving State (within the limits permitted by international law);
 - e. Negotiate with the Government of the receiving State;
 - f. Ascertain conditions and developments in the receiving State and report to the Government of the sending State (through lawful means)
 - g. Promote friendly relations between the sending State and the receiving State
 - h. Develop economic, cultural and scientific relationships between the States
3. Under the Vienna Convention on Consular Relations, consular functions (performed by diplomatic and consular missions include: (Tick all that apply)
 - a. protecting the interests of nationals of the sending State in the receiving State, (within the limits of international law)
 - b. helping and assisting nationals of the sending State
 - c. helping and assisting nationals of the sending State who have acted in accordance with all the laws of the receiving country
 - d. safeguarding the interests of minors and other persons lacking full capacity who are nationals of the sending State;
 - e. appropriate legal representation for nationals of the sending State before the tribunals and other authorities of the receiving State to ensure the rights and interests of nationals are upheld, in accordance line with the laws of the destination country
4. Which statement reflects your country's policy towards nationals working abroad as reflected through the actions of the embassies and consulates? (Tick one)
 - a. Protection of all nationals abroad is a core concern of the foreign policy
 - b. Protection of regular nationals is a core concern of the foreign policy
 - c. Protection of nationals is an objective of the foreign policy, but of lower priority than economic issues.
 - d. Protection of national workers is a foreign policy aim, but domestic workers are not recognised as workers.
 - e. Protection of nationals is not part of the foreign policy.

5. Under Law 39 of 2004 Concerning Placement and Protection of Indonesian Workers in Foreign Countries the Indonesian Government is obliged to:
 - a. To provide protection to Indonesian Workers during the period of time of employment abroad
 - b. To provide protection to Indonesian Workers in the period prior to working abroad and when they return
 - c. To provide protection to Indonesian Workers in the period prior to working abroad, during the period of time of employment abroad and when they return
6. Under Law 39 of 2004 Concerning Placement and Protection of Indonesian Workers in Foreign Countries the Indonesian Government is obliged to:
 - a. Guarantee the fulfilment of the rights of prospective Indonesian Workers who go to a foreign country via authorised recruitment agencies
 - b. Guarantee the fulfilment of the rights of prospective Indonesian Workers who go to a foreign country independently (without help from a job placement agency);
 - c. Guarantee the fulfilment of the rights of prospective Indonesian Workers who go to a foreign country via authorised recruitment agencies or who go independently
 - d. Make diplomatic efforts to guarantee the fulfilment of rights and protection of Indonesian Workers optimally in destination countries
 - e. a and d only
 - f. c and d only

Key learning points from Module 1

- ☐ Domestic workers are nationals and are entitled to equal protection like any other citizen regardless of sex, age, ethnicity or background.
- ☐ Domestic workers are sometimes victims of abuse and exploitation and therefore they need special protection and assistance from embassies.
- ☐ Different types of women migrate as domestic workers from Indonesia. They are often young (20s), they may or may not be married and have children themselves. A majority of domestic workers have not completed high school education.
- ☐ Women migrate as domestic workers because of various push (supply) and pull (demand) factors.

The supply factors include:

- ☐ Poverty
- ☐ Better income abroad
- ☐ Need to support family
- ☐ Gender discrimination at home
- ☐ Adventure/new experience
- ☐ Lack of employment opportunities at home
- ☐ Lack of education for other jobs
- ☐ Civil unrest or disaster
- ☐ Escaping domestic violence

The demand factors include:

- ☐ Unavailable local labour supply for informal sector jobs
- ☐ Developed and growing economy
- ☐ Restrictive migration policies allow migrant women access to certain unskilled and low-paid areas of the job market.
- ☐ More women in developed countries are working full-time
- ☐ The feminisation of migration means that more women are migrating than men and women's migration experience is different to that of men.
- ☐ Migrant domestic workers are especially vulnerable to exploitation due to their status as women (pervading gender discrimination), as migrants (who sometimes lack the same rights as citizens), because they work in the private sphere and are often unprotected by labour laws.
- ☐ Foreign Service Personnel (FSP) have a responsibility to protect domestic workers abroad under international standards such as the Vienna Conventions on Diplomatic and Consular Relations and the Migrant Workers Convention.

Knowledge Review

1. Poverty is the only reason women seek to migrate and work as domestic workers.
True False
2. Domestic workers who complain about bad working conditions should go back to Indonesia.
True False
3. Feminisation of migration means:
 - a) women don't want to migrate, but they have no choice
 - b) more women migrate than men and women's migration experience is different to men's due to gender discrimination
 - c) less women migrate than men but women suffer additional discrimination in the migration and employment alternatives
 - d) men who migrate become more feminine
4. Migrant domestic workers are vulnerable to exploitation because
 - a) they work in the home, they are women and all men lack self-control
 - b) they all work illegally and this means they don't deserve any protection
 - c) they work in the home, domestic work is not recognised as work, they face gender and racial discrimination
 - d) All of the above
5. Under Indonesian foreign policy (Law 37) Indonesian embassies are obliged to:
 - a) Foster unity and harmony amongst Indonesia citizens abroad;
 - b) Provide sense of security, protection, and legal aid to Indonesian citizens in all cases
 - c) Provide a sense of security, protection and legal aid to Indonesian citizens in conformity with national legislation and international law and practice.
 - d) a and b
 - e) a and c

ANNEX 1:

Essential reading:

- ☐ Responsibilities under the Vienna Conventions on Diplomatic and Consular Relations
- ☐ Responsibilities under Indonesian foreign policy
- ☐ Case of Maria Fe, *Regional Training Programme for Labour Attaches: Protecting Migrant Workers, Strengthening Collaboration in Asia*, Canadian Human Rights Foundation, 22-25 October 2001
- ☐ ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Workers*, GENPROM, Booklet 1, Geneva 2002, pp 9-22

Recommended reading:

- ☐ Law 37 of 1999

Annex 1: Essential Reading

1. Responsibilities under the Vienna Conventions on Diplomatic and Consular Relations

The mandate of FSOs is to protect their citizens abroad. This is clearly established as a function of consular staff in the UN Conventions on Diplomatic and Consular Relations in the 1960s, but protecting nationals has become even more important in recent years because of the huge numbers of migrant workers continuing to go overseas.

The responsibilities of consulates are established in the 2 Conventions:

- Vienna Convention on Diplomatic Relations and its Optional Protocols (1961).
- Vienna Convention on Consular Relations and its Optional Protocols (1963).

Vienna Convention on Diplomatic Relations and its Optional Protocols (1961)

Under Article 3, one of the five functions of diplomatic missions (i.e. embassies) is to protect the interests of nationals in the receiving State, within the limits permitted by international law.

Vienna Convention on Diplomatic Relations and its Optional Protocols (1961)

Article 3:

1. The functions of a diplomatic mission consist inter alia in:
 - (a) representing the sending State in the receiving State;
 - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
 - (c) negotiating with the Government of the receiving State;
 - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
 - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Vienna Convention on Consular Relations and its Optional Protocols (1963)

Under Article 3 of the **Consular** Convention, consular functions are exercised by both diplomatic and consular missions. Thus Article 5 of the Vienna Convention applies to both embassies and consulates exercising consular functions. Article 5 of the Vienna Convention sets out the consular functions, of which assistance to nationals is a repeated priority. Consular staff must protect, assist, help nationals, especially protecting the interests of minors and ensuring all nationals have appropriate legal representation to safeguard their rights and interests.

Vienna Convention on Consular Relations and its Optional Protocols (1963)

Article 3: EXERCISE OF CONSULAR FUNCTIONS

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 5: CONSULAR FUNCTIONS

Consular functions consist in:

- (a) **protecting** in the receiving State **the interests of** the sending State and of its **nationals**, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) **helping and assisting nationals**, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) **safeguarding the interests of nationals**, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) **safeguarding**, within the limits imposed by the laws and regulations of the receiving State, **the interests of minors and other persons lacking full capacity** who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, **representing or arranging appropriate representation for nationals** of the sending State **before the tribunals and other authorities** of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures **for the preservation of the rights and interests of these nationals**, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

2. Responsibilities under Indonesian foreign policy

Law Number 37 of 1999 on Foreign Relations elaborates on the specific functions of Indonesian FSOs under Chapter V. Specifically Articles 18, 19 and 21 set out that embassies are obliged to provide a sense of security, protection and legal aid to Indonesian citizens and especially if Indonesians are in danger, give them protection and assistance including repatriation at the cost of the State.

Law Number 39 of 2004 on Protection of Indonesian workers abroad state the responsibility of the Indonesian Government for protecting Indonesian workers in foreign countries while they are working as well as to use diplomatic efforts to guarantee the fulfilment of rights and protection of Indonesian workers abroad (Articles 6 and 7). Embassies shall give protection to Indonesian workers in foreign countries in accordance with national laws as well as international laws and conventions including by deploying labour attaches as appropriate (Article 78). Embassies shall supervise and monitor employment agencies at destination as well as advising and providing services to Indonesian workers. (Article 79) This service should include providing legal assistance and advocacy assistance to ensure rights are protected in line with their employment contract and the destination country's law. (Articles 80)

LAW NO. 37 OF 1999 ON FOREIGN RELATIONS

For full act go to

<http://www.deplu.go.id/2003/detail.php?doc=5395c422306ce51b08f50f75e9a9d686>

CHAPTER V

PROTECTION OF INDONESIAN CITIZENS

Article 18

1. The Government of the Republic of Indonesia shall protect the interests of Indonesian citizens and legal bodies in legal disputes with foreign missions accredited to Indonesia.
2. Such protection as stipulated in paragraph (1) shall be effected in conformity with the provisions of international law and practice.

Article 19

Missions of the Republic of Indonesia are obliged to:

1. Foster unity and harmony amongst Indonesia citizens abroad;
2. Provide sense of security, protection, and legal aid to Indonesian citizens and Indonesian legal bodies abroad, in conformity with national legislation and international law and practice.

Article 21

In the case where Indonesian citizens are threatened with real danger, the Mission of the Republic of Indonesia is obliged to give protection and assistance and to assemble said citizens in a safe area, as well as to endeavor to repatriate them to Indonesia at the expense of the state.

Article 23

Implementation of stipulations as laid down in Articles 21 and 22 shall be carried out through cooperation with the local government or the relevant government of other countries or international organizations.

LAW 39 OF 2004 CONCERNING PLACEMENT AND PROTECTION OF INDONESIAN WORKERS IN FOREIGN COUNTRIES

CHAPTER II

THE GOVERNMENT'S DUTIES, RESPONSIBILITIES AND OBLIGATIONS

Article 5

- (1) The Government shall have the duties of regulating, supervising, and controlling the organization [administration] of job placement and protection of Indonesian Workers in Foreign Countries
- (2) In carrying out its duties as referred to under subsection (1), the [central] Government may transfer/ delegate part of its authority and/ or assign and share part of its duty to provide assistance to regional [district/ city] governments according to laws and regulations. [Translator's note: The phrase 'duty to provide assistance' is here used to translate *tugas perbantuan*, meaning that one of the duties of the Government is to provide assistance [to job placement agencies as well as to regional governments] to facilitate job placement and protection of Indonesian Workers bound for employment or being employed in foreign countries, in addition to the duties enumerated under subsection (1) above. However, the word *perbantuan* normally suggests 'secondment' that usually refers to the act of the central government of sending a skilled person or an expert to work for a regional government with the intention to help the regional government in a certain matter, which, in this case, is to help the regional government in handling job placement and protection of Indonesian Workers bound for employment or being employed in foreign countries who come from the region.]

Article 6

The Government shall be responsible for improving effort to protect Indonesian Workers in foreign countries.

Article 7

In carrying out its duties and responsibilities as referred to under Article 5 and Article 6, the Government has the obligation:

- g. To guarantee the fulfilment of the rights of prospective Indonesian Workers (*calon TKI*)/ Indonesian Workers (*TKI*) who depart [go to a foreign country] via private implementers or who depart independently [on their own, without help from a job placement agency];
- h. To supervise and control the placement of prospective Indonesian Workers in jobs in foreign countries;
- i. To establish and develop an information system for the placement of prospective Indonesian Workers in jobs in foreign countries;
- j. To make diplomatic efforts to guarantee the fulfilment of rights and protection of Indonesian Workers optimally in destination countries; and
- k. To provide protection to Indonesian Workers during the period of time prior to [their] departure [to destination countries], during the period of employment [in foreign countries], and during the post-placement period.

Chapter VI:

Protection for Indonesian Workers

Article 77

- (1) Every prospective Indonesian Worker/ every Indonesian Worker going to be employed or already being employed in a foreign country is entitled to receive protection according to laws and regulations.

- (2) The protection for Indonesian Workers employed in foreign countries as referred to under subsection (1) shall be provided starting from their pre-placement [prior to their employment in foreign countries], during the course of their placement [during their employment in foreign countries], until their post-placement [until the end of their employment in foreign countries].

Article 78

- (1) The Representative Office of the Republic of Indonesia shall provide protection to Indonesian Workers during the course of their placement [employment] in foreign countries according to laws and regulations as well as international laws and conventions.
- (2) To provide more effective protection to Indonesian Workers during the course of their placement [employment] in foreign countries, the Government may establish labour attachés embedded in the Representative Offices of the Republic of Indonesia in certain foreign countries where Indonesian Workers are placed [employed].
- (3) The appointment of labour attachés as referred to under subsection (2) shall be carried out according to laws and regulations.

Article 79

In order to provide protection to Indonesian Workers during their placement [employment] in foreign countries, the Representative Offices of the Republic of Indonesia [in those foreign countries] shall provide advisory and supervisory services to and perform inspection on the representatives of private implementers for the placement of Indonesian Workers in foreign countries [which operate in those foreign countries] as well as providing advisory, and supervisory service to Indonesian Workers employed in those foreign countries.

Article 80

- (1) Protection provided to Indonesian Workers during their employment in foreign countries shall cover, among others:
- a. The provision of legal assistance according to the laws and regulations of the destination countries where the Indonesian Workers are placed [employed] and according to international laws and conventions;
 - b. The provision of advocacy service to ensure the fulfilment of the rights of the Indonesian Workers according to their work agreements and or the laws and regulations of the foreign countries where they are employed;
- (2) Further provisions/ regulations concerning the provision of protection to Indonesian Workers during their employment in foreign countries as referred to under subsection (1) shall be specified with a Government Regulation.

Case of Maria Fe Ocampo

Source: Regional Training Programme for Labour Attaches: Protecting migrant workers, p.88

1) Maria Fe Ocampo

Maria Fe Ocampo, a Filipina was legally working in Malaysia as a maid to the Croatian Ambassador in Kuala Lumpur. She came to Tenaganita after trying the known legal channels for redress.

Abuse

Maria had been raped four times by the Ambassador who also hurt her with a sharp object to coerce her into complying. The Ambassador also threatened to murder Maria and her mother if she reported him to the police.

Actions for Redress

The Philippine Embassy in Kuala Lumpur which was assisting Maria Fe, helped in procuring her visa, passport, remuneration and possessions from the Croatian Ambassador, besides aiding her in filing a police report and undergoing a medical check-up. The Consular Division of the Philippine Embassy stated that if there were a case, a public prosecutor would take on Maria's case. Maria then engaged a lawyer to defend her. The lawyer instituted civil proceedings against the Ambassador.

Outcome

The Ambassador was recalled to Croatia. The Croatian Embassy, which had also appointed solicitors earlier to handle the case, instructed the latter to stop representing the Ambassador and not to accept the writ of summons. The police stated that the investigation papers were submitted to the Head of Prosecution in the Attorney General's Office, where it was decided that on the basis of insufficient evidence, the criminal case was to be closed. Currently, Maria's lawyer has closed his file on this case. She has been violated and abused and has not received justice. Her visa, which was renewed on a monthly basis as long as the case was going on, is likely to be terminated. She is without a job, and cannot take up another employment because work permits are specific to the employment and employer stated therein. The hospital that did her medical check-up will not give her the medical report. She borrowed heavily in the Philippines and her family mortgaged the family home to pay for her way to Malaysia. Her family in the Philippines is economically dependent on her. She is emotionally and psychologically traumatised, besides being economically deprived. Ironically, she suffered all these because she decided to seek redress for the violations committed against her.

ILO

An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Workers,

GENPROM, Booklet 1, Geneva 2002, pp. 9-22

1.3 Mengapa fokus pada pekerja migran perempuan internasional?

1.3.1. Proses feminisasi dari migrasi tenaga kerja internasional

"Jaman telah berubah, dan sekarang semakin banyak perempuan bermigrasi tidak dengan maksud untuk bersatu dengan pasangan mereka, tetapi untuk mencari pekerjaan di tempat-tempat dimana sekiranya mereka akan dibayar lebih baik dibanding di negara asal mereka. Diperkirakan bahwa saat ini para migran perempuan mengisi hampir separuh dari jumlah pekerja migran di seluruh dunia. Proses 'feminisasi' ini kadang-kadang diwarnai oleh perwakilan berlebihan tentang migran perempuan dalam posisi yang sangat rentan, sehingga posisi-posisi tersebut diwarnai oleh ikatan subordinasi kuat yang terjadi antara pemberi pekerjaan dan pekerja, dan – diatas itu semua – karena sektor-sektor tersebut biasanya berada diluar cakupan perlindungan hukum dalam pekerjaan, terutama Kode Undang-undang Ketenagakerjaan" ⁴

Dimensi-dimensi jender dari migrasi tenaga kerja internasional terlalu penting untuk diabaikan begitu saja:

♦ ***Jumlah dan andil para migran perempuan besar dan semakin meningkat:***

- Pada permulaan abad ke-21, satu dari setiap 35 orang di dunia tinggal di luar negara asal mereka. Jumlah total dari pendatang ini meningkat pesat antara tahun 1965 dan 2000, dari 75 juta menjadi 175 juta. Jumlah ini termasuk para pekerja migran, para imigran tetap, para pengungsi dan para orang terlantar, tetapi tidak termasuk para migran tidak teratur yang lolos dari perhitungan resmi. Arus para migran setiap tahunnya diperkirakan antara 5 sampai 10 juta orang, termasuk para migran yang tidak tercatat.
- Menurut Organisasi Ketenagakerjaan Internasional (ILO), saat ini di seluruh dunia ada sekitar 120 juta pekerja migran beserta keluarganya. Perincian regional adalah 20 juta di Afrika, 18 juta di Amerika Utara, 12 juta di Amerika Tengah dan Selatan, 7 juta di Asia Selatan dan Tenggara, 9 juta di Timur Tengah dan 30 juta di Eropa.⁶
- Estimasi global berdasarkan jenis kelamin⁷ mengkonfirmasi bahwa selama lebih dari 40 tahun sejak 1960, jumlah migran perempuan hampir sama banyaknya dengan jumlah migran laki-laki. Bahkan pada tahun 1960, jumlah migran perempuan diperhitungkan sudah mencapai hampir 47 orang dari setiap 100 migran yang tinggal di luar negara kelahiran mereka. Sejak itu, andil para migran perempuan dari seluruh migran internasional meningkat dengan pasti, mencapai 48 persen pada tahun 1990, dan hampir 49 persen pada tahun 2000. Pada tahun 2000, prosentase migran perempuan mendekati 51 persen dari seluruh migran di negara maju, dan kira-kira 46 persen dari semua migran di negara-negara berkembang. [NKotak 1.2];
- Yang mengejutkan adalah bahwa di negara negara berkembang yang menerima para pekerja migran secara eksklusif untuk tujuan tenaga kerja sementara ⁸, andil para perempuan dalam arus migrasi tenaga kerja telah meningkat sejak akhir 1970-an. Daya tarik utama bagi para pekerja migran perempuan terletak di Asia Barat, dan juga di negara-negara Rim Pasifik di Asia Timur dan Tenggara. Di kedua kawasan ini, proporsi para perempuan dalam keseluruhan jumlah migran internasional telah meningkat dengan pasti sejak 1980. Pada tahun 2000 di Asia Timur dan Tenggara, jumlah migran

perempuan diperkirakan melewati jumlah migran laki-laki (5 juta dibanding 4.9 juta). 7.6 juta migran perempuan di Asia Barat diperkirakan merupakan 48 persen dari seluruh jumlah migran di kawasan tersebut. Satu dari perubahan terbaru yang terjadi dalam peta migrasi di Afrika adalah berkembangnya proses feminisasi, yang menunjukkan bahwa peran sosial tradisional telah sangat berubah. Mengingat dulu biasanya laki-laki yang pergi untuk mencari pekerjaan, sekarang ini makin banyak perempuan berusaha sendiri mencari kemandirian ekonomi. Saat ini jumlah perempuan Afrika yang bermigrasi adalah setengah dari seluruh jumlah para migran dari Afrika. Para dokter, para pekerja rumah tangga atau para pengusaha perempuan, mereka ini sekarang bermigrasi tidak hanya didalam batas negara mereka, tetapi juga banyak yang ke luar negeri.⁹ Yang layak dicatat dalam kasus migran perempuan Afrika adalah meningkatnya mereka yang berketrampilan tinggi. Hijrahnya para sarjana keluar negeri telah terfeminisasikan pada tahun-tahun belakangan ini, karena semakin banyak perempuan Afrika memiliki kualifikasi dan ketrampilan sama dengan laki-lakinya.¹⁰

- Estimasi tingkat nasional mengindikasikan bahwa pada tahun 2000, para migran perempuan Indonesia mewakili 68 persen dari 2,55 juta pekerja migran Indonesia yang ada di luar negeri; para migran perempuan Filipina mewakili 46 persen dari 2,945 juta pekerja Filipina yang tercatat dan 1,840 yang tidak tercatat di luar negeri; dan 75 persen dari sekitar 1,2 juta pekerja Sri Lanka di luar negeri ¹¹
- Semakin banyak pekerja yang berpindah secara global adalah perempuan yang pindah

Kotak 1.2 Prosentase migran perempuan dari jumlah total migran internasional berdasarkan daerah utama, 1960 – 2000

Daerah Utama	1960	1970	1980	1990	2000
Dunia	46.6	47.2	47.4	47.9	48.8
Kawasan yang lebih berkembang	47.9	48.2	49.4	50.8	50.9
Kawasan yang kurang berkembang	45.7	46.3	45.5	44.7	45.7
Eropa	48.5	48.0	48.5	51.7	52.4
Amerika Utara	49.8	51.1	52.6	51.0	51.0
Oceania	44.4	46.5	47.9	49.1	50.5
Afrika Utara	49.5	47.7	45.8	44.9	42.8
Afrika Sub-Sahara	40.6	42.1	43.8	46.0	47.2
Asia Selatan	46.3	46.9	45.9	44.4	44.4
Asia Timur dan Tenggara	46.1	47.6	47.0	48.5	50.1
Asia Barat	45.2	46.6	47.2	47.9	48.3
Karibia	45.3	46.1	46.5	47.7	48.9
Amerika Latin	44.7	46.9	48.4	50.2	50.5

Sumber: H. Zlotnik, "Data Insight The Global Dimensions of Female Migration", *International Migration Report: 2002*. No. E.03.XIII.4, (New York, United Nations, 2002).

sendirian (sebagai migran yang otonom), meninggalkan keluarga dan rumah untuk pekerjaan di luar negeri;

- Sebagian besar migran perempuan akhir-akhir ini terlibat dalam migrasi sementara. Tetapi banyak dari mereka ini akhirnya pergi ke luar negeri beberapa kali dalam siklus hidup mereka, mengambil serangkaian kontrak kerja, atau tinggal dan bekerja di suatu negara selama beberapa tahun dan dalam beberapa kasus bahkan menetap di negara tersebut selamanya;
- Di beberapa tempat di dunia ini, pertumbuhan “industri migrasi”, yang terdiri dari agen perekrutan tenaga kerja swasta, promotor pekerjaan luar negeri, penyedia SDM dan berbagai perantara resmi dan tidak resmi lain telah sangat memfasilitasi terjadinya migrasi tenaga kerja perempuan;
- Beberapa negara pengirim menganjurkan migrasi tenaga kerja laki-laki maupun perempuan sebagai sumber penting devisa melalui pengiriman upah pekerja;
- Laki-laki bermigrasi untuk berbagai jenis pekerjaan, mulai dari pekerjaan kasar sampai yang memerlukan ketrampilan yang tinggi. Tetapi migrasi tenaga kerja perempuan sangat bercirikan konsentrasi dalam jumlah pekerjaan-pekerjaan yang sangat terbatas yang didominasi perempuan, yang diasosiasikan dengan peran-peran jender tradisional, seperti pembantu rumah tangga dan pekerja “dunia hiburan.” Walau pekerjaan semacam ini tidak harus selalu bersifat eksploitatif, lingkungan dari pekerjaan itu sendiri sering membuka jalan menuju kerentanan tingkat tinggi terhadap penyalahgunaan dan eksploitasi, bahkan kerja paksa dan perbudakan.
- Untuk mendapatkan pengertian tentang pentingnya **migran perempuan dalam pekerjaan rumah tangga**, beberapa angka dikutip disini: di Hong Kong, pekerja rumah tangga migran berjumlah lebih dari 202.900 pada tahun 2000; ¹² antara tahun 1999 sampai Juni 2001, 691.285 perempuan Indonesia meninggalkan negaranya (angka ini menggambarkan 72 persen dari total migran yang berasal dari Indonesia) mereka terutama bekerja sebagai pembantu rumah tangga di luar negeri; ¹³ di Malaysia, terdaftar 155.000 (dan banyak lagi yang tidak terdaftar) pekerja rumah tangga migran pada tahun 2002; ¹⁴ di Itali, 50 persen dari kira-kira 1 juta pekerja rumah tangga adalah penduduk non-Uni Eropa dan di Perancis lebih dari 50 persen migran perempuan dipercayai terlibat dalam pekerjaan rumah tangga; ¹⁵
- Data mengenai para **migran perempuan di industri hiburan** atau pekerjaan seks tidak memadai. Tetapi pada tahun 2000 saja, sekitar 103.264 migran masuk ke Jepang sebagai “penghibur”¹⁶ Estimasi dari statistik resmi menyebutkan bahwa sampai sekitar 5.000 perempuan mungkin telah diperjualbelikan ke Korea Selatan untuk industri seks sejak pertengahan tahun 1990, walaupun angka yang sesungguhnya mungkin lebih tinggi. Perempuan Filipina merupakan mayoritas, tetapi angka yang cukup tinggi juga datang dari negara-negara Asia tengah. Selain itu, ada kenaikan akhir-akhir ini dalam jumlah perempuan penghibur dari Rusia, Belarus dan Ukraina. ¹⁷
- Para migran, baik laki-laki dan perempuan, sering dipakai sebagai stok penyangga untuk tenaga cadangan yang disewa ketika kekurangan, dan dipecat ketika situasi lapangan kerja memburuk:
“Dalam dunia yang berubah, status dari para migran adalah sulit. Di ekonomi maju, mereka sudah merupakan segmen tenaga kerja yang kurang terlindungi dan lebih mudah untuk digantikan, selama-lamanya sebagai elemen kelenturan dalam lapangan tenaga kerja. Di ekonomi yang sedang berkembang, dimana pekerjaan kurang, migrasi menyediakan kelenturan tambahan untuk mempekerjakan tenaga kerja dalam negeri. Para migran merupakan faktor yang lentur secara sempurna Apakah kelenturan hanya sekedar kata baru untuk eksploitasi?” ¹⁸

- ♦ ***Perubahan peran para migran perempuan di dalam keluarga dan lingkungan sosial mereka:***
 - Di beberapa tempat di dunia ini para pekerja migran perempuan telah menjadi penghasil pendapatan yang penting bagi keluarga mereka, dan penyumbang devisa untuk negara asal mereka, sering setaraf dengan para laki-laki. Di Sri Lanka, mereka ini memberikan lebih dari 62 persen dari total pengiriman uang pribadi senilai 1 milyar US dollar pada tahun 1999, bertanggungjawab untuk lebih dari 50 persen saldo perdagangan dan 145 persen dari jumlah kotor pinjaman dan bantuan asing.¹⁹
 - Gerakan mereka, sering sebagai strategi pertahanan hidup keluarga, telah diberi dorongan tambahan oleh dampak negatif program-program penyesuaian struktural, krisis-krisis ekonomi/keuangan, transisi ke ekonomi pasar, dan konflik-konflik politik di negara asal mereka;
 - Dalam konteks-konteks ini, proses feminisasi kemiskinan, dan fakta bahwa semakin banyak perempuan menjadi pencari nafkah satu-satunya dalam keluarga mereka, telah berkontribusi terhadap naiknya jumlah para perempuan yang dengan senang hati mengambil kesempatan untuk mencari pekerjaan dan mencari nafkah di luar negeri.

- ♦ ***Perdagangan dan kerja paksa perempuan dan anak perempuan-suatu keprihatinan global:***
 - Perdagangan manusia – laki-laki dan perempuan, dewasa dan anak-anak – telah berkembang sedemikian rupa dalam cakupan dan keseriusannya sehingga sekarang menjadi fokus inisiatif-inisiatif internasional, regional dan nasional dalam menentang perdagangan manusia. Walau tidak ada data pasti karena sifat dari gejala ini, diperkirakan bahwa setiap tahunnya sekitar 800 ribu sampai 900 ribu orang diperjualbelikan melewati perbatasan.²⁰
 - Yang paling memprihatinkan adalah bahwa sebagian besar korban perdagangan ini adalah perempuan dan anak perempuan yang akhirnya terpuruk dalam pelacuran dan eksploitasi seksual atau dalam bentuk lain eksploitasi tenaga kerja, kerja paksa, perhambaan hutang atau perbudakan;
 - Perempuan juga menjadi korban dari perdagangan pengantin yang dipesan lewat pos; mereka tertipu oleh penawaran perkawinan dengan orang-orang asing, hanya berakhir di kerja paksa atau bahkan lingkaran pelacuran. Ada juga kasus-kasus dimana perempuan dan anak perempuan dijual atau diperdagangkan sebagai istri ke orang asing;
 - Ada kaitan yang jelas antara perdagangan perempuan dan diskriminasi rasial: Beberapa perempuan dari kelompok ras atau etnis tertentu sebagian lebih besar mengalami perlakuan sewenang-wenang dibanding perempuan lain, sementara perdagangan sering melibatkan sikap-sikap dan persepsi-persepsi rasialis;
 - Pelanggaran HAM, termasuk hak-hak pekerja, adalah penyebab maupun konsekuensi dari perdagangan manusia;
 - Proses feminisasi kemiskinan dan pengangguran parah di negara-negara asal telah memperburuk kerentanan para migran perempuan dan anak perempuan terhadap perdagangan;
 - Kebijakan-kebijakan migrasi yang bersifat membatasi berbeda dengan kenyataan-kenyataan pasar di negara-negara asal maupun tujuan, dan kebijakan tsb mengakibatkan terjadinya peningkatan jumlah mereka yang bersedia mengambil risiko untuk diselundupkan dan/atau diperdagangkan. Di satu sisi, prospek kerja dan perbedaan upah yang dapat sangat jauh berbeda, sehingga walaupun kemungkinan harus menanggung resiko-resiko yang ada, menjadi suatu tawaran yang menarik bagi masing-masing migran. Di sisi lainnya, Juga karena ketidak-seimbangan yang terjadi membuat perdagangan dan penyelundupan pekerja migran menjadi “bisnis” yang sangat menguntungkan.

- Disamping itu pertumbuhan di banyak negara yang terjadi dalam industri seks, yang terlihat namun secara hukum dibatasi, telah meningkatkan permintaan atas migran perempuan yang tidak berada dalam pengawasan maupun pengontrolan peraturan, dan dengan demikian semakin tinggi risiko dapat dieksploitasi.

♦ **Perbedaan jender dalam pengalaman migrasi:**

- Faktor-faktor yang menimbulkan migrasi perempuan dan yang mempengaruhi akibatnya adalah berbeda dengan faktor-faktor yang terkait dengan migrasi laki-laki;
- Kebijakan-kebijakan dan peraturan-peraturan dalam imigrasi dan emigrasi sering tidak peka-jender dan tidak netral-jender dalam maksud ataupun dampaknya.²¹ Kebijakan-kebijakan dan peraturan-peraturan sering mereproduksi dan memperbesar ketidaksetaraan sosial, ekonomi dan budaya yang ada antara kaum perempuan dan laki-laki yang terjadi baik di negara-negara asal maupun tujuan;
- Penyamarataan yang berlebihan/salah persepsi bahwa “laki-laki bermigrasi, perempuan diperdagangkan” dapat menimbulkan prasangka tambahan pada kebijakan-kebijakan migrasi;
- Dampak-dampak dari dinamika lapangan kerja bersifat selektif berdasarkan jender, ras atau asal etnis, serta status migran di negara-negara asal dan tujuan;
- Penyesuaian untuk hidup dan menyatu di negara asing sering lebih sulit bagi para migran perempuan dibanding bagi laki-laki, khususnya bagi mereka yang datang dari latar-belakang konservatif dan dilindungi. Mereka biasanya memiliki akses terbatas atau bahkan tidak sama sekali ke pelayanan-pelayanan penunjang yang cocok dengan budaya mereka atau yang menggunakan bahasa mereka.
- Penyatuan kembali sesudah pemulangan mereka ke negara-negara asal seringkali adalah suatu proses yang sangat sulit, khususnya ketika migran perempuan dihadapkan pada masalah keluarga yang disebabkan oleh perpisahan mereka dengan keluarganya. Banyak migran perempuan yang kembali yang tidak dapat menemukan pekerjaan yang menguntungkan, yang tidak berhasil dalam mendirikan usaha mereka sendiri dan sering ditekan untuk pergi mencari pekerjaan ke luar negeri lagi.

♦ **Pemberdayaan atau Kerentanan:**

- Banyak perempuan berpindah sebagai suatu cara untuk memajukan emansipasi mereka. Migrasi dapat merupakan suatu pengalaman yang memberdayakan, membantu para perempuan tersebut mendapatkan kemerdekaan yang lebih besar dan juga kepuasan pribadi;
- Di sisi lain, di beberapa negara keluarga dari para perempuan atau anak perempuan beranggapan bahwa adalah tanggung-jawab anak-anak perempuan untuk meningkatkan standar kehidupan keluarga. Anak-anak perempuan dan anak laki-laki tidak memiliki hak yang setara dalam menentukan diri sendiri – dan kewajiban dari anak perempuan mungkin termasuk membiarkannya dirinya diperdagangkan, dijual sebagai istri ke orang asing, atau setidaknya menjalani kehidupan keras sebagai pekerja migran untuk menunjang keluarganya;²²
- Para pekerja migran perempuan cenderung jauh lebih rentan – dibandingkan dengan migran laki-laki atau pekerja perempuan setempat – terhadap diskriminasi, eksploitasi, perlakuan sewenang-wenang serta perdagangan manusia – baik dalam tindakan migrasi itu sendiri, maupun dalam lapangan kerja di negara asal dan negara-negara tujuan:
“Para pekerja migran perempuan menderita diskriminasi ganda dalam ketenagakerjaan: pertama, karena mereka adalah orang asing dan oleh karenanya mereka menjadi sasaran diskriminasi yang sama yang dialami oleh para pekerja migran laki-laki; dan kedua, karena mereka adalah perempuan, dan dengan demikian sering menjadi korban dari sikap-sikap tradisional, yang berakar di negara mereka atau dalam pekerjaan,

yang menyangkut tempat perempuan dalam masyarakat pada umumnya dan dalam kehidupan pekerjaan khususnya".²³

- Migrasi, lapangan kerja dan kebijakan-kebijakan sosial yang tidak peka jender, serta norma-norma sosial-budaya yang sudah meresap yang mengekalkan ketidak-setaraan jender berarti dalam banyak kasus, para migran perempuan menukar posisi mereka yang rendah dalam keluarga di negara asal mereka dengan posisi rendah yang serupa, jika tidak dengan posisi dimana mereka dieksploitasi, di tempat kerja mereka di negara tujuan:
*"Pergerakan populasi dapat sangat khusus-jender, dimana para perempuan dan para laki-laki bermigrasi untuk alasan yang berbeda, melalui jalan yang berbeda dan dengan hasil yang berbeda. Tetapi sebagian besar dari kebijakan-kebijakan dan peraturan-peraturan yang terkait dengan migrasi belum disesuaikan dengan keadaan ini – baik di ujung spektrum imigrasi di negara asal maupun di negara tujuan. Kebijakan-kebijakan sering sekali tidak ada atau mengabaikan sifat jender dari migrasi, dengan konsekwensi-konsekwensi yang tidak terduga bagi para perempuan"*²⁴
- Sering terjadi penurunan derajat atau penyalahgunaan modal manusia dan penghapusan keahlian; para migran perempuan mengambil pekerjaan yang tidak cocok dengan pendidikan dan kualifikasi keahlian mereka. Untuk penghasilan yang lebih baik tetapi status lebih rendah di luar negeri, para perempuan ini merendahkan kualifikasi mereka untuk mengamankan posisi pekerjaan mereka di luar negeri;
- Migrasi dari para perempuan muda mempengaruhi jalan siklus kehidupan mereka, contohnya, mereka menunda perkawinan dan melahirkan anak. Mungkin juga terjadi dampak-dampak antar-generasi, dimana para perempuan yang lebih tua tetap tinggal untuk mengurus cucu-cucu mereka;
- Migrasi para ibu dapat memberikan dampak yang lebih buruk pada anak-anak yang ditinggal dibandingkan migrasi para bapak. Anak-anak didapatkan berhenti sekolah atau mendapatkan nilai yang buruk, mengalami masalah emosi, terjebak ke dalam penyalahgunaan obat, dipaksa untuk masuk ke lapangan kerja dalam usia dini, mengalami penyalahgunaan fisik dan seksual;
- Meningkatnya perdagangan perempuan dan anak perempuan dalam industri seks menyumbangkan terjadinya penyebaran infeksi menular seksual (IMS) dan HIV/AIDS melewati batas-batas nasional. Aspek-aspek kesehatan menjadi sesuatu yang makin memprihatinkan;
- Para "korban" dari perdagangan ini, ketika "diselamatkan" oleh pihak yang berwenang, biasanya mengalami deportasi kilat – karena mereka adalah pendatang tidak terdaftar – dan ditolak hak-haknya untuk akses ke keadilan. Sering terjadi fenomena "pintu berputar", dimana para perempuan dan anak gadis yang diperdagangkan tadi kembali ke negara asal mereka, dengan faktor-faktor pendorong yang tidak berubah dan jatuh kembali ke tangan para pedagang yang sama atau lainnya, untuk kemudian diperdagangkan kembali.

1.3.2. Kerentanan terhadap diskriminasi, eksploitasi dan perlakuan sewenang-wenang

"Komite [para pakar] meminta pada pemerintah memberikan perhatian kepada kerentanan khusus terhadap eksploitasi dan penyalahgunaan yang dialami para pekerja migran perempuan, yang berdasarkan beberapa estimasi jumlahnya adalah separuh dari seluruh populasi migran di dunia saat ini. [...] Kerentanan mereka pada hakekatnya terletak pada kenyataan bahwa mereka dipekerjakan di luar negeri dan oleh karenanya berada diluar perlindungan hukum negara asal mereka, dan juga berhubungan dengan fakta bahwa mereka sering melakukan jenis pekerjaan yang kurang dilindungi di dalam peraturan sosial: pembantu rumah tangga, pekerja kasar (di pertanian, pabrik atau zona pemrosesan untuk ekspor), hostes atau penghibur di klub malam atau kabaret,

dsb. Subordinasi mereka ini diperburuk dengan kurangnya otonomi dan hubungan subordinasi yang kuat yang khas mewarnai jenis pekerjaan yang dilakukan oleh para pekerja ini; hal tersebut ditambah dengan kenyataan bahwa para perempuan ini biasanya muda dan miskin, hidup dalam ketakutan akan kehilangan pekerjaan mereka, setelah harus meninggalkan keluarga mereka di kampung halamannya, tidak bisa berbicara bahasa negara dimana mereka bekerja, tidak sadar akan hak-hak mereka yang dilanggar, dan biasanya tidak tahu kemana mencari pertolongan. Dalam keadaan semacam ini, bahwa mereka dalam situasi tidak teratur di negara tempat mereka bekerja, atau dipekerjakan secara gelap, membuat mereka semakin rentan terhadap tindak kekerasan dan perlakuan semena-mena".²⁵

o **Para pekerja migran perempuan berada dalam risiko lebih besar untuk mengalami diskriminasi, eksploitasi dan perlakuan sewenang-wenang melalui beberapa cara:**

- ☐ Sebagai perempuan berhadapan dengan laki-laki;
- ☐ Sebagai orang asing dibandingkan dengan penduduk setempat;
- ☐ Sebagai tanggungan dibandingkan dengan migran yang mandiri; dan
- ☐ Sebagai migran yang "tidak teratur" (hal yang sering terjadi pada mereka) dalam hubungannya dengan migran tercatat.

♦ **Sebagai perempuan berhadapan dengan laki-laki:**

Ketidaksetaraan dan diskriminasi jender sebetulnya tetap berlangsung di hampir semua negara – baik itu negara asal, transit atau tujuan. Di dalam keluarga, di tempat kerja, di masyarakat dan di negara, perempuan dan anak-anak perempuan masih belum memiliki hak dan kesempatan yang setara dengan laki-laki dan anak laki-laki. Di lain pihak, semakin banyak perempuan diharapkan mengambil tanggungjawab untuk keberlangsungan hidup seluruh keluarganya dan untuk mencari sumber penghasilan yang baru.

Namun demikian, mereka masih berhadapan dengan perbedaan-perbedaan, pengecualian-kecualian atau kekangan-kekangan dengan alasan mereka dilahirkan sebagai perempuan, yang memiliki akibat atau tujuan untuk mengurangi atau meniadakan pengakuan, kesenangan atau penggunaan – dengan basis kesetaraan laki-laki dan perempuan – HAM dan kemerdekaan hakiki dalam dunia politik, ekonomi, sosial, budaya atau bidang-bidang lainnya. Peran stereotip jender terus berlangsung – contoh, bahwa laki-laki adalah pencari nafkah dan perempuan adalah tanggungan, laki-laki bermigrasi dan perempuan diperjual-belikan. Para migran perempuan, dibandingkan dengan para migran laki-laki, memiliki akses terbatas ke informasi dan tidak memiliki daya untuk membuat keputusan serta untuk mengatur sumberdaya. Lapangan-lapangan kerja dan jenis-jenis pekerjaan di negara asal dan tujuan sebagian besar tetap tersegregasi berdasarkan jenis kelamin.

♦ **Sebagai orang asing dibandingkan dengan penduduk setempat:**

Para migran perempuan, seperti halnya dengan para migran laki-laki, menjadi rentan sepanjang mereka berada diluar yurisdiksi dan perlindungan hukum negara asal mereka dan tidak berhak atas perlindungan dan tunjangan yang ada di negara

Di dalam keluarga, di tempat kerja, di masyarakat dan di negara, perempuan dan anak-anak perempuan masih belum memiliki hak dan kesempatan yang setara dengan laki-laki dan anak laki-laki. Di lain pihak, semakin banyak perempuan diharapkan mengambil tanggungjawab atas keberlangsungan hidup seluruh keluarganya dan untuk mencari sumber pendapatan yang baru.

tujuan. Penyebab utama dari kerentanan adalah karena para pekerja migran perempuan sering terkonsentrasi dalam jenis pekerjaan- seperti pelayanan rumah tangga, pekerja kasar di pabrik, industri hiburan dan seks, yang biasanya tidak tercakup dalam kode ketenagakerjaan atau tunjangan-tunjangan jaminan sosial di negara tujuan. Di banyak negara, para pekerja migran tidak diperbolehkan membentuk atau bergabung dalam serikat-serikat pekerja.

Dengan mengerasnya sikap resmi para pejabat terhadap migran pada umumnya, ditambah dengan tumbuhnya kebencian para penduduk setempat terhadap orang asing, terutama dalam situasi meningkatnya pengangguran dan kesulitan ekonomi di negara-negara tujuan, kerentanan para migran pada umumnya, dan para migran perempuan pada khususnya, semakin meningkat. *Xenofobia* (sikap, prasangka dan tingkah laku yang menolak, mengucilkan dan seringkali memfitnah orang, berdasarkan pada sudut pandang bahwa mereka orang luar atau orang asing dalam komunitas, masyarakat atau identitas nasional) dan *rasisme* (pembedaan berdasarkan pada perbedaan ciri-ciri fisik, seperti warna kulit, jenis rambut, roman muka, dsj) telah muncul di media, wacana politik dan sentimen publik.

♦ ***Sebagai tanggungan dibandingkan dengan migran mandiri:***

Para migran perempuan mengalami diskriminasi dan kekangan di negara-negara tujuan dalam hal ijin masuk ke suatu negara, ijin tinggal dan partisipasi dalam lapangan kerja, termasuk hak untuk

Penyebab utama dari kerentanan adalah karena para pekerja migran perempuan sering terkonsentrasi dalam jenis-jenis pekerjaan yang biasanya tidak tercakup oleh kode ketenagakerjaan atau tunjangan jaminan sosial di negara tujuan.

bekerja, akses ke bantuan kesejahteraan, hak untuk tinggal dan hak untuk mensponsori migrasi orang lain. Ini khususnya terjadi ketika para migran perempuan pindah tidak sebagai migran yang mandiri tetapi dengan dasar hubungan keluarga dan dimasukkan dalam posisi sebagai tanggungan sah dari para migran laki-laki. Banyak peraturan mengenai ijin masuk ke suatu negara yang masih cenderung beranggapan bahwa para migran perempuan sebagian besar adalah migran sekunder, bergabung dengan para migran lainnya. Sebagai "tanggungan", para migran perempuan memiliki hak terbatas dalam lapangan kerja, dapat dideportasi jika mereka kehilangan dukungan dari suami atau keluarganya, atau mungkin dipaksa dengan cepat untuk pergi jika suami atau orangtua mereka dideportasi.

Bentuk lain dari ketergantungan adalah ketika para pekerja migran perempuan tidak diijinkan berdasarkan undang-undang keimigrasian negara penerima untuk berpindah majikan atau diharuskan memiliki visa yang disponsori oleh para warganegara asli negara penerima. Aturan "satu majikan" dan sistem sponsor visa (sistem "*kafala*" di Timur Tengah) menempatkan pekerja dalam posisi hampir sepenuhnya dibawah kuasa majikan/sponsor. Jika mereka tidak ingin kehilangan ijin tinggal di negara tempat mereka bekerja, maka para pekerja migran perempuan ini harus bertahan dengan berbagai kondisi pekerjaan dan perlakuan sewenang-wenang. Ketergantungan ini khususnya sangat besar dalam kasus para pembantu rumah tangga yang tinggal di rumah tangga majikan. Para perempuan ini hampir tidak memiliki daya untuk melakukan negosiasi dan tidak mampu bereaksi terhadap pelanggaran atas hak-hak mereka dan perlakuan sewenang-wenang yang sangat melampaui batas.

Bilamana para migran perempuan memperoleh ijin masuk ke suatu negara sebagai pekerja migran yang otonom, biasanya berada dalam posisi paling rendah dalam lapangan kerja. Banyak negara pengimpor tenaga asing memiliki peraturan yang melindungi lapangan kerja domestik mereka. Peraturan semacam ini, sering disebut sebagai "*aturan prioritas*"

memiliki arti bahwa ijin kerja tidak akan diberikan sampai dibuktikan bahwa tidak ada warganegara setempat yang mau mengambil pekerjaan yang dimaksud. Para migran perempuan diterima untuk melakukan pekerjaan berderajat lebih rendah yang jelas-jelas tidak menarik untuk para penduduk setempat.

♦ **Sebagai migran tidak tercatat atau tidak teratur:**

Beberapa negara telah mencoba “melindungi” perempuan dan anak perempuan dari perdagangan, eksploitasi atau perlakuan sewenang-wenang dengan melarang atau membatasi mobilitas mereka.²⁶ Namun demikian, kebijakan migrasi yang bersifat membatasi ini sering memiliki konsekuensi mendorong perempuan dan anak perempuan mencari saluran migrasi tidak resmi dan membuat mereka justru malah semakin rentan untuk diperdagangkan.

“Aturan satu majikan” dan sistem sponsor visa menempatkan pekerja dalam posisi hampir sepenuhnya dibawah kuasa majikan /sponsor.

Para migran perempuan dan anak perempuan yang telah memasuki suatu negara tanpa dokumen yang benar atau tidak melalui pemeriksaan di pelabuhan masuk, ijin tinggal sah yang telah kadaluarsa, juga mereka yang memiliki ijin sah untuk tinggal tetapi bekerja tanpa ijin, mereka ini adalah yang terutama rentan terhadap eksploitasi dan perlakuan sewenang-wenang. Karena mereka tidak memiliki status hukum di negara tujuan tersebut, maka mereka tidak memiliki penolong hukum jika terjadi pelanggaran terhadap hak-hak mereka. Mereka juga terlalu takut untuk mengajukan pengaduan atau bahkan mendekati pihak berwenang untuk bentuk bantuan resmi apapun. Bahkan ketika mereka “diselamatkan” oleh pihak yang berwenang - dari para majikan, para perantara atau dari pihak lainnya yang mengeksploitasi atau memperlakukan mereka secara sewenang-wenang - mereka sering diperlakukan sebagai para penjahat karena status tidak resmi mereka. Para Perempuan yang diperdagangkan yang berhasil kabur dari situasi mereka seringkali menjadi korban-ulang sebagai akibat dari perlakuan yang mereka terima dari tangan pihak berwenang.

o **Para pekerja migran perempuan, dengan demikian menghadapi berbagai bentuk diskriminasi dan keadaan merugikan, serta rentan terhadap eksploitasi dan perlakuan sewenang-wenang pada setiap tahap proses migrasi internasional [Kotak 1.3]:**

- ☐ Pembuatan keputusan dan persiapan untuk pergi ke luar negeri;
- ☐ Perekrutan dan perjalanan untuk pekerjaan di luar negeri;
- ☐ Bekerja dan tinggal di luar negeri; dan
- ☐ Pulang : Bersatu kembali dengan keluarga dan komunitas mereka.

♦ **Pembuatan keputusan dan persiapan untuk pergi ke luar negeri:**

Konon periode yang paling penting dalam proses migrasi adalah sebelum keberangkatan – terutama ketika dalam tahap pembuatan keputusan untuk bermigrasi. Sering keputusan untuk mencari pekerjaan di luar negeri tidak dibuat oleh

Karena mereka tidak memiliki status hukum di negara tujuan tersebut, maka mereka tidak memiliki penolong hukum jika terjadi pelanggaran terhadap hak-hak mereka. Mereka juga terlalu takut untuk mengajukan pengaduan atau bahkan mendekati pihak berwenang untuk bentuk bantuan resmi apapun. Bahkan ketika mereka “diselamatkan” oleh pihak yang berwenang, mereka sering diperlakukan sebagai penjahat.

perempuan yang bersangkutan itu sendiri, melainkan oleh keluarganya, terutama oleh anggota keluarga laki-laki. Meski keluarga juga memaksakan beberapa pengaruh dalam migrasi laki-laki, tetapi sering keluargalah yang membuat keputusan untuk mengirimkan anak-anak perempuan dan istri-istri mereka ke luar negeri untuk “mendapatkan uang banyak, ditabung dan diberikan kepada keluarga [mereka] untuk masa depan yang cerah.” Subordinasi perempuan terhadap otoritas laki-laki paling segera terlihat di dalam keluarga; adalah keluarga yang menugaskan dan merumuskan peran perempuan, yang selanjutnya menentukan motivasi dan insentif relatif mereka untuk bermigrasi; dan keluargalah yang menyediakan sumberdaya dan informasi yang dapat mendukung atau menghalangi migrasi.

Informasi yang akurat, memadai dan mudah diakses adalah penting sebagai dasar pembuatan keputusan yang realistis. Sayangnya, para calon migran perempuan dan keluarga mereka sering memiliki harapan-harapan dan sudut pandang yang tidak realistis tentang bekerja dan tinggal di luar negeri, karena para agen perekrutan dan para pedagang manusia memberikan informasi yang menyesatkan; para migran yang kembali sering memberikan gambaran “menyenangkan” daripada mengakui keadaan sesungguhnya pengalaman migrasi mereka; dan para migran laki-laki memberikan informasi yang mungkin tidak relevan untuk para calon migran perempuan. Para migran perempuan sendiri, karena posisi subordinasi mereka didalam keluarga atau masyarakat, sering tidak memiliki akses ke jenis informasi yang mereka perlukan tentang kesempatan di lapangan kerja, biaya-biaya dan keuntungan-keuntungan sesungguhnya dari migrasi, persyaratan-persyaratan hukum dan lainnya, dsb.

♦ ***Perekrutan dan perjalanan untuk pekerjaan di luar negeri:***

Ketika para calon migran perempuan atau keluarganya tidak memiliki akses ke informasi yang realistis dan akurat mengenai kesempatan-kesempatan kerja yang ada di dalam dan di luar negeri, serta mengenai kerugian dan

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keuntungan ekonomi dan sosial dari pekerjaan di luar negeri, maka mereka khususnya berada dalam risiko untuk ditipu oleh para pedagang manusia dan para agen perekrutan yang jahat-.

Tahap-tahap rekrutmen dapat penuh bahaya. “Bisnis migrasi” telah menjadi sesuatu yang sangat menguntungkan, sehingga para agen perekrutan, para promotor pekerjaan di luar negeri, dan berbagai kelompok perantara lainnya yang sah maupun tidak sah, serta para pedagang manusia beroperasi, sering dengan cara mengambil manfaat dari ketiadaan akses para perempuan tersebut ke informasi yang akurat dan realistik. Biaya yang dikenakan oleh para agen biasanya sangat tinggi, sehingga para calon migran perempuan dan keluarganya sering terjebak dalam hutang jangka panjang atau menjual harta-bendanya untuk membayar biaya tersebut. Mereka tiba di berbagai negara yang berbeda tergantung dari biaya penempatan yang mereka mampu bayar. Para perempuan tersebut mungkin akan dikurung dalam “kamp pelatihan” dalam kondisi yang menyedihkan selama beberapa bulan sampai mereka dapat dikirim ke luar negeri, dan paspor-paspor atau dokumen-dokumen lain milik mereka ditahan secara tidak sah oleh para agen mereka. Selain itu, mereka terikat dalam kontrak-kontrak yang menyesatkan, kontrak-kontrak pengganti atau bahkan tidak ada kontrak sama sekali.

Perekrutan tidak resmi untuk migrasi telah berkembang subur, ini sering disebabkan oleh prosedur-prosedur migrasi sah yang bersifat sangat mengekang, berbelit-belit, memakan waktu atau sangat mahal. Para perempuan lebih cenderung memanfaatkan perekrutan

dan jalur-jalur migrasi tidak resmi dibandingkan dengan para laki-laki karena keterbatasan akses mereka ke informasi, tidak ada waktu untuk mencari saluran migrasi yang sah, dan tidak ada sumber daya keuangan untuk membayar biaya-biaya. Sifat pekerjaan bentuk-bentuk migrasi yang terbuka bagi para perempuan juga dapat menggiring mereka untuk tergantung pada para perekrut dan agen-agen jasa tenaga kerja yang curang dan meragukan. Situasi semacam ini membuat mereka menjadi santapan empuk bagi jejaring kejahatan yang terorganisir dan para perekrut tidak resmi, dan mengekspos mereka ke dalam situasi-situasi berisiko tinggi dalam kaitannya dengan migrasi tidak teratur. Para perekrut tidak resmi yang jahat mungkin juga secara aktif mencari para perempuan karena mereka lebih mudah tertipu dibanding para laki-laki. Meningkatnya masalah perdagangan perempuan dan anak-anak, serta penyelundupan migran dapat juga ditelusuri muasalanya ke operasi dari jejaring yang terorganisir dengan baik, sering melalui koneksi-koneksi resmi.

Perjalanan yang sebenarnya ke negara tujuan dapat sangat berisiko dan berbahaya, terutama jika gerakan migrasi tersebut berada dalam kondisi tidak teratur atau sewenang-wenang. Ada banyak kasus dimana para perempuan dan anak-anak perempuan dikirim, diselundupkan dan diperdagangkan secara tidak resmi melewati berbagai tapal-batas internasional, dalam keadaan yang mengenaskan, mengakibatkan cedera atau bahkan kematian yang bersangkutan. Selama perjalanan, para perempuan dan anak perempuan tersebut juga sering menjadi korban dari kekerasan seksual dan fisik yang dilakukan oleh berbagai perantara.

♦ **Bekerja dan tinggal di luar negeri:**

Hukum-hukum imigrasi yang mengatur masuknya seseorang ke suatu negara pada umumnya tidak secara jelas menyebutkan jenis kelamin, dalam arti tidak dengan tegas memasukkan kata-kata seperti “suami atau istri”, sebagai pengganti pasangan, “anak perempuan atau anak laki-laki” sebagai pengganti anak-anak, “laki-laki atau perempuan” sebagai pengganti migran. Yang terjadi

Dalam pekerjaan-pekerjaan seperti PRT, dalam industri hiburan dan seks, sebagai pembantu di restoran dan hotel, para migran perempuan memiliki daya menawar yang terbatas atau bahkan tidak memilikinya sama sekali. Mereka pun memiliki sedikit, atau sama sekali tidak memiliki, kesempatan untuk membentuk jejaring informasi dan dukungan sosial. Jenis pekerjaan tersebut sering tidak diakui sebagai pekerjaan, dan tidak atau hanya sebagian kecil terlindungi oleh ketentuan hukum ketenagakerjaan dan kesejahteraan sosial

justru sebaliknya; faktor-faktor tidak langsung – khususnya stereotip laki-perempuan dan stratifikasi berdasarkan jenis kelamin – adalah faktor-faktor yang ada. Contohnya, praktek-praktek yang secara otomatis menyerahkan peran kepala rumah tangga kepada laki-laki meningkatkan kemungkinan bahwa perempuan secara administratif dimasukkan sebagai “istri” — dan dengan demikian menjadi “tanggungan” — oleh para petugas imigrasi dan oleh keluarga imigran itu sendiri.

Sepanjang peraturan-peraturan tentang masuk ke suatu negara memperbolehkan para migran untuk jenis-jenis pekerjaan tertentu, dan ada segregasi gender dalam pekerjaan tersebut, maka para migran yang diterima sebagai pekerja sementara di pertanian atau bangunan pada umumnya adalah para migran laki-laki, sedangkan migran perempuan biasanya akan mendominasi sektor pelayanan (pelayan rumah tangga, pengasuhan dan hiburan). Penerapan kriteria ketrampilan untuk masuk ke suatu negara juga akan cenderung membuahkan hasil yang berbeda bagi para migran perempuan dan para migran laki-laki. Hal ini terjadi, baik karena di negara-negara asal terdapat diskriminasi dalam akses ke pelatihan ketrampilan, maupun karena di negara-negara tujuan stereotip gender membuat para perempuan diasosiasikan dengan pekerjaan tanpa ketrampilan dan para laki-laki dengan posisi yang memerlukan ketrampilan tinggi.

Di negara-negara tujuan, “jika para migran terkonsentrasi dalam *pekerjaan-pekerjaan SALEP (Shunned by all Nationals Except the Very Poorest –Yang dihindari oleh semua warganegara kecuali yang paling melarat)*, para migran perempuan terkonsentrasi dalam pekerjaan-pekerjaan yang paling rawan dalam pekerjaan tersebut ²⁷. Mereka berada dalam pekerjaan “3D” (*Dirty, Dangerous and Degrading* – kotor, berbahaya, dan merendahkan martabat). **[Bagian.1.3.4.]** Para pekerja migran perempuan, terutama para PRT dan para penghibur, menjadi sasaran berbagai perlakuan sewenang-wenang, seperti pelanggaran kontrak (dibawah upah minimum/upah tidak dibayarkan, tidak ada hari istirahat/libur), kondisi-kondisi pekerjaan atau kehidupan dibawah standar, mengekang kebebasan bergerak, atau perlakuan sewenang-wenang secara fisik, psikologis maupun seksual.

Kebanyakan dari pekerjaan tersebut adalah perpanjangan peran tradisional perempuan dalam pekerjaan pengasuhan dan rumah tangga, dan dicirikan dengan lingkungan kerja yang terindividualisasi dan terisolir. Dalam pekerjaan-pekerjaan seperti PRT, dalam industri hiburan dan seks, sebagai pelayan restoran dan hotel, para migran perempuan memiliki daya tawar yang terbatas atau bahkan tidak memilikinya sama sekali. Mereka pun memiliki sedikit, atau sama sekali tidak memiliki kesempatan untuk membentuk jejaring informasi dan dukungan sosial. Jenis Pekerjaan tersebut sering tidak dianggap sebagai pekerjaan, dan tidak atau hanya sebagian kecil terlindungi dalam ketetapan hukum ketenagakerjaan dan kesejahteraan sosial, bahkan untuk para warganegara setempat. Para pekerja ini tidak terlindungi dari eksploitasi yang dilakukan oleh para majikan, yang sering memanfaatkan status imigran pekerja ini (terutama jika tidak tercatat) dan hubungan ketergantungan kepada majikan mereka untuk memberi mereka upah rendah, membebani pekerjaan yang berlebihan, dan memperlakukan mereka sebagai tenaga kerja yang patuh.

♦ ***Pulang dan bersatu kembali:***

Bagi sebagian besar migran, pulang ke tempat asal mereka merupakan tahap terakhir dari proses migrasi dan pencapaian tujuan akhir dari migrasi.

Sebagaimana kerasnya kehidupan perempuan migran ini di luar negeri, proses penyatuan kembali mereka setelah pulang ke negara asalnya mungkin sama sulitnya.

Beberapa perempuan pulang dengan tabungan dan aset yang terkumpul, kepercayaan diri yang lebih besar, dan norma-norma atau sikap-sikap baru yang didapatkan ketika mereka berada di luar negeri. Mereka mendapatkan status lebih baik dan daya membuat keputusan didalam keluarga dan, yang terpenting, mungkin sebagai panutan bagi para perempuan muda lainnya yang mencari kehidupan lebih baik.

Tetapi mereka pun dapat menghadapi masalah serius dalam beradaptasi kembali. Studi-studi kasus menunjukkan bahwa, sebagaimana kerasnya kehidupan para migran perempuan di luar negeri, proses penyatuan kembali mereka setelah pulang ke negara asalnya mungkin akan sama sulitnya. Para migran perempuan memerlukan bantuan, tidak hanya untuk dapat kembali kepada keluarga dan komunitasnya, tetapi juga untuk mendapatkan pekerjaan yang memuaskan dan menghasilkan. Masalah mereka menjadi semakin serius ketika mereka mendapatkan bahwa sewaktu mereka di luar negeri telah menyumbangkan ke perpecahan rumah tangga, pasangan mereka telah memiliki pasangan baru, dan uang yang mereka rajin kirimkan setiap bulannya habis digunakan untuk konsumsi keluarga. Tanpa tabungan atau tidak mendapatkan pekerjaan di daerahnya, maka banyak dari perempuan ini kembali mencari pekerjaan di luar negeri. Sedangkan bagi perempuan atau keluarganya yang dapat menabungpun masih tetap merupakan suatu tantangan bagi mereka untuk dapat memanfaatkan tabungan hasil jerih payah mereka dalam investasi yang produktif karena kurangnya kesempatan lokal atau dukungan resmi.

Berdasarkan perjanjian-perjanjian internasional dan hukum-hukum anti-perdagangan manusia, mereka yang dijual atau diperdagangkan ke suatu negara harus diperlakukan sebagai para korban, dibebaskan dari denda-denda atau hukuman penjara dan dijamin untuk direpatrisasi dengan aman ke negara asal mereka. Tetapi, para perempuan dan anak-anak yang diperdagangkan tersebut pada umumnya diperlakukan berdasarkan hukum keimigrasian dan orang asing, atau hukum ketenagakerjaan dari negara tujuan, ditangkap dan sering ditahan untuk waktu yang lama, tanpa tuduhan resmi atau proses pengadilan, dan akhirnya dideportasikan. Bahkan setelah kembali ke negara asal mereka, orang-orang yang diperdagangkan tersebut mungkin dalam keadaan yang tidak aman. Dalam banyak kasus, orang-orang yang diperdagangkan yang dipulangkan ke tempat asal mereka tanpa mendapatkan perlindungan dari pihak yang berwenang di negara asal mereka, dan mungkin sangat rentan terhadap pembalasan dendam dari para pedagang, dan untuk dijadikan korban kembali ke dalam lingkaran perdagangan manusia. Para korban perdagangan manusia ini mungkin juga memerlukan konseling sosio-psikologis, perawatan kesehatan dan bantuan hukum untuk membantu mereka mengatasi pengalaman buruk mereka, dan agar mereka berhasil bersatu kembali dengan keluarga dan komunitas mereka.

Annex 1: RECOMMENDED READING



**UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 37 TAHUN 1999
TENTANG
HUBUNGAN LUAR NEGERI
DENGAN RAHMAT TUHAN YANG MAHA ESA
PRESIDEN REPUBLIK INDONESIA,**

Menimbang :

- a bahwa sebagai Negara Kesatuan Republik Indonesia yang merdeka dan berdaulat, pelaksanaan hubungan luar negeri didasarkan pada asas kesamaan derajat, saling menghormati, saling menguntungkan, dan saling tidak mencampuri urusan dalam negeri masing-masing, seperti yang tersirat di dalam Pancasila dan Undang-Undang Dasar 1945;
- b bahwa sesuai dengan Pembukaan Undang-Undang Dasar 1945, salah satu tujuan Pemerintah Negara Kesatuan Republik Indonesia adalah ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial;
- c bahwa untuk mewujudkan tujuan sebagaimana dimaksud pada pertimbangan huruf b, Pemerintah Negara Kesatuan Republik Indonesia selama ini telah melaksanakan hubungan luar negeri dengan berbagai negara dan organisasi regional maupun internasional;
- d bahwa pelaksanaan kegiatan hubungan luar negeri, baik regional maupun internasional, melalui forum bilateral atau multilateral, diabdikan pada kepentingan nasional berdasarkan prinsip politik luar negeri yang bebas aktif;
- e bahwa dengan makin meningkatnya hubungan luar negeri dan agar prinsip politik luar negeri sebagaimana dimaksud pada pertimbangan huruf d dapat tetap terjaga, maka penyelenggaraan hubungan luar negeri perlu diatur secara menyeluruh dan terpadu dalam suatu Undang-undang;
- f bahwa berdasarkan pertimbangan tersebut dalam huruf a, b, c, d, dan e perlu dibentuk Undang-undang tentang Hubungan Luar Negeri.

Mengingat :

1. Pasal 5 ayat (1), Pasal 11, Pasal 13, dan Pasal 20 ayat (1) Undang-Undang Dasar 1945;
2. Undang-Undang Nomor 1 Tahun 1982 tentang Pengesahan Konvensi Wina mengenai Hubungan Diplomatik beserta Protokol Opsionalnya mengenai Hal Memperoleh Kewarganegaraan (Vienna Convention on Diplomatic Relations and Optional Protocol to The Vienna Convention on Diplomatic Relations Concerning Acquisition of Nationality), 1961 dan Pengesahan Konvensi mengenai Hubungan Konsuler beserta Protokol Opsionalnya mengenai Hal Memperoleh Kewarganegaraan (Vienna Convention on Consular Relations and Optional Protocol to The Vienna Convention on Consular Relations Concerning Acquisition of Nationality), 1963 (Lembaran Negara Republik Indonesia Tahun 1982 Nomor 2; Tambahan Lembaran Negara Republik Indonesia Nomor 3211);
3. Undang-undang Nomor 2 Tahun 1982 tentang Pengesahan Konvensi Mengenai Misi Khusus (Convention on Special Missions), New York, 1969 (Lembaran Negara Republik Indonesia Tahun 1982 Nomor 3; Tambahan Lembaran Negara Republik Indonesia Nomor 3212);

**DENGAN PERSETUJUAN
DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA
MEMUTUSKAN
Menetapkan : UNDANG-UNDANG TENTANG HUBUNGAN LUAR NEGERI**

BAB I

KETENTUAN UMUM

Pasal 1

Dalam Undang-undang ini yang dimaksud dengan :

1. Hubungan Luar Negeri adalah setiap kegiatan yang menyangkut aspek regional dan internasional yang dilakukan oleh Pemerintah di tingkat pusat dan daerah, atau lembaga-lembaganya, lembaga negara, badan usaha, organisasi politik, organisasi masyarakat, lembaga swadaya masyarakat, atau warga negara Indonesia.
2. Politik Luar Negeri adalah kebijakan, sikap, dan langkah Pemerintah Republik Indonesia yang diambil dalam melakukan hubungan dengan negara lain, organisasi internasional, dan subyek hukum internasional lainnya dalam rangka menghadapi masalah internasional guna mencapai tujuan nasional.
3. Perjanjian Internasional adalah perjanjian dalam bentuk dan sebutan apa pun, yang diatur oleh hukum internasional dan dibuat secara tertulis oleh Pemerintah Republik Indonesia dengan satu atau lebih negara, organisasi internasional atau subyek hukum internasional lainnya, serta menimbulkan hak dan kewajiban pada Pemerintah Republik Indonesia yang bersifat hukum publik.
4. Menteri adalah Menteri yang bertanggung jawab di bidang hubungan luar negeri dan politik luar negeri.

5. Organisasi Internasional adalah organisasi antarpemerintah.

Pasal 2

Hubungan Luar Negeri dan Politik Luar Negeri didasarkan pada Pancasila, Undang-Undang Dasar 1945, dan Garis-garis Besar Haluan Negara.

Pasal 3

Politik Luar Negeri menganut prinsip bebas aktif yang diabdikan untuk kepentingan nasional.

Pasal 4

Politik Luar Negeri dilaksanakan melalui diplomasi yang kreatif, aktif, dan antisipatif, tidak sekedar rutin dan reaktif, teguh dalam prinsip dan pendirian, serta rasional dan luwes dalam pendekatan.

BAB II

PENYELENGGARAAN HUBUNGAN LUAR NEGERI DAN PELAKSANAAN POLITIK LUAR NEGERI

Pasal 5

- (1) Hubungan Luar Negeri diselenggarakan sesuai dengan Politik Luar Negeri, peraturan perundang-undangan nasional dan hukum serta kebiasaan internasional.
- (2) Ketentuan sebagaimana dimaksud dalam ayat (1) berlaku bagi semua penyelenggara Hubungan Luar Negeri, baik pemerintah maupun non-pemerintah.

Pasal 6

- (1) Kewenangan penyelenggaraan Hubungan Luar Negeri dan pelaksanaan Politik Luar Negeri Pemerintah Republik Indonesia berada di tangan Presiden. Sedangkan dalam hal menyatakan perang, membuat perdamaian, dan perjanjian dengan negara lain diperlukan persetujuan Dewan Perwakilan Rakyat.
- (2) Presiden dapat melimpahkan kewenangan penyelenggaraan Hubungan Luar Negeri dan pelaksanaan Politik Luar Negeri sebagaimana dimaksud dalam ayat (1) kepada Menteri.
- (3) Menteri dapat mengambil langkah-langkah yang dipandang perlu demi dipatuhinya ketentuan sebagaimana dimaksud dalam Pasal 5.

Pasal 7

- (1) Presiden dapat menunjuk pejabat negara selain Menteri Luar Negeri, pejabat pemerintah, atau orang lain untuk menyelenggarakan Hubungan Luar Negeri dibidang tertentu.
- (2) Dalam melaksanakan tugasnya, pejabat negara selain Menteri Luar Negeri, pejabat pemerintah, atau orang lain sebagaimana dimaksud dalam ayat (1) melakukan konsultasi dan koordinasi dengan Menteri.

Pasal 8

- (1) Menteri, atas usul pimpinan departemen atau lembaga pemerintah nondepartemen, dapat mengangkat pejabat dari departemen atau lembaga yang bersangkutan untuk ditempatkan pada Perwakilan Republik Indonesia guna melaksanakan tugas-tugas yang menjadi bidang wewenang departemen atau lembaga tersebut.
- (2) Pejabat sebagaimana dimaksud dalam ayat (1) secara operasional dan administratif merupakan bagian yang tidak terpisahkan dari Perwakilan Republik Indonesia serta tunduk pada peraturan-peraturan tentang tata kerja Perwakilan Republik Indonesia di luar negeri.

Pasal 9

- (1) Pembukaan dan pemutusan hubungan diplomatik atau konsuler dengan negara lain serta masuk ke dalam atau keluar dari keanggotaan organisasi internasional ditetapkan oleh Presiden dengan memperhatikan pendapat Dewan Perwakilan Rakyat.
- (2) Pembukaan dan penutupan kantor perwakilan diplomatik atau konsuler di negara lain atau kantor perwakilan pada organisasi internasional ditetapkan dengan Keputusan Presiden.

Pasal 10

Pengiriman pasukan atau misi pemeliharaan perdamaian ditetapkan oleh Presiden dengan memperhatikan pendapat Dewan Perwakilan Rakyat.

Pasal 11

- (1) Dalam usaha mengembangkan Hubungan Luar Negeri dapat didirikan lembaga kebudayaan, lembaga persahabatan, badan promosi, dan lembaga atau badan Indonesia lainnya di luar negeri.
- (2) Pendirian lembaga dan atau badan sebagaimana dimaksud dalam ayat (1) hanya dapat dilakukan setelah mendapat pertimbangan tertulis dari Menteri.

Pasal 12

- (1) Dalam usaha mengembangkan Hubungan Luar Negeri dapat juga didirikan lembaga persahabatan, lembaga kebudayaan, dan lembaga atau badan kerja sama asing lain di Indonesia.
- (2) Ketentuan mengenai syarat dan tata cara pendirian lembaga atau badan kerja sama asing sebagaimana dimaksud dalam ayat (1) diatur dengan Peraturan Pemerintah.

BAB III

PEMBUATAN DAN PENGESAHAN PERJANJIAN INTERNASIONAL

Pasal 13

Lembaga Negara dan lembaga pemerintah, baik departemen maupun nondepartemen, yang mempunyai rencana untuk membuat perjanjian internasional, terlebih dahulu melakukan konsultasi mengenai rencana tersebut dengan Menteri.

Pasal 14

Pejabat lembaga pemerintah, baik departemen maupun nondepartemen, yang akan menandatangani perjanjian internasional yang dibuat antara Pemerintah Republik Indonesia dengan Pemerintah negara lain, organisasi internasional, atau subyek hukum internasional lainnya, harus mendapat surat kuasa dari Menteri.

Pasal 15

Ketentuan mengenai pembuatan dan pengesahan perjanjian internasional diatur dengan undang-undang tersendiri.

BAB IV

KEKEBALAN, HAK ISTIMEWA, DAN PEMBEBASAN

Pasal 16

Pemberian kekebalan, hak istimewa, dan pembebasan dari kewajiban tertentu kepada perwakilan diplomatik dan konsuler, misi khusus, perwakilan Perserikatan Bangsa-Bangsa, perwakilan badan-badan khusus Perserikatan Bangsa-Bangsa, dan organisasi internasional lainnya, dilakukan sesuai dengan peraturan perundang-undangan nasional serta hukum dan kebiasaan internasional.

Pasal 17

- (1) Berdasarkan pertimbangan tertentu, Pemerintah Republik Indonesia dapat memberikan pembebasan dari kewajiban tertentu kepada pihak-pihak yang tidak ditentukan dalam Pasal 16.
- (2) Pemberian pembebasan sebagaimana dimaksud dalam ayat (1) dilaksanakan berdasar pada peraturan perundangan-undangan nasional.

BAB V

PERLINDUNGAN KEPADA WARGA NEGARA INDONESIA

Pasal 18

- (1) Pemerintah Republik Indonesia melindungi kepentingan warga negara atau badan hukum Indonesia yang menghadapi permasalahan hukum dengan perwakilan negara asing di Indonesia.
- (2) Pemberian perlindungan sebagaimana dimaksud dalam ayat (1) dilakukan sesuai dengan ketentuan hukum dan kebiasaan internasional.

Pasal 19

Perwakilan Republik Indonesia berkewajiban :

- a. memupuk persatuan dan kerukunan antara sesama warga negara Indonesia di luar negeri;

- b. memberikan pengayoman, perlindungan, dan bantuan hukum bagi warga negara dan badan hukum Indonesia di luar negeri, sesuai dengan peraturan perundangundangan nasional serta hukum dan kebiasaan internasional.

Pasal 20

Dalam hal terjadi sengketa antara sesama warga negara atau badan hukum Indonesia di luar negeri, Perwakilan Republik Indonesia berkewajiban membantu menyelesaikannya berdasarkan asas musyawarah atau sesuai dengan hukum yang berlaku.

Pasal 21

Dalam hal warga negara Indonesia terancam bahaya nyata, Perwakilan Republik Indonesia berkewajiban memberikan perlindungan, membantu, dan menghimpun mereka di wilayah yang aman, serta mengusahakan untuk memulangkan mereka ke Indonesia atas biaya negara.

Pasal 22

Dalam hal terjadi perang dan atau pemutusan hubungan diplomatik dengan suatu negara, Menteri atau pejabat lain yang ditunjuk oleh Presiden, mengkoordinasikan usaha untuk mengamankan dan melindungi kepentingan nasional, termasuk warga negara Indonesia.

Pasal 23

Pelaksanaan ketentuan sebagaimana dimaksud dalam Pasal 21 dan Pasal 22 dilakukan melalui kerja sama dengan pemerintah setempat atau negara lain atau organisasi internasional yang terkait.

Pasal 24

- (1) Perwakilan Republik Indonesia berkewajiban untuk mencatat keberadaan dan membuat surat keterangan mengenai kelahiran, perkawinan, perceraian, dan kematian warga negara Republik Indonesia serta melakukan tugas-tugas konsuler lainnya di wilayah akreditasinya.
- (2) Dalam hal perkawinan dan perceraian, pencatatan dan pembuatan surat keterangan hanya dapat dilakukan apabila kedua hal itu telah dilakukan sesuai dengan ketentuan hukum yang berlaku di tempat wilayah kerja Perwakilan Republik Indonesia yang bersangkutan, sepanjang hukum dan ketentuanketentuan asing tersebut tidak bertentangan dengan peraturan perundangundangan Indonesia.

BAB VI

PEMBERIAN SUAKA DAN MASALAH PENGUNGSI

Pasal 25

- (1) Kewenangan pemberian suaka kepada orang asing berada di tangan Presiden dengan memperhatikan pertimbangan Menteri.
- (2) Pelaksanaan kewenangan sebagaimana dimaksud dalam ayat (1) diatur dengan Keputusan Presiden.

Pasal 26

Pemberian suaka kepada orang asing dilaksanakan sesuai dengan peraturan perundang-undangan nasional serta dengan memperhatikan hukum, kebiasaan, dan praktek internasional.

Pasal 27

- (1) Presiden menetapkan kebijakan masalah pengungsi dari luar negeri dengan memperhatikan pertimbangan Menteri.
- (2) Pokok-pokok kebijakan sebagaimana dimaksud dalam ayat (1) diatur dengan Keputusan Presiden.

BAB VII

APARATUR HUBUNGAN LUAR NEGERI

Pasal 28

- (1) Menteri menyelenggarakan sebagian tugas umum pemerintahan dan pembangunan dalam bidang Hubungan Luar Negeri dan Politik Luar Negeri.
- (2) Koordinasi dalam penyelenggaraan Hubungan Luar Negeri dan pelaksanaan Politik Luar Negeri diselenggarakan oleh Menteri.

Pasal 29

- (1) Duta Besar Luar Biasa dan Berkuasa Penuh adalah pejabat negara yang diangkat dan diberhentikan oleh Presiden selaku Kepala Negara.
- (2) Duta Besar Luar Biasa dan Berkuasa Penuh mewakili negara dan bangsa Indonesia dan menjadi wakil pribadi Presiden Republik Indonesia di suatu negara atau pada suatu organisasi internasional.
- (3) Duta Besar Luar Biasa dan Berkuasa Penuh yang telah menyelesaikan masa tugasnya mendapat hak keuangan dan administratif yang diatur dengan Peraturan Pemerintah.

Pasal 30

- (1) Untuk melaksanakan tugas diplomatik di bidang khusus, Presiden dapat mengangkat Pejabat lain setingkat Duta Besar.
- (2) Pejabat sebagaimana dimaksud dalam ayat (1) diangkat dengan Keputusan Presiden.

Pasal 31

- (1) Pejabat Dinas Luar Negeri adalah Pegawai Negeri Sipil yang telah mengikuti pendidikan dan latihan khusus untuk bertugas di Departemen Luar Negeri dan Perwakilan Republik Indonesia.
- (2) Ketentuan mengenai pendidikan dan latihan Pejabat Dinas Luar Negeri sebagaimana dimaksud dalam ayat (1) diatur dengan Keputusan Menteri.

Pasal 32

- (1) Pejabat Dinas Luar Negeri adalah Pejabat Fungsional Diplomat.
- (2) Pejabat Fungsional Diplomat dapat memegang jabatan struktural.
- (3) Tata cara pengangkatan dan penempatan Pejabat Dinas Luar Negeri diatur dengan Keputusan Menteri.
- (4) Hak dan kewajiban Pejabat Dinas Luar Negeri diatur dengan Keputusan Menteri.

Pasal 33

Jenjang kepangkatan dan gelar Pejabat Dinas Luar Negeri dan penempatannya pada Perwakilan Republik Indonesia diatur dengan Keputusan Menteri.

Pasal 34

Hubungan kerja antara Departemen Luar Negeri dan Perwakilan Republik Indonesia diatur dengan Keputusan Menteri.

BAB VIII

PEMBERIAN DAN PENERIMAAN SURAT KEPERCAYAAN

Pasal 35

- (1) Presiden memberikan Surat Kepercayaan kepada Duta Besar Luar Biasa dan Berkuasa Penuh Republik Indonesia untuk suatu negara tertentu atau pada suatu organisasi internasional.
- (2) Presiden menerima Surat Kepercayaan dari kepala negara asing bagi pengangkatan Duta Besar Luar Biasa dan Berkuasa Penuh negara tersebut untuk Indonesia.

Pasal 36

- (1) Dalam hal seseorang ditunjuk untuk mewakili Negara Republik Indonesia pada suatu upacara tertentu di luar negeri, jika disyaratkan, kepada orang yang ditunjuk diberikan Surat Kepercayaan yang ditandatangani oleh Presiden.
- (2) Dalam hal seseorang ditunjuk untuk mewakili Pemerintah Republik Indonesia dalam suatu konferensi internasional, jika disyaratkan, kepada orang yang ditunjuk diberikan Surat Kepercayaan yang ditandatangani oleh Menteri.

Pasal 37

- (1) Presiden menandatangani Surat Tauliah bagi seorang Konsul Jenderal atau Konsul Republik Indonesia yang diangkat guna melaksanakan tugas konsuler untuk suatu wilayah tertentu pada suatu negara asing.
- (2) Presiden menerima Surat Tauliah seorang Konsul Jenderal atau Konsul asing yang bertugas di Indonesia serta mengeluarkan eksekutor untuk memulai tugasnya.

Pasal 38

- (1) Presiden menandatangani Surat Tauliah bagi seorang Konsul Jenderal Kehormatan atau Konsul Kehormatan Republik Indonesia yang diangkat guna melaksanakan tugas konsuler untuk suatu wilayah tertentu pada suatu negara asing.
- (2) Presiden menerima Surat Tauliah seorang Konsul Jenderal Kehormatan atau Konsul Kehormatan asing yang bertugas di Indonesia serta mengeluarkan eksekutur.

BAB IX

KETENTUAN PERALIHAN

Pasal 39

Peraturan perundang-undangan mengenai atau berkaitan dengan Hubungan Luar Negeri yang sudah ada pada saat mulai berlakunya undang-undang ini tetap berlaku sepanjang tidak bertentangan atau belum diganti dengan yang baru berdasarkan undang-undang ini.

BAB X

KETENTUAN PENUTUP

Pasal 40

Undang-undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan undang-undang ini dengan penempatannya di dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta
pada tanggal 14 September 1999

PRESIDEN REPUBLIK INDONESIA,

ttd.

BACHARUDDIN JUSUF HABIBIE

Diundangkan di Jakarta
pada tanggal 14 September 1999

**MENTERI NEGARA SEKRETARIS NEGARA
REPUBLIK INDONESIA**

ttd.

M U L A D I

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 1999 NOMOR 156

Salinan sesuai dengan aslinya

MODULE 2: Trafficking, forced labour and exploitation faced by domestic workers

Timeframe: 2 hr 15 min (75 min + 60 min)

Module Learning Outcomes:

By the end of this module, the participant will be able to:

- Distinguish trafficking, forced labour and smuggling
- Define debt bondage
- List 2 human violations that might happen to a domestic worker before she travels (in the country of origin)
- List 2 human rights violations that might happen to a domestic worker in the country of destination
- Explain how the State may be a violator migrant domestic workers rights
- Explain why a human rights perspective is relevant to FSP

Outline of Module:

1. PowerPoint presentation [Aims of module [5 min]
2. Small Group work - Case of Adek discussed amongst groups of 3 [10 min]
3. Feedback [10 min]
4. PowerPoint Presentation on key terms (trafficking, forced labour debt bondage and smuggling), statistics of trafficking and forced labour and why conceptual distinctions are important [40 min]
[Break]
5. Group work: Human rights violations in case studies [20 min]
6. Feedback [20 min]
7. PowerPoint presentation on human rights violations in sending and receiving countries, State accountability and human rights, religion and cultural values [30 min]
8. Knowledge review [homework]

Annex 2:

Essential reading:

- UN Trafficking Protocol to prevent, Suppress and Punish Trafficking in Persons, Especially women and children, 2000
- ILO *Human Trafficking and Forced Labour Exploitation –Guidance for Legislation and Law Enforcement Guidelines* pp. 31-32
- GAATW *Human Rights and Trafficking in Persons: A Handbook*, Bangkok, 2000, pp.13-22
- ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers*, GENPROM, Geneva, 2002, Booklet 1, *International Legal Instruments*, pp. 22 -23, pp. 25 – 27 and 55 – 66.
- Rosenberg, Ruth (ed.), *Trafficking of Women and Children in Indonesia*, ICMC, ACILS, Jakarta

Module Step by Step

1. PowerPoint Presentation

Aims:

- ♦ What is trafficking, forced labour smuggling and debt bondage?
- ♦ What human rights violations happen in sending countries?
- ♦ What human rights violations happen in receiving countries?
- ♦ Who violates domestic workers' rights?
- ♦ Why is a human rights perspective is relevant to foreign service personnel?

2. Small group work

Case of Adek¹

I went to a broker in the town to help me to go to Hong Kong, because I heard from a relative working there that the salary was higher and I would get Sundays off. The broker brought me to the PT. SPJ employment agency in Sidoarjo, Surabaya.

I had to pay Rp. 60,000 39 to the broker for a medical test, but he did not pay for the test. I also paid Rp.250,000 to the employment agency for my uniform and Rp.80,000 for Cantonese language and cookery books. I was told that I would not receive any salary for the first four months (HK3670x4) as I had to pay this amount as agency fees to process everything. The agency arranged everything: passport, ticket, visa, employer, and medical test. I waited four months before I could leave for Hong Kong. I did not know that I had to wait for that long.

During that time I stayed in the 'training camp' of the PT. Surry Pacifik Jaya in Surabaya, East Java. There were around 1000 women in this camp, all going to Hong Kong, Singapore, Malaysia and Taiwan. I could eat three times a day, but the food was not healthy. They gave us a small amount of vegetables (we were not allowed to serve ourselves) and sometimes they gave us a piece of salty fish or tempe 40 or tofu only. Since the food was insufficient I had to buy my own food from vendors outside the gate of the camp.

We had to find roundabout ways to buy food from that vendor, since we were not allowed to leave the training camp.

Many women were sick there. They had fever, cold, and many of us had skin problems since the water was not clean. I had to take a bath with 10 persons in the same bathroom. The water was dirty and not enough for all of us.

Many of my friends were always screaming and while I was staying in that training camp one of my friends died. She died after being sick for a long time in the camp. Actually her family was trying to take her home she was seriously ill, but the agency did not allow it because her family refused to pay Rp. 2,000,000 to the agency as guarantee that she would come back to the camp. One day later the agency brought her to the hospital but she died a day after.

The agency told the women who were going to Taiwan that they should not pray; I do not know why. The agency allowed those of us going to Hong Kong to bring a prayer cloth so

¹ Chew, L., Discussion Paper for Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking, Anti-Slavery International and the International Labour Organization, London, 2003.

long as the color is not white. According to them, Hong Kong people are afraid of white color. The agency staff treated us very badly. They sounded like kings, commanding us to do many things for their personal needs. We had to do whatever they asked very fast, and they are shouted at us if we made a little mistake.

We were not allowed to go out of the training camp. We were isolated from the community. Our families couldn't contact us since there were no telephones. If our families or relative sent a letter, the agency staff will censor it first. Often they opened our letters or did not give our letters to us. Our families were allowed to visit us once every 2 weeks on Saturday between 8.30 am and 3.00 pm only.

Since many of us came from villages very far away, sometimes our families or relatives did not arrive for a visit at the right time. Then we were allowed to meet them for one to two hours only.

The agency was very strict with timing. If we were late even five minutes, they would punish us by making us do extra cleaning of the camp. If we wanted to go back home for some important things we had to deposit a guarantee of around Rp 1,000,000 to 2,000,000. If we wanted to cancel our employment process the agency would fine us around Rp 3,500,000. One of my friends got pregnant and since that was not allowed she had to cancel her process, for which the agency asked her to pay Rp 3,500,000. If we refused to pay, then the agency would bring us to another place, where we would have to work without any payment for an unlimited time, until our families are able to buy us out.

Almost all the women in this training camp stayed more than 5 to 6 months and some of them stayed for almost 1 or 2 years. I was lucky because they did not ask me to do part time work. They told me because there was an employer in Hong Kong for me already. Almost all my friends there were forced to do part time work for only Rp 75,000 to Rp 100,000 per month. They can't refuse it since this is also one of the regulations in this training camp.

In this training camp we were forced to learn Cantonese, from 8 am to 5 pm. During lunchtime we were allowed to take a rest for one hour. Those going to Hong Kong soon had to continue studying from 8pm to 11 pm.

My documents

I signed employment contract papers when I was still in the training camp. But they did not explain much about these to me; they just pointed to the places to be signed by me. So from signing these I knew that I had a contract already. But in fact I never kept any of my documents myself, including contract and passport. I just held these in my hand during my trip to Hong Kong and as soon as I arrived at Hong Kong airport, the agency staff who picked me up took all the documents away from me. However, I did not object because at that time I did not know that this is illegal in Hong Kong. I thought it was common that domestic workers were not allowed to keep their documents themselves.

Arrival in Hong Kong

I arrived in Hong Kong in August 2001. From the airport the agency staff brought me to their flat, where I had to stay and do domestic work for the people in that house for two days without pay. Then my employer picked me up and brought me to their flat.

Payment of salary

On 30 of August my agency brought me to the Hong Kong Shanghai Bank in Central where they told me to open a bank account. But the agency did not give me the passbook. They told me that my employer would pay my monthly salary into this bank account. The

agency seriously told me that I was allowed to get money from that account only after my first five months employment, and not more than HK\$2000 per month. 'If you get more than that your employer will terminate you,' the agency said to me. However, I did not ask or object since I did not know that there is a minimum wage in Hong Kong.

After a month of my employment, my employer gave me an ATM card of my account. But she told me that I could not withdraw money in this account yet since I still have to pay my agency fee. I just obeyed what my employer said.

On February 2002 (after working my first five months), I withdrew money from on my ATM card. But my employer was angry with me whenever I withdrew money; she said that I had to tell her in advance how much and for what I withdrew money.

Later on (after I was terminated), from the bank records I received upon request from the bank, I discovered that my employer had deposited HK\$3670 every month in my account. From that record I also learnt that a finance company was withdrawing money from my bank account. In the first four months they withdrew HK\$3,570 per month and then after that they withdraw HK\$1,670 per month. I had never borrowed money from any finance company and I also never gave anyone authorisation to withdraw money from my account. Then I remembered that in the training camp, the agency had asked me to sign a paper. Since that paper was in English I did not know what was written there. Since all my friend also had to sign such papers, I thought it is one of the requirements if we wanted to go abroad.

Rest day and public holidays

During the 9 months of my employment I only had one rest day-on 16 December 2001, which was a Muslim celebration. My employer gave me the rest day because I asked for it, but complained to the agency, and I was scolded by my agency. My employer never gave me any money as compensation for not taking rest days. I was allowed to stay alone in the flat, but I was not allowed to do any shopping alone, not even to buy personal things like sanitary napkins for myself. So had to wait until my employer had time to go with me to buy that. I had to pay for these articles myself.

Although I was not asked to do anything I thought a domestic worker should not do, she treated me as if I was not a human being. Often she called me 'black' and 'stupid'. Whenever she was angry with me because of some mistake, she said bad words to me, like 'You had better eat shit.' She often called the agency to complain that I could not work properly. Then the agency would call me and get angry with me.

2. Is Adek trafficked?

Name the essential factors that make it a trafficking case, or don't make it a trafficking case.

3. Feedback

Is Adek trafficked? Yes/No

Essential factors:

4. PowerPoint Presentation

o Trafficking

Definition of Trafficking

According to the definition in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, to the UN Convention Against Transnational Organised Crime (2000) **'trafficking in persons'** is

"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";

Or presented schematically, trafficking is one element from each column of the following table

Figure 2.0

The UN Trafficking Protocol Definition

Trafficking in persons is:

+ by means of

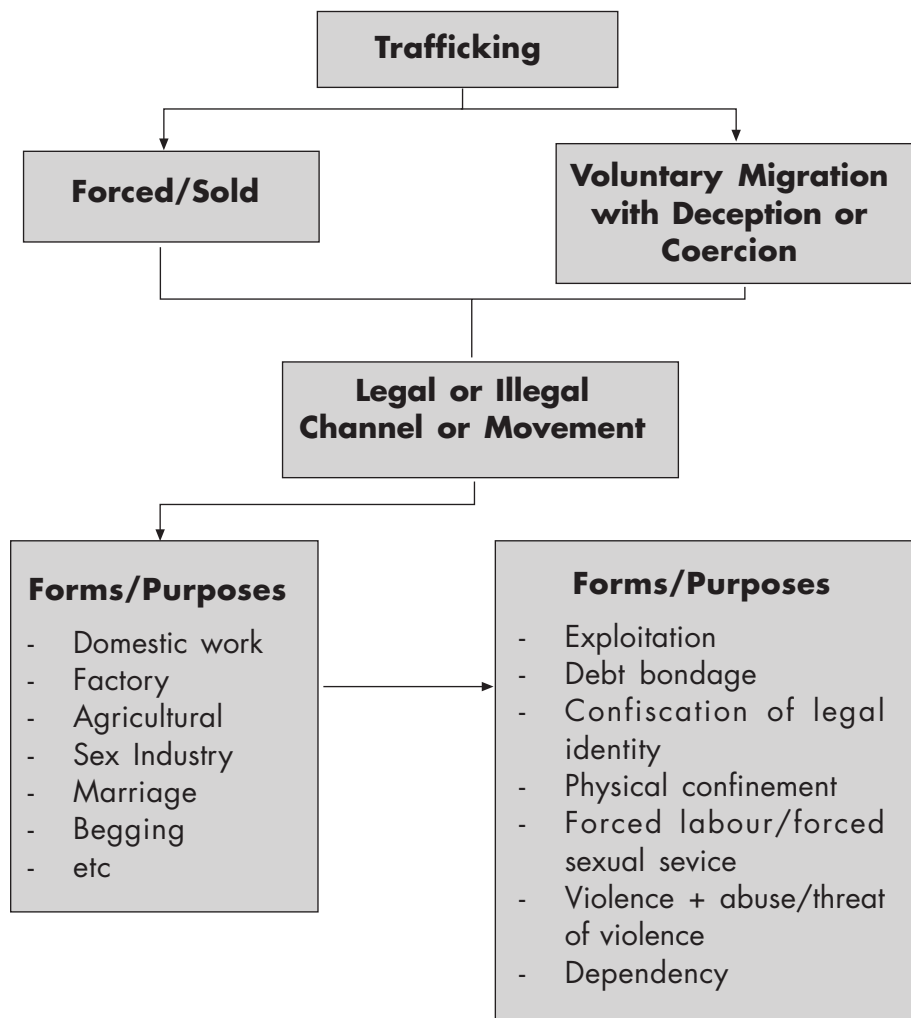
+ for the purpose of exploitation

Exploitation =

• Recruitment or • transportation or • transfer or • harbouring or • receipt	• the threat or • use of force or other forms of coercion, or • of abduction, or • of fraud, or • of deception, or • 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,	• the exploitation of the prostitution of others or • other forms of sexual exploitation, or • forced labour or services, or • slavery or • practices similar to slavery or • servitude or • the removal of organs
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- For trafficking in adults (i.e. 18 years+) you need one element from each column (column 1 plus column 2 plus column 3)
- For children (for under 18s) you need only one element each from column 1 and 3 to constitute trafficking);
- The consent of a victim of trafficking in persons to the intended exploitation (column 3) is irrelevant where any of the means (column 2) have been used (i.e. where an aspect of column 2 is present, consent to 3 is irrelevant).

Trafficking is the facilitated movement of a person by means of deception or coercion etc. into conditions of exploitation, be it sexual exploitation, forced labour, slavery or slavery-like practices or servitude.



Women and girls are trafficked into domestic work, when they are being held in forced labour or situations from which they cannot freely leave, because of physical or psychological coercion exerted by a third party.

Exploitation under UN Protocol = FORCED LABOUR

"All work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"
(ILO Convetion No. 29)

- ♦ Lack of consent to work + threat of penalty = forced
- ♦ The penalty might take different forms, be it physical violence or psychological pressure
- ♦ Domestic workers often find them in forced labour when they cannot freely leave a situation, if they are locked in the house and are forced to work under threat or violence or psychological coercion.

Forced labour

Article 2 of ILO Convention Number 29 on Forced Labour (1930) defines forced labour as:

“All work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Domestic workers often find them in forced labour when they cannot freely leave a situation, if they are locked in the house and are forced to work under threat or violence or psychological coercion.

The Indonesian Ambassador to Singapore states ‘We have many cases of forced labour in Singapore, at the Indonesian embassy we have 50 women staying here at any one time, and they are usually the ones who have escaped abuse in the households’.

The ILO gives the following list to help identify forced labour in practice. It is not necessary for all of these to be present; however the presence of some or even one element from each side of the table will prove forced labour.

Identifying forced labour in practice²

Lack of consent to (involuntary nature of) work (the “route into” forced labour)	Menace of a penalty (the means of keeping someone in forced labour)
• 1. Birth/descent into “slave” or bonded status • 2. Physical abduction or kidnapping • 3. Sale of person into the ownership of another • 4. Physical confinement in the work location – in prison or in private detention • 5. Psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance • 6. Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.) • 7. Deception or false promises about types and terms of work • 8. Withholding and non-payment of wages • Retention of identity documents or other valuable • personal possessions	Actual presence or credible threat of: • 9. Physical violence against worker or family or close associates • 10. Sexual violence • 11. (Threat of) supernatural retaliation • 12. Imprisonment or other physical confinement • 13. Financial penalties • 14. Denunciation to authorities (police, immigration, etc.) and deportation • 16. Dismissal from current employment • 17. Exclusion from future employment • 18. Exclusion from community and social life • 19. Removal of rights or privileges • 20. Deprivation of food, shelter or other necessities • 21. Shift to even worse working conditions • 22. Loss of social status

Most of the above characteristics can and do apply to migrant domestic workers who end up in forced labour. The only ones that generally do not apply to migrant domestic workers from Philippines and Indonesia are 1 and 11.

2 From International Labour Office, A global alliance against forced labour, Geneva, 2005, p.6.

Children and adults in forced labour

There is no distinction between children and adults, however in terms of children; the ILO has also defined worst forms of child labour, which might provide a clearer context of what is considered forced labour in regard to children – basically worst forms of child labour is broader since children are especially vulnerable to exploitation.

The “**worst forms of child labour**” is defined under Article 3 of ILO Convention Number 182 on the Worst Forms of Child Labour (1999) as comprising:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

ILO Recommendation 190 provides a more detailed description of the kind of work that countries should consider when defining their own list of harmful work under part (d). This includes

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Clearly therefore, child domestic work where the child is working long hours, confined to the employers household and working at night might be considered a worst forms of child labour.

Exploitation under UN Protocol = SLAVERY-LIKE PRACTICES

Slavery-like practices includes debt bondage, serfdom, forced marriage and trafficking of children

(UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956))

DEBT BONDAGE is:

‘the status of condition arising from a pledge by a debtor of his security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt of the length and nature of those services are not respectively limited and defined’.

(UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956))

Debt bondage

Under the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), “**debt bondage**” is

“the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

Many migrant domestic workers work in situations of in debt bondage.

DEBT BONDAGE

- ♦ Where a person has to work to pay off a debt and the value of the money owed is less than the value of the work they do OR
- ♦ Worker does not know when their debt will finally be considered paid OR
- ♦ Non-payment of wages (with consent) in the early part of the employment contract may be indirectly DB
- ♦ Is Adek is debt bondage)

Non-payment of wages with the consent of the worker, especially in the early part of the employment contract, may constitute indirect debt bondage because it establishes a relationship of unequal power, where the employer can exert unreasonable control over the worker, because the worker fears remaining unpaid.

Is Adek in debt bondage?

Yes. Adek is in debt bondage even in Indonesia, where she is not allowed to leave the training camp and is bonded to stay there unless her family can pay a sum of money or she can work off the money ‘owed’. In Hong Kong, the debt bondage continues because she is not paid at all for four months and then is not paid full salary with no indication when the amount ‘owed’ will be repaid to the agency.

UN Protocol definition of trafficking

“Trafficker” under the Protocol is someone who commits columns 1+2+3 or in case of children 1+2

A trafficker might not be involved in recruitment and transportation for exploitation, also includes receipt and exploitation (i.e. employers)

Who is the trafficker in Adek’s case?

Refer to Answers for Participants 2.2 disseminated during the training for answer to this case

Trafficking, migration and smuggling

- ♦ **Migration** is movement from one country to another (legal or illegal)
- ♦ **Smuggling** is when one is moved illegally by a third party across border for profit
- ♦ **Trafficking** is when one is moved and exploited by a third party. In the case of adults via deceptive or coercive means.
(It can be legal or illegal movement, within or across borders)

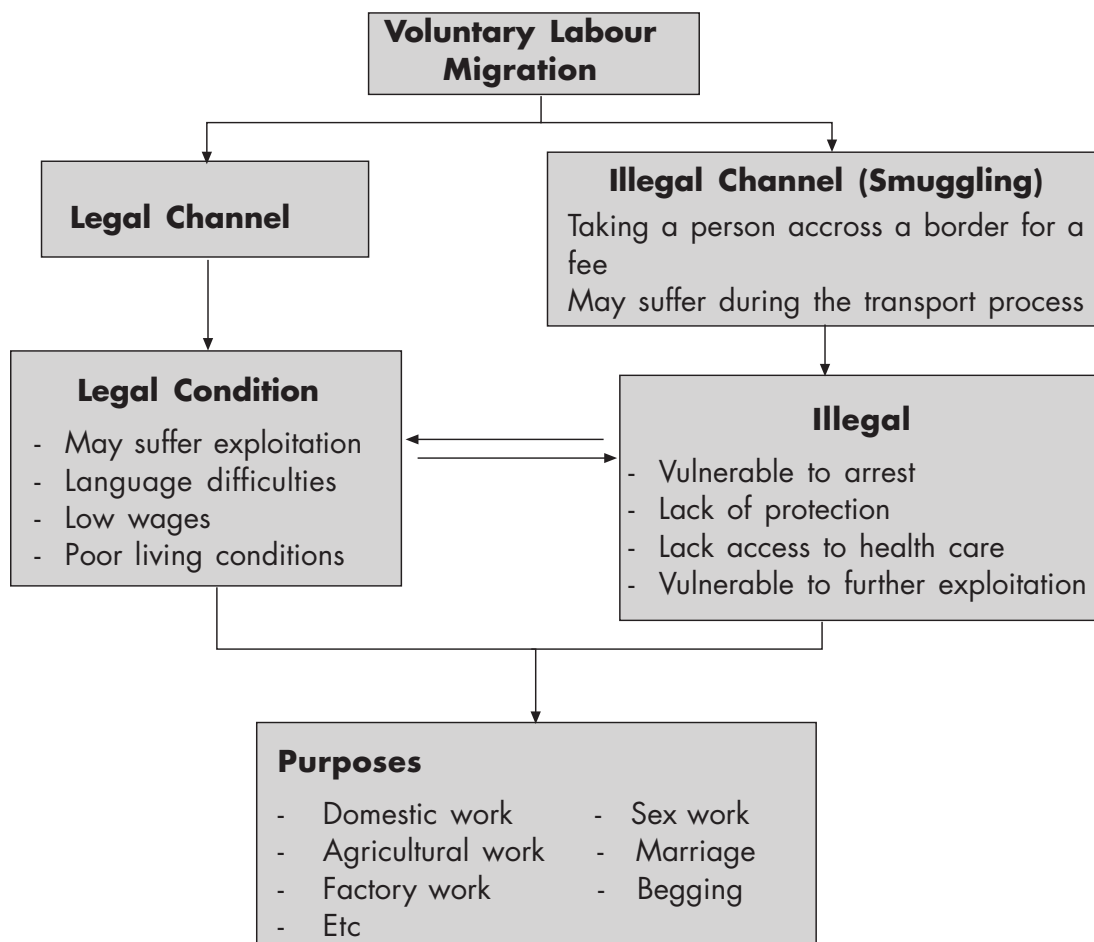
Smuggling

Under Article 3 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing the UN Convention Against Transnational Organised Crime "**smuggling in persons**" is

"The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident"

The difference between smuggling and trafficking is:

- o Smuggling requires crossing of international borders, whereas trafficking can also happen internally.
- o Smuggling is for profit
- o Smuggling is generally thought of as a crime against the State (because the crime is illegal migration), whereas trafficking is a crime against the person (the victim)



How many trafficked and in forced labour

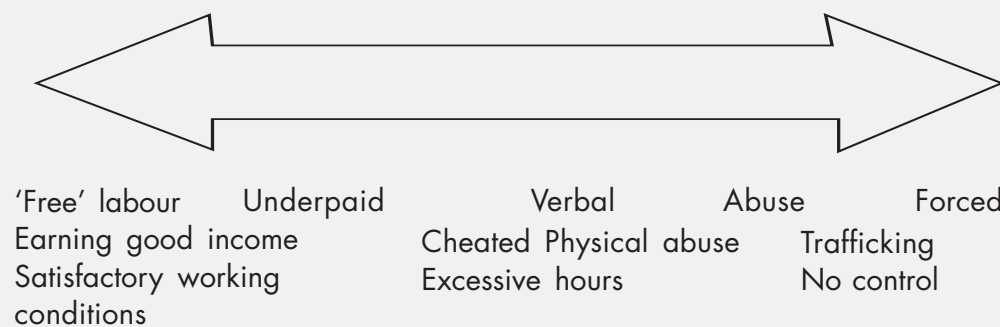
According to ILO estimates,

- ♦ Approximately 12.3 million people are held in forced labour worldwide
- ♦ Of that number, 2.45 million people are trafficked into forced labour. One third of these are trafficked for non-sexual purposes
- ♦ 1.36 million victims of trafficking into forced labour in the Asia-Pacific region (Source: International Labour Office, A global alliance against forced labour, Geneva, 2005)
- ♦ Therefore seems to be a significant amount of trafficking of women into domestic work in Asian countries

Embassies can collect data on the numbers of domestic workers trafficked and in forced labour → important for staff to understand exactly what constitutes trafficking and forced labour

Other violations and vulnerability to trafficking and abuse

The scale of exploitation of migrant workers:



If other violations are also not addressed properly, then it can make someone vulnerable to a trafficking or forced labour situation

We have spent some time explaining the elements of forced labour and debt bondage so that embassy staff can clearly identify a victim of trafficking from a non-victim. But why is this important? What difference does it make to know if someone is smuggled or trafficked or in labour exploitation?

Why are the distinctions between trafficking, smuggling and other forms of exploitation important to embassy staff?

- ♦ Trafficking and smuggling require different responses. Combating smuggling is by tightening border controls but combating trafficking and forced labour is by improving labour protection
- ♦ Different crimes have been committed and can be prosecuted. With trafficking, various criminal and labour laws are violated (as we will cover in more detail in Modul on laws)
- ♦ Victims of trafficking require special assistance from staff because of their experiences (we will cover in detail in Module 4)
- ♦ Victims of trafficking may have more rights under the law of the receiving country (e.g. temporary right to stay or to stay in shelter not detention)

One of the most severe violations some domestic workers face is trafficking. Trafficking is at one end of the spectrum of abuse of domestic workers. It is important to know that there are various other violations in the migration process, some of which are faced by victims of trafficking and some are also faced by non-trafficked migrant domestic workers.

5. Group work: Human rights violations in sending and receiving countries

Human Rights Violations

Group work exercises

- ♦ Group A: Cases of Shamela and Nasiroh
- ♦ Group B: Cases Riena and Adek

1. Is the worker in the case study trafficked, smuggled or in forced labour or debt bondage (or is there insufficient information to tell)?
2. What rights are being violated in the case and for each right, who is the violator?

(30 minutes)

Case 1 – Shamela

Court transcript records of facts: "Defendant MS is the Second Secretary of the Bahrain Mission to the United Nations, and defendant KS is his wife. Plaintiff [named Shamela], a native of Bangladesh, alleges that between November or December 1998 and August 30, 1999, she worked as a domestic servant in defendants' New York City apartment. Plaintiff contends that she was subjected to abusive working conditions, and that her only compensation was a very small sum of money forwarded to her husband in Bangladesh. Plaintiff further alleges that during her employment she was allowed to leave the apartment on only two occasions, both times to go to the market to assist Mrs. S. and that on the second occasion she left the apartment, she spoke to a Bengali-speaking fruit and vegetable vendor, who contacted someone who then helped plaintiff leave the home of Mr. and Mrs. S."³

Additional information: Shamela obtained a legal work visa to enter the United States. However, upon arrival at her employer's apartment, her passport was confiscated. She was fed little, suffered verbal and physical abuse and had to work every day for long hours without any rest days until her escape 10 months after her arrival.

Case 2 - Nasiroh

"Nasiroh, a young Indonesian woman, went to Saudi Arabia in 1993 to earn money as a domestic worker. She told Amnesty International that she was sexually abused by her employer, falsely accused of his murder, and then tortured and sexually abused by police officers during two years of incommunicado detention. Officials from her embassy did not visit her once. Her trial was so cursory that she did not know she had been convicted. She still has no idea for what "crime" she was imprisoned for five years."⁴

3 United States District Court Southern District of New York, Shamela Begum (Plaintiff) vs Mohammed Saleh and Khatun Saleh (Respondents), No. 99 Civ. 11834, 2000.

4 Amnesty International, Saudi Arabia: Gross Human Rights Abuses Against Women at <http://web.amnesty.org/library/Index/ENGMDE230572000?open&of=ENG-SAU>

Additional information: Although Nasiroh was present at the trial; she was not informed about the process and did not have a translator.

Case 3 - Riena⁵

The agent said I will take care of old people. They promised me 350 ringgit [US\$92.10] a month, with four months deduction. There were four kids, the parents, and a grandma. From 4:30 a.m. to 8:00 a.m., I worked at a shop. Then I would go upstairs and clean the house, while taking care of the grandma. From 1:00 p.m. to 5:00 p.m. I would go back to the shop. After 5:00 p.m. I went to the other house. At the second house I would clean until 11:30 p.m. if I was able to go fast. If I wasn't able to go fast, I would return at 1:00 a.m.

If I had rest time, the employer asked me to clean the house, mop, and wash the walls and windows. There was no time off. I was never allowed to use the phone or write a letter. Every time I worked, the woman complained about my job. She asked me to clean everything. The family called me a dog, they told me I don't have a brain, that I am crazy. I am Christian and they never allowed me to go to church. They never allowed me to walk out of the house. For the family, the principle was that I work and work and work and don't have time to rest. Sometimes I was tired and I wanted to rest. Even if I was ill I had to work.

My employer kept my salary—350 ringgit per month. I don't know if they kept it in a bank account. I asked if I could send money to my family. I wanted to send 500 ringgit [U.S.\$131.58], but they didn't give me the money, even though I had been working one year.

I tried to kill myself, because I couldn't stand my employer. When that happened, she called the agency and the agent took me from the house to the agent's house. The agent asked whether I wanted to continue working or go back to Indonesia. I said Indonesia. The agent said if you go back, you get no money. The agent said he would send me home...but when we arrived in Kuala Lumpur, he said that immigration would only let me leave Malaysia on March 19, 2004. Now I know that is actually the expiration date for the visa, not [a government requirement, but I didn't know that then].... I never got a salary in all fourteen months.

Interview with Riena Sarinem, age thirty, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004⁶

Case 4 - Adek

Refer to case above under trafficking. **Group B does not have to answer Question 1 for Adek's case since this has already been discussed, just answer Question 2.**

Refer to Answers for Participants disseminated during the training for the Answers to these cases.

6 Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*, Vol. 16, No. 9 (B), July 2004, New York, p.50-51.

Human Rights Instruments

Refer also to Essential Reading in Annex 1: GAATW, Human Rights and Trafficking: a Handbook

International Covenant on Economic, Social and Cultural Rights (ICESC)

The ICESC protects equal rights for men and women and different nationalities, rights to employment of one's choice, fair wages, just and fair working conditions, adequate and fair standards of living including food, clothing and housing, physical and mental health.

International Covenant on Civil and Political Rights (ICCPR)

This convention protects the right to life and security, freedom from torture or cruel, inhuman or degrading treatment, freedom from slavery and servitude, freedom of movement and equality before the courts and equal protection under the law.

Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (CAT)

Whilst this Convention particularly considers torture that is sanctioned by the state, it also prohibits actions by individuals such as cruel, inhuman or degrading treatment.

Special conventions for vulnerable groups – women, children and migrants

Convention for the Elimination of All forms of Racial Discrimination (CERD)

This convention sets out the principle of non-discrimination based on race or ethnic origin. In particular, the right to equality before the law and access to justice regardless of race or ethnic origin.

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and Its Protocols.

The CEDAW Convention sets out equal rights for women and no gender-based discrimination including gender-based violence. It covers rights to liberty and security of person, to be protected from trafficking, to just and favourable conditions of work and to have equal access to justice, education, employment and health care.

Convention on the Rights of the Child (CRC) and its Protocols

The CRC sets out specific rights to be considered in the case of children. Children should be protected from trafficking, abuse, maltreatment and exploitation. Children enjoy rights to education and freedom from hazardous work. It establishes the best interests of the child as the primary concern in all actions regarding children. Children also have the rights to family reunion, and to victims have the rights to minimum standards of care in their physical and psychological recovery and integration.

ILO Convention 182 on the Worst Forms of Child Labour

Children should also be protected from the worst forms of child labour which includes slavery and slavery-like practices, trafficking, debt bondage, forced labour, commercial sexual exploitation and work that is harmful to the health, safety or morals of children.

Children in domestic work may be considered a worst form of child labour where the child is living and working confined to the employer's home, engaged in long hours or work at night time or if they are exposed to any kind of abuse. States are obliged to remove children from the worst forms of child labour and assist them in recovery and integration including giving access to education.

ILO Conventions 30 on Forced Labour and 105 on Abolition of Forced Labour

These Conventions prohibit forced labour and call on States to take all measures to prevent it from occurring.

UN Convention on Protection of Migrant Workers and Members of Their Families – (Migrants Workers' Convention)

This Convention establishes protection for both regular and irregular migrants by both sending and receiving States. Migrant workers should be treated equally to nationals in living and working conditions, access to justice and freedom of movement. Migrants are entitled to reasonable, healthy and safe working and living conditions.

State should provide free information and appropriate assistance to migrant workers and their families, especially regarding ease of travel, working and living conditions and rights and duties under the laws of the receiving country. States should also regulate recruitment agencies and prevent employment of irregular workers by taking punitive measures against illegal agencies and employers of irregular workers.

UN Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)

The Trafficking Protocol sets out the rights of victims of trafficking including rights to safety, privacy and confidential legal proceedings and information about court proceedings including access to compensation. States should consider measures for the physical, psychological and social recovery of victims (in co-operation with non-governmental organisations) including appropriate housing, counselling and information (especially regarding their rights), medical, psychological and material assistance and employment, education and training opportunities. Receiving countries are encouraged to take measures to enable victims of trafficking to remain in their country temporarily or permanently in appropriate cases and should give consideration to humanitarian and compassionate factors.

The following quotes reflect the basic rights to human rights to freedom from violence, fair remuneration and just and favourable conditions of work:

Ratification of Human Rights Treaties

- ♦ Indonesia has ratified CAT, CEDAW, CRC and ILO Conventions 29, 105 and 182
- ♦ Indonesia has acceded to CERD
- ♦ Indonesia has signed the UN Migrant Workers Convention and Trafficking Protocol
- ♦ Most of the rights in the following slides are from the UN Migrant Workers Convention
- ♦ It is important to check what Conventions have been ratified by the receiving country
- ♦ If there is a convention Indonesia has ratified that the receiving country has not, Indonesia has the moral highground to call for protection of those rights of its citizens

Violations in Sending countries

- ♦ Freedom from trafficking, forced labour and debt bondage
- ♦ Freedom of movement
- ♦ Right to adequate standard of living
- ♦ Right to information about working and living conditions in destination
- ♦ Right to adequate food and clean water
- ♦ Right to health
- ♦ And??

Violations by State Actors:

Violations in Receiving countries

- ♦ Freedom from trafficking, forced labour and debt bondage
- ♦ Freedom from physical and psychosocial abuse and violence
- ♦ Freedom of movement
- ♦ Right to fair remuneration
- ♦ Right to just and favourable conditions of work
- ♦ Right to protection and assistance from consular or diplomatic officials of country of origin
- ♦ Right to respect for cultural identity
- ♦ Right to equal treatment as nationals in remuneration and terms and conditions of work

Violations in Receiving countries

Directly by State actors:

- ♦ Access to justice
- ♦ Right to information
- ♦ Access to appropriate services
- ♦ Equal treatment before the law
- ♦ Right to shelter
- ♦ And??

Return and reintegration

- ♦ Right to privacy
- ♦ Right to non-discrimination
- ♦ Freedom from debt bondage and re-trafficking
- ♦ Access to justice
- ♦ Right to work and be protected from unemployment
- ♦ And??

Accountability of States

Who violates rights?

- ♦ Traffickers commit crimes, yet States, including government officials, are responsible to protect human rights
- ♦ States may indirectly violate rights where they fail to enact or enforce laws to protect human rights
- ♦ States have obligations under the Universal Declaration of Human Rights and treaties signed and ratified by Governments
- ♦ States should enact laws to protect people from having their rights violated and ensure that such laws are enforced
- ♦ How does this relate to embassy staff?
- ♦ Embassy staff are representative of the State. All victims of human rights violations (trafficked or not) enjoy the right to adequate protection and support from the embassy in the receiving country
- ♦ Where violations arise, you have a duty to assist victims and inform them of their rights under Indonesian and the destination country's law (we will identify relevant laws in Module 3)
- ♦ Embassy staff should document and inform Home Government if the receiving State is violating rights of workers (bound by Indonesian law - see Module 3)

We know that these violations happen against workers, but what difference does it make to us as embassy officials in our job? We cannot change the law of the destination country.

Human Rights, Religion and Cultural Values

Problem: Receiving country does not respect human rights because sees them as a Western construct

Solutions: Look for the same values of fairness and justice in the culture, or even in religion

- ♦ All countries have moral codes of fair and acceptable treatment of people, and justice

Different philosophies and religious writings from all countries ascribe to these core beliefs of morality, justice and fair treatment. In Buddhist, Islamic and Christian countries, human rights violations are also prohibited by the fundamental religious texts. This may be useful knowledge when mediating with employers for example.

ISLAM:

- Human exploitation and oppression is *haram*
- The prophet said: "Do not beat God's women servants"
- H.R. Ahmad: "Whoever had workers, is obliged to pay them"
- "Wages should be paid before their (the worker's) sweat is drying"
- The Lord does not burden people above their capacity" *Al Qur-an* (Koran).

(Source: Muhammad, H., Prevention of Trafficking of Domestic Workers, Meeting of Fatayat NU, 11 March 2005, Jakarta).

CHRISTIANITY:

"You shall not oppress a hired servant who is poor and needy, whether he is one of your brethren or one of the sojourners who are in your land within your towns; you shall give him his earnings on the day he earns it, before the sun goes down (for he is poor, and sets his heart upon it); lest he cry against you to the LORD, and it be sin in you.

(Deuteronomy 24:14-15)

"You shall not oppress your neighbour or rob him. The wages of a hired servant shall not remain with you all night until the morning.

(Leviticus 19:13)

(Source: Bible, Revised Standard Version)

Key learning points from Module 2

- ❑ Trafficking is the facilitated movement of a person by means of deception or coercion etc. into conditions of exploitation, be it sexual exploitation, forced labour, slavery or slavery-like practices (including debt bondage).
- ❑ Smuggling is facilitated movement of a person illegally across a border for profit
- ❑ Forced labour is where someone does not consent freely to work and is working under some kind of threat or pressure
- ❑ Debt bondage is a person working to pay off an unspecified amount of debt or an amount exceeding the value of their labour.
- ❑ Human rights of domestic workers are protected in various international treaties including the UN Migrant Workers Convention, Trafficking Protocol, ICECSR, ICCPR, CAT, CEDAW, CRC, ILO Convention 182.
- ❑ Human rights violations against domestic workers in sending countries include forced labour, illegal confinement, and lack of rights to information about destination conditions, lack of rights to health, adequate food and water and adequate standard of living.
- ❑ Human rights violations in receiving countries include crimes committed by traffickers and employers and violations directly by State actors. These include trafficking and forced labour, illegal confinement, psychical and psychological abuse and the right to just and favourable working conditions.
- ❑ Rights that may be directly violated by the receiving State include the right to shelter, equal protection under the law, access to justice and rights to information and protection and assistance from consular staff.
- ❑ Knowing these human rights and violations is important to FSP because as a representative of the State it is your job and your responsibility to provide victims of violations with information and assistance. They particularly need accurate information about relevant Indonesian and destination countries laws.

Homework for next day:

Complete Knowledge Reviews

Complete *Quiz on knowledge of Indonesian Laws* at p.

Essential Reading for Modules 3 and 4

Knowledge Review

1. An agent assisted Joy to travel from Indonesia to Singapore. She travelled on a false passport. The agent then got her a job as a domestic worker with a family. She agrees to give the agent half of her first month's salary for finding the job. Joy receives slightly less pay than other domestic workers in Singapore. She works 6 days a week, 12 hour per day but she is happy to do so for her employer. She calls the embassy asking for help on how to increase her wages. Joy is:
 - a) in debt bondage
 - b) smuggled
 - c) trafficked
 - d) in forced labour
 - e) all of the above
2. Enid travels to Dubai to work as a domestic worker. She goes via an illegal agent, because it is faster than the official channels. He tells her it will cost \$1000 and she can repay this when she starts working there. On arrival, Enid's false passport is taken away by the agent. She starts work for the family, however the agent tells Enid that unspecified costs mean she has to pay back more than \$1000 and he does not know when the money owed will be finally paid.

Is Enid in debt bondage?

 - a) Yes
 - b) No
 - c) It is impossible to tell
3. Is Enid trafficked?
 - a) Yes
 - b) No
 - c) It is impossible to tell
4. The right to be free from forced labour can be violated in both sending and receiving countries.

True or False
5. Before a domestic worker leaves her country, what is she vulnerable to?
 - a) deportation
 - b) trafficking
 - c) excessive fees being charged
 - d) all of the above
 - e) b), c) only.
6. If a migrant domestic worker is not permitted to stay in a country to bring a labour complaint her employer, this violates her right to seek justice. Who is the violator of this right?
 - a) Employer
 - b) Agency
 - c) Employer and agency
 - d) Host government
 - e) Sending government
 - f) All of the above

Annex 2: ESSENTIAL READING

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

UNITED NATIONS
2000

Advance copy of the authentic text. The copy certified
by the Secretary-General will be issued at a later time.

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH
TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND
CHILDREN, SUPPLEMENTING THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking

in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to

discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

ILO

Human Trafficking and Forced Labour Exploitation – Guidance for Legislation and Law Enforcement Guidelines,

Geneva 2005, pp.31-32

Chapter 4

Monitoring, recruiters and other auxiliaries

The Protocol requires the introduction of criminal sanctions for persons who have recruited, transported or transferred by means of coercion, deception or persuasion, for the purpose of exploitation, which includes the exploitation of 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. Among the issues in the Protocol definition that require further clarification, is the relationship between the person who recruits, transports or transfers the worker and the person who engages the worker in unacceptable labour practice.

Monitoring recruitment as part of effective migration management will lead to the prevention of trafficking and other forced labour outcomes by stopping unscrupulous intermediaries, agencies and employers from luring (potential) migrants into exploitative employment. Recruitment occurs both in origin and destination countries. While the ILO recognizes private employment agencies as legitimate actors in the labour market, it also attempts to eradicate abusive practices, such as excessive fees, false job offers, provision of credits with high interest rates for travel and job brokering services as well as forged documents. This section will look at different types of recruiters and how they are covered in ILO Conventions that relate to aspects of the Protocol. The Conventions may thus aid in drafting appropriate anti-trafficking and anti-forced labour legislation through the identification of recruiters who can subsequently be monitored or sanctioned.²³

IDENTIFYING THE RECRUITER

The trafficking cycle most often begins with the recruitment of a person by means of deception, coercion and/or persuasion. Recruitment is a somewhat broad notion that can be used in common parlance to mean job advertising, candidate canvassing, candidate selection, job brokerage, direct hiring or hiring by delegation. In general terms, it can be defined as a free contractual agreement whereby one party commits itself to pay pre-determined remuneration in exchange of which the other party commits itself to perform pre-determined tasks in a pre-determined time.²⁴

Recruiters, including traffickers, can be agencies, individuals, auxiliaries, employers, or an organization of these, usually working legally, semi-legally or with a facade of legality.

They can also be entirely illegal. Traffickers may operate under several disguises, for instance, private employment agencies, travel agencies, model and fashion agencies, dancers' and entertainment agencies, actors' and performers' agencies, bridal and matrimonial agencies, agencies that do not have recruitment as their primary activity, yet engage in it, or pen and personal contact clubs. They can also be part of an organized crime network. Auxiliaries in the recruitment business can be, for example, the entire range of people involved in supplying documentation, including false documentation, and those involved in providing transport. Hence, a network consisting of recruiters and auxiliaries surrounds trafficking and forced labour.

There are various forms of abuse and exploitation that can be committed by recruiters and auxiliaries, which, even if this particular actor in the chain has no intention of putting the migrant in forced labour, make the migrant vulnerable to it. These abuses are also useful indicators of trafficking. They include charging exorbitant fees for visas and other travel documents, processing and providing fake travel documents without informing the migrant who is to use them, recruitment for non-existent jobs as well as misrepresenting the job and work conditions (e.g. women going abroad and believing they will work as domestics but ending up in prostitution). There is also the provision of a loan that is hard to pay back (particularly since the interest on the loan and the amount of the loan itself tend to be falsely inflated, though the migrant is not usually aware of this), leaving the person in debt to the recruiter and leading to situations of debt bondage and forced labour.

Box 10

Abuses carried out by recruitment agencies in Indonesia

By the 1990s Indonesians were amongst the fastest-growing migrant population in Asia. Indonesians desiring to work abroad are officially required to find jobs abroad through 400 government-sanctioned agencies. These charge excessive fees for training, processing applications and placements. Because of this, migrants are usually seriously indebted before even leaving the country. Furthermore, they are required to sign contracts with the recruitment agencies and have little or no power to negotiate their terms.

The agencies require prospective migrants to live in training camps for one to 14 months. Here they are often forced to work for agency staff, as well as perform tasks such as cleaning, shopping and cooking. The majority of migrants in the camps do not have mattresses to sleep on and are underfed. Physical and sexual abuses also occur in the camps, illness is rampant but there is insufficient medical care.

Agencies continue to profit from the migrants' labour when the latter finally leave for a job abroad. The salary of the first months of work abroad is used to pay off the debt to the agency. However, even after the debt has been paid off most migrants still face forced labour conditions, this time at the hands of their employer/ exploiter abroad. Indonesian migrants are unable to leave the forced labour situation because of the contract they signed with the agency, though often they have not even seen the contract or it is in a foreign language.

Even on return migrants are exploited. Returning migrants are required to pass through a special terminal of the Soekarno Hatta International airport. There have been reports of migrants subjected to rape and physical abuse. Moreover, many have to pay bribes in order to obtain basic information and services. If the migrant is dependent on transport from the agency, this once again leads to excessive fees, about ten times higher than the cost of public transport.

23 For more information see ILO/SAP-FL (2005): Trafficking for forced labour: How to monitor the recruitment of migrant workers, Training manual, Geneva

24 Ibid. For a legal definition of recruitment in the context of migration see Convention No. 97, Art. 2, Annex 1.

See: Comments made by the International Confederation of Free Trade Unions (ICFTU) concerning the exploitation of Indonesian migrant workers, noted by the Committee of Experts on the Application of Conventions and Recommendations, 75th Session, Geneva 2004.

GAATW
Human Rights and Trafficking in Persons: a Handbook,
Bangkok 2000, p.13-22

These actions violate recognised human rights that are located in a number of human rights instruments. Below are the main instruments that set out the human rights applying to everyone; men, women, trafficked persons and migrants. The following tables list the more common rights which are violated in the context of trafficking. Human rights violations suffered by trafficked persons are so extensive that it is necessary to look at all major human rights instruments. The names of the relevant committees reviewing government compliance are set out below each table. The instruments are listed in order of their significance at the international level.

You may wish to refer back to this section again after reading part B of this chapter 'What is trafficking.'²

a. International Covenant on Civil and Political Rights (1966)

Article

- 2 No distinction based on sex
- 3 Equal rights for men and women in the enjoyment of civil and political rights
- 7 No cruel, inhumane or degrading treatment
- 8 Prohibition on slavery and servitude
- 9 Right to liberty and security of person; no one shall be subject to arbitrary arrest or detention
- 12 Freedom of movement
- 14 Equality before the courts and tribunals
- 26 Equal before the law, equal protection of the law

Monitoring body is the Human Rights Committee.

b. International Covenant on Economic, Social and Cultural Rights (1966)

Article

- 2 No distinction based on sex, nation or social origin
- 3 Equal rights for men and women in the enjoyment of economic, social and cultural rights
- 6 Right to do work that one freely chooses under conditions protecting fundamental freedoms of the individual
- 7 Right to just and favourable conditions of work
- 10 Marriage must have consent of both parties
- 11 Right to adequate standard of living including food, clothing, housing
- 12 Right to physical and mental health

Monitoring Body is the Committee on Economic, Social and Cultural Rights.

c. Convention on the Elimination of all Forms of Discrimination Against Women (Women's Convention, 1979)

Article

- 2 States must eliminate discrimination by any person, organisation or enterprise and must abolish discriminatory laws, regulations, customs and practices
- 6 State parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women

- 9 Marriage shall not automatically change nationality
- 11 Right to free choice of employment
- 12 Right to health care and services
- 14 Protection for women in rural areas
- 15 Equality before the law
- 16 Right to freely choose a spouse, minimum age for marriage

Monitoring Body is the Committee on the Elimination of Discrimination against Women (CEDAW). CEDAW and its mechanisms are discussed further in Chapter IV.

d. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Article

- 1 Torture is an act where severe pain or suffering, physical or mental, is intentionally inflicted for purposes including: punishment; intimidation or coercion; by person acting in official capacity
- 3 No expulsion or return of a person to another State if substantial grounds for believing she would be in danger of torture
- 13 Alleged victims of torture have the right to complain to and have her case promptly and impartially examined by competent authorities. Complainant and witnesses shall be protected against any consequential ill treatment or intimidation.
- 14 Redress and right to compensation

Monitoring Body is the Committee Against Torture.

e. Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article

- 2 Protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them full and equal enjoyment of human rights and fundamental freedoms
- 5 Right to equality before the law, especially rights to: equal treatment before all organs of justice; security of person and protection by the State against violence of bodily harm whether inflicted by government officials or by any individual, group or institution; leave and return to/from one's own country; nationality; marriage and choice of spouse; work just and favourable working conditions and remuneration, health services
- 6 Effective protection and remedies against any act of racial discrimination which violates one's human rights

Monitoring Body is the Committee on the Elimination of all Racial Discrimination.

f. (i) Convention on the Rights of the Child (1989)

Article

- 7 Right to nationality
- 16 Legal protection from arbitrary or unlawful interference with privacy, family home or correspondence nor unlawful attacks on honour or reputation
- 19 Protection against physical or mental violence, injury, abuse, neglect or negligent maltreatment or exploitation, including sexual abuse
- 28 Right to education
- 31 Right to rest and leisure, engage in play and recreational activities
- 32 Protection from economic exploitation or performing any work likely to be hazardous, interfere with education or harmful to child's health or physical, mental, spiritual, moral or social development

- 34 Protect from all forms of sexual exploitation and sexual abuse
- 35 Protect from abduction, sale or traffic in children for any purpose or form
- 36 Protect against all other forms of exploitation prejudicial to child's welfare
- 37 Free from torture or other cruel, inhuman or degrading treatment or punishment, no unlawful or arbitrary deprivation of liberty
- 39 Promote physical and psychological recovery and social reintegration of a child victim

Monitoring Body is the Committee on the Rights of the Child.

(ii) *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)* [adopted by the General Assembly but not yet in force]

Article

- 1 Prohibit sale of children, child prostitution and child pornography
- 2 (a) (b) (c) Sale of children: any act or transaction whereby a child is transferred by any person/s to another for remuneration or other consideration Child prostitution: use of a child in sexual activities for remuneration or other consideration Child pornography: any representation of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes
- 3 Criminal or penal law to cover sale of children including offering, delivering or accepting a child for purposes of sexual exploitation, transfer of organs for profit, forced labour
- 8 (1) (3) (4) Protect rights of child victims in criminal justice process: in recognising their special needs, especially as witnesses; in keeping them informed at all times of all things; providing support services; protecting privacy and identity of child; providing for their safety and that of their family where appropriate and avoiding unnecessary delay in granting compensation "Best interests of the child" shall be a primary consideration Ensure appropriate training for persons working with child victims
(2) (3) (4) Prevention of sale of children, child prostitution and child pornography through legal and social laws and policies Prevention by education campaign and training with participation of children and child victims Measures to ensure victim assistance including full social reintegration and recovery Access to adequate procedures for compensation for damages
10 (1) (2) International cooperation by agreements for prevention, detection, investigation, prosecution and punishment of offenders Promote international cooperation to assist child victims in recovery, reintegration and repatriation

g. *Slavery Convention (1926)*

Article

- 2 (1) (2) Slavery is the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised. The slave trade includes all acts involved in: the capture, acquisition or disposal of a person with intent to reduce him to slavery; the acquisition of a slave with a view to selling or exchanging him; disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and trade and transport of slaves.
- 2 State parties to prevent and suppress slave trade
- 3 State parties to prevent compulsory or forced labour

No monitoring committee.

h. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)

Article

- 1 Abolition of slavery-like practices including debt-bondage & serfdom, forced marriage and sale/ transfer of children for labour exploitation (all further defined within this article)
- 2 Minimum age of marriage
- 6 Act or attempted act of enslaving or inducing another to slavery or slavery-like practices is a criminal offence

No monitoring committee.

i. Convention on the Protection of the Right of All Migrant Workers and their Families (1990)
[adopted by the General Assembly but not yet in force]

Article

- 10 Prohibits torture or cruel, inhuman or degrading treatment or punishment
- 11 Prohibits slavery, servitude, forced or compulsory labour
- 16 (1) (2) (3-9) Right to liberty and security of person Effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions Minimum standards with regard to verification of identity, arrest, detention
- 25-30 Minimum standards with regard to the labour conditions of migrant workers, remuneration, medical care and social security
- 40 For documented migrants, the right to form associations and trade unions to protect their economic, social, cultural and other interests
- 41 For documented migrants, the right to equal benefits with regard to access to State educational and health services
- 68 To impose effective sanctions against persons, groups or entities which use violence, threats or intimidation against migrant workers in an irregular situation

The Migrant Workers Convention sets out comprehensive protection standards. Only fourteen countries have ratified it, so it is not yet in force and thus has no enforcement mechanism. It may never come into force because the majority of states are not in favour of adopting a convention that would require them specifically to recognize the rights of non-citizens in their countries, even though other conventions establish the human rights obligation to protect the rights of all persons, whether they are citizens or not.

j. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organised Crime [adopted October 2000, open for signature December 2000]

Article

- 3 Defines trafficking (see page 24 modern definition)
- 6 (1) (2) (3) (4) (5) (6) Assistance and Protection for trafficked persons **in appropriate cases and to the extent possible** under domestic law: Protecting privacy of trafficked person with regard to legal proceedings Information on relevant court and administrative proceedings and facilitate trafficked persons to present their views and concerns in non-prejudicial manner in court proceedings Measures for physical, psychological and social recovery in cooperation with NGOs including appropriate housing, counseling and information in native language, medical, psychological and economic assistance and employment, educational and training opportunities Special needs of child victims especially in regard to housing, education and care Physical safety of victims Possibility of obtaining compensation

- 7 Possible temporary or permanent resident status in destination countries **in appropriate cases**
- 9 (1) (4) Measures to prevent and combat trafficking in persons and protect trafficked persons from revictimisation Address factors that make persons vulnerable to trafficking such as poverty, underdevelopment and lack of equal opportunity

The Trafficking Protocol is the most recent international instrument that focuses specifically on trafficking. It is one of two Protocols attached to the Crime Convention, the other one deals with smuggling in persons. The creation of two separate protocols on trafficking in persons and smuggling in persons respectively is important because it reflects the difference between the acts, and the need for different measures to address these crimes. Trafficking is defined for the first time in international law in the Protocol. It will be further discussed later in this chapter under 'Current Definitions'. The Trafficking Protocol and its effectiveness in terms of protecting rights of trafficked persons will be discussed further in Chapter IV⁶.

k. *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

The 1949 Convention purports to cover trafficking; however, it is inherently problematic. It contains no definition of trafficking and simply addresses prostitution and the movement of persons into prostitution. The Convention considers prostitution an 'evil'; as 'incompatible with the dignity and worth of the human person'. Its goal is to abolish prostitution by stopping women from moving, even voluntarily, into the sex industry. It does not mention trafficking for other purposes such as domestic work, marriage or sweatshop labour. It adopts a crime control perspective on trafficking into prostitution by criminalising all activities by third parties associated with prostitution regardless of the women's age or consent⁷.

The 1949 Convention, though gender neutral, predominantly affects women. It contains provisions to ensure supervision of airports and appropriate public places⁸, and of employment agencies "to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution."⁹ It thus deprives persons, especially women, of the right to non-discriminatory treatment, the right to move freely within their country's borders, the right to enter and leave their country of citizenship freely and their labour rights including the right to choice of work, the right to unionise and the right to just and favourable conditions of work.

By focusing on the elimination of prostitution instead of on the protection of human rights of trafficked persons, the 1949 Convention is not an effective human rights convention. Up till now, it has been ratified by only 72 countries, and thus has been, and will continue to be, an ineffective treaty.

The 1949 Convention has no monitoring mechanism, although the Working Group on Contemporary Forms of Slavery now officially requires reports from State Parties. However, only a few governments bother to submit reports.

l. *ILO (International Labour Organisation) Convention No. 29 on Forced Labour (1930)*

Article

- 1 States to suppress use of forced or compulsory labour within shortest possible period
- 2 Forced or compulsory labour is all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered herself voluntarily
- 6 Officials shall not constrain any person to work for private individuals, companies or associations

The monitoring body of all ILO Conventions is the Committee of Experts on the Application of Conventions and Recommendations. More information on the ILO and its mechanisms is available in Chapter IV.

m. ILO Convention No. 105 on Abolition of Forced Labour (1959)

Article

- 1 Suppress all forms of forced labour as a means of racial, social, national or religious discrimination
- 2 Effective measures to secure the immediate and complete abolition of forced labour

n. ILO Convention No. 182 on the Worst Forms of Child Labour (1999)

Article

- 1 Prohibition and elimination of worst forms of child labour
- 2 Worst forms of child labour includes all forms of slavery or practices similar to slavery including trafficking
- 6 Design and implement programmes of action to eliminate, as a priority, worst forms of child labour
- 7 Importance of education to prevent child labour, take into account special situation of girls
- 8 Enhance international co-operation and/or assistance including development, poverty eradication programmes and universal education

o. UN General Assembly Declaration on Violence Against Women, 1993

Article

- 2 Definition of violence against women includes trafficking in women and forced prostitution
- 3 Rights to: liberty and security of person, equal protection under the law, non-discrimination, highest standard attainable of physical and mental health, just and favourable conditions of work, not be subjected to torture or cruel, inhuman or degrading treatment or punishment

These are the primary international instruments relevant to trafficking; however, some relevant international mechanisms related to trafficking do not spring directly from treaties. These mechanisms, such as UN Special Rapporteurs, are also important for NGO strategies to address trafficking and are discussed further in Chapter IV.

D. WHAT IS TRAFFICKING?

Case of Shenaz¹⁰

Shenaz, from Bangladesh, was a married woman and mother of three when she decided to pay an agent to go to Bahrain to work. Her family was very poor, and her husband had already tried to get work abroad, but was cheated out of a lot of money. Shenaz wanted her children to get an education. She approached an agency, borrowed money from loan sharks, neighbours and friends and put her house down as collateral to pay the agent for the \$1000 ticket to Bahrain. She would work as a domestic worker for a family in Bahrain. After one month there, the employer told Shenaz she had to go to work in America. Shenaz was frightened and refused, but eventually agreed to go. Shenaz moved to New York to work as a live-in domestic worker for a high level diplomat of the United Nations and his wife. Upon arrival, her employers took her passport away from her. She worked seven days a week and was virtually imprisoned. They paid her husband in Bangladesh US\$100 per month, but Shenaz was given no money for herself. They left Shenaz alone in New York for days at a time without any food. She was forbidden from

going out alone, and in nine months, she only left the apartment three times, and always with her employers. On one occasion, the diplomat's wife struck her with a glass. After ten months living and working under these abusive conditions, Shenaz finally managed to escape with the help of a community group.

Stories like Shenaz's are becoming increasingly common throughout the world. Women from Latin America, Africa, Eastern Europe or elsewhere in Asia have similar tales to tell. Many people, often women and children, are "trafficked" from one place to another, to work in conditions where they are abused, treated like slaves or forced to work for little or no money. Trafficking in persons, particularly women and children, is now a global phenomenon. Yet what exactly is trafficking?

1. Historical Background of Trafficking in Persons

We can understand the phenomenon of 'trafficking in persons', and the need for a clear and unambiguous definition better if we trace the historical development of the concept of "trafficking", and see what it has meant to different people, organisations and governments over time.

The earliest understanding of "trafficking" comes from UN instruments. The term "traffic" was first used to refer to the so-called 'white slave trade' in women around 1900. The trafficking and voluntary migration of white women from Europe to Arab and Eastern States as concubines or prostitutes was of particular concern to European middle-class men, women and governments. The result was the creation of an international agreement for suppression of the 'white slave trade' in 1904. At this time, "traffic" meant the movement of women for an immoral purpose i.e., prostitution. Initially, this definition required the crossing of country borders, but by 1910 it changed to acknowledge traffic in women could occur within national boundaries. Traffic in women was seen as related to slavery, but also to closely linked to prostitution.

The link between trafficking and prostitution solidified even more in the following decades, most clearly in the adoption of the 1949 Convention. We already discussed this problematic treaty under 'Primary Human Rights Instruments'. This early confusion of trafficking with prostitution is still seen in the anti-trafficking activism of some individuals, organisations and governments today.

Unfortunately, governments of some destination countries also continue to conflate trafficking with undocumented migration, particularly into prostitution. The response of such governments is predictable and harmful to women; they adopt stricter immigration policies particularly to combat the movement of young women, under the guise of combating "illegal trafficking in persons". Some countries of origin object to this approach because it violates the rights of their citizens abroad. However some countries of origin have adopted similar policies to prevent young women from leaving their country under the mistaken belief that they are preventing 'trafficking'.

So we can see that at different times in history, the then prevailing concept of trafficking has

- Ignored the human rights of trafficked persons;
- Been used by moralists to dictate to women in prostitution;
- Been used by governments to restrict the movements of women.

2. The Modern Definition of Trafficking

The Special Rapporteur on Violence Against Women, made the following statements in regard to the definition of trafficking in her Report to the 56th Session of the Commission on Human Rights¹¹:

10. *At present there is no internationally agreed definition of trafficking. The term "trafficking" is used by different actors to describe activities that range from voluntary, facilitated migration, to the exploitation of prostitution, to the movement of persons through the threat or use of force, coercion, violence, etc. for certain exploitative purposes. Increasingly, it has been recognised that historical characterizations of trafficking are outdated, ill-defined and non-responsive to the current realities of the movement of and trade in people and to the nature and extent of the abuses inherent in and incidental to trafficking.*¹²
11. *Rather than clinging to outdated notions of the constituent elements of trafficking, which date back to the early nineteenth century, new understandings of trafficking derive from an assessment of the current needs of trafficked persons in general, and trafficked women in particular. New definitions also must be specifically tailored to protect and promote the rights of trafficked persons, with specific emphasis on gender-specific violations and protections.*

Before we discuss contemporary definitions of trafficking, read the following cases and consider:

1. Has this person been trafficked or is this a case of voluntary migration?
2. Why/Why not?
3. What are the elements that make this a case (or not a case) of trafficking?

Case of Lui

Lui is a 15 year old uneducated Laotian girl. A woman in her village named Jai suggested she work in a factory in Bangkok. Lui's family is very poor. Jai claimed that Lui could earn 3000 baht (\$US75) per month working in a factory in Bangkok. Lui's mother said she should go and paid for the travel cost. Jai took Lui to a house in Bangkok where there were many Laotian girls waiting for employers to select them. A few days later, Ladda, the owner of a garment factory, took Lui to her factory. Most of the workers in the factory were children aged between 12-15 years. They came from Laos and Burma. They had to work from 6am until 10pm. Sometimes they had to work till midnight. They had three meals per day and slept on the floor in the working room. They could not play, laugh or talk with each other. The owners of the factory supervised the children to make sure they worked hard enough. They could not rest, even when they were very tired. Children who broke the rules were beaten. They did not have holidays and never received any salary. They were not allowed to go outside the factory. On Sundays, they received 70 baht (\$US1.75) so they could buy some necessary things, such as soap or toothbrush at a small shop besides the factory under the supervision of the employer.

One child ran away because she was beaten very badly and she reported it to the police. After that, all the children including Lui were rescued. They were detained and fined for their illegal entry before being deported.

Case of Margarita

Margarita came from the Caldras region in Colombia. Gustavo, a friend of the family offered her a job as a waitress in a club in Bogota. Her mother let her go because Gustavo told her that Margarita would earn 150,000 pesos (\$US80) a month. The money would contribute to the housekeeping and help her brothers and sisters. After arriving in Bogota, Margarita was sold to Eugenia, a club owner. She was forced to work in prostitution at the club. She had to work between 10-18 hours per day every day, and was not allowed to leave except with clients. The club paid her enough for the costs of food and lodging, but nothing beyond that. Since she had no money, she was sometimes forced to buy clothes from the club, and so her debt kept increasing. She also had to pay fines to the club when she was late or sick and could not work.¹³

Case of Raya

Raya was 23 and living in Kiev, Ukraine. Her mother took in a lodger from Jordan named Azim. Raya fell in love with Azim and they had a child together. However, Azim did not want to marry her. After the child was born, Azim returned to Jordan. When the child turned one year-old, Azim returned and insisted on adopting the child, so they registered the adoption in the Ukraine. Then Azim took Raya to Jordan to see his father. They lived with Azim's parents and life was terrible. Azim did not allow her to go out, made her cover her face and still did not want to marry her. Raya then realised that Azim needed their son only to get state benefits for the child. This went on for about six months. One day Azim told Raya that she had to live with another man because he had sold her to him as a slave. Raya finally managed to escape with the help of the Ukrainian embassy but she was forced to leave her son behind in Jordan. From time to time, Azim still called Raya, asking her to sell her flat in order to pay to get the son back.

Case of Rachel

Rachel from Benin City, Nigeria was approached by a man and asked if she would like to go abroad and earn money by buying cosmetics. She agreed and was taken to Italy via Ghana. Once in Italy she was taken to a house and forced into prostitution. The Madam at the house, Agnes, told Rachel that she owed 90 million lire for her travel expenses, and that she would be expected to pay that back at the rate of 300 000 lire (\$US132) per day.

⁶ for an analysis of the UN Anti-Trafficking Protocol contact Ann Jordan of the International Human Rights Law Group, Washington D.C., at annj@hrlawgroup.org

⁷ Article 1 obliges state parties to punish any person who:

(1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
(2) exploits the prostitution of another person, even with the consent of that person.

Article 2 further obliges punishment of any person who:

(1) keeps or manages, or knowingly finances or takes part in the financing of a brothel;
(2) knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

⁸ Article 17.

⁹ Article 20.

¹⁰ Source: Campaign for Migrant Domestic Workers, Institute for Policy Studies, Washington DC, USA.

¹¹ *Supra* note 4. 21

¹² Miller and Stewart (Chair and Rapporteur), 'Report from the Roundtable on the Meaning of "Traffic in Persons": A Human Rights Perspective', *Women's Rights Law Reporter*, 20.1:11, Rutgers University, 1998.

ILO

An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Workers,

GENPROM, Booklet 1, Geneva 2002, pp. 22-23, 25-27, 55-56

Tetapi mereka pun dapat menghadapi masalah serius dalam beradaptasi kembali. Studi-studi kasus menunjukkan bahwa, sebagaimana kerasnya kehidupan para migran perempuan di luar negeri, proses penyatuan kembali mereka setelah pulang ke negara asalnya mungkin akan sama sulitnya. Para migran perempuan memerlukan bantuan, tidak hanya untuk dapat kembali kepada keluarga dan komunitasnya, tetapi juga untuk mendapatkan pekerjaan yang memuaskan dan menghasilkan. Masalah mereka menjadi semakin serius ketika mereka mendapatkan bahwa sewaktu mereka di luar negeri telah menyumbangkan ke perpecahan rumah tangga, pasangan mereka telah memiliki pasangan baru, dan uang yang mereka rajin kirimkan setiap bulannya habis digunakan untuk konsumsi keluarga. Tanpa tabungan atau tidak mendapatkan pekerjaan di daerahnya, maka banyak dari perempuan ini kembali mencari pekerjaan di luar negeri. Sedangkan bagi perempuan atau keluarganya yang dapat menabungpun masih tetap merupakan suatu tantangan bagi mereka untuk dapat memanfaatkan tabungan hasil jerih payah mereka dalam investasi yang produktif karena kurangnya kesempatan lokal atau dukungan resmi.

Berdasarkan perjanjian-perjanjian internasional dan hukum-hukum anti-perdagangan manusia, mereka yang dijual atau diperdagangkan ke suatu negara harus diperlakukan sebagai para korban, dibebaskan dari denda-denda atau hukuman penjara dan dijamin untuk direpatrisasi dengan aman ke negara asal mereka. Tetapi, para perempuan dan anak-anak yang diperdagangkan tersebut pada umumnya diperlakukan berdasarkan hukum keimigrasian dan orang asing, atau hukum ketenagakerjaan dari negara tujuan, ditangkap dan sering ditahan untuk waktu yang lama, tanpa tuduhan resmi atau proses pengadilan, dan akhirnya dideportasikan. Bahkan setelah kembali ke negara asal mereka, orang-orang yang diperdagangkan tersebut mungkin dalam keadaan yang tidak aman. Dalam banyak kasus, orang-orang yang diperdagangkan yang dipulangkan ke tempat asal mereka tanpa mendapatkan perlindungan dari pihak yang berwenang di negara asal mereka, dan mungkin sangat rentan terhadap pembalasan dendam dari para pedagang, dan untuk dijadikan korban kembali ke dalam lingkaran perdagangan manusia. Para korban perdagangan manusia ini mungkin juga memerlukan konseling sosio-psikologis, perawatan kesehatan dan bantuan hukum untuk membantu mereka mengatasi pengalaman buruk mereka, dan agar mereka berhasil bersatu kembali dengan keluarga dan komunitas mereka.

Kotak 1.3 Kerentanan dalam berbagai tahap proses migrasi

Tahap Migrasi	Kerentanan yang dihadapi pekerja migran perempuan
Perekrutan dan pra-keberangkatan	♦ Perekrutan tidak resmi dan perdagangan manusia ♦ Biaya penempatan dan surat-surat yang sangat mahal ♦ Penipuan dan pemerasan oleh agen dan calo. Pekerjaan yang sebetulnya tidak pernah ada ♦ Program pelatihan yang tidak cocok dan mahal ♦ Ditahan oleh para perekrut/agen pencari tenaga kerja, diperlakukan sewenang-wenang di "pusat pelatihan". Sama sekali tidak dikirim ke luar negeri ♦ Pemalsuan identitas pekerja ♦ Kurangnya informasi mengenai syarat dan kondisi pekerjaan

Tahap Migrasi	Kerentanan yang dihadapi pekerja migran perempuan
Perjalanan	♦ Tiket yang mahal ♦ Transportasi yang tidak resmi/penyelundupan ♦ Perjalanan yang berbahaya ♦ Pengorbanan pada saat transit
Bekerja dan Tinggal di luar negeri	♦ Penggantian atau pelanggaran kontrak ♦ Hubungan kerja yang bersifat ketergantungan, Penahanan surat-surat/dokumen ♦ Kondisi pekerjaan dan tempat tinggal yang buruk ♦ Risiko kesehatan dan keselamatan, serta kurangnya perlindungan sosial ♦ Gaji tidak dibayar, atau dipotong secara tidak sah ♦ Perlakuan sewenang-wenang atau kekerasan secara fisik, psikologis atau seksual ♦ Kebebasan bergerak yang terbatas ♦ Kurangnya/tiada informasi, akses ke pelayanan dan mekanisme untuk menuntut ganti-rugi ♦ Tidak ada kedutaan, atau pelayanan yang tidak memadai dari kedutaan
Pengakhiran/ Pemutusan kontrak	♦ Pemutusan secara tidak sah ♦ Pemutusan tiba-tiba, dan tidak adil ♦ Tidak ada tempat tinggal sebelum dipulangkan ♦ Tidak adanya prosedur untuk pengaduan dan tuntutan ganti rugi
Pulang dan bersatu kembali	♦ Tidak ada sumber penghasilan alternatif, kesulitan dalam mendapatkan pekerjaan ♦ Pemerasan dan biaya yang berlebihan atas pelayanan yang dilakukan oleh oknum bandara dan beacukai, pedagang valuta asing, dsb. ♦ Pailit/bankrut ♦ Masalah keluarga, penyesuaian ♦ Kesulitan dalam bersatu kembali kemasyarakat, terutama bagi mereka yang selamat dari tindak kekerasan di luar negeri ♦ Ancaman "diperdagangkan kembali"
Diadaptasi dari: Asian Migrant Centre, Asia South Pacific Bureau for Adult Education, Migrant Forum in Asia, <i>Clearing a Hurried Path: Study on Education Programs for Migrant Workers in Six Asian Countries</i> (Hong Kong, 2001), halaman.93, 114-116; Unlad Kabayan Migrant Services Foundation Inc., <i>Planning Your Re-entry Filipino Migrant Workers Orientation Course</i> (Quezon City, Unlad Kabayan, November 2001), halaman.16-17; dan Asian Migrant Centre and Coalition for Migrants' Rights, "Strategies, Experiences and Lessons: Protecting the Rights and Empowering Asian Migrant Domestic Workers", presentasi PowerPoint yang diberikan pada Pertemuan Konsultasi ILO mengenai Perlindungan terhadap PRT dari ancaman kerja paksa dan perdagangan manusia (<i>Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking</i>) 17-19 Februari, 2003, Hong Kong.	

Kotak 1.4. Kategori-kategori Para Migran Perempuan Internasional ³⁰

Perempuan sebagai imigran tetap:

Mereka ini adalah para migran yang terdaftar yang diterima untuk tinggal menetap, atau transmigrasi, di negara yang baru. Hanya sekelompok kecil negara yang masih menerima migrasi secara permanen, yakni Amerika Serikat, Kanada, Australia dan Selandia Baru. Para migran perempuan terutama yang diterima sebagai "tanggungan" dari para migran laki-laki, misalnya dibawah skema penyatuan kembali dengan keluarga. Perempuan yang diterima sebagai tanggungan keluarga sering memiliki hak yang terbatas untuk berpartisipasi dalam lapangan kerja.

Perempuan sebagai pekerja migran sementara:

Para migran perempuan dalam kategori ini diterima oleh suatu negara lain untuk tujuan yang jelas, yakni untuk melakukan kegiatan ekonomi. Mereka dapat menjadi *pekerja migran musiman* yang dipekerjakan hanya dalam waktu tertentu dalam setahun karena pekerjaan yang mereka lakukan tergantung pada keadaan musim. *Para pekerja migran yang terikat proyek* diterima masuk untuk periode yang jelas untuk melulu bekerja pada proyek tertentu yang diselenggarakan di negara tujuan oleh majikan dari pekerja migran yang bersangkutan. *Para Pekerja migran borongan* memiliki perjanjian pekerjaan yang menyebutkan dengan jelas batas periode pekerjaan dan tidak diperkenankan berganti pekerjaan. *Para Pekerja migran sementara* diperbolehkan bekerja untuk jangka waktu tertentu dalam jabatan tertentu atau pekerjaan yang spesifik dan dapat berganti majikan, serta memiliki ijin kerja yang diperbaharui. Sebagian besar pekerja migran perempuan adalah tidak trampil atau semi-trampil, tetapi para perempuan juga mencakup proporsi yang makin meningkat dari *migran berketrampilan tinggi atau profesional*, yang sering dirujuk sebagai "*brain drain*" atau "hijrahnya para sarjana keluar negeri."

Perempuan sebagai pengungsi dan pencari suaka:

Seorang pengungsi adalah "siapaapun yang karena ketakutan yang cukup beralasan bahwa dia akan dihukum dengan alasan-alasan ras, agama, kebangsaan atau pendapat politik, berada di luar negara dimana dia memiliki kewarganegaraannya dan tidak sanggup atau, karena ketakutan tersebut atau karena alasan-alasan selain kenyamanan pribadi, tidak rela untuk menyediakan dirinya berada dalam perlindungan negara tersebut" ³¹. Para pengungsi adalah mereka yang mencari ijin untuk memasuki negara penerima, sedangkan pencari suaka adalah mereka yang sudah berada di negara dimana mereka berharap dapat diakui sebagai pengungsi. Beberapa negara sekarang sudah mengadopsi program imigrasi "*perempuan berisiko*", yang menyediakan kesempatan khusus untuk transmigrasi, atau perpindahan tempat untuk tinggal menetap, bagi para perempuan pengungsi yang tidak terlindungi dan tanggungan mereka; kriteria untuk pemberian status pengungsi termasuk perempuan yang lari dari hukuman yang didasarkan pada diskriminasi gender, termasuk mutilasi alat kelamin perempuan.

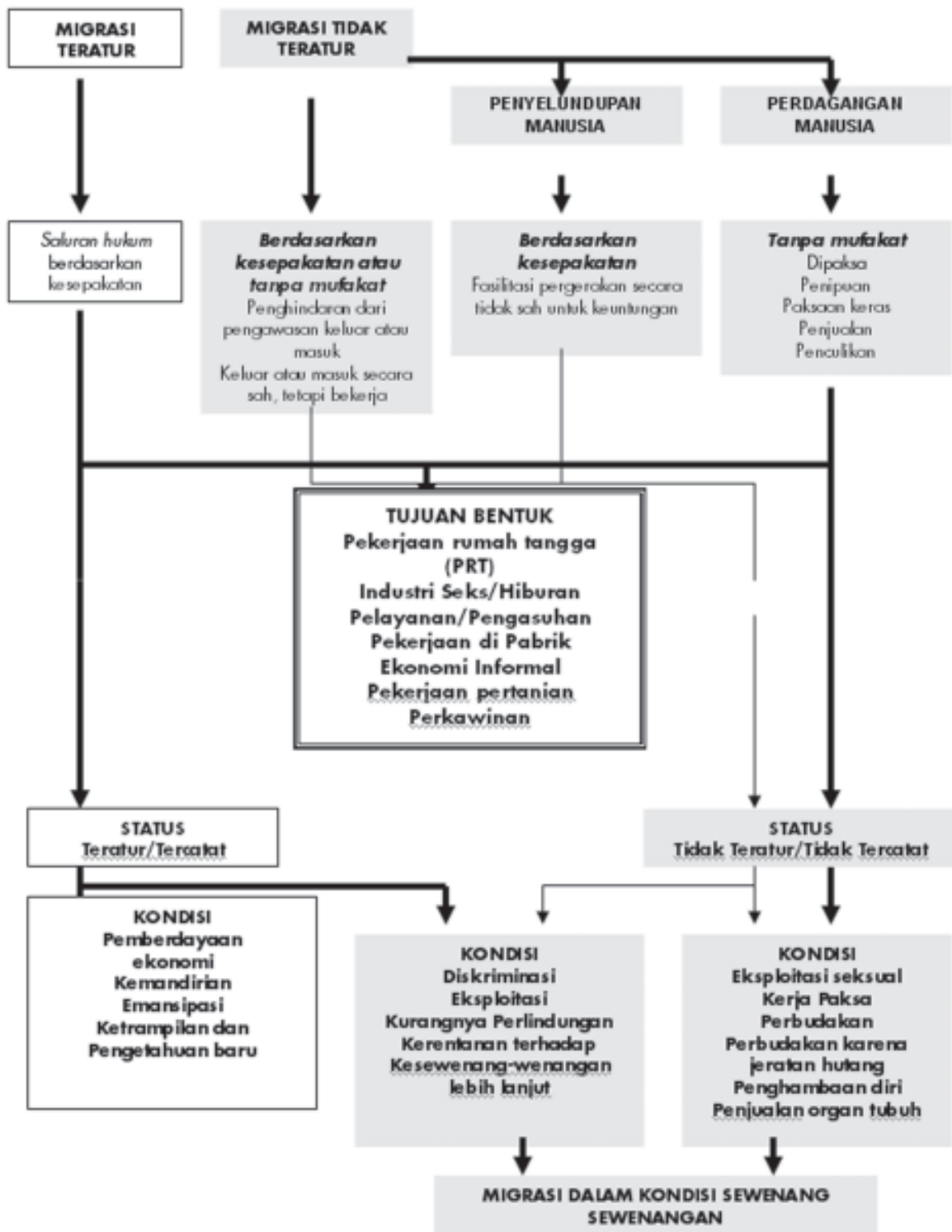
Perempuan sebagai pekerja migran tidak teratur atau tidak tercatat:

Para pekerja migran tidak teratur atau tidak tercatat adalah mereka yang tidak memenuhi persyaratan yang diperlukan untuk diijinkan masuk, tinggal dan terlibat dalam kegiatan yang menguntungkan di negara tempat bekerja menurut undang-undang Negara tersebut, dan perjanjian internasional dimana Negara tersebut menjadi salah satu pihak. Yang termasuk sebagai para pekerja migran perempuan tidak teratur atau tidak tercatat adalah:

- Mereka yang memasuki ke suatu negara secara sah, tetapi tinggal atau bekerja dengan cara bertentangan dengan undang-undang. Satu contoh menyangkut mereka yang tinggal lebih lama daripada seharusnya, setelah kontrak atau visa mereka habis, atau setelah mereka meninggalkan para majikan mereka dan tidak lagi sejalan dengan undang-undang keimigrasian dan ketenagakerjaan dari negara tempat mereka bekerja;
- Mereka yang tinggal dan masuk secara sah, tetapi tidak memiliki hak untuk bekerja dan terlibat dalam pekerjaan tidak resmi atau gelap. Mereka ini biasanya perempuan yang bermigrasi sebagai tanggungan pasangan, yang ijin tinggalnya terpisah dengan ijin kerja mereka;
- Mereka yang masuk ke suatu ke negara secara tidak sah dan mencari perubahan untuk status mereka sesudah kedatangan untuk mencari pekerjaan yang sah. Mereka mungkin masuk melalui saluran yang curang atau tidak resmi, seperti menggunakan dokumen palsu atau tidak memiliki dokumen dan tidak memiliki hak untuk tinggal atau bekerja;
- Mereka yang masuk ke suatu negara secara tidak sah, yang tinggal secara melawan hukum dan yang pekerjaannya tidak sah. Migrasi tidak teratur jenis ini biasanya melibatkan perekrut dan pedagang manusia tidak resmi serta penyelundup atau jaringan kejahatan terorganisir. Para perempuan ini akan sangat rentan terhadap eksploitasi dan perlakuan sewenang-wenang.

Walau pada umumnya orang-orang yang dikategorikan sebagai tidak teratur adalah karena cara mereka memasuki atau tinggal di suatu negara tujuan atau transit, migran mungkin juga dapat dikategorikan sebagai tidak teratur di negara asal mereka. Contohnya, beberapa negara melarang para perempuan warganegaranya berpergian ke luar untuk bekerja di tujuan luar negeri. Beberapa negara melarang emigrasi perempuan dibawah usia tertentu untuk bekerja sebagai PRT di luar negeri. Negara lain melarang pekerja migran meninggalkan negara sebelum melengkapi prosedur pendaftaran tertentu. Emigran yang melawan persyaratan-persyaratan ini dapat dianggap sebagai tidak teratur di negara asal mereka, tidak peduli apakah mereka dianggap tidak teratur di negara tujuan atau transit.

Kotak 1.5. Hubungan timbal-balik antara migrasi teratur dan tidak teratur, perdagangan dan penyelundupan manusia



Deklarasi Durban dan Program Aksi Konferensi Dunia Menentang Rasisme, Diskriminasi Rasial, Xenofobia dan Ketidak-toleranan yang berkait, 2001

(Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance) 2001, memiliki tidak kurang dari 40

alinea mengenai perlakuan terhadap tenaga kerja migran. ⁵⁵ Teksnya secara khusus mendesak Negara-negara untuk menghadapi diskriminasi, rasisme dan xenofobia di tempat kerja, dan menjamin kesetaraan penuh bagi semua orang dihadapan hukum, termasuk hukum ketenagakerjaan. Alinea yang membahas tentang para migran perempuan, dan para perempuan serta anak perempuan korban perdagangan manusia termasuk:

Deklarasi Durban dan Program Aksi dari Konferensi Dunia Menentang Rasisme, Diskriminasi Rasial, Xenofobia dan Ketidak-toleranan yang terkait, 2001

- ‘Mendesak Negara-negara, dalam hubungannya dengan proporsi para migran perempuan yang meningkat, untuk memberikan fokus khusus terhadap isu jender, termasuk diskriminasi jender, terutama ketika berbagai rintangan yang dihadapi oleh para pekerja migran perempuan saling bersinggungan; riset terinci harus dilakukan, tidak hanya dalam kaitannya dengan pelanggaran HAM yang dilakukan terhadap migran perempuan, tetapi juga pada kontribusi yang mereka berikan pada ekonomi negara asal mereka dan negara tujuan, dan penemuan-penemuan dari riset termaksud harus disertakan dalam laporan ke badan-badan perjanjian.” (Alinea 31)
- “Mendesak Negara-negara untuk memasukkan sudut pandang jender dalam semua program aksi melawan rasisme, diskriminasi rasial, xenofobia dan ketidak-toleranan yang terkait, dan untuk mempertimbangkan beban dari diskriminasi semacam ini yang terjadi perempuan pribumi, perempuan Afrika, perempuan Asia, perempuan keturunan Afrika, perempuan keturunan Asia, perempuan migran, dan perempuan dari kelompok-kelompok kurang beruntung lainnya, menjamin akses mereka ke sumber daya produksi dalam kedudukan yang sama yang diberikan kepada para laki-laki, sebagai alat untuk mempromosikan pembangunan ekonomi dan produksi masyarakat mereka” (alinea 50)
- “Mendesak Negara-negara untuk menciptakan, menegakkan dan memperkuat tindakan-tindakan di tingkat nasional, regional dan internasional untuk mencegah, memberantas dan membasmi segala bentuk perdagangan perempuan dan anak-anak, terutama anak perempuan, melalui strategi-strategi anti-perdagangan yang komprehensif, termasuk tindakan-tindakan legislatif, kampanye pencegahan dan pertukaran informasi. Mendesak Negara-negara untuk mengalokasikan sumber daya, sesuai dengan kelayakan, untuk menyediakan program-program komprehensif yang dirancang untuk memberikan bantuan, perlindungan, penyembuhan, penyatuan kembali ke masyarakat dan rehabilitasi korban. Negara sebaiknya menyediakan atau memperkuat pelatihan untuk petugas-petugas penegak hukum, imigrasi dan petugas yang relevan lainnya yang dalam hal ini berurusan dengan para korban perdagangan ” (alinea 64).

1.4.2.3. Mempromosikan pekerjaan yang layak

Migrasi sekarang ini adalah mengenai pekerjaan dan pemerintahan; para pemberi pekerjaan dan pekerja mengakuinya sebagai suatu keprihatinan yang mendalam. Membahas migrasi berarti mempromosikan pekerjaan yang layak.

Migrasi sekarang ini adalah mengenai pekerjaan dan pemerintahan; para pemberi pekerjaan dan pekerja mengakuinya sebagai suatu keprihatinan yang mendalam. Membahas migrasi berarti mempromosikan pekerjaan yang layak.

Tujuan utama dari ILO adalah mempromosikan kesempatan bagi perempuan dan laki-laki untuk mendapatkan pekerjaan dan kerja yang produktif dalam keadaan yang merdeka, setara, aman dan bermartabat.

ILO memandang bahwa pekerjaan yang layak terdiri dari empat pilar utama:

- Promosi prinsip-prinsip dan hak-hak fundamental dalam tempat kerja bagi semua tenaga kerja, baik warganegara setempat maupun bukan warganegara, tidak peduli dimana mereka bekerja;
- Penciptaan pekerjaan yang produktif dan menguntungkan;
- Perluasan perlindungan sosial, terutama untuk kelompok-kelompok yang termarginalisasi dan rentan; serta
- Pengorganisasian dan perwakilan pekerja dan pengusaha/majikan dalam lembaga-lembaga dan proses-proses dialog sosial

Promosi pekerjaan yang layak memasukkan pendekatan berdasarkan hak-hak dan pendekatan pembangunan. Dari sudut pendekatan berdasarkan hak-hak, pekerjaan yang layak adalah mengenai HAM di bidang ketenagakerjaan: non-diskriminasi dalam hal pekerjaan dan jabatan, bebas dari kerja paksa, bebas dari pekerja anak, dan kebebasan untuk berserikat serta hak untuk berorganisasi [**Deklarasi ILO tentang Prinsip-prinsip dan Hak-hak Mendasar di Tempat Kerja dan Tindaklanjutnya, dan Konvensi Inti ILO di bagian 1.4.3.1**]

Pekerjaan yang layak adalah tentang mengamankan martabat manusia – “tentang kesetaraan jender, pengakuan setara, dan memampukan perempuan untuk membuat pilihan dan memegang kendali atas kehidupan mereka”⁵⁶ Promosi dan perlindungan hak-hak pekerja migran perempuan adalah penting karena mereka lebih sering mengalami pemerkosaan hak-hak mereka dibandingkan dengan rekan-rekan laki-laki atau bahkan para warganegara perempuan setempat.

Dari sudut pandang pembangunan, pekerjaan yang layak memperluas pilihan dan meningkatkan kapasitas, sambil turut mempertimbangkan faktor-faktor kebutuhan-kebutuhan dasar perempuan dan laki-laki. Pekerjaan yang layak juga penting dari sudut kesempatan-kesempatan atas matapencaharian. Adalah faktor-faktor kemiskinan, pengangguran atau kekurangan pekerjaan, kurangnya pilihan-pilihan mata pencaharian dan akses ke pelayanan sosial yang pokok serta ke informasi yang membuat orang-orang pindah atau dipindahkan ke tempat lain untuk mencari kesempatan pekerjaan dan penghasilan yang lebih produktif.

1.4.2.4. Pengentasan kemiskinan dan pengucilan sosial

Orang bermigrasi untuk pekerjaan sebagai strategi kelangsungan hidup untuk keluar dari kemiskinan dan pengucilan sosial. Para perempuan mengisi mayoritas dari jumlah para miskin di dunia.

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Agenda Pekerjaan yang Layak dari ILO memberikan kerangka yang koheren dan terintegrasi untuk membahas kemiskinan. Pengentasan kemiskinan adalah prioritas dari Tujuan Pembangunan Milenia (*Millenium Development Goals*); resolusinya adalah untuk mengurangi sampai separuhnya dari proporsi penduduk dunia yang saat ini berpenghasilan kurang dari satu dolar per hari, pada tahun 2015, dan pada saat yang bersamaan, “mempromosikan kesetaraan jender dan pemberdayaan perempuan sebagai cara efektif untuk memberantas kemiskinan”.⁵⁷

Akar penyebab migrasi adalah kemiskinan. Orang bermigrasi untuk pekerjaan sebagai strategi kelangsungan hidup untuk keluar dari kemiskinan dan pengucilan sosial. Tentu saja, tidak semua pekerja migran perempuan yang rentan berasal dari lapisan termiskin dalam masyarakat. Sebagaimana diketahui secara luas, para calon migran tidak teratur mungkin

harus mengumpulkan sejumlah besar uang untuk membayar pelayanan dari para penyelundup. Bahkan mereka yang melalui saluran hukum mungkin masih harus membayar iuran yang cukup lumayan kepada para perekrut dan agen. Bagaimanapun juga adalah suatu kenyataan bahwa sebagian besar pekerja migran perempuan terutama rentan terhadap eksploitasi, perlakuan sewenang-wenang dan perdagangan manusia karena kemiskinan mereka. Para perempuan mengisi mayoritas dari jumlah para miskin di dunia, terutama jika kita memperhitungkan pula distribusi pendapatan dan sumber daya dalam rumah tangga. Memburuknya kondisi ekonomi dan sosial di banyak negara pengirim tenaga kerja migran mungkin juga memperkuat hubungan antara feminisasi kemiskinan atau pemiskinan dengan timbulnya migrasi yang kejam dan perdagangan manusia.

Tindakan-tindakan yang ditujukan untuk mencegah migrasi dalam kondisi kejam dan perdagangan menekankan pada penghapusan kemiskinan dan pengucilan sosial. Contohnya, Uni-Eropa memfokuskan pada penanganan kemiskinan dan pengangguran sebagai akar perdagangan di negara-negara calon yang mencari akses ke Uni-Eropa, dan strateginya memberikan perhatian khusus untuk mempertinggi peran serta perempuan di lapangan kerja.⁵⁸ Contoh lainnya adalah pedoman ADB (*Asian Development Bank* — Bank Pembangunan Asia) mengenai pengarus-utamaan isu perdagangan manusia didalam kegiatan untuk menghapuskan kemiskinan⁵⁹ **[Kotak 6.12 dalam Buku 6]**; tujuan yang mendasarinya adalah untuk mengidentifikasi risiko dan kerentanan yang dihadapi oleh kelompok-kelompok miskin tertentu, terutama perempuan dan anak, terhadap perdagangan manusia, serta untuk menganalisa bagaimana pembangunan dan prakarsa-prakarsa penghapusan kemiskinan berdampak pada, atau mengurangi risiko-risiko ini.

1.4.3. Perangkat-perangkat hukum internasional

Kerangka respon harus memiliki dasarnya dalam kaidah hukum. Ada beberapa perangkat HAM internasional yang penting, dan tujuan dari kerangka respon harus untuk mempromosikan pemakaian dan pelaksanaan perangkat-perangkat tersebut. Dalam pedoman ini, bagian-bagian dibawah ini terutama berfokus pada perangkat-perangkat ILO dan PBB yang relevan untuk melindungi para pekerja migran perempuan dari diskriminasi, eksploitasi dan perlakuan sewenang-wenang, termasuk perdagangan untuk pekerjaan dan eksploitasi seksual. Ada juga perangkat-perangkat regional yang memiliki nilai potensial dalam membahas hak-hak pekerja migran perempuan.⁶⁰

1.4.3.1. Perangkat-perangkat ILO

Salah satu kekuatan ILO adalah perannya sebagai organisasi penyusun dan penetap patokan-patokan. Konvensi-konvensi ILO memiliki kekuatan sebagai hukum dalam negeri, begitu pemerintah negara anggota meratifikasi suatu Konvensi. Ada juga beberapa Rekomendasi yang tidak mengikat, atau *non-binding*. Peralatan pengawasan ILO untuk penerapan Konvensi-konvensi dan Rekomendasi-rekomendasinya termasuk didalamnya adalah sistem pelaporan teratur dari negara anggota yang diawasi oleh suatu Komite Ahli untuk Penerapan Konvensi-konvensi dan Rekomendasi-rekomendasi yang independen. Komite tripartit berdiri untuk hal yang sama, yang bertemu pada konferensi tahunan ILO; dan prosedur-prosedur khusus untuk mengajukan protes dan keluhan tentang ketidak-taatan terhadap Konvensi-konvensi ILO yang diratifikasi. Ada juga Komite untuk kebebasan berserikat yang mengurus keluhan-keluhan yang berhubungan dengan pelanggaran terhadap hak-hak serikat pekerja/buruh.

Migrasi tenaga kerja internasional telah menjadi pusat keprihatinan ILO sejak pembentukannya, dan kerentanan luar biasa yang dihadapi oleh para pekerja migran tetap menjadi prioritas didalam mandat organisasi ini. Ketika ILO didirikan pada tahun 1919, Traktat Versailles

membahas situasi para tenaga kerja yang dipekerjakan di luar negara mereka:

"Patokan yang ditetapkan oleh hukum di setiap negara mengenai kondisi-kondisi ketenagakerjaan harus tunduk pada perlakuan ekonomi yang adil bagi setiap tenaga kerja yang secara sah tinggal disana." (Pasal 427).

Mukadimah Konstitusi ILO juga membebaskan pada Organisasi suatu kewajiban Konstitusional untuk:

"...Melindungi kepentingan para tenaga kerja ketika mereka dipekerjakan di negara lain selain negara mereka sendiri."

Secara tradisional, kewajiban ILO untuk melindungi para pekerja migran telah dijalankan melalui perluasan dan pengawasan atas standar-standar ketenagakerjaan internasional. Harus diingat bahwa, kecuali diatur secara tersendiri untuk pekerja dalam kategori khusus, semua Konvensi dan Rekomendasi ILO adalah untuk penerapan umum, dan berlaku bagi semua tenaga kerja, apakah mereka warganegara atau bukan warganegara. Dari komentar badan-badan pengawas ILO, adalah jelas bahwasanya Konvensi-konvensi mendasar ILO [yang dijelaskan dibawah] berlaku bagi semua tenaga kerja migran, apakah mereka datang secara sementara ataupun tetap, dan bahkan meskipun mereka berada dalam situasi tidak teratur. Sebagaimana digarisbawahi dalam kotak teks pada hal. 49, **Deklarasi ILO mengenai Prinsip-prinsip dan Hak-hak Mendasar di Tempat Kerja** dan Lanjutannya (*ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*) yang secara bulat diterima oleh semua Negara anggota pada tahun 1998, dalam Mukadimahnya merujuk khususnya ke perlindungan terhadap pekerja migran. Deklarasi ini menyatakan bahwa semua Negara-negara anggota, meskipun mereka tidak meratifikasi Konvensi termaksud, mempunyai kewajiban yang muncul dari fakta keanggotaan mereka didalam ILO, untuk menghormati, mempromosikan dan menyadari prinsip-prinsip mengenai hak-hak fundamental yang diejawantahkan dalam Konvensi-konvensi inti.

↑ **Standar-standar ketenagakerjaan inti yang tercakup dalam Deklarasi mengenai Prinsip-prinsip dan Hak-hak Mendasar di Tempat Kerja, dan Lanjutannya, 1998 adalah:**

- **Konvensi no. 29 mengenai Kerja Paksa** atau *Forced Labour Convention*, tahun 1930;
- **Konvensi no. 105 mengenai Penghapusan Kerja Paksa** atau *Abolition of Forced Labour Convention*, 1957;
- **Konvensi no. 138 mengenai Usia Minimum** atau *Minimum Age Convention*, tahun 1973;
- **Konvensi no. 182 mengenai Bentuk-bentuk Terburuk Pekerjaan Anak** atau *Worst Forms of Child Labour Convention*, 1999;
- **Konvensi no. 100 mengenai Kesamaan Pengupahan** atau *Equal Remuneration Convention*, 1951;
- **Konvensi no. 111 mengenai Diskriminasi (Pekerjaan dan Jabatan)** atau *Discrimination (Employment and Occupation) Convention*, 1958;
- **Konvensi no. 87 mengenai Kebebasan untuk Bergabung** Berserikat atau *Freedom of Association Convention* atau, 1948;
- **Konvensi no. 98 mengenai Hak untuk Berorganisasi dan untuk Berunding Bersama** atau *Right to Organize and Collective Bargaining Convention*, 1949.

Konvensi-konvensi ini berlaku bagi semua tenaga kerja, warganegara atau bukan warganegara, apakah mereka migran berstatus teratur atau tidak teratur.⁶¹ Ketetapan-ketetapan yang memiliki kaitan khusus dengan pencegahan diskriminasi, eksploitasi dan perlakuan sewenang-wenang terhadap pekerja migran perempuan digariskan di dalam kotak berikut.

Konvensi no. 29 mengenai Kerja Paksa, 1930:

- Mengarah pada penindasan seketika terhadap segala bentuk kerja paksa atau kerja wajib;
- Merumuskan kerja paksa atau kerja wajib sebagai "segala bentuk atau pelayanan yang diminta dari orang dibawah ancaman hukuman dan dimana orang yang bersangkutan tidak menawarkan dirinya untuk itu dengan sukarela."
- Menuntut sanksi-sanksi hukum yang layak dan dapat diterapkan dengan tegas terhadap pemerasan untuk melakukan kerja paksa atau kerja wajib.

Konvensi no. 182 mengenai Bentuk-bentuk Terburuk dari Pekerjaan Anak, 1999:

- Menegaskan bahwa perdagangan anak adalah praktek yang serupa dengan perbudakan dan dengan demikian adalah bentuk terburuk dari pekerjaan anak;
- Meminta tindakan segera dan efektif untuk menjamin pelarangan dan penghapusan perdagangan anak-anak perempuan dan laki-laki dibawah usia 18 tahun;
- Mentargetkan perdagangan anak yang mengarah ke eksploitasi anak-anak laki-laki dan perempuan, termasuk tindakan-tindakan gelap seperti perdagangan obat bius dan pelacuran.
- Memberikan pedoman untuk menghapuskan secara efektif perdagangan anak dan untuk melindungi anak-anak yang menjadi korban perdagangan atau berada dalam risiko menjadi korban;
- Meminta Negara-negara Anggota agar membentuk mekanisme untuk memantau perdagangan anak dan membuat suatu program aksi penghapusan perdagangan anak sebagai suatu prioritas;
- Meminta tindakan yang efektif dan terikat waktu untuk pencegahan, untuk memberikan bantuan pada pemindahan anak yang menjadi korban perdagangan dan rehabilitasi mereka, untuk menjamin akses ke pendidikan dasar dan pelatihan kejuruan bagi semua anak yang diselamatkan dari situasi perdagangan; untuk mengidentifikasi anak-anak yang berada dalam risiko khusus dan untuk memperhitungkan situasi khusus dari anak perempuan;
- Meminta kerjasama internasional dan bantuan sesama negara-negara yang meratifikasi konvensi untuk memberantas perdagangan anak.

Konvensi no. 100 mengenai Kesamaan Pengupahan, 1958

- Bermaksud untuk menjamin bahwa pekerja laki-laki dan perempuan menerima upah yang setara untuk pekerjaan yang sama nilainya, menetapkan tarif upah tanpa diskriminasi berdasarkan jenis kelamin;
- Bermaksud untuk menjamin upah yang setara di sektor publik dan mempromosikan upah yang setara di sektor swasta.

Konvensi no. 111 mengenai Diskriminasi (Pekerjaan dan Jabatan), 1958:

- Merumuskan diskriminasi sebagai "segala perbedaan, pengecualian atau pilihan yang dibuat berdasarkan ras, warna kulit, jenis kelamin, agama, pandangan politik,

keturunan/asal negara atau latar belakang sosial, yang mengakibatkan peniadaan atau pengurangan kesetaraan kesempatan atau perlakuan dalam pekerjaan dan jabatan;

- Mengharuskan ketentuan suatu kebijakan nasional yang dirancang untuk mempromosikan kesetaraan kesempatan dan perlakuan dalam hal pekerjaan dan jabatan dengan maksud untuk menghapuskan segala jenis diskriminasi yang dimaksud;
- Cakupan dari Konvensi meliputi akses ke pelatihan kejuruan, akses ke pekerjaan dan jenis pekerjaan tertentu, serta syarat-syarat perjanjian pekerjaan;
- Perlindungan dari kekerasan atau eksploitasi berbasis jender dalam ruang lingkup pekerjaan dapat menjadi bagian dari kebijakan nasional untuk mempromosikan kesetaraan kesempatan dan perlakuan.

Konvensi no. 87 mengenai Kebebasan untuk Bergabung dan Perlindungan atas Hak untuk Berorganisasi, 1948.

- Menjamin hak para pengusaha dan pekerja untuk membentuk dan bergabung dengan organisasi, dan untuk dengan leluasa melaksanakan hak mereka untuk berorganisasi;
- Melindungi organisasi-organisasi pengusaha dan pekerja dari campur-tangan atau pembatasan dari aparat yang berwenang.

Konvensi no. 98 mengenai Hak untuk Berorganisasi dan Berunding Bersama, 1949:

- Melindungi pekerja yang sedang menggunakan hak berorganisasi;
- Menegakkan asas tidak campur tangan antara organisasi pekerja dan organisasi pengusaha;
- Mempromosikan perundingan bersama sukarela.

ILO juga telah mengembangkan suatu kumpulan hukum internasional yang komprehensif yang menguraikan mengenai perlindungan tenaga kerja migran, dan khususnya perempuan dan anak perempuan migran, termasuk mereka yang diperdagangkan ke kerja-paksa. Patokan-patokan utama yang khususnya berhubungan dengan tenaga kerja migran atau yang berisi ketentuan-ketentuan perlindungan hak-hak mereka termasuk sebagai berikut:

↑ **Konvensi-konvensi ILO yang relevan:**

- **Konvensi no. 97 mengenai Migrasi untuk Pekerjaan (revisi)** (Migration for Employment Convention (Revised), 1949;
- **Konvensi no. 143 mengenai Pekerja Migran (Ketentuan Tambahan)** (Migrant Workers (Supplementary Provisions) Convention), 1975;
- **Konvensi no. 118 mengenai Perlakuan yang Sama (Jaminan Sosial)** (Equality of Treatment (Social Security) Convention), 1962;
- **Konvensi no. 157 Pemeliharaan Hak Jaminan Sosial** (Maintenance of Social Security Rights Convention), 1982;
- **Konvensi no. 181 mengenai Perusahaan Jasa Tenaga Kerja Swasta** (Private Employment Agencies Convention), 1997.

Dua perangkat komprehensif ILO yang berhubungan khususnya dengan para pekerja migran adalah **Konvensi no. 97 mengenai Migrasi untuk Pekerjaan (revisi), 1949**, dan **Konvensi no. 143 mengenai Pekerja Migran (Ketentuan Tambahan), 1975**. Konvensi ini memiliki tujuan ganda, yakni: untuk mengatur kondisi-kondisi dimana migrasi tenaga kerja terjadi, dan untuk menyediakan perlindungan khusus bagi para pekerja yang berkategori sangat rentan ketika mereka dipekerjakan di negara-negara selain negara mereka sendiri. ⁶²

Secara umum, **Konvensi-konvensi nomer 97 dan 143** tidak membuat perbedaan antara migran tetap atau sementara. Namun, beberapa ketentuan dari **Konvensi 97** hanya berhubungan dengan para pekerja migran dan keluarganya yang telah diterima masuk secara tetap, misalnya ketentuan yang melindungi para pekerja ini dari pengusiran hanya dengan dasar ketidak-sanggupan untuk bekerja.

Konvensi no. 97 mengenai Migrasi untuk Pekerjaan (revisi), 1949 meliputi mereka yang diterima secara teratur sebagai migran untuk pekerjaan. Konvensi ini memasukkan didalamnya tindakan-tindakan untuk mengatur kondisi-kondisi dimana migrasi untuk pekerjaan seharusnya terjadi, tindakan-tindakan perlindungan umum berhubungan dengan pemeliharaan pelayanan cuma-cuma untuk membantu para migran, pemberian informasi, langkah-langkah terhadap propaganda yang menyesatkan, perjalanan dan kedatangan para migran, transfer penghasilan mereka dan tindakan-tindakan yang berhubungan dengan pengusiran para migran tetap. Konvensi ini memberikan tindakan-tindakan yang ditujukan untuk menjamin kesetaraan perlakuan antara para pekerja migran teratur dan para warganegara dalam hubungannya dengan jaminan sosial, kondisi kerja dan kehidupan, pajak ketenagakerjaan dan akses ke keadilan.

Konvensi no. 97 mengenai Migrasi untuk Pekerjaan (revisi), 1949

Pasal 2:

Setiap Anggota yang mana konvensi ini diberlakukan, berusaha mengadakan, atau memuaskan dirinya bahwa telah diadakan, suatu pelayanan cuma-cuma yang memadai untuk membantu para migran untuk pekerjaan, dan terutama memberikan mereka informasi yang benar dan tepat.

Pasal 3:

... mengerjakan sepanjang dimungkinkan oleh undang-undang dan peraturan nasional, semua langkah yang tepat terhadap propaganda menyesatkan yang berhubungan dengan emigrasi dan imigrasi.

Pasal 4:

Berbagai tindakan harus diambil setepat mungkin oleh masing-masing Anggota, didalam yurisdiksinya masing-masing, untuk memfasilitasi keberangkatan, perjalanan dan penerimaan para migran –untuk pekerjaan.

Pasal 6:

... melaksanakan tanggungjawab untuk menerapkan, tanpa diskriminasi dalam hal kebangsaan, ras, agama atau jenis kelamin, pada para imigran yang secara sah berada dalam wilayah, perlakuan yang sama menguntungkannya dengan yang diterapkan pada warganegaranya sendiri, dalam hal berikut ini (pengupahan, keanggotaan dalam serikat pekerja, dan merasakan manfaat-manfaat dari perundingan bersama, akomodasi, jaminan sosial, pajak pekerjaan, proses hukum).

Pasal 8:

Para migran untuk pekerjaan yang telah diterima masuk untuk bekerja tetap dan keluarganya yang telah diberi ijin untuk menemani atau bergabung dengannya tidak boleh dipulangkan ke wilayah asal atau wilayah darimana mereka beremigrasi karena si migran yang bersangkutan tidak sanggup melaksanakan pekerjaannya dikarenakan sakit yang diderita atau cedera yang dialami sesudah masuk, kecuali jika orang yang bersangkutan menginginkannya atau jika suatu perjanjian internasional dimana Anggota adalah salah satu pihak, memungkinkan untuk itu.

Pasal 11

Untuk tujuan Konvensi ini, istilah “migran untuk pekerjaan” berarti seseorang yang bermigrasi dari satu negara ke negara lain dengan maksud untuk dipekerjakan selain atas usahanya sendiri dan termasuk siapapun yang dengan teratur diterima sebagai migran untuk pekerjaan.

Konvensi no. 143 mengenai Para pekerja Migran (Ketentuan Tambahan), 1975

Bagian 1: Migrasi dalam Keadaan Sewenang-wenang

Pasal 1:

Setiap Anggota yang mana Konvensi ini diberlakukan, bertanggungjawab untuk menghormati HAM mendasar semua pekerja migran.

Pasal 2

Setiap Anggota yang mana Konvensi ini diberlakukan, secara sistematis wajib mencari untuk menentukan apakah ada tenaga kerja migran yang dipekerjakan secara tidak sah di dalam wilayahnya, dan apakah ada pergerakan migran untuk pekerjaan yang berangkat dari, melewati atau tiba di wilayahnya, yang mana para migran selama perjalanan, pada saat kedatangan atau selama jangka waktu tinggal dan bekerja, mengalami kondisi-kondisi yang berlawanan dengan perangkat atau perjanjian internasional, multilateral atau bilateral atau undang-undang dan peraturan-peraturan nasional yang relevan.

Pasal 3:

Setiap Anggota wajib mengambil setiap tindakan yang perlu dan tepat, baik di dalam yurisdiksinya dan dalam kerjasama dengan Anggota lainnya – (a) untuk menekan pergerakan gelap para migran untuk pekerjaan dan penempatan kerja yang tidak sah atas migran, dan (b) menentang para organisator pergerakan tidak resmi atau gelap dari para migran untuk pekerjaan yang berangkat, melalui atau tiba di wilayahnya, dan menentang mereka yang mempekerjakan para migran yang telah bermigrasi dalam keadaan tidak sah [...].

Pasal 7:

Organisasi-organisasi yang mewakili para pengusaha dan para pekerja harus dimintai nasehat [...]

Pasal 8:

Dalam keadaan bahwa para migran telah tinggal secara sah didalam wilayah tujuan pekerjaan, para pekerja migran tidak boleh diperlakukan sebagai berada dalam situasi tidak sah atau tidak teratur hanya karena kenyataan telah kehilangan pekerjaannya, yang tidak boleh dengan sendirinya diartikan secara tidak langsung pencabutan otoritasnya untuk tinggal, atau, sebagaimana mungkin kasusnya adalah, ijin kerja [...]

Pasal 9:

Dengan prasangka terhadap langkah-langkah yang dirancang untuk mengendalikan pergerakan para migran untuk pekerjaan dengan cara menjamin bahwa para pekerja migran masuk ke wilayah nasional dan diterima untuk suatu pekerjaan dengan mematuhi undang-undang dan peraturan yang relevan, maka pekerja migran - dalam kasus-kasus dimana undang-undang dan peraturan-peraturan dihormati dan dimana posisi migran tidak dapat diregularisasikan - harus menerima perlakuan setara bagi untuk dirinya dan keluarganya berkenaan dengan hak-hak yang ada dari pekerjaan sebelumnya dalam hal pengupahan, jaminan sosial dan tunjangan-tunjangan lainnya.

Bagian II: Kesetaraan Kesempatan dan Perlakuan

Pasal 10:

Setiap Anggota yang mana Konvensi ini diberlakukan, bertanggungjawab untuk mengumumkan dan mengikuti kebijakan nasional yang dirancang untuk mempromosikan dan menjamin, dengan cara yang sesuai dengan keadaan dan praktek nasional, kesetaraan kesempatan dan perlakuan terhadap orang-orang yang sebagai pekerja migran atau sebagai anggota keluarga dari mereka yang secara sah berada didalam wilayahnya, dalam hal pekerjaan dan jabatan, jaminan sosial, hak-hak serikat pekerja/buruh dan budaya, serta kebebasan perseorangan dan bersama.

Konvensi no. 143 mengenai Pekerja Migran (Ketentuan Tambahan), 1975 (Bagian I, Pasal 1 – 9) adalah usaha pertama yang dilakukan oleh masyarakat internasional untuk menghadapi masalah-masalah yang muncul dari migrasi tidak teratur dan pekerjaan tidak resmi para migran, dan juga termasuk ketentuan-ketentuan mengenai standar minimum perlindungan bagi para pekerja migran teratur maupun yang tidak teratur. Dalam meletakkan kewajiban umum untuk menghormati HAM yang mendasar bagi semua pekerja migran (Pasal 1) dan menyediakan beberapa langkah-langkah perlindungan bagi para pekerja migran yang kehilangan pekerjaannya (Pasal 8) dan bagi mereka yang berada dalam situasi tidak teratur (Pasal 9), Konvensi menegaskan – tanpa menentang hak Negara untuk mengatur arus migrasi – hak-hak pekerja migran harus dilindungi, apakah mereka masuk ke suatu negara secara teratur atau tidak, dengan atau tanpa dokumen-dokumen resmi. Konvensi ini juga menekankan pentingnya konsultasi dengan organisasi-organisasi perwakilan pengusaha dan pekerja/buruh tentang undang-undang, peraturan-peraturan dan tindakan-tindakan lain yang disediakan dan dirancang untuk mencegah dan menghapuskan migrasi dalam kondisi yang kejam.

Implementasi kebijakan *kesetaraan perlakuan* antara para warganegara dan para pekerja migran teratur disediakan didalam **Konvensi No. 97**. Sebagai tambahan dari kesetaraan perlakuan mengenai bidang-bidang yang dijanjikan oleh **Konvensi No. 97**, Bagian II dari **Konvensi No. 143** juga memberikan *kesetaraan kesempatan* dalam hubungannya dengan akses ke pekerjaan, hak-hak serikat pekerja, hak-hak budaya dan kebebasan perseorangan dan secara bersama. Pasal 14 dari Konvensi No. 143, bagaimanapun juga mengizinkan restriksi terbatas atas kesetaraan kesempatan dalam akses ke pekerjaan. Kebijakan nasional yang disyaratkan dalam **Konvensi No. 143** tidak boleh hanya mempromosikan tetapi juga menjamin kesetaraan kesempatan dan perlakuan dalam pekerjaan dan jabatan bagi para pekerja migran dan anggota keluarga mereka yang secara sah berada didalam wilayah negara tempat mereka bekerja.

Perlu dicatat bahwa baik **Konvensi No 97 dan 143** memungkinkan beberapa pengecualian dalam hal kategori-kategori migran yang dicakupi oleh Konvensi. Para pelaut, pekerja perbatasan dan mereka yang berprofesi liberal dan para seniman serta mereka yang bekerja untuk diri mereka sendiri yang masuk suatu negara untuk jangka pendek, tidak dimasukkan didalam Konvensi-konvensi termaksud. Tambahan pula, **Konvensi No. 143** juga mengecualikan mereka yang sedang dalam pelatihan dan melaksanakan tugas khusus. Namun demikian, pengecualian didalam **Konvensi No. 143** hanya berlaku untuk Bagian II, yang membahas mengenai kesetaraan kesempatan antara para migran teratur perempuan dan laki-laki dengan warganegara. Ini berarti bahwa semua pekerja migran, tanpa dibedakan, memiliki hak atas beberapa perlindungan minimal berkaitan dengan HAM yang mendasar dan beberapa hak yang muncul dari pekerjaan sebelumnya.

Standar-standar dari ILO juga membahas hal yang sangat penting mengenai jaminan sosial bagi para pekerja migran.⁶³ Bentuk-bentuk diskriminasi yang paling umum berkenaan dengan jaminan sosial bagi para pekerja migran adalah tidak adanya jaminan, atau jaminan bersyarat atau opsional. Dua perangkat pokok berkenaan dengan hal ini adalah **Konvensi no. 118 mengenai Perlakuan yang Sama (Jaminan Sosial), 1962**, dan **Konvensi no. 157 mengenai Pemeliharaan Hak atas Jaminan Sosial, 1982**. Kedua perangkat tersebut berisi ketentuan-ketentuan yang berhubungan dengan sembilan cabang semuanya dari jaminan sosial: perawatan kesehatan, tunjangan sakit, tunjangan cuti hamil, tunjangan cacat, tunjangan hari tua, tunjangan untuk tanggungan keluarga yang selamat, tunjangan kecelakaan kerja, tunjangan pengangguran dan tunjangan keluarga.

Namun demikian, walau Negara yang meratifikasi Konvensi No. 118 dapat membatasi pemakaiannya pada beberapa dari cabang tersebut, kelenturan sedemikian rupa tidak ditawarkan oleh dalam Konvensi No. 157. Dibawah Konvensi No. 118, untuk setiap cabang yang diterima, pihak Negara berusaha untuk memberikan kepada para warganegara dari Negara lain yang meratifikasi Konvensi yang berada dalam wilayahnya perlakuan yang sama dengan yang diberikan kepada para warganegaranya berkenaan dengan jaminan sosial. Lebih lanjut lagi, perlakuan yang sama juga harus diberikan pada para pengungsi dan orang-orang tidak bernegara. Disamping itu, dibawah perundangan-undangan nasional dimana hak-hak untuk tunjangan tunduk pada persyaratan tinggal, kondisi sedemikian secara prinsip tidak dapat diterapkan hanya pada mereka yang bukan warganegara.

Pemeliharaan hak-hak yang diperoleh mengizinkan para pekerja migran untuk menerima tunjangan yang harus mereka terima dari Negara tujuan, walaupun mereka tidak lagi tinggal di wilayah negara yang bersangkutan. Asas ini, yang sangat penting bagi perlindungan sosial para pekerja migran, dimaksudkan untuk menjamin kesetaraan perlakuan yang sebenarnya dan bukan hanya sekedar kesetaraan secara hukum. Negara yang terlibat dalam **Konvensi No. 118** harus menjamin pemberian tunjangan secara luas dalam cabang tertentu bagi para warganegaranya dan warganegara dari Negara lainnya yang telah menerima kewajiban-kewajiban dari Konvensi untuk cabang yang sama, tidak peduli akan tempat kediaman dari si penerima tunjangan. **Konvensi No. 157** menetapkan kewajiban yang mirip. Tetapi, karena konvensi ini tidak memungkinkan pengecualian pada cabang manapun pada saat ratifikasi, maka pemeliharaan hak-hak yang diperoleh harus dipastikan bagi para warganegara Negara lain yang terlibat dengan Konvensi didalam cabang jaminan sosial apapun dimana Negara yang bersangkutan memiliki peraturan yang berlaku.⁶⁴ Akhirnya, baik **Konvensi No. 118** dan **Konvensi No. 157** menetapkan bahwa kaidah ini harus diterapkan, tanpa kondisi timbal balik, kepada para pengungsi dan orang-orang yang tidak memiliki negara.

Mempertimbangkan berkembangnya peran perusahaan-perusahaan jasa tenaga kerja swasta dalam proses perekrutan dan penempatan para pekerja migran, dan mengingat kebutuhan-kebutuhan untuk melindungi para pekerja migran dari praktek-praktek curang dan sewenang-wenang, **Konvensi no. 181 mengenai Perusahaan Jasa Tenaga Kerja Swasta, 1977**, menawarkan pedoman perancangan kerangka hukum untuk menangani praktek-praktek perekrutan tidak resmi dan perdagangan manusia, terutama perempuan dan anak perempuan. Tujuan dari Konvensi ini adalah untuk memperbolehkan beroperasinya perusahaan-perusahaan jasa tenaga kerja swasta, dan pada saat yang sama melindungi para pekerja yang memakai jasa mereka dari perlakuan sewenang-wenang serta menjamin bahwa para pekerja ini mendapatkan hak-hak mendasar yang dijamin dalam standar-standar ketenagakerjaan inti, juga ketentuan-ketentuan yang berkaitan dengan perekrutan dan penempatan kerja dalam Konvensi No. 97 dan No. 143. Untuk mempromosikan kesetaraan kesempatan dan perlakuan dalam akses ke pekerjaan dan jabatan, Pasal 5 Konvensi menetapkan bahwa negara-negara Anggota harus menjamin bahwa agen-agen jasa tenaga kerja swasta memperlakukan para pekerja tanpa diskriminasi berdasarkan ras, warna kulit, jenis kelamin, agama, pandangan

politik, keturunan/asal kewarganegaraan, asal sosial atau bentuk diskriminasi lainnya yang diatur oleh hukum-hukum dan praktek-praktek nasional. Pasal 7 Konvensi menetapkan, dengan beberapa pengecualian tertentu, bahwa agen-agen jasa tenaga kerja swasta tidak boleh meminta baik langsung atau tidak langsung, seluruhnya atau sebagian, bayaran atau ongkos kepada para pekerja. Pasal 8.1 mewajibkan Negara-negara yang meratifikasi agar mengambil tindakan-tindakan untuk memberikan perlindungan memadai kepada dan mencegah perlakuan sewenang-wenang terhadap pekerja migran yang direkrut atau ditempatkan di wilayahnya oleh perusahaan-perusahaan jasa tenaga kerja swasta. Tindakan-tindakan ini harus termasuk undang-undang atau peraturan-peraturan yang memberikan hukuman, termasuk larangan terhadap agen-agen jasa tenaga kerja swasta yang terlibat dalam praktek-praktek curang dan perlakuan sewenang-wenang. Pasal 8.2 menetapkan bahwa Negara-negara anggota yang berkepentingan selayaknya mempertimbangkan perjanjian-perjanjian bilateral untuk mencegah perlakuan sewenang-wenang dan praktek-praktek curang dalam perekrutan, penempatan dan ketenagakerjaan.

1.4.3.2. Perangkat-perangkat PBB

↑ Perangkat-perangkat PBB yang relevan termasuk:

- **Deklarasi Universal tentang Hak-hak Asasi Manusia (DUHAM)** (*Universal Declaration of Human Rights (UDHR)*, 1948;
- **Konvensi Internasional untuk Perlindungan Hak-hak Seluruh Pekerja Migran dan Anggota keluarganya** (*International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families*), 1990;
- **Protokol untuk Mencegah, Menekan dan Menghukum Perdagangan Manusia, terutama perempuan dan Anak-anak, Tambahan Konvensi PBB Melawan Kejahatan Transnasional yang Terorganisir** (*Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime*), 2000;
- **Protokol Menentang Penyelundupan Migran melalui Darat, Laut dan Udara, Tambahan Konvensi PBB Menentang Kejahatan Transnasional yang Terorganisir** (*Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime*), 2000;
- **Konvensi Internasional tentang Penghapusan Semua Bentuk Diskriminasi Rasial** (*International Convention on the Elimination of All Forms of Racial Discrimination–ICERD*), 1965;
- **Konvensi tentang Penghapusan Semua Bentuk Diskriminasi terhadap Perempuan** (*Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW*), 1979;
- **Konvensi tentang Hak-hak Anak** (*Convention on the Rights of the Child–CRC*), 1989, dan
Protokol Opsional tentang Penjualan Anak, Pelacuran Anak dan Pornografi Anak (*Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography*), 2001.

Deklarasi Universal Hak-hak Asasi Manusia (DUHAM), yang diadopsi pada tahun 1948, menetapkan bahwa semua manusia, laki-laki dan perempuan adalah sama, dilahirkan merdeka dan sejajar dalam martabat dan hak-haknya. Tidak ada laki-laki atau perempuan dapat ditawan dalam perbudakan atau perhambaan; perbudakan dan perdagangan budak dalam segala bentuknya harus dilarang (Pasal 4). Tidak seorang pun dapat menjadi sasaran penganiayaan atau perlakuan keji, tidak manusiawi dan menghinakan atau penyiksaan (Pasal

5). Setiap orang memiliki hak untuk bekerja, hak untuk bebas memilih pekerjaan, hak atas kondisi-kondisi kerja yang adil dan menguntungkan dan hak untuk perlindungan dari menjadi tunakarya (Pasal 23).

Perumusan hak-hak dan kebebasan yang ditentukan dalam DUHAM berlaku sama bagi para migran dan juga bagi perseorangan lainnya, begitupun halnya dengan ketentuan-ketentuan dari perangkat-perangkat PBB, khususnya **Kovenan PBB tentang Hak-hak Sipil dan Politik (1966)** dan **Kovenan PBB tentang Hak-hak Ekonomi, Sosial dan Budaya (1966)**, yang dihasilkan kemudian. Negara-negara tidak hanya diharuskan untuk menahan diri dari melanggar HAM yang dibubuhkan dalam Konvensi-konvensi ini, tetapi juga harus mengambil langkah-langkah positif sehingga perseorangan dapat menikmati hak-hak ini.

Konvensi Internasional untuk Perlindungan Hak-hak Semua Pekerja Migran dan Anggota Keluarga mereka (*The International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families*), **1990**, adalah perangkat PBB yang paling penting sangkut-pautnya langsung dengan para pekerja migran [NKotak 1.16]. Konvensi ini mengakui dan mengandalkan ketentuan-ketentuan yang ada dalam Konvensi-konvensi ILO dan dalam banyak hal melebihi konvensi-konvensi tersebut. Konvensi PBB, yang mulai berlaku pada tahun 2003, sangat memperluas kerangka hukum untuk migrasi, perlakuan terhadap migran dan pencegahan terhadap eksploitasi dan migrasi tidak teratur. Konvensi ini memberikan kepada para pekerja migran yang masuk atau menetap di negara tuan rumah secara tidak resmi, hak-hak yang sebelumnya hanya dibatasi pada perseorangan yang terlibat dalam migrasi teratur untuk pekerjaan. Tujuan dari Konvensi ini adalah untuk mencegah dan akhirnya menghapuskan migrasi tidak teratur, dan juga bertujuan untuk melindungi hak-hak dasar dari para migran selama proses migrasi mempertimbangkan posisi rentan mereka. Rumusan “keluarga” lebih luas daripada yang diberikan oleh Konvensi-konvensi ILO dan memperhitungkan komposisi keluarga yang lebih moderen dan terbaru. Negara-negara Peratifikasi tidak lagi diperbolehkan mengecualikan kategori pekerja migran apapun dari penerapannya. Perlindungan yang lebih besar terhadap hak-hak diberikan kepada pekerja mandiri, yang termasuk pekerja ekonomi informal.

Rosenberg, Ruth (ed.)
Trafficking of Woman and Children in Indonesia,
ICMC, ACILS, Jakarta

Appendix B: Glossary of Trafficking Terms
 By Rebecca Surtees and Martha Widjaja

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Agents	Person acting for another. Migration agent is someone who facilitates the migration process. There are both legal and illegal migration agents in Indonesia.	Agen	Orang yang bertindak atas nama pihak lain. Agen imigrasi adalah seseorang yang memfasilitasi proses imigrasi. Di Indonesia, ada agen imigrasi yang sah dan tidak sah.
Arbitrary Detention	The detention of an individual without cause	Penahanan Sewenang-wenang	Penahanan seseorang tanpa sebab
Arbitration	The settlement of a dispute by a person or persons chosen to hear both sides and come to a decision.	Arbitrasi	Penyelesaian suatu sengketa oleh satu atau beberapa orang yang dipilih untuk mendengarkan kedua belah pihak dan mengambil sebuah keputusan
Battery	A physical attack on another person	Pemukulan (pukul)	Serangan fisik terhadap seseorang
Blackmail	A payment or other benefit extorted by pressure or threats	Pemerasan	Peras uang atau dalam bentuk lain dari seseorang demi kepentingannya dengan cara mengancam menindas
Bonded Labour	Bonded labour (also known as debt bondage) is when a person's labour is demanded as a means of repayment for a loan.	Sistem Ijon	Sistem ijon (juga dikenal sebagai perbudakan karena terjerat utang) adalah ketika seseorang dituntut untuk bekerja sebagai cara untuk melunasi pinjamannya.
Brokers	A person who buys or sells on behalf of another.	Broker	Seseorang yang membeli atau menjual atas nama pihak lain.
Child Labour	Child labour consists of both economic and no economic activities. The broad definition of child labour includes any form of economic activity for at least one hour per week, and/or domestic	Pekerja Anak	Pekerjaan yang dilakukan pekerja anak terdiri dari aktivitas ekonomi dari aktivitas non-ekonomi. Definisi luas dari pekerja anak termasuk setiap bentuk aktivitas ekonomi paling tidak selama satu

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
	chores for at least seven hours per week, and/or school labour for at least five hours per week. The 'higher risk' definition of child labour has the same cut-offs for non-economic activities but at least three hours per week for economic activities in Indonesian this applies to children under the age of 15 years while according to the ILO this applies to persons under the age of 18.		jam setiap minggu, dan/atau melakukan pekerjaan-pekerjaan setidaknya selama tujuh jam setiap minggu dan/atau pekerjaan di sekolah selama paling tidak lima jam setiap minggu. Definisi 'risiko yang lebih tinggi' dari pekerja anak mempunyai batasan yang sama bagi aktivitas non ekonomi namun setidaknya tiga jam setiap pekan bagi aktivitas ekonomi. Di Indonesia definisi ini berlaku bagi anak yang berumur di bawah 15 tahun sementara menurut ILO definisi ini berlaku bagi orang yang berumur di bawah 18 tahun.
Child Prostitution	Prostitution by a child, which constitutes one of the worst forms of child labour.	Pelacuran Anak	Pelacuran yang dilakukan oleh seorang anak, yang merupakan salah satu bentuk pekerjaan terburuk bagi anak.
Child Trafficking	Movement of child(ren) from their family support through recruitment, transportation, transfer, harbouring or receipt, by means of threat, coercion, force, abduction, fraud, deception or abuse of power for the purpose of prostitution, pornography, sexual abuse/ exploitation, forced labour/ unfair wages or slavery or similar practices.	Trafiking Anak	Pergerakan anak(-anak) yang meninggalkan dukungan keluarganya atau dukungan lain sebelumnya melalui perekrutan, pengangkutan, perpindahan, penyembunyian atau penerimaan; dengan menggunakan ancaman, paksaan, kekerasan, penculikan, penipuan, kebohongan atau penyalahgunaan kekuasaan untuk tujuan pelacuran, pornografi, penganiayaan/ eksploitasi seksual, kerja paksa/upah yang tidak layak (unfair wages) atau perbudakan atau praktek-praktek lain yang serupa.

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Choice	The ability to freely select between a range of options	Pilihan	Keleluasaan untuk memilih dengan bebas dari sejumlah alternative
Civil Law	The body of codified law developed from Roman law and still in force in many European and American nations. It is distinguishable from Common Law which is the legal code in the UK and former British colonies.	Hukum Perdata	Bagian dari hukum yang dikodifikasi yang dikembangkan dari hukum Romawi dan masih berlaku di banyak Negara Eropa dan Amerika. Hukum Perdata dapat dibedakan dari Hukum Adat yang merupakan hukum resmi di Inggris dan Negara-negara bekas jajahan Inggris.
Civil Society	An intermediate realm situated between state and household, populated by organized groups or associations which are separate from the state, enjoy some autonomy in relations with the state, and area formed voluntarily by members of society to protect or extend their interests, values or identities, NGOs and TUs are civil society organizations.	Masyarakat Madani	Sebuah wilayah tengah yang berada di antara Negara dan rumah tangga, beranggotakan sejumlah kelompok atau asosiasi terorganisir yang terpisah dari negara, menikmati otonomi hingga tahap tertentu dalam hubungannya dengan Negara, dan dibentuk secara sukarela oleh anggota masyarakat untuk melindungi atau memperluas kepentingan, nilai atau identitas mereka. LSM dan Serikat Buruh adalah organisasi masyarakat madani.
Coercion	To compel someone to act by force or threat of force or Threats of serious harm to or physical restraint against any person; or Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any persons; or The abuse of threatened abuse of the legal process	Pemaksaan	Memaksa seseorang untuk melakukan suatu tindakan dengan kekerasan atau ancaman kekerasan
Complicity	Involvement in act(s) of wrongdoing (including failure to stop in act(s) of wrong-doing).	Ketersangkutan	Keterlibatan dalam perbuatan (-perbuatan) yang keliru (termasuk

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Commercial Sex Worker	A person who engages in sexual acts for money crimes and their punishments.	Pekerja Seks Komersial	kegagalan untuk menghentikan perbuatan (-perbuatan) yang keliru Seseorang yang melakukan tindakan seksual untuk memperoleh uang cara, kejahatan dan hukuman mereka
Criminal syndicates	Association of persons based on criminal activity	Sindikan kriminal	Perkumpulan dari sejumlah orang yang terbentuk untuk melakukan aktivitas kriminal
Cruel, inhuman or degrading treatment	Treatment which violates an individual's human rights	Kelakuan kejam (atau Perlakuan yang kejam, tidak manusiawi atau merendahkan martabat)	Perlakuan yang melanggar hak asasi manusia seseorang
Debt Bondage Discrimination	See Bond Labour Unfavourable treatment based on prejudice	Sistem Ijon Diskriminasi	Lihat Sistem Ijon di atas Perlakuan merugikan yang didasarkan atas prasangka
Evidence	Tertimony or material which is presented to prove a fact	Bukti	Pernyataan atau materi yang disampaikan untuk membuktikan suatu fakta
Exploitation	To make unethical use of someone for one's own advantage or profit	Eksplorasi	Memanfaatkan seseorang secara tidak etis demi kebaikan atau keuntungan seseorang
Force	Compel someone to act against their will	Pemaksaan (dengan kekuatan fisik)	Memaksa seseorang untuk bertindak di luar kemauan mereka
Forced Labour (& Slavery Like Practices)	The extraction of all work or services from any person by means of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion. Forced labour can be for the benefit of governments, private individuals, companies or associations.	Kerja Paksa (& Praktek-Praktek Serupa Perbudakan)	Memerintah seseorang untuk bekerja atau memberikan jasa dengan menggunakan kekerasan atau ancaman kekerasan, penyalahgunaan wewenang atau posisi yang dominan, jeratan utang, kebohongan atau bentuk-bentuk pemaksaan lainnya. Kerja paksa dapat dilakukan demi keuntungan pemerintah, individu pribadi, perusahaan atau asosiasi.
Forced Prostitution	To compel (force) someone to work as a prostitute	Pelacuran Paksa	Mendesak (memaksa) seseorang untuk bekerja sebagai pelacur.

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Formal Economy (or Sector)	Economic activities within the framework of government regulation including taxation and labour laws.	Ekonomi (atau Sektor) Formal	Aktivitas-aktivitas ekonomi yang termasuk dalam kerangka peraturan pemerintah termasuk undang-undang perpajakan dan perburuhan.
Gender	Refers to those characteristics of women and men that are socially constructed (as compared to biological characteristics which are denoted as 'sex').	Gender	Karakteristik wanita dan pria yang dibangun melalui interaksi social (dibandingkan dengan karakteristik biologis yang disebut sebagai 'jenis kelamin')
Gender-based Violence-GBV (also known as Violence against Women)	Any act of violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. This includes physical, sexual, emotional and psychological violence such as wife beating, sexual abuse, female feticide and infanticide, coercion and abduction of women and girls for prostitution and forced marriages GBV occurs in the family, the workplace, the general community and is sometimes also condoned or perpetuated by the state through a variety of policies and actions.	Kekerasan berdasarkan Gender – GBV (disebut juga kekerasan terhadap Wanita)	Setiap tindak kekerasan yang mengakibatkan, atau kemungkinan besar mengakibatkan cedera fisik, seksual atau psikologis atau penderitaan kepada wanita, diantaranya ancaman akan tindakan semacam itu, pemaksaan atau perampasan kebebasan secara sewenang-wenang, baik yang terjadi dalam kehidupan public atau pribadi. Hal ini diantaranya adalah kekerasan fisik, seksual, emosional dan psikologis seperti pemukulan terhadap istri, penganiayaan seksual, pembunuhan janin perempuan dan pembunuhan bayi, pemaksaan dan penculikan wanita dan anak perempuan untuk pelacuran dan kawin paksa
Globalisation	The process by which countries economies become increasingly interwoven and affected by each other. This comes about by the increased flow of goods (trade), companies (foreign direct investment), and or	Globalisasi	Proses di masa perekonomian sejumlah negara menjadi semakin saling terkait dan terpengaruh oleh satu sama lain. Hal ini terciptadari meningkatnya aliran barang (perdagangan),

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
	people (migration) across national borders. Globalisation is not new, but the speed, depth and breadth of the changes aided by technology is new		perusahaan (investasi asing langsung), uang (keuangan) dan/atau orang (imigrasi) lintas batas Negara. Globalisasi bukanlah sesuatu yang baru, namun kecepatan, kedalaman dan keluasan dari perubahan yang dibantu oleh teknologi merupakan sesuatu yang baru.
Human Rights	The basic rights and freedoms to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law.	Hak Asasi Manusia	Hak-hak dan kebebasan-kebebasan dasar yang berhak dimiliki setiap manusia, yang kerap juga termasuk hak untuk hidup dan merdeka, kebebasan berpikir dan berpendapat, dan persamaan di depan hukum.
Illegal migrant	A person who migrated without the legal authority to do so (i.e. without proper documentation)	Imigran gelap	Seseorang yang bermigrasi tanpa wewenang sah untuk melakukannya (yaitu tanpa dilengkapi dokumen yang sesuai)
Informal Economy or Sector	Economic activities that take place outside of The government regulatory framework. This often refers to small businesses (like warungs), micro-entrepreneur, day labourers, piece workers, home workers, and domestic workers. All work which is, by the nature and size of the work, are not counted, monitored or protected by governments.	Sektor atau Ekonomi Informal	Aktivitas-aktivitas ekonomi yang terjadi di luar kerangka Peraturan pemerintah. Aktivitas yang dimaksud ini kerap merujuk kepada usaha kecil (seperti warung), perusahaan berskala mikro, buruh harian, pekerja borongan, pekerja rumahan, dan pembantu rumah tangga. Semua pekerjaan, yang berdasarkan sifat dan skala pekerjaan, tidak tercakup, dipantau atau dilindungi oleh pemerintah.
Imprison	To confine or place in prison	Memenjarakan	Mengurung atau menempatkan dalam penjara
Inalienable	Refers to rights that belong to every person and cannot be taken from a person under any circumstances	Tidak dapat dicabut	Mengacu kepada hak-hak yang dimiliki setiap orang dan tidak dapat diambil dari seseorang dalam situasi apapun

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Indictment	To accuse someone formally of a crime	Dakwaan	Menuduh seseorang secara resmi atas suatu kejahatan
Indivisible	Refers to the equal importance of each human rights law. A person cannot be denied a right because someone decides it is "less important" or "nonessential"	Tidak dapat dipecah-pecah	Mengacu kepada kedudukan setiap hak asasi manusia yang sama pentingnya. Sehingga suatu hak tidak bias dicabut dari seseorang karena orang lain memutuskan bahwa hak itu "kurang penting" atau "tidak diperlukan"
Instrument	A generic term to denote either a treaty or another standard, such as a declaration, body of principles, guidelines, etc. These instruments outline international norms and standards in the area of human rights, humanitarian law, and crime.	Instrumen	Sebuah istilah generic yang berarti sebuah traktat atau dokumen penetapan standar lain, seperti deklarasi, azas, pedoman, dsb. Instrumen-instrumen ini menjabarkan norma-norma dan standar-standar internasional di bidang Hak Asasi Manusia, undang-undang kemanusiaan, dan kejahatan.
International Labour Standards (also known as Core Labour Standards)	These are international standards for work and workers including freedom of association, the right to organise and bargain collectively, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination in employment and occupation.	Standar Buruh Internasional (juga dikenal sebagai Standar Buruh Inti)	Merupakan standar-standar internasional bagi pekerjaan dan pekerja termasuk kebebasan untuk berkumpul, hak untuk berorganisasi dan melakukan tawar-menawar secara kolektif, penghapusan semua bentuk kerja paksa atau kerja wajib, abolisi efektif pekerja anak dan penghapusan diskriminasi dalam pekerjaan dan jabatan.
International Law	A set of rules generally regarded and accepted as binding in relations between states and nations. (also called law of nations)	Hukum Internasional	Serangkaian peraturan yang umumnya dianggap dan diterima sebagai mengikat dalam hubungan antara negara-negara dan bangsa-bangsa. (Juga disebut sebagai hukum bangsa-bangsa)

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Intimidation	To influence someone by frightening or threatening them	Intimidasi	Mempengaruhi seseorang dengan menakut-nakuti atau mengancamnya
Investigation	To study an issue carefully	Penyelidikan	Mempelajari suatu isu dengan cermat
Labour Exploitation	To make a profit from the labour of others without giving a just return	Eksplotasi Buruh	Mendapat keuntungan dari hasil kerja pihak lain tanpa memberikan imbalan yang layak
Labour Rights	The basic rights within the workplace, to which all workers are entitled. These include the right to work, the right to a fair wage, freedom of association, freedom from discrimination in the workplace, etc. These are also known as 'workers' rights'.	Hak-Hak Buruh	Hak-hak dasar di tempat kerja, yang berhak dimiliki semua buruh. Hak-hak ini di antaranya adalah hak untuk bekerja, hak untuk mendapat upah yang layak, kebebasan untuk berkumpul, kebebasan dari distriminasi di tempat kerja, dll. Hak-hak ini juga disebut sebagai 'hak-hak pekerja'.
Mediation	The act of friendly or diplomatic intervention, usually by consent or invitation, for settling differences between persons, nations, etc.	Mediasi	Tindak intervensi yang bersahabat atau diplomatis, biasanya berdasarkan ijin atau undangan, untuk menyelesaikan perbedaan di antara sejumlah orang, Negara, dsb.
Migrant	A migrant is a person who leaves his or her country or community of origin for political, economic, social, religious or other reasons. There are different types of migration – legal and illegal, urban and rural, international and domestic.	Migran	Migran adalah seseorang yang meninggalkan Negara atau masyarakat asalnya untuk alasan politik, ekonomi, sosial, keagamaan atau alasan lainnya. Ada beberapa tipe migrasi – legal dan ilegal, kota dan desa, luar dan dalam negeri.
Migration	Movement from one community or country and settling in another.	Migrasi	Perpindahan dari satu masyarakat atau Negara dan menetap di masyarakat atau Negara lain.
Monitor	Maintain regular surveillance over an issue or person	Monitor	Melakukan pengawasan secara teratur terhadap suatu isu atau seseorang
Non-government organisations (NGOs)	An organisation which works for the welfare benefit and/or	Lembaga Swadaya Masyarakat (LSM)	Suatu organisasi yang bekerja untuk kesejahteraan dan/atau

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
	development of society or certain section of society. It is usually 'non profitable', which means that its memers are not entitled to any profit from the earning or income that it generates.		pembangunan masyarakat atau bagian tertentu dari masyarakat. Lazimnya bersifat 'nirlaba', yang berarti para anggotanya tidak berhak atas keuntungan dari penghasilan atau penerimaan yang diperolehnya.
Perperator	To commit an act. For example, to perpetrate an act of trafficking is to commit the crime of trafficking	Pelaku kejahatan	Orang yang melakukan suatu kejahatan. Contohnya, melakukan tindak trafiking berarti melakukan kejahatan trafiking
Persecute	To afflict or harass constantly so as to injure or distress, OR To oppress cruelly, especially for reasons of religion, politics, or race.	Menganiaya	Mengakibatkan penderitaan atau melakukan pelecehan secara terus menerus dengan tujuan untuk melukai atau mendatangkan kesusahan, ATAU menindas dengan kejam, khususnya dengan alasan agama, politik atau ras.
Punishment	Discipline or penalty imposed for wrong-doing	Hukuman	Tindakan disipliner atau sanksi yang dijatuhkan atas suatu kesalahan.
Prosecute	To institute legal proceedings against, or conduct criminal proceedings in court against.	Menurut	Mengambil tindakan hukum terhadap, atau mengajukan gugatan pidana ke pengadilan
Prostitution	A sexual act engaged in for money	Pelacuran	Tindakan seksual yang dilakukan untuk memperoleh uang
Protocol	A treaty which expands or modifies the effect of the convention, covenant, or other treaty with which it is associated. Protocols are often drafted after the main convention was adopted to further define a related issue, and fill gaps as new developments prompt the international community to take action.	Protokol	Traktat yang memperluas atau memodifikasi efek dari konvensi, permufakatan, atau traktat lain yang berkaitan dengannya. Protokol kerap disusun setelah konvensi utama diadopsi untuk memberikan penjelasan lebih lanjut mengenai suatu isu yang berkaitan dan mengisi celah-celah yang ada sehubungan

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Rape	Non-consensual sexual intercourse	Pemeriksaan	dengan perkembangan baru yang mendorong masyarakat internasional untuk mengambil tindakan. Persetujuan yang terjadi tanpa ijin salah satu pihak yang terlibat
Recruitment	The act of enlisting persons for work or an activity	Perektrutan	Tindakan mendaftarkan sejumlah orang untuk suatu pekerjaan atau aktivitas
Servitude	A state of subjection to an owner or master; or Lack of personal freedom, as to act as one chooses.	Penghambaan	Seseorang yang berada di bawah penguasaan seorang pemilik atau majikan; atau hilangnya kebebasan pribadi, untuk bertindak sebagaimana yang dikehendaknya.
Sexual slavery	When a person owns another and exploits them for sexual activity	Perbudakan seksual	Adalah ketika seseorang memiliki orang lain dan mengeksploitasinya untuk menganiaya secara seksual
Sexual violence	Violence or force exerted for the purpose of sexually violating, damaging, or abusing	Kekerasan seksual	Kekuatan kekerasan yang dikeluarkan dengan tujuan untuk melakukan kekerasan, melukai, atau menganiaya secara seksual
Shelter	Refuge or haven; or something that provides cover or protection	Shelter	Tempat berlindung atau tempat yang aman; atau sesuatu yang memberikan keteduhan atau perlindungan
Slavery	The state of one bound in servitude as the property of a slaveholder or household; or practice of owning slaves, or mode of production in which slaves constitute the principal work force.	Perbudakan	Keadaan di mana seseorang terbelenggu dalam penghambaan sebagai milik dari seorang penguasa sebagai milik dari seorang penguasa budak atau suatu rumah tangga; atau praktek untuk memiliki budak; atau metode produksi di mana budak merupakan tenaga kerja pokok

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Smuggling	The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party of which the person is not a national or permanent resident	Penyelundupan	Memasukkan seseorang, agar dapat memperoleh, secara langsung maupun tak langsung, keuntungan finansial atau materiil lainnya, secara ilegal ke suatu negara di mana orang itu bukan warga negara atau penduduk tetap dari negara bersangkutan
Survivor	Someone who continues to live in spite of acts perpetrated against them which have endangered their life	Survivor	Seseorang yang selamat dari kejahatan yang diperbuat terhadapnya, di mana perbuatan itu membahayakan kehidupannya
Sweatshop	A factory or workplace where one or more international labour standard is violated. Such violations may include forced labour, compulsory overtime, unfair wages, sexual harassment or exploitation, unsafe working conditions or child labour, etc	Sweatshop	Suatu pabrik atau tempat kerja di mana satu atau lebih standar perburuhan internasional dilanggar. Pelanggaran itu dapat berupa kerja paksa, kerja lembur wajib, upah yang tidak adil, pelecehan atau eksploitasi seksual, kondisi kerja yang tidak aman, atau buruh anak, dsb.
Testimony	Declaration, supporting evidence	Kesaksian	Pernyataan, bukti pendukung
Trade Unions (TUs)	A voluntary organisation of workers that exercise its rights of freedom of association to engage on employer in collective bargaining for the purpose of improving wages, hours and working conditions, TUs also engage in political and social activities to advance their shared interest and concerns. TUs are generally organised by industrial sector or trade. TUs are also referred to as 'Labour Unions'	Serikat Buruh (SB)	Suatu organisasi sukarela dari para buruh yang menggunakan hak kebebasannya untuk berkumpul untuk melibatkan majuan dalam proses tawar-menawar kolektif yang bertujuan untuk memperbaiki upah, jam kerja dan kondisi kerja.
Trafficker	A person who commits the crime of trafficking in persons	Pelaku trafiking	Seseorang yang melakukan kejahatan trafiking terhadap manusia

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Trafficking (in persons)	Movement of persons from their family support or other original support through recruitment, transportation, transfer, harbouring or receipt; by means of threat, coercion, force, abduction, fraud, deception or abuse of power; for the purpose of prostitution, pornography, sexual abuse/exploitation, forces labour/ unfair wages or slavery or similar practices.	Trafiking (terhadap manusia)	Pergerakan sejumlah orang yang meninggalkan dukungan keluarga mereka atau dukungan lain sebelumnya melalui perekrutan, pengangkutan, perpindahan, penyembunyian atau penerimaan; dengan menggunakan ancaman, pemaksaan, kekerasan, penculikan, penipuan, kebohongan atau penyalahgunaan kekuasaan untuk tujuan pelacuran, pornografi, penganiayaan/ eksploitasi seksual, kerja paksa / upah yang tidak layak atau perbudakan atau praktek-praktek serupa lainnya.
Trauma	An emotional wound or shock that creates substantial, lasting damage to the psychological development of a person; or an event of situation that causes great distress and disruption	Trauma	Suatu luka atau guncangan emosional yang menciptakan kerusakan mendalam dan permanen terhadap perkembangan psikologis seseorang; atau suatu peristiwa atau situasi yang menyebabkan penderitaan dan gangguan hebat.
Treaty	An international agreement between countries, which is binding in international law. Treaties can be called a number of things including 'Convention', 'Cocennant', 'Protocol', and 'Agreement'.	Traktat	Suatu kesepakatan internasional antara sejumlah negara, yang sifatnya mengikat dalam konteks hukum internasional. Traktat dapat disebut dengan beberapa nama lain, diantaranya adalah 'Konvensi', 'Permufakatan', 'Protokol', dan 'Kesepakatan'.
Underground Economy	Illegal economic activities such as prostitution, certain forms of gambling, trafficking in persons and drugs, etc. Also known as the 'black market' economy.	Perekonomian Bawah Tanah	Aktifitas-aktifitas ekonomi ilegal seperti prostitusi, bentuk perjudian tertentu, trafiking terhadap manusia dan obat-obatan.
United Nations	An international organization composed of most of the countries of the world. It was founded in	Perserikatan Bangsa-Bangsa	Suatu organisasi internasional yang terdiri dari kebanyakan negara di

English Language Term	English Language Definition	Istilah Bahasa Indonesia	Definisi Bahasa Indonesia
Victim	1945 to promote peace, security, and economic development. Person injured, killed or made to suffer	Korban	dunia. Didirikan pada tahun 1945 untuk mendorong terciptanya perdamaian, keamanan, dan pembangunan ekonomi. Orang yang dilukai, dibunuh atau dibuat menderita
Violence (physical)	Physical force exerted for the purpose of violating, damaging, or abusing, or abusive or unjust exercise of power use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (in Indonesia, this is considered to include mining/extractive industries, jermals, and plantation work). In Indonesian this applies to children under the age of 15 years while according to the ILO this applies to persons under the age of 18.	Kekerasan (fisik)	Kekuatan fisik yang dikeluarkan dengan tujuan untuk mengganggu, melukai, atau menganiaya; atau penggunaan kekuasaan yang sifatnya menganiaya atau tidak benar dikerahkan dalam konflik bersenjata; (b) pemakaian, pengadaan atau penawaran seorang anak untuk pelacuran, untuk produksi pornografi atau untuk pertunjukan pornografi; (c) pemakaian, pengadaan atau penawaran seorang anak untuk aktivitas-aktivitas terlarang, khususnya bagi produksi dan trafiking obat-obat terlarang seperti yang didefinisikan dalam sejumlah traktat internasional terkait; (d) pekerjaan yang, sifat atau kondisi dalam mana pekerjaan itu dijalankan, kemungkinan besar akan mengganggu kesehatan, keselamatan atau moral anak (di Indonesia, yang termasuk dalam definisi ini adalah industri pertambangan/ penggalian, jermal, dan pekerjaan di perkebunan). Di Indonesia definisi ini berlaku bagi anak yang berusia di bawah 15 tahun sementara menurut ILO definisi ini berlaku bagi orang yang berumur di bawah 18 tahun.

Sources: Definitions, concepts and translations for this glossary were drawn and adapted from the sources listed below

- ♦ GAATW (1999) Human Rights in Practice: A Guide to Assist Trafficked Women and Children. Bangkok, Thailand: GAATW.
- ♦ Houghton Mifflin Company (2000) The American Heritage Dictionary of the English Language, 4th edition USA
- ♦ Office of the High Commissioner for Human Rights (2002) Human Rights Instruments. Geneva (<http://www.unhchr.ch/html/intlinst.htm> accessed on July 30 2002)
- ♦ Office of the High Commissioner for Human Rights (no date) Human Rights; A Basic Handbook for UN Staff. Geneva: Office of the High Commissioner for Human Rights.
- ♦ United Nations (2002) List of Conventions, Declarations and Other Instruments contained in General Assembly Resolutions (1946 onwards). New York, USA: United Nations Dag Hammarskjöld Library (<http://www.un.org/Depts/dhl/resguide/resins.htm> accessed on July 30, 2002)
- ♦ UNTAET (1999) Human Rights Glossary. Dili, East Timor: UNTAET Human Rights Unit

Implementation of Learning: Close of Day One

Annex:

Essential Reading: *Regional Training Programme for Labour Attaches: Protecting Migrant Workers: Strengthening Collaboration in Asia*, Canadian Human Rights Foundation, p. 12, October 2001.

Learning implementation plans: This is a plan which sets out as specifically as possible how you will implement aspects of what you have learnt in this training course (see LIP form). Participants fill these out at the end of each day in order to reflect on what they have learnt that day and how they will apply that knowledge to their daily work.

You should think about:¹

1. How your learning from this workshop will help you and your department to better protect the rights of migrant workers?
 - a. By providing better services?
 - b. By increasing the knowledge/skills within the organisation?
2. What practical steps can you take after the workshop to ensure that this happens?

¹ Canadian Human Rights Foundation, *Regional Training Programme for Labour Attaches: Protecting Migrant Workers: Strengthening Collaboration in Asia*, 22 – 25 October 2001, Bangkok, p. 11.

LEARNING IMPLEMENTATION PLAN ¹

NAME:	POSITION TITLE:
POSTING TO:	
MODULE TITLE:	DATE:

1. WHICH OF THE SUBJECTS COVERED IN THE MODULE WILL YOU BE IMPLEMENTING IN YOUR WORK? (PICK ONE OR TWO, THE MOST IMPORTANT)
2. WHAT ROLE OR AREA OF RESPONSIBILITY IN YOUR JOB DOES THIS SUBJECT RELATE TO?
3. WHY HAVE YOU CHOSEN ROLE OR RESPONSIBILITY FOR THE PLAN? Is there a problem that you are trying to solve? or, Is there a skill area, which you need to strengthen or improve?
4. WRITE AN OBJECTIVE FOR IMPROVEMENT. What do you hope to achieve by working on this role or responsibility with the new knowledge that you have? Within _____ months of attending this programme I will have ...
5. INDICATORS. WHAT WILL SHOW YOU HAVE SUCCESSFULLY ACHIEVED YOUR OBJECTIVE AND MADE USE OF YOUR LEARNING? How will you be able to show that you have been successful or made progress? What measures can you or others use to assess your success?

6. WHAT ACTIVITIES ARE NECESSARY TO ACHIEVE YOUR OBJECTIVES? List the things you will have to do step by step.

7. WILL ANYONE ELSE BE AFFECTED BY YOUR PLAN? For example your staff. You need to make sure they understand and agree with your ideas.

8. WHAT RESOURCES WILL YOU NEED? Will you need any extra resources – remember that time is a resource and new activities or methods of doing something can take more time than things that are already known.

9. WHAT POTENTIAL PROBLEMS MIGHT YOU HAVE? For example, someone else who will be affected by your plan but may not agree with the way you want to do things now.

10. WHO WILL HELP YOU WITH THIS PLAN? This includes thinking about who can help you to solve problems.

SIGNED: _____

DATE: _____

¹ Adapted from Matthews N., Draft Learning Implementation Plan for Anti-Trafficking Training Programme for the Greater Mekong Sub-Region, UNIAP, Bangkok, 10 September 2005 (DRAFT CURRICULUM).

Canadian Human Rights Foundation
Regional training programme for labour attaches, p.12

A Thai Labour Attaché stationed in Hong Kong

...Regarding the last training in Chiang Mai, I find it very useful. For the day-to-day work, I usually act automatically on the basis of my instinct and experiences whether educational or work-related. The training makes me stop for a while and look back to see whether what I have done is up to the international standards or in what way I should improve the operation and convey my concept to my staff. Although the improvement is not as fast as I expect, I have seen some changes in the services we provide for the domestic helpers in Hong Kong. I have picked up the good things from my colleagues in the training session and incorporated into my system. As I have left Hong Kong approximately for one year, I am not sure whether they are still there. By the way, I am still the invited resource person to give presentation about domestic helpers in Hong Kong for the Department of Employment in Thailand.

At present, I am not only concentrated in handling the complaints of a group of persons...the migrant workers, but rather extending the services to cover a larger scope....Thai people all over the country. Whether the migrant workers or Thai people in general, those who get maltreatment from others or misadministration from the government agencies are considered to be the disadvantaged who need services catered to their grievances. The concept of human rights is also there.

...To ensure that participants apply what they have learned in the workplace needs an active follow-up program. Not only to follow up what we have promised to do in the letter sent to our colleague, but there must be something else along the way. As far as I am concerned, I have changed my job. Even though I was still with the Ministry of Labour, by this time I may have been transferred to take up other position and I could not do what I have written in my letter anymore. I need some brush-up. I need some technical document and updated information in the field as well as an opportunity to learn the latest experiences from my colleagues and from the experts. These must be on a continuous or on some regular basis. At the moment my office, the Office of the Ombudsman, is under the process of designing our strategic plans for the years 2001 to 2005 and expects to implement our action plans very soon. Your letter reminds me that I should go over the document I have received from the training for another two times so that I can have new ideas to incorporate into the strategic plans during our seminar to be held from 29 June to 1 July 2001. I hope that your second training course will be a successful one.

MODULE 3: Rights in the law

Timeframe: 2 hours 15 min (75 min + 60 min)

Module Learning Outcomes:

By the end of this module the participant will be able to:

- o Describe what is meant by a rights-based approach and explain how it is relevant to FSP
- o Name the four 'Ps' in addressing trafficking
- o Describe the main laws in country of origin and destination penalizing crimes against domestic workers
- o Explain the types of laws that exist to protect rights of domestic workers in sending and receiving countries
- o Explain the relevance of standard contracts and bilateral agreements to protecting migrant domestic workers at destination

Outline of Module

1. PowerPoint presentation of aims, RBA and 4 'P's of trafficking [20 min]
2. Group work [15 min]
3. Feedback [10 min]
4. PowerPoint Presentation on different laws, obstacles to prosecution and conflicting rights and laws [20 min]
5. Country C example [5 min]
6. Feedback [5 min]
- [break]
7. Standard contract [5 min]
8. Case of Karla Discussion [10 min]
9. Group work (Jordan standard contract) (10 min)
10. Feedback (5 min)
11. Bilateral agreements and discussion [15 min]
12. Quiz on Indonesian legal knowledge [15 min]

Annex 3: Essential reading:

- o Relevant Laws of Indonesia
- o Relevant Laws of Destination
- o Sample of Hong Kong Laws to prosecute exploitation and abuse of workers and protect domestic workers' rights
- o Case of Mrs Kumaratunga
- o ILO, An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers, GENPROM, Geneva, 2002, Booklet 6, pp. 36 – 41, 88-92
- o Special working Contract fir Non-Jordanian Domestic Workers
- o MOU between Philippines and Kuwait from ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers*, GENPROM, Geneva, 2002, Booklet 3, p.29.

Recommended reading:

- o Law 39 of 2004 (full Bahasa version)
- o Hong Kong Standard Contract for Employment of Foreign Domestic Helpers
- o ACILS, Memoranda of Understanding between Indonesia and Malaysia: Commentary, Jakarta 2004

Module Step by Step

1. PowerPoint Presentation

Aims

- ♦ What is a rights-based approach and how it is relevant to foreign service personnel?
- ♦ What are the four 'Ps' in addressing trafficking?
- ♦ How does law, culture and human rights affect treatment of migrant domestic workers?
- ♦ What laws in sending and receiving countries can be used to prosecute crimes against domestic workers?
- ♦ What laws protect domestic workers' right in sending and receiving countries?
- ♦ How are standard contracts and bilateral agreements relevant to protecting migrant workers at destination?

Rights-based approach

- ♦ Looks at trafficking as a form of human rights violation
 - ♦ Uses human rights principles and instruments to address violations in different stages of trafficking
 - ♦ Uses empowering strategies to tackle the problem. Encourages participation and self-representation of affected groups.
1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims
 2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons
 3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.

(OHCHR Recommended principles and guidelines on human rights and human trafficking)

4 'P's in anti-trafficking

1. Prevention (preventing trafficking from occurring in the first place)
2. Prosecution (bringing traffickers to justice)
3. Protection (of the rights of victims at all stages in the trafficking and post-trafficking process)
4. Policy (institutional framework needed to address trafficking)

Need for this to be more detailed about what

How can embassy staff be involved in the 4 Ps?

Prevention: By documenting the root causes and bringing this to the attention of the Home Government for further action e.g. many workers being trafficked to Country X because there is a lack of legal migration opportunities so workers are compelled to use illegal means and are therefore more vulnerable to forced labour and too scared to ask for help. The embassy may raise this issue with the Host Government to address a safe legal migration strategy for women workers.

Prosecution: By identifying victims of trafficking who come to the embassy and providing them with adequate legal information and assistance so they file complaints and bring their traffickers to justice.

Protection: Embassy staff can protect domestic workers rights by giving them accurate advice and assistance about the laws of the destination country and providing referrals for assistance such as shelter, counselling and medical care and ensuring they have translators if needed, especially during legal procedures.

Policy: By identifying and addressing policy gaps of the host or home country that contribute to trafficking. For example the embassy finds that the policy of forcing migrant domestic workers to return home to renew their contracts makes them very vulnerable to debt bondage when they travel again. The embassy raises the attention of the Home Government on this issue and provides a mechanism for renewing contracts in the destination.

Embassy staff and 4 'P's:

- ♦ This module will focus on Prosecution and legal protection of domestic workers
- ♦ Module 5 will focus on prevention and policy (long-term strategies)

Laws: Group Work

Return to Adek's Shamela's case from Module 2.
Split into 2 groups - one case per - group.

1. If the worker came to the embassy, who could be prosecuted for the violations and under what type of laws?
2. What any other relevant laws that could protect the worker?

(Consider in Indonesia and destination country)

(15 minutes)

For Shamela's case, even though she is from Bangladesh, consider what Indonesian laws could be applied if she was from Indonesia.

Group work answer table:

Country	Criminal law	Who is offender
Sending (Philippines or Indonesia)	- - Other relevant laws to protect worker: - -	
Receiving	Criminal laws	
	Other relevant laws to protect worker: e.g. labour law	

Other laws that could protect the worker?

Examples of domestic criminal laws of receiving countries

Criminal law

- ♦ Trafficking law (does it include labour exploitation?)
- ♦ Forced labour (may not be called forced labour)
- ♦ Unlawful confinement (does a person have to be physically locked up? Does it cover psychological coercion?)
- ♦ Unlawful withholding of documents (employer of recruitment agency with holding passport to prevent worker from leaving)
- ♦ Slavery (currently being used?)
- ♦ Servitude
- ♦ Rape/sexual abuse
- ♦ Assault/battery
- ♦ Psychological abuse including threats/intimidation
- ♦ Domestic violence (does it include domestic workers as members of the household?)
- ♦ Specific domestic work provisions

Trafficking law: Under Hong Kong and Singapore's criminal law, the crime of trafficking only covers trafficking for sexual exploitation

Forced Labour: Singapore's Penal Code has a provision of 'compelling someone to work against their will'. This may not be explicitly called 'forced labour'. Hong Kong and Singapore's criminal law also have a provision against use of assault with intent to cause certain acts to be done.

Unlawful imprisonment: Under Hong Kong Crimes Ordinance, unlawful imprisonment is punishable by ten years imprisonment.

Unlawful withholding of documents (employer or recruitment agency withholding passport to prevent worker from leaving) example: In USA, it is a crime to destroy, conceal or possess someone's documents for the purpose of holding them in slavery or maintaining their labour or services.

Slavery (currently being used?): In Italy, slavery has been reinterpreted by courts in recent times to include cases of trafficking, even where victims are under psychological coercion rather than physical restraint.

Servitude: The crime of servitude has been used in the United States to prosecute trafficking of migrant domestic workers

Psychological abuse including threats/intimidation: For example, the Hong Kong Crimes Ordinance has a provision punishing anyone who threatens or intimidates another person.

Domestic violence: Indonesia's Domestic Violence Law (2004) punishes physical, psychological and sexual violence against persons working in the home.

Domestic work: Singapore's Penal Code 1998 states employers who abuse a migrant domestic worker must face punishment of one-and-a-half times the sentence allowed under the Penal Code.

Labour laws and migrant labour laws

- ♦ Do these cover domestic workers?
- ♦ Are there provisions against exploitation of domestic workers such as underpayment or non-payment of wages, illegal recruitment or excessive fee charging, breach of contract?

Do these cover domestic workers? For example, Hong Kong's Employment Ordinance covers these issues and includes domestic workers. Singapore's Employment Ordinance does not include domestic workers but are covered by a separate Employment of Foreign Workers Act (EFWA)

Provisions against exploitation? For example, Hong Kong's Employment Ordinance punishes failure to pay wages, underpayment and unlawful deductions. It also punishes employment agencies that charges more than 10% of first month's wages as a fee under Employment Agency Regulations

Singapore's EFWA does not specifically mention crimes committed by employers or recruitment agencies. However, employers who breach work permit conditions may be punished by a fine up to \$5,000 and imprisoned up to 6 months under the EFWA. According to Singapore's Ministry of Manpower, if an employer does not ensure the domestic worker's personal safety, proper housing, prompt salary payment, adequate food and rest, then they are liable for breaching the work permit conditions and can be punished under the EFWA.

For an example of successful use of Labour Law in Singapore, refer to case of Mrs Kumaratunga who worked without pay for 8 months (Annex 3). With the support of the embassy and an NGO who obtained free legal services for Mrs K, a court ruled in her favour and ordered payment of \$8000.

Obstacles to prosecution

- ♦ Diplomatic cases (waiver of immunity?)
- ♦ Lack of evidence (burden of proof)
- ♦ Lack of access to justice (no lawyer, no information, bad advice or institutional obstacles)
- ♦ Lack of incentive
- ♦ Lack immigration status

Could Shamela's employer be prosecuted?

In the true facts of this case, the employer was charged with false imprisonment and servitude. The offences of trafficking, forced labour and unlawful holding of documents were not yet crimes under US law when this case was heard.

Shamela's lawyer stated: "Hiring an employee to clean your house and watch your children is not related to consular functions and should not be immune from federal and state law."

The judge allowed the employer's defence of diplomatic immunity on the grounds of feared retaliation against American diplomats abroad and the need to ensure immunity. Still, due to the immense publicity from the case, the employers were compelled to reach an out-of-court settlement with Shamela for an undisclosed sum.

Currently FSP enjoy diplomatic immunity. However increasing concern about diplomatic abuse of domestic workers in Europe has raised the issue of waiving diplomatic immunity.

Council of Europe Recommendation 1523 (2001) recommended the Committee of Ministers ask the governments of Member States to amend the Vienna Convention in order to waive diplomatic immunity for all offences committed in private life.

Immigration laws

- ♦ Under what conditions can a worker stay in the destination country?
- ♦ Can a worker change her employer?
- ♦ Change work status?

Remember: Contact lawyers and legal rights NGOs in destination countries for up-to-date information and advice

Laws of individual destination countries are not included here since staff is being posted to many different countries. However it is important to know these laws thoroughly and to contact lawyers and legal specialists for that information as well as those involved in supporting migrant workers rights.

It is up to you to brief yourself on the law of the destination country. You can do this by inviting representatives of the police, labour department and an immigration or labour lawyer to meet with you and potentially other embassy staff. An informal briefing would give you the opportunity to ask them specific questions on how the laws apply to domestic workers. If you do this, will save yourself time in the long run, and ensure the advice you give to domestic workers is accurate. In addition, it is a good way of developing a working rapport with government officials and lawyers who may be able to help you later in specific cases.

Conflicting rights and laws

Give an example of a 'bad' law that violates basic rights?

Example:

- ♦ Laws that discriminate against women
- ♦ Laws that discriminate against domestic workers

In many Middle Eastern countries and in Malaysia, the law states that employers should control the domestic worker's identity documents, rather than the domestic worker herself. Another example is a law that forbids domestic workers from changing their employers. In either case, workers are more likely to stay in abusive or exploitative conditions and therefore their rights are being violated directly by a law infringing them.

Even if laws do not strictly violate rights, in many cultural contexts, abuse and exploitation of certain kinds of people is socially tolerated, particularly maltreatment of migrants, young people and women. For example, it might be acceptable to lock up a migrant domestic worker in Country X, but not in Country Y.

Conflicting rights and laws

- ♦ Consider the cultural and legal context of the host country very carefully
- ♦ Staff can not break the law of the land
- ♦ Remember in the destination country, the law of that country will be applied in court, not the law of Indonesia. This is especially important for enforcement of contract of domestic workers
- ♦ Staff should monitor how legal and cultural factors influence the situation of domestic workers, especially abuses such as trafficking and forced labour
- ♦ Does a country's culture sanction trafficking and forced labour of migrant domestic workers? Is this reflected in the country's law and policies?
What can the Indonesian governments do to address it?

The following example tests your understanding of trafficking and what policy changes are effective or ineffective:

Problems

Many countries such as these in Middle East and Malaysia have restrictive visa conditions that prohibit domestic workers from changing employers. In country C., this policy was changed and it is now possible for workers to change employer but both employers must agree to change. The Ambassador asks you what is the likely outcome of the policy? Will trafficking increase or decrease as a result?

(discuss in pairs) (5 min)

Protection under the law

Examples:

- ♦ Standard contract
- ♦ Bilateral agreements

What are these and how do they protect domestic workers?

Standard employment contract

- ♦ A standard contract sets out specific minimum terms and conditions of employment for that sector
- ♦ Standard contracts developed jointly by sending and receiving countries can be good way of protecting rights
- ♦ Some countries' standard contracts do not necessarily protect rights of workers. Specific provisions should be studied very carefully

Standard employment contract

CHECKLIST:

- ♦ Does the destination country prescribe use of a standard employment contract for migrant domestic workers?
- ♦ Does it conform to your own countries laws and policies?
- ♦ What protections are included and how can these be enforced?
- ♦ What if a worker is on a different contract to a standard one?
- ♦ Does the standard contract violate the rights of domestic workers in anyway?

Case of Karla

Karla goes to Country X which has a standard model contract for domestic workers. Karla has her contract approved before she left home. Upon arrival in Country X, an agency official tears up her old contract and makes her sign a new contract in a language which she does not understand. Karla comes to the embassy, because she is being paid much less than she originally had agreed, and has no holidays or days off under the new contract

Which is enforceable, the old contract or the new one?

Exercise

Read the Standard Contract for workers going to Jordan

1. Does it protect the basic rights of workers in line with Indonesian laws?
2. Does it protect the basic rights of workers in line with international standards?

(10 minutes in groups of 3)

Bilateral agreements

- ♦ Bilateral agreements give specific terms of agreements between two countries, such as minimum standards for terms and conditions of employment. They are often expressed as memoranda of understanding (MoU) between the two countries
- ♦ Can give more protection but can specifically exclude migrant workers from protection
- ♦ FSP play a role in advising the content of bilateral agreements

CHECKLIST:

- ♦ Is there a bilateral agreement between your country and the host country on employment of national, and does it include domestic workers?
- ♦ Does it cover treatment of trafficked persons?
- ♦ What kind of protection does it include?
- ♦ Does it violate the rights of workers in anyway?

Refer to the ACIL's *Memoranda of Understanding between Indonesia and Malaysia Commentary* for more information on bilateral agreements and what they should and should not include to protect the rights of domestic workers.

Discussion

Consider the provisions of the MoU between Philippines and Kuwait

- ♦ How does it protect domestic workers rights, and under which provisions?

Quiz on knowledge of Indonesian Laws

(Complete this before commencement of Module 3)

1. Is there a trafficking law in Indonesia that applies to domestic workers?
Yes No
2. What provisions of Law 39 on Migrant Workers could be used to prosecute traffickers for other offences? Tick all that apply:
 - a) Illegal recruitment
 - b) Maltreatment in holding centres
 - c) Lack of legal agent at destination
 - d) Forced labour
3. What is the term of imprisonment for illegal recruitment?
 - a) No jail term just a fine
 - b) 1 - 5 years
 - c) 2 - 10 years
 - d) 10 – 15 years
4. What is the term of imprisonment for maltreating a person in a holding centre?
 - a) No jail term just a fine
 - b) 1 - 5 years
 - c) 2 - 10 years
 - d) 10 – 15 years
5. What is the term of imprisonment for an agency that lacks a legal agent at destination?
 - a) No jail term just a fine
 - b) 1 day - 30 days
 - c) 1 month - 1 year
 - d) 6 months - 1 year
 - e) 1 - 5 years
6. Which of the following are provisions under Law 39 on Migrant Workers? (Tick all that apply)
 - a) The State shall only deploy workers overseas where their rights are protected. The receiving country must have laws protecting the rights of migrant workers and/or shall have a bilateral agreement on labour placement with Indonesia.
 - b) Indonesian workers shall receive rights, opportunities and treatment equal to that received by local workers
 - c) Indonesian workers shall receive rights, opportunities and treatment equal to that received by other foreign workers according to the laws of the destination country
 - d) Indonesian workers shall have the right to safe and secure return to their place of origin
 - e) Agencies are obliged to treat workers in pre-departure holding centres in a humane and 'normally acceptable' manner
7. Under Law 39, domestic workers should sign a work agreement (contract) prior to departure covering the terms and conditions of employment including working hours, wages, procedures for payment, leave entitlements, rest periods and social security.
True or False?

8. Who is responsible for protecting migrant workers under Law 39?
- a) Private recruitment agencies
 - b) Indonesian Government
 - c) FSP
 - d) All of the above.
9. Agencies who charge workers placement fees for costs other than training, processing of documents and health and psychological tests are (Tick all that apply):
- a) Doing normal business as private entrepreneurs
 - b) Violating Law 39 and may lose their licence
10. Who is responsible for implementing policies to protect workers abroad, manage bilateral agreements with receiving countries and improve the welfare of domestic workers? (Tick all that apply)
- a) Deplu
 - b) Depnaker
 - c) Meneg PP

Key learning points from Module 3

- o A rights-based approach sees trafficking as a human rights violation and uses human rights principles and instruments to address the violations at different stages of trafficking.
- o Using a rights-based approach means FSP should analyse Indonesian and destination country laws and policies to know if they protect or violate the rights of workers.
- o The four 'Ps' in addressing trafficking are prevention of trafficking, prosecution of traffickers, protection of rights of victims and policy framework measures. Embassy staff can be involved in each of these 4 P's, and this module focuses on prosecution and protection by assessing what kind of legal framework is necessary to protect domestic workers in destination countries
- o In destination countries, embassy staff should be aware of criminal laws that can be used to prosecute traffickers include laws on trafficking, forced labour, rape/sexual assault, assault/battery and psychological abuse. Likewise, embassy staff should know the labour laws or laws affecting migrant workers and immigration laws in order to provide accurate advice.
- o A domestic worker abused by a diplomat might not be successful in criminal cases due to diplomatic immunity but may still receive compensation if there is public pressure on the case.
- o Upon arrival in the destination country, embassy staff should contact lawyers, legal rights and migrant rights organisations and/or government officials for accurate and up to date information about the laws of the destination country.
- o Where a destination country's law actually violates the rights of a domestic worker (e.g. lack of right to hold own documents), staff cannot advise workers to break the law, but should monitor its impact and bring to the attention of the Home Government.
- o By understanding standard contracts and bilateral agreements, embassy staff can analyse what gaps in legal protection in the destination country might be addressed.
- o A standard employment contract sets out minimum terms and conditions for employment of domestic workers and can ensure protection of the rights in the contract, if endorsed by receiving countries.
- o Bilateral agreements give the specific terms of agreement between two countries such as agreeing minimum standards for terms and conditions of employment.
- o Law 39 of 2004 Concerning Placement and Protection of Indonesian Workers in Foreign Countries sets out criminal sanctions for various offences committed by agencies such as illegal recruitment, maltreatment in holding centres and lack of legal agent at destination. It also provides broad protection of workers from exploitation in areas such as deployment, equal protection, standard contracts, the responsibilities of agencies and pre-departure training and awareness. Embassy staff should know about Law 39 to know what possible action domestic workers can take against unscrupulous agencies when they return home.

Knowledge Review

1. A rights-based approach to trafficking means:
 - a) Seeing trafficking as a human rights violation and responding to it by protecting the rights of victims as the central concern.
 - b) Seeing trafficking as a human rights violation and responding to it by prosecuting traffickers as the central concern.
 - c) Seeing trafficking as a human rights violation and responding to it by prosecuting domestic workers as the central concern.
2. The four P's in anti-trafficking strategy are:
 - a) Prosecution, prevention, policy, prohibition
 - b) Prostitution, prosecution, protection, prevention
 - c) Prevention, paedophilia, pornography, prostitution
 - d) Prevention, protection, prosecution, policy
3. A domestic worker has been living in Hong Kong for five years. She wonders if she is able to obtain residency and bring her family over. This is a matter of:
 - a) Labour Law
 - b) Criminal Law
 - c) Immigration Law
4. Malaysia does not have a standard contract for domestic workers. A domestic worker signs a contract before leaving home which is authorised by the Government. She then is forced to sign another contract upon arrival with worse terms than the original. Which contract is valid in Malaysia?
 - a) The new contract only
 - b) The old contract since authorised by the Government
 - c) The new one, but she could try to make a case for being coerced into signing it and then the old one might be valid again
 - d) Neither since the Employment Act does not apply to migrant domestic workers
5. Which contract could be evidence in the origin country to make a claim against the recruitment agency?
 - a. The new one
 - b. The old one
 - c. Both
 - d. Neither
6. A bilateral agreement between Cambodia and Thailand states that Cambodian migrant workers are entitled to equal remuneration as Thai workers and equal protection under the law. This shows how:
 - a) Bilateral agreements can safeguard the human rights of migrant workers
 - b) Bilateral agreements can set out procedures for recruiting foreign labour
 - c) Bilateral agreements are not very helpful
7. A diplomat who abuses a domestic worker
 - a) is completely protected by diplomatic immunity
 - b) is protected from criminal charges by diplomatic immunity, yet may be penalised in other ways such as media attention or being withdrawn from post
 - c) can be charged in criminal cases like any other person

ANNEX 3:

ESSENTIAL READING

Relevant Laws of Indonesia

Law 39 of 2004 Concerning Placement and Protection of Indonesian Workers in Foreign Countries

Criminal prosecution of offences:

The options to pursue legal action back in Indonesia is quite limited, therefore it is preferable to pursue action in the destination. However the following provisions may be useful to domestic workers wishing to pursue action against exploitative recruitment agencies, though they do not focus on the exploitation itself.

Illegal recruitment:

If agencies or individuals recruit workers abroad without the relevant permits or into a place of work that runs against human values they are liable to a sentence of 2 – 10 years and/or a fine of 2 billion – 15 billion Indonesian Rupiah (Article 102 of Law 39)

Maltreatment in holding centres

If agencies treat workers unreasonably and unacceptably in holding centres they face 1- 5 years jail and/or fine of 1 – 5 billion Indonesian Rupiah (Article 34 of Law 39)

Lack of legal agent at destination

If agencies place workers without using a legally registered partner employment agency in destination countries they are also liable to 1 month – 1 year's imprisonment and/or a fine of 100 million – 1 billion Indonesian Rupiah (Article 104 of Law 39).

Trafficking

There is no law against trafficking as yet in Indonesia, though there is a Trafficking Bill. Be updated on its progress by contacting MENEGPP.

Protection of workers from exploitation:

Law 39

Deployment:

The State shall only deploy workers overseas where their rights are protected. Therefore the receiving country must have laws protecting the rights of migrant workers and/or shall have a bilateral agreement on labour placement with Indonesia (Article 27 of Law 39)

Equal protection to workers:

- Access to accurate information on migrant employment, right to minimum wage as set by destination countries, equal treatment to other migrant workers and safe return (Article 8 of Law 39).

Standard contract:

Contracts shall be agreed and signed before departure and cover rights and responsibilities of the worker, terms and conditions of employment including working hours, wages, procedures for payment, leave entitlements, rest periods and social security.

Responsibilities of private recruitment agencies:

- ♦ Private recruitment agencies are responsible for providing protection to migrant workers (Article 82 of Law 39). FSOs and Government are also elsewhere in the act responsible for protecting migrant workers. Therefore FSOs particularly have the duty to monitor and regulate recruitment agencies to ensure protection of workers (Article 7)
- ♦ They are obliged to charge only for costs of training, processing of documents, health and psychological tests (Article 76 of Law 39)
- ♦ Violating these may result in loss of their licence (article 100 of Law 39).

Pre-departure Training and Awareness

Workers have the right to pre-departure education and specific job training (Article 42 of Law 39) as well as the duty to participate in pre-departure awareness raising programmes by the recruitment agency (Article 83 of Law 39) and by the Government (Article 69 of Law 39).

- Agencies are obliged to treat workers in pre-departure holding centres in a humane and 'normally acceptable' manner (Article 70 of Law 39)

Indonesian Stakeholders acting on trafficking and FL cases involving migrant DWs

National Body for the Placement and Protection of Indonesian Workers in Foreign Countries

- implements policies to protect workers abroad, manage bilateral agreements with receiving countries, improve welfare of workers and their families (Chapter X of Law 39)

Law 39 of 2004

CHAPTER III INDONESIAN WORKERS' RIGHTS AND OBLIGATIONS

Article 8

Every prospective Indonesian Worker/ Indonesian Worker shall have equal rights and opportunities to:

- Work or be employed in a foreign country;
- Receive correct information on job markets in foreign countries and procedures for the placement of Indonesian workers in jobs in foreign countries;
- Receive equal service and treatment for placement in jobs in foreign countries;
- Enjoy freedom to adopt his/ her religion and belief and to perform/ fulfil religious worship/ obligations according to that which is required by his/ her religion and belief;
- Receive a wage according to the standards of wages that apply in the destination country of employment;
- Receive rights, opportunities and treatment equal to the ones received by other foreign workers [of other nationalities] according to laws and regulations that apply in the destination countries [where the Indonesian Worker is placed/ employed];
- Receive a guarantee of legal protection according to laws and regulations against action that may lower one's dignity and worth as a human being and against violations of rights that are established according to laws and regulations during employment in foreign countries;
- Receive a guarantee of protection of the safety and security of the Indonesian Worker upon his/ her return to his/ her place of origin.
- Receive the text [document] of the original employment agreement.

Article 9

Every prospective Indonesian Worker/ Indonesian Worker is obliged to:

- Comply with laws and regulations both at home and in the destination country [of his/ her employment];
- Observe and carry out his/ her work in compliance with his/ her employment or work agreements;
- Pay a job placement service fee for job placement in a foreign country according to that which is regulated under laws and regulations; and
- Notify or report to the Representative Office of the Republic of Indonesia in the destination country where the Indonesian Worker is placed of his/ her arrival, presence or whereabouts, as well as his/ her repatriation from, the destination country.

CHAPTER VI PROTECTION FOR INDONESIAN WORKERS

Article 77

- (1) Every prospective Indonesian Worker/ every Indonesian Worker going to be employed or already being employed in a foreign country is entitled to receive protection according to laws and regulations.
- (2) The protection for Indonesian Workers employed in foreign countries as referred to under subsection (1) shall be provided starting from their pre-placement [prior to their employment in foreign countries], during the course of their placement [during their employment in foreign countries], until their post-placement [until the end of their employment in foreign countries].

Article 82

Private Implementers for the placement of Indonesian Workers in foreign countries shall be responsible for providing protection to prospective Indonesian Workers/ Indonesian Workers bound for employment or already being employed in foreign countries in accordance with [their] placement agreements.

Article 83

Every Prospective Indonesian Worker/ every Indonesian Worker who individually goes to a foreign country for employment or who is sent for employment in a foreign country by a Private Implementing Agency for the Placement of Indonesian Workers in Foreign Countries is obliged to attend [participate in] advisory and protective programs for Indonesian Workers bound for employment in foreign countries.

Article 84

Further provisions/ regulations concerning the advisory and protective programs for Indonesian Workers employed in foreign countries as referred to under Article 83 shall be specified further with a Government Regulation.

Relevant laws at destination

The laws vary for each country and laws also change quite frequently. Therefore the following list is a sample of laws that you should be aware of.

Laws that exist that you should be aware about include:

- ♦ trafficking law (does it include labour exploitation?)
- ♦ forced labour
- ♦ rape/sexual abuse
- ♦ assault/battery
- ♦ psychological abuse
- ♦ labour laws (see table for more detail. Is there equal access to labour protection by migrants?)
- ♦ standard employment contract (for domestic workers)
- ♦ immigration laws (enable worker to stay in destination country, change employer status etc)

Sample of Hong Kong Laws to prosecute exploitation and abuse of workers and protect domestic workers rights:

The following is reproduced from <http://www.jobs.gov.hk/eng/domestic/question/question.asp>

Frequently Asked Questions about employment of migrant domestic workers in Hong Kong

For more details, refer to the booklet 'A Concise Guide to the Employment Ordinance'. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

1. Shall the employer make a written contract of employment with the domestic helper?

Ans.:

A contract of employment is an agreement on the employment terms and conditions made between an employer and a domestic helper. The agreement can be made orally or in writing. The terms of the contract may include both express and implied terms. The Labour Department encourages the employer and the domestic helper to set out employment terms and conditions in a written employment contract. In order to help employers and domestic helpers draw up their contracts, the Labour Department has prepared a sample employment contract, which sets out the essential terms and some common conditions of employment, for their reference.

2. According to the Employment Ordinance, what protection does the domestic helper have?

Ans.:

According to the Employment Ordinance, all domestic helpers, regardless of the number of hours they work per week, are entitled to:

- ♦ statutory holidays;
- ♦ wage protection; and
- ♦ protection against anti-union discrimination. If the domestic helper is employed under continuous contract of employment (i.e. works continuously for four weeks or more, with at least 18 hours in each week), then in addition to wages paid to the domestic helper, the employer should also provide other protections as required by the Employment Ordinance, such as:
 - rest days;
 - statutory holiday with pay;
 - paid annual leave;
 - sickness allowance;
 - maternity leave; and
 - severance payment or long service payment, etc.

3. When should the employer pay wages to the domestic helper?

Ans.:

The employer should pay wages to the domestic helper not less than once every month. The employer shall pay wages to the domestic helper upon the expiry of the last day of the wage period, but in no case later than 7 days after the end of the wage period.

4. What are the consequences if the employer fails to pay wages to the domestic helper when they become due?

Ans.:

An employer is required to pay interest on the outstanding amount of wages to the domestic helper if he fails to pay wages within seven days after the end of the wage period, and is liable to prosecution and, upon conviction, to a fine of \$200,000 and to imprisonment for one year. If wages are not paid within one month after they become due, a domestic helper

may deem the contract of employment to be terminated by the employer without notice. Under such circumstance, the employer shall have to give termination payment to the domestic helper.

5. When the employer terminates the contract, what payments should he pay to the domestic helper?

Ans.:

On termination of employment contract, the employer should pay outstanding wages to the domestic helper. In addition, the employer should pay the following payments in accordance with the Employment Ordinance, having regard to the length of service, the reason for termination of contract, etc.:

- ♦ wages in lieu of notice (if any);
- ♦ payment in lieu of any untaken annual leave, and pro rata annual leave pay for the current leave year (if applicable);
- ♦ long service payment or severance payment (where appropriate).

6. Should the employer take out insurance policy for the domestic helper to cover his liabilities for compensation and medical expenses arising from accidents or diseases?

Ans.:

Under the Employees' Compensation Ordinance and the common law, the employer is liable to pay compensation for the domestic helper's injury or death by accident arising out of and in the course of employment. Employers are also compulsorily required, under the Employees' Compensation Ordinance, to have a valid insurance policy for the domestic helper to cover all their liabilities for compensation.

7. Shall the employer make arrangements for the domestic helper to participate in the MPF Scheme?

Ans.:

According to the Mandatory Provident Fund Schemes Ordinance, all domestic helpers are not required to participate in the MPF Scheme.

8. If the domestic helper causes damage to or loss of employer's goods, could the employer deduct wages as compensation?

Ans.:

If the damage or loss to the employer's goods or property is directly attributable to the domestic helper's default or negligence, the employer may deduct from the domestic helper's wages the cost of the damaged item subject to a limit of \$300. The total of such deductions should not exceed one quarter of the wages payable to the domestic helper for that month.

9. Where can the employer and the domestic helper approach for enquiries in relation to employment contract and the Employment Ordinance?

Ans.:

The employer and the domestic helper can:

- ♦ call the 24-hour Telephone Enquiry Service hotline at 2717 1771 (the hotline is handled by "1823 Citizen's Easy Link");
- ♦ Visit the homepage of the Labour Department;
- ♦ Go to the Offices of the Labour Relations Division of the Labour Department for enquiries;
- ♦ Refer to 'A Concise Guide to the Employment Ordinance', which sets out in simple terms the main provisions of the Ordinance and is available in the offices of the Labour Relations Division of the Labour Department.

Country Criminal Law Offences	HK Article Max Sentence
Unlawful Imprisonment / Confinement	Crimes ordinance imprisonment for 10 years
Forced Labour	Crimes Ordinance Assaults with intent to cause certain acts to be done or omitted s25 on summary conviction to a fine of \$2000 and to imprisonment for 2 years and shall be liable on conviction upon indictment to imprisonment for 5 years s27
Trafficking	Crimes Ordinance· - Trafficking (prostitution)—imprisonment for 10 years s.129. - No provision on trafficking for labour exploitation
Rape / Sexual Abuse	Crime Ordinance - Rape / buggery—imprisonment for life . - Indecent assault—imprisonment for 10 years
Physical Abuse, beating, hitting	Offences Against the Person Ordinance: . - Any person who unlawfully and maliciously, by any means whatsoever, wounds or causes any grievous bodily harm to any person shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life s17 - Any person who is convicted of an assault occasioning actual bodily harm shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 3 years. s 39
Psychological coercion (Threats, Intimidation)	Crimes Ordinance Any person who threatens any other person with injury to them, their reputation, their property or that of a third person or with any illegal act,with intent to (i) alarm the person so threatened or any other person; or(ii) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or(iii) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do,shall be guilty of an offence. s.24

Country Criminal Law Offences	HK Article Max Sentence
Specific domestic worker provisions	Offences Against the Person Ordinance Any person who is legally liable to provide for any apprentice or servant necessary food, clothing, or lodging, willfully and without lawful excuse refuses or neglects to provide the same; or unlawfully and maliciously does or causes to be done any bodily harm to any such apprentice or servant so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been or is likely to be permanently injured, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 3 years. s.25
Civil Law Claims	Article Max Sentence
Labour Contract Violations Domestic workers included under Labour Law Overwork (excessive hours without payment) Underpayment No Rest Days	Yes, not specifically mentioned but included under Employment Ordinance N/A Employment Ordinance - Failure to pay wages when due / underpayment is liable to prosecution and upon conviction max fine of \$200000 and imprisonment for one year. Failure of employer to pay interest on outstanding wages is liable to prosecution and upon conviction fine of \$10000 s63C - An employer who makes an unlawful deduction from wages liable to a max fine of \$100000 and imprisonment for one year s63C - For underpayment an employer can be prosecuted with making a false representation and is liable to a max fine of \$150000 and imprisonment for 14 years Employment Ordinance - Liable to prosecution and upon conviction max fine of \$50000

Country Criminal Law Offences	HK Article Max Sentence
Breach of Contract	Employment Ordinance - Unreasonable Dismissal & Unreasonable Variation of Terms of the Employment Contract - Order for reinstatement or re-engagement or· An award of terminal payments Termination of Employment Contract because of pregnant, on sick leave, giving evidence or information to the authorities, TU activities, injury at work is liable to prosecution and upon conviction to fine of \$100000 s15 Unreasonable and unlawful dismissal - An order for reinstatement or reengagement or - An award of terminal payments - And an award of compensation max of \$150000
Excessive Fees	Employment Ordinance - If employer makes the employee pay the Employees Retraining Levy liable to prosecution and upon conviction to a fine of \$10000 & one years imprisonment Employment Agency Regulations The maximum commission which may be received by an employment agency shall be from each person applying to the employment agency for employment, work or contract or hire of his services, an amount not exceeding a sum equal to ten per cent of the first month's wages received by such person after he has been placed in employment by the employment agency schedule 2 (1) Any licensee who contravenes regulation shall be guilty of an offence and shall be liable on conviction to a fine at level 3. (L.N. 159 of 1992) regulation 14
Dangerous / Unhealthy Work Conditions	Employer Ordinance - Dangerous / unhealthy work assigned to pregnant women—employer liable to prosecution and on conviction a max fine of \$50000 s15AA Employees Compensation Ordinance Chap 282 - Compensation in fatal cases s6 - Compensation in cases of permanent total incapacity s7 - Compensation in cases of permanent partial incapacity s9 - Compensation in cases of temporary incapacity s10

Country Criminal Law Offences	HK Article Max Sentence
	- Compensation in cases of occupational diseases s32 - Contract of service not to be terminated during incapacity s48 Employees Compensation Ordinance Chap 282 - Compensations (schedule 1) - Compensation for occupational diseases (schedule 2) - Medical expenses payable by an employer in respect of an injury due to accident arising out of and in the course of employment (schedule 3)
Pain and Suffering Mental Anguish	

TEMPORARY STAYS DURING PROCEEDINGS	ARTICLE, DURATION OF STAY, RIGHT TO WORK OR RIGHT TO STUDY OR RECEIVE INCOME OR SERVICES
Ability of victim witness to stay in country during criminal proceedings	The police are required to give the victim a supporting letter (stating that the victim needs to stay in HK for the case / investigation). The letter is taken to the Immigration Department and the visa can be extended, at the discretion of the Immigration Officer, for between 1 and 3 months. No right to work Changing visa status costs
Ability of complainant to stay in country during civil proceedings	The victim will apply for legal aid and if granted the Legal Aid department will be required to provide supporting documents to allow the victim's visa to be extended. The visa is extended, at the discretion of the Immigration Officer for between 1 and 3 months. No right to work. Changing visa status costs

OTHER RIGHTS OF DOMESTIC WORKERS	
Right to equal protection under the Law	All persons in Hong Kong (including foreign domestic helpers (FDHs)) are entitled to equal protection of the law without discrimination on any grounds such as race, colour, sex, language, religion, national or social origin or other status HK Bill of Rights Ordinance (Article 1 and 10)
Right to be free from slavery, servitude and forced-labour	HK Bill of Rights Ordinance (Article 4)
Rights to change employer	Change of employer • Application to change employers within the two-year contract will not as a rule be approved. If the Helper wishes to take up employment with a new employer, he/she must return to his/her place of origin and apply for the appropriate visa directly to the Director of Immigration either by post or through his/her employer. • In accordance with Clause 13 of the standard Employment Contract (ID 407), at the end of the two-year contract the Helper will be required to return to his/her place of origin. An application for change of employment by the Helper at the end of the two-year contract may be made in the HKSAR. However, the application must be submitted by the Helper in person. In addition, a release letter from the current employer showing the date of expiry / termination of the contract is required. Application for a visa to enable the Helper to return to the HKSAR to start employment with a new employer may be made but the Helper is required to go back to his/her place of origin within his/her limit of stay before returning to the HKSAR to work under the new contract. • Employers wishing to renew the employment contracts with their existing Helpers shall make fresh applications in the HKSAR. Applications can be submitted in person or by an authorised person. Application for contract renewal will normally be accepted within four weeks prior to the expiry of the existing contract. The application should be submitted together with the current employment contract. Approval of the renewal would be subject to the employer and Helper meeting the eligibility criteria at the time the application is

	made. Applications submitted after the expiry of the contract and the Helper's valid limit of stay in Hong Kong will not be accepted. Under normal circumstances, the Helper should return to his/her place of origin after the completion of contract and apply for a visa to return to the HKSAR to start the new contract. If circumstances do not permit the Helper to return to his/her place of origin for vacation immediately upon expiry of the old contract, subject to the employer's and Helper's mutual agreement, the Helper may apply for an extension of stay for him/her to defer the vacation leave. The employer shall arrange for the Helper to complete the Application for Extension of Stay form (ID 91) to the Director of Immigration for consideration.
Right to terminate contract	- Either party can terminate the contract by giving not less than one month's notice in writing or by paying one month's wages to the other party (need to inform Immigration Department in writing within 7 days) - Helpers can terminate the contract without notice or payment in lieu of notice if: - Reasonably fear physical danger by violence or disease - Subject to ill treatment by the employer - Employed for not less than 5 years and you are medically certified as being permanently unfit for the type of work engaged in.
Right to join an association	Employment Ordinance s21B (1) Failure to let the employee join a TU—employer liable to prosecution and upon conviction to a fine of \$10000
Right to form an association	Employment Ordinance s21B (1) Failure to let the employee form or apply for the registration of a TU—employer liable for prosecution and upon conviction fine of \$10000
Right to pension / social security funds	No rights

**Canadian Human Rights Foundation,
Regional Training Programme for Labour Attaches, p. 89**

Case of Mrs Kumaratonga - Empty Pay Envelopes

In 1995, a local newspaper reported what turned out to be one of the worst cases of tardy payment. Mrs. Kumaratonga, a Sri-lankan, came to work in Singapore in March 1994. According to her contract, she was to be paid \$250/ month. However, since the end of August 1994, she had not been paid any wages.

She did not know the reason why her employer refused to pay her. In addition to the normal household chores, she had to work at an Indian restaurant on week-ends. Mrs. Kumaratonga was quoted as saying, "I was very worried and so was my family because everyone depended on me. I was not able to send money home. I had to write to my husband and explain to him what had happened". At 4:00 am on December 2, 1994, she left her employer's home and sought help from the Geylang Catholic Centre.

After unsuccessful negotiations with the employer, the Centre and Mrs. Kumaratonga asked for assistance from the Sri Lankan Labour Attaché who referred her back the Centre. The Centre was finally able to obtain free legal services so that Ms. Kumaratonga filed a claim in court. The court ruled in her favour. The employer was ordered to pay a sum of \$2,000 for the eight months salary due to her. She left Singapore right after the verdict as her employer

had terminated her Work Permit. She was lucky in that her Work Permit was not terminated before the case was finally resolved.

ILO,
**An Information Guide Preventing Discrimination, Exploitation and
Abuse of Women Workers**
Booklet 6, pp.41-45

6.6. Kerangka Respon

- Dalam Buku 1 [NBagian 1.4] dari Pedoman Informasi ini telah ditekankan bahwa mekanisme respon untuk menghadapi berbagai penyebab, perwujudan dan akibat yang bersegi banyak dari diskriminasi, eksploitasi dan perlakuan sewenang-wenang terhadap para pekerja migran perempuan harus bersifat komprehensif, multi-cabang dan multi-strata. Dalam buku ini, unsur-unsur dari kerangka respon untuk perdagangan manusia yang sedemikian tersebut akan diuraikan secara panjang lebar.
- Kerangka respon ini secara harafiah merujuk ke Protokol PBB untuk Mencegah, Menindas dan Menghukum Perdagangan Manusia, terutama Perempuan dan Anak-anak, (*United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*), tahun 2000 atau dikenal juga sebagai *Protokol Perdagangan*, dan juga Rekomendasi PBB untuk Prinsip-prinsip dan Pedoman tentang Hak Asasi Manusia dan Perdagangan Manusia yang direkomendasikan PBB (*UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*), tahun 2002.⁴⁹
- Kerangka respon komprehensif harus mencakup *Pencegahan* perdagangan manusia, *Perlindungan* atas orang-orang yang diperdagangkan, dan *Penjatuhan* hukuman kepada para pedagang. Bagian 6.7, 6.8 dan 6.9 memusatkan perhatian pada berbagai strategi, langkah praktis, praktek yang baik serta hikmah dari tiga "P" ini.

↑ Kerangka respon yang komprehensif harus:

- *Memperlakukan perdagangan manusia sebagai suatu kejahatan tersendiri dan memusatkan perhatian pada seluruh tahap dari siklus perdagangan dan seluruh korban;*
- *Memusatkan perhatian pada penyebab utama dari persediaan maupun permintaan untuk orang-orang yang diperdagangkan;*
- *Mempromosikan HAM, termasuk hak-hak pekerja dan hak-hak migran;*
- *Mempromosikan pendekatan berbasis standar untuk memberantas perdagangan manusia;*
- *Mempromosikan pekerjaan yang layak bagi semua pekerja;*
- *Bekerja menuju sistem migrasi tenaga kerja yang teratur, tertib dan manusiawi;*
- *Mengambil tindakan di semua tingkat: masyarakat, nasional, regional dan global;*
- *Menciptakan mekanisme kelembagaan untuk melibatkan semua pelaku sosial;*
- *Mengumpulkan dan berbagi informasi*
- *Menjamin kerangka hukum yang memadai dan diselaraskan serta penegakan hukum yang efektif;*
- *Menjamin agar perundang-undangan, kebijakan dan program bersifat peka-jender; dan*
- *Mempromosikan prinsip-prinsip non-diskriminasi serta memberantas rasisme dan xenofobia*
- *Memperlakukan perdagangan manusia sebagai sebuah suatu kejahatan tersendiri dan memusatkan perhatian pada seluruh tahap dari siklus perdagangan dan seluruh korban:*

Kerangka respon akan terkoordinasi dan efektif hanya jika semua pihak — para pejabat pemerintah, penegak hukum, organisasi-organisasi pekerja dan pengusaha serta Ornop/

LSM — bersama-sama memusatkan perhatian pada kejahatan yang sama dan mengidentifikasi kelompok korban yang sama serta kelompok pelaku kejahatan yang sama. Perdagangan harus diperlakukan sebagai suatu kejahatan tersendiri dan tidak dicampuradukan dengan penyelundupan atau pelacuran. Perdagangan manusia bukan hanya untuk eksploitasi seksual, ia meliputi semua bentuk kerja paksa, perbudakan dan perhambaan di sektor ekonomi apapun. Perdagangan manusia juga tidak hanya mempengaruhi para perempuan dan anak perempuan. Para laki-laki dan anak laki-laki juga menjadi korban, di beberapa daerah bahkan lebih banyak dibandingkan dengan para perempuan.

Karena perdagangan manusia adalah masalah yang multi-tahap, maka seluruh negara asal, transit dan tujuan dalam siklus perdagangan manusia harus terlibat dalam respon komprehensif yang bertujuan untuk:

- *Mencegah perdagangan manusia*- tidak hanya melalui kerangka hukum yang efektif, mekanisme penegakan hukum yang kuat dan kerjasama antara Pemerintah, tetapi juga dengan memusatkan perhatian pada faktor-faktor persediaan maupun permintaan dan menangani penyebab utama yang melatarbelakangi perdagangan manusia, termasuk kemiskinan, pengangguran, ketidakadilan dan berbagai bentuk diskriminasi dan prasangka;
- *Memperluas perlindungan dan dukungan yang tepat untuk semua orang-orang yang diperdagangkan* dengan tanpa diskriminasi, dan dengan menghormati hak-hak dan kebutuhan mereka yang telah diperdagangkan;
- *Menyelidiki, mengadili dan memberikan pidana yang layak pada para pedagang dan kaki tangan mereka*, sepenuhnya memperhatikan hak-hak pembelaan diri tanpa mengkompromikan hak-hak korban;
- *Memperlengkapi orang-orang yang diperdagangkan, sebagai korban-korban pelanggaran HAM, dengan akses ke penyelesaian yang memadai dan tepat*, termasuk akses ke keadilan, hak untuk bebas dari ancaman pembalasan, hak untuk pemulihan, hak-hak untuk menuntut secara hukum, dan kesanggupan untuk menghidupi diri mereka sendiri dan keluarga mereka.
- *Memusatkan perhatian pada penyebab utama dari persediaan maupun permintaan untuk orang-orang yang diperdagangkan:*

Rekomendasi PBB tentang Hak Asasi Manusia dan Perdagangan manusia Manusia menegaskan bahwa strategi-strategi yang ditujukan terhadap pencegahan perdagangan manusia harus memusatkan perhatian pada permintaan sebagai penyebab utama perdagangan manusia; dan Negara-negara serta organisasi-organisasi antarpemerintahan harus menjamin bahwa intervensi mereka memusatkan perhatian pada faktor-faktor yang meningkatkan kerentanan terhadap perdagangan manusia, termasuk ketidakadilan, kemiskinan dan semua bentuk diskriminasi.

Penyebab-penyebab utama dibalik persediaan dan permintaan untuk perempuan dan anak perempuan yang diperdagangkan telah diidentifikasi di atas [Bagian 6.5]. Walaupun diakui memang tidak mudah, dan walaupun langkah-langkah yang diambil akan harus bersifat jangka panjang, penyebab-penyebab utama ini harus ditanggulangi jika upaya-upaya untuk menghadapi perdagangan manusia dapat efektif dan berkesinambungan [lihat juga Bagian 6.7].

Adalah penting untuk menghindari apa yang disebut sebagai gejala “ditekan ke bawah—muncul ke atas”. Pelajaran yang dapat diambil hikmahnya dari kawasan Asia Pasifik adalah: ⁵⁰ Meski intervensi yang berhasil dapat dilakukan di satu komunitas atau negara, tidak adanya penurunan dari sisi permintaan mengakibatkan pergeseran pusat persediaan ke komunitas atau negara rentan lainnya. Keberhasilan strategi perlindungan berbasis masyarakat akan memiliki dampak terbatas dan hanya berakibat pada pengalihan masalah sampai

perhatian yang lebih besar diberikan pada kerjasama regional dan penanganan dari sisi permintaan.

Perdagangan manusia adalah pertama dan terpenting suatu pelanggaran terhadap HAM.

- *Mempromosikan HAM, termasuk hak-hak pekerja dan hak-hak migran:*

Perdagangan manusia adalah kesewenang-wenangan yang

serius terhadap HAM dan, dalam menjawab masalah ini, Negara-negara harus memprioritaskan perlindungan HAM orang-orang yang diperdagangkan, mengambil langkah-langkah yang diperlukan untuk mencegah kesewenang-wenangan, dan memberikan perbaikan dimana kesewenang-wenangan terjadi. "Perdagangan manusia tidak boleh hanya dilihat terutama atau semata-mata dari sudut pandang keamanan nasional; ia tidak boleh dipandang hanya dari sudut pandang kepentingan perlindungan nasional; ia tidak boleh dilihat hanya sebagai perjuangan melawan kejahatan terorganisir dan migrasi tidak resmi. Perdagangan manusia adalah pertama dan terpenting suatu pelanggaran terhadap HAM".⁵¹

Perdagangan manusia adalah pertama dan terpenting suatu pelanggaran terhadap HAM.

Prinsip-prinsip berikut ini adalah penting dalam menerapkan suatu kerangka HAM. Hak-hak asasi manusia adalah bersifat

- **Universal:** berlaku dimana saja;
- **Tidak dapat dibagi:** hak-hak politis dan sipil tidak bisa dipisahkan dari hak-hak sosial dan budaya;
- **Tidak dapat dicabut:** tidak dapat disangkal dari siapapun;
- **Saling-tergantung:** semua hak sama pentingnya.

↑ **Hak-hak pekerja dan hak-hak migran yang dasar adalah bagian dari HAM:**

Deklarasi Universal Hak-hak Asasi Manusia

Pasal 23

- Setiap orang mempunyai hak untuk bekerja, hak bebas memilih pekerjaannya, hak untuk mendapatkan kondisi kerja yang adil dan perlindungan dari pengangguran;
- Setiap orang yang bekerja mempunyai hak untuk upah yang adil dan menguntungkan yang menjamin bagi dirinya dan keluarganya suatu keberadaan yang sesuai dengan martabat manusia, dan ditambah, jika perlu, dengan cara perlindungan sosial lainnya;
- Setiap orang mempunyai hak untuk membentuk dan bergabung dengan serikat-serikat pekerja untuk melindungi kepentingannya.

Deklarasi ILO tentang Prinsip-prinsip dan Hak-hak Mendasar di Tempat kerja dan Tindak-lanjutnya [Buku 1, Bagian 1.4.3.1.], yang dengan suara bulat diadopsi oleh Negara-negara Anggota pada tahun 1998, menegaskan ulang hak untuk kebebasan berserikat dan pengakuan efektif terhadap hak untuk perundingan bersama; penghapusan semua bentuk kerja paksa atau kerja wajib; abolisi efektif terhadap pekerja anak dan penghapusan diskriminasi berkaitan dengan pekerjaan dan jabatan bagi semua pekerja, warganegara dan bukan warganegara. Mukadimah Deklarasi ini membuat rujukan khusus pada perlindungan para pekerja migran:

Mengingat bahwa ILO harus memberikan perhatian khusus terhadap masalah orang-orang dengan kebutuhan sosial yang khusus, terutama para pengangguran dan para tenaga kerja migran, serta memobilisasi dan mendorong upaya-upaya internasional dan nasional yang ditujukan untuk memecahkan masalah mereka, dan mempromosikan kebijakan-kebijakan yang efektif yang ditujukan untuk peluasan lapangan kerja.

Kotak 6.8. Pedoman untuk promosi dan perlindungan HAM

Pelanggaran HAM adalah penyebab sekaligus akibat dari perdagangan manusia. Jadi adalah penting untuk meletakkan perlindungan terhadap semua HAM pada inti dari langkah-langkah apapun yang diambil untuk mencegah dan mengakhiri perdagangan manusia. Langkah-langkah anti-perdagangan tidak boleh memberi efek yang merugikan terhadap HAM dan harga diri seseorang, dan terutama, hak-hak dari mereka yang telah diperdagangkan, para migran, orang-orang terlantar di dalam negeri, para pengungsi dan pencari suaka. Negara-negara dan, dimana dapat diterapkan, organisasi-organisasi antar-pemerintahan dan non-pemerintah wajib mempertimbangkan untuk:

- ♦ Mengambil tindakan untuk menjamin bahwa langkah-langkah yang dipakai untuk tujuan mencegah dan memberantas perdagangan manusia tidak memiliki dampak merugikan pada hak-hak dan harga diri orang-orang, termasuk mereka yang telah diperdagangkan;
- ♦ Melakukan konsultasi dengan badan-badan yudikatif dan legislatif, lembaga-lembaga HAM nasional dan sektor-sektor masyarakat sipil yang relevan dalam pembentukan, pemakaian, penerapan dan peninjauan dari perundang-undangan, kebijakan dan program-program anti-perdagangan;
- ♦ Mengembangkan rencana aksi nasional untuk mengakhiri perdagangan manusia. Proses ini harus digunakan untuk membangun hubungan dan kemitraan antara lembaga-lembaga pemerintah yang terlibat dalam memberantas perdagangan dan/atau membantu orang-orang yang telah diperdagangkan dengan sektor-sektor masyarakat sipil yang relevan;
- ♦ Memperhatikan dengan khusus untuk menjamin bahwa perihal diskriminasi berbasis-jender ditanggulangi secara sistematis ketika langkah-langkah anti-perdagangan diusulkan, dengan maksud untuk menjamin bahwa langkah-langkah semacam ini tidak diterapkan dengan cara yang diskriminatif;
- ♦ Melindungi hak-hak semua orang untuk kebebasan bergerak, dan menjamin bahwa langkah-langkah anti-perdagangan tidak melanggar hak ini;
- ♦ Menjamin bahwa undang-undang, kebijakan-kebijakan, program-program dan intervensi anti-perdagangan tidak mempengaruhi hak semua orang, termasuk mereka yang diperdagangkan, untuk mencari dan mendapatkan perlindungan suaka dari penyiksaan sesuai dengan undang-undang pengungsi internasional, khususnya melalui penerapan yang efektif dari azas non-refoulement (azas dalam hukum internasional dimana tidak satupun negara dapat mengusir, memulangkan atau mengekstradisikan seseorang ke negara lain dimana terdapat alasan-alasan kuat yang dapat dipercaya bahwa di negara tersebut dia terancam akan disiksa/dianiaya);
- ♦ Membentuk mekanisme untuk memantau dampak HAM dari undang-undang, kebijakan-kebijakan, program dan intervensi-intervensi anti-perdagangan. Pertimbangan harus diberikan untuk menyerahkan peran ini pada lembaga-lembaga HAM nasional yang independen dimana lembaga-lembaga semacam ini ada. Ornop/LSM yang bekerja dengan orang-orang yang diperdagangkan harus didorong untuk berperan serta dalam pemantauan dan penilaian atas dampak HAM dari langkah-langkah anti-perdagangan;
- ♦ Menyajikan informasi terperinci berkenaan dengan langkah-langkah yang mereka ambil

untuk mencegah dan memberantas perdagangan manusia dalam laporan-laporan berkala mereka ke badan-badan pemantauan traktat HAM dari PBB;

- ♦ Menjamin bahwa perjanjian-perjanjian kerjasama bilateral, regional dan internasional serta peraturan-peraturan dan kebijakan-kebijakan lainnya yang berkenaan dengan perdagangan manusia tidak mempengaruhi hak, kewajiban dan tanggungjawab Negara berdasarkan hukum internasional, termasuk hukum HAM, hukum humaniter dan hukum pengungsi;
- ♦ Menawarkan bantuan teknis dan keuangan kepada Negara-negara dan sektor-sektor masyarakat sipil yang relevan untuk tujuan pengembangan dan penerapan strategi-strategi anti-perdagangan berbasis HAM.

Sumber: United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 1, hal.5-6.

- *Mempromosikan pendekatan berbasis standar untuk memberantas perdagangan bersama-sama dengan perlindungan hak-hak dasar semua migran:*

Sebuah Suatu kerangka respon harus memiliki landasannya di dalam kedaulatan hukum. Adalah penting untuk menciptakan standar hak-hak hukum dan kebijakan menjamin legitimasi sosial dan akuntabilitas. Oleh karena itu, tujuannya harus untuk mempromosikan pemakaian dan pelaksanaan Konvensi-konvensi utama dari PBB dan ILO [Buku 1, Bagian 1.4.3]:

- Konvensi Internasional untuk Perlindungan Hak-hak Seluruh Pekerja Migran dan Anggota keluarganya (International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families), 1990;
- Konvensi ILO no. 97 mengenai Migrasi untuk Pekerjaan (revisi), tahun 1949 (ILO Migration for Employment Convention (Revised), 1949, No.97);
- Konvensi no. 143 mengenai Para Pekerja Migran (Ketentuan Tambahan), tahun 1975 (ILO Migrant Workers (Supplementary Provisions) Convention, 1975, No.143);
- Deklarasi ILO tentang Prinsip-prinsip dan Hak-hak Mendasar di Tempat kerja dan Tindak-lanjutnya (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up), dan Konvensi-konvensi inti yang terkait
- Konvensi PBB Menentang Kejahatan Transnasional Terorganisir, tahun 2000 (United Nations Convention Against Transnational Organized Crime, 2000);
- Protokol untuk Mencegah, Menekan dan Menghukum Perdagangan Manusia, terutama Perempuan dan Anak-anak, Tambahan Konvensi PBB Melawan Kejahatan Transnasional yang Terorganisir (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime), 2000;
- Protokol Menentang Penyelundupan Migran melalui Darat, Laut dan Udara (Protocol Against the Smuggling of Migrants by Land, Sea and Air), 2000.

- *Mempromosikan pekerjaan yang layak bagi semua pekerja:*

Migrasi masa kini adalah tentang pekerjaan. Menghadapi migrasi berarti mempromosikan kesempatan bagi para

Migrasi dalam kondisi-kondisi yang sewenang-wenang dan eksploitasi serta perdagangan para pekerja migran terjadi dalam suasana kekurangan yang amat sangat atas kerja layak.

perempuan dan laki-laki, warganegara dan migran, untuk mendapatkan pekerjaan yang layak dan produktif dalam kondisi yang merdeka, adil, aman dan bermartabat. Migrasi dalam kondisi yang sewenang-wenang dan eksploitasi serta perdagangan para pekerja

migran terjadi dalam situasi kekurangan yang amat sangat akan pekerjaan yang layak — dipandang dari segi tidak adanya hak-hak di tempat kerja, kurangnya pekerjaan-pekerjaan yang produktif dan menguntungkan, perlindungan sosial yang tidak memadai, dan kurangnya perwakilan serta suara—di negara asal, transit dan tujuan.

Oleh karenanya suatu respon komprehensif terhadap permasalahan perdagangan manusia harus berdasarkan pada promosi akan pekerjaan yang layak. ILO memandang pekerjaan yang layak sebagai terdiri dari empat tiang utama: Promosi Asas-asas dan hak-hak pokok di tempat kerja bagi semua pekerja, warganegara dan bukan-warganegara; Penciptaan lapangan kerja yang produktif dan menguntungkan; Perluasan perlindungan sosial terutama ke kelompok-kelompok terpinggirkan dan rentan; dan Pengorganisasian serta perwakilan pekerja dan majikan/pengusaha dalam lembaga-lembaga dan proses-proses dialog sosial.

6.9. Pengusutan hukum terhadap para pedagang

“Pengusutan hukum terhadap para pedagang adalah prasyarat yang paling dasar untuk mencegah perdagangan dan menghentikan ‘pendaur-ulangan’ para perempuan dan anak-perempuan. Jika tidak dilakukan, maka tindakan anti-perdagangan akan merangsang migrasi tidak resmi dan perdagangan daripada mengurangnya. Program-program pemulangan akan menjadi perusahaan jasa perjalanan cuma-cuma yang digunakan oleh para pedagang untuk mengirim – dengan biaya dari masyarakat internasional – para perempuan dan anak perempuan yang mereka pilih untuk dilepaskan” 82

↑ Pada saat ini, pengusutan hukum mungkin adalah bagian terlemah dari keseluruhan sistem anti-perdagangan. Hambatan-hambatan utamanya adalah: ⁸³

- Kurangnya itikad politik dan tindakan terhadap para pedagang;
- Kurangnya perundang-undangan anti-perdagangan;
- Kegagalan untuk menerapkan undang-undang yang berlaku, kecuali untuk pelacuran;
- Kurangnya penegakan hukum karena korupsi, kurangnya pemahaman mengenai perundang-undangan; kurangnya pengetahuan tentang perundang-undangan perdagangan dan anti-perdagangan;
- Kurangnya informasi dan pelatihan untuk petugas kepolisian dan pengadilan;
- Kesaksian tertulis dari para korban perdagangan bukan bukti cukup di pengadilan;
- Tidak adanya keamanan saksi;
- Kurangnya kerjasama dan pertukaran informasi skala internasional

↑ Untuk mengatasi hambatan-hambatan ini dan meningkatkan pengusutan atas terhadap para pedagang manusia, langkah-langkah berikut ini adalah penting: ⁸⁴

- Menetapkan pelanggaran yang jelas dan perumusan dari perdagangan manusia;
- Menjatuhkan sanksi pencegahan yang efektif;
- Membuat entitas/badan hukum bertanggungjawab secara pidana;
- Mengkriminalisasikan semua kegiatan yang berkaitan dengan perdagangan;
- Menetapkan pelanggaran-pelanggaran pidana lainnya yang berkaitan dengan perdagangan
- Menetapkan yurisdiksi ekstra-teritorial.

- *Menetapkan pelanggaran yang jelas dan perumusan dari perdagangan manusia:*

Tidak akan ada pengusutan hukum tanpa perumusan yang jelas tentang kejahatan. Undang-

Undang-pidana di banyak negara tidak memasukan pelanggaran tegas tentang perdagangan manusia. Hal ini harus menjadi persyaratan utama.

Undang-pidana di banyak ~~sekal~~ negara tidak memasukan pelanggaran tegas tentang perdagangan manusia sebagaimana dijelaskan diatas. Persyaratan utama adalah harus menetapkan pelanggaran tegas tentang perdagangan manusia secara cukup luas untuk mencakup semua bentuk perdagangan, termasuk sekurang-kurangnya unsur berikut:

- *Tindakan-tindakan:* perekrutan, pengangkutan, pengiriman, menyembunyian atau penerimaan orang;
- *Cara-cara:* Ancaman atau penggunaan kekuatan atau bentuk-bentuk lain dari pemaksaan, penculikan, kecurangan, penipuan, penyalahgunaan kekuasaan atau kedudukan kerentanan;
- *Maksud tujuan:* Tidak hanya untuk eksploitasi seksual, tetapi semua bentuk kerja atau pelayanan paksa, perbudakan, praktek-praktek mirip perbudakan dan perhambaan.

Dalam banyak kejadian, hukuman untuk membawa narkoba jauh lebih berat daripada untuk jual-beli manusia.

- *Menjatuhkan sanksi pencegahan yang efektif:*

Pada saat ini, sanksi-sanksi yang ada di berbagai negara untuk perdagangan manusia tidak

Dalam banyak kejadian, hukuman untuk membawa narkoba jauh lebih berat daripada untuk jual-beli manusia.

memiliki efek pencegahan karena mereka terlalu lemah. Dalam banyak kejadian, hukuman untuk membawa narkoba jauh lebih berat daripada untuk jual-beli manusia. Sifat dan kerasnya pidana yang dijatuhkan dapat mempengaruhi upaya-upaya pengusutan:

- Menetapkan dan menerapkan sanksi-sanksi untuk perdagangan yang memiliki efek pencegahan dan mencerminkan sifat berat dari kejahatan ini dan pelanggaran HAM yang terjadi;
- Negara-negara harus mempertimbangkan sanksi-sanksi berikut ini: penjara, denda, penyitaan aset-aset yang dihasilkan dari perdagangan, dan penutupan usaha-usaha yang dikaitkan dengan perdagangan;
- Aset-aset yang disita dari para pedagang harus digunakan untuk mengganti kerugian orang-orang yang diperdagangkan dan kemudian untuk membayar pelayanan-pelayanan bagi orang-orang yang diperdagangkan. Negara-negara juga harus mempertimbangkan untuk mendukung program-program penyatuan kembali di negara-negara asal dengan uang yang dihasilkan dari penyitaan.

- *Membuat entitas/ badan hukum bertanggungjawab secara pidana:*

Para pedagang kadang-kadang bertindak melalui entitas hukum (juga disebut "badan hukum"), seperti perusahaan jasa perjalanan, perusahaan jasa

Jika pengusutan dibatasi kepada perseorangan, maka kegiatan-kegiatan dari badan-badan hukum akan tidak terpidana. Jika hanya perseorangan yang dikirim ke penjara, maka perusahaan dapat berlanjut dengan orang lain yang menjalankannya.

pernikahan, toko seks, bar, hotel, rumah bordil dan perusahaan jasa tenaga kerja. Jika pengusutan dibatasi kepada perseorangan, maka kegiatan dari badan-badan hukum

akan tidak terpidana. Jika hanya perseorangan yang dikirim ke penjara, maka perusahaan dapat berlanjut dengan orang lain yang menjalankannya. Dalam banyak kasus, juga sulit untuk membuktikan keterlibatan orang-orang sebagai perseorangan yang bertindak untuk badan-badan hukum tersebut. Oleh karenanya:

- Negara-negara harus menetapkan tanggungjawab pidana dan perdata dari badan-badan hukum yang terlibat dalam perdagangan manusia. Ini harus dilakukan tanpa prasangka terhadap tanggungjawab perseorangan dari orang-orang yang terlibat;
- Sanksi-sanksi terhadap badan-badan hukum harus termasuk denda-denda, penyitaan aset-aset, penutupan usaha-usaha, pengecualian dari hak-hak atas bantuan pemerintah atau pengecualian pajak, penempatan dibawah pengawasan peradilan dan diskualifikasi dari penjalanan kegiatan-kegiatan komersil.

▪ *Mengkriminalisasikan semua kegiatan yang berkaitan dengan perdagangan:*

Untuk memutuskan lingkaran perdagangan, adalah penting untuk menjamin bahwa semua kegiatan dan semua perantara

Untuk memutuskan lingkaran perdagangan, adalah penting untuk menjamin bahwa semua kegiatan dan semua perantara pada setiap tahap manapun dari proses perdagangan manusia dituntut secara hukum.

pada setiap tahap manapun dari proses perdagangan manusia dituntut secara hukum. Dan karena perdagangan manusia sekarang ini adalah usaha yang terorganisir baik dengan struktur dan jejaring yang teliti, semua pelaku harus juga diusut. Ini menimbulkan persoalan tentang pengkriminalisasian pertolongan, persekongkolan, penghasutan perdagangan, atau percobaan perdagangan. Orang-orang yang bukan bagian dari kelompok kejahatan tetapi gagal untuk bertindak, seperti penjaga perbatasan yang menutup mata ketika para pedagang melintasi perbatasan, juga dapat dikenai pengusutan. Untuk pengusutan yang efektif maka:

- Negara-negara harus menetapkan semua kegiatan yang berkaitan dengan perdagangan manusia sebagai pelanggaran pidana, seperti penghasutan, pertolongan, persekongkolan, kelalaian bertindak dan berkomplot untuk memperdagangkan manusia;
- Negara-negara harus secara khusus menetapkan kegiatan-kegiatan dari kelompok kejahatan terorganisir yang terlibat dengan perdagangan sebagai pelanggaran pidana;
- Negara-negara harus menjamin lebih lanjut bahwa kasus-kasus perdagangan yang melibatkan petugas pemerintah diusut dan tidak hanya melibatkan akibat disipliner tetapi juga sanksi berdasarkan hukum pidana.

▪ *Menetapkan pelanggaran-pelanggaran pidana lainnya yang berkaitan dengan perdagangan:*

Perdagangan sering hanya salah satu kejahatan yang dilakukan terhadap orang-orang yang diperdagangkan. Agar supaya menjamin bahwa hukuman yang dijatuhkan mencerminkan beratnya kejahatan yang

Agar supaya menjamin bahwa hukuman yang dijatuhkan mencerminkan beratnya kejahatan yang dilakukan terhadap orang-orang yang diperdagangkan, maka sebagai tambahan dari pengusutan yang didasarkan pada kejahatan perdagangan manusia terhadap para pedagang, Negara-negara harus memohonkan penggunaan ketentuan-ketentuan hukum pidana lainnya yang dapat diterapkan.

dilakukan terhadap orang-orang yang diperdagangkan, maka sebagai tambahan dari pengusutan terhadap para pedagang karena kejahatan perdagangan manusia, Negara-negara wajib mengaktifkan memohonkan penggunaan ketentuan-ketentuan hukum pidana lainnya yang dapat diterapkan. Kejahatan-kejahatan ini termasuk, tapi tidak terbatas pada

yang berikut ini: perbudakan, praktek-praktek mirip perbudakan, perhambaan terpaksa, kerja paksa atau kerja wajib, perhambaan karena hutang (*debt bondage*), perkawinan yang dipaksakan, aborsi yang dipaksakan, kehamilan yang dipaksakan, penyiksaan, kekejian, perlakuan tidak manusiawi dan menghinakan, perkosaan, penyerangan seksual, mencederai badan, pembunuhan, penculikan, penahanan diluar hukum, eksploitasi tenaga kerja, menyembunyikan surat-surat identitas dan korupsi. Kesanggupan untuk mengaktifkan ketentuan-ketentuan lain dari hukum pidana terutama sekali dapat berguna di negara-negara dimana:

- Perumusan yang tegas untuk pelanggaran pidana perdagangan manusia tidak ada;
- Hukuman-hukuman untuk perdagangan manusia tidak secara memadai mencerminkan beratnya kejahatan dan tidak memiliki efek pencegahan;
- Bukti-bukti yang ada tidak cukup untuk menuntut tersangka perdagangan.

▪ *Menetapkan yurisdiksi ekstra-teritorial:*

Perdagangan manusia sering meluas melewati tapal batas nasional. Oleh karenanya yurisdiksi ekstrateritorial - yaitu kemungkinan suatu negara untuk menuntut dan mengadili kejahatan yang dituduhkan yang tidak terjadi didalam wilayahnya - adalah penting agar supaya memungkinkan pihak berwenang untuk menuntut para pedagang, dan juga mencegah para pelaku kabur dari pengusutan di satu negara dengan cara memindahkan kegiatannya ke negara lain:

- Negara-negara wajib menggunakan yurisdiksi atas kejahatan perdagangan yang dilakukan dalam wilayah mereka;
- Negara-negara juga wajib menetapkan yurisdiksi jika kejahatan dilakukan diluar wilayah mereka, setidaknya dalam kasus-kasus dimana pelanggaran dilakukan oleh atau terhadap salah satu warganegara mereka, dan dalam kasus-kasus kejahatan transnasional dimana kegiatan dilakukan diluar wilayah tetapi memiliki akibat didalam wilayah mereka;
- Negara-negara wajib meratifikasi **Konvensi PBB Menentang Kejahatan Transnasional yang Terorganisir, tahun 2000**. Sebagai tambahan, mereka wajib menandatangani perjanjian bilateral atau multilateral agar mempermudah ekstradisi dalam kasus-kasus perdagangan manusia;
- Negara-negara wajib menjamin bahwa para pejabat mereka yang berwenang menerapkan traktat-traktat ekstradisi termaksud didalam praktek dan bahwa para pedagang tersangka diekstradisi ke negara dimana bukti-bukti dari kejahatan yang dituduhkan telah ditemukan;
- Negara-negara wajib juga mempertimbangkan ekstradisi para warganegara mereka. Jika suatu negara menolak ekstradisi para warganegaranya, ia wajib untuk segera memasukan kasus tersebut kepada pihak berwenang yang kompeten untuk mengadakan penyelidikan dan penuntutan.

Kotak 6.35. Contoh-contoh upaya penuntutan hukum

Belgia: memiliki undang-undang anti-perdagangan yang luas, dan hukuman untuk perdagangan setara dengan kejahatan-kejahatan berat lainnya, khususnya dengan sanksi-sanksi berat untuk perdagangan anak-anak. Hukuman dijatuhkan yang berkaitan dengan perdagangan rata-rata dari dua sampai enam tahun penjara dengan berbagai denda. Hukuman terhadap perdagangan adalah kurang sering dibandingkan penghukuman yang terkait dengan pelacuran dan para pengamat mencatat bahwa kasus-kasus yang melibatkan sweatshop I tidak resmi yang mungkin berkaitan dengan perdagangan jarang ditelusuri. Kantor Jaksa Federal Belgia mengkoordinasikan penyidikan dan penuntutan hukum terhadap para pedagang, dan suatu unit khusus Kepolisian Federal bertanggungjawab atas penegakan untuk anti-perdagangan. Pemerintah mengangkat magistrat khusus anti-perdagangan pada tingkat nasional dan daerah, dan Pusat untuk Kesempatan yang Sama dan penghapusan Rasisme (Centre for Equal Opportunity and Fight Against Racism) memberikan pelatihan khusus untuk petugas kepolisian dan jaksa yang terlibat dalam kegiatan anti-perdagangan.

Kolumbia: Pada tahun 2002, perundang-undangan anti-perdagangan yang sudah ditingkatkan memperluas definisi perdagangan dan memperberat hukuman - pidana penjara dilipatkan hampir dua kali dan denda maksimum dinaikan 10 kali lipat. Kolumbia adalah salah satu negara terkemuka yang terlibat dalam kerjasama penegakan hukum internasional bersama terhadap para pedagang manusia. Polisi telah melakukan berbagai operasi internasional dalam koordinasi dengan pemerintah negara lain, terutama Spanyol, negeri Belanda dan Jepang, yang telah menuntun ke penyelamatan pembebasan dari ratusan korban perdagangan dan lebih dari 100 penangkapan. Di dalam negeri, kepolisian secara proaktif berupaya untuk memutuskan lingkaran perdagangan sebelum para perempuan diviktimisasi. Pemerintah juga menganjurkan para korban untuk memberikan kesaksian melawan orang-orang yang memperdagangkan mereka, tetapi program perlindungan korban kekurangan dana, dan intimidasi yang berhasil dari para pedagang telah menyebabkan rendahnya jumlah penuntutan hukum yang berhasil.

Lithuania: Perdagangan manusia kedalam dan keluar Lithuania untuk tujuan kekejaman seksual, keuntungan materi atau perseorangan, dan pelacuran, adalah dilarang secara hukum pidana. Masa hukuman antara empat sampai delapan tahun penjara, dengan pidana yang lebih berat untuk keadaan-keadaan yang lebih buruk, termasuk perdagangan anak-anak. Hukum juga memberlakukan pengambilan dan penyitaan aset-aset, dengan hukuman baru untuk perdagangan mereka yang dibawah umur, pengoperasian rumah bordil dan pemilikan pornografi anak-anak. Pemerintah berhasil menggunakan pengamatan elektronik dan penyamaran, dan juga teknologi konferensi-video di pengadilan, dalam penyidikan dan proses hukum terhadap para pedagang yang dicurigai memaksa ratusan perempuan dari Lithuania ke rumah-rumah bordil di Eropa. Pemerintah memantau polisi mereka sendiri dan telah memenjarakan petugas polisi yang terlibat dalam perdagangan manusia, pemerasan dan penggermoan. Pemerintah memiliki perjanjian bilateral dengan Kementrian Dalam Negeri dari lebih dari 20 negara, termasuk kerjasama dalam bidang perdagangan manusia. Pemerintah berkoordinasi dengan penegakan hukum dari beberapa negara regional dan Eropa lewat perjanjian trilateral dan bilateral, Interpol dan para petugas penghubung Uni Eropa ditugaskan di Lithuania. Pengawasan perbatasan yang dipertinggi mengakibatkan berkurangnya korban-korban dari Ukraina, Rusia dan Belarus yang bertransit melalui Lithuania, dan kepolisian telah bekerja untuk menciptakan database nasional untuk memantau para pedagang melalui kejahatan-kejahatan lain yang terkait.

Perdagangan manusia semakin masuk dibawah mandat dari polisi untuk kejahatan terorganisir

Uni Emirat Arab (UEA): Kode pidana yang khusus melarang perdagangan; kasus-kasus perdagangan dapat juga dijatuhi hukuman berdasarkan undang-undang lain. Penegakan hukum secara aktif menyelidiki kasus-kasus perdagangan dan keluhan atas perlakuan sewenang-wenang. Pemerintah baru-baru ini mengkriminalisasikan penggunaan joki unta anak-anak. Pemerintah melakukan tes DNA dan kesehatan untuk menyelidiki "orangtua" dari joki unta. Kementrian Tenaga Kerja menciptakan satgas untuk mengawasi semua perusahaan industri di sektor swasta dan menambahkan 54 pengawas tenaga kerja. Setelah ditemukan bersalah atas pelanggaran ketenagakerjaan, 215 perusahaan didaftarkan dari pengajuan permohonan untuk ijin kerja atau pengalihan sponsor dan didenda. Institut Pelatihan dan Pengkajian Judisial dari Kementrian Kehakiman mempunyai kursus-kursus wajib bagi para jaksa dan hakim mengenai HAM, pelanggaran seksual, pelanggaran imigrasi dan ketenagakerjaan. Departemen Naturalisasi dan Tempat Kediaman dari Kementrian Dalam Negeri membentuk ruangan pusat operasi untuk melacak kedatangan dan keberangkatan orang-orang di UEA. Untuk memberantas pemalsuan dokumen, pemerintah melembagakan penggunaan pemindaian retina untuk menambah informasi identifikasi biometrik kedalam database mereka.

Sumber: United States of America Department of State, Victims of Trafficking and Violence Protection Act 2000 Trafficking in Persons Report, Juni 2003, narasi negara.

Annex 3: Recommended reading

Special Working Contract for Non-Jordanian Domestic Workers

Premises

1. First Party:- A- (Employer)

Name:

Sex:.....

Nationality: I.D: I.D number:.....

Profession: Work Tel:.....

Work address:.....

Residency address (city)Street:

Residence no.:..... P.O.Box:.....

B- Special Agency for Bringing and Recruiting Non-Jordanian Domestic Workers

Recruiting Agency:.....

Tel No. :.....

Address:

Ministry of Labour License No.:.....

2. Second Party (Worker):

Name:

Place and Date of Birth:.....

Sex: Female/ Male

Nationality: Marital Status:

Passport Number:

Place and date of Issue:

Date of Expiry:.....

Address in the Country of Origin:

Phone no.:

Worker's agent in his/her country.....

Contract date: (Day).....(Month).....(Year).....

Contract period: Two years upon the Second Party's arrival to the Hashemite Kingdom of Jordan..... , The contract may be renewed for other periods with the agreement of both Parties and subject to the condition that the First Party obtains the required working and residency permits for the Second Party during the contract's duration in compliance with articles 3 and 9 of the contract.

As the First Party wishes to employ the Second Party to work in his/her residence, whose address is mentioned above, in the profession of..... and as the Second Party is ready to fully perform this work, this contract has been signed with the approval and consent of the Two Parties to the following conditions:

Terms and Conditions

First: The introduction of this contract is an essential part of it and shall be read altogether.

Second:

- A) The First Party shall provide the Second Party with a two-way ticket under the condition that the Second Party has spent no less than a period of two working years. The First Party shall provide the Second Party with a return ticket if he/she wishes to end the Second Party's work before the contract expires. The First Party shall not bear the responsibility of providing the Second Party with a return ticket in case of transferring the Second Party to another employer or if the Second Party does not complete the contract's duration due to reasons caused by him/her.
- B) In case of transferring the Second Party to work with a new employer and in order to complete the duration of this contract and following the approval of the concerned authorities, both parties and the new employer, an annexed contract shall be signed that will regulate the commitments of each Party including the return ticket.

Third: The First Party shall obtain the required working and residency permits at his/her own expenses for the Second Party. If the First Party fails to obtain the permits, he/she shall pay the penalties stated in article (34) of the Residency and Foreigners Affairs Law.

Fourth:

- A) The Employer shall pay a monthly salary of..... JD or its equivalent in foreign currencies within seven days of the due date. Both parties shall sign a receipt verifying that the Employer has paid the salary and the Second Party has received it provided that both Parties shall keep original copies
- B) The payment of the above mentioned salary To a Third Party shall not be considered quittance from paying the salary unless the Employer gets a written approval from the Second Party permitting him/her to pay the salary to a Third Party.

Fifth: The Employer shall not employ the Second Party in any place other than the usual address of the Employer's residence. In case of moving to another country, the Employer shall notify the concerned Embassy and shall get the approval of the Second Party.

Sixth: The Employer shall not employ the Second Party in any work other than the one described in the premises. The Second Party shall faithfully and loyally perform his/her duties without violating the general social norms, morals and Laws. The Second Party shall not leave the Employer's residence or be absent from work without the Employer's approval.

Seventh: The Employer shall provide the Second Party, and in a suitable way, with accommodation, meals, clothing and medical care. The Employer must not place any restrictions upon the Second Party's correspondence.

Eighth: Both Parties shall treat each other in a humane way that complies with Jordanian Laws and the International Conventions ratified by Jordan. The Second Party shall be given one rest day weekly provided that the Second Party shall not leave the residence without the permission of the Employer.

Ninth: The Second Party has the right to nullify, without prior warning, the contract if the First Party does not abide by the Third and Fourth Articles. Therefore, the First Party shall bear the full civil and penal responsibility for violating the two mentioned Articles or any of the contract's Articles with full obligation on the part of the First Party to what is stated in the Second Article.

Tenth: The First Party has no right to withhold the Second Party's passport or any other related personal documents.

Eleventh: The Recruiting agency (B-First Party), and in case the Second Party appears to be infected, before entering the Kingdom, by any of the contagious or dangerous diseases or if found to be unhealthy or physically unfit or if turns to be pregnant, shall bear any financial expenses that the Employer had to pay when bringing the Second Party or any other expenses caused by any of the aforementioned reasons and shall send the Second Party back to the Country of Origin.

Twelfth: The First Party shall obtain a life and accidental insurance policy for the benefit of the Second Party, issued at an accredited insurance company recognized by the Second Party's Embassy, with an annual fee that shall not exceed JD 20, of which the Second Party shall pay half of the agreed amount to the First Party. In case the Second Party is from a nationality that its Embassy does not recognize any insurance company then the First Party shall insure the Second Party at any registered insurance company.

Thirteenth: Any dispute between the Employer and the Second Party shall be resolved in a friendly manner with the involvement of the agent (B- First Party) mentioned in the premises, and where necessary using the good offices of the Embassy. Both parties have the right to refer the matter to the judicial authority in order to solve it according to relevant laws.

Fourteenth: The First Party shall give the Second Party a grant equivalent to a 15- day salary at the end of the two working years at the same Employer.

Fifteenth: Three copies of the contract will be issued to the First Party (A+B), Second Party and concerned Embassy in the Kingdom in, Arabic and English. The Embassy's copy shall be kept at its offices without any expenses from the First Party.

Sixteenth: this contract has been executed in.....day.....

Date.....

Additional Conditions that shall not violate any of the contract's articles:

- 1.
- 2.
- 3.

First Party:

Second Party

A) Employer

B) Agency.....

Seal of the Ministry of Labour

Seal of the Concerned Embassy

(B) The Special Agency for Bringing and Recruiting Non-Jordanian Domestic Workers for the New Employer:

Recruiting Agency:.....
Tel No. :.....
Address:
Ministry of Labour License No.:.....

Since the First Party employed the Second Party in his/ her residence in the profession of.....in compliance with the provisions of the Special Working Contract signed by both parties on; as the Third Party wishes to employ the Second Party at his her residence in the profession of; taking into account that the Second Party has agreed to this transfer; and provided that the concerned Jordanian authorities do not object to this transfer; this contract has been signed with the approval and consent of all Parties involved, and is considered to be part of the Original Special Working Contract, to the following conditions:

Terms and Conditions

First: The introduction of this contract is an essential part of it and shall be read altogether.

Second: All articles and conditions, mentioned in the Original Working Contract dated above, that the First Party has to comply with, shall be considered obligations to the Third Party in this contract. Once this contract enters into force the First Party cease having any obligation towards the Second Party.

Third: The term of this contract shall expire with the expiration of the Original Special Working Contract and the Second Party's work at the Third Party shall be a completion to the term of the Original Special Working Contract that have been referred to.

Fourth: The Third Party shall provide the Second Party with a return ticket when the term of this contract expires complying with article 2 of the Original Special Working Contract.

Fifth: Both Parties, the First and Third, shall notify the concerned authorities including the Second Party's concerned Embassy.

Sixth: this contract has been executed in.....day.....
Date:

ILO
***An Information Guide Preventing Discrimination,
Exploitation and Abuse of Migrant Workers***
Booklet 3, p.29

Kotak 3.5. Contoh dari Perjanjian Ketenagakerjaan Bilateral

**MEMORANDUM KESEPAKATAN TENTANG KETENAGAKERJAAN DAN
PENGEMBANGAN TENAGA KERJA ANTARA PEMERINTAH REPUBLIK FILIPINA
DAN PEMERINTAH NEGARA KUWAIT**

PEMERINTAH REPUBLIK FILIPINA DAN PEMERINTAH NEGARA KUWAIT (selanjutnya disebut sebagai "para pihak") MENEGASKAN ikatan persaudaraan yang ada antara Pemerintah dan rakyat kedua belah pihak;

BERKEINGINAN untuk memperkuat ikatan persahabatan yang sudah ada antara mereka dan mendukung hubungan kerjasama bilateral berdasarkan kesetaraan dan keuntungan bersama;

BERKEHENDAK untuk mendukung kerjasama dan memperkuat koordinasi dalam bidang ketenagakerjaan dan pengembangan tenaga kerja;

TELAH MENYETUJUI SEBAGAI BERIKUT INI:

Pasal 1

Kedua belah Pihak akan berusaha untuk memperkuat kerjasama dalam ketenagakerjaan dan pengembangan tenaga kerja

Pasal 2

Kedua belah Pihak akan menyediakan fasilitas yang diperlukan dan relevan untuk pemenuhan dan promosi kerjasama tersebut dalam kerangka peraturan dan ketentuan yang ada di masing-masing negara.

Pasal 3

Kedua belah Pihak akan berusaha untuk mempermudah mobilisasi dan pengembangan tenaga kerja antara kedua negara, dalam kerangka hukum, peraturan dan ketentuan yang ada dan dapat diterapkan di masing-masing negara.

Pasal 4

Kedua belah Pihak akan saling bertukar kunjungan dan melakukan konsultasi untuk berbagi pengetahuan dan pengalaman dalam hal perluasan lapangan kerja dan menciptakan pekerjaan.

Pasal 5

Kondisi-kondisi dasar untuk hak, kewajiban dan syarat-syarat pekerjaan, yang dapat diterapkan kepada baik pengusaha/majikan maupun pekerja harus ditetapkan dalam kontrak kerja terpisah yang disetujui bersama, yang sesuai dengan hukum, peraturan dan ketentuan yang relevan di kedua negara.

Pasal 6

Dalam penyelesaian perselisihan ketenagakerjaan yang timbul dari hubungan majikan-

pekerja, pihak pemerintah yang berwenang yang berurusan dari kedua belah pihak, sesuai dengan hukum, peraturan dan ketentuan mereka masing-masing, akan bekerjasama untuk penyelesaian secara baik-baik melalui negosiasi, konsiliasi dan arbitrase. Dimana upaya-upaya untuk penyelesaian sengketa secara baik-baik gagal, para pihak yang berurusan dapat mengambil jalan pengadilan sesuai dengan hukum, peraturan dan ketentuan masing-masing.

Pasal 7

Suatu Panitia Bersama akan dibentuk untuk menjalankan tugas-tugas berikut ini:

- a) Untuk menjamin implementasi Memorandum Kesepahaman ini; dan
- b) Untuk mengajukan revisi ~~Nota~~ Memorandum sebagaimana diperlukan dan menyelesaikan kesulitan-kesulitan yang ada dalam implementasinya. Panitia harus bertemu dimana diperlukan sesuai dengan permintaan dari pihak manapun.

Pasal 8

Memorandum Kesepakatan ini akan berlaku selama empat (4) tahun. Memorandum Kesepakatan ini akan berlaku mulai tanggal pada saat diumumkan oleh kedua belah Pihak, yang menandakan pemenuhan atas persyaratan resmi dalam negeri masing-masing agar memiliki kekuatan hukum. Memorandum Kesepakatan ini harus secara otomatis diperbaharui pada waktu yang sama, kecuali jika satu Pihak mengumumkan pada Pihak lainnya secara tertulis, melalui saluran diplomatik, tentang keinginannya untuk mengakhiri atau merubah Memorandum Kesepakatan ini enam (6) bulan sebelum masa berakhirnya.

D. H. Contract No. A 000001

EMPLOYMENT CONTRACT
(For A Domestic Helper recruited from abroad)

This contract is made between
("the Employer", holder of Hong Kong Identity Card/Passport No.*) and
..... ("the Helper") on and
has the following terms:

1. The Helper's place of origin for the purpose of this contract is
.....

2. (A)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Helper arrives in Hong Kong.

(B)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on, which is the date following the expiry of D.H. Contract No. for employment with the same employer.

(C)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Director of Immigration grants the Helper permission to remain in Hong Kong to begin employment under this contract.

3. The Helper shall work and reside in the Employer's residence at

4. (a) The Helper shall only perform domestic duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer.

(b) The Helper shall not take up, and shall not be required by the Employer to take up, any other employment with any other person.

(c) The Employer and the Helper hereby acknowledge that Clause 4 (a) and (b) will form part of the conditions of stay to be imposed on the Helper by the Immigration Department upon the Helper's admission to work in Hong Kong under this contract. A breach of one or both of the said conditions of stay will render the Helper and/or any aider and abettor liable to criminal prosecution.

5. (a) The Employer shall pay the Helper wages of HK\$ per month. The amount of wages shall not be less than the minimum allowable wage announced by the Government of the Hong Kong Special Administrative Region and prevailing at the date of this contract. An employer who fails to pay the wages due under this employment contract shall be liable to criminal prosecution.

(b) The Employer shall provide the Helper with suitable and furnished accommodation as per the attached Schedule of Accommodation and Domestic Duties and food free of charge. If no food is provided, a food allowance of HK\$ a month shall be paid to the Helper.

(c) The Employer shall provide a receipt for payment of wages and food allowance and the Helper shall acknowledge receipt of the amount under his/her* signature.

6. The Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified in the Employment Ordinance, Chapter 57.

7. (a) The Employer shall provide the Helper with free passage from his/her* place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his/her* place of origin.

(b) A daily food and travelling allowance of HK\$100 per day shall be paid to the Helper from the date of his/her* departure from his/her* place of origin until the date of his/her* arrival at Hong Kong if the travelling is by the most direct route. The same payment shall be made when the Helper returns to his/her* place of origin upon expiry or termination of this contract.

8. The Employer shall be responsible for the following fees and expenses (if any) for the departure of the Helper from his/her place of origin and entry into Hong Kong:—

- (i) medical examination fees;
- (ii) authentication fees by the relevant Consulate;
- (iii) visa fee;
- (iv) insurance fee;
- (v) administration fee or fee such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant government authorities; and
- (vi) others:

In the event that the Helper has paid the above costs or fees, the Employer shall fully reimburse the Helper forthwith the amount so paid by the Helper upon demand and production of the corresponding receipts or documentary evidence of payment.

* Delete where inappropriate.

† Use either Clause 2A, 2B or 2C whichever is appropriate.

9. (a) In the event that the Helper is ill or suffers personal injury during the period of employment specified in Clause 2, except for the period during which the Helper leaves Hong Kong of his/her* own volition and for his/her* own personal purposes, the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The Helper shall accept medical treatment provided by any registered medical practitioner.

(b) If the Helper suffers injury by accident or occupational disease arising out of and in the course of employment, the Employer shall make payment of compensation in accordance with the Employees' Compensation Ordinance, Chapter 282.

(c) In the event of a medical practitioner certifying that the Helper is unfit for further service, the Employer may subject to the statutory provisions of the relevant Ordinances terminate the employment and shall immediately take steps to repatriate the Helper to his/her* place of origin in accordance with Clause 7.

10. Either party may terminate this contract by giving one month's notice in writing or one month's wages in lieu of notice.

11. Notwithstanding Clause 10, either party may in writing terminate this contract without notice or payment in lieu in the circumstances permitted by the Employment Ordinance, Chapter 57.

12. In the event of termination of this contract, both the Employer and the Helper shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to the Director of Immigration.

13. Should both parties agree to enter into new contract upon expiry of the existing contract, the Helper shall, before any such further period commences and at the expense of the Employer, return to his/her* place of origin for a paid/unpaid* vacation of not less than seven days, unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration.

14. In the event of the death of the Helper, the Employer shall pay the cost of transporting the Helper's remains and personal property from Hong Kong to his/her* place of origin.

15. Save for the following variations, any variation or addition to the terms of this contract (including the annexed Schedule of Accommodation and Domestic Duties) during its duration shall be void unless made with the prior consent of the Commissioner for Labour in Hong Kong:

(a) a variation of the period of employment stated in Clause 2 through an extension of the said period of not more than one month by mutual agreement and with prior approval obtained from the Director of Immigration;

(b) a variation of the Employer's residential address stated in Clause 3 upon notification in writing being given to the Director of Immigration, provided that the Helper shall continue to work and reside in the Employer's new residential address;

(c) a variation in the Schedule of Accommodation and Domestic Duties made in such manner as prescribed under item 6 of the Schedule of Accommodation and Domestic Duties; and

(d) a variation of item 4 of the Schedule of Accommodation and Domestic Duties in respect of driving of a motor vehicle, whether or not the vehicle belongs to the Employer, by the helper by mutual agreement in the form of an Addendum to the Schedule and with permission in writing given by the Director of Immigration for the Helper to perform the driving duties.

16. The above terms do not preclude the Helper from other entitlements under the Employment Ordinance, Chapter 57, the Employees' Compensation Ordinance, Chapter 282 and any other relevant Ordinances.

17. The Parties hereby declare that the Helper has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the Employer.

Signed by the Employer _____
(Signature of Employer)

in the presence of _____
(Name of Witness) (Signature of Witness)

Signed by the Helper _____
(Signature of Helper)

in the presence of _____
(Name of Witness) (Signature of Witness)

* Delete where inappropriate.

SCHEDULE OF ACCOMMODATION AND DOMESTIC DUTIES

1. Both the Employer and the Helper should sign to acknowledge that they have read and agreed to the contents of this Schedule, and to confirm their consent for the Immigration Department and other relevant government authorities to collect and use the information contained in this Schedule in accordance with the provisions of the Personal Data (Privacy) Ordinance.

2. Employer's residence and number of persons to be served

A. Approximate size of flat/house square feet/square metres*

B. State below the number of persons in the household to be served on a regular basis:

..... adult minors (aged between 5 to 18) minors (aged below 5) expecting babies.

..... persons in the household requiring constant care or attention (excluding infants).

(Note: Number of Helpers currently employed by the Employer to serve the household)

3. Accommodation and facilities to be provided to the Helper

A. Accommodation to the Helper

While the average flat size in Hong Kong is relatively small and the availability of separate servant room is not common, the Employer should provide the Helper suitable accommodation and with reasonable privacy. Examples of unsuitable accommodation are: The Helper having to sleep on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex.

☐ Yes. Estimated size of the servant room square feet/square metres*

☐ No. Sleeping arrangement for the Helper:

☐ Share a room with child/children aged

☐ Separate partitioned area of square feet/square metres*

☐ Others. Please describe

.....
.....

B. Facilities to be provided to the Helper:

(Note: Application for entry visa will normally not be approved if the essential facilities from item (a) to (f) are not provided free.)

(a) Light and water supply ☐ Yes ☐ No

(b) Toilet and bathing facilities ☐ Yes ☐ No

(c) Bed ☐ Yes ☐ No

(d) Blankets or quilt ☐ Yes ☐ No

(e) Pillows ☐ Yes ☐ No

(f) Wardrobe ☐ Yes ☐ No

(g) Refrigerator ☐ Yes ☐ No

(h) Desk ☐ Yes ☐ No

(i) Other facilities (Please specify) _____

4. The Helper should only perform domestic duties at the Employer's residence. Domestic duties to be performed by the Helper under this contract exclude driving of a motor vehicle of any description for whatever purposes; whether or not the vehicle belongs to the Employer.

5. Domestic duties include the duties listed below.

Major portion of domestic duties:—

1. Household chores
2. Cooking
3. Looking after aged persons in the household (constant care or attention is required/not required*)
4. Baby-sitting
5. Child-minding
6. Others (please specify)

.....
.....
.....
.....

6. The Employer shall inform the Helper and the Director of Immigration of any substantial changes in item 2, 3 and 5 by serving a copy of the Revised Schedule of Accommodation and Domestic Duties (ID 407G) signed by both the Employer and the Helper to the Director of Immigration for record.

Employer's name and signature

Date

Helper's name and signature

Date

* delete where inappropriate

☐ tick as appropriate

Memoranda of Understanding between Indonesia and Malaysia Commentary

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1. Introduction

- Memoranda of Understanding (MOU) represent an important second string in the protection of worker rights, operating along side international Conventions. Where conventions have not been adopted, they take the primary role in protecting migrant worker rights through the guarantee of basic rights in the signing states.
- Indonesia has minimal legal safeguards for the protection of its migrant workers. The State is not a signator to either the 1990 Convention on the Protection of the Rights of all Migrant Workers and their Families, the 1966 International Covenant on Civil and Political Rights or the 1967 Covenant on Economic, Social and Cultural Rights nor is there comprehensive internal legislation for the protection of migrant workers or the provision of migrant worker facilities. Indeed current proposed legislation is remarkable for the rights not protected as opposed to the few, which are¹. In this climate MOU's provide the most significant protection role available to Indonesian migrant workers.
- As bilateral agreements between sending and receiving states, they lay the framework for those rights which will be protected and those which will be disregarded. Disregard is normally presented in the form of omission, so for example if the receiving state does not agree to up-hold worker rights as listed in the Convention, then those rights are not the subject of guarantee.
- The general pattern for MOU construction will be based on the specific industry targeted by the sending and receiver states. So for example, the MOU signed between the Philippines and the Republic of Korea² was directed specifically at the technology industry.
- Details relating to the appointment of government agencies on both sides in relation to the deployment of legal workers, visa requirements, maximum duration of stay and repatriation provisions are the standard content for MOU's³.

2. 2004 MOU between Indonesia and Malaysia

- On May 10, 2004 Indonesia signed an MOU with Malaysia. The MOU has not as yet been released to the public. Analysis which has taken place has been done so on the basis that Human Rights Watch officials were allowed to look at the report but not to remove a copy. Therefore, analysis for the benefit of this paper has not been possible. Nonetheless their first hand observations are of great importance and have been repeated here.

1 For a complete analysis of the current legal provisions see Migrant Worker Rights: Analysis of Proposed Legislation and International Standards: ACILS 2004

2 Memorandum of Understanding (MOU) between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea on the sending of Workers to Korea: 2004. This document can be downloaded from http://www.poea.gov.ph/html/RPKorea_mou.htm

3 Memorandum of Understanding (MOU) between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Cooperation in the Employment of Workers: 1999.

- The long waiting MOU was expected to increase the human rights provisions and protections the MOU fell significantly short of the hoped for protection structure. Strongly criticised by Human Rights Watch, the MOU excludes provisions for domestic workers and grants employers and agents the right to hold workers passports, effectively removing their ability to leave abusive situations. Minimum standards for working conditions were not referred to at all⁴.

1. Domestic workers are excluded from the agreement and as such are offered no protection by the provisions.
2. Employers and agents have the right to hold workers' passports, severely inhibiting the ability of an employee to leave their place of employment⁵.
3. There is no reference to minimum standards for working conditions, including a defined minimum wage, hours of work, regular payment of wages, rest days, and safe workplaces. Rather it requires employers to pay at least the equivalent to the basic wage for Malaysian workers working in the same field and provide appropriate accommodation as required by Malaysian law.
4. There is no requirement to for employers to insure their workers⁶.
5. There are no mechanisms open for workers to seek remedies against employers or labour agents who commit abuses⁷.
6. There are no guarantees for workers' freedom of association.⁸

3. 1996 MOU between Indonesia and Malaysia

- Domestic workers are catered for under the MOU structure by another MOU signed between Malaysia and Indonesian on the 30 January 1996⁹. Designed primarily to address the issue of costs charged to migrant workers in the initial phase of recruitment. Specific reference is made to the exploitation of maids and exorbitant charges paid by Malaysian employers¹⁰.
- Charges to be paid in Indonesian are to be set by the Indonesian Authority who will provide loans to maids where that provision is required¹¹, while charges in Malaysia are to be determined by the Government of Malaysia.
- Maids are liable for the cost of:
 - o Placement services,
 - o Documentation,
 - o Health examination,
 - o Training,
 - o Visas,

4 www.hrw.org/english/docs/2004/05/11/malays8569.htm and Ridwan Max Sijabat: Malaysia's Draft MOU one-sided and unrealistic: The Jakarta Post 11 February 2004

5 This provision is in direct breach of Article 21 of the Convention and Article 15 of the Universal Declaration of Human Rights as referenced here Annex 1, Para 15.

6 In breach of Article 27 of the Convention and Article 22 of the Universal Declaration of Human Rights as referenced here Annex 1, Para 21.

7 In breach of Article 18 of the Convention and Article 11 & 6 of the Universal Declaration of Human Rights as referenced here Annex 1, Para 13.

8 In breach of Article 26 of the Convention and Article 20 & 23 of the Universal Declaration of Human Rights as referenced here Annex 1, Para 20. <http://hrw.org/english/docs/2004/05/11/malays8569.htm> and Ridwan Max Sijabat, "Malaysia's draft MOU one-sided, unrealistic," The Jakarta Post, 11 February 2004.

9 Note of Agreement on the Guidelines on the Hiring between Malaysia and Indonesia of Indonesian Maids

10 Background Paragraph 3.

- o Accommodation in Indonesia and
- o Transportation to the international departure point¹².
- Employers are to pay for international transportation and costs incurred in Malaysia¹³.

3.1 Areas of Vulnerability

- o There are a number of problems which arise from these provisions. It should be pointed out that the problems identified occur as the result of illegal practices on the part of licensed Indonesian employment agencies as opposed to employer or government abuse. Nonetheless the issues identified below illustrate the difficulties faced by workers and the protection which they require.
- o In relation to fees, experience has shown that there is a significant difference between official cost rates and actual costs levied. In Nunukan a migrant worker must pay IDR500,000-800,000 for immigration documents, the official cost is IDR115,000.¹⁴
- o Once the initial contract is agreed, workers are then required by recruiters to live in training camps for 1 to 14 months.¹⁵ Technically, under current legislation recruiters must have a job on order prior to the recruitment of a worker. However recruiters commonly sign workers 'on book' in advance of the placement of work orders, holding candidates for extended periods of time prior to placement.¹⁶ During this period of time the accumulation of debt begins. For every day that the worker spends in the camp they are charged a fee which will be recovered from their salary once the working phase begins.
- o In relation to salaries the MOU outlines salary rates as being between RM350,000 and RM450,000 per month, these rates reflecting standard wages in 1996. As per the information available during the writing of this report, workers routinely receive significantly lower rates of salary than the norm, often at rates as low as RM 8-RM 25 per month.¹⁷

3.2 Contract Provisions

- o The MOU does not set out any additional rights or obligations but does include a draft contract which should be used. The contract has a number of points of interest:
- o Employer responsibilities extend to the obligation to provide accommodation and three meals a day, and are restricted from engaging maids in any work other than household duties¹⁸.
- o Employers have the obligation to pay workers on a monthly basis in cash unless otherwise requested by the worker¹⁹.
- o The worker shall receive one rest day each week, the timing of which is to be

11 Guidelines Paragraph 1, 2 & 3

12 Cost Elements Paragraph 1

13 Ibid Paragraph 2.

14 Suara Pembaruan, 11 September 2001

15 Ibid

16 Narrative Report of Roundtable Discussion I: Formulating draft of Act Concerning the Protection of Indonesian Migrant Labourers and their Families (15-17 May 2001, collaboration between Kpbumi and UNFPA-UNIFEM

17 Palupi S.: Problems Mapping and Alternative System for Protecting Indonesian Migrant Workers: UNIFEM 2003 Pending Publication. Page 36.

18 Contract Paragraph 5.

19 Paragraph 4.

determined by the employer. If the employers requires the worker to work on a rest day the worker will be paid for that additional days work²⁰.

- o The employer has the right to terminate the contract should the worker commit an act of misconduct. The worker has no right to terminate the contract²¹.

3.3 Human Rights Safeguards not Present

- o The 1996 MOU is very clear in its setting of parameters, it addresses costs incurred during the recruitment phase and does not attempt to address any other issues. Utilitarian in nature the limitations on its scope is understandable, however even within the basic provisions held rights are omitted which should have played a role in the agreement.

These provisions which should have been included are as follows:

1. Maximum working hours per day.
2. Confirmation that accommodation should be fit for human habitation.
3. Confirmation that meals should be fit for human consumption.
4. Penalties in the case of employer breach of these basic obligations.
5. A prohibition on the over charging of fees.
6. The status of Indonesian workers in Malaysia as being equal under the law and entitled to the protection of the state.
7. A prohibition on any kind of abuse.

4. Conclusion

- A review of MOU's signed between Indonesia and a range of countries show an even more Spartan approach, with no reference made to worker rights or entitlements at all. Neither the MOU signed between Indonesia and Jordan²² or the MOU signed with Kuwait²³ have any human rights provisions, nor do they have any reference to rules of operation. In both cases the MOU's are still in force and provisions in general are minimal. The activity 'placement of manpower' and the designation 'worker' are defined.

Placement of manpower is the:

*'activities which are conducted in the framework of employment services to meet the demand and supply of workers based on work contract'*²⁴.

While a worker is a:

*'Citizen of Indonesia or the citizen of Kuwait who is employed in accordance with the laws and regulations in force in the respective countries'*²⁵.

All provisions in relation to worker conditions are contained within the working contract which is *'considered as the determiner and organiser of both parties commitments'*²⁶. Both MOU's have ten and eleven articles respectively and essentially are bare agreements to facilitate the movement of people.

20 Paragraph 6.

21 Paragraph 7.

22 MOU between the Government of the Republic of Indonesia and the Government of the Hashemite Kingdom of Jordan 2001

23 MOU between the Government of the Republic of Indonesia and the Government of the State of Kuwait 1996

24 Article 1

25 Ibid. The same text is used in both MOU's

26 Article 5 respectively.

Were domestic laws and international provisions sufficiently strong within Indonesia, the lack of provisions within an MOU would be relatively unimportant. Indeed, the previously referenced MOU between the Philippines and Korea makes no reference to human rights provisions. However, the Philippines has one of the strongest protection mechanisms for workers in Asia and is bound not to sign an MOU with any country which will not abide by the provisions of the Convention on the Protection of the Rights of all Migrant Workers and their Families²⁷.

- Indonesia, in line with Thailand does not have such safeguards or institutional mechanisms; comparison is more pertinent when made between the practices of those two States. The 1999 MOU signed between Thailand and Cambodia listed a number of basic rights which relate to migrant workers²⁸.
- Article 1 of the MOU explicitly states that all workers will be afforded due protection to ensure that no loss of rights occur during the period of employment. Employee requirements include the provision of visa's, health insurance, access to state administered saving funds which can be fully accessed at the point of repatriation²⁹, taxes and contracts between employers and workers.
- Temporary return of an employee to the State of origin does not terminate the contract allowing for home and family leave³⁰.
- Workers of both parties are entitled to wages and other benefits due for local workers based on the principles of non-discrimination³¹, and both parties undertake to ensure that workers enjoy protection in accordance with domestic laws. While the full range of rights afforded under the Convention are not listed, the agreement is nonetheless equitable and affords basic protections. More importantly it does not contain any provisions in breach of existing human rights norms.
- Neither the 1996 nor the 2004 MOU (as per available information), contain the kind of safeguards essential for the protection of Indonesian migrant workers. This fact combined with weak implementation of the basic provisions contained, results in the systematic abuse of workers. As such it is vital that any international agreements enshrine the most fundamental human rights required by workers, such as a mandatory day of rest. Maximum working hours per day, a prohibition on debt bondage, a prohibition on civil (non official) imprisonment and the setting out of penalties should these provisions be breached.

27 Migrant Workers and Overseas Filipinos Act 1995 no. 8042 SEC.4.

28 Op cite. 57

29 Articles VII, XI & XII. Saving funds represent a deduction of 15% of each workers salary.

30 Article XIII

31 Articles XVII & XVIII. The non-discrimination undertaking includes reference to equality of sex, race and religion.

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 39 TAHUN 2004
TENTANG
PENEMPATAN DAN PERLINDUNGAN
TENAGA KERJA INDONESIA DI LUAR NEGERI
DENGAN RAHMAT TUHAN YANG MAHA ESA

Menimbang :

- a. bahwa bekerja merupakan hak asasi manusia yang wajib dijunjung tinggi, dihormati, dan dijamin penegakannya;
- b. bahwa setia tenaga kerja mempunyai hak dan kesempatan yang sama tanpa diskriminasi untuk memperoleh pekerjaan dan penghasilan yang layak, baik di dalam maupun di luar negeri sesuai dengan keahlian, keterampilan, bakat, minat, dan kemampuan;
- c. bahwa tenaga kerja Indonesia di luar negeri sering dijadikan obyek perdagangan manusia, termasuk perbudakan dan kerja paksa, korban kekerasan, kesewenang-wenangan, kejahatan atas harkat dan martabat manusia, serta perlakuan lain yang melanggar hak asasi manusia;
- d. bahwa negara wajib menjamin dan melindungi hak asasi warga negaranya yang bekerja baik di dalam maupun di luar negeri berdasarkan prinsip persamaan hak, demokrasi, keadilan sosial, kesetaraan dan keadilan gender, anti diskriminasi, dan anti perdagangan manusia;
- e. bahwa penempatan tenaga kerja Indonesia di luar negeri merupakan suatu upaya untuk mewujudkan hak dan kesempatan yang sama bagi tenaga kerja untuk memperoleh pekerjaan dan penghasilan yang layak, yang pelaksanaannya dilakukan dengan tetap memperhatikan harkat, martabat, hak asasi manusia dan perlindungan hukum serta pemerataan kesempatan kerja dan penyediaan tenaga kerja yang sesuai dengan hukum nasional;
- f. bahwa penempatan tenaga kerja Indonesia di luar negeri perlu dilakukan secara terpadu antara instansi Pemerintah baik Pusat maupun Daerah dan peran serta masyarakat dalam suatu sistem hukum guna melindungi tenaga kerja Indonesia yang ditempatkan di luar negeri;
- g. bahwa peraturan perundang-undangan di bidang ketenagakerjaan yang ada belum mengatur secara memadai, tegas, dan terperinci mengenai penempatan dan perlindungan tenaga kerja Indonesia di luar negeri;
- h. bahwa dalam Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dinyatakan penempatan tenaga kerja Indonesia di luar negeri diatur dengan undang-undang;
- i. bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, huruf c, huruf d, huruf e, huruf f, huruf g, dan huruf h, perlu membentuk undang-undang tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia di Luar Negeri;

Mengingat :

1. Pasal 20, Pasal 21, Pasal 27 ayat (2), Pasal 28 D ayat (1) dan ayat(2), Pasal 28 E ayat (1) dan ayat (3), Pasal 29 Undang-undang Dasar Negara Republik Indonesia Tahun 1945;
2. Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan (Lembaran Negara Tahun 2003 Nomor 39, Tambahan Lembaran Negara Nomor 4279);

Dengan Persetujuan Bersama
DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA
DAN
PRESIDEN REPUBLIK INDONESIA
MEMUTUSKAN:

Mengingat :

UNDANG-UNDANG TENTANG PENEMPATAN DAN PERLINDUNGAN TENAGA KERJA
INDONESIA DI LUAR NEGERI.

BAB I
KETENTUAN UMUM

Pasal 1

Dalam undang-undang ini yang dimaksud dengan:

1. Tenaga Kerja Indonesia yang selanjutnya disebut dengan TKI adalah setiap warga negara Indonesia yang memenuhi syarat untuk bekerja di luar negeri dalam hubungan kerja untuk jangka waktu tertentu dengan menerima upah.
2. Calon Tenaga Kerja Indonesia yang selanjutnya disebut calon TKI adalah setiap warga negara Indonesia yang memenuhi syarat sebagai pencari kerja yang akan bekerja di luar negeri dan terdaftar di instansi pemerintah kabupaten/kota yang bertanggung jawab di bidang ketenagakerjaan.
3. Penempatan TKI adalah kegiatan pelayanan untuk mempertemukan TKI sesuai bakat, minat, dan kemampuannya dengan pemberi kerja di luar negeri yang meliputi keseluruhan proses perekrutan, pengurus dokumen, pendidikan dan pelatihan, penampungan, persiapan pemberangkatan, pemberangkatan sampai ke negara tujuan, dan pemulangan dari negara tujuan.
4. Perlindungan TKI adalah segala upaya untuk melindungi kepentingan calon TKI/TKI dalam mewujudkan terjaminnya pemenuhan hak-haknya sesuai dengan peraturan perundang-undangan, baik sebelum, selama, maupun sesudah bekerja.
5. Pelaksanaan penempatan TKI swasta adalah badan hukum yang telah memperoleh izin tertulis dari Pemerintah untuk menyelenggarakan pelayanan penempatan TKI di luar negeri.
6. Mitra usaha adalah instansi atau badan usaha berbentuk badan hukum di negara tujuan yang bertanggung jawab menempatkan TKI pada pengguna.
7. Pengguna Jasa TKI yang selanjutnya disebut dengan Pengguna adalah instansi Pemerintah, Badan Hukum Pemerintah, Badan Hukum Swasta, dan/atau Perseorangan di negara tujuan yang mempekerjakan TKI.
8. Perjanjian Kerja Sama Penempatan adalah perjanjian tertulis antara pelaksana penempatan TKI swasta dengan mitra Usaha atau Pengguna yang memuat hak dan kewajiban masing-masing pihak dalam rangka penempatan serta perlindungan TKI di negara tujuan.
9. Perjanjian Penempatan TKI adalah perjanjian tertulis antara pelaksana penempatan TKI swasta dengan calon TKI yang memuat hak dan kewajiban masing-masing pihak dalam rangka penempatan TKI di negara tujuan sesuai dengan peraturan perundang-undangan.
10. Perjanjian Kerja adalah perjanjian tertulis antara TKI dengan Pengguna yang memuat syarat-syarat kerja, hak dan kewajiban masing-masing pihak.
11. Kartu Tenaga Kerja Luar Negeri yang selanjutnya disebut dengan KTKLN adalah kartu identitas bagi TKI yang memenuhi persyaratan dan prosedur untuk bekerja di luar negeri.

12. Visa Kerja adalah izin tertulis yang diberikan oleh pejabat yang berwenang pada perwakilan suatu negara yang memuat persetujuan untuk masuk dan melakukan pekerjaan di negara yang bersangkutan.
13. Surat Izin Pelaksana Penempatan TKI yang selanjutnya disebut SIPPTKI adalah izin tertulis yang diberikan oleh Menteri kepada Perusahaan yang akan menjadi pelaksana penempatan TKI swasta.
14. Surat Izin Pengerahan yang selanjutnya disebut SIP adalah izin yang diberikan Pemerintah kepada pelaksana penempatan TKI swasta untuk merekrut calon TKI dari daerah tertentu untuk jabatan tertentu, dan untuk dipekerjakan kepada calon Pengguna tertentu dalam jangka waktu tertentu.
15. Orang adalah pihak orang perseorangan atau badan hukum.
16. Pemerintah adalah perangkat Negara Kesatuan Republik Indonesia yang terdiri dari Presiden beserta para Menteri.
17. Menteri adalah Menteri yang bertanggung jawab di bidang ketenagakerjaan.

Pasal 2

Penempatan dan perlindungan calon TKI/TKI berasaskan keterpaduan, persamaan hak, demokrasi, keadilan sosial, kesetaraan dan keadilan gender, anti diskriminasi, serta anti perdagangan manusia.

Pasal 3

Penempatan dan perlindungan calon TKI/TKI bertujuan untuk :

- a. memberdayakan dan mendayagunakan tenaga kerja secara optimal dan manusiawi;
- b. menjamin dan melindungi calon TKI/TKI sejak di dalam negeri, di negara tujuan, sampai kembali ke tempat asal di Indonesia;
- c. meningkatkan kesejahteraan TKI dan keluarganya.

Pasal 4

Orang perseorangan dilarang menempatkan warga negara Indonesia untuk bekerja di luar negeri.

BAB II

TUGAS, TANGGUNG JAWAB, DAN KEWAJIBAN PEMERINTAH

Pasal 5

- (1) Pemerintah bertugas mengatur, membina, melaksanakan, dan mengawasi penyelenggaraan penempatan dan perlindungan TKI di luar negeri.
- (2) Dalam melaksanakan tugas sebagaimana dimaksud pada ayat (1), Pemerintah dapat melimpahkan sebagi wewenang dan /atau tugas perbantuan kepada pemerintah daerah sesuai dengan peraturan perundang-undangan.

Pasal 6

Pemerintah bertanggung jawab untuk meningkatkan upaya perlindungan TKI di luar negeri.

Pasal 7

Dalam melaksanakan tugas dan tanggung jawab sebagaimana dimaksud dalam Pasal 5 dan Pasal 6 Pemerintah berkewajiban :

- a. menjamin terpenuhinya hak-hak calon TKI/TKI, baik yang bersangkutan berangkat melalui pelaksana penempatan TKI, maupun yang berangkat secara mandiri;

- b. mengawasi pelaksanaan penempatan calon TKI;
- c. membentuk dan mengembangkan sistem informasi penempatan calon TKI di luar negeri;
- d. melakukan upaya diplomatik untuk menjamin pemenuhan hak dan perlindungan TKI secara optimal di negara tujuan; dan
- e. memberikan perlindungan kepada TKI selama masa sebelumnya pemberangkatan, masa penempatan, dan masa purna penempatan.

BAB III

HAK DAN KEWAJIBAN TKI

Pasal 8

Setiap calon TKI mempunyai hak dan kesempatan yang sama untuk :

- a. bekerja di luar negeri;
- b. memperoleh informasi yang benar mengenai pasar kerja luar negeri dan prosedur penempatan TKI di luar negeri;
- c. memperoleh pelayanan dan perlakuan yang sama dalam penempatan di luar negeri;
- d. memperoleh kebebasan menganut agama dan keyakinannya serta kesempatan untuk menjalankan ibadah sesuai dengan agama dan keyakinan yang dianutnya.
- e. memperoleh upah sesuai dengan standar upah yang berlaku di negara tujuan.
- f. memperoleh hak, kesempatan, dan perlakuan yang sama yang diperoleh tenaga kerja asing lainnya sesuai dengan peraturan perundang-undangan di negara tujuan;
- g. memperoleh jaminan perlindungan hukum sesuai dengan peraturan perundang-undangan atas tindakan yang dapat merendahkan harkat dan martabatnya serta pelanggaran atas hak-hak yang ditetapkan sesuai dengan peraturan perundang-undangan selama penempatan di luar negeri;
- h. memperoleh jaminan perlindungan keselamatan dan keamanan kepulangan TKI ke tempat asal;
- i. memperoleh naskah perjanjian kerja yang asli.

Pasal 9

Setiap calon TKI/TKI mempunyai kewajiban untuk :

- a. mentaati peraturan perundang-undangan baik di dalam negeri maupun di negara tujuan;
- b. menaati dan melaksanakan pekerjaannya sesuai dengan perjanjian kerja;
- c. membayar biaya pelayanan penempatan TKI di luar negeri sesuai dengan peraturan perundang-undangan; dan
- d. memberitahukan atau melaporkan kedatangan keberadaan dan kepulangan TKI kepada Perwakilan Republik Indonesia di negara tujuan.

BAB IV

PELAKSANAAN PENEMPATAN TKI DI LUAR NEGERI

Pasal 10

Pelaksanaan penempatan TKI di luar negeri terdiri dari :

- a. Pemerintah;
- b. Pelaksanaan penempatan TKI swasta.

Pasal 11

- (1) Penempatan TKI di luar negeri oleh Pemerintah sebagaimana dimaksud dalam Pasal 10 huruf a, hanya dapat dilakukan atas dasar perjanjian secara tertulis antara Pemerintah dengan pemerintah negara Pengguna TKI atau Pengguna berbadan hukum di negara tujuan.

- (2) Ketentuan mengenai tata cara pelaksanaan penempatan TKI oleh Pemerintah sebagaimana dimaksud pada ayat (1), diatur lebih lanjut dengan Peraturan Pemerintah.

Pasal 12

Perusahaan yang akan menjadi pelaksana penempatan TKI swasta sebagaimana dimaksud dalam Pasal 10 huruf b wajib mendapat izin tertulis berupa SIPPTKI dari Menteri.

Pasal 13

- (1) Untuk dapat memperoleh SIPPTKI sebagaimana dimaksud dalam Pasal 12, pelaksana penempatan TKI swasta harus memenuhi persyaratan :
- a. berbentuk badan hukum perseroan terbatas (PT) yang didirikan berdasarkan peraturan perundangan-undangan;
 - b. memiliki modal disetor yang tercantum dalam akta pendirian perusahaan, sekurang-kurangnya sebesar Rp. 3.000.000.000,- (tiga milyar rupiah)
 - c. menyetor uang kepada bank sebagai jaminan dalam bentuk deposito sebesar Rp. 15.000.000,- (lima belas juta rupiah) pada bank pemerintah;
 - d. memiliki rencana kerja penempatan dan perlindungan TKI di luar negeri sekurang-kurangnya untuk kurun waktu 3 (tiga) tahun berjalan;
 - e. memiliki unit pelatihan kerja; dan
 - f. memiliki sarana dan prasarana pelayanan penempatan TKI.
- (2) Sesuai dengan perkembangan keadaan, besarnya modal disetor sebagaimana dimaksud pada ayat (1) huruf b dan jaminan dalam bentuk deposito sebagaimana dimaksud pada ayat (1) huruf c, dapat ditinjau kembali dan diubah dengan Peraturan Menteri.
- (3) Ketentuan mengenai penyusunan rencana kerja sebagaimana dimaksud pada ayat (1) huruf d, dan bentuk serta standar yang harus dipenuhi untuk sarana dan prasarana pelayanan penempatan TKI sebagaimana dimaksud pada ayat (1) huruf f, diatur lebih lanjut dengan Peraturan Menteri.

Pasal 14

- (1) Izin untuk melaksanakan penempatan TKI di luar negeri diberikan untuk jangka waktu 5 (lima) tahun dan dapat diperpanjang setiap 5 (lima) tahun sekali;
- (2) Perpanjangan izin sebagaimana dimaksud pada ayat (1) dapat diberikan kepada pelaksana penempatan TKI swasta selain harus memenuhi syarat sebagaimana dimaksud dalam Pasal 13 ayat (1) juga harus memenuhi syarat-syarat sebagai berikut :
- a. telah melaksanakan kewajibannya untuk memberikan laporan secara periodik kepada Menteri;
 - b. telah melaksanakan penempatan sekurang-kurangnya 75% (tujuh puluh lima persen) dari rencana penempatan pada waktu memperoleh SIPPTKI;
 - c. masih memiliki sarana dan prasarana yang sesuai dengan standar yang ditetapkan;
 - d. memiliki neraca keuangan selama 2 (dua) tahun terakhir tidak mengalami kerugian yang diaudit akuntansi publik; dan
 - e. tidak dalam kondisi diskors.

Pasal 15

Tata cara pemberian dan perpanjangan SIPPTKI sebagaimana dimaksud dalam Pasal 12, Pasal 13, dan Pasal 14 diatur dengan Peraturan Menteri.

Pasal 16

Deposito hanya dapat dicairkan dalam hal pelaksanaan penempatan TKI swasta tidak memenuhi kewajiban terhadap calon TKI/TKI sebagaimana telah diperjanjikan dalam perjanjian penempatan.

Pasal 17

- (1) Pelaksanaan penempatan TKI swasta wajib menambah biaya keperluan penyelesaian perselisihan atau sengketa calon TKI/TKI apabila deposito yang digunakan tidak mencukupi.
- (2) Pemerintah mengembalikan deposito kepada pelaksana penempatan TKI swasta apabila masa berlaku SIPPTKI telah berakhir dan tidak diperpanjang lagi atau SIPPTKI dicabut.
- (3) Ketentuan mengenai penyetoran, penggunaan, pencairan, dan pengembalian deposito sebagaimana dimaksud pada ayat (1) dan ayat (2), diatur lebih lanjut dengan Peraturan menteri.

Pasal 18

- (1) Menteri dapat mencabut SIPPTKI apabila pelaksana penempatan TKI swasta :
 - a. tidak lagi memenuhi persyaratan sebagaimana dimaksud dalam Pasal 13, atau
 - b. tidak melaksanakan kewajiban dan tanggung jawabnya dan/atau melanggar larangan dalam penempatan dan perlindungan TKI di luar negeri yang diatur dalam undang-undang ini.
- (2) Pencabutan SIPPTKI oleh Menteri sebagaimana dimaksud pada ayat (1), tidak mengurangi tanggung jawab pelaksana penempatan TKI swasta terhadap TKI yang telah ditempatkan dan masih berada diluar negeri.
- (3) Tata cara pencabutan SIPPTKI sebagaimana dimaksud pada ayat (1) diatur lebih lanjut dengan Peraturan Menteri.

Pasal 19

Pelaksanaan penempatan TKI swasta dilarang mengalihkan atau memindahtangankan SIPPTKI kepada pihak lain.

Pasal 20

- (1) Untuk mewakili kepentingannya, pelaksana penempatan TKI swasta wajib mempunyai perwakilan di negara TKI ditempatkan.
- (2) Perwakilan pelaksana penempatan TKI swasta sebagaimana dimaksud pada ayat (1), harus berbadan hukum yang dibentuk berdasarkan hukum yang dibentuk berdasarkan peraturan perundang-undangan di negara tujuan.

Pasal 21

- (1) Pelaksana penempatan TKI swasta dapat membentuk kantor cabang di daerah diluar wilayah domisili kantor pusatnya.
- (2) Kegiatan yang dilakukan oleh kantor cabang pelaksana penempatan TKI swasta sebagaimana dimaksud pada ayat (1), menjadi tanggung jawab kantor pusat pelaksana penempatan TKI swasta.
- (3) Ketentuan mengenai tata cara pembentukan kantor cabang pelaksana penempatan TKI swasta sebagaimana dimaksud pada ayat (1) dan ayat (2), diatur lebih lanjut dengan Peraturan Menteri.

Pasal 22

Pelaksana penempatan TKI swasta hanya dapat memberikan kewenangan kepada kantor cabang untuk :

- a. melakukan penyuluhan dan pendataan calon TKI;
- b. melakukan pendaftaran dan seleksi calon TKI;
- c. menyelesaikan kasus calon TKI/TKI pada pra atau purna penempatan; dan
- d. menandatangani perjanjian penempatan dengan calon TKI atas nama pelaksana penempatan TKI swasta.

Pasal 23

Seluruh kegiatan yang dilakukan oleh kantor cabang pelaksana penempatan TKI swasta sebagaimana dimaksud dalam Pasal 22, menjadi tanggungjawab kantor pusat pelaksana penempatan TKI swasta.

Pasal 24

- (1) Penempatan TKI pada Pengguna perseorangan harus melalui Mitra Usaha di negara tujuan
- (2) Mitra Usaha sebagaimana dimaksud pada ayat (1) harus berbentuk badan hukum yang didirikan sesuai dengan peraturan perundangan di negara tujuan.

Pasal 25

- (1) Perwakilan Republik Indonesia melakukan penilaian terhadap Mitra Usaha dan Pengguna sebagaimana dimaksud dalam pasal 24.
- (2) Hasil penilaian terhadap Mitra Usaha dan Pengguna sebagaimana dimaksud pada ayat (1) digunakan sebagai pertimbangan Perwakilan Republik Indonesia dalam memberikan persetujuan atas dokumen yang dipersyaratkan dalam penempatan TKI di luar negeri.
- (3) Berdasarkan hasil penilaian terhadap Mitra Usaha dan Pengguna sebagaimana dimaksud pada ayat (2), Perwakilan Republik Indonesia menetapkan Mitra Usaha dan Pengguna yang bermasalah dalam daftar Mitra Usaha dan Pengguna bermasalah.
- (4) Pemerintah mengumumkan daftar Mitra Usaha dan Pengguna bermasalah secara periodik setiap 3 (tiga) bulan.
- (5) Ketentuan mengenai tata cara penilaian dan penetapan Mitra Usaha dan Pengguna baik bermasalah maupun tidak bermasalah sebagaimana dimaksud pada ayat (1) dan ayat (3) diatur lebih lanjut dengan Peraturan Pemerintah.

Pasal 26

- (1) Selain oleh Pemerintah dan pelaksana penempatan TKI swasta sebagaimana dimaksud dalam Pasal 10, perusahaan dapat menempatkan TKI di luar negeri, untuk kepentingan perusahaan sendiri atas izin tertulis dari Menteri.
- (2) Penempatan TKI di luar negeri untuk kepentingan perusahaan sendiri sebagaimana dimaksud pada ayat (1) harus memenuhi persyaratan :
 - a. perusahaan yang bersangkutan harus berbadan hukum yang dibentuk berdasarkan hukum Indonesia.
 - b. TKI yang ditempatkan merupakan pekerja perusahaan itu sendiri
 - c. perusahaan memiliki bukti hubungan kepemilikan atau perjanjian pekerja yang diketahui oleh Perwakilan Republik Indonesia.
 - d. TKI telah memiliki perjanjian kerja.
 - e. TKI telah diikutsertakan dalam program jaminan sosial tenaga kerja dan/atau memiliki polis asuransi; dan
 - f. TKI yang ditempatkan wajib memiliki KTKLN.

- (3) Ketentuan mengenai penempatan TKI di luar negeri untuk kepentingan perusahaan sendiri sebagaimana dimaksud pada ayat (1) dan ayat (2) diatur lebih lanjut dengan Peraturan Menteri.

BAB V

TATA CARA PENEMPATAN

Bagian Pertama

Umum

Pasal 27

- (1) Penempatan TKI di luar negeri hanya dapat dilakukan ke negara tujuan yang pemerintahnya telah membuat perjanjian tertulis dengan Pemerintah Republik Indonesia atau tenaga kerja asing.
- (2) Berdasarkan pertimbangan sebagaimana dimaksud pada ayat (1) dan/atau pertimbangan keamana Pemerintah menetapkan negara-negara tertentu tertutup bagi penempatan TKI dengan Peraturan Menteri.

Pasal 28

Penempatan TKI pada pekerjaan dan jabatan tertentu diatur lebih lanjut dengan Peraturan Menteri.

Pasal 29

- (1) Penempatan calon TKI/TKI di luar negeri diarahkan pada jabatan yang tepat sesuai dengan keahlian, ketrampilan, bakat, minat dan kemampuan.
- (2) Penempatan calon TKI/TKI sebagaimana dimaksud pada ayat (1) dilaksanakan dengan memperhatikan harkat, martabat, hak azazi manusia, perlindungan hukum, pemerataan kesempatan kerja, dan ketersediaan tenaga kerja dengan mengutamakan kepentingan nasional.

Pasal 30

Setiap orang dilarang menempatkan calon TKI/TKI pada jabatan dan tempat pekerjaan yang bertentangan dengan nilai-nilai kemanusiaan dan norma kesusilaan serta peraturan perundang-undangan, baik di Indonesia maupun di negara tujuan atau di negara tujuan yang telah dinyatakan tertutup sebagaimana dimaksud dalam Pasal 27.

Bagian Kedua

Pra Penempatan TKI

Pasal 31

Kegiatan pra penempatan TKI di luar negeri meliputi :

- a. pengurusan SIP;
- b. perekrutan dan seleksi;
- c. pendidikan dan pelatihan kerja;
- d. pemeriksaan kesehatan dan psikologi;
- e. pengurusan dokumen;
- f. uji kompetensi;
- g. pembekalan akhir pemberangkatan (PAP); dan
- h. pemberangkatan.

Paragraf 1
Surat Izin Pengerahan

Pasal 32

- (1) Pelaksana penempatan TKI swasta yang akan melakukan perekrutan wajib memiliki SIP dari Menteri.
- (2) a. perjanjian kerjasama penempatan;
b. surat permintaan TKI dari Pengguna;
c. rancangan perjanjian penempatan; dan
d. rancangan perjanjian kerja.
- (3). Surat permintaan TKI dari Pengguna perjanjian kerja sama penempatan , dan rancangan perjanjian kerja sebagaimana dimaksud pada ayat (2) huruf a, huruf b, dan huruf d harus memperoleh persetujuan dari pejabat yang berwenang pada Perwakilan Republik Indonesia di negara tujuan.
- (4) Tata cara penerbitan SIP diatur lebih lanjut dengan Peraturan Menteri.

Pasal 33

Pelaksana penempatan TKI swasta dilarang mengalihkan atau memindahkan SIP kepada pihak lain untuk melakukan perekrutan calon TKI.

Paragraf 2
Perekrutan dan Seleksi

Pasal 34

- (1) Proses perekrutan didahului dengan memberikan informasi kepada calon TKI sekurang-kurangnya tentang :
 - a. tata cara perekrutan;
 - b. dokumen yang diperlukan;
 - c. hak dan kewajiban calon TKI/TKI;
 - d. situasi, kondisi, dan resiko di negara tujuan; dan
 - e. tata cara perlindungan bagi TKI.
- (2) Informasi sebagaimana dimaksud pada ayat (1), disampaikan secara lengkap dan benar.
- (3) Informasi sebagaimana dimaksud pada ayat (1) dan ayat (2), wajib mendapatkan persetujuan dari instansi yang bertanggungjawab di bidang ketenagakerjaan dan disampaikan oleh pelaksana penempatan TKI swasta.

Pasal 35

Perekrutan calon TKI oleh pelaksana penempatan TKI swasta wajib dilakukan terhadap calon TKI yang telah memenuhi persyaratan :

- a. berusia sekurang-kurangnya 18 (delapan belas) tahun kecuali bagi calon TKI yang akan dipekerjakan pada Pengguna perseorangan sekurang-kurangnya berusia 21 (dua puluh satu) tahun;
- b. sehat jasmani dan rohani;
- c. tidak dalam keadaan hamil bagi calon tenaga kerja perempuan; dan
- d. berpendidikan sekurang-kurangnya lulus Sekolah Lanjutan Tingkat Pertama (SLTP) atau yang sederajat.

Pasal 36

- (1) Pencari kerja yang berminat bekerja ke luar negeri harus terdaftar pada instansi pemerintah

- kabupaten/kota yang bertanggung jawab di bidang ketenagakerjaan.
- (2) Pendaftaran pencari kerja sebagaimana dimaksud pada ayat (1), dilakukan sesuai dengan Peraturan Menteri

Pasal 37

Perekrutan dilakukan oleh pelaksana penempatan TKI swasta dan pencari kerja yang terdaftar pada instansi pemerintah kabupaten/kota yang bertanggung jawab di bidang ketenagakerjaan sebagaimana dimaksud dalam Pasal 36 ayat (1).

Pasal 38

- (1) Pelaksana Penempatan TKI swasta membuat dan mendatangi perjanjian penempatan dengan pencari kerja yang telah dinyatakan memenuhi persyaratan administrasi dalam proses perekrutan.
- (2) Perjanjian penempatan sebagaimana dimaksud pada ayat (1) diketahui oleh instansi yang bertanggung jawab di bidang ketenagakerjaan kabupaten/kota.

Pasal 39

Segala biaya yang diperlukan dalam kegiatan perekrutan calon TKI dibebankan dan menjadi tanggung jawab pelaksana TKI swasta.

Pasal 40

Ketentuan mengenai tata cara perekrutan calon TKI, diatur lebih lanjut dengan Peraturan Menteri.

Paragraf 3

Pendidikan dan Pelatihan Kerja

Pasal 41

- (1) Calon TKI wajib memiliki sertifikat kompetensi kerja sesuai dengan persyaratan jabatan :
- (2) Dalam hal TKI belum memiliki kompetensi kerja sebagaimana dimaksud pada ayat (1) pelaksana penempatan TKI swasta wajib melakukan pendidikan dan pelatihan sesuai dengan pekerjaan yang akan dilakukan.

Pasal 42

- (1) Calon TKI berhak mendapat pendidikan dan pelatihan kerja sesuai dengan pekerjaan yang akan dilakukan.
- (2) Pendidikan dan pelatihan kerja bagi calon TKI sebagaimana dimaksud pada ayat (1) dimaksudkan untuk :
- a. membekali, menempatkan dan mengembangkan kompetensi kerja calon TKI;
 - b. memberi pengetahuan dan pemahaman tentang situasi, kondisi, adat istiadat, budaya agama, dan risiko bekerja di luar negeri;
 - c. membekali kemampuan berkomunikasi dalam bahasa negara tujuan; dan
 - d. memberi pengetahuan dan pemahaman tentang hak dan kewajiban calon TKI/TKI

Pasal 43

- (1) Pendidikan dan pelatihan kerja dilaksanakan oleh pelaksana penempatan tenaga kerja swasta atau lembaga pelatihan kerja yang telah memenuhi persyaratan.

- (2) Pendidikan dan pelatihan sebagaimana dimaksud pada ayat (1) harus memenuhi persyaratan sesuai dengan peraturan perundang-undangan yang berkaitan dengan pendidikan dan pelatihan kerja.

Pasal 44

Calon TKI memperoleh pengakuan kompetensi kerja setelah mengikuti pendidikan dan pelatihan kerja yang diselenggarakan lembaga pendidikan dan pelatihan kerja sebagaimana dimaksud dalam Pasal 43, dalam bentuk sertifikat kompetensi dari lembaga pendidikan dan pelatihan yang telah terakreditasi oleh instansi yang berwenang apabila lulus dalam sertifikasi kompetensi kerja.

Pasal 45

Pelaksana penempatan TKI swasta dilarang menempatkan calon TKI yang tidak lulus dalam uji kompetensi kerja.

Pasal 46

Calon TKI yang sedang mengikuti pendidikan dan pelatihan dilarang untuk dipekerjakan.

Pasal 47

Ketentuan mengenai pendidikan dan pelatihan kerja diatur lebih lanjut dengan Peraturan Menteri.

Paragraf 4

Pemeriksaan Kesehatan dan Psikologi

Pasal 48

Pemeriksaan kesehatan dan psikologi bagi calon TKI dimaksudkan untuk mengetahui dengan kesehatan dan tingkat kesiapan psikis serta kesesuaian kepribadian calon TKI dengan pekerjaan yang akan dilakukan di negara tujuan.

Pasal 49

- (1) Setiap calon TKI harus mengikuti pemeriksaan kesehatan dan psikologi yang diselenggarakan oleh sarana kesehatan dan lembaga yang menyelenggarakan pemeriksaan psikologi yang ditunjuk oleh Pemerintah.
- (2) Ketentuan mengenai penyelenggaraan pemeriksaan kesehatan dan psikologi bagi calon TKI dan penunjukan sarana kesehatan dan lembaga yang menyelenggarakan pemeriksaan psikologi sebagaimana dimaksud pada ayat (1), diatur lebih lanjut dengan Peraturan Menteri.

Pasal 50

Pelaksana penempatan TKI swasta dilarang menempatkan calon TKI yang tidak memenuhi syarat kesehatan dan psikologi.

Paragraf 5
Pengurusan Dokumen

Pasal 51

Untuk dapat ditempatkan di luar negeri, calon TKI harus memiliki dokumen yang meliputi :

- a. Kartu Tanda Penduduk, Ijazah pendidikan terakhir, akte kelahiran atau surat keterangan kenal lahir;
- b. surat keterangan status perkawinan bagi yang telah menikah melampirkan copy buku nikah;
- c. surat keterangan izin suami atau istri, izin orang tua, atau izin wali;
- d. sertifikat kompetensi kerja;
- e. surat keterangan sehat berdasarkan hasil pemeriksaan kesehatan dan psikologi;
- f. paspor yang diterbitkan oleh Kantor Imigrasi setempat;
- g. visa kerja;
- h. perjanjian penempatan kerja;
- i. perjanjian kerja, dan
- j. KTKLN.

Pasal 52

- (1) Perjanjian penempatan TKI sebagaimana dimaksud dalam Pasal 51 huruf h dibuat secara tertulis dan ditandatangani oleh calon TKI dan pelaksana penempatan TKI swasta setelah calon TKI yang bersangkutan terpilih dalam perekrutan.
- (2) Perjanjian penempatan TKI sebagaimana dimaksud pada ayat (1), sekurang-kurangnya memuat :
 - a. nama dan alamat pelaksana penempatan TKI swasta;
 - b. nama, jenis kelamin, umur, status perkawinan, dan alamat calon TKI;
 - c. nama dan alamat calon Pengguna.
 - d. hak dan kewajiban para pihak dalam rangka penempatan TKI di luar negeri yang harus sesuai dengan kesepakatan dan syarat-syarat yang ditentukan oleh calon Pengguna tercantum dalam perjanjian kerjasama penempatan.
 - e. jabatan dan jenis pekerjaan calon TKI sesuai permintaan pengguna
 - f. jaminan pelaksana penempatan TKI swasta kepada calon TKI dalam hal ini Pengguna tidak memenuhi kewajibannya kepada TKI sesuai perjanjian kerja;
 - g. waktu keberangkatan calon TKI;
 - h. hanya penempatan yang harus ditanggung oleh calon TKI dan cara pembayarannya;
 - i. tanggung jawab pengurusan penyelesaian musibah;
 - j. akibat atas terjadinya pelanggaran perjanjian penempatan TKI oleh salah satu pihak, dan
 - k. tanda tangan para pihak dalam perjanjian penempatan TKI.
- (3) Ketentuan dalam perjanjian penempatan TKI sebagaimana dimaksud pada ayat (2) tidak boleh bertentangan dengan peraturan perundang-undangan.
- (4) Perjanjian penempatan TKI sebagaimana dimaksud pada ayat (1) dan ayat (2) dibuat sekurang-kurangnya rangkap 2 (dua) dengan bermeterai cukup dan masing-masing pihak mendapat 1 (satu) perjanjian penempatan TKI yang mempunyai kekuatan hukum yang sama.

Pasal 53

Perjanjian penempatan TKI tidak dapat ditarik kembali dan/atau diubah, kecuali atas persetujuan para pihak.

Pasal 54

- (1) Pelaksana penempatan TKI swasta wajib melaporkan setiap perjanjian penempatan TKI kepada instansi pemerintah kabupaten/kota yang bertanggung jawab di bidang ketenagakerjaan.
- (2) Pelaporan sebagaimana dimaksud pada ayat (1), dilakukan dengan melampirkan copy atau salinan perjanjian penempatan TKI.

Bagian Ketiga

Perjanjian Kerja

Pasal 55

- (1) Hubungan kerja antara Pengguna dan TKI terjadi setelah perjanjian kerja disepakati dan ditandatangani oleh para pihak.
- (2) Setiap TKI wajib menandatangani perjanjian kerja sebelum TKI yang bersangkutan diberangkatkan ke luar negeri.
- (3) Perjanjian kerja ditanda tangani di hadapan pejabat instansi yang bertanggung jawab di bidang ketenagakerjaan.
- (4) Perjanjian kerja sebagaimana dimaksud pada ayat (2) disiapkan oleh pelaksana penempatan TKI swasta.
- (5) Perjanjian kerja sebagaimana dimaksud pada ayat (2) dan ayat (3), sekurang-kurangnya memuat :
 - a. nama dan alamat pengguna;
 - b. nama dan alamat TKI;
 - c. jabatan dan jenis pekerjaan TKI;
 - d. hak dan kewajiban para pihak;
 - e. kondisi dan syarat kerja yang meliputi jam kerja upah dan tata cara pembayaran, baik cuti dan waktu istirahat, fasilitas dan jaminan sosial; dan
 - f. jangka waktu perpanjangan kerja.

Pasal 56

- (1) Perjanjian kerja dibuat untuk jangka waktu paling lama 2 (dua) tahun dan dapat diperpanjang untuk jangka waktu paling lama 2 (dua) tahun.
- (2) Dikecualikan dari ketentuan jangka waktu perjanjian kerja sebagaimana dimaksud pada ayat (1) untuk jabatan atau jenis pekerjaan tertentu.
- (3) Ketentuan mengenai jabatan atau jenis pekerjaan tertentu yang dikecualikan dari jangka waktu perjanjian kerja sebagaimana dimaksud pada ayat (2), diatur lebih lanjut dengan peraturan Menteri.

Pasal 57

- (1) Perpanjangan jangka waktu perjanjian kerja sebagaimana dimaksud dalam Pasal 56 ayat (1), dapat dilakukan oleh TKI yang bersangkutan atau melalui pelaksana penempatan TKI swasta.
- (2) Perpanjangan sebagaimana dimaksud pada ayat (1) harus disepakati oleh para pihak sekurang-kurangnya 3 (tiga) bulan sebelum perjanjian kerja pertama berakhir.

Pasal 58

- (1) Perjanjian kerja dan jangka waktu perpanjangan perjanjian kerja wajib mendapat persetujuan dari pejabat berwenang pada Perwakilan Republik Indonesia di negara tujuan.
- (2) Pengurusan untuk mendapatkan persetujuan sebagaimana dimaksud pada ayat (1) dilaksanakan oleh dan menjadi tanggung jawab pelaksana penempatan TKI swasta.

- (3) Ketentuan mengenai persyaratan dan tata cara memperoleh persetujuan perjanjian kerja dan perpanjangan jangka waktu perjanjian kerja sebagaimana dimaksud pada ayat (1) dan ayat (2) diatur lebih lanjut dengan Peraturan Menteri.

Pasal 59

TKI yang bekerja pada Pengguna perseorangan yang telah berakhir perjanjian kerjanya dan akan memperpanjang perjanjian kerja TKI yang bersangkutan harus pulang terlebih dahulu ke Indonesia.

Pasal 60

Dalam hal perpanjangan dilakukan sendiri oleh TKI yang bersangkutan, maka pelaksana penempatan TKI swasta tidak bertanggung jawab atas risiko yang menimpa TKI dalam masa perpanjangan perjanjian kerja.

Pasal 61

Bagi TKI yang bekerja pada Pengguna perseorangan, apabila selama masa berlakunya perjanjian kerja terjadi perubahan jabatan atau jenis pekerjaan, atau pindah Pengguna, maka perwakilan pelaksana penempatan TKI swasta wajib mengurus perubahan perjanjian kerja dengan membuat perjanjian kerja baru dan melaporkan kepada Perwakilan Republik Indonesia.

Pasal 62

- (1) Setiap TKI yang ditempatkan di luar negeri, wajib memiliki dokumen KTKLN yang dikeluarkan oleh Pemerintah.
- (2) KTKLN sebagaimana dimaksud pada ayat (1) digunakan sebagai kartu identitas TKI selama masa penempatan TKI di negara tujuan.

Pasal 63

- (1) KTKLN sebagaimana dimaksud dalam Pasal 62 hanya dapat diberikan apabila TKI yang bersangkutan :
 - a. telah memenuhi persyaratan dokumen penempatan TKI di luar negeri;
 - b. telah mengikuti Pembekalan Akhir Pemberangkatan (PAP); dan
 - c. telah diikutsertakan dalam perlindungan program asuransi.
- (2) Ketentuan mengenai bentuk, persyaratan, dan tata cara memperoleh KTKLN diatur lebih lanjut dengan Peraturan Menteri.

Pasal 64

Pelaksana penempatan TKI swasta dilarang menempatkan calon TKI yang tidak memiliki KTKLN

Pasal 65

Pelaksana penempatan TKI swasta bertanggung jawab atas kelengkapan dokumen penempatan yang diperlukan.

Pasal 66

Pemerintah wajib menyediakan pos-pos pelayanan di pelabuhan pemberangkatan dan pemulangan TKI yang dilengkapi fasilitas yang memenuhi syarat.

Pasal 67

- (1) Pelaksana penempatan TKI swasta wajib memberangkatkan TKI ke luar negeri yang telah memenuhi persyaratan kelengkapan dokumen sebagaimana dimaksud dalam Pasal 51 sesuai dengan perjanjian penempatan sebagaimana dimaksud dalam Pasal 52 ayat (2).
- (2) Pelaksana penempatan TKI swasta wajib melaporkan setiap keberangkatan calon TKI kepada Perwakilan Republik Indonesia di negara tujuan.
- (3) Pemberangkatan TKI ke luar negeri sebagaimana dimaksud pada ayat (1), dilaksanakan melalui tempat pemeriksaan imigrasi yang terdekat.

Pasal 68

- (1) Pelaksana penempatan TKI swasta wajib menginstruksikan TKI yang diberangkatkan ke luar negeri dalam program asuransi.
- (2) Jenis program asuransi yang wajib diikuti oleh TKI sebagaimana dimaksud pada ayat (1) diatur lebih lanjut dengan Peraturan Menteri.

Pasal 69

- (1) Pelaksana penempatan TKI swasta wajib mengikutsertakan TKI yang akan diberangkatkan ke luar negeri dalam pembekalan akhir pemberangkatan.
- (2) Pembekalan akhir pemberangkatan (PAP) dimaksudkan untuk memberikan pemahaman pendalaman terhadap :
 - a. peraturan perundang-undangan di negara tujuan; dan
 - b. materi perjanjian kerja.
- (3) Pembekalan akhir pemberangkatan (PAP) menjadi tanggung jawab Pemerintah.
- (4) Ketentuan mengenai pembekalan akhir pemberangkatan (PAP) sebagaimana dimaksud pada ayat (1), ayat (2), dan ayat (3) diatur lebih lanjut dengan Peraturan Menteri.

Bagian Keempat

Masa Tunggu di Penampungan

Pasal 70

- (1) Pelaksana penempatan TKI swasta dapat menampung calon TKI sebelum pemberangkatan
- (2) Lamanya penampungan disesuaikan dengan jabatan dan/atau jenis pekerjaan yang akan dilakukan di negara tujuan
- (3) Selama masa penampungan, pelaksana penempatan TKI swasta wajib memperlakukan calon TKI secara wajar dan manusiawi
- (4) Ketentuan mengenai standar tempat penampungan dan lamanya penampungan diatur lebih lanjut dengan Peraturan Menteri

Bagian Kelima

Masa Penempatan

Pasal 71

- (1) Setiap TKI wajib melaporkan kedatangannya kepada Perwakilan Republik Indonesia di negara tujuan.
- (2) Kewajiban untuk melaporkan kedatangan sebagaimana dimaksud pada ayat (1) bagi TKI yang bekerja pada Pengguna Perseorangan dilakukan oleh pelaksana penempatan TKI swasta.

Pasal 72

Pelaksana penempatan TKI swasta dilarang menempatkan TKI yang tidak sesuai dengan pekerjaan sebagaimana dimaksud dalam ketentuan perjanjian kerja yang disepakati dan ditandatangani TKI yang bersangkutan.

Bagian Keenam

Purna Penempatan

Pasal 73

- (1) Kepulangan TKI terjadi karena :
 - a. berakhirnya masa perjanjian kerja;
 - b. pemutusan hubungan kerja sebelum masa perjanjian kerja berakhir;
 - c. terjadi perang, bencana alam, atau wabah penyakit di negara tujuan;
 - d. mengalami kecelakaan kerja yang mengakibatkan tidak bisa menjalankan pekerjaannya lagi;
 - e. meninggal dunia di negara tujuan;
 - f. cuti; atau
 - g. dideportasi oleh pemerintah setempat.
- (2) Dalam hal TKI meninggal dunia di negara tujuan sebagaimana dimaksud pada ayat (1) huruf e, pelaksana penempatan TKI berkewajiban :
 - a. memberitahukan tentang kematian TKI kepada keluarganya paling lama 3 (tiga) kali 24 (dua puluh empat) jam sejak diketahuinya kematian tersebut;
 - b. mencari informasi tentang sebab-sebab kematian dan memberikannya kepada pejabat Perwakilan Republik Indonesia dan anggota keluarga TKI yang bersangkutan;
 - c. memulangkan jenazah TKI ke tempat asal dengan cara yang layak serta menanggung semua biaya yang diperlukan, termasuk biaya penguburan sesuai dengan tata cara agama TKI yang bersangkutan;
 - d. mengurus pemakaman di negara tujuan penempatan TKI atas persetujuan pihak keluarga TKI atau sesuai dengan ketentuan yang berlaku di negara yang bersangkutan;
 - e. memberikan perlindungan terhadap seluruh harta milik TKI untuk kepentingan anggota keluarganya; dan
 - f. mengurus pemenuhan semua hak-hak TKI yang seharusnya diterima.
- (3) Dalam hal terjadi perang, bencana alam, wabah penyakit, dan deportasi sebagaimana dimaksud pada ayat (1) huruf c, dan huruf g, Perwakilan Republik Indonesia, Badan Nasional Penempatan kepulangan TKI sampai ke daerah asal TKI.

Pasal 74

- (1) Setiap TKI yang akan kembali ke Indonesia wajib melaporkan kepulangannya kepada Perwakilan Republik Indonesia negara tujuan.
- (2) Pelaporan bagi TKI yang bekerja pada Pengguna perseorangan dilakukan oleh pelaksana penempatan TKI swasta.

Pasal 75

- (1) Kepulangan TKI dari negara tujuan sampai tiba di daerah asal menjadi tanggung jawab pelaksana penempatan TKI.
- (2) Pengurusan kepulangan TKI sebagaimana dimaksud pada ayat (1) meliputi hal :
 - a. pemberian kemudahan atau fasilitas kepulangan TKI;
 - b. pemberian fasilitas kesehatan bagi TKI yang sakit dalam kepulangan; dan
 - c. pemberian upaya perlindungan terhadap TKI dari kemungkinan adanya tindakan pihak-pihak lain yang tidak bertanggung jawab dan dapat merugikan TKI dalam kepulangan.

- (3) Pemerintah dapat mengatur kepulangan TKI
- (4) Ketentuan lebih lanjut mengenai pemulangan TKI sebagaimana dimaksud pada ayat (1), ayat (2), dan ayat (3) diatur lebih lanjut dengan Peraturan Menteri.

Bagian Ketujuh

Pembiayaan

Pasal 76

- (1) Pelaksana penempatan TKI swasta hanya dapat membebankan biaya penempatan kepada calon TKI untuk komponen biaya :
 - a. pengurusan dokumen jati diri;
 - b. pemeriksaan kesehatan dan psikologi; dan
 - c. pelatihan kerja dan sertifikasi kompetensi kerja.
- (2) Biaya selain biaya sebagaimana dimaksud pada ayat (1) diatur lebih lanjut dengan Peraturan Menteri.
- (3) Komponen biaya sebagaimana dimaksud pada ayat (1) dan ayat (2) harus transparan dan memenuhi asas akuntabilitas.

BAB VI

PERLINDUNGAN TKI

Pasal 77

1. Setiap calon TKI/TKI mempunyai hak untuk memperoleh perlindungan sesuai dengan peraturan perundang-undangan.
2. Perlindungan sebagaimana dimaksud pada ayat (1) dilaksanakan mulai dari pra penempatan, masa penempatan, sampai dengan purna penempatan.

Pasal 78

1. Perwakilan Republik Indonesia memberikan perlindungan terhadap TKI di luar negeri sesuai dengan peraturan perundang-undangan serta hukum dan kebiasaan internasional.
2. Dalam rangka perlindungan TKI di luar negeri, Pemerintah dapat menetapkan jabatan Atase Ketenagakerjaan pada Perwakilan Republik Indonesia tertentu.
3. Penugasan Atase Ketenagakerjaan sebagaimana dimaksud pada ayat (2) dilakukan sesuai dengan peraturan perundang-undangan.

Pasal 79

Dalam rangka pemberian perlindungan selama masa penempatan TKI di luar negeri, Perwakilan Republik Indonesia melakukan pembinaan dan pengawasan terhadap perwakilan pelaksana penempatan TKI swasta dan TKI yang ditempatkan di luar negeri.

Pasal 80

1. Dengan pertimbangan selama masa penempatan TKI di luar negeri dilaksanakan antara lain :
 - a. pemberian bantuan hukum sesuai dengan ketentuan peraturan perundang-undangan di negara tujuan serta hukum dan kebiasaan internasional;
 - b. pembelaan atas pemenuhan hak-hak sesuai dengan perjanjian kerja dan/atau peraturan perundang-undangan di negara TKI ditempatkan.

2. Ketentuan mengenai pemberian perlindungan selama masa penempatan TKI di luar negeri sebagaimana dimaksud pada ayat (1) diatur lebih lanjut dengan Peraturan Pemerintah.

Pasal 81

1. Dengan pertimbangan untuk melindungi calon TKI/TKI, pemerataan kesempatan kerja dan/atau untuk kepentingan ketersediaan tenaga kerja sesuai dengan kebutuhan nasional, Pemerintah dapat menghentikan dan/atau melarang penempatan TKI di luar negeri untuk negara tertentu atau penempatan TKI pada jabatan - jabatan tertentu di luar negeri.
2. Dalam menghentikan dan/atau melarang penempatan TKI sebagaimana dimaksud pada ayat (1), Pemerintah memperhatikan saran dan pertimbangan Badan Nasional Penempatan dan Perlindungan TKI
3. Ketentuan mengenai penghentian dan pelarangan penempatan TKI sebagaimana dimaksud pada ayat (1), diatur lebih lanjut dengan Peraturan Pemerintah

Pasal 82

Pelaksana penempatan TKI swasta bertanggungjawab untuk memberikan perlindungan kepada calon TKI/TKI sesuai dengan perjanjian penempatan.

Pasal 83

Setiap calon TKI/TKI yang bekerja ke luar negeri baik secara perseorangan maupun yang ditempatkan oleh pelaksana penempatan TKI swasta wajib mengikuti program pembinaan dan perlindungan TKI.

Pasal 84

Program pembinaan dan perlindungan TKI sebagaimana dimaksud dalam Pasal 83 diatur lebih lanjut dengan Peraturan Pemerintah.

BAB VII PENYELESAIAN PERSELISIHAN

Pasal 85

1. Dalam hal terjadi sengketa antara TKI dengan pelaksana penempatan TKI swasta mengenai pelaksanaan perjanjian penempatan, maka kedua belah pihak mengupayakan penyelesaian secara damai dengan cara bermusyawarah.
2. Dalam hal penyelesaian secara musyawarah tidak tercapai, maka salah satu atau kedua belah pihak dapat meminta bantuan instansi yang bertanggungjawab di bidang ketenagakerjaan di Kabupaten/Kota, Provinsi atau Pemerintah.

BAB VIII PEMBINAAN

Pasal 86

1. Pemerintah melakukan pembinaan terhadap segala kegiatan yang berkenaan dengan penyelenggaraan Penempatan dan Perlindungan TKI di luar negeri.
2. Dalam melakukan pembinaan sebagaimana dimaksud pada ayat (1), Pemerintah dapat mengikutsertakan pelaksana penempatan TKI swasta, organisasi dan /atau masyarakat.
3. Pembinaan sebagaimana dimaksud pada ayat (1) dan ayat (2) dilaksanakan secara terpadu dan terkoordinasi.

Pasal 87

Pembinaan oleh Pemerintah sebagaimana dimaksud dalam Pasal 86, dilakukan dalam bidang:

- a. informasi;
- b. sumber daya manusia; dan
- c. perlindungan TKI

Pasal 88

Pembinaan oleh Pemerintah dalam bidang informasi sebagaimana dimaksud dalam Pasal 87 huruf a, dilakukan dengan :

- a. membentuk sistem dan jaringan informasi yang terpadu mengenai pasar kerja luar negeri yang dapat diakses secara meluas oleh masyarakat
- b. memberikan informasi keseluruhan proses dan prosedur mengenai penempatan TKI di luar negeri termasuk resiko bahaya yang mungkin terjadi selama masa penempatan TKI di luar negeri

Pasal 89

Pembinaan oleh Pemerintah dalam bidang sumber daya manusia sebagaimana dimaksud dalam Pasal 87 huruf b, dilakukan dengan :

- a. meningkatkan kualitas keahlian dan/atau keterampilan kerja calon TKI/TKI yang akan ditempatkan di luar negeri termasuk kualitas kemampuan berkomunikasi dalam bahasa asing;
- b. membentuk dan mengembangkan pelatihan kerja yang sesuai dengan standar dan persyaratan yang ditetapkan.

Pasal 90

Pembinaan oleh Pemerintah dalam bidang perlindungan TKI sebagaimana dimaksud dalam Pasal 87 huruf c, dilakukan dengan :

- a. memberikan bimbingan dan advokasi bagi TKI mulai dari pra penempatan, masa penempatan dan purna penempatan;
- b. memfasilitasi penyelesaian perselisihan atau sengketa calon TKI/TKI dengan Pengguna dan/atau pelaksana penempatan TKI
- c. Menyusun dan mengumumkan daftar Mitra Usaha dan Pengguna bermasalah secara berkala sesuai dengan peraturan perundang-undangan;
- d. melakukan kerjasama internasional dalam rangka perlindungan TKI sesuai dengan peraturan perundang-undangan.

Pasal 91

1. Pemerintah dapat memberikan penghargaan kepada orang atau lembaga yang telah berjasa dalam pembinaan penempatan dan perlindungan TKI di luar negeri.
2. Penghargaan sebagaimana dimaksud pada ayat (1) dapat diberikan dalam bentuk piagam, uang, dan/atau bentuk lainnya.

BAB IX PENGAWASAN

Pasal 92

1. Pengawasan terhadap penyelenggaraan penempatan dan perlindungan TKI di luar negeri

dilaksanakan oleh instansi yang bertanggung jawab di bidang ketenagakerjaan pada Pemerintah, Pemerintah Provinsi, dan Pemerintah Kabupaten/Kota.

2. Pengawasan terhadap penyelenggaraan penempatan dan perlindungan TKI di luar negeri dilaksanakan oleh Perwakilan Republik Indonesia di negara tujuan.
3. Pelaksanaan pengawasan terhadap penyelenggaraan penempatan dan perlindungan TKI di luar negeri sebagaimana dimaksud pada ayat (1) dan ayat (2), diatur lebih lanjut dengan Peraturan Pemerintah.

Pasal 93

1. Instansi yang bertanggung jawab di bidang ketenagakerjaan pada Pemerintah Provinsi dan Pemerintah Kabupaten/Kota wajib melaporkan hasil pelaksanaan pengawasan terhadap pelaksanaan penempatan dan perlindungan TKI di luar negeri yang ada di daerahnya sesuai dengan tugas, fungsi dan wewenangnya kepada Menteri.
2. Ketentuan mengenai tata cara pelaporan sebagaimana dimaksud pada ayat (1), diatur lebih lanjut dengan Peraturan Menteri.

BAB X BADAN NASIONAL PENEMPATAN DAN PERLINDUNGAN TKI

Pasal 94

1. Untuk menjamin dan mempercepat terwujudnya tujuan penempatan dan perlindungan TKI di luar negeri, diperlukan pelayanan dan tanggung jawab yang terpadu.
2. Untuk mencapai tujuan sebagaimana dimaksud pada ayat (1), dibentuk Badan Nasional Penempatan dan Perlindungan TKI
3. Badan Nasional Penempatan dan Perlindungan TKI sebagaimana dimaksud pada ayat (2), merupakan lembaga pemerintah non departemen yang bertanggung jawab kepada Presiden yang berkedudukan di Ibukota Negara.

Pasal 95

1. Badan Nasional Penempatan dan Perlindungan TKI sebagaimana dimaksud dalam Pasal 94 mempunyai fungsi pelaksanaan kebijakan di bidang penempatan dan perlindungan TKI di luar negeri secara terkoordinasi dan terintegrasi.
2. Untuk melaksanakan fungsi sebagaimana dimaksud pada ayat (1), Badan Nasional Penempatan dan Perlindungan TKI bertugas :
 - a. melakukan penempatan atas dasar perjanjian secara tertulis antara Pemerintah dengan Pemerintah negara Pengguna TKI atau Pengguna berbadan hukum di negara tujuan penempatan sebagaimana dimaksud dalam Pasal 11 ayat (1);
 - b. memberikan pelayanan, mengkoordinasikan, dan melakukan pengawasan mengenai :
 - dokumen;
 - pembekalan akhir pemberangkatan (PAP);
 - penyelesaian masalah;
 - sumber-sumber pembiayaan;
 - pemberangkatan sampai pemulangan;
 - peningkatan kualitas calon TKI;
 - informasi;
 - kualitas pelaksana penempatan TKI; dan
 - peningkatan kesejahteraan TKI dan keluarganya

Pasal 96

1. Keanggotaan Badan Nasional Penempatan dan Perlindungan TKI terdiri dari wakil-wakil instansi Pemerintah terkait.
2. Dalam melaksanakan tugasnya, Badan Nasional Penempatan dan Perlindungan TKI sebagaimana dimaksud dalam Pasal 95 ayat (2) dapat melibatkan tenaga-tenaga profesional

Pasal 97

Ketentuan lebih lanjut mengenai pembentukan, fungsi, tugas, struktur organisasi, dan tata kerja Badan Nasional Penempatan dan Perlindungan TKI diatur dengan Peraturan Presiden.

Pasal 98

1. Untuk kelancaran pelaksanaan pelayanan penempatan TKI, Badan Nasional Penempatan dan Perlindungan TKI membentuk Balai Pelayanan Penempatan dan Perlindungan TKI di Ibukota Provinsi dan/atau tempat pemberangkatan TKI yang dianggap perlu
2. Balai Pelayanan Penempatan dan Perlindungan TKI sebagaimana dimaksud pada ayat (1) bertugas memberikan kemudahan pelayanan pemrosesan seluruh dokumen penempatan TKI.
3. Pemberikan pelayanan pemrosesan dokumen sebagaimana dimaksud pada ayat (2) dilakukan bersama-sama dengan instansi yang terkait.

Pasal 99

1. Balai Pelayanan Penempatan dan Perlindungan TKI sebagaimana dimaksud dalam Pasal 98 berada di bawah dan bertanggung jawab kepada Kepala Badan.
2. Tata cara pembentukan dan susunan organisasi Balai Pelayanan Penempatan dan Perlindungan TKI sebagaimana dimaksud pada ayat (1) diatur lebih lanjut dengan Keputusan Kepala Badan.

BAB XI SANKSI ADMINISTRATIF

Pasal 100

1. Menteri menjatuhkan sanksi administratif atas pelanggaran terhadap ketentuan-ketentuan sebagaimana dimaksud dalam Pasal 17 ayat (1), Pasal 20, Pasal 30, Pasal 32 ayat (1), Pasal 33, Pasal 34 ayat (3), Pasal 38 ayat (2), Pasal 54 ayat (1), Pasal 55 ayat (2) dan ayat (3), Pasal 58 ayat (1) dan ayat (2), Pasal 62 ayat (1), Pasal 67 ayat (1) dan ayat (2), Pasal 69 ayat (1), Pasal 71, Pasal 72, Pasal 73 ayat (2), Pasal 74, Pasal 76 ayat (1), Pasal 82, Pasal 83, atau Pasal 105.
2. Sanksi administratif sebagaimana dimaksud pada ayat (1) berupa :
 - a. peringatan tertulis;
 - b. penghentian sementara sebagian atau seluruh kegiatan usaha penempatan TKI;
 - c. pencabutan izin;
 - d. pembatalan keberangkatan calon TKI; dan / atau
 - e. pemulangan TKI dari luar negeri dengan biaya sendiri
3. Ketentuan lebih lanjut mengenai sanksi administratif sebagaimana dimaksud pada ayat (1) dan ayat (2), diatur lebih lanjut dengan Peraturan Menteri.

BAB XII PENYIDIKAN

Pasal 101

1. Selain Penyidik Pejabat Polisi Negara Republik Indonesia, kepada Pejabat Pegawai Negeri Sipil tertentu di instansi Pemerintah, Pemerintah Provinsi dan/atau Pemerintah Kabupaten/Kota yang bertanggung jawab di bidang ketenagakerjaan diberi wewenang khusus sebagai Penyidik sebagaimana dimaksud dalam Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, untuk melakukan penyidikan tindak pidana sebagaimana diatur dalam Undang-Undang ini.
2. Penyidik sebagaimana dimaksud pada ayat (1) berwenang :
 - a. melakukan pemeriksaan atas kebenaran laporan tentang tindak di bidang penempatan dan perlindungan TKI;
 - b. melakukan pemeriksaan terhadap orang yang diduga melakukan tindak pidana di bidang penempatan dan perlindungan TKI;
 - c. meminta keterangan dan bahan bukti dari orang atau badan hukum sehubungan dengan tindak pidana di bidang penempatan dan perlindungan TKI;
 - d. melakukan pemeriksaan atau penyitaan bahan atau barang bukti dalam perkara tindak pidana di bidang penempatan dan perlindungan TKI;
 - e. melakukan pemeriksaan atas surat dan/atau dokumen lain tentang tindak pidana di bidang penempatan dan perlindungan TKI;
 - f. meminta bantuan tenaga ahli dalam rangka pelaksanaan tugas penyidikan tindak pidana di bidang penempatan dan perlindungan TKI;
 - g. menghentikan penyidikan apabila tidak terdapat cukup bukti yang membuktikan tentang adanya tindak pidana di bidang penempatan dan perlindungan TKI.
3. Kewenangan Penyidik Pegawai Negeri Sipil sebagaimana dimaksud pada ayat (2) dilaksanakan sesuai dengan Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

BAB XIII KETENTUAN PIDANA

Pasal 102

1. Dipidana dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 5 (lima) tahun dan / atau denda paling sedikit Rp. 1.000.000.000,00 (satu miliar rupiah) dan paling banyak Rp. 5.000.000.000,00 (lima miliar rupiah), setiap orang yang :
 - a. mengalihkan atau memindahtangankan SIPPTKI sebagaimana dimaksud dalam Pasal 19;
 - b. mengalihkan atau memindahtangankan SIP kepada pihak lain sebagaimana dimaksud dalam Pasal 33;
 - c. melakukan perekrutan calon TKI yang tidak memenuhi persyaratan sebagaimana dimaksud dalam Pasal 35;
 - d. menempatkan TKI yang tidak lulus dalam uji kompetensi kerja sebagaimana dimaksud dalam Pasal 45;
 - e. menempatkan TKI tidak memenuhi persyaratan kesehatan dan psikologi sebagaimana dimaksud dalam Pasal 50;
 - f. menempatkan calon TKI/TKI yang tidak memiliki dokumen sebagaimana dimaksud dalam Pasal 51;
 - g. menempatkan TKI di luar negeri tanpa perlindungan program asuransi sebagaimana dimaksud dalam Pasal 68; atau
 - h. memperlakukan calon TKI secara tidak wajar dan tidak manusiawi selama masa di

- penempatan sebagaimana dimaksud dalam Pasal 70 ayat (3)
2. Tindak pidana sebagaimana dimaksud pada ayat (1) merupakan tindak pidana kejahatan.

Pasal 104

1. Dipidana dengan pidana kurungan paling singkat 1 (satu) bulan dan paling lama 1 (satu) tahun dan/atau denda paling sedikit Rp. 100.000.000,00 (seratus juta rupiah) dan paling banyak Rp. 1.000.000.000,00 (satu miliar rupiah), setiap orang yang :
 - a. menempatkan TKI tidak melalui Mitra Usaha sebagaimana dipersyaratkan dalam Pasal 24;
 - b. menempatkan TKI di luar negeri untuk kepentingan perusahaan sendiri tanpa izin tertulis dari Menteri sebagaimana dimaksud dalam Pasal 26 ayat (1);
 - c. mempekerjakan calon TKI yang sedang mengikuti pendidikan dan pelatihan sebagaimana dimaksud dalam Pasal 46;
 - d. menempatkan TKI di Luar Negeri yang tidak memiliki KTKLN sebagaimana dimaksud dalam Pasal 64; atau
 - e. tidak memberangkatkan TKI ke luar negeri yang telah memenuhi persyaratan kelengkapan dokumen sebagaimana dimaksud dalam Pasal 67.
2. Tindak pidana sebagaimana dimaksud pada ayat (1) merupakan tindak pidana pelanggaran.

BAB XIV KETENTUAN LAIN-LAIN

Pasal 105

1. TKI yang bekerja di luar negeri secara perseorangan melapor pada instansi Pemerintah yang bertanggung jawab di bidang ketenagakerjaan dan Perwakilan Republik Indonesia.
2. Selain dokumen yang diperlukan untuk bekerja di luar negeri, TKI yang bekerja di luar negeri secara perseorangan harus memiliki KTKLN.

Pasal 106

1. TKI yang bekerja di luar negeri secara perseorangan berhak untuk memperoleh perlindungan.
2. Perlindungan sebagaimana dimaksud pada ayat (1) dilakukan oleh Perwakilan Republik Indonesia sesuai dengan ketentuan peraturan perundang-undangan.

BAB XV KETENTUAN PERALIHAN

Pasal 107

1. Pelaksana penempatan TKI swasta yang telah memiliki izin penempatan TKI di luar negeri sebelum berlakunya Undang-Undang ini wajib menyesuaikan persyaratan yang diatur dalam Undang-Undang ini paling lama 2 (dua) tahun sejak berlakunya Undang-Undang ini.
2. Bagi pelaksana penempatan TKI swasta yang menempatkan TKI sebelum berlakunya Undang-Undang ini, maka jangka waktu penyesuaian terhitung mulai sejak Undang-Undang ini berlaku sampai dengan berakhirnya perjanjian kerja TKI terakhir yang ditempatkan sebelum berlakunya Undang-Undang ini.
3. Apabila pelaksana penempatan TKI swasta dalam jangka waktu yang ditentukan sebagaimana dimaksud pada ayat (1) tidak menyesuaikan persyaratan-persyaratan yang diatur dalam Undang-undang ini, maka izin pelaksana penempatan TKI swasta yang bersangkutan dicabut oleh Menteri.

Pasal 108

Pembentukan Badan Nasional Penempatan dan Perlindungan TKI sebagaimana dimaksud dalam Pasal 94 ayat (2) dilakukan dalam waktu paling lama 2 (dua) tahun sejak berlakunya Undang-Undang ini.

BAB XVI KETENTUAN PENUTUP

Pasal 109

Undang-Undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahui, memerintahkan pengundangan Undang-Undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Ditetapkan di Jakarta
pada tanggal 18 Oktober 2004
PRESIDEN REPUBLIK INDONESIA,

ttd

MEGAWATI SOEKARNOPUTRI

Diundangkan di Jakarta
pada tanggal 18 Oktober 2004
MENTERI NEGARA/ SEKRETARIS NEGARA REPUBLIK INDONESIA,

ttd

BAMBANG KESOWO
LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 2004 NOMOR 133

MODULE 4: Immediate assistance: Short term strategies that protect human rights

Timeframe: 2 hr 15 min (90 min + 45 min)

Learning Outcomes:

By the end of this module, the participant will be able to:

- o Distinguish between empowering and repressive responses by FSOs to domestic worker problems and give some examples of each.
- o State 4 important attitudinal traits to remember when serving domestic workers in the embassy
- o Explain why sometimes it can be difficult to identify victims of trafficking from other domestic workers
- o Explain what steps to follow for workers who are victims of trafficking or abuse
- o Name 3 groups it is useful to network with when providing immediate assistance to domestic workers and how they can assist FSOs
- o Explain what to consider when prioritising your caseload

Outline of Module

Time taken:

1. PowerPoint presentation on aims and empowering vs repressive strategies [10 min]
2. Group Exercise [5 min]
3. Feedback [10 min]
4. Role-play scenario [20 min]
5. PowerPoint presentation on attitude, dealing with victims of trafficking and assistance procedures [20 min]
6. Role play (revise) [30 min]
[break]
7. Role-play in pairs [15 min]
8. Feedback [15 min]
8. PowerPoint presentation [5 min]
Networking for assistance
9. Brainstorming exercise [10 min]
10. Feedback [15 min]
11. Prioritising cases [15 min]
12. Knowledge Review (homework)

Annex 4:

Essential Reading:

- o ICMC, *Victim Services Manual: Consular Assistance for Indonesian migrants and trafficking victims abroad*, ICMC, Jakarta, 2005 (draft), pp.8 – 30.
- o Zimmerman, C., *World Health Organisation Ethical and Safety Recommendations for interviewing Trafficked Women*, WHO, Geneva, 2003, pp.
- o ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers*, GENPROM, Geneva, 2002, Booklet 4, Co-operation to Provide Services, pp. 52-54.

Recommended Reading:

Philippines Guidelines on Immediate Assistance

Roleplay exercise

Two volunteers to replay the role play exercise applying the ICMC steps and attitudes learned.

- ♦ Those watching should note what is done right, wrong and give suggestions for further improvement
- ♦ Repeat exercise again with two new volunteers

(30 mins)

Aims

- ♦ What are empowering and repressive responses to domestic worker's problems?
- ♦ What attitude is important when serving domestic workers in the embassy?
- ♦ Why can it be difficult to identify victims of trafficking from other domestic workers?
- ♦ What steps to follow for workers who are victims of trafficking or abuse?
- ♦ Who to network with for immediate assistance to domestic workers?
- ♦ What are considerations when prioritising your caseload?

Empowering vs repressive strategies

- ♦ What do you mean by these terms?
- ♦ *Empowering actions:* Taken to protect and promote the rights of the worker FSPs empower workers by informing workers of what are their alternatives and then leaving it up to the worker to decide. Empowering actions facilitate and support the worker
- ♦ *Repressive actions:* Try to control the situation, punish the worker or simply tell her what to do.

2. Group work

Case 1

Under the law of Country X, migrant domestic workers are entitled to one day off per week. A domestic worker comes to the consulate and says she is only given one day off per month, although she does receive the correct salary payment. She is seeking advice about what to do. The foreign service officer advises her she should not raise the subject with her employer and she should keep quiet or else she might be terminated. The member of staff tells her actually she is quite lucky because she gets paid the full salary.

Case 2

Catherine has problems with an abusive employer. She tries to call the consulate many times, but she can only use the phone for a few minutes at a time in case her employer gets suspicious. Each time she calls the consulate she either can not get through (the line is busy) or when she gets through the person puts her on hold to wait because she does not speak Chinese. Catherine suffers a very bad beating for which she has to go to hospital. When she is in hospital, she reports the case to the consulate. The member of staff tells her she should have contacted them earlier.

Group work

Discuss case 1 or 2 in groups of 3 and report back.

- ♦ Is the embassy response repressive or empowering? Why?
- ♦ What actions would you take to address this situation?

(5 minutes)

Roleplay scenario

- ♦ What do you think about the response of the FSP in this case?
- ♦ What traits are important to remember when assisting domestic workers?

(20 minutes)

Roleplay scenario

- ♦ What do you think about the response of the FSP in this case?
- ♦ What traits are important to remember when assisting domestic workers?

(30 minutes)

Two participants will act in the following role-play. All participants should watch it carefully to notice the way the embassy staff interacts with the domestic worker.

Sample situation for role play

DW: Domestic Worker

FSO: Foreign Service Official

DW: I am here to collect my passport, my agency should have sent it. I broke my contract with them so I am trying to get another employer.

FSO checks for it but can't find it.

FSO: No, its not here, perhaps your agency has it, have you checked with them?

DW: I called my agency and they told me they sent it to the consulate.

FSO: Well, it's not here.

DW: I spoke to them on the phone, I asked my agent, why did you send it to the consulate? They said because the consulate wants to see you.

FSO: Why is it that we should want to see you. Why did you break your contract?

DW: *(may show reluctance to tell, hostility, may say its personal, eventually will agree to tell)*. Haven't you heard my story already? Because my employer raped me and I was physically abused.

FSO: Oh, I'm so sorry to hear that. Yes, I did hear of your case, but I had forgotten about it until you just mentioned it. We did receive your passport from the agency. Why didn't you come here when you ran away?

DW: Because I didn't know where to go and my friend helped me to go to the Labour Department.

FSO: If you came here, we could help you.

DW: What can you do to help me?

FSO: We can call your agency for you, ask your agency to help you?

DW: There is no need for that, because the agency is very bad, they are in cahoots with my employer. There is no need, because you have my passport and the copy of my contract.

FSO returns the passport and copy of the contract copy to the worker.

DW: What about my ID?

FSO: I don't have it, that's all they gave us, you'll have to get it back from the agency.

FSO: Well I am sorry that it is 5 pm and I can't stay any more to discuss your case, but can you come back tomorrow?

DW: I have to go to Labour tomorrow.

FSO: Well, can I come with you to Labour, I can take you, I will come and pick you up.

DW: OK.

FSO: Do you need any money, any food, and clothes? Where are you staying?

DW: I do not need any of that, I am staying with an NGO.

FSO: OK, well I will come and see you tomorrow.

DW: Ok, bye.

DW walks away, leaves, then returns (upset)

DW: Are you sure you will come and pick me up? How are you going to do that? You didn't even ask where I was staying. And you don't have my telephone number. Are you sure?

FSO: I'm sorry, I thought I had it, what was the address again? It's been a long day....

END

Attitude

Concern

- ♦ She may be a victim of abuse. Treat her as a human being with emotions and anxiety like any females in your own family might have in the same situation. Show concern, be polite and listen to what the worker says

Awareness of expectations

- ♦ Workers sometimes have high expectations of the embassy and what you can do for them. May be first contact with someone from their own country, they may feel that coming to the embassy will settle all their problems; they may feel of it as 'home'. FSP should be aware of this background and expectations of workers. Do not make promises you cannot help.

Non-discriminatory

- ♦ Respect the fact that a domestic worker has the same rights as any other nationals who come to the embassy for assistance, despite having a different social background.

Freedom to decide

- ♦ Provide information, inform a worker of all their choice available but any action taken is her decision. Do not pressure a worker to make a decision. You can give them more factual information about the pros and cons of different choices. You should only tell someone what they must do if it is mandatory under the law and there is no choice to be made.

Dealing with trafficked persons

Why is it difficult to identify victims of trafficking and forced labour?

- ♦ May not see themselves as victims.
- ♦ May lie because afraid or unwilling to talk
- ♦ May have difficulty to speak about it
- ♦ May not remember events well (impact of trauma)

Victims of trafficking, forced labour and other forms of abuse and exploitation will have special needs. But it is not always easy to identify victims of trafficking. They themselves may not even see themselves as victims. Therefore it is important to reflect a sympathetic and observant attitude to all workers, recognising that potentially any domestic worker who comes to the embassy for help could be a victim.

The World Health Organisation (WHO) has noted that victims of trafficking are in a complex situation and therefore may behave in ways other than one would expect of a 'typical victim' (see Annex 4). For example they may lie, they may have difficulty telling their story or remembering things coherently. WHO has developed 10 simple guidelines for people interviewing trafficked women, which are also relevant to embassy staff. These are based on protecting the basic rights of the women, so cover areas such as respecting confidentiality, being aware of security concerns, preparing referral information, getting informed consent to do the interview, not re-traumatising the woman, ensuring interpreters are prepared and preparing for an emergency situation.

ICMC guidelines for interviewing, supporting and assisting trafficked women

ICMC has developed a simple checklist when dealing with victims of trafficking as well as clear guidelines when conducting interviews with women which cover the aspects in the WHO Guidelines. This starts with the initial interview (carried out in accordance with the guidelines), assessment and referral to services including housing, legal assistance, medical care, psychosocial support, financial support, skills training, security needs (e.g. emergency hotline number) and access to contact family. The following sections are adapted from ICMC's Victim Service Manual for embassy staff in Indonesia. For more detailed information on these services refer to the text from ICMC's Victim Services Manual in Annex 4.

The Philippines has also developed comprehensive guidelines for assistance to victims of trafficking. Refer to Annex 4 Recommended Reading for these guidelines and a flowchart showing the steps of assistance.

Roleplay exercise

Two volunteers to replay the role play exercise applying the ICMC steps and attitudes learned.

- ♦ Those watching should note what is done right, wrong and give suggestions for further improvement
- ♦ Repeat exercise again with two new volunteers

(30 mins)

Assistance procedures

ICMC steps in assisting trafficked persons:

- ♦ Conduct initial interview by appropriate consulate staff

Interview tips:

- Respect confidentiality of domestic worker's story and information
- Consider security concerns connected to the traffickers/abusers
- Get informed consent of the domestic worker to interview her
- Do not re-traumatise her
- If interpreters are required, make sure they are prepared and understand the situation
- Be Aware of your Biases
- Be Sensitive to the Client
- Face the Person
- Be Open (Not arms folded)
- Lean In
- Maintain eye Contact
- Relax
- Respond to what she is saying (Be encouraging)

(Source: International Catholic Migration Commission, Victims Services Manual: Consular Assistance for Indonesian migrants and trafficking victims abroad, 2005, Jakarta, draft version).

- ♦ Organise safe accommodation (if required)
- ♦ Give referrals and service delivery information in-country
 - Legal Assistance
 - + As victims of Crime (both Criminal and Civil Issues)
 - + As Perpetrators of Crime
 - Medical Services (refer to hospital or doctor serving migrants)
 - Psychological Support (refer to counselling services)
 - banking Services/Access to Funds
 - Access to family back home (give phonecard to call home)
 - Skills Training & Activities
 - Transportation & Pick up Services
 - Hotline of Telephone Services
 - Assist in translation where required (e.g. doctor, police report)

Referral information

Referral information should be prepared in a small pamphlet that can be given to workers discreetly at the embassy or in public places. The pamphlet should be updated regularly and embassy staff should test all the numbers and address every three months to make sure that they are still operating and one is able to get through. The referral information should cover consulate hotline number and address, other hotline service in migrant languages (government and non-governmental), police and labour department, shelters, legal assistance, medical assistance, counselling services. Refer services if possible that speak the migrants language, if not mention this in the pamphlet.

Filing complaints and access to information

Good practice example:

“One night an employer flew into a rage and beat up her helper. The helper left the house and came to the consulate. A security guard received her. The guard reported it to the police, and was subsequently able to testify that he had seen fresh bruises on the helper’s face and arms when she had come to the consulate.”

Interview with Indonesian Consul General in Hong Kong⁹

If the victim chooses to file a criminal or civil complaint against their trafficker (i.e. the recruitment agency and/or the employer), she may be able to remain in the country for the duration of the trial (depending on the law of the country). A lawyer should brief the victim of their rights and the process of prosecution or civil litigation. The victim should also be referred to an NGO or social worker who can assist the victim with other matters, not related to the case for the period whilst they are in the destination country.

Education and Vocational Training

If the worker is filing a case against a trafficker or employer, she may stay in the destination country for some time while the case goes to court. In most countries she will not be able to work. Giving skills training, education or other activities is not only good for the worker’s self esteem and relieves boredom, but may provide them with useful skills when they return home. For example, the Philippines Consulate offers regular skills training sessions in cooking and sewing for domestic workers in Hong Kong. This is free for those living in the shelter. Embassies can also approach employers associations, trade unions, Government departments, NGOs and Diaspora community for information on where such courses are held, and if migrants can participate

Consider the job market in the sending and receiving countries (generally) for sectors of work that are currently in demand and conduct courses accordingly. Examples might include tailoring, health care professionals, financial management, business and entrepreneurial skills, IT skills and foreign language lessons. These should be updated annually to reflect the skills most in current demand. For example, in Hong Kong, the Thai consulate gives scholarships to some domestic workers who are committed to furthering their education whilst in Hong Kong and enables them to conduct higher education through the consulate for free.

Assistance procedures (cont)

- ♦ Discuss and Assess her Needs and Options (including returning home or staying in the destination country)
What legal possibilities are there to stay/go?
What does she want?
- ♦ Document her case and collect data
Assist her to obtain Proper Documents to Remain in-Country or Return Home

⁹ Anggraeni, D., Dreamcatchers: Indonesian Women Who Seek Work as Domestic Helpers Overseas, ILO, 2005, Draft only, p. 33.

Options to stay or return

Embassy staff should advise victims about their options to remain in the country or to return home, depending on the country's law and what are the victim's wishes. Victims of trafficking should have some recovery time to consider what has happened to them and whether they want to press criminal or civil charges against the trafficker, if they want to stay or return home. Studies have proved that such time is needed for victims to recover and make a more informed decision about what they want to do.¹⁰ Not all victims need such time, and if a victim is ready to report the trafficker or clearly wants to return home immediately, you should not try to dissuade her otherwise. However, if they are unsure, it is good to give them some time and not press them to make a decision.

Assistance procedures (cont)

- ♦ Assist repatriation process if voluntary return
- ♦ Facilitate services through referrals upon return

(Source: International Catholic Migration Commission, Victims Services Manual: Consular Assistance for Indonesian migrants and trafficking victims abroad, 2005, Jakarta, draft version).

Return and reintegration

- ♦ Domestic worker is medically, physically, mentally and emotionally fit to travel home
- ♦ Entire journey home is safe (not just to border but to home or safe shelter)
- ♦ Arrange for someone they know to meet them upon return
- ♦ Ascertain needs of worker including security, health, legal, psycho-social and economic needs
- ♦ Give referral information about organisations that can help them in the origin
- ♦ Up-to-date contact information of police and/or victim support services in their area as well as in the capital.

In the longer term, victims of trafficking may need assistance from the embassy both during the trial and if they return home, in repatriation and reintegration.

Return: repatriation and reintegration

Victims of trafficking should not be deported to the country of origin, but rather should be repatriated. This is in line with international standards¹¹ and under the Philippine law 9208. The embassy must ensure that the entire journey home is safe. Victims of trafficking are vulnerable to be re-trafficked or subject to reprisals, for example, if they meet the agent who recruited them at the airport, transit centre or upon return to their community. The safety issue should be discussed with the victim and if possible, arrange for someone they know to meet them upon return.

¹⁰ Such as by Anti-Slavery International...

¹¹ See OHCHR Recommended Principles and Guidelines

Embassy staff should make an assessment of the victim's needs upon return including security, health, legal, psycho-social and economic needs. They must ensure that victims of trafficking are provided referral information about organisations that can help them in the origin such as NGOs working with returned migrants, women, health issues and HIV/AIDS and income generation. Up-to-date contact information of police and/or victim support services in their area as well as in the capital should also be provided to the victim.

Dealing with children (minors)¹²

Children (i.e. persons under 18 years of age) who are migrant domestic workers need special protection. Remember that due to their increased vulnerability, they can be victims of trafficking more easily than women. The best interests of the child should be the paramount concern when dealing with children. Embassy staff must make extra effort to identify and locate family members. Embassy staff should conduct a risk assessment (by inquiring into how the child was trafficked in the first place and issues of parental consent or neglect). If it is deemed to be in the best interest of the child, the child should be reunited with the family. The views of the child concerned should be taken into consideration where the child is of an age to be able to express and form their own views. Likewise, in any support and assistance programmes for children, consider their special needs in programmes such as the right to go to school whilst at destination.

Tips on giving assistance to workers and working with others

Dealing with employment contract violations:

- ♦ inform the domestic worker of all the options.
- ♦ use of mediators/conciliators in embassies does help to settle disputes between employers, agents and workers. However remember the embassy should always remain neutral. You have the obligation to inform the worker of other alternatives should mediating with the agency or employer not result positively for the worker.
- ♦ Inform workers of the rights under the labour law to bring claims and provide balanced information on the pros and cons of bringing a legal case against an employer or agency.

Liaising with employers and agencies

- ♦ May be useful for 'local hires' to liaise with employers and agencies to overcome cultural differences e.g. Indonesian embassy does this in Singapore.
- ♦ It is important for FSP to be neutral and to be seen to be neutral when dealing with agencies, employers and workers. Therefore do not treat agencies more favourably, especially in front of workers.

Liaising with Labour Department officials and police officers

- ♦ Find out if there is a special task force on migrant workers, trafficking or forced labour e.g. in Singapore there is a task force on migrant workers. If such a task force exists, check the procedure for referring complaints. It is usually preferable for workers to file complaints with the task force rather than at the local Labour Department. Especially in trafficking cases, officers who are more experienced in dealing with abuse will be more sensitive to the needs and rights of workers.
- ♦ Try to develop a personal connection with officials in the Labour Department and police force so they can help you in problematic or sensitive cases.

¹² See the OHCHR Guidelines on children

Role-play exercise in pairs

A consular officer is interviewing a domestic worker at the front of the queue in an aggressive manner. The domestic worker claims she has had her hand ironed by her employer and also has not been paid. She is currently staying at an NGO shelter.

FSP: 'So you say your employer hurt your hand, are you sure you didn't do it yourself?'

DW: 'No, I didn't'. *FSP is not friendly, keeps blaming worker, worker has bandaged hand.*

FSP: 'If you are lying I tell you, you will go to prison',

DW: 'I'm ready to go to prison, its impossible that I did it myself, she did this to me'.

FSP: But why do you want to make a claim against your employer? It is wasting our time. Why do you do that?

DW: I want justice and I want my money

FSP: Why do you need money? Money is not so important, what is important is you have a job. You should go back to the agency, do not go back to the NGO, go back to the agency and ask them to give you a new employer.

Roleplay in pairs

- ♦ Read out the next role play in pairs and discuss what is wrong with the FSP response
- ♦ Then act it out bearing in mind the principles learned in this Module

(15 mins)

Budged constraints

- ♦ Problems: The embassy does not have the resources to help the huge numbers of victims. We have to turn them away. We struggle to provide them with food and basic health care, we can't afford to give them all these things
- ♦ Solutions: The assistance described here does not need to be costly. Staff willing to help and with a positive attitude does not cost money. In terms of the services, these can be provided by networking with others in the destination country.
- ♦ Example: the Singapore embassy has been able to do a lot with limited resources based on the Singapore's Ambassador's willingness to work with others.

Networking

"Networking is the key to success when you have limited resources such as we do. You can't survive with limited resources without networking"

Philippines Labour Attache in Hongkong

Networking

Why?

- ♦ Ensures victims obtain immediate assistance
- ♦ Save embassy time
- ♦ Saves embassy resources
- ♦ Others are skilled and have resources to provide specific services to victims

Brainstorming exercise

Split into two groups and discuss how you would involve the following groups in providing assistance to domestic workers and what support they could provide.

Group 1: Diaspora community, lawyers and host government

Group 2: NGOs and trade unions

(15 minutes)

Diaspora community

This is the community of other nationals working and living in the host country. Can the consulate encourage solidarity amongst nationals despite class differences? For example, support through donations to the shelter, volunteering time to orientate new domestic workers to the city, assisting with translation and teaching to domestic workers. The Thai community does this in Hong Kong.

Lawyers

FSP should approach law firms for pro-bono assistance specialising in labour, criminal and immigration cases. Philippine Labour Attaché in Hong Kong shares his experience, "When I arrived we called up many law firms and asked them to help us. We used the argument that Philippine workers contribute a lot to Hong Kong society, domestic workers free up Hong Kong women's time to work and earn money, but we asked them, 'how do you repay society?' Lawyers are willing to help; they just need to be asked. It is good for us to have specialised lawyers who are familiar with the issues whom we can call on when we need."

Host Government

- o FSP should find out what services the host government is providing for migrant domestic workers.
- o For example, host governments such as Hong Kong and Singapore provide comprehensive information to domestic workers such as post-arrival orientation programmes for workers, written and audio-visual guides on the country's services and laws, referral information in various languages, free telephone consultation services etc.
- o Some cities or local governments may provide services to migrants. In Taipei, Taiwan, the local government has a cultural centre for migrant workers including free access to computers, fitness facilities, karaoke and a mini-library.
- o Ask host government to provide additional services or facilities for migrants. Where host governments are not providing enough services, sending countries should ask for them.

- A government official of a receiving country stated, "If the Indonesian embassy asked us for facilities like the Philippines did, then we would provide them the space and facilities, but they don't ask us."
- After all, if migrants are trafficked, then it is the responsibility of the host country to protect these migrants with assistance such as housing (not detention), medical and legal assistance to trafficked workers.

NGOs

Some FSP regard NGOs as a threat, or as a problem, "They are troublemakers and they just cause us more problems". However, this is not true in all cases. NGOs can be an extremely powerful ally to embassies. Some NGOs give important services to migrants such as legal support, shelter, psycho-social support. It is important to know these NGOs to give referrals, as well as to know those who advocate on behalf of domestic workers. This will be covered in more detail in Module 5.

The NGOs considered 'troublemakers' may be advocating for domestic workers' rights. These NGOs provide a vital role also, even if FSP do not agree with their approach. Without their action and increased attention on issues, Governments might not feel the pressure to change their policies to provide increased protection to domestic workers.

At the end of the day, if policies afford more protection to domestic workers, then FSP will have fewer problems to deal with. Thus it is important to foster a good relationship with NGOs.

The Indonesian Ambassador tells of his experience with NGOs.

"Co-operation with NGOs is critical. There is a lot of potential to work together with NGOs to protect the domestic workers and we co-operate very closely. They are very responsive to the situation of domestic workers. For instance, with the current trials of 2 maids accused of killing their employer, we have facilitated an NGO to come from Jakarta to stay here during the trial. Thus they can see for themselves what we are doing on domestic workers here and they are also able to give support to the accused during the trial. It is important to foster good relationships with NGOs, we really want to open their eyes and show them that we are working and caring about this issue."

Trade unions

Some trade unions are responsive to protecting the interests of migrant domestic workers, such as in Hong Kong and Malaysia. In Hong Kong, migrant domestic workers have even formed their own trade unions. Unions can advise migrant domestic workers about their rights under the labour law, and what to do if they are suffering exploitation or abuse. Unions will provide this basic information to all workers, regardless of whether they are members. This means that domestic workers have other support mechanisms to turn to besides the embassy when they face problems in the workplace.

If domestic workers are members of trade unions, the union will also accompany and represent them in the Labour Department and Labour Tribunal. Unions can reduce the workload of labour attaches and embassy staff by addressing labour concerns of domestic workers, thus embassies should check if any unions are sympathetic to migrant workers and domestic workers and see what services they can provide. In cases of forced labour and trafficking, the relevant unions in Hong Kong will advise workers to report the case to the police and advise them to contact relevant social service providers.

Complementing services/resources:

Network partners-

- ♦ Lawyers (pro-bono and legislative drafting)
- ♦ Host government (migrant services and information)
- ♦ NGOs (migrant support, shelter, legal and psycho-social)
- ♦ Trade unions (legal advice and support)
- ♦ Diaspora community (volunteers, orientation, finance)
- ♦ Keep up-to-date records of who provides what services
- ♦ Compile lists of shelters, lawyers, health professionals, counsellors or psycho-social therapist, translators, NGOs and trade unions willing and have capacity to assist migrant domestic workers
- ♦ Host governments or NGOs may compile this information already but embassy staff should verify information and suitability of services e.g. access, language and safety.

Prioritising the workload

It's 7 pm, and you have been working late because there is such a backlog of cases to deal with. You are expected to attend a high-level ceremony with the Ambassador. However, at the last minute you receive a call from the police, a domestic worker has been hospitalised and is in intensive care after 'jumping' from a seven storey window. What do you do?

- ♦ Prioritise cases based on need. Urgent cases of trafficking abuse need to be dealt with immediately, which means sometimes out of regular working hours
- ♦ Have backup plans of referring workers to other migrant support organisations if the embassy is unable to cope with the number of complaints
- ♦ Use a database and ensure that cases are documented and files are organized. It is also useful to document chronology of actions taken to solve the cases
- ♦ Contingency plan for unforeseen events (e.g. tsunami, SARS outbreak, terrorism etc.). Does your embassy have a contingency plan to give assistance to victims of trafficking in emergency situations?

Key learning points from Module 4

- An empowering action is one that protects and promotes the worker's rights, provides them with information and facilitates them to make their own decisions. A repressive action is one that response is one that tries to control the situation and punish the worker or simply tells her what to do. Embassy staff should try to empower workers when giving assistance to them.
- Four important attitudinal traits to remember when serving domestic workers, especially those who are victims are 1) to show concern, 2) be aware of her expectations (don't offer what you can't give), 3) you should treat her equally to other nationals and 4) give her freedom to make her own decisions.
- It can be difficult sometimes to identify victims of trafficking because they may not see themselves as victims, they may like because they are afraid or unwilling to talk, they may find it difficult to speak about what has happened and they may not remember the events very well (psychological trauma)
- If you suspect a woman has been trafficked who comes to the embassy follow these steps:
 - ◆ Conduct Initial Interview by appropriate staff
 - ◆ Organise Safe Accommodation (if required)
 - ◆ Give referrals and Service Delivery In-country
 - ◆ Discuss and Assess her needs and options (including returning home or staying in the destination country)
 - ◆ Document her case and collect the data
 - ◆ Assist her to Obtain Proper Documents to Remain in Country or Return Home
 - ◆ Assist the Repatriation Process if voluntarily returning
 - ◆ Facilitate services through referrals for when she return
- Networking with others ensures women can get assistance quickly, it save time and resources and ensures women can get appropriate assistance quickly.
- Some NGOs, lawyers, Host Government Departments and sometimes trade unions who are sympathetic to migrant domestic workers may provide social or legal assistance and information to migrant women. The Diaspora Community may be activated to donate time or money to assist women in need. Embassy staff should learn who provides what in the destination country to avoid duplicating efforts.
- When prioritising your caseload, ensure trafficking and other cases of abuse are dealt with promptly, ensure a back-up referral system for outside working hours and have a contingency plan for unforeseen events.

Knowledge Review

1. Is the action taken by the FSP in the following case empowering or repressive?
A labour attaché describes the process for mediating labour disputes involving domestic workers in Malaysia, "We have a tripartite system involving the embassy, agency and the employers. We sit together and discuss the situation. The worker only sits in sometimes, to avoid interrupting the negotiations."
Repressive Empowering
2. An empowering response:
 - a. protects and promotes the rights of domestic workers
 - b. informs domestic workers of their alternatives
 - c. facilitate domestic workers to take action
 - d. all of the above
3. Four attitudinal traits to remember when interviewing domestic workers are:
 - a. Sympathetic, Awareness of expectations, Non-discriminatory, Freedom to decide
 - b. Sympathetic, Friendly, Non-discriminatory, Relaxed
 - c. Sympathetic, Awareness of expectations, Efficient, Freedom to decide
 - d. Sympathetic, Non-discriminatory, Efficient, Friendly
4. It is difficult to identify victims of trafficking because
 - a. They don't all look the same
 - b. They sometimes lie because they are afraid and confused
 - c. They don't think they are victims
 - d. All of the above
5. A domestic worker who has been trafficked is rescued and brought to the embassy by an NGO. You interview her and ensure she has access to basic services, housing, legal, medical and so on. What is the next step?
 - a. Assistance in Obtaining Proper Documents to Remain in Country or Return Home
 - b. Documentation and data collection
 - c. Discussion and Assessment of Client's Needs and Options (including returning home or staying in the destination country)
 - d. Repatriation
 - e. Arrange for victim to go to the immigration detention centre
6. When a victim of trafficking is repatriated the FSP should make arrangements to:
 - a. Take her shopping before she goes home
 - b. Arrange for her to be met by local media to bring attention to the case
 - c. Assess her economic, psycho-social, security, health and legal needs upon return
 - d. All of the above
7. A worker comes to the embassy and complains of maltreatment by her employer. The FSP refers her to her agency. The agency official sends her back to the employer and the worker is severely beaten. What should the FSP have done instead?
 - a. Nothing, it is through no fault of the FSP that the domestic worker was beaten
 - b. The FSP should not simply refer the worker to the agency, but inform the worker that maltreatment is not acceptable, and advise her of her rights under the destination country's law
 - c. The FSP should speak to the agency and arrange for the worker to be sent home

8. In case of a natural disaster, the embassy should:
 - a. Downgrade trafficking to second priority, postpone assistance to victims until things calm down
 - b. Keep working as if nothing has happened
 - c. Activate the disaster or crisis contingent response plan to ensure victims of trafficking still receive urgent assistance
 - d. Activate the disaster or crisis contingent response plan and postpone all assistance to victims until things calm down

Day 2 Close: Implementing our Learning

LEARNING IMPLEMENTATION PLAN ¹

NAME:	POSITION TITLE:
POSTING TO:	
MODULE TITLE:	DATE:

1. WHICH OF THE SUBJECTS COVERED IN THE MODULE WILL YOU BE IMPLEMENTING IN YOUR WORK? (PICK ONE OR TWO, THE MOST IMPORTANT)
2. WHAT ROLE OR AREA OF RESPONSIBILITY IN YOUR JOB DOES THIS SUBJECT RELATE TO?
3. WHY HAVE YOU CHOSEN ROLE OR RESPONSIBILITY FOR THE PLAN? Is there a problem that you are trying to solve? or, Is there a skill area, which you need to strengthen or improve?
4. WRITE AN OBJECTIVE FOR IMPROVEMENT. What do you hope to achieve by working on this role or responsibility with the new knowledge that you have? Within _____months of attending this programme I will have ...
5. INDICATORS. WHAT WILL SHOW YOU HAVE SUCCESSFULLY ACHIEVED YOUR OBJECTIVE AND MADE USE OF YOUR LEARNING? How will you be able to show that you have been successful or made progress? What measures can you or others use to assess your success?

6. WHAT ACTIVITIES ARE NECESSARY TO ACHIEVE YOUR OBJECTIVES? List the things you will have to do step by step.
7. WILL ANYONE ELSE BE AFFECTED BY YOUR PLAN? For example your staff. You need to make sure they understand and agree with your ideas.
8. WHAT RESOURCES WILL YOU NEED? Will you need any extra resources – remember that time is a resource and new activities or methods of doing something can take more time than things that are already known.
9. WHAT POTENTIAL PROBLEMS MIGHT YOU HAVE? For example, someone else who will be affected by your plan but may not agree with the way you want to do things now.
10. WHO WILL HELP YOU WITH THIS PLAN? This includes thinking about who can help you to solve problems.
SIGNED: _____ DATE: _____

¹ Adapted from Matthews N., Draft Learning Implementation Plan for Anti-Trafficking Training Programme for the Greater Mekong Sub-Region, UNIAP, Bangkok, 10 September 2005 (DRAFT CURRICULUM).

ANNEX 4: ESSENTIAL READING

ICMC,

Victim Services Manual: Consular Assistance for Indonesian migrants and trafficking victims abroad,

Jakarta, 2005 (draft), pp.8 – 30:

Support and Assistance in Destination Country from Consulate/ Embassy

Initial Interview with Client by Consulate Staff

Step 1: Conducting Initial Interview (& Completing Interview Form – Appendix 1)

Step 2: Assessing Client's Emergency Medical & Psychological Needs

Step 3: Advising Client of available Shelter Facilities

Step 4: Provision of Basic Information Kit to Client

Step 5: Opening Client Case File

Provision of Safe Shelter

Referrals and Service Delivery In-country

- ♦ Legal Assistance
 - As Victims of Crime
 - As Perpetrators of Crime
- ♦ Medical Services
- ♦ Psychological Support
- ♦ Banking Services/ Access to Funds
- ♦ Access to family in Indonesia
- ♦ Skills Training & Activities
- ♦ Transportation & Pick up Services
- ♦ Hotline or Telephone Services

Discussion and Assessment of Client's Needs and Options (including returning to Indonesia or staying in the destination country)

Documentation and data collection

Assistance in Obtaining Proper Documents to Remain in Country or Return to Indonesia

Repatriation Process

Arrangement of Safe Transport to Reception Location

Arrangement of Safe Transport from Border to Recovery Centre or Home

Arrangement for Safe Shelter en route

Facilitate services through referrals upon return to Indonesia

Interview with Client by Consulate Staff

Step 1. Conducting Interview (& Completing Interview Form – Appendix 1)

This interview will likely be the first contact clients have with authorities and intervention programs. As such, staff must ensure that they set a tone with the client that provides comfort and assistance. To do this, consulate staff should:

- ♦ consider who is most appropriate as the contact point for clients (i.e. women to interview women, have a social worker present when the person is underage, etc.)
- ♦ review information on how to sensitively interview clients and some of the emotional responses one might expect in the interview process
- ♦ the interview should take place in a private room where the client feels comfortable

Consulate staff should be aware that some information they ask in this initial interview may cause discomfort or fear on the part of the client. For example, clients may not wish to tell you their area of origin because it conflicts with their formal documentation. Or they may not wish to provide you with details of their passport because it is a false document. They may also fear problems with their agent or employer if they provide contact information.

Consulate staff must be prepared that the victim's story may be confused or inconsistent. Or the victim may be reticent to share their story, particularly with the Indonesian authorities. When this occurs, you should not push the client to answer your questions. They should fill in the information that they can get easily without pushing/'interrogating' the client. This information gathering stage is entirely voluntary on the part of the client. There will be future opportunities to meet and document their case.

Consulate staff should also provide reassurances to the client that the information they share will not be used to penalize them. For example, they may be fearful of saying they had migrated (knowingly or unknowingly) with illegal document are they may not wish to divulge that they are below the legal age for migration. Contact with authorities for many people is a daunting experience. Most victims will have been warned by traffickers or agents not to contact authorities for fear of arrest, deportation or retribution. Consulate staff must provide assurances that they can be trusted with the information they share and that there will not be any negative implications for the victims such as arrest by the police or return to the employer.

Consulate staff should assure clients that:

- ♦ this interview process is voluntary and can be terminated whenever they choose
- ♦ any information they share is confidential
- ♦ that efforts will be made to protect the client if they divulge potentially dangerous information
- ♦ that consulate staff will do everything possible to protect clients from prosecution for immigration or labour law violations

Step 2. Assessing Client's Emergency Medical & Psychological Needs

Indonesian working in Malaysia is commonly subjected to violence and abuse as well as poor working and living conditions. As such, they may require emergency medical or psychological treatment. As a part of the initial interview, consulate staff should assess the client's need for emergency medical treatment or psychological care and arrange the provision of these services to the client, if she agrees to accept them.

Step 3: Advising Client of available Shelter Facilities

In the interview with the client, a discussion is required about whether or not the client requires the provision of safe shelter. The Consulate staff should inform the client:

- ♦ that shelter facilities are available at the consulate
- ♦ what assistance and services are available through the shelter (i.e. medical care, psychological services, etc)
- ♦ what avenues are open to her in the event that she opts to move to the shelter (i.e. return to Indonesia, change employers, temporary stay in-country, etc)
- ♦ entry into the shelter is entirely voluntary. Under no circumstances should the woman be forcibly placed in a shelter. The decision to enter and stay at the shelter must be the woman's own decision.

Step 4: Provision of Basic Information material or leaflet to Client

Upon completion of the interview and any requisite associated assessments, the consulate staff member will provide the client with additional information which they can take with them for reference and further information. See sample as appendix 2. You should read through this material with the client so if she has any further questions you can help her.

Step 5: Opening Client Case File

As soon as a client comes to the Consulate/Embassy for assistance a case file should be opened and their case documented. This file should include all documents related to the person's case, including:

- ♦ Completed Interview Form (Appendix 1)
- ♦ Copies of the client's identity cards and immigration documents – KTS, passport, visa, work permit, etc.
- ♦ Copies of police or immigration files, if any
- ♦ Copies of employment contract, if any

Special Considerations for Minors: Interviewing and Assessing Underage Clients

When interviewing minors adjustments will need to be made by the interviewer in terms of the wording of the questions, the way that questions are answered, how information is gathered, the capacity of the minor to answer questions at certain stages of the return process, etc. As well, attention must be paid to the particular fragility and vulnerability of underage victims and the ways that interviewing can be a traumatic and disconcerting experience for them.

For further information on this, refer to chapter 5 on how to sensitively and appropriately interview children/minors

Special consideration for photographing clients with injury

In the event of an injury, it will be advisable to photograph the injuries (in case of future litigation). Assure the client that this is done to assist them in their case and better understand their situation. Assure the client that all photographs will be kept confidential and can only be used with her consent. However, the client can refuse to be photographed.

Note: 'Rules' for photographing injuries

- ♦ must get permission/consent from client
- ♦ photographs to be taken by a woman staff if the victim is a woman
- ♦ client may want to have a friend present in this process

- ♦ assure her of confidentiality of photographs and that they will be used only with her consent
- ♦ use a camera which automatically dates the film
- ♦ no face to appear in photograph
- ♦ record case file number on photograph
- ♦ make a note in the case file that photographs have been taken of the injuries

Critical Issues when interviewing Clients:

Ensure Anonymity and Confidentiality

- ♦ Anonymity and confidentiality of clients must always be respected at all times - in the discussion of clients needs, in the way one accesses clients for interviews, in the interview process, in how data is kept secure after the interview, etc.
- ♦ Explain what will be done with the information collected in the interview and ensure that the client is aware of the implications of sharing her story.
- ♦ Provide client with assurances of confidentiality and anonymity. It may be necessary to explain how records are kept, who has access, etc.
- ♦ An example of what can happen if anonymity and confidentiality are compromised: A woman trafficked into sex work relates her story of recruitment including details about the broker who trafficked her (i.e. name, physical description, where she met him, etc.) The interviewer then relates the story to other consulate staff, revealing the identity of the client and trafficker. This information reaches the agent who deployed her abroad and the broker threatens her about talking further with authorities about her case.

Initiate Referrals and/or Service Delivery

- ♦ Trafficking clients may be in need of a range of services including counseling, medical services, legal assistance, employment options, education and shelter. Consider services from government, NGOs, international organizations, hospitals, community groups, religious groups, private practitioners, etc.
- ♦ You should learn about available services in the area which would be appropriate for the type of client you are interviewing. You should be prepared to facilitate the first contact and accompany the client as needed. You may also need to act as an advocate for the client in accessing these referrals services.
- ♦ You should arrange these referrals wherever possible but do not promise services you cannot provide or access.
- ♦ An example of an appropriate referral: You are interviewing a trafficking client who you know has been a client of sexual violence. Prior to meeting with her, you contact psychological and medical practitioners and inquire about the possibility of referrals and the process for this. Upon completion of the interview you explain to the client available services of which you were aware and assist her in accessing these, either by making appointments, accompanying her to the first appointment or providing referral information to an NGO already working with the client.

Be Aware of Client Expectations & Fulfil your Promises

- ♦ There is an understandable desire by the interviewer to offer assistance and the client to directly request assistance of the interviewer.
- ♦ Difficulties can arise if promises are not fulfilled. It represents a breaking of trust which can be very painful for a client who has already endured a great deal of personal difficulty. As well, it compromises the perception of the interviewer in future work and interactions in the eyes of the target group.
- ♦ Do not raise expectations or promises which cannot be fulfilled in the course of interviews and contact. It is very important that in the course of the interviews no promises of services or assistance are provided which cannot realistically be met.

- ♦ Be clear and transparent about the purpose of your interview and why you are talking to the client. Also be clear about what you can and cannot provide in the course of these interviews – i.e. that you can assist with referrals to a legal agency but cannot make guarantees that they can remain in country, etc.
- ♦ An example of problems which arise when promises are broken: In your desire to comfort the trafficking client you promise that you will help her get settled in her new life and that you are her friend. She understands this to mean that you have a friendship and that she can call on and count on you in times of stress and difficulty. She asks you to help her find a job but you are unable to do so because there are no jobs available for someone of her skills level. She is hurt by your broken promises and feels you have let her down.

Consider Security Issues

- ♦ Be aware of whether or not security is an issue – for the interviewer and the client and other service providers.
- ♦ Take necessary precautions regarding the safety and well-being of clients, witnesses, contacts and service providers.
- ♦ When security is an issue, develop a strategy for guaranteeing security prior to beginning your interviews.
- ♦ Do not pressure sources to meet you if they are afraid. Ensure sources are aware of risks involved in meeting you.
- ♦ Encourage the client to have a friend or family member present for the interview, if they choose.
- ♦ Guard confidential information and be prepared to destroy it if it compromises the safety of your clients.
- ♦ Provide assurances of security to the client and explain how their security can and/or will be protected.
- ♦ An example of security risks in trafficking interviews: It may not be safe for a client to visit the consulate because her movements are monitored by her employer. Instead, she asks to meet at the house of a friend where your interview will not be observed by her employer. She also insists on her friend being present for the interview in order to feel more secure.

Be Aware of your Biases

- ♦ Issues of class, culture, ethnicity, gender, beliefs, and behaviours must be acknowledged as influencing interviewers views, assumptions and perceptions
- ♦ Everyone has biases and we must be aware of them and how they might impact our work. If you are aware of your biases you can work to overcome them.
- ♦ Interviewers must consider their own stereotypes, biases and perceptions to ensure that these do not colour or skew their representation of trafficking and its clients.
- ♦ You must be conscious not to express personal opinions, feelings or judgments. Your role is not to critique choices and decisions made or being made but rather to collect information about her experiences.
- ♦ An example of how biases impact our research: With a university education and middle class background, you find it difficult to understand how a woman could be so easily duped by a recruiting agent and so naïve about the migration process. She asked no questions, signed without reading the contract, didn't take down the name and address of the agent, etc. Why didn't she say "no", or simply ask more questions, or run away when the opportunity arose? You are conscious of these biases and realize that what may seem obvious to you may not be obvious to those with limited education, opportunity, choice, experiences, etc. You consciously make an effort as an interviewer to ensure that your tone and questions do not reflect these biases.

Be Sensitive to the Client

- ♦ Be aware of how the interview process can be traumatic for the client and how you can be sensitive to the problems and discomfort of the client. It is critical that attention be paid to not 're-traumatizing' the interviewee.
- ♦ Explain the interview process – who you are and why you are conducting the interview, how the interview will be conducted and what questions you will be asking in the interview.
- ♦ Think deeply about the type of information might be difficult for the client to share with you (i.e. about violence, sexual experience, family problems, etc.) and seriously consider whether you need this information. Do not pursue information which is problematic for the client to share, even when it is interesting information for you.
- ♦ We must be kind and sensitive in the way that we word our questions, the tone of voice we use, our body language, our approach in the interview, etc. Do not be overly inquisitive or overbearing.
- ♦ Create a comfortable environment for the client – a quiet, private, 'safe' location without distraction or interruption. Do not have other officials or actors present unless necessary. Allow the client to have a friend or relative accompany her, if this makes her more comfortable.
- ♦ During your interview with a trafficking client, be aware that questions that dig into the details of these experiences may force the client to relive the events in her mind. In doing so, she may relive the terrible feelings of fear, pain, and loss of dignity. Also remember that she would be telling intimate details to you (a stranger) who she may feel you will judge her for the things that happened to her. Do not ask personal questions outside the scope of the interview.
- ♦ As an interviewer you should never push clients to answer questions they are not comfortable answering. It is better to have an unanswered question than to pressure the client. Do not use your 'power' as a service provider to gain information. Inform the client that she needn't answer any questions she is not comfortable with and is free to end the interview at any time.
- ♦ Be prepared for emotional responses. Clients may cry, laugh, exhibit anger, etc. This may or may not mean you should end the interview – ask them what they wish to do. It also means that you may need to provide comfort and support as they continue the interview.
- ♦ Consider how you might support and express kindness and sensitivity to the client during your interviews – i.e. hold their hand or hug them, use soothing words, take a break from talking, offer her a tissue or glass of water, suggest stopping the interview if they would prefer, etc. Consider also what is inappropriate behaviour – i.e. men should not interview women clients and physically touch them, victims of sexual violence should not be hugged or touched, etc. When in doubt, ask permission before you offer physical comfort.
- ♦ Clients may have been sexually or physically abused. They may be uncomfortable being alone in a room with a person of authority. The gender and age of the person conducting the interview may also need to be taken into consideration. The interviewing should not delve into details of the physical or sexual abuse; this should be left to a trained psychologist so that the client is not re-traumatized.
- ♦ Interviewing can re-traumatize clients and trigger stress and reactions such as nightmares, flashbacks, feelings of helplessness, etc. As such, ideally the interview should be followed by a debriefing session to discuss any feelings the interview had triggered and, wherever possible, provide referrals for client services.
- ♦ An example of client sensitivity in your research: You are interviewing the client who has asked to be repatriated about her trafficking experience. She has willingly agreed to this interview but once she starts talking she becomes very upset. She starts to cry while relating her experience. You say that you know how difficult it is to talk about this and that you think she is brave for sharing such difficult memories. You ask her if she would like to stop but she says 'no' she wants to continue. You tell her that she can stop any time she wants. When the interview is finished you tell her how much you appreciate her time and efforts. A few days

later you have follow-up meeting with the client to inquire as to whether she has any questions and concerns and see how she is feeling about the interview.

Face the Person: This means facing the speaker square on, with your shoulders parallel to those of the speaker.

Be Open: This involves an open posture, particularly with your arms. It is suggested that speakers offer less trust to listeners who have their arms crossed.

Lean In: When sitting, listeners who lean slightly forward engender a greater sense of intimacy than listeners who lean back in their chairs. You may have noticed this in your own experience. In some cultural groups the gender of the people who are communicating influences what is appropriate.

Eye Contact: Eye contact is an important part of attending. Our clients are less likely to communicate freely with us if we avoid eye contact with them. In fact, people will usually stop talking with another person if the listener withdraws eye contact. However, intense eye contact can also make communication difficult for the speaker. Here we need to engage in soft eye contact – regular, gentle eye contact that neither avoids direct gaze nor stares too intensely. It is important to be aware of cultural practices with eye contact

Relax: Speakers are more likely to feel comfortable with listeners who are calm and relaxed. This means refraining from fidgeting, foot-tapping, wringing hands, cracking knuckles, breathing rapidly, and so on. Being relaxed is a state of mind that is shown in the body. However, concentrating on the body can aid relaxation. We all have our own ways of imposing a relaxed state on our bodies and for most of us this will involve gentle, deep, and regular breathing, relaxed muscles, and a still posture.

Respond: You can respond verbally and non-verbally to encourage a person to speak more.

- ♦ **Non-verbal encouragement could be:** Nodding, leaning towards the speaker, eye contact, your sitting position, your facial expressions. These non-verbal cues let the person see that you are listening and are interested. Thus, it works as an encouragement. Attentive silence can also work as an encouragement to speak.
- ♦ **Verbal encouragement could be saying:** *I see, Right, Ah- hah, Mm-hmm, Yes, Go on, Tell me more* etc. These responses do not necessarily mean that you agree with the speaker, rather you are telling the speaker that you are listening. You will find these responses used very much in telephone conversation. They are also equally important in face-to-face conversations.

Provision of Safe Shelter

A safe and secure shelter is important because:

- ♦ The shelter removes immediate risk to the safety of the individual.
- ♦ The shelter includes the provision of basic needs, such as food and accommodation.
- ♦ The shelter includes the provision of medical, legal and psychological assistance as needed
- ♦ The shelter provides a safe environment to explore options and make decisions about the future

A shelter is important when:

- ♦ The client has been physically or sexually abused (by employer, client, agent)
- ♦ There is a threat of violence against the client (by employer, client, agent)
- ♦ The client is not safe in her work or living environment
- ♦ The client has no where else to live
- ♦ The only alternative allowed by the destination country is prison or detention centres (for example, due to immigration violations)

Based on the option selected by the victim, consulate staff should take the appropriate steps as outlined below.

Option 1: If Client chooses to enter the Shelter

The Indonesian Consulate provides temporary shelter to harbour and protect Indonesian citizens in Malaysia who have faced problems and require assistance. These shelters must adhere to some basic requirements and standards to ensure the safety, security and well-being of victims resident there.

Basic Provision of Services and Standards at the Shelter

In spite of the temporary or make shift nature of shelter facilities in the consulate, there are nevertheless some basic standards to which the shelter and staff must adhere. Each shelter will provide the following basic services and standards to the shelter clients:

- ◆ Free food and accommodation
- ◆ Medical and psychological services or referrals, as needed
- ◆ Legal advice and referrals, as needed
- ◆ Separate shelter facilities/accommodation for unaccompanied minors
- ◆ Separate shelter facilities/accommodation for men and women
- ◆ Keep parents and children together
- ◆ No mixed gender shelter facilities
- ◆ 24 hour guard and security at the shelter
- ◆ Guarantees of confidentiality by service providers and security
- ◆ Escort of clients in both emergency and non-emergency situations
- ◆ Facilities for prayer/religious observance
- ◆ Leisure Activities (i.e. book, magazines, TV, video, etc.)

When consulate staff inform the client of the option of shelter facilities they should apprise them of the facilities available at the shelter as well as assure them of both the confidentiality and security at the shelter.

When victims chose to enter the shelter, there are a series of intake steps which are then undertaken. Each woman must be told of and accept the rules of the shelter while resident there. This can also establish routine which in turn creates a degree of stability and normalcy.

Introductory Interview and Shelter Rules

In the introductory interview at the shelter, a basic orientation is conducted about the shelter and life as a shelter resident. Upon arrival, shelter staff should inform the client about the following:

- ◆ Conduct basic orientation tour to show shelter facilities and activities (i.e. food, accommodation, recreation, leisure, etc.)
- ◆ Return to private office/room and answer any questions she has about the shelter
- ◆ Explain Resident Roles and Responsibilities of Shelter and sign the agreement
- ◆ Introduce shelter staff and their role
- ◆ Explain the services available to her in the shelter (i.e. training, counselling, legal advice, medical treatment, etc.) and provide leaflet with this information
- ◆ Explain the Daily Schedule (and provide her with sample schedule)
- ◆ Resident signs Contract agreeing to the Rules
- ◆ Show woman to her room and assign her to another resident in her room who can for the next day walk her through the routine

Once the client is informed of the shelter facilities and their rights and responsibilities in the shelter, they are assigned to their room and encouraged to settle in.

Entering a shelter can be a difficult experience for women and their reaction to the shelter as well as their needs will vary significantly. Further, while these clients are 'victims' of a crime, they are independent persons who must be fully informed of their situation and allowed to make independent decisions.

A critical aspect of shelter facilities is that the staff is trained and equipped to deal with residents who have been trafficking victims and exploited migrants.

Shelter Staff

Shelter staff is on the frontline of providing assistance to Indonesians who have faced problems in Malaysia. Their role is essential in establishing feelings of safety and comfort for shelter residents. Further, it is shelter staff who has regular contact with the residents and who support them on a day to day basis.

Some critical issues to consider in terms of the day to day operation of the shelter are:

- ♦ Shelter staff training: Staff requires training to meet the needs of shelter residents. Participate in regular training to keep current and to meet the needs of residents.
- ♦ Training might include: basic communication and counseling skills.
- ♦ Staff confidentiality
- ♦ Shelter Staff Rules and Responsibilities
- ♦ Privacy of Residents: Entrance to the girls' bedrooms is only with permission. Privacy is respected. No male staff member is permitted to be alone with any shelter resident.

Option 2: If Client chooses not to enter the Shelter

There is no immediate need for or interest in safe shelter at this stage, the consulate staff should nevertheless notify the client of the availability of these services should they or other Indonesian clients they know require this service. The Consulate staff can advise the woman that should she wish to access the shelter, she can return to the Consulate for this service.

Internal Shelter Rules and Contract - appendix 3

Women, who have been accepted in the Shelter, must follow these House Rules.

Referrals and Service Delivery In-country

While the consulate may be able to provide some services needed by its citizens, it is unrealistic to expect that the consulate and its staff could meet all of these needs. Services required may include psychological counseling, legal assistance, shelter, medical services, educational services, return transportation, preparation of documents, etc. Given the breadth of needs of victims, it will be important for consulate staff to identify possible organizations to which they can refer clients as well as establish relationships with these organizations to ensure that their services can be accessed.

Referrals are essential for better identification of and assistance to, trafficking victims and exploited migrant workers. Referrals enhance and maximize the assistance and protection available workers by ensuring co-operation between all actors in identifying, receiving and assisting trafficked persons and exploited migrants.

Developing a Referral System

As a first step in mobilizing a referrals system it is essential to identify all actors who currently do

or are willing to provide services to trafficked persons and exploited migrant workers. Equally important is to identify actors who would be willing to provide financial or human resources to you and your referrals network toward service provision. Possible actors might include:

- ♦ non-government organizations (NGOs)
- ♦ religious or community organizations
- ♦ international organizations
- ♦ other embassies
- ♦ government departments in destination country
- ♦ social services (i.e. hospitals, social workers, etc.)
- ♦ law enforcement officials
- ♦ private practitioners (i.e. lawyers, doctors, psychologists, etc.)
- ♦ migrant workers organizations
- ♦ private foundations and donor agencies
- ♦ community service clubs (i.e. dharma wanita, rotary clubs, etc.)

Once service providers and actors are identified, steps must be taken to unite these various service providers in a cooperative network willing and able to pool resources and service victims. Various mechanisms might be employed to fortify this network including regular meetings and sharing of experiences, the appointment of a national coordinator to oversee the referral system, standardized trainings for network members, etc. As well, it might be advisable to develop a MOU between service providers which clearly outlines their various roles and responsibilities within the referral structure.

Critical Referrals In-Country

Exploited migrants and victims of trafficking are in need of an entire range of services and assistance to protect or guard their rights as well as restore their sense of normalcy and stability.

Areas where referrals will most likely be needed include the following:

1. Legal Assistance
 - a. As Victims of Crime (i.e. labour violations, criminal acts, etc.)
 - b. As Perpetrators of Crime (i.e. Immigration violations, etc.)
2. Medical Services
3. Psychological Counseling
4. Banking Services/ Access to Funds
5. Skills Training & Education
6. Leisure Activities
7. Transportation & Pick up Services
8. Hotline or Telephone Services

1. Legal Assistance and Counseling

Trafficking victims and exploited migrant workers require legal advice and assistance. This assistance can be grouped into two areas:

- ♦ As Victims of Crime (i.e. labour violations, criminal acts, etc.)
- ♦ As Perpetrators of Crime (i.e. Immigration violations, etc.)

- a. Legal advice as Victims of Crime

Clients must be apprised of the legal avenues available to them as victims of violence, exploitation, labour violations and/or trafficking. These legal avenues may be available in both the destination country and in Indonesia, depending upon the violations suffered. Consulate staff should inform clients about the potential legal avenues of redress for both Indonesia and Malaysia. These may include:

- ♦ Civil proceedings (i.e. in cases of change of contract conditions, withheld wages, etc.)
- ♦ Criminal cases (i.e. in cases of trafficking, violence, etc.)
- ♦ Alternative Dispute Resolution (i.e. in cases of withheld wages)

Information needed about the legal process

Regardless of the type of case to be pursued, the client needs to be made aware of a number of different issues in deciding whether or not to pursue or be involved in legal proceedings, whether as complainant or as a witness.

These include:

- ♦ the multiple steps involved in the various types of legal process, whether criminal, civil or alternative dispute resolution
- ♦ what her role would be in the legal process depending upon the type of legal process pursued
 - in a civil case, the client would be the complainant, initiating a legal case with the possible outcome being financial compensation
 - in a criminal case, the state files charges and the client serves as a witness to the crime. The possible outcome is prison and/or financial sanctions
 - In alternative dispute resolution, the victim and perpetrator (i.e. trafficker, employer or agent) agree to meet with a third party toward a solution. Possible outcomes vary by case.
- ♦ any costs involved in the legal process (i.e. lawyers fees, court costs, loss of wages if unable to work, etc.) and what s/he would be expected to bear
- ♦ the anticipated duration of the legal proceedings
- ♦ possible obstacles and problems to be faced in the legal process
- ♦ issues of security and safety for the victim in legal proceedings
- ♦ what assistance and support (i.e. financial, accommodation, legal, etc.) is available to her throughout this process from the consulate or referral agencies

The consulate staff member should outline all of these issues.

International standards require that victims be given 'recovery time' right before deciding whether or not to pursue criminal proceedings against the trafficker.

That being said, there may also be cases where it is compulsory for a client to serve as a witness in a criminal prosecution. The decision to pursue a civil case is entirely voluntary and a decision which the client should make based on their own needs and interest.

Prior to any decisions being made, it is advisable for the consulate staff to refer the client to a legal organization which can provide more concrete advice about the viability of the case, the problems and obstacles involved, and the advantages and disadvantages of their involvement in legal proceedings.

In some cases this may mean others being involved in the discussion (although this will depend on the situation and state of the client), while in other cases this will mean referring to these resource persons for additional information.

Once a decision is made to pursue a legal case or the client is considering this avenue, it is important for her statement to be taken down. The consulate will need to be involved in this process throughout it given that an Indonesian client is involved as either a complainant or a witness. However, other persons – police, legal assistance organizations, lawyers, etc. – need to be involved at this stage. Attention must be paid to the difficulties of this process for the victim and appropriate support must be mobilized.

In general there are a number of aspects of support that the client will need in the case of legal proceedings. The consulate will need to consider how they can meet these needs,

either through direct support or accessing outside services. Included in the support required by women during the trial process is:

- temporary residence permit or visa
- expenses for her stay and living needs for the duration of the trial
- social support and health services
- shelter and protection to guarantee her safety as well as her family, as needed
- translation
- legal services
- support/accompaniment during the proceedings
- efforts to promote a friendly trial environment (i.e. video taping her testimony, closed courtroom, etc.)

In all cases, these issues will need to be explored, possibly over the course of a number of interviews and discussions. Clients should be allowed time to reflect on their decisions.

b. Legal advice as Perpetrators of Crime

Often in the course of exploitative migration and trafficking, the client violates immigration or other laws which renders them a perpetrator of a crime. It is critical to note that these violations occur in situations of force (as is the case with trafficking) or without the knowledge of the migrant (as in the case of many Indonesian migrants workers who are deceived about the legality of their migration). Nevertheless, many destinations countries hold perpetrators accountable for these violations and may subject them to punishment. For example, in Malaysia, if found guilty of these immigrations violations, the person is subjected to a combination of prison terms, fines and corporal punishment.

As such, legal assistance must consider the issue of victims as 'perpetrators of crime'. In cases where the client has violated immigration laws in the course of their trafficking or migration experience, legal advice and assistance will be required. Many cases have been reported whereby Indonesians who were trafficked to Malaysia have been charged with immigration violations and been subject to legal prosecution.

According to international standards, persons who commit a crime in the context of trafficking (i.e. sex work, begging, immigration violations, narcotics trafficking, etc.) cannot be held accountable for the crime. Special dispensation must be arranged in such circumstances. The consulate has an important role to play on this subject both in terms of facilitating referrals and advocating on behalf of its citizens that special dispensation be given in such circumstances.

2. Medical Services

Currently in Malaysia, the Indonesian consulate staff refers Indonesian victims to the hospitals and other public sector medical facilities. The quality of care in these facilities is adequate.

3. Psychological Counseling

Counseling is an important aspect of recovery for victims of trafficking and exploited migrant workers. Counseling might be offered in group or individual session, depending upon the needs of the victim. There are different ways that counseling resources can be mobilized and this will depend on the specific situation in each consulate.

4. Banking Services/ Access to Funds

One area of need identified by consulate staff in Malaysia is for shelter residents to have access to personal funds. Many of the women arrive at the shelter without money or basic provisions. As such, they are entirely dependent upon the consulate for all of their needs. Many shelter residents interviewed as well as consulate staff expressed the desirability of

assisting the women in accessing funds from home. This might take the shape of:

- ♦ a money wire facility through the consulate
- ♦ the ability to access their Indonesian bank account
- ♦ a cheque cashing facility for cheques sent from home

5. Skills Training & Education

Currently, shelter facilities at the consulate only provide residents with basic needs. The result is that residents are often idle for weeks and even months while they stay at the shelter. This idleness is disconcerting for residents and may contribute to their feelings of depression, restlessness, stress, etc. Further, it represents a lost opportunity on the part of service providers to give women some skills which will be helpful in their return to Indonesia as well as serve to prevent their re-trafficking in the future.

The skills training and education is aimed at providing valuable and usable skills to residents, skills which can be learned during the relatively short periods of time that the women are resident at the shelter. Among the topics identified as valuable, enjoyable and feasible by both residents and consulate staff are:

- ♦ English classes
- ♦ Life Skills Training (i.e. how to open a bank account, confidence building, how to read a map, etc.)
- ♦ Beauty classes (i.e. make-up, hairdressing, etc.)
- ♦ Basic literacy
- ♦ Work Skills Training (i.e. cooking, sewing, using a washing machine, cleaning, caring for babies)
- ♦ Basic Rights Training (i.e. right to freedom, right to human living and working conditions, etc.)

These training could be provided by a range of different person, depending upon the specific relationships and context of the consulate. Possible trainers might include volunteers from community service organizations (i.e. dharma wanita, rotary club), local NGOs, volunteer teachers, etc...

6. Leisure Activities

In addition to skills training, there is a need for some basic activities to keep the residents occupied and entertained. These activities may serve to help foster relationships and fun between the residents, may temporarily take the women's mind off of their problems, provide an outlet for stress and fear, etc. Possible activities which could be inexpensively and easily implemented into the shelter include:

- ♦ Sport activities (i.e. aerobics, badminton, etc.)
- ♦ Film and television
- ♦ Board games and cards
- ♦ Field trips outside of the shelter (i.e. to a park, a mall, etc.)

Discussion & Assessment of Client's Needs and Options

Client's needs may vary from straightforward return and reintegration to serving as a witness in a criminal prosecution of traffickers prior to reintegration. Other clients may require assistance in resettling in a new 'safe' community.

Clients needs and options will depend on the specifics of individual cases. These will have to be explored with attention to the individual interests. Critical factors include whether or not it is safe for a woman to return to her home community, what the risks of re-trafficking are for the woman upon reintegration, what skills she has which could assist in the reintegration, the degree of trauma endured in her trafficking experience, the possibility of criminal or civil litigation, etc.

Most critically, discussion will need to take place at this stage about the client's desire to stay in Malaysia or return to Indonesia. As such, these issues will need to be explored in the context of options and choices for the client at this stage.

No trafficking victim should be forcibly 'rescued', returned or reintegrated into their community.

Options for Return to Indonesia or Stay in Malaysia

This discussion is aimed at exploring the options women have available to them at this stage and assist them in selecting which best meets their needs and situation.

Repatriation to the country of origin should be a voluntary process. Women should have the opportunity to explore the various options available to them. At the same time, the discussion should be based on realistic options. For example, applying for residency in Malaysia may not be a realistic option given policies of the Malaysian government or the profile of the client. As such, the consulate staff must take the time to work through the range of options, acknowledging and assisting wherever possible and providing alternatives and suggestions when the 'ideal' option is not feasible.

There are four options to be explored in the context of this discussion:

Option 1: Return to Indonesia and Home Village/Area (Reintegration)

Option 2: Return to Indonesia but settled in a New Area (Integration)

Option 3: Temporary stay in Malaysia

Option 4: Permanent stay in Malaysia

Option 1: Return to Indonesia and Village/Area of Origin (Reintegration)

In many cases clients will immediately express a desire to return immediately and directly to their families. It is important that consulate staff make the distinction between returning home to visit their family and the feasibility/advisability of returning to the village to live. Have them consider:

- ♦ Is there work available?
- ♦ What were the conditions that led to you migrating/being trafficked?
- ♦ Was your family involved in your migration/trafficking?
- ♦ Do you have debt with people in your village?
- ♦ Is there anyone in your village who might be angry at your pre-mature return i.e. agents, family members,...)?

The consulate staff should have an idea of the individual client's case in order that they can guide the discussion in appropriate ways. For example, if her parent's were complicit in the trafficking, are there risks that she will be re-trafficked? Since she worked as a sex worker in Malaysia, will there be stigma issues upon her return? Due to her high debts, will she be re-trafficked? This, however, does not mean that the consulate staff should try to persuade the client to make one decision over another. Their role is to explore the advantages and disadvantages of a return to the village in their discussion with the client which, in turn, will allow the client to formulate her own decisions.

Option 2: Return to Indonesia but settle in a new Village/Area (Integration)

It is common that trafficking victims are concerned about a return to their area of origin upon repatriation. This is due to a number of factors including:

- ♦ Stigma attached to return if client has failed to earn money or was working as a sex worker
- ♦ Have substantial debt in area of origin
- ♦ Fear of retribution from traffickers/agents
- ♦ No opportunity at home
- ♦ Frustration/anger with parents, family, husband, etc. who sent her away

- ♦ Fear of being sent abroad again
- ♦ Fear of returning home without earnings

These are legitimate and very real concerns and consulate staff should be aware of the risks and problems involved in reintegration into a client's home community. They should acknowledge that these are legitimate concerns and ones which we will attempt to accommodate by assisting in her repatriation to a new area in Indonesia.

This, however, does not mean that the consulate staff should try to persuade the client to make one decision over another. Their role is to explore the advantages and disadvantages of integration vs. reintegration in their discussion with the client, which, in turn, will allow the client to formulate her own decisions.

Steps to Assist Client in Returning to Indonesia – Option 1 & 2.

In the case of both option #1 (reintegrate in her community of origin) and option #2 (resettling in a new area in Indonesia), the client should be advised of the steps involved in her return to Indonesia. It is important to explain that these are the steps and services which are available to her. It is not compulsory that she pass through all of the steps. These steps are designed to provide her with assistance which can help her in the return and reintegration into Indonesia.

These steps are:

- ♦ Shelter at the consulate while victim is stabilized, options explored and/or tickets and documents are processed by the consulate
- ♦ Provision of emergency medical and psychological care, as needed,
- ♦ Accompanied Return to Border
- ♦ Escort to a Reception/Transit Center
- ♦ Safe shelter at Reception/Transit Center en route - short stay if it is not possible to transport directly home or to recovery centre
- ♦ Accompanied Transfer to Recovery Centre
- ♦ Longer term stay in Recovery Center where a range of assistance and services are available to the client (i.e. skills training, medical services, counseling, legal assistance, etc.)
- ♦ Preparation Reintegration/Integration through the Recovery Centre
- ♦ Re-Integration in home community/Integration in new community
- ♦ Follow-up assistance/services by GO and NGO services providers, as necessary.

In the case of Return to Indonesia (Options 1 and 2), you must explain:

- ♦ What documents will need to be processed for travel from Malaysia.
- ♦ How they will travel (i.e. by bus, boat, airplane, car, etc).
- ♦ Who will cover the cost of travel.
- ♦ Who will accompany them to the border, across the border and in Indonesia.
- ♦ Who should be contacted in case of problems/emergency and provide contact details.
- ♦ Information about her legal situation upon return (in the event that she left the country illegally)
- ♦ Information about any problems/obstacles that might be faced in this process (i.e. delays in departure,...)
- ♦ Information about the possibility of legal recourse

Critically, at this stage clients do not need to make any immediate decisions about their final destination as they have the option of staying at the recovery center and make further decisions there. As well, they are free to change their mind about their final destination at a later stage. But it is important that they begin to think through these issues at this early stage.

Option 3: Temporary stay/work in Malaysia

Trafficking clients may be eligible for temporary stay permits, particularly if they are willing to testify in the prosecution of a criminal case. Temporary permits allow the woman to stay in the country of destination for a specified period of time.

If the woman wishes to remain temporarily in Malaysia, there may be different options available. These might include:

- ♦ She might wish to continue working in the same sector but with a different employer.
- ♦ She may wish to try to find other types of work.
- ♦ She may wish to convert her illegal status to legal working status.
- ♦ She may wish to hold a temporary stay permit for the duration of the legal proceedings in which she is involved.

In each case, consideration will need to be given to the feasibility of the client's request, including whether she meets minimum requirements for the job as well as the consulate's ability to assist with obtaining necessary documentation.

Option 4: Permanent stay in Malaysia - Consideration of Permanent Residency

To discuss

Steps to Assist Client to Stay in Malaysia (Temporarily or Permanently) – Options #3 & #4

In the case of both #3 (requests temporary stay in Malaysia) and #4 (requests permanent stay in Malaysia), consulate staff must first assess the feasibility of this request. They should refer to the requirements for such a request and see whether or not she is eligible.

In the event that she is eligible to request temporary or permanent status, the consulate staff should:

- ♦ Inform her about the government established criteria for claiming this status and explain why she is eligible.
- ♦ Information about her legal status in Malaysia and how this impacts ability to work, access social services, etc..
- ♦ Inform her about the documents that will need to be processed to remain in Malaysia.
- ♦ Inform her about the step by step tasks for getting (temporary or permanent) status in the country.
- ♦ Inform her about the length of time required for the processing of this request.
- ♦ Inform her about the costs involved in this process.
- ♦ Inform her of services/support which are available which may (or may not) be able to assist her in her request.
- ♦ Advise her as to what the consulate will and will not be able to assist with in this process.
- ♦ Facilitate referral to a legal assistance agency which can provide her with further information and assistance.
- ♦ Information about any problems/obstacles that might be faced in this process (i.e. denial of her claim, deportation,...)

While international standards call for accommodation to be made for trafficking clients in this matter, not all States adhere to these standards. In circumstances where women who wish to stay permanently in Malaysia are not legally able to do so, consulate staff will need:

- ♦ explain why this option is not available to her (i.e., how she does not fit the criteria, etc.)
- ♦ discuss with her the various options involved in return to Indonesia (#1 & 2, above).

General Comment

Regardless of which of the four options is chosen, it is critical that these decisions are reached with the full consent of the client. No pressure should be exerted on the client to sway their decision. As well, adequate time should be afforded to the client to allow them to process this information and make appropriate decisions. Further, it is imperative to discuss the procedures and process clearly with the client about the option they have chosen.

Zimmerman, C.,

World Health Organisation Ethical and Safety Recommendations for interviewing Trafficked Women.

WHO, Geneva, 2003:

Those still in a trafficking situation often:

- ♦ feel trapped with no safe way out;
- ♦ work in an informal, often illicit or covert sector;
- ♦ have limited knowledge of their rights and legal options;
- ♦ have limited personal freedoms;
- ♦ are likely to have experienced physical, sexual or psychological abuse and threats of abuse against themselves or their family;
- ♦ are susceptible to violence, fines and penalties by employers or agents;
- ♦ do not have legal status in the country they are in, have had their papers taken from them and worry about deportation;
- ♦ are about their age, especially if they are minors;
- ♦ are trapped in situations of debt bondage or other stringent obligations that may involve organized crime, corrupt government officials, or members of the police or military;
- ♦ face ethnic, social and gender discrimination; and
- ♦ adopt self-protective reactions or demonstrate symptoms of trauma and stress that are reflected in an impaired sense of time or space, memory loss of certain events, risk behaviours, or underestimation of risk.

Those who have left the trafficking situation often:

- ♦ have some of the same concerns identified with the trafficking situation (see above);
- ♦ continue to feel, and may be, watched or under surveillance of traffickers or others connected to the traffickers
- ♦ have outstanding debts or owe money to traffickers (based on traffickers' calculations);
- ♦ may remain vulnerable to retribution against themselves and/or their families;
- ♦ have only temporary residency status in a destination country and fear imminent deportation;
- ♦ feel, and often are, socially stigmatized by their experience and their work, and risk rejection by family and community members if past events are revealed;
- ♦ are vulnerable to extreme stress reactions once out of the situation and have relinquished previous psychological survival mechanisms;
- ♦ find that talking about the experience is to relive it; and
- ♦ believe that the services (or immigration status) depend on their compliance, and therefore agree to participate in an interview which they would otherwise decline.

It should not be assumed, however, that all women who have been trafficked are traumatized, consider themselves victims, detest their captors, or wish to escape or go home.

Many women are in equivocal circumstances in which they may have contradictory and ambivalent feelings. They may regard their experience as the consequence of a poor decision for which they are/were obliged to fulfil the terms of their contract. Some women may see it as only a temporary situation during which time they intend to earn enough money to pay off a debt, and support themselves or a family at home.

These complexities can make it hard to approach women, establish trust, get their cooperation, acquire truthful responses, and to fully comprehend their decisions and reactions.

Adopting appropriate safety and ethical procedures benefits both the respondent and the interviewer. If approached in a sensitive and non-judgemental manner, many women benefit from having the opportunity to tell their story.

Similarly, the greater the extent to which a woman feels she is respected and that her welfare is a priority, the more likely she is to share accurate and intimate details of her experience. The factors affecting the security and well-being of a woman who has been trafficked are also the same factors that affect disclosure.

ILO
An Information Guide Preventing Discrimination, Exploitation and
Abuse of Migrant Workers,
Booklet 4, p.52-54

Konvensi ILO no. 157 mengenai Pemeliharaan Hak Jaminan Sosial, 1982

Bagian IV:
Pemeliharaan Hak-hak yang Didapatkan dan Pemberian Tunjangan di Luar
Negeri
Pasal 9

[1] Setiap Anggota harus menjamin pemberian tunjangan cacat, tunjangan hari tua dan tunjangan tunai untuk anggota keluarga yang masih hidup, uang pensiun berkenaan dengan cedera pekerjaan dan dana bantuan kematian, yang mana suatu hak diperoleh berdasarkan perundang-undangnya, kepada para ahli waris warganegara dari suatu negara Anggota atau pengungsi atau orang-orang tanpa negara, terlepas dari tempat tinggal mereka, tunduk pada tindakan-tindakan yang diambil untuk tujuan ini, dimana diperlukan, melalui perjanjian antar Anggota atau dengan Negara yang berkepentingan.

Pasal 10

Para Anggota yang bersangkutan akan berusaha keras untuk berperan serta dalam skema-skema pemeliharaan hak-hak yang diperoleh berdasarkan perundang-undangan mereka, dengan mempertimbangkan ketentuan-ketentuan dalam Bab III Konvensi ini, mengenai setiap cabang dari jaminan sosial berikut ini yang mana setiap Anggota memiliki perundang-undangan yang berlaku: perawatan medis, tunjangan sakit, tunjangan kehamilan dan melahirkan serta tunjangan yang berkenaan dengan cedera dalam pekerjaan, selain uang pensiun dan bantuan kematian. Skema-skema ini harus menjamin tunjangan-tunjangan tersebut kepada orang-orang yang tinggal atau sementara tinggal di wilayah salah satu Anggota-anggota ini selain dari Anggota yang berkompeten, dibawah syarat-syarat dan didalam batasan-batasan yang ditentukan oleh perjanjian bersama antara Anggota-anggota yang bersangkutan.

Tabel 4.23. Ketentuan-ketentuan tentang jaminan sosial bagi para-pekerja migran

Italia telah membuat beberapa ketentuan dalam peraturan perundang-undangnya untuk melindungi para pekerja migran, mematuhi prinsip bahwa jaminan sosial bagi para orang asing tidak boleh berada dalam tingkat lebih rendah daripada warganegaraanya: *Pasal 41 Undang-undang Keimigrasian* membentuk prinsip umum tentang perlakuan yang setara bagi para warganegara dan orang asing yang memegang *sojourn permit* (ijin menetap jangka pendek) yang berlaku untuk sekurang-kurangnya satu tahun atau *sojourn card* (kartu menetap jangka pendek) berkenaan dengan tunjangan dari alokasi jaminan sosial.

Pasal 25 Undang-undang Keimigrasian mengatur secara terperinci tunjangan jaminan sosial bagi para pekerja musiman. Dalam hal ini para majikan harus menyumbang kepada lembaga-lembaga nasional untuk jaminan sosial senilai alokasi keluarga dan asuransi terhadap pengangguran tidak sukarela. Nilai sedemikian membiaya dana nasional untuk kebijakan-kebijakan migran, yang diatur oleh *Pasal 45 Undang-undang Keimigrasian*.

Pasal 49 Undang-undang no 488, tanggal 23 Desember 1999 memberikan alokasi sosial kepada pekerja perempuan asing yang sedang hamil yang membawa *sojourn card* (dikeluarkan setelah lima tahun tinggal secara sah didalam wilayah Negara). Ketentuan sedemikian ini mendiskriminasikan migran perempuan yang memegang *sojourn permit* dibandingkan dengan mereka yang memegang *sojourn card*.

Sumber: D'Alconzo, G., S. La Rocca dan E. Marioni, *Italy: Good Practices to Prevent Women Migrant Workers from Going into Exploitative Forms of Labour*, Geneva, ILO GENPROM Series on Women and Migration, 2002, hal.31.

Meningkatkan bantuan dan sarana dukungan serta pelayanan bagi pekerja migran:

Pemerintah negara-negara penerima harus menyediakan sarana dukungan dan pelayanan untuk mempermudah penyesuaian dan pembauran para pekerja migran kedalam masyarakat dan tradisi lokal. Pelayanan-pelayanan semacam ini dapat termasuk [NKotak 4.24 sampai 4.26]:

- Pelatihan bahasa,
- Informasi tentang hak-hak dan akses untuk pelayanan mendasar,
- Pelatihan ketrampilan,
- Pusat-pusat konseling, dan
- Bantuan dengan akomodasi/tempat tinggal

↑ Dalam menyediakan sarana dukungan dan pelayanan semacam itu, pemerintah harus bekerja erat dengan organisasi-organisasi pekerja dan pengusaha serta kelompok-kelompok masyarakat sipil. Organisasi-organisasi sektor swasta dan Ornop ini sering menyediakan banyak pelayanan yang tidak dapat diberikan oleh pemerintah; mereka memiliki jejaring yang erat dengan para pekerja migran dan kompeten dalam mengidentifikasi kebutuhan mereka serta dalam memberikan pelayanan yang tepat.

Tabel 4.24. Dukungan publik bagi para peserta latihan asing untuk belajar bahasa setempat

“Pemerintah Jepang — dengan kata lain, para pembayar pajak—harus melunasi pembayaran untuk pendidikan bahasa bagi para pekerja asing sebagai bagian dari Bantuan Pembangunan Resmi (ODA) dalam bidang pendidikan dari negara Jepang, untuk beberapa alasan. Pertama-tama, adalah alasan kemanusiaan, bahwa kemampuan untuk berbicara bahasa Jepang akan membuat tinggal dan bekerja di Jepang lebih aman dan lebih nyaman bagi para pekerja asing. Yang kedua, hal ini akan menjadi keuntungan ekonomis, dengan membantu meningkatkan kemampuan dan efisiensi kerja mereka. Yang ketiga, ada keuntungan yang sifatnya publik dimana mendapatkan kemampuan berbicara bahasa Jepang dapat dianggap sebagai investasi dalam kebaikan publik. Memang secara jelas kemampuan berbahasa Jepang memiliki ciri-ciri sebagai kebaikan pribadi, dalam hal ini menguntungkan baik bagi peserta pelatihan itu sendiri maupun majikan mereka. Namun, berlawanan dengan mahasiswa asing yang sedang berkunjung, yang tujuan utamanya datang ke Jepang adalah belajar dan penelitian, para pekerja asing terutama datang untuk bekerja, dan dengan demikian kurang kebebasan, kemampuan atau kecenderungan untuk menguasai bahasa Jepang sesuai dengan waktu mereka dan atas biaya mereka sendiri. Sekali lagi, hanya ada insentif yang sangat kecil sekali bagi para majikan untuk membantu para peserta pelatihan agar mendapatkan lebih dari sekedar pengetahuan bahasa kerja yang mendasar. Tetapi jika pemerintah, melalui bantuan asing, hendak mendukung suatu peningkatan menyeluruh dalam kemampuan para pekerja asing untuk berbicara bahasa Jepang, maka ini akan membawa keuntungan sosial yang penting dengan meningkatkan efektifitas dan memperbaiki hasil dari Program Bekerja dan Belajar. Dengan demikian, investasi apapun dalam memperbaiki standar bahasa Jepang pekerja asing dapat dilihat sebagai investasi publik. Yang terakhir, suatu perbaikan yang menyeluruh dalam kemampuan pekerja asing untuk berbicara bahasa Jepang akan memiliki manfaat sosial dan ekonomi yang penting dalam arti meningkatkan profil dan manfaat bahasa Jepang di dunia bisnis internasional dan di tempat-tempat kerja”

Sumber: H. Shimada, Japan's "Guest Workers": Issues and Policies, Tokyo, University of Tokyo Press, 1994, hal.97

Tabel 4.25. Memberitahukan kepada PRT migran tentang hak-hak mereka

Di Costa Rica, organisasi resmi yang bertanggung-jawab untuk mempromosikan kesetaraan jender dan melindungi hak-hak perempuan perempuan adalah CMF (Pusat Nasional untuk Perempuan dan Keluarga—National Centre for Women and Family) Antara 1994-1998, CMF membentuk sekutu strategis dengan ASTRADOMES, satu-satunya organisasi untuk para pembantu rumah tangga di negara ini. Bersama-sama mereka menyiapkan suatu seri yang terdiri dari enam modul informasi dan pelatihan dalam format yang populer dengan gambar-gambar dan dalam bahasa yang mudah dimengerti oleh para pekerja rumah tangga asing mengenai:

Modul 1: Penyewaan

Modul 2: Gaji dan bonus Natal

Modul 3: Giliran kerja dan liburan yang didapatkan

Modul 4: Hak saya atas kesehatan

Modul 5: Pembantu rumah tangga migran

Modul 6: Hak untuk hidup tanpa kekerasan

Modul-modul ini diperkenalkan selama empat bulan di La Merced Park, areal publik dimana banyak orang-orang Nikaragua (kira-kira 1500 orang) berkumpul selama hari kerja dan terutama sekali pada akhir pekan.. Suatu tenda didirikan di dalam taman, dan tiga pakar CMF bertanggungjawab untuk memberikan ceramah-ceramah informatif dan menjawab pertanyaan baik dari para perempuan maupun para laki-laki. Strateginya adalah mengkombinasikan penggunaan modul-modul dan pelatihan di tempat dengan poster-poster yang menggambarkan setiap topik, serta pemberitaan radio melalui La Viz Nica. CMF juga mempromosikan koordinasi dengan bermacam-macam organisasi pemerintah, termasuk Kedutaan Besar Nikaragua di Costa Rica, Direktorat Jenderal Migrasi dan Status asing, dan Kementerian Keamanan Publik. Koordinasi dengan Kementerian Kewenangan Publik adalah sangat penting karena agen-agen mereka memperbolehkan para migran untuk mendekati tenda CMF dengan rasa percaya diri bahkan ketika mereka tidak memiliki dokumen migrasi yang benar.

Sumber: A. I. Garcia, M. Barahona, C. Castro dan E. Gomariz, Costa Rica: Female Labour Migrants and Trafficking in Women and Children, Geneva, ILO GENPROM, 2002, hal.47-48.

Kotak 4.26. Pedoman anda untuk pelayanan-pelayanan di Hong Kong

Biro Dalam Negeri Hong Kong (Hong Kong Home Affairs Bureau) telah menerbitkan suatu pedoman dalam berbagai bahasa untuk para migran yang datang bekerja di Hong Kong, terutama sebagai PRT. Isinya termasuk:

- Perkenalan
- Kedatangan di Hong Kong
 - Imigrasi
 - Cukai
 - Bagaimana menuju ke pusat kota
- Kartu Tanda Pengenal/KTP dan Visa
 - Mencari KTP Hong Kong
 - Menyimpan KTP di tempat yang mudah dicari jika diperlukan
 - Kapan visa saya akan habis
 - Bagaimana mengajukan permohonan perpanjangan ijin tinggal
 - Kemana saya dapat membuat pengaduan tentang mutu Pelayanan Imigrasi
- Bekerja di Hong Kong
 - Kondisi pekerjaan
 - Perusahaan jasa penempatan tenaga kerja
 - Apa saja hak-hak anda sebagai pembantu rumah tangga asing
 - Perlakuan buruk, siksaan fisik dan seksual
 - Berhubungan baik dengan majikan anda
 - Permohonan untuk perpanjangan visa
 - Penyelesaian kontrak kerja
 - Pengakhiran kontrak kerja
 - Bantuan dari Departemen Tenaga Kerja
 - Hak-hak anda untuk berorganisasi, dan hak-hak pekerja lainnya
 - Kontrak Kerja (bagi pembantu rumah tangga yang direkrut dari luar Hong Kong)

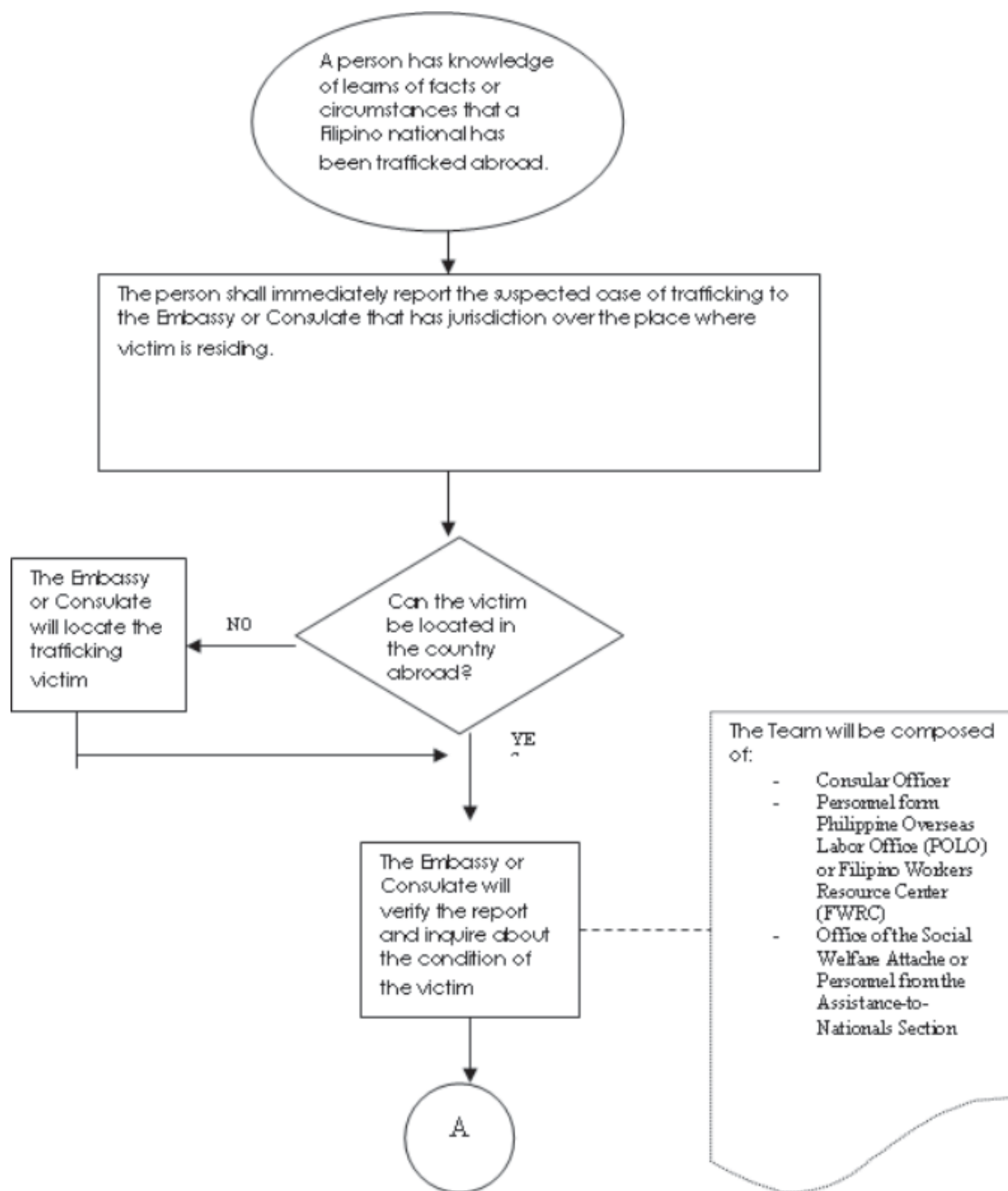
- Mengunjungi Hong Kong
- Bank dan Uang
- Perawatan Kesehatan di Hong Kong
- Bantuan Hukum
 - Kantor Divisi Hubungan Ketenagakerjaan dari Departemen Tenaga Kerja
 - Ornop/LSM
 - Informasi hukum melalui telepon
 - Skema Pengacara yang disediakan oleh pengadilan
 - Bantuan Hukum
 - Mendapatkan akses ke seorang Pengacara
- Kesatuan Polisi Hong Kong
- Mencegah Korupsi
 - Penyuapan dan korupsi
 - Komisi Independen melawan Korupsi
- Hak-hak konsumen
- Kegiatan-kegiatan Sosial, Budaya dan Hiburan
- Tempat-tempat kebaktian/sembahyang
- Pelayanan Pos & Giro
- Pelayanan Sosial
- Tanda-tanda peringatan Topan Tropis dan Hujan Badai
 - Struktur pemerintahan
- Pelayanan informasi untuk umum dan hotline
- Telepon Lokal dan Internasional
- Organisasi untuk Anda
 - Konsulat Jenderal dari Negara Asal
 - Organisasi Migran, serikat dan Ornop/LSM
- Kepulangan ke kampung halaman
- Nama tempat dalam bahasa Cina dan ungkapan bahasa Kanton yang membantu

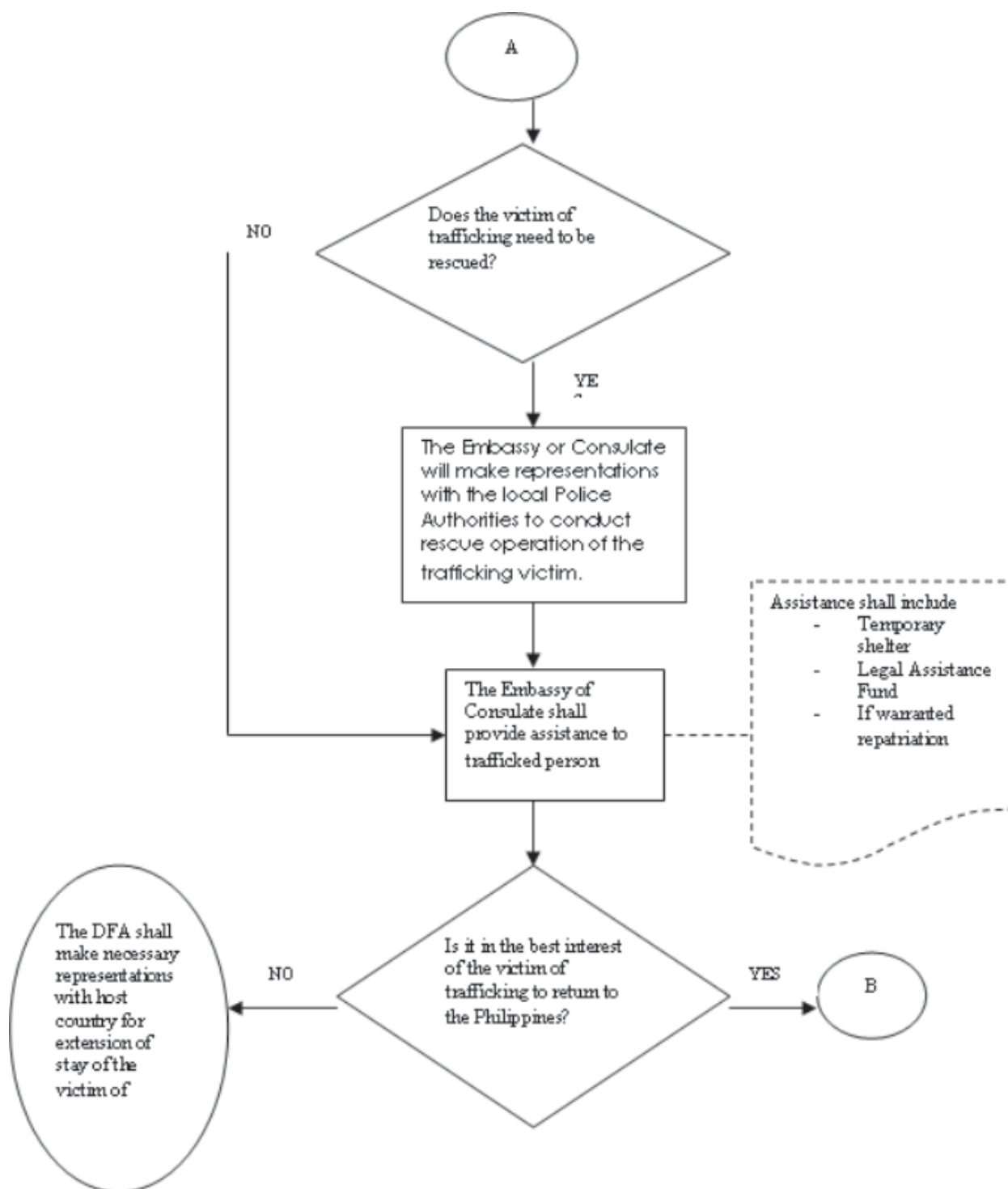
Sumber: Biro Urusan Dalam Negeri SAR Hong Kong, Your Guide to Services in Hong Kong (Pedoman Anda untuk Pelayanan di Hong Kong), versi bahasa Inggris (Edisi ketiga), Januari 2002, hal 40

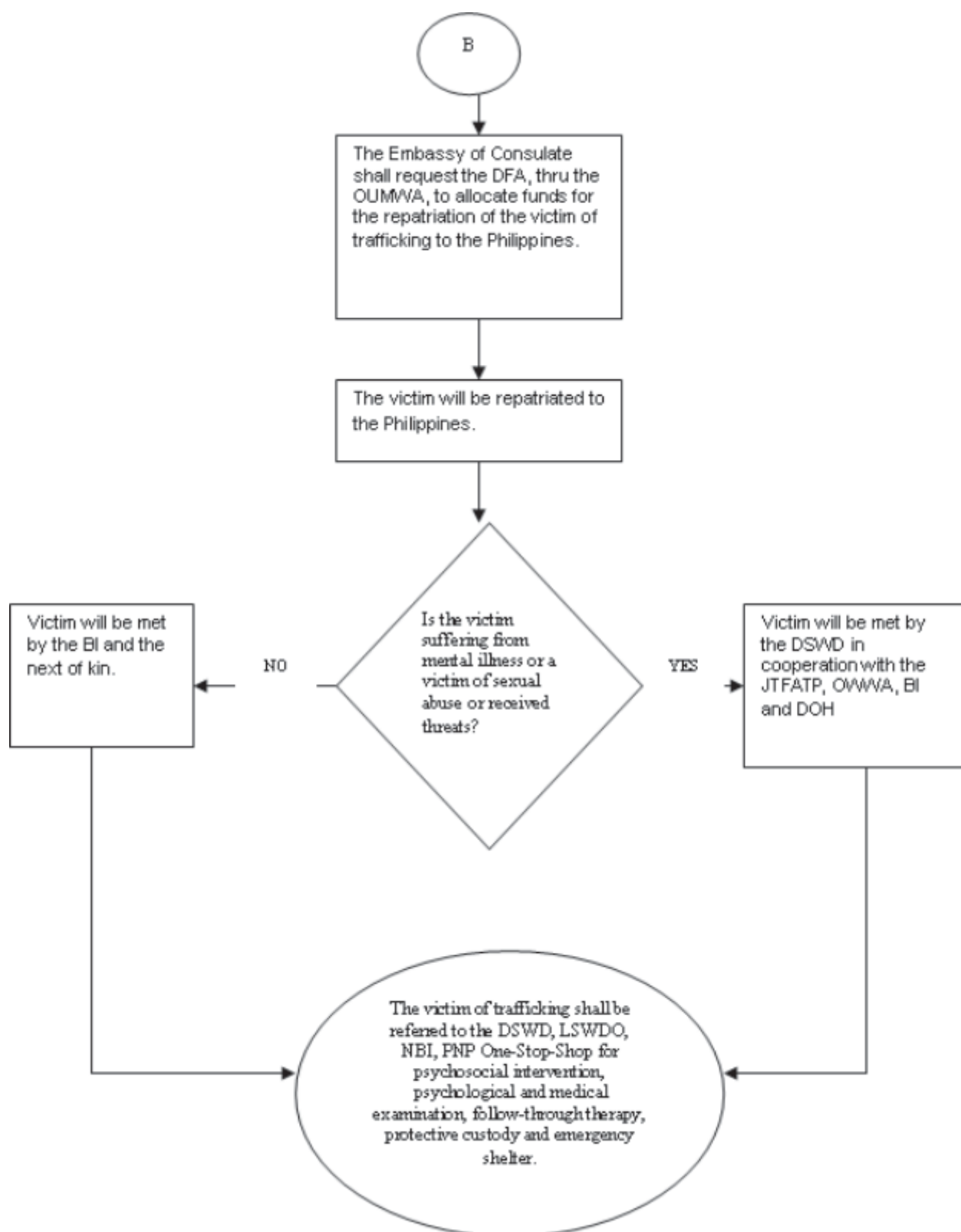
Annex 4: Recommended reading

ANNEX 4A: PHILIPPINES GUIDELINES ON IMMEDIATE ASSISTANCE

FLOWCHART: Identification and Assistance of Trafficking Victim Abroad (Philippines)







Philippines Guidelines on embassy assistance to trafficking victims abroad¹

1. Any person who has knowledge or learns of facts or circumstances that give rise to a reasonable belief that a **Filipino national has been trafficked abroad** shall immediately report the same, either orally or in writing or through other means, to the Philippine Embassy/Consulate which has jurisdiction over the place where the trafficking occurred or where the trafficked person is found. *(Sec. 22, in relation to Sec. 29 (a) of the IRR of RA 9208)*

In many instances, persons report the incident to the DFA Home Office. In such a case, the DFA forwards the report to the Philippine Embassy/Consulate², which has jurisdiction over the place where the trafficking occurred or where the trafficked person is found.

2. The Country Team Approach (CTA) under R.A. No. 8042 shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons regardless of their immigration status. Under the CTA, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies shall, on a per country basis, act as one-country team with a mission under the leadership of the Ambassador or the head of mission. *(Section 28 of the IRR)*

3. If the whereabouts of the victim are unknown, the Embassy/Consulate shall try to locate the victim and inquire into the condition of the victim.

Consistent with the CTA, the Post will send a **team** composed of a consular officer and personnel from the Philippine Overseas Labor Office (POLO) or the Filipino Workers Resource Center (FWRC), THE office of the Social Welfare Attaché, as the case may be, to conduct a visit to the jail, establishment, work site or residence of the victim. In the case of Posts without attached services, the team will be composed of a consular officer and personnel from the Assistance-to-Nationals section. *(Par. 2 of Section 29 (a), IRR).*

During the inquiry into the condition of the victim, the Post will determine if the victim needs to be rescued. If the conduct of rescue operations is necessary, the Post will make representations with the local police authorities or other relevant law enforcement agencies in the country. Rescue operations shall also be made in cooperation an in close coordination with NGOs, local contacts or private individuals, when necessary.

4. The victim will be encouraged to execute a sworn statement, recounting among others, the people/establishment involved in the recruitment/transfer and deployment, the modus operandi employed to recruit, transport and deploy the victim, and other pertinent information which could provide a lead in the investigation and eventual prosecution of the perpetrators.
5. The trafficked person shall be provided with temporary shelter and other forms of assistance. In countries where there is a Filipino Workers Resource Center (FWRC), the services available to overseas Filipinos as provided for in Republic Act No. 8042 shall also be extended to trafficked persons regardless of their status in the host country.
6. Trafficked persons shall be considered under the category "Overseas Filipinos in Distress" and may avail of the Legal Assistance Fund established under Republic Act No. 8042, subject to the guidelines as provided by law, including rules and regulations issued by the DFA as to its utilization and disbursement.

7. The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary

responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country. (Sec. 30, IRR)

8. **Procedure for Repatriation (Sec. 31, IRR).** In accordance with existing rules and regulations on the use and disbursement of ATN Fund of the DFA for the repatriation of distressed OFWs, the Post shall immediately request the DFA, through the Office of the Undersecretary for Migrant Workers' Affairs (OUMWA), allocation of funds for the repatriation of the victim.

In appropriate cases and to avoid re-victimization, the Post may withdraw the passport of the victim and forward it to the DFA and in its place issue a Travel Document (FA Form 79(B)) valid for direct travel to the Philippines.

The Post concerned shall report to the DFA, through the OUMWA, copy furnished the Office of Consular Affairs, the actual date of repatriation and other pertinent information and submit a copy of the sworn statement and other relevant documents.

In appropriate cases, especially when the victim is suffering from mental illness, has suffered physical or sexual abuse or has received serious threats to his or her life and safety, the victim will be met upon arrival in the Philippines by DSWD personnel, in coordination with the Joint Task Force Against Trafficking in Persons and other government agencies such as OWWA, BI and DOH. In the case of mentally ill patients, minors, and other persons requiring special care, the Post shall designate a duly authorized individual to escort said victims to the Philippines.

The victim will be encouraged, if he or she has not done so before, to execute a sworn statement with the view of filing the appropriate charges against the suspected trafficker in the Philippines.

Should the victim request the assistance of DFA, OUMWA shall interview the victim and make recommendations for investigation with law enforcement agencies such as the PNP and the NBI. In cases where recruitment agencies are involved, the case shall also be referred to the POEA for appropriate action. The report shall also be forwarded to the BI for case build up.

The victim may be referred to the DSWD/Local Social Welfare And Development Office or to the NBI/PNP One-Stop Shop for psycho-social interventions, psychological and medical examination and follow-through therapy sessions. Protective custody and emergency shelter shall also be provided to the victim, in appropriate cases.

¹ The procedure outlined below is based on the Implementing Rules and Regulations of RA 9208 (Anti-Trafficking in Persons Act). This information was prepared by the Philippines Department of Foreign Affairs for the International Labour Organization, 2005.

2 Sometimes hereinafter referred to as "Post."

MODULE 5: Long term strategies to protect human rights

Timeframe: 2 hr 15 min (60 min + 75 min)

Module Learning Outcomes

By the end of this module, the participant will be able to:

- o Distinguish between empowering and repressive long term strategies and give examples of each
- o Identify changes in law and policy needed to protect migrant domestic workers and plot relevant plans of action with strategic partners
- o State the benefits of building alliances with host government and other labour sending countries and gives examples of how it should be done
- o Explain how advocacy of NGOs and trade unions can benefit embassies
- o Identify factors involved in effective awareness-raising of domestic workers
- o Explain the role FSP can play in migrants savings programmes

Specific Headings:

1. PowerPoint presentation of aims, networking to prevent abuses, policy alliance and building institutional relationships with NGOs [20 min]
2. Small Group work [10 min]
3. Feedback to plenary [10 min]
4. PowerPoint presentation cont on networking and institutional relationships, lobbying blocs, media
5. Group work [20 min]
6. Feedback [20 min]
7. [break]
8. PowerPoint presentation on Awareness-raising [15 min]
9. Group Work [10 min]
10. Feedback to plenary [10 min]
11. PowerPoint presentation on Migrant Savings Programmes [10 min]
12. Small Group Work [5 min]
13. Feedback to plenary [5 min]

Annex 6: Essential Reading

- o Emily and Juliet, *The Maid Tangle, Regional Training Programme for Labour Attaches: Protecting Migrant Workers: Strengthening Collaboration in Asia*, Canadian Human Rights Foundation, 22 – 25 October 2001, p.90-91.
- o ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers*, GENPROM, Geneva, 2002, Booklet 4, pp. 37-41 and pp.57-61.

Aims

- ♦ How to plot relevant plans of action with strategic partners
- ♦ How to build policy alliance with host governments
- ♦ How can NGO and trade union advocacy help?
- ♦ How to build lobbying and negotiating blocs with other sending countries
- ♦ How to use media strategically
- ♦ How can we raise awareness of domestic workers effectively?
- ♦ How can embassy staff support migrants' saving schemes?

Networking to prevent abuses:

- ♦ Complementing services/resources (Module 4)
- ♦ Policy alliance with host government
- ♦ Institutional relationships with NGOs, migrant groups and trade unions
- ♦ Creating lobbying and negotiating blocs
- ♦ Strategic use of media

Policy alliance with Host Government

- ♦ Identify who is concerned about trafficking and forced labour
 - Host government officials
 - Home government officials
 - NGOs
 - Trade unions
 - Others?

Interns of the host government:

- ♦ What is the Host government doing to counter trafficking and exploitation of domestic workers?
- ♦ Know your allies (who is sympathetic and hostile to the situation of exploited migrant domestic workers? Police? Social Welfare? Racial Discrimination Bureau? Women's Bureau? Labour? Immigration?)
- ♦ Set up meetings with relevant officials to discuss these issues
- ♦ Find out if there are working groups or regular meetings to discuss such issues. Consider joining these discussions on trafficking and forced labour whether hosted by the host government, IGOs or NGOs
- ♦ Use the experiences of the embassy to inform anti-trafficking and migration labour policies of the home and host government
- ♦ At the same time, keep up-to-date with anti-trafficking developments in the host country.

Knowing the right people active on trafficking and forced labour issues means:

- ♦ Potential government assistance for taking action in urgent cases
- ♦ Builds open channels of communication, for example, advice on impact of policy changes

Be Creative:

- ♦ Formal or informal means
- ♦ Pressure via others e.g. NGOs

- ♦ **Be creative.**

In some countries, it may be difficult to meet with officials. Some FSP have been successful in developing good relations by having a letter from the Minister of Labour at home, and requesting a meeting with the Minister of Labour at destination. By securing positive high level connections, it has been easier to obtain host government support. Other FSP have been more successful in informally contacting host government officials outside of work hours, the good personal relationships pay off when assistance is needed in urgent cases.

- ♦ **If sensitivity, consider indirect means.**

If the embassy does not want to be so bold with the host government due to sensitivity in the bilateral relations, this can also be done indirectly. For example, monitoring the impact of changes of law and policy can also be done through discussing with NGOs and unions the consequences of changes to law and recommend what types of further action can be taken.

Embassies can simply create forums where migrant workers can talk with government officials of sending and receiving countries directly (as done in Hong Kong by the Philippines and Indonesian consulates)

Institutional relationships with NGOs, migrant groups and trade unions

- ♦ Can share information and devise common strategies to improve sending and receiving country policy on domestic workers
- ♦ Saves times when need to disseminate information quickly to migrant workers about changes in sending government policies
- ♦ Can operate as a 'damage control' for concerns of NGOs and workers. Prevents problems from occurring by dealing with them before they become too big
- ♦ The embassy may be regarded more as part of the solution than part of the problem

Example: Philippines monthly 'leaders forum' held at Philippines consulate in Hong Kong

Small group work

The Hong Kong government is considering reducing the minimum wage of domestic workers by 20%. Migrant domestic workers union complains to the Indonesian consulate. What does the embassy do in this situation and who would you involve?

Give specific recommendations for action

(discuss in groups of 3 for 10 minutes)

Institutional relationships with NGOs, migrant groups and trade unions

Common objective, different roles:

- ♦ Hold regular leaders forum to discuss issue with affected groups
- ♦ NGOs and domestic worker organizations organise protests and media attention
- ♦ Embassy facilitates discussions between Indonesian government and Government of Hong Kong
- ♦ Embassy and NGOs organise petition

Good practice from the Philippines: In Hong Kong every month on a Sunday the Philippines consulate used to hold a 'leaders' forum' amongst domestic workers, trade unions and NGOs to discuss issues concerning migrant domestic workers. Participation is open to anyone who wants to attend. Recently since the consulate is involved in many other activities with the same stakeholders, the leaders forum is now held on a 'needs' basis. However it operated for four years on a monthly basis and so the members are well-connected to each other. The decision to change the meeting regularity was taken jointly by the leaders as well as the consulate.

The Philippines labour attaché states, "The leaders' forum is important because people should be given an avenue to voice their concerns and pressures. How will we know what they want, what they don't want and what they think of Government policies if we don't ask them? It is an opportunity for people to criticise the Government and the Consulate, which perhaps some embassy staff do not like, but if we do not engage with people, then their criticisms will simply come out in other ways.

So many decisions that have been taken in the consulate and also in Manila have been influenced by the leaders' forum. Whenever Govt officials come to Hong Kong from Manila I ask them if they can stay for a Sunday so they can see the leaders' forum, speak to the people there and also hear their views directly. It's important to have dialogue, and also to quash untrue rumours. The leaders' forum enables us to inform people about the policy changes and explain reasons why or why not and what impact they will have. Everybody benefits from the leaders forum, not just the Govt, is also a way for NGOs to voice their upcoming activities to others and the workers.

The labour forum is an important means for FSOs and Government to engage directly with domestic workers and NGOs in a non-confrontational way. It can be an important way of changing policy. It can also operate as a 'damage control' for concerns of NGOs and workers.

For example, do you hold regular meetings with NGOs? Have you ever used these meeting to address trafficking and forced labour issues? How could you build trafficking and forced labour into regular meetings with NGOs?

Possible actions to address trafficking at regular meetings:

- ♦ Consider devoting part of the meeting to review trafficking cases and discuss common or emerging trends and possible responses.
- ♦ Share cases of trafficking and forced labour from the embassy and also from NGOs each meeting. Monitor number of cases reported and follow-up
- ♦ Invite guest speakers to talk about trafficking such as police, international organisations or members of anti-trafficking units from the Home country
- ♦ Suggest a different issue related to trafficking for discussion each meeting such as prevention, prosecution, protection, rescue, reintegration, victim services, witness protection etc. and ask NGOs specialised in the issue to organise the discussion

Institutional relationships with trade unions

1. First, are domestic workers covered by trade unions?

In some countries, they are not covered because domestic work is not recognised as work under labour laws.

However in other countries like Malaysia, although the labour law gives only basic protection to domestic workers, trade unions are willing to represent migrant domestic workers.

2. Are migrant workers covered by trade unions?

In some countries it is illegal for migrant workers to join trade unions and trade unions may be openly hostile to migrants because they see them as a threat to local workers. In others, migrants may join or be represented by trade unions, though they may not hold positions of responsibility.

In a few countries (e.g. Hong Kong) migrants domestic workers are allowed to form and join trade unions, therefore they can protect their own rights.

For instance, migrant unions in Hong Kong have been successful in lobbying the Hong Kong Government on the following issues:

- Retaining maternity protection for domestic workers
- Retaining their right to freely use public spaces on rest days
- Reducing the amount of the wage cut introduced by the Government (from 35% to 5%).

However, the support of a trade union on migrant domestic worker issues depends on the country and specific union involved.

FSP should contact trade unions and see their willingness and capacity to represent migrant domestic workers and work on issues of forced labour and exploitation before referring workers there.

Good practice: In Malaysia, the Malaysian Trade Union Congress works with migrant workers in the following ways:

- ♦ Undertakes actions to give the migrant workers all the necessary protection of their rights and dignity
- ♦ Organizes migrant workers
- ♦ Gives basic orientation information to migrant workers e.g. introduction to local unions, religious customs, taboos, work ethics, etc
- ♦ Gives skills enhancement opportunities to have a better working environment and benefits but also be better trained and skilled when they eventually return home
- ♦ Monitors the real labour needs of every sector and works closely with the Government to ensure that there is no excess supply of labour in any sector
- ♦ Identifies errant and problematic employers and encourages the authorities to take all the available punitive action against them
- ♦ Works closely with embassies and national trade unions of sending countries
- ♦ Reviews together with other national trade union centres from the sending countries, all MOUs and contracts
- ♦ Works out a standard model MOU and contract for recruitment and employment of migrant workers
- ♦ Gives special focus on domestic workers. Propose changes to the Employment Act to recognize domestic work as work; to develop standardized contracts; and to organize domestic workers into unions
- ♦ Enhances the social image of migrant workers

Institutional relationships with NGOs, migrant groups and trade unions

Cultivating program implementing channels and partners

- ♦ Network actions build the foundation for long-term partnership and programmes between embassies, host governments, NGOs and trade unions to save resources and be most effective in combating trafficking and forced labour
- ♦ Example: ICMC support in running shelters and in developing standard operating procedures to assist and return victims of trafficking

In Europe, embassies work together with NGOs in raising awareness about trafficking amongst potential victims. NGOs provide posters and leaflets to the embassy, as well as provide technical assistance to the embassy on identifying and assisting victims.

Creating lobbying and negotiating blocs with other labour sending countries

- ♦ Contact other embassies of labour sending countries with high numbers of domestic workers
- ♦ Share useful information about trafficking, forced labour and common forms of exploitation as well as laws, policies and customs of the destination country
- ♦ Share common ways of alleviating problems of domestic workers
- ♦ Develop common positions to strengthen migrant domestic workers' rights in-country.
- ♦ Is there a network of labour attaches already in place? If so, schedule a meeting to discuss the issue of trafficking of domestic workers and what to do about it
- ♦ If there is no network in place, consider using trafficking or another common problem as an issue for the first meeting. Hold a roundtable discussion and exchange views on main problems in the receiving country and solutions. Encourage subject area themes for other meetings and invite guest speakers such as host government representatives, lawyers or others who can increase your knowledge on the destination country.

Good practice example: In Taiwan, when the Government was trying to change the terms of dispute settlement for migrant workers, labour attaches of all the labour-sending countries (Philippines, Thailand, Vietnam and Indonesia) met and discussed how the change would affect workers. Basically, the proposed change would have a negative impact on migrant workers' rights. The four countries agreed the same minimum terms of dispute resolution. Taiwan called each country individually. However the individual countries repeatedly told Taiwan to call them as a group. All the countries agreed to the same terms regarding voluntary arbitration as a mode of settlement. The Taiwan government accepted the proposal of the labour sending countries.

Strategic use of media

- ♦ Trafficking and forced labour is 'human interest' story
- ♦ Media interest in exploitation and 'high profile' abuses
- ♦ Journalists usually want to speak to victims directly, and in some cases photograph or film them
- ♦ Exercise caution in using the media, particularly in providing access to talk to or film victims trafficking:
 - Obtain the informed consent of victims before any interview or filming
 - Ensure an embassy staff member or person close to the women is present during any interviews
 - Brief both the domestic worker and the journalist separately before and regarding:
 - + use of information and possible effects (positive and negative)
 - + security risk
 - + possible psychological trauma

How could FSP target media more effectively and what should be the message?

Consider:

- ♦ What is the message you are trying to get across?
- ♦ Is it correct for the embassy to be making these statements, or should they come from elsewhere? NGOs? Host Government officials? Domestic workers themselves?
- ♦ What changes are required in the host or sending government policy?
- ♦ How can these have effect?

Example: The Flor Contemplacion case in Singapore

- ♦ Domestic worker sentenced to death for alleged murder
- ♦ Philippines embassy heavily criticised for not providing enough support, particularly the lack of a lawyer to represent her
- ♦ As a result of Philippine media coverage, embassies received increased funding for legal services and for Filipino Worker Resource Centres to be established to protect migrant workers. The media attention also partly led to the development of specific measures in Philippine law to protect migrant workers abroad.

Group work

In country Z, there is no recognised standard contract for domestic workers and no protection under the labour law. Many domestic workers come to the embassy suffering the following problems:

- ♦ Being made to work in more than one household
- ♦ Exorbitant placement fees (usually paid through salary deductions for a period of 6-8 months)
- ♦ Non-payment of wages
- ♦ Lack valid employment contract as basis for settlement of claims/complaints
- ♦ Rare or no days off (1 to 2 days off per month)

Came up with a plan of action to address these problems through building networks with others (using the format provided)

Form for small group work feedback: NB: be very specific to these problems and first strategise about what policy changes would alleviate these issues?

Complementing services/resources (What? Who?)

Policy alliance with host government (What? Who?)

Institutional relationships with NGOs, migrants groups and trade unions (What who?)

Creating lobbying and negotiating blocs (What? Who?)

Strategic use of media? (What? Who?)

Any other actions?

Awareness raising of domestic workers

What do they need to know?

- ♦ Laws
- ♦ Culture
- ♦ Changes in policies of home and host govt.
- ♦ Practical information - getting around
- ♦ Common problems faced at work and in their life
- ♦ How to avoid trafficking, forced labour and other abuses

Why should we do it?

- ♦ Reduce number of cases of trafficking and forced labour from occurring
- ♦ The more information they have about trafficking and forced labour, they will know what to do if they end up in a situation and where to go for assistance
- ♦ The more domestic workers who know their rights and know how to protect themselves, the less they need to come to the embassy for assistance.

How do we do it?

Consider the following questions when considering how to raise awareness and target workers, access is the main consideration in raising awareness of domestic workers:

- ♦ What access do they have to resources outside the home? E.g. via radio, internet, telephone or on their day off.
- ♦ Do all domestic workers have a regular day off?
- ♦ Can they travel to the consulate or other places on their day off?
- ♦ Which areas do they live?
- ♦ For those who live far from the consulate, how else can we reach them?
- ♦ Do they listen to certain radio programmes?
- ♦ Do they own a mobile phone and can they write/receive SMS?
- ♦ Do they go to certain areas where domestic workers congregate on their day off?
- ♦ Do they read newspapers or magazines from home available at the destination? Which ones?
- ♦ Do they log onto the website of the embassy?
- ♦ What current awareness-raising activities are going on in the destination country and by whom? Government? NGOs? Trade unions? How are they perceived by migrant domestic workers? Can the embassy work together with these groups?

How do we do it?

- ♦ Consider the profile of workers and the average working conditions for best outreach
- ♦ Broadcast, Print Media and SMS
- ♦ Cultural events/Solidarity
- ♦ Seminars - 'know your rights'

Broadcast and Print Media

- ♦ FSP engaging in radio programmes or writing a weekly column in a local language newspaper or magazine is a good way of sharing common problems and solutions to save yourself and domestic workers time
- ♦ For example, FSP, NGOs and lawyers participating in talkback radio programmes where they discuss the anti-trafficking policies of the receiving or sending country and domestic workers can call in and seek advice about what to do
- ♦ In the newspaper or magazine column, participants can be invited to write in by email or letter
- ♦ Need to ensure information is factually correct and consistent with human rights.
There have been some examples of recruitment agencies and embassy staff speaking on radio programmes that have actually given bad advice to workers by encouraging them to stay in situations where they are underpaid and to be quiet and thankful for having a job in the first place.

SMS

- ♦ SMS is becoming a common alternative as communication, so that in conjunction with the radio or print media forums, readers or listeners can SMS in their questions and embassies can respond on air, in print or respond to individual questions by prioritising urgent cases first.
- ♦ Domestic workers should be encouraged to report potential cases of trafficking and forced labour if they hear about them, for example, workers in neighbouring flats/houses, but provided the embassy or other partners will actually follow up such reports.

Cultural events/Solidarity

- ♦ Holding cultural events with visiting performing artists from the country of origin and in conjunction with the Host Government (as done in Hong Kong between the Philippines Consulate, Home Affairs Bureau and NGOs) and invite domestic workers.
- ♦ Using cultural and religious holidays to hold events.
- ♦ Holding an embassy 'open day' as a celebration with domestic workers one day per year (as done in Singapore by the Indonesian Ambassador).

Seminars

- ♦ FSP can hold 'Know your Rights' seminars for domestic workers, incorporating protection from forced labour and trafficking. Sometimes this can be done in conjunction with NGOs or trade unions.
- ♦ For example, in Hong Kong general seminars by the Philippines consulate are conducted on Sundays (domestic workers regular day off) and are mobile, travelling to different areas so that more domestic workers from outlying areas can participate.
- ♦ FSP should invite guest speakers such as lawyers, police, trade unions, NGOs and government officials to participate.
- ♦ Seminars can be done in tandem with NGO or Host Government activities. For example in Taiwan, local government officials visit areas where domestic workers congregate to provide information to migrants about government services and the law.

Discussion

In Country C, many domestic workers work in their employer's business as well as in the home which is illegal under the law of Country C. What awareness raising campaign would you engage in to alert domestic workers to the law? Revising Module 4, what would you advise a domestic worker who has been forced to work illegally in another job?

(10 mins)

Migrant Savings Programmes

- ♦ Encourage workers to send money home and invest for their future
- ♦ Builds capacity of migrants, learn new skills and responsibilities and money management
- ♦ Generates income, jobs and development in home country
- ♦ Local level project and small enterprises

How can embassies help?

- ♦ Give workers information about savings and investment schemes in the home country and micro-credit
- ♦ Link workers to relevant local government and social service structures in home country

Small Group discussion

Zeta is a member of a migrant savings investment group. Her group has combined of \$60,000. Most of this amount has been used to buy farming and back in the Philippines. However there is little money left for farm development, therefore Zeta must raise more capital funds. Furthermore there is little infrastructure in the areas, in terms of roads and electricity. She comes to the embassy for advice.

(5 minutes in groups of 3)

Key learning points from Module 5

- Empowering long term strategies are those taken in conjunction with migrant workers, that give them knowledge and skills to enable them to fight for their own rights. E.g. 'know your rights' seminars and holding leaders forums with migrant workers. Disempowering long term strategies are those that try to restrict and control migrant workers to protect them, such as a policy that ban all migrant women from working in Kuwait as a means of protection.
- An effective plan of action to address the long-term problems and policies domestic workers face requires co-operation with other interested stakeholders such as the Host Government, representatives of other sending countries, NGOs, international organisations, migrant worker associations, trade unions, media and employer associations.
- Building alliance with host government can result in laws and policies more favourable to migrant workers. Alliances are strengthened through holding discussions with government officials, meetings about issues of concern and monitoring the impact of policies on domestic workers.
- Sometimes building alliances with other stakeholders is less confrontational than raising issues directly with the host government. Less direct advocacy is working with NGOs, trade unions, migrants associations and other labour attaches (or labour sending countries). By sharing information and resources, these groups can be more effective in solving domestic worker problems.
- Regular meetings with NGO and migrant organisations assist embassies to learn and share information in an environment of dialogue and co-operation.
- Whilst some trade unions in some countries are hostile to migrant domestic workers, in other countries trade unions work hard to protect their rights. Embassies should identify which unions are sympathetic to migrant workers' issues and then encourage workers to join.
- Strategic use of media means always have a clear objective and clear message to give when speaking to journalists and ensure they respect women's rights to privacy and confidentiality.
- Awareness raising of domestic workers is most effective through radio and home country newspapers as well as holding 'know your rights' seminars in places where domestic workers congregate. It can prevent domestic workers from being exploited and thus less workers need assistance from the embassy.
- FSP can advise migrants in savings programmes on loans and investment schemes in the country of origin as well as proving links with local government and social services.

Knowledge Review

1. Which of the following are empowering long term strategies?
 - a. Hosting leaders forums
 - b. 'Know your rights' seminars
 - c. Influencing law in sending country
 - d. Building alliance with Host government
 - e. All of the above
 - f. 1 and 2 only
 - g. 3 and 4 only
2. Which of the following are repressive strategies?
 - a. Talkback radio programmes that advise workers not to claim their rights but accept minor breaches of contract

- b. Prohibiting domestic workers from migrating legally to work due to political tensions
 - c. Working with the host government to agree a standard minimum contract providing for basic rights of workers
 - d. All of the above
 - e. a. and b. only
3. A receiving government routinely detains undocumented domestic workers regardless of whether they are victims of trafficking. What action should you take with the host government?
- a. Talk to Human Rights Commission of host country
 - b. Meet with immigration officials
 - c. Raise issue at the host government's monthly Anti-Trafficking Enforcement Task Force Meeting
 - d. Discuss issue in NGO leaders forum
 - e. Use a personal contact to avoid detention of a victim of trafficking
 - f. All of the above
 - g. a., b., and c. only
4. Holding regular meetings with migrants groups is useful because:
- a. Embassies are seen as part of the solution than the problem
 - b. FSP can engage directly with domestic workers, NGOs and trade unions in a non-confrontational way.
 - c. All parties can share information and devise common strategies to protect migrant domestic workers
 - d. All of the above
 - e. a. and b. only
5. Increasing numbers of domestic workers that are in forced labour in Country B. are undocumented. Many of them stayed in their situation because employers and illegal agencies threaten them they would be locked up if they report the abuse to the police. However the reality is that undocumented workers in Country B. are not detained, and identified victims can temporarily stay in the country with access to assistance and the opportunity to press charges against traffickers. The Ambassador asks for your advice for how to address this problem. You suggest that in partnership with others, the embassy should:
- a. Undertake mass awareness campaign through broadcast media that undocumented domestic workers in forced labour, should escape and seek assistance and that they will not be imprisoned
 - b. Conduct research into forced labour mechanisms based on interviews with migrant domestic workers and use it to discuss the situation and possible solutions with the Host Government
 - c. Conduct research into modes of travel from the sending country and recommend increased immigration controls by both Home and Host Governments.
 - d. All of the above
 - e. a. and b. only
6. In Country D the law previously prohibited domestic workers from changing employers. This policy now changes and workers can change employer but both employers must agree to the change. The Ambassador to Country D. asks for your advice on what to do about the policy. You suggest:
- a. Contact the embassies of other labour-sending countries to agree to a joint list of recommendations, prepare a joint statement and hold discussion with the Government of Country D.
 - b. Congratulate the Government of its new policy for protecting migrant workers from

trafficking and forced labour.

- c. Contact the embassies of other labour-sending countries to share with them the details of the new policy and convince them it will reduce trafficking of migrant workers.
 - d. Contact the media in your own country about the negative impacts of the policy and that migrant workers should not be sent to Country C. until the policy is revoked.
 - f. All of the above
7. An international NGO has just released a new report indicating that abuse of domestic workers by agencies and employers is a significant problem in Country F. It accuses the embassy of colluding in the abuse by receiving money from the agency for returning workers there. You heard rumours before that one staff member might be corrupt. As Ambassador of post, what action should you take?
- a. Ignore the report until the Home Government asks for a response
 - b. Write a letter to the media stating that the claims are untrue
 - c. Meet a lawyer to discuss possible libel action against the NGO for printing misinformation
 - d. Conduct an internal inquiry into the allegations in conjunction with Home Government and contact the NGO for a meeting to discuss what information led to the allegations
 - e. All of the above
8. NGOs and trade unions have called you to discuss the new policy of the sending government to charge high fees to domestic workers. You have not met with the group since you have been so busy attending to cases. You now read in the newspaper the trade union is planning to have a rally and lead a protest march to the embassy. What do you do?
- a. Call the trade union and tell them not to hold the rally
 - b. Call the trade union and invite representatives to meet with you prior to the rally
 - c. Write to the newspaper clearly explaining that the embassy is not responsible for the increase in fees which is a matter of the Home Labour Department
 - d. All of the above
9. A domestic worker comes to the embassy and you know she was previously in a situation of debt bondage. She managed to change employers and is now earning her own income. She asks you for advice on remitting money home and tells you she is worried about getting into debt again, since it is so easy to obtain loans here.
- Which of the following would you tell her?
- a. Use Western Union
 - b. Use an international bank transfer
 - c. Go to a certain financing company you know well that gives loans easily to migrant domestic workers
 - d. She better go home if she is not used to living in rich countries
 - e. Advise her of the options to remit money and their costs (Western Union, bank transfer etc) and inform her of migrants' saving groups provided by NGOs and any Government programmes at the destination. Give her a brochure or contact details of the organisations involved. Advise her that finance companies commonly prey on migrant workers and charge high interest rates so she should avoid them if possible.
10. Domestic workers getting into debt is a common problem in the destination country. The strategy to deal with this is:
- a. Do awareness-raising of domestic workers about financing companies, debt management and migrant savings programmes
 - b. Conduct research about which credit companies seem to be the worst offenders, based on information received from the migrants.

- c. Discuss the problem with NGOs and work out a potential solution together. For example, NGOs to conduct further research and wider awareness-raising, Home Government and agencies to include the issue in pre-departure training seminars and conduct media campaign about financing companies taking advantage of migrant workers.
- d. All of the above
- e. a. and c. only

ANNEX 5: Essential reading

Canadian Human Rights Foundation

Regional Training Program for Labour Attachés: Protecting Migrant Worker: Strengthening Collaboration in Asia Facilitator, p. 90-91

3) The Maid Tangle

Emily and Juliet were contracted to work in Singapore by Mr. George Sy. Soon after their arrival, they were taken to a bakeshop in Changi where they were introduced to a Miss Chan. They started working in the bakeshop on a 14 - hour shift from 3.30 am to 5.30 pm every day, seven days a week. They slept on the second floor of the bakery.

Lunch and dinner were provided by the employer but she did not provide drinks which Emily and Juliet bought themselves. They were taught how to bake different kinds of bread and also do the cleaning up and sales. Their boss, Ms. Chan visited the Changi shop once in a while. There were altogether three Thai girls and three Filipinas including Emily and Juliet who worked in the bakeshop.

During this time Emily and Juliet's legal status as workers remained unclear. They came on a 14 - day tourist visa which was subsequently extended for two more months. Both were each later given Work Permits for two years. In the Work Permit issued by the Ministry of Labour, Emily was supposed to work as a domestic worker for Mr. Chan, who is the father of Ms. Chan. Juliet, on the other hand, was listed as working for one Mr. Wee, a brother-in-law of Mr. Sy. Both of them were in fact not working as domestic helpers in the homes specified but employed in the bakery of Ms. Chan. A few months later, Emily was transferred to Mr. Lee's flat to work in his factory at Toa Patoh Industrial Estate. Every day she walked to the factory after finishing her domestic chores which was from 7.30 am to 3 pm. There in the factory she helped to bake cakes until about midnight after which she went back to the flat to sleep. She shared one room with another Filipina while Mr. Lee and his wife and two children occupied the other room. This went on for about a month.

During the second month, Mr. Lee attempted to enter the room of Emily. He succeeded on his second try and found Emily alone. He tried to force himself on her but Emily pushed him away and locked the door. Emily was distraught after the incident. She told her friend, Juliet, about it. But both felt they could not do anything. Emily did not want to lose her job; besides the attempt to rape her did not succeed. So, she continued to work for Mr. Lee.

Emily was then transferred back to work for Ms. Chan. She now shared a bungalow with Juliet in the Sembawang area belonging to Ms. Chan. Both of them would work in Changi or at the Toa Patoh factory depending on where they were needed. At about the same time there were reports in the local newspapers about raids carried out by the Ministry of Labour on employers suspected of engaging their foreign domestic workers in non-domestic work.

In view of these reports, they were transferred to a vegetable farm owned by Mr. Chan, Ms. Chan's father. Here they were made to work in the home which was located on the farm, as well as on the farm itself. Four months after, Mr. Chan brought the girls back to work with his

daughter. A few weeks later, the bakeshop was raided by officials of the Ministry of Labour and Ms. Chan was charged in court and found guilty of illegal employment. In the raid, only Juliet was caught working in the factory. Juliet's Work Permit was temporarily returned to the Labour Ministry and her passport to the Immigration Department. She sought assistance from the Philippine Consulate who referred her to the Geylang Catholic Centre. In the meantime, Emily was not caught in the raid, but her employer could technically terminate her employment and send her home. She approached the Labour Attaché who helped her negotiate with her legal employer, Ms. Chan, to release Emily instead of cancelling her Work Permit so that she could seek alternative employment. Presently, both Emily and Juliet are still working in Singapore for different employers.

ILO

An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers,

GENPROM, Geneva, 2002, Booklet 4, pp. 38–42, 57-61

4.4. Mencegah diskriminasi, eksploitasi dan perlakuan sewenang-wenang terhadap pekerja migran perempuan di negara tujuan

4.4.1. Apa yang dapat dilakukan oleh pemerintah negara tujuan

"[...] ada kebutuhan untuk merumuskan dan memperkuat langkah-langkah pada tingkat nasional untuk menjamin penghargaan dan perlindungan terhadap HAM para migran, para pekerja migran dan keluarga mereka, untuk menghapuskan tindakan-tindakan rasisme dan xenofobia yang meningkat dalam berbagai sektor di banyak masyarakat, dan untuk mempromosikan keselarasan dan toleransi yang lebih besar lagi di seluruh masyarakat".⁴⁶

"Dan bagi masyarakat tuan rumah, terutama mereka yang membanggakan diri mereka dalam hal kesetaraan kesempatan bagi semuanya, kehadiran kelas bawah imigran adalah peringatan yang tidak nyaman bahwa banyak dari kemakmuran mereka berdasarkan atas kerja keras dari yang lainnya - yang tidak mendapatkan imbalan yang sejajar." ⁴⁷

- ↑ "Mungkin langkah yang pertama dan terpenting adalah bagi pemerintah negara-negara tujuan untuk mengkaitkan kebijakan imigrasi dan prosedur administratif yang mengatur migrasi dengan penilaian yang sistematis dan realistis atas permintaan pasar lapangan kerja untuk pekerja migran. Penilaian sedemikian ini harus dilakukan oleh aparat pemerintah yang berkompeten—biasanya kementerian tenaga kerja daripada kementerian dalam negeri atau kementerian kehakiman—dalam konsultasi yang erat dengan organisasi-organisasi pengusaha dan pekerja."
- ↑ Pekerja migran perempuan memainkan peran penting dalam lapangan kerja dan proses pembangunan di negara-negara penerima. Mereka memberikan sumbangan yang berharga pada ekonomi dan masyarakat negara-negara penerima. Mereka memberikan sumber daya manusia dalam ekonomi yang dibayar - dalam pekerjaan-pekerjaan yang tidak diinginkan oleh warganegara setempat tetapi penting, dan memungkinkan suatu negara untuk mempertahankan daya saing globalnya. Mereka juga memainkan peran penting dalam ekonomi perawatan - dalam hal tugas-tugas rumah tangga dan perawatan anak-anak yang masih kecil, orang tua, orang sakit dan mereka yang cacat - membebaskan para perempuan warganegara setempat untuk mengambil pekerjaan-pekerjaan berstatus lebih tinggi dan berbayaran lebih baik dalam ekonomi nasional.
- ↑ Negara-negara penerima harus mengakui dan menghargai sumbangan para pekerja migran perempuan dan menghormati serta menjunjung HAM, hak-hak pekerja dan hak-hak migran dari para pekerja ini, mempromosikan integrasi ekonomi dan sosial mereka dan tidak memperlakukan mereka semata-mata dari sudut pandang pengelolaan migrasi dan pengontrolan keamanan nasional. Pemerintah negara-negara penerima harus:
 - ♦ Menandatangani perjanjian ketenagakerjaan bilateral atau multilateral dengan negara-negara pengirim;
 - ♦ Menjamin bahwa kebijakan keimigrasian adalah peka jender;

- ♦ Memberikan perlindungan ketenagakerjaan yang memadai bagi para pekerja migran;
- ♦ Mempertimbangkan peraturan perundang-undangan yang khusus untuk mencakup pekerja rumah tangga;
- ♦ Mengatur dan mengawasi kegiatan-kegiatan dari perusahaan-perusahaan jasa tenaga kerja;
- ♦ Mengadakan pemeriksaan yang memadai terhadap para majikan/pengusaha;
- ♦ Melindungi kesehatan dan keselamatan kerja serta meningkatkan jaminan sosial para pekerja migran;
- ♦ Meningkatkan bantuan dan fasilitas serta pelayanan penunjang untuk para pekerja migran;
- ♦ Memungkinkan kebebasan bergabung dan memfasilitasi pengorganisasian dan perwakilan dari para pekerja migran
- ♦ Mengambil langkah-langkah untuk mempromosikan kesetaraan jender dan mengakhiri xenofobia dan rasisme.

↑ **Menandatangani perjanjian ketenagakerjaan bilateral atau multilateral dengan negara-negara pengirim:**

Perjanjian-perjanjian semacam ini dapat menjadi sarana yang efektif untuk mengatur proses migrasi, mengontrol perlakuan sewenang-wenang dalam perekrutan, penempatan dan pekerjaan, serta mengurangi perekrutan tidak resmi dan perdagangan **[Kotak 1.8 dalam Buku 1]**. Perjanjian-perjanjian ini harus bertujuan untuk menyesuaikan dengan cepat dan teratur antara permintaan pengusaha/majikan dengan para calon-calon migran yang mencari pekerjaan. Perjanjian-perjanjian ini harus mencakup aspek-aspek penting seperti pengumuman lowongan pekerjaan, pemilihan dan penempatan, kontrak kerja, pengangkutan, syarat dan kondisi pekerjaan, prosedur-prosedur keluhan dan penyelesaian sengketa, perlindungan hak-hak dasar dan jaminan sosial. Mungkin ada perjanjian dimana negara tujuan tidak akan mengeluarkan visa atau ijin kerja bagi pelamar yang belum diperiksa dan disahkan di negara-negara pengirim. **[Bagian 3.5.1 dan Kotak 3.5 dalam Buku 3]**

Bahkan ketika perjanjian formal belum ditandatangani, kerjasama erat antara negara penerima dan pengirim dapat mempromosikan pertukaran informasi, khususnya berkenaan dengan praktek-praktek merendahkan, curang atau sewenang-wenang di pihak perusahaan-perusahaan perekrutan atau penempatan swasta dan juga di pihak pengusaha/majikan. Prosedur juga dapat dibuat untuk menyelidiki dan mengambil tindakan-tindakan terhadap perlakuan sewenang-wenang.

↑ **Menjamin bahwa kebijakan keimigrasian adalah peka jender:**

Sebagaimana dibahas dalam Bagian 1.4.2 dan 1.4.3 dalam Buku 1, negara-negara, yang mendapatkan manfaat dari keanggotaan mereka dalam masyarakat internasional, dan khususnya jika mereka telah meratifikasikan perangkat-perangkat HAM yang penting, diwajibkan menahan diri untuk tidak melanggar hak-hak perseorangan, warganegara atau bukan warganegara, dan mengambil tindakan positif untuk menjamin bahwa perempuan dan laki-laki secara perorangan dapat menikmati hak-hak ini. Juga terdapat perangkat-perangkat khusus untuk melindungi hak-hak perempuan dan laki-laki migran. Tidaklah cukup untuk memberikan hak-hak kepada para pekerja migran; mereka harus berhak untuk menuntut untuk dipatuhinya hak-hak tersebut jika mereka merasa bahwa hak-hak mereka tersebut telah dilanggar. Dengan demikian, prosedur penyelesaian keluhan dan sengketa harus terbuka bagi para migran - dengan syarat-syarat yang sama sebagaimana mereka harus terbuka bagi para pekerja warganegara setempat - dan mereka harus memiliki akses ke peradilan ketenagakerjaan dan peradilan lainnya di negara tujuan.

Konvensi Internasional untuk Perlindungan Hak-hak Semua pekerja migran dan **Anggota Keluarga mereka, tahun 1990**, yang sekarang telah diberlakukan, menetapkan kerangka kerja hukum yang komprehensif untuk perlakuan terhadap para pekerja migran [**Kotak 1.16. dalam Buku 1**]. Yang terpenting dari Konvensi ini menetapkan bahwa terlepas dari status hukum mereka, para pekerja migran memiliki HAM yang secara hukum dilindungi dan tidak dapat dicabut begitu saja. Konvensi juga menghargai hak-hak migran sebagai hal yang menentukan kondisi-kondisi hidup dan kerja mereka serta membentuk standar perlindungan yang minimum.

↑ Dengan merujuk khusus ke perundang-undangan keimigrasian dan hak-hak pekerja migran, negara tujuan harus meninjau ulang peraturan dan perundang-perundangan untuk menjamin tidak ada diskriminasi yang dilakukan baik secara terang-terangan maupun sembunyi-sembunyi terhadap perempuan dalam hal masuk, tinggal dan bekerja:

- Dimana migran diberikan ijin masuk ke negara untuk bekerja dalam berbagai pekerjaan yang telah ditentukan sebelumnya (dengan konsultasi yang melibatkan kementerian tenaga kerja dan organisasi-organisasi pengusaha dan pekerja) dimana ada kebutuhan akan pekerja asing, pemerintah harus menjamin bahwa migran perempuan mempunyai kesempatan dan perlakuan yang sama dengan migran laki-laki;

Pemerintah Kanada telah mengintegrasikan keprihatinan jender ke dalam program imigrasi nasional mereka. Suatu model pembuatan kebijakan imigrasi yang dipandu jender telah dikembangkan. Mengikuti matriks "analisa berbasis-jender", setiap persoalan kebijakan dan peraturan imigrasi yang baru diharuskan melewati tes dampak potensial jender. ⁴⁸

- Dimana hukum memperbolehkan pekerja migran untuk ditemani oleh anggota keluarga mereka, maka hal ini harus berlaku setara bagi migran perempuan dan migran laki-laki;
- Para pekerja migran perempuan tidak boleh didiskriminasikan dalam hal masuk, tinggal dan pekerjaan mereka dibuat tergantung pada tes kesehatan wajib berkala untuk kehamilan, penyakit menular, HIV/AIDS dan penyakit-penyakit menular seksual lainnya. Tes-tes semacam ini dapat disediakan secara cuma-cuma dan sukarela bagi semua pekerja, migran dan para warganegara, dan konseling yang memadai serta bantuan kesehatan disediakan bagi mereka yang memerlukannya;
- Meninjau ulang perundang-undangan yang berkenaan dengan pembatasan pekerjaan untuk menjamin bahwa peraturan-peraturan tersebut tidak menjadi alasan atau sumber perlakuan sewenang-wenang para majikan;
- Mereka yang menjadi korban perdagangan tidak boleh diperlakukan sebagai penjahat atau pelacur, tetapi harus diberikan bantuan dan dukungan yang perlu untuk mengajukan ganti rugi dari para pedagang mereka, untuk dapat tinggal di negara selama jangka waktu penuntutan ganti rugi dan dapat pulang kembali ke negara asal mereka secara sukarela [**Buku 6**]

Konvensi ILO no. 143 mengenai Pekerja migran (Ketentuan Tambahan), 1975, Pasal 14 (a) memberikan pembatasan pekerjaan, menyatakan bahwa Negara Anggota dapat

"membuat pilihan bebas untuk pekerjaan, sementara menjamin hak para pekerja migran untuk mobilitas geografis, dengan syarat bahwa para pekerja migran telah tinggal secara sah didalam wilayahnya untuk bekerja dalam jangka waktu yang ditentukan tidak melebihi dua tahun atau, jika undang-undang dan peraturan-peraturan memungkinkan untuk kontrak dengan waktu tetap selama kurang dari dua tahun, setelah si pekerja menyelesaikan kontrak kerjanya yang pertama."

Tetapi apabila suatu negara memberlakukan pembatasan semacam itu dalam hal sponsor visa dari majikan/pengusaha atau dalam hal pengaturan bahwa para pekerja migran tidak dapat berganti majikan tanpa menghadapi ancaman-ancaman deportasi, maka si pekerja sangatlah bergantung pada majikan. Sebagaimana diuraikan dalam bagian-bagian diatas, ketergantungan ini dapat menjadi sumber perlakuan sewenang-wenang serius. Harus ada suatu tinjauan ulang mengenai sistem sponsor visa. Juga harus ada pengujian yang lebih teliti terhadap pengaturan "satu majikan", misalnya, dimana dapat dibuktikan bahwa alasan diperlukannya suatu perubahan adalah karena perlakuan sewenang-wenang atau kerja paksa oleh majikan, para pekerja migran tidak boleh dihukum dalam hal deportasi. Tinjauan seperti ini dapat juga membantu dalam berurusan dengan masalah seperti "mereka yang kabur", yang sangat serius di beberapa negara.

Taiwan telah merubah peraturannya untuk memperbolehkan seorang pekerja dipindahkan ke majikan yang baru bilamana terdapat bukti yang memadai atas kesalahan majikan. Kesalahan yang dimaksud tidak hanya mengenai penahanan paspor, melukai badan atau pelanggaran hak-hak legal para pekerja migran, tetapi juga tidak dibayarnya gaji selama tiga bulan atau ketidak-patuhan terhadap pengaturan gaji yang tercantum dalam kontrak.⁴⁹

↑ **Menyediakan perlindungan ketenagakerjaan yang memadai bagi pekerja migran:**

Pekerja migran, sebagai bagian penting dalam lapangan kerja di negara tujuan, harus dicakup dalam Kode Ketenagakerjaan negara tersebut.

Pemerintah harus segera meninjau ulang perundang-undangan ketenagakerjaan mereka untuk:

- Menjamin bahwa para pekerja migran berhak setidaknya atas standar minimum yang dinikmati oleh warganegara dalam hal kondisi kerja, tunjangan-tunjangan dan perlindungan-perindungan yang pokok **[Kotak 4.20];**
- Menjamin bahwa kondisi kerja dari pekerja migran dipantau secara rutin oleh mekanisme pengawasan/pelaksanaan dari negara tujuan;
- Menjamin bahwa pekerja migran memiliki cara untuk meminta bantuan ke peradilan ketenagakerjaan atau bentuk-bentuk lain dari arbitrase ketenagakerjaan atau penyelesaian sengketa.

Amerika Serikat mengikuti rekomendasi ILO dan memberikan perlindungan lapangan kerja berkenaan dengan gaji dan jam kerja yang sama untuk semua pekerja tidak peduli akan status hukum mereka. Untuk mendorong migran melaporkan pelanggaran-pelanggaran terhadap hak-hak mereka, Departemen Tenaga Kerja AS tidak melaporkan pekerja yang dicurigai sebagai pekerja tidak resmi ke INS jika pekerja mengajukan pengaduan. Selanjutnya Komisi Kesempatan Pekerjaan yang Setara (Equal Employment Opportunity Commission) akan menyelidiki dan, bilamana dianggap perlu, menerapkan sanksi kepada majikan AS yang mendiskriminasikan pekerja dengan alasan ras, kebangsaan atau jender, bahkan walaupun pekerja tersebut tidak resmi. Kantor Penasehat Khusus untuk Praktek-praktek Pekerjaan Tidak Adil yang Berkaitan dengan Imigrasi didalam Departemen Kehakiman diabdikan untuk penegakan undang-undang yang melarang diskriminasi dalam mempekerjakan dan status imigrasi atau asal kebangsaan berbasiskan-pekerjaan ⁵⁰

Dalam kaitannya dengan hal ini, adalah berguna untuk mengutip **Konvensi no 97 mengenai Migrasi untuk Pekerjaan (revisi), tahun 1949:**

Konvensi no 97 mengenai Migrasi untuk Pekerjaan (revisi), tahun 1949

Pasal 6

1. Setiap Anggota yang mana Konvensi ini berlaku, melaksanakan tanggungjawab untuk menerapkan, tanpa diskriminasi dalam hal kebangsaan, ras, agama atau jenis kelamin, pada imigran yang secara sah berada dalam wilayahnya, perlakuan yang sama menguntungkannya dengan yang diterapkan pada warganegaranya sendiri, berkenaan dengan hal-hal berikut ini:
 - (a) Sepanjang hal-hal sedemikian diatur dalam undang-undang dan peraturan, atau tunduk dalam pengawasan pihak berwenang yang mengurus—
 - (i) Pengupahan, termasuk tunjangan keluarga dimana bentuk ini adalah bagian dari pengupahan, jam kerja, perhitungan lembur, libur bergaji, pembatasan pekerjaan rumah, usia minimum untuk pekerjaan, pemagangan dan pelatihan, pekerjaan perempuan dan pekerjaan untuk kaum muda;
 - (ii) Keanggotaan dalam serikat pekerja dan untuk menikmati manfaat perundingan bersama;
 - (iii) Akomodasi;
 - (b) Jaminan sosial (yaitu, ketetapan hukum berkenaan dengan cedera dalam pekerjaan; masa maternitas; sakit; cacat; usia tua; kematian; pengangguran dan tanggung jawab keluarga; dan hal-hal tak terduga lainnya yang, berdasarkan undang-undang atau peraturan nasional, tercakup dalam skema jaminan sosial), tunduk pada pembatasan-pembatasan berikut;
 - (i) Mungkin terdapat perjanjian-perjanjian yang tepat untuk pemeliharaan atas hak-hak yang didapatkan dan hak-hak yang sedang dalam perolehan;
 - (ii) Undang-undang atau peraturan nasional dari negara-negara imigrasi mungkin menentukan rencana-rencana khusus berkenaan dengan tunjangan atau sebagian dari tunjangan yang dapat dibayarkan sepenuhnya dari dana publik, dan berkenaan dengan uang saku yang dibayarkan pada orang-orang yang tidak memenuhi syarat-syarat kontribusi yang ditentukan untuk mendapatkan uang pensiun normal.
 - (c) Pajak-pajak pekerja, iuran dan kontribusi yang dibayarkan berkenaan dengan orang yang dipekerjakan, dan
 - (d) Tata cara hukum berkenaan dengan hal-hal yang dirujuk dalam Konvensi ini.

Kotak Teks 4.20. Kontrak Khusus untuk PRT Migran

Kementrian Ketenagakerjaan Yordania menandatangani suatu *Kontrak Khusus untuk PRT non-Yordania* pada awal 2003. Kontrak ini adalah hasil dari usaha bersama antara UNIFEM dan Kementrian Ketenagakerjaan dalam proyek: "Pemberdayaan Pekerja migran Perempuan di Yordania". *Steering Committee* dari proyek ini yang menyertakan Kementerian Perencanaan, Kementrian Dalam Negeri, Departemen Kepolisian, Unit Perlindungan keluarga, Organisasi Ketenagakerjaan Internasional, Komisi Nasional Yordania untuk Perempuan dan Serikat Perempuan Yordania, serta Kedutaan-kedutaan besar Sri Lanka, Indonesia dan Filipina, mencerminkan suatu upaya untuk menganeka-ragamkan migrasi dari sekedar urusan keamanan dan pengawasan perbatasan.

Kontrak ini adalah yang pertama kalinya di Yordania, dan diharapkan menjadi model untuk negara-negara lainnya di kawasan Arab. '*Kontrak Khusus untuk PRT non-Yordania*' memperkuat koordinasi antara negara-negara pengirim dengan Yordania, sebagai negara tujuan, menjamin hak-hak pekerja migran mendapatkan asuransi jiwa, perawatan kesehatan, hari libur, repatriasi ketika kontrak kerja berakhir, dan menegaskan kembali hak-hak migran perempuan untuk diperlakukan sesuai dengan standar HAM internasional.

Kontrak tersebut akan dipertimbangkan sebagai syarat untuk mendapatkan ijin tinggal, ijin kerja dan visa untuk masuk ke Yordania. Kontrak dilengkapi dengan amandemen dari undang-undang baru untuk mendaftarkan perusahaan-perusahaan jasa tenaga kerja. Undang-undang ini akan memungkinkan Kementrian Ketenagakerjaan untuk memantau kerja dari perusahaan-perusahaan jasa dan untuk mengambil tindakan serius jika mereka melanggar peraturan-peraturan ini yang tujuannya adalah untuk melindungi para pekerja migran dan juga para majikan.

Sumber: Sahtha Amin, "Empowering Migrant Women Workers in Jordan." A Presentation during ILO Programme Consultation meeting on the protection of domestic workers against the threat of forced labour and trafficking, Hong Kong, 16-19 Februari 2003.

MODULE 6: Monitoring, follow up and implementation

Timeframe: 90 min (+ 60 min – LIP and Evaluation)

Module Learning Outcomes

By the end of this module, the participant will be able to:

- o Explain to what extent the learners' objectives were achieved
- o Specify the commitments you have made to implement the training when you go to work
- o Understand the process of follow-up and evaluation to assess how the learning has been put into action at 6 month and 12 month intervals.
- o Recognise a framework for quantitatively monitoring assistance to domestic workers and consider how to apply this framework in the new post.

Specific Headings:

1. PowerPoint – Aims [5]
2. Group work - Learning Objectives [10 min]
3. Feedback [10 min]
4. Summary of LIPs and Discussion [40 min]
5. Monitoring and follow-up [20 min]
6. Revise and complete own personal LIP – final [30 min]
7. Oral evaluation (10 min)
8. Evaluation form (20 min)
9. Close

Annex 6:

Essential reading

- o Levelheaded, Training and Facilitating skills

Have the learners' objectives been achieved? (20 min)

- ♦ Review General Expectations from beginning of course (summarised list of expectations)
- ♦ Review Module Learning Outcomes at the beginning of each module

Aims

- ♦ Have the learners' objectives been achieved?
- ♦ What steps will you take to implement the training in your daily work?
- ♦ What is the followup and evaluation process?
- ♦ What framework will measure the level of assistance to domestic workers and implementation of this training?

Group 1 – Module 1+2

Group 2 – Module 3+ 4

Group 3 - Module 5

[Discuss in 3 groups for 10 mins and then feedback to main group]

Sharing and Discussion of Implementation Plans for Modules 1-4 (40 min)

The trainer will summarise the plans prepared on Days 1 and 2:

- ♦ Actions to be taken
- ♦ Why
- ♦ Goal to be achieved
- ♦ Timeframe
- ♦ Indicators of Success
- ♦ Resources needed
- ♦ Who will be involved?

Participants will discuss in together the various strategies and activities mentioned to protect domestic workers rights, and consider what revisions are needed to their individual learning plans.

- ♦ Is the activity plan feasible? Why? Why not?
- ♦ Could it be made more specific?
- ♦ Are there opportunities for collaboration? How? With who?
- ♦ Are there any other activities or ways to improve this activity?

Monitoring and Follow-up (30 min)

Deplu will monitor the effectiveness of this training in three ways:

- ♦ Immediate self-evaluation (learning implementation plan and evaluation form to be completed by participant) (Qualitative)
- ♦ Long-term self-evaluation. After six months and after 12 months, Deplu will send participants an assessment of achievement questionnaire under which participants will self-assess the extent to which they have fulfilled their learning implementation plans (see Assessment of Achievement).
- ♦ Monitoring form - Measuring assistance (Quantitative)

Any questions about these documents? Suggestions?

LEARNING IMPLEMENTATION PLAN ¹

NAME:	POSITION TITLE:
POSTING TO:	
MODULE TITLE:	DATE:

1. WHICH OF THE SUBJECTS COVERED IN THE MODULE WILL YOU BE IMPLEMENTING IN YOUR WORK? (PICK ONE OR TWO, THE MOST IMPORTANT)
2. WHAT ROLE OR AREA OF RESPONSIBILITY IN YOUR JOB DOES THIS SUBJECT RELATE TO?
3. WHY HAVE YOU CHOSEN ROLE OR RESPONSIBILITY FOR THE PLAN? Is there a problem that you are trying to solve? or, Is there a skill area, which you need to strengthen or improve?
4. WRITE AN OBJECTIVE FOR IMPROVEMENT. What do you hope to achieve by working on this role or responsibility with the new knowledge that you have? Within _____months of attending this programme I will have ...
5. INDICATORS. WHAT WILL SHOW YOU HAVE SUCCESSFULLY ACHIEVED YOUR OBJECTIVE AND MADE USE OF YOUR LEARNING? How will you be able to show that you have been successful or made progress? What measures can you or others use to assess your success?

6. WHAT ACTIVITIES ARE NECESSARY TO ACHIEVE YOUR OBJECTIVES? List the things you will have to do step by step.

7. WILL ANYONE ELSE BE AFFECTED BY YOUR PLAN? For example your staff. You need to make sure they understand and agree with your ideas.

8. WHAT RESOURCES WILL YOU NEED? Will you need any extra resources – remember that time is a resource and new activities or methods of doing something can take more time than things that are already known.

9. WHAT POTENTIAL PROBLEMS MIGHT YOU HAVE? For example, someone else who will be affected by your plan but may not agree with the way you want to do things now.

10. WHO WILL HELP YOU WITH THIS PLAN? This includes thinking about who can help you to solve problems.

SIGNED: _____

DATE: _____

¹ Adapted from Matthews N., Draft Learning Implementation Plan for Anti-Trafficking Training Programme for the Greater Mekong Sub-Region, UNIAP, Bangkok, 10 September 2005 (DRAFT CURRICULUM).

LEARNING IMPLEMENTATION PLAN

ASSESSMENT OF ACHIEVEMENT²

NAME:

POSITION TITLE:

POSTING TO:

DATE:

PARTICIPANT'S ASSESSMENT

1. WHAT WAS THE OBJECTIVE YOU WERE TRYING TO ACHIEVE?

2. WHAT WERE THE INDICATORS OF SUCCESS?

3. HAS THE OBJECTIVE BEEN ACHIEVED? IF YES, WHAT INDICATORS DEMONSTRATE SUCCESS? IF NO, WHAT WENT WRONG?

4. WHAT FACTORS HELPED OR HINDERED THE ACHIEVEMENT OF THE OBJECTIVE?
What difficulties or problems did you encounter? How did you try to solve them?

5. WHICH SKILLS WERE YOU TRYING TO IMPROVE THROUGH IMPLEMENTING THIS PLAN? WHAT DO YOU THINK HAS BEEN THE MOST IMPORTANT CHANGE IN YOUR SKILLS AND ABILITIES DUE TO IMPLEMENTING THIS PLAN?

6. WHAT DO YOU THINK YOU WILL NEED TO FOCUS ON NEXT, IN ORDER TO FURTHER DEVELOP YOUR SKILLS IN THIS AREA?

7. DESCRIBE ANY OTHER USES YOU HAVE MADE OF THE LEARNING FROM THE COURSE.

SIGNED: _____

DATE: _____

² Adapted from Matthews N., Draft Learning Implementation Plan for Anti-Trafficking Training Programme for the Greater Mekong Sub-Region, UNIAP, Bangkok, 10 September 2005 (DRAFT CURRICULUM).

Monitoring form³

In order to monitor the success of this training and to ensure the protection of domestic workers, Deplu will be collecting data regarding domestic workers who access the embassy.

We ask FSP to collect information on the following through their existing monitoring forms or else by creating an additional monitoring mechanism covering these core elements.

Quarterly monitoring form on Protection of Domestic Workers By Embassy or Consulate

	Accomplishments	Agencies Concerned	Remarks
Total Number of Domestic Workers Receiving Services from the Embassy			
Domestic workers in trafficking and forced labour cases (number of cases reported to embassy)			
Other abuse – sexual abuse, physical beatings or mental abuse etc (number of cases reported to embassy)			
Labour exploitation – underpayment, lack of just working conditions (number of cases reported to embassy)			
Social services provided by embassy (number of cases handled - current) - Housing - counselling - legal assistance - repatriation - visits to hospital/jails - other (specify)			

³ Adapted from Philippines embassy monitoring form ILAS Form No 01-2002.

	Accomplishments	Agencies Concerned	Remarks
Social services (Number of cases solved) - Housing - Counselling - legal assistance - repatriation - visits to hospital/jails - other (specify) Referrals to NGOs Referrals to trade unions Mediations Referrals to Labour Department Referrals to police 24 hour hotline (number of queries received)24 hour hotline (number of queries assisted) Blacklisting employers (number recommended to watch)Blacklisting employers(number actually blacklisted) Blacklisting recruitment agencies (number recommended to watch)Blacklisting recruitment agencies (number actually blacklisted) Policy Development FormulationPolicy developments on DW issue (no. submitted)Policy developments on DW issue (no. implemented)			

	Accomplishments	Agencies Concerned	Remarks
Networking, linkages and information dissemination Number of activities/ consultations organised/ conducted/participated in - host government - NGOs - Trade unions - Diaspora community - Employers - Recruitment agencies - Media - Other (specify)			

Questions for discussion:

Is it feasible to collect this kind of information? (or does it already exist)

How will you go about it? Timeframe?

Is there anything else you will need?

ILO TRAINING ON DOMESTIC WORKERS: PROTECTING HUMAN RIGHTS

Participants Evaluation Form

PART I

1. What were you expecting to learn from attending this training?
2. Were your expectations met? If no, why not?
3. How will you put this learning into action? What steps will you take
 - a. Within the next 2 weeks?
 - b. Within the next three months?
 - c. In one years' time?

4. Please list any obstacles to applying the training in practice (your actions in 3.)

5. Which of the trainings presentations or topics were the most useful to you? Why?

5. Which of the training presentations or topics did you find the least useful? Why?

6. What presentations or topics were you expecting to hear, but were not presented?

7. Are there any items or activities you would like to see added to this training?

8. Are there any items or activities you would like to see removed from this training?

8. In terms of training methods, which activities did you find most interesting and useful (e.g. group work, discussion, presentation, role play, quiz)

9. Other Comments:

PART II

Please indicate your impression of the training items listed below.

Circle 5 for very good, 4 for good, 3 for average, 2 for needs improvement and 1 for bad.

Please make comments if you circle a 1 or 2 to explain

A. CURRICULUM

1. The training met my expectations.

Worst

Best

1 2 3 4 5

2. I will be able to apply the knowledge learned.

1 2 3 4 5

3. The training objectives for each topic were identified and followed.

1 2 3 4 5

4. The curriculum content was organized and easy to follow.

1 2 3 4 5

5. The materials distributed were pertinent and useful.

1 2 3 4 5

B. TRAINERS

1. The trainers were knowledgeable.

Worst

Best

1 2 3 4 5

2. The quality of instruction was good.

1 2 3 4 5

3. The presentations were interesting and practical.

1 2 3 4 5

4. The presenters met the training objectives.

1 2 3 4 5

5. The methods used were interactive and participatory

1 2 3 4 5

6. Adequate time was provided for attendee questions.

1 2 3 4 5

C. TRAINING SPECIFIC QUESTIONS

1. How do you rate the training overall?

Worst

Best

1

2

3

4

5

2. The training will help me do my job better.

1

2

3

4

5

3. This training is worthwhile and should be conducted on a regular basis.

1

2

3

4

5

PROCEDURES AND INFORMATION

1. Did you receive timely, advance training information?

Worst

Best

1

2

3

4

5

2. Was adequate time allowed for breaks and meals?

1

2

3

4

5

Name (optional): _____-

LIST OF ACRONYMS AND ABBREVIATIONS

ACILS	American Centre for International Labour Solidarity
AOA	Assessment of Achievement Plan
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CERD	Convention for the Elimination of All forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
FGD	Focus group discussion
FSO	Foreign service official
FSP	Foreign service personnel
EU	European Union
HIV/ AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
ICMC	International Catholic Migration Committee
ILO	International Labour Organization
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour
LIP	Leaner Implementation Plan
Migrant workers convention	UN Convention on Protection of Migrant Workers and Members of Their Families
OHCHR	Office of the High Commissioner on Human Rights
Trafficking Protocol	UN Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)
UN	United Nations
UNICEF	United Nations Children's Fund
WHO	World Health Organization

GLOSSARY

Agent: Those who facilitate migrant workers to find employment and receive payment for this service.

Accession:

Bilateral agreement: An agreement between two countries that sets specific terms such as minimum standards for terms and conditions of employment. Often expressed as memoranda of understanding between the two countries.

Debt bondage: Article 1 of UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956):

‘the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;’

Domestic worker: Someone who is paid to perform domestic duties such as cleaning, cooking and looking after children/elderly in the home. Usually lives and works in the employer’s residence.

Duress:

Employer: A person who pays another to perform labour or services under their supervision.

Feminisation of migration: The rise in female migration, particularly in low-paid, low-skilled jobs that are considered ‘suitable’ for women due to gender discrimination.

Forced labour: Article 2 of ILO Convention Number 29 on Forced Labour (1930):

‘All work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.

Gender: The social differences between women and men that are learned and vary widely within and between cultures and change over time.

Irregular migrant: Article 5 of the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990) states in relation to migrant workers that they:

“(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or *in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.*”

An irregular migrant is the same as an undocumented migrant. The definition of an irregular migrant includes all those that do not have valid documents authorizing their entry, stay or working status in the destination country. According to ILO Convention No. 143, those regular migrants who lose their job in the destination country do not automatically become undocumented or irregular. Victims of trafficking can be either irregular or regular migrants.

Migrant worker: Article 2(1) of the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990) says that a migrant worker is any 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.

Ratification:

Servitude:

Signature to (a treaty):

Slavery

Article 1 UN Slavery Convention (1926):

“Slavery” means the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and “slave” means a person in such condition or status.

Slavery-like practices (or institutions and practices similar to slavery)

Article 1 of UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956):

“Slavery-like practices” includes:

- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Smuggling:

Article 3 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing the UN Convention Against Transnational Organised Crime

“The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”

Basically, smuggling is facilitating the illegal movement of someone across a border in return for a benefit.

Standard contract:

A standard contract sets out specific minimum terms and conditions of employment. It should both sector-specific and country-specific (to the culture and laws of the destination country). Standard contracts should cover salary and benefits including housing, hours of work and rest periods for that sector. For example, Hong Kong and Jordan use standard contracts for employment of migrant domestic workers.

Trafficked person

Any person who has been trafficked according to the definition set out under “trafficking”.

Trafficker

Any person that commits the crime of trafficking in persons. This is not limited to those involved in recruitment or transportation of people but includes employers and all those involved in the exploitation of the trafficked person.

Trafficking

Article 3 of the UN Trafficking Protocol:

- “(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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) ‘Child’ shall mean any person under eighteen years of age.”

This definition considers trafficking as the facilitated movement of a person by means of deception or coercion, etc. into conditions of exploitation, be it sexual exploitation, forced labour, slavery or slavery-like practices or servitude. As far as children are concerned, there is no need to prove deception and coercion were used. The evidence of movement into exploitation is considered enough to define a child as “trafficked”.

UN Trafficking Protocol

Protocol to prevent, suppress and punish trafficking in persons, especially women and children. One of two Protocols (additional treaties) attached to the UN Convention Against Transnational Organised Crime (2000). The other deals with smuggling in persons.

Worst forms of child labour

Article 3 of ILO Convention Number 182 on the Worst Forms of Child Labour (1999):

The “worst forms of child labour” comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

CONTACTS LIST

Migrant support organisations (working on Migrant Domestic Work in Asia)

Hong Kong

Asian Migrant Centre (AMC)

9/F Lee Kong Commercial Building
115 Woosung St., Kowloon, Hong Kong SAR
Tel: (85-2) 2312-0031 Fax: (85-2) 2992-0111
Email: amc@asian-migrants.org
www.asian-migrants.org

Asia-Pacific Mission for Migrants (APMM) and Asian Migrants Coordinating Body

2 Jordan Road, Kowloon, Hong Kong SAR
Tel: (852) 2723-7536 Fax: (852) 2735-4559
Email: apmm@hknet.com
www.apmigrants.org/

Asian Migrant Coordinating Body (AMCB)

c/o APMM, No. 2 Jordan Road
Kowloon, Hong Kong SAR
Tel: (852) 2810-4379, 2314-7316 Fax: 2526-2894, 2735-4559
E-mail: amcb@myrealbox.com

Members: Association of Sri Lankans in Hong Kong (ASL-HK)
Asosiasi Tenaga Kerja Indonesia - Hong Kong (ATKI-HK)
(Association of Indonesian Migrant Workers)
Far-East Overseas Nepalese Association - Hong Kong (FEONA-HK)
Friends of Thai - Hong Kong (FOT-HK)
Thai Regional Alliance (TRA-HK)
United Filipinos in Hong Kong (UNIFIL-HK)

Asian Migrant Workers Social Service Project &

Filipino Social Service Project Caritas Hong Kong
Rm.139 Caritas House
2 Caine Road, Central, Hong Kong SAR
Tel: (852) 2524-2071 Fax: (852) 2521 5720

Bethune House Migrant Women's Refuge

Tel: (852) 2721 3119
Fax: (852) 2314 3766
E-mail: bhmwr@hknet.com

Christian Action

Domestic Helpers and Migrant Workers' Programme
Room 1, G/F, No. 2 Jordan Road
Kowloon, Hong Kong SAR
Tel: (852) 2739-6193 Fax: (852) 2724-5309
Email: domhelp@christian-action.org.hk

Coalition for Migrants' Rights (CMR)

9/F Lee Kong Commercial Building
115 Woosung St., Kowloon, Hong Kong SAR
Tel: (85-2) 2312-0031 Fax: (85-2) 2992-0111
Email: cmr@asian-migrants.org

Members: Asian Domestic Workers Union (ADWU)
Association of Sri Lankans in Hong Kong (ASL)
Far East Overseas Nepalese Association (FEONA)
Forum of Filipino Reintegration & Saving Groups (FFRSG)
Indian Domestic Workers Association (IDWA)
Indonesian Migrant Workers Union (IMWU)
Thai Women Association (TWA)

Hong Kong Coalition of Indonesian Migrant Workers (KOTKIHO)

5/F Flat A, Chun Hoi, Commercial Building,
688-690 Shanghai Street, Mong Kok, Hong Kong SAR
Tel: (852) 2312 0031

Hong Kong Confederation of Trade Unions

19/F Wing Wong Building
557-559 Nathan Road,
Yau Ma Tei, Kowloon
Hong Kong SAR
Tel: (852) 2770-8668
E-mail: hkctu@hkctu.org.hk
www.hkctu.org.hk

Indonesian Migrant Workers Union

Flat C, 4/F Jardine Mansion
32 Jardine's Bazaar, Hong Kong SAR
Tel: (852) 2375-8337 Fax: (852) 2992-0111
Email: imwu@asian-migrants.org

Mission for Filipino Migrant Workers (HK) Society

c/o St. John's Cathedral
Garden Road, Central, Hong Kong SAR
Tel: (852) 2522-8264 Fax: (852) 2526-2894
Email: mission@migrants.net
www.migrants.net

Philippine Domestic Workers Union

23 Sau Wa Fong, 1/F Black A,

Wanchai, Hong Kong SAR
Tel: (852) 2866-0243

United Filipinos in Hong Kong

2F New Hall, St. John's Cathedral,
4 Garden Road, Central, Hong Kong SAR
Tel: (852) 2810 4379
Fax: (852) 2526 2894
E-mail: execom@unifil.org.hk
www.unifil.org.hk

Indonesia

American Center for International Labor Solidarity Indonesia Office

Gedung Ciks, Lantai 2
Jalan Cikini Raya 84-86
Jakarta 10330, Indonesia
Tel: (62-21) 3193-6635 Fax: (62-21) 3190-3822
scindo@acils.or.id.

Baradamai

Jl. Bekasi B. 90 BTN Taman Indah
Mataram, NTB 83127
Indonesia

Center for Indonesian Migrant Workers (CIMW)

Jl. Cempaka Putih Timur XI/26, Jakarta 10510, Indonesia
Tel: (62-21) 420-6924 / 425-3379 Fax: (62-21) 420-5623
Email: ucm@jakarta.wasantara.net.id

Federation of Indonesian Migrant Workers Organizations (FOBMI)

Jl. Pori Raya No.6, Pisangan, Timur, Jakarta Timur
Tel: (62-21) 4711215 Fax: (62-21) 4711215
Email: rights@fobmi.zzn.com / fobmi@telkom.net
www.buruhmigran.net

International Catholic Migration Committee Indonesia

Jalan Terusan Hang Lekir I/5
Kebayoran Lama
Jakarta 12220
Tel: (62-21) 720 3910 Fax: (62-21) 726 1918
E-Mail: warren@icmc.net
www.icmc.net

International Labour Organization

Domestic Workers Project, South-East Asia
ILO Jakarta office,
Menara Thamrin, level. 22

Jl. M.H.Thamrin, Kav. 3, Jakarta 10250
Tel:(62-21) 391-3112 Fax: (62-21) 310-0766
Email: kejser@ilojkt.or.id

Jarnas Pekabumi (The National Network of Economic Development Indonesian Migrant Workers and Their Families)

Jl. Diponegoro 98 P.O. Box 167 Salatiga 50714, Central Java, Indonesia
Tel:(62-298) 322379 / 321742 Fax:(62-298) 322303
Email: chrattw@yahoo.com

KOPBUMI

Jl. Aren IV/6 Rawamangun
Jakarta Timur 13220 Indonesia
Tel: (62-21) 4706377 Fax: (62-21) 4706377
Email: newkopbumi@yahoo.com / felix-sltg@plasa.com

Migrant Care

Jl. Cipinang Pulo Maja No.41F, Kel. Cipinang Besar Utara Jatinegara, Jakarta Timur
Tel: (62) 85903590 Fax: (62) 85903590
Email: migrantcare@telkom.net

Rural Development Foundation (YPP)

Jl. Simpang Gajayana 611 A-B,
Malang 65144, Indonesia
Tel: (62-341) 560-995 Fax: (62-341) 560-995

Pusat Pengembangan Sumberdaya Wanita

(Centre for Women Resources Development)
Billy Moon HI No. 10, Pondok Kelapa,
Jakarta 13450, Indonesia
Tel: (62-21) 8642134 / 865794.5 Fax: (62-21) 8642134
Email: ppswjar@rad.net.id

Solidaritas Perempuan (Women's Solidarity for Human Rights)

Jalan. Jati Padang Raya Gang Wahid. No. 64
Pasar Minggu - Jakarta Selatan 12450, Indonesia
Tel: (62 21) 780 2529, 782 6008 Fax: (62 21) 780 2529
Email : Soliper@centrin.net.id

Korea

Joint Committee for Migrant Workers in Korea (JCMK)

190-10 Choongjungro 2 Ga, Soedaemun-Gu, Seoul 120-012
Tel: (82 2) 312-1686~7 Fax: (82 2) 312-1688
E-mail : jcmk@jcmk.org jcmk@chol.com
www.jcmk.org

Malaysia

CARAM Asia Secretariat

8th Floor, Wisma MLS 31, Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur, Malaysia
Tel: (603)2697-0708 / (603)2697-0219
Fax: (603)2697-0282
e-mail: caraminfo@yahoo.com or infom@caramasia.org
URL: www.caramasia.org

Filipina service Committee (FSC)

Bahay ni Maria, St. Francis Xavier
135 Jln Gasing, Petaling Jaya
Selangor 46200, Malaysia
Tel: (603) 758-6472 Fax: (603) 757-2435

Malaysian Trade Union Congress

Wisma MTUC, 10-5, Jalan USJ 9/5T, 47620 Subang Jaya, Selangor.
Tel: (603)80242953, Fax: (603) 80243225
Email:mtuc@tm.net.my
<http://www.mtuc.org.my/>

Tenaganita

Penthouse, Wisma MLS
No.31, Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur, Malaysia
Tel: (603)-26913691/26973671 Fax: (603)-26913681
E-mail: tenaganita@yahoo.co.uk

Sarawak Women for Women Society

P.O.Box 551
Kuching, Sarawak 93172, Malaysia
Tel: (60-82)416-053

Women's Aid Organization (WAO)

Pertubuhan Pertolongan Wanita
PO. Box 493, Jaan Sultan.
46760 Petaling Jaya
Selangor, Malaysia
Tel: (603) 7956-3488 Fax: (603) 7956-3237
Email: wao@po.jaring.my
Web: www.wao.org.my

Philippines

ACHIEVE Inc. (Action for Health Initiatives)

162-A Sct. Fuentebella Ext., Brgy. Sacred Heart
Quezon City 1103 Philippines
Tel: (632)414-6130

Tel/Fax: (632)426-6147

E-mail: achieve@pacific.net.ph, achieve_caram@yahoo.com

Alliance of Migrant Workers and Advocates to Amend R.A. 8042 (AMEND)

c/o Kanlungan Center Foundation, Inc. No. 77, K- 10th Street, Kamias

Quezon City, Philippines

Tel: (632) 928-2384 Fax: (632) 433-0933

Center for Migrant Advocacy in the Philippines (CMA_Phils.)

72 Matahimik St., Teachers' Village West, Diliman, Quezon City 1104 Philippines

Tel: (632) 433-0684 Fax: (632) 433-0684

Email: cma@tri-isys.com

www.pinoy-abroad.net

International Labour Organization

Sub-Regional Office for Southeast Asia and the Pacific

19th Floor, Yuchengco Tower, RCBC Plaza

Senator Gil Puyat cor Ayala Venue

Makati City

Tel: (632) 580-9900 Fax: (632) 580-9996

Email: cascoric@ilomnl.org.ph

Kaibigan (Friends of Filipino Migrant Workers)

Room B, Ben-lor Bldg

1184 Quezon Ave, Quezon City

Philippines

Tel: (632)373-6901/373-6893 Fax:(632)373-6899

Kalayaan

41 Maginhawa St, UP Village, Diliman

Quezon City,Philippines

Tel: (632) 434-0602 Fax: (632) 435-2019

Kanlungan Center Foundation, Inc.

No. 77 K-10 Street, Kamias 1102

Quezon City, Philippines

Tel: (632) 928-2384 Fax: (632) 433-0933

Email: kcfi@philonline.com.ph

Kanlungan La Union Office

National Highway corner Madrid Road, Lingsat, San

Fernando,La Union, Philippines

Tel: (63-72) 242-3520

Email: knl-lu@sflu.com

www.kanlungan.ngo.ph

Kapisanan ng mga Kamag-anakan ng Migranteng Manggagawang Pilipino (KAKAMMPI)

#2 Dahlia Street , Roxas District,

Quezon City 1101 Philippines

Tel: (632) 4165065 Fax: (632) 4165065
Mobile: 63-919-4421973
Email: kakammpi@tri-isys.com
www.kakammpi.org

Unlad Kabayan Migrant Services Foundation, Inc.

59-B Malumanay St., Teachers' Village West, Diliman, Quezon City 1104 Philippines
Tel: (632) 926-0116 Fax: (632) 433-1292

Singapore

Archdiocesan Commission for the Pastoral Care of Migrants & Itinerant People (ACMI)

2 Highland Road #03-19
CAEC Building
Singapore 549102
Tel: (65) 6280-5424, 6283-9953 Fax: (65) 6284-8156
Email: migrants@singnet.com.sg
www.migrants.org.sg

Filipino On-going development programme (FILODEP)

FMM House of prayer and Formation
49 Holland Road
Singapore 1025
Tel: (65) 6272-0172

Humanitarian Organization for Migration Economics (HOME)

1A Rowell Road
Singapore 207956
Tel: (65)6341 7538 Fax: (65)6341 7528
Helplines: (65) 63415525(women)
Email: vip@home.org.sg
www.home.org.sg

Transient Workers Count Too

Singapore
www.twc2.org.sg/cms/

Taiwan

Hope Workers Centre (HWC)

No. 65 Chang Chiang Road, Chung-li City, Taoyuan, Taiwan
Tel: (886-3) 425-5416
Fax: (886-3) 427-1092
Email: hopemw@ms16.hinet.net

Migrant Workers' Concern Desk
Rm. 906, 9 Floor
2, Chung Shan N. Road, Sec. 1
Taipei
Taiwan, ROC.
Tel: (886-02)389-5247 Fax: (886-02) 311-5124

International networks on trafficking in persons

Anti-Slavery International

Thomas Clarkson House, The Stableyard
Broomgrove Road,
London SW9 9TL, UK
Tel: (44-20) 7501-8920 Fax: (44-20) 7738 4110
Email: antislavery@antislavery.org
www.antislavery.org

Global Alliance Against Traffic in Women (GAATW)

PO. Box 36, Bangkok Noi Post Office
Bangkok 10700, Thailand
Tel: (66-2) 864-1427 Fax: (662) 864-1637
Email: gaatw@gaatw.org
www.gaatw.org

International networks on migrants' rights

CARAM Asia Secretariat

8th Floor, Wisma MLS 31, Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur, Malaysia
Tel: +603-2697-0708 / +603-2697-0219 Fax: +603-2697-0282
Email: caraminfo@yahoo.com or infom@caramasia.org
www.caramasia.org

Migrant Forum in Asia

59-B Malumanay Steet
Teachers' Village West
Quezon City 1104
Philippines
Tel: (632)433-3508 Fax: (632)433-1292
E-mail: mfa@pacific.net.hk
Website: <http://www.mfasia.org>

Migrants Rights International

c.p. 135, route des Morillons
1211 Geneva
Switzerland
Phone: +41.22.9177817 / +41.22.7882873
Fax: +41.22.7882875
E-mail: migrantwatch@vtx.ch

Migrante International

49 Mayaman corner Matahimik Streets,
UP Village, Quezon City, Philippines
Tel: (63-2)425-1259 Fax: (632) 926-2838
Email: migrante@tri-isys.com
www.migrante.org

Middle East**Jordan****Arab Organization for Human Rights (AOHR)**

Amman Institute for Human Rights Studies
P.O. Box 212524, Amman 11121, Jordan
Tel/Fax: (962-6) 4655-043

Oman**Middle East Council of Churches (MECC)**

Gulf Liaison Office, Al Amana Centre
P.O. Box 11, Muscat 113 Oman
Tel: (968) 736-315 Fax: (968) 736-633
Email: kor.pearson@home.se

Appendix D: List of Partners & Projects in Indonesia

BALI

- ♦ **Manikaya Kauci**

Mr. Gunadjar, SH
Jl. Noja Gang XXXVII No. 16, Denpasar Bali
Phone / Fax: 0361-249630
Email : ally_alor@yahoo.com

Project Title: Prevention of Women Trafficking in Dance Groups in Bali

Project Description: Manikaya Kauci is conducting a prevention program for women dance group members in two regions of Bali – Gianyar and Karang Asem districts. Dance group members may be vulnerable to trafficking under the guise of dance or cultural missions. They will train dance members, their community leaders, and families, and develop awareness raising materials.

- ♦ **Women's Study Center – Udayana University (PSW Udayana)**

Dr. Tjok Istri Putra Astiti, SH, MS
Udayana University, Women's Study Center, Jl. PB Sudirman, Denpasar, Bali
Phone / Fax: 0361: 0361-231223
Email: pswunud@yahoo.com

Project Title: Profile of Women and Child Migration from Bali

Project Description: PSW Udayana is conducting research on trafficking and migration from two districts of Bali – Karang Asem and Buleleng. They are assessing the victim demographics and trafficker profiles, studying the routes and processes used by traffickers, and the reasons victims are lured into trafficking.

CENTRAL JAVA

- ♦ **Yayasan Kelompok Studi Perempuan Indonesia (KSPI)**

Ms. Dhinar Sasongko
Jl. Jetis Permai VII No. 2 Gentan Solo
Tel/Fax : 0271-723009

Project Title: Creation of Two Village-Level Community Organizations to Monitor and Protect Migrant Workers in Wonogiri District

Project Description: KSPI will develop and conduct workshops on trafficking issues. Workshop participants will be largely Village Heads, other village-level officials, as well as officials from the kecamatan and district level. KSPI will also produce written materials on trafficking that will be distributed to project participants and other village-level institutions and leaders in Wonogiri District. It is expected that, by raising the awareness of village and local-level authorities, trafficking in the district can be curbed.

♦ **Aliansi Jurnalis Independen (AJI) – Solo**

Mr. Anjar Fahmiarto
Jl. Teratai 16 Badran Laweyan Solo
Tel/Fax: 0271-716219
aji_ska@indo.net.id

Project Title: Journalists' Project on Investigative Reporting Opposing Trafficking

Project Description: The Alliance of Independent Journalists in Solo will organize three workshops on the investigative reporting of trafficking. The workshops will be led by journalists who have extensive experience in investigative techniques, and experts on trafficking. Participants will include journalists from the print and electronic media in Central Java. Participants will be expected to produce stories about trafficking in Central Java, and the best examples will be collected and published in book form at the end of the project period.

♦ **Yayasan Kakak**

Ms. Emmy LS
Jl. Slamet Riyadi No. 534 B Kerten Surakarta
0271-711453

Project Title: Program of Child-Centered, Action-Oriented Research to Handle the Trafficking of Children for Sexual Purposes in Solo

Project Description: Yayasan Kakak will work with children and adolescents at risk of trafficking (or who have survived trafficking) to provide them with the skills and confidence needed to engage in a program of child-centered, action oriented research into the trafficking of children for the sex industry in Solo. The information and recommendations generated from this research will be provided to local officials, members of the district and provincial legislatures and the police.

EAST JAVA

♦ **Konsorsium Pembela Buruh Migran Indonesia – Blitar (KOPBUMI)**

Ms. Tina Suprihatin
Perum Pondok Delta Blok A No. 1 kaweron Talun Blitar Tromol Pos 6 Wlingi
Tel/Fax: 0342-693686/691111
tina_sp@telkom.net

Project Title: Counter-Trafficking in the Process of Recruiting Migrant Laborers in East Java

Project Description: The Consortium for the Defense of Indonesian Migrant Workers in East Java aims to raise awareness of trafficking issues among migrant workers, as well as to provide assistance to victims of trafficking. In order to do so, KOPBUMI will organize workshops and focus group discussions in which participants will be former migrant workers or survivors of trafficking, individuals at risk of being trafficked, including potential migrant workers, and other stakeholders. In addition, KOPBUMI will provide paralegal training to individuals linked with its member organizations in East Java so that they are better able to provide legal assistance to trafficking survivors and individuals at risk of being trafficked.

♦ **Yayasan Hotline Surabaya**

Ms. Esthi Susanti
Jl. Indrapura No. 17 Surabaya
Tel/Fax: 031-3566232/3566233
did@indo.net.id

Project Title: Program on Women and Children Trafficking

Project Description: Yayasan Hotline Surabaya will work with a professional theatrical producer and director to stage a play about trafficking of women and children for the sex industry. The actors will be commercial sex workers from Surabaya who have personal experience with trafficking. The play will be staged in four cities (Banyuwangi, Bojonegoro, Sampang and Jakarta) and the project includes funding for filming the play and the production of 200 DVDs of the play. In addition, Yayasan Hotline Surabaya will also organize a public discussion about the trafficking of women and children for the sex industry, and will invite local government officials, members of local legislatures and other public figures to participate in this event.

♦ **Social Analysis and Research Institute (SARI) – Solo**

Mr. Mulyadi
Jl. Jambu No. 64 Perum RRI jajar Surakarta
Tel/Fax: 0271-714705
sari_solo@hotmail.com

Project Title: Prevention of Trafficking of Women and Children

Project Description: SARI will carry out awareness raising activities in two districts (Ngawi and Magetan) in East Java. The organization will implement a general public awareness campaign through the creation and distribution of information posters and leaflets, as well as provide training in community organization and paralegal skills to leaders within migrant workers networks (such as the “Cahaya” network in Madiun and Ponorogo). It is expected that these trained leaders will be better able to provide legal aid to individuals affected by

trafficking. It is also expected that the leaders will be better able to mobilize the migrant worker community, as well as other concerned individuals, to put pressure on the provincial and district authorities to control trafficking in East Java.

♦ **Solidaritas Buruh Migran Indonesia – Jawa Timur (SBMI-Jatim)**

Mr. Aak Abdullah Al-Kudus
Jl. Linduboyo No. 139 Klakah Lumajang
Tel/Fax: 0334-442805
sbmi_jatim@telkom.net

Project Title: Action to Counter Women and Children Trafficking to Other Countries

Project Description: SBMI-Jatim will conduct activities to empower Indonesian migrant workers, especially undocumented women and children, with the knowledge and skills necessary to keep them from becoming victims of trafficking. The project will be implemented in four villages in Lumajang District and will consist of conducting community organizing training targeted at individuals at risk of being trafficked, providing training in trafficking itself (i.e., how to recognize it, avoid it, take steps to protect oneself if one becomes a victim, as well as how to obtain justice and assistance if one is a survivor of trafficking).

EAST KALIMANTAN

- ♦ **Planned Parenthood Indonesia - Samarinda (PKBI)**

Drs. Sumadi Atmodiharjo
Jalan Letjen Suprpto No. 1 Samarinda
Tel/Fax: 0541-734751
Email: pkbi-kaltim@samarinda.org

Project Title: Integrated Services for Victims of Trafficking in East Kalimantan

Project Description: PKBI will lead a coalition of government and NGO partners for the provision of services to victims of trafficking – particularly for sex work, in Samarinda. In addition to victim services, the partnership will lead an awareness-raising campaign to increase the awareness of sex workers and those in contact with them about the services of the network.

JAKARTA

- ♦ **Yayasan Jurnal Perempuan**

Gadis Arivia
Jl. Tebet Barat VIII No. 27 Jakarta Selatan
Tel/Fax: 021-8370-2005/021/021-829-0328
email: yjp@yjp.or.id

Project Title: Advocacy on Women trafficking Through the Press

Project Description: YJP is conducting a counter trafficking awareness raising program. They are conducting investigations of trafficking in three regions – Riau, West Kalimantan and Jakarta - and using the information and interviews from these investigations to develop media programs. These include a radio program that will be broadcast throughout Indonesia, a counter trafficking documentary video, and an edition of YJP monthly publication dedicated to trafficking.

- ♦ **Atma Jaya University, Center for Societal Development Studies**

Dr. Harimurti Kridalaksana
Jl. Jendral Sudirman 51, Jakarta, Indonesia 12930
Tel/Fax: 021-5703306/021-5734355
email:

Project Title: Research on Child Trafficking for Domestic Work in Jakarta

Project Description: Atma Jaya University is conducting research into trafficking of child domestic workers in Jakarta. The research will examine the percentage of child workers amongst the domestic worker population, the conditions in which they work, and the economic, social and psychological impact on the children. They will also analyze government policies and legislation relevant to trafficking of children for domestic workers.

- ♦ **Women and Gender Studies Center University of Indonesia (Pusat Kajian**

Wanita dan Gender Universitas Indonesia)
Dr. Sulistiowati Irianto, MA
Gedung Rektorat Lama UI Lt. 4
Jakarta 10430

Tel/Fax: 021-3924392/021-3924392
email: cedawui@pacific.pacific.net.id

Project Title: Research and action program: Women trafficking and drugs dealing in feminist law perspective

Project Description: UI is conducting research in the Tangerang Women's Prison in Jakarta. They are investigating whether women convicted on drugs trafficking charges may be victims of trafficking themselves who were forced to traffic in drugs.

♦ **Solidaritas Perempuan**

Salma Safitri
Jl. Jatipadang Raya Gg. Wahid No. 64
Jakarta Selatan
Tel/Fax: 021-7802529/021-7802529
email: soliper@centrin.net.id

Project Title: Research on Child Trafficking for Domestic Work in Jakarta

Project Description: SP is providing legal assistance to women migrant workers who are survivors of trafficking or of serious labor and human rights violation. SP provides legal assistance, shelter services and other assistance for survivors.

LAMPUNG

♦ **Lembaga Advokasi Perempuan Damar (Damar)**

Ms. SN. Laila
Jl. Jl. Wijaya Kusuma No. 1 Rawalaut BandarLampung
Tel/Fax: 0721-255093
damar-pr@indo.net.id

Project Title: Advocacy for Female Trafficking Victims

Project Description: In this project, Damar will focus on assistance to female survivors of trafficking in Bandar Lampung. The organization will provide assistance in the form of legal aid to survivors who are involved in legal proceedings stemming from their trafficking experiences. In addition, Damar will also provide medical care and psychological counseling to survivors in need of these services. Project funding will also be used to fund a shelter for survivors of trafficking and other women in crisis (chiefly women who have left abusive Relationships). Damar will work with the city government to press for ongoing funding of this shelter through the municipal budget after project funding ceases.

♦ **Kantor Bantuan Hukum Lampung (KBH Lampung)**

Mr. Grace P. Nugroho
Jl. Letjen Suprpto No. 54/78 Kel. Pelita Kec. Tanjungkarang Pusat
Bandar Lampung 35117
Tel/Fax: 0721-267965/241149
kbh_lpg@indo.net.id

Project Title: Legal Aid and Policy Dialogue

Project Description: KBH Lampung will identify five significant cases of trafficking in Lampung

Province and will launch legal proceedings in each of these cases. The procedures followed and other important issues arising from the legal procedures will be documented and analyzed in order to develop a more comprehensive understanding of the strengths and weaknesses of legal and official responses to trafficking in the province. This analysis and other recommendations will be shared with key players in counter-trafficking efforts (such as the police, public prosecutors, judges, lawyers and legal associations, legal experts and other NGOs) in two meetings.

♦ **Perkumpulan Keluarga Berencana Indonesia (PKBI Lampung Barat)**

Drs. Tono Suparman
Jl. Mawar No. 5 Liwa Lampung Barat
Tel/Fax: 0728-21326

Project Title: Awareness Raising Regarding the Trafficking in Women and Children in West Lampung

Project Description: The Indonesian Family Planning Association in West Lampung District will develop a training program and materials which they will provide to local-level leaders and other respected figures in the district. Participants will include village and neighborhood chiefs, as well as staff from village-level Puskesmas and Posyandu clinics. It is expected that, by targeting individuals associated with existing village-level institutions, project sustainability will be enhanced and there will be a greater likelihood that those at risk of being trafficked will be identified and counseled appropriately.

♦ **Lembaga Advokasi Anak (LADA)**

Ms. Diah D. Yanti
Jl. Kamboja no. 67/59, Bandar Lampung
Phone/ Fax: 0721-264395
Email: lada_damar@yahoo.com

Project Title: Assistance to Children Victims of Trafficking (Pendampingan Anak Korban Trafficking)

Project Description: LAdA, a children welfare and protection NGO, will focus on the rescue, repatriation, and reintegration of child victims of trafficking. LAdA will also advocate for a new *Perda (Peraturan Daerah)* (Regional Regulation) to the regional government in Lampung on the protection and welfare of children, including the trafficking of children and protection of victims.

NORTH SULAWESI

♦ **Sehabat Perempuan**

Dr. Jane M. Pangemanan, MS
Jl. Langsung No. 10 Tikala Baru
Manado 95126
Telp/Fax: 0431-860750/0431-860750
E-mail: ysp@telkom.net

Project Title: Counter Trafficking in North Sulawesi

Project Description: Sehabat Perempuan will work with government and NGOs in North Sulawesi to develop a network / referral system for the provision of a comprehensive package of services to victims of trafficking. In addition, they will train highschool teachers about trafficking and develop awareness raising materials for use in highschools.

♦ **Yayasan Maupusan Minahasa**

Venal pangau
Jl. Raya Sendangan Kec. Remboken
Kab. Minahasa Sulawesi Utara
Hp: 08124417877
email: kalia_computer@yahoo.com

Project Title: Counter Trafficking Prevention Program

Project Description: Yayasan Masyarakat Minahasa will conduct a prevention program targeted to highschool students and the community at large in 5 subdistricts in Minahasa. They will provide training for students, hold public discussions, and develop awareness raising materials for students and the community.

NORTH SUMATRA

♦ **Pusat Kajian dan Perlindungan Anak (PKPA)**

Ahmad Sopian
Jl. Mustapa No. 30
Medan 20238
061-6611943/061-6611943
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Project Title: Cooperation between Batam and Medan in the Prosecution of Trafficking Cases

Project Description: PKPA is providing legal assistance and support for children from North Sumatra who were trafficked for the purpose of sexual exploitation to Riau. PKPA is providing assistance on their return, developing mechanisms of cooperation between officials from both regions, and providing legal assistance to help survivors bring their cases to the courts.

♦ **Yayasan Pondok Rakyat Kreatif (YPRK)**

Oktoviana SP
Jl. Panglima denai No. 128 (Seksama Ujung)
Medan 20228
Tel/Fax: 061-7875547/061-7875547
email: yprknet@indo.net.id

Project Title: Prevention of Trafficking of Girls in 3 Fishing Communities in Belawan (Belawan Lama, Kampung Nelayan and Bagan Tanjung Ujung)

Project Description: YPRK is conducting a prevention program in three fisherman communities in North Sumatra. As part of this program they will hold a community theater on trafficking with vulnerable children as the actors, conduct community awareness raising activities, and conduct house to house and community meetings to discuss how to protect your children from becoming victims of trafficking.

♦ **Lembaga Advokasi dan Pemberdayaan Rakyat (LAYAR)**

Junita Lila Sinaga
Jl. Pattimura No. 26
Pematang Siantar
Sumatera Utara

Tel/Fax: 0622-26442/0622-26442
email: bebas_s@hotmail.com

Project Title: Trafficking Prevention in 7 sub districts in North Sumatera

Project Description: LAYAR is conducting a prevention program in 7 communities in North Sumatera. They will develop a core team of three people from each community to act as the peer group leaders for that community, informing their community about trafficking. They will also develop awareness raising materials, conduct radio talk shows and hold workshops for community leaders and families of vulnerable children.

RIAU PROVINCE

♦ **Yayasan Mitra Kesehatan dan Kemanusiaan (YMKK)**

Lola Wagner
First City Komplek Blok 2, 2nd Floor No.9
Batam Center, Batam
Tel/Fax: 0778-464195/0778-464195
email: ymkk@batam.wasantara.net.id

Project Title: Victims Support and Reduction of Trafficking of Women & Children in Batam

Project Description: YMKK is providing assistance to commercial sex workers including victims of trafficking. They provide primarily safe shelter, counseling, and medical assistance in Batam.

♦ **Forum 182**

Irwan
First City Komplek Blok 2, 2nd Floor No.9
Batam Center, Batam
Tel/Fax: 0778-464195/0778-464195
email: forum182@plasa.com

Project Title: Building the Strength of Forum 182 to address Trafficking Issues in Batam

Project Description: Forum 182, which is a coalition of NGOs in Batam, is conducting an awareness raising campaign to increase the government and the public's knowledge and understanding of trafficking in order to get local government resources committed to combat trafficking.

♦ **Pusat Pelayanan Tenaga Kerja Wanita di Batam (PP Nakerwan)**

Vike Karundeng
Jl. Raden Patah 51 Nagoya Batam
Tel/Fax: 0778-425993/0778-427895
email: ppnakerwan@plasa.com

Project Title: Advocacy to Prevent the Trafficking of Women Migrant Worker

Project Description: PP Nakerwan is conducting an awareness raising campaign to improve conditions for migrant worker women in the holding centers and to stop trafficking-like practices. They are conducting a special workshop for government employees involved in regulating the holding centers, producing awareness raising materials and conducting investigations of the conditions in the holding centers.

♦ **Ketua Komisi Migran dan Perantau (Karya Migran)**

Father J.W Langenhuijser
St. Theresa Church Jl. Kartini III Sungai Harapan
Sekupang Batam 29422
Tel/Fax: 0778-310958/ 0778-321800
email: sscprop@telkom.net

Project Title: Shelter for Migrant Worker Victims of Trafficking

Project Description: Karya Migran is providing assistance to migrant workers who have returned from working abroad. They provide safe shelter, counseling, and assistance for return to their home communities.

WEST JAVA

♦ **Institut Perempuan Bandung**

Ms. Rotua Valentina
Jl. Pada Asri No. 8 Pav Bumi Asri Padasuka Bandung
Tel/Fax: 022-7206289
institut_perempuan@yahoo.com

Project Title: Radio and Leafleting Campaign to Eradicate the Trafficking of Women and Children

Project Description: Institut Perempuan Bandung will produce a public service announcement (PSA) and a leaflet designed to raise the awareness of vulnerable

groups in West Java about the issue of trafficking and how it can be eradicated. In order to ensure that the PSA and leaflet are appropriate for the target audience (those at greatest risk of being trafficked), Yayasan Institut Perempuan will organize focus group discussions with the target audience to develop and design the messages to be transmitted. In addition, the PSA and leaflet will be produced in both Bahasa Indonesia and Bahasa Sunda in order to increase the reach of the counter-trafficking message of this campaign.

♦ **Lembaga Perlindungan Anak (LPA)**

Dra. Yusi Riksa, M.Pd
Jl karangtinggal 33 Bandung 40162
Tel/Fax: 022-2032525
lpajabar@bdg.centrin.net.id

Project Title: Elimination of the Worst Forms of Child Labor through Training and Awareness of Child Trafficking Issues

Project Description: LPA will conduct a survey of child trafficking issues in West Java and create a database of child trafficking issues (vulnerable groups, individuals and institutions involved, services available) in the province. This information will be used in training programs that will be provided to government officials and other NGOs working in the field of child labor and trafficking in children. It is expected that the information generated, and the training provided in the project will result in a strengthened capacity to combat the worst forms of child labor and trafficking in children at the community, organizational and official levels in West Java.

♦ **Lembaga Advokasi Hak Anak (LAHA)**

Ms. Distia Aviandati

Jl. PLN Dalam 108 / 203 D Moh. Toha Bandung 40225

Tel/Fax: 022-5221151

lahabdg@indosat.net.id

Project Title: Legal Responses to the Problem of Trafficking of Children in West Java

Project Description: Working with the police, public prosecutors, judges, lawyers, legal experts and other stakeholders, LAHA will develop a "standard operating procedure" to handle cases of child trafficking in West Java. It is anticipated that this standard operating procedure will be adopted by all individuals and institutions involved in counter-trafficking efforts in West Java, thus increasing the effectiveness and synergy of these efforts.

♦ **Yayasan Bina Sejahtera Indonesia (BAHTERA)**

Mr. Hadi Utomo

Jl. Ciparay No. 277 / 196 A RT ½ Bandung

Tel/Fax: 022-5402588/6001601/7279320

ybahtera@indosat.net.id

Project Title: Empowerment Program for Child Survivors of Trafficking

Project Description: In this project, BAHTERA will provide protection and services to child survivors of trafficking by facilitating the return of child trafficking victims to their homes from Batam: the provision of medical care and counseling; the development of mentoring relationships between BAHTERA fieldworkers and children at risk of being trafficked and their families; and the provision of a crisis center in Bandung. In addition, BAHTERA will organize an awareness raising campaign in Bandung, and seek to raise the profile of child trafficking issues amongst policy-makers through meetings and discussions.

WEST KALIMANTAN

♦ **YLBH-APIK Pontianak**

Ms. Hairiah, SH

Jl. Kyai Ahmad Dahlan Gg. Jeruk 62 Pontianak Kalbar

Tel/Fax: 0561-734636

apik_ptk@yahoo.com

Project Title: Awareness Raising Regarding Trafficking in Women for Village Leaders in West Kalimantan

Project Description: YLBH-APIK will develop a training program and materials concerning the trafficking of women in West Kalimantan. This training program will be provided to Village Heads, other village-level officials and traditional community leaders so that they will be better able to identify trafficking, prevent its occurrence in their communities and protect women at risk of being trafficked. This training program will be complemented with a village-level awareness raising campaign in which YLBH-APIK will produce and distribute information posters and flyers.

♦ **Borneo Multivision PH Pontianak**

Mr. Usman Damiri, Ap, S Sos

Jl. Nusa Indah I Blok B No. 58 LT III Pontianak

Tel/Fax: 0816-4988005
borneo_ph@yahoo.com

Project Title: Public Information through the Production of a PSA and Documentary on Trafficking of Women and Child

Project Description: Borneo Multivision, a television production house located in Pontianak, will produce a public service announcement (PSA) and 30-minute documentary on trafficking for broadcast on TVRI (state-owned television station). Both the PSA and the documentary will focus on the experiences of local people who were trafficked to neighboring East Malaysia, and footage will include interviews with survivors of trafficking.

♦ **Perempuan Khatulistiwa Crisis Center (PKCC)**

Ms. Novita, SH
Jl. KHA. Dahlan Gg. Jeruk No. 45 Pontianak Kalbar
Tel/Fax: 0561-713273
khatulistiwa_pr@yahoo.com

Project Title: Awareness Raising Training on Trafficking for Teachers in Three Districts in West Kalimantan

Project Description: In this project, PKCC will develop a training program and materials on trafficking issues which will be given to public school teachers (primarily at the junior high and high school level) in three districts (high migrant worker sending areas). Once trained, the teachers will pass on their knowledge and understanding to their students and colleagues. Eventually, it is intended that the training program will become part of the "Local Content" (*muatan lokal*) currently being developed by provincial and district authorities for eventual inclusion into the standard curriculum taught throughout the province.

♦ **Dewan Pemimpin Daerah Federasi Serikat Pekerja Perkayuan dan Perhutanan**

Indonesia – Kalimantan Barat (DPD FSP KAHUTINDO KALBAR)
Mr. Bambang Yuniarto
Jl. Hussein Hamzah Dwi Ratna Indah 3 B. 23 Pontianak
Tel/Fax: 0561-773409/771821/741052

Project Title: Project for Counter-Trafficking of Women and Children

Project Description: The West Kalimantan Branch of the Federation of Woodworking and Forestry Unions will conduct ten intensive membership meetings for 500 plant-level leaders and members in three districts (Pontianak, Ketapang and Sambas – high migrant worker sending areas). During these meetings, participants will receive a basic understanding of what trafficking is, how individuals can protect themselves against trafficking, where survivors of trafficking and their families can obtain assistance, and how the union can play a role in eradicating trafficking in the province. Once armed with this knowledge, it is expected that plant-level leaders and members will be better able to identify and counsel individuals at risk of being trafficked and will also play an active role in lobbying governments to eradicate trafficking at the local level.

WEST NUSA TENGGARA

- ♦ **Yayasan Panca Karsa**

Ms. Endang Susilowati
Jl. Industri No. 26 A Kodya Mataram 83114 NTB
Tel/Fax: 0370-624304
ypkmtr@telkom.net

Project Title: Protection of Indonesian Women Migrant Workers from Trafficking Practices

Project Description: Yayasan Panca Karsa will implement a comprehensive program of training and discussions in eight villages that are high migrant worker sending areas (Puyung, Bare Julat, Batu Nyala, Bare Bali, Batujai, Aik Mual, Mongtong Trep and Nyerot) in Central Lombok. The project target group includes women at risk of being trafficked and training will be provided in the identification and prevention of trafficking, as well as in gender awareness, sexual health issues (HIV/AIDS) and local microenterprise as an alternative to seeking work outside one's home community. In addition, Yayasan Panca Karsa will provide legal aid and counseling/medical support for specific cases of trafficking in the eight target areas. These local level initiatives will be linked to the policy level through the organization of hearings with representatives of the district government and legislature, public debates and the use of media (i.e., appearance on talk shows, submission of articles to the print media) to raise public awareness of trafficking issues.

- ♦ **Yayasan Koslata**

Mr. Sulistiyono
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Tel/Fax: 0370-637017
koslata@mataram.wasantara.net.id

Project Title: Protection and Strengthening of Indonesian Migrant Workers and their Families through Community Groups and Critical Discussion

Project Description: Yayasan Koslata will conduct an analysis of the scale of the trafficking problem, as well as prepare an inventory of resources available to counter trafficking in West Lombok. Following this, the organization will train a cadre of village-level facilitators/paralegals in three communities (Desa Tanjung, Desa Kediri and Desa Gerung) in West Lombok. These trained facilitators/ paralegals will organize community-level discussions of trafficking issues during the project period. The project also aims to support the development of community-based migrant worker associations who will actively support each other and other community members at risk of being trafficked. The project will also link the community-level activities with policy-making through organizing a number of meetings between project participants, officials, members of the district legislature and other public figures.

OTHER RESEARCH PARTNERS

- ♦ **The Women's Study Center, Padjadjaran University (UNPAD)**

Ibu Dr. Komariah Emong Sapardjaja, SH
Lembaga Penelitian
Universitas Padjadjaran
Jl. Dipati Ukur 35
Bandung
Phone/Fax: 022-2507444/022-2507444

Project Title: The research on trafficking of women and children in Riau

Project Description: The Women's Study Center of Padjadjaran University will work with the Women's Study Center of the University of Riau and with local NGOs to conduct research into trafficking in Riau province, particularly on the islands of Batam and Karimum. They are assessing the victim demographics and trafficker profiles, studying the routes and processes used by traffickers, the reasons victims are lured into trafficking, the services available, and the impact of legislation and policy. They have also conducted similar research in West Java province.

♦ **The Gender and Law Faculty, Brawijaya University (UNIBRAW)**

Sri Wahyuningsih, SH., MPd
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Universitas Brawijaya
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Malang
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E-mail: pphg@telkom.net

Project Title: Research on Trafficking of women & children in West Kalimantan.

Project Description: The Gender and Law Faculty of Brawijaya University will work with the Women's Study Center of the Tanjungpura University in West Kalimantan and with local NGOs to conduct research into trafficking in West Kalimantan province. They are assessing the victim demographics and trafficker profiles, studying the routes and processes used by traffickers, the reasons victims are lured into trafficking, the services available, and the impact of legislation and policy. These studies will contribute to the "academic paper" and the development of counter trafficking legislation. They have also conducted similar research in East Java province.

OTHER PROJECT PARTNERS:

♦ **Konsorsium Pembela Buruh Migran Indonesia (KOPBUMI) – National Secretariat (The Consortium for the Defense of Indonesian Migrant Workers)**

Mr. Wahyu Susilo, Executive Secretary
Jl. Aren IV / 6
Rawamangun, East Jakarta
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♦ **Federasi Organisasi Buruh Migran Indonesia (FOBMI) (Federation of Indonesian Migrant Workers)**

Mr. Edi Ahmad Setiawan
Jl. Aren IV/6 Rawamangun Jakarta Timur
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E-mail: rights@fobmi.zzn.com
jarnasbmi@hotmail.com

Project title: Prevention of Trafficking Practices for Migrant Workers based in Banten Province

Project Description: KOPBUMI will work together with its member organization, the **Federasi Organisasi Buruh Migran Indonesia (FOBMI) (Federation of Indonesian Migrant Workers)** on this project. FOBMI will conduct a survey in Banten province to identify high

migrant worker sending areas and in which areas migrant workers are most vulnerable to trafficking. FOBMI will conduct community discussions in two districts once a month with 8-15 persons each, related to issues of safe migration, risks or danger signs for trafficking, and how to avoid it. In order to raise awareness of local leaders and people in Banten, FOBMI will conduct a radio talk show three times over three months, and conduct a one-day workshop on trafficking issues. To follow-up these activities, FOBMI will design, produce, and disseminate a leaflet raising the same messages as in the talk show and community discussions.

- ♦ **Jaringan Lembaga Non-Pemerintah untuk Program Aksi Penanggulangan Pekerja Anak di Indonesia (JARAK) – National Secretariat & One Stop Service Center (The Network for the Elimination of Child Labor)**

Mr. Anwar Solihin
Perum Karanglo Indah Blok O-10
Malang, East Java
Tel/Fax: 0341-414451
<http://www.jarakonline.or.id>

- ♦ **Yayasan Sosial Solidaritas Nusantara (YSSN)**

Mr. Arifin Alapan, SE.
Jl. Adi Sucipto Km 12 Teluk Mulus Blok I no.14-15 Kabupaten Pontianak, West Kalimantan
Phone/Fax : 0561-721 266
E-mail : arifinalapan@yahoo.com

Project Title: Elimination of Trafficking in West Kalimantan Cross-National Border

Project Description: JARAK will work together with its member organization, **Yayasan Sosial Solidaritas Nusantara (YSSN) in West Kalimantan, on this project.** Working with JARAK, YSSN will conduct one day seminar on trafficking issues to raise awareness of stakeholders at the provincial level, including government representatives, NGOs, trade unions and other community organizations. YSSN will develop a network at the district and local level to take community action to eliminate trafficking of children. They will produce a poster and leaflets related to trafficking to disseminate to a larger group of people in West Kalimantan. YSSN will also provide services to twenty-eight identified trafficking victims to provide counseling, prioritize their problems, and provide life-skill training to prevent them from being trafficked again.

- ♦ **Serikat Buruh Sejahtera Indonesia (SBSI), Departemen Buruh Perempuan dan Buruh Anak (The Indonesian Workers Welfare Union - Department of Women Workers and Child Labor)**

Ms. Sulistri
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- ♦ **Serikat Pekerja Tekstil, Sandang, dan Kulit (SP-TSK), Departemen Buruh Perempuan (The Union of Textile, Shoes, and Leatherworkers – Department of Women Workers)**

Ms. Lilis Mahmudah

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