



International
Labour
Office

Jakarta



Overview of Key Issues Related to Domestic Workers in Southeast Asia

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**ILO Project on Mobilising Action for the Protection of Domestic Workers from
Forced Labour and Trafficking in Southeast Asia**



International Labour Organization

June 2006

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First published 2006

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International Labour Organization
Overview of Key Issues Related to Domestic Workers in Southeast Asia
Jakarta, International Labour Office, 2006

ISBN 92-2-018698-5 (print)
92-2-018699-3 (web pdf)

Also available in Bahasa Indonesia: *Tinjauan Permasalahan terkait Pekerja Rumah Tangga di Asia Tenggara*.
ISBN 978-92-2-018698-5 (print) and 978-92-2-018699-2 (web pdf),
Jakarta, 2006

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Printed in Indonesia

Foreword

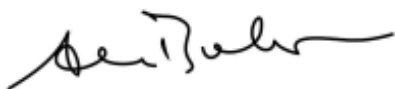
All workers, regardless of their status and sector, have equal rights to protection and recognition according to the 1998 *ILO Declaration on Fundamental Principles and Rights at Work* and its Follow-up resolution from the 92nd session of International Labour Conference in 2004.

Domestic work constitutes the most prevalent form of wage employment for women in Asia, and as Asia becomes increasingly urbanized and income differentials increase, the prevalence of domestic work is also growing. In spite of the importance of domestic work for national economies and productivity, domestic workers in most Asian countries are not recognized as workers with equal rights to employment and other protection. As a result, in most Asian countries they are excluded from coverage of general labour laws and protections, regulating wages and employment conditions, as well as from social protection schemes. Due to the nature of their work, which usually takes place in private households away from the public eye, domestic workers are furthermore vulnerable to abusive practices by unscrupulous employers.

Domestic workers can often face triple discrimination, as women, as domestic workers and as migrants. For this reason the *ILO Project on Mobilising Action for the Protection of Domestic Workers from Forced Labour and Trafficking in Southeast Asia* in 2004, supported by DFID-UK under the Special Action Programme on Forced Labour (SAP-FL) is seeking to assist Governments and other partners in strengthening protections and programmes for domestic workers.

This paper is part of the work under the above-mentioned Project, and aims to provide an overview of the key human rights and labour rights issues in relation to domestic workers, as well as the possible abuses and exploitation facing them. In doing so the paper aims to enhance the knowledge base and information sharing concerning the position of domestic workers, as well as to increase the knowledge of best practices that can be applied in looking after the interests and welfare of these workers. The paper in this way constitutes part of the efforts of the ILO and its tripartite constituents to ensure that decent work conditions are extended to all workers.

Jakarta, June 2006



Alan Boulton
Director
ILO Jakarta Office



Lotte Kejser
Chief Technical Advisor
Domestic Workers Project

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Domestic work constitutes an important source of wage employment for women and men in Southeast Asia. Due to the fact that it takes place inside the household and is considered informal work, it is unregulated and therefore often invisible. Yet, this is a category of workers who are in urgent need of legal and social protection, as they experience abuse and exploitation during recruitment and placement, during employment, and during and after return to their hometown. This paper outlines the most pressing problems confronted by domestic workers as well as obstacles they experience in efforts to claim their rights. Although both men and women carry out domestic work, women and girls form the majority and are most seriously affected by problems of abuse and exploitation. As such, this paper will focus exclusively on female domestic workers.

Domestic work is a source of work for thousands of women, especially rural women who often have low levels of formal education and have learned few marketable skills. Reports indicate the existence of 860,000 to 1,400,000 domestic workers in Indonesia, of which at least 25 per cent are under 15 years of age.¹ In the Philippines, estimates vary between 574,000 and 631,000 (according to the 2002 Labour Force Survey, of whom 92 per cent are women), and 1.3 million (the number of households with employed persons, according to the April 2002 Labour Force Survey).² Many domestic workers are very young: the April 1995 NSO Labour Force Survey found that 301,701 househelpers were 19 or younger, with the majority (272,819) between 15-19 years old. However, NGO estimates for the number of child domestic workers are much higher.

The majority of domestic workers appear to be aged below 30 and are from poor rural areas throughout the country where educational facilities and employment opportunities are limited.³ The 1995 Philippines Labour Force Survey found that 59 per cent of domestic workers were between the ages of 15 and 24.⁴ Tjoet Njak Dien, a NGO working with domestic workers in Yogyakarta (Indonesia), found that half of their survey sample in three major cities only had elementary education. Most were unmarried, had few formal skills, and were responsible for their family's economic well-being.⁵

Many women who seek domestic work outside their hometown do so because they face pressures at home, whether it is pressure by their husbands to bring in additional income or domestic violence from which they seek to escape. Women may also find a sense of freedom, independence and empowerment by leaving their hometown and seeking work elsewhere. In short, many women are undeterred in their search for domestic work, either because they are unaware of the risks or because

1 Rosenberg, R. (ed) *Trafficking of Women and Children in Indonesia* (Jakarta: International Catholic Migration Commission and American Center for International Labor Solidarity, 2003), p18.

2 Philippines NSO Labour Force Survey, January to October 2002. These figures are based on the number of persons who identified "domestic helper" in response to the survey category "relationship to household head." Quoted in N. Sayres, *An Analysis of the Situation of Filipino Domestic Workers* (Geneva and Manila: International Labour Office, 2004), p5.

3 Rosenberg, *Trafficking of Women and Children in Indonesia*, p18 and pp59-60.

4 Quoted in Sayres, *An Analysis of the Situation of Filipino Domestic Workers*, p6.

5 Quoted in Rosenberg, *Trafficking in Women and Children in Indonesia*, p60. See also E. Noerdin and Eun See Park, *Situational Analysis of Domestic Workers in Indonesia: A preliminary assessment* (Jakarta: International Labour Organisation, 2004).

they accept these risks as the price to be paid for economic and social self-improvement or assistance to their families. But domestic work also is a vital service to those who employ domestic workers. In many families in urban areas, a domestic worker takes care of the household, children and the elderly to enable both parents to work outside the home.

Migration for domestic work takes place not only within but also across national borders. Overseas labour migration by women has increased significantly since the 1970s, with women now comprising the large majority of legal migrant workers originating from Indonesia, the Philippines and Sri Lanka. For example, by 2002 73 per cent of legal migrant workers from the Philippines and 76 per cent from Indonesia were women.⁶ The number of Asian women who migrate for work is estimated at some 800,000 per year.⁷ Many of these women work as domestic workers in Southeast and East Asia and in the Middle East.⁸ Between 70 and 90 per cent of Indonesian and Filipino migrant workers to the Middle East are women, adding up to tens of thousands of women leaving their homes each year.⁹ However, the largest numbers of female domestic workers from Indonesia and the Philippines are found in Hong Kong, Singapore and Malaysia.

Between 1,400,000 and 2,100,000 Indonesian women are estimated to be working overseas, most of who are engaged in domestic work.¹⁰ In 2002, according to the Indonesian Ministry of Manpower and Transmigration, 94 per cent of Indonesian female legal migrant workers worked as domestic workers in the Middle East, East Asia and Southeast Asia. Of the approximately 240,000 domestic workers in Malaysia, 90 per cent are Indonesian.¹¹ However, if migrant workers without work permits or visas were counted, these numbers could easily double, as each year thousands of Indonesians migrate illegally to Malaysia. Similarly, whereas the Indonesian Ministry of Manpower and Transmigration reports the presence of some 20,000 Indonesian domestic workers in Hong Kong, the number provided by the Hong Kong Immigration Department is almost four times higher (77,100).¹²

Philippines statistics show that in 2002-03, 265,000 migrant workers departed overseas.¹³ Some 1.5 million Filipinos live and work in Asia and the Pacific (not including West Asia), while the number of undocumented Filipinos in this region is estimated at over half a million.¹⁴ Almost half of all female, land-based new hires in 2004 (and 36 per cent of the total number of new hires) were working in the service sector (44 per cent as domestic workers and caregivers).¹⁵ Statistics combining new hires and rehires show that in 2004, some 87,000 Filipino workers left for Hong Kong, and more than 20,000 for

6 Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore* (Human Rights Watch, New York: 2005), p10; Sayres, *An Analysis of the Situation of Filipino Domestic Workers*, p9; Asian Migrant Centre, *Underpayment: Systematic Extortion of Indonesian Migrant Workers in Hong Kong* (AMC, Hong Kong: 2005), p7. The Indonesian figures are based on data from the Ministry of Manpower and Transmigration. Statistics on domestic work and facts on geographic flows are unreliable and incomplete, due to difficulties in monitoring a sector in which undocumented migration occurs frequently.

7 Human Rights Watch, *Help Wanted: Abuses against female migrant domestic workers in Indonesia and Malaysia*. (Online: <http://hrw.org/reports/2004/indonesia0704/>), p4. This figure is based on estimates from labour-sending countries.

8 Although the Middle East still is an important destination for domestic workers from countries such as Indonesia and the Philippines, this paper is limited to a discussion of domestic work in Southeast Asia.

9 ILO, *Gender and Migration in Arab States: The case of domestic workers* (Beirut: ILO Regional Office for Arab States, June 2004), p15.

10 Rosenberg, *Trafficking of Women and Children in Indonesia*.

11 HRW, *Help Wanted*, p3. Official data from the Malaysian Ministry of Human Resources put the number of documented foreign domestic workers much lower at 155,000, of whom 70 per cent are Indonesian (source: N. Piper, *Migrant Labor in Southeast Asia: Malaysia country study*, Paper prepared for Friedrich Ebert Stiftung Project on Migrant Labour in Southeast Asia, p7).

12 Asian Migrant Center, *Underpayment*, p8. The discrepancy reflects inadequate monitoring by the Indonesian government.

13 Quoted in Abella, *Plan of Action on Labour Migration in Asia Pacific*, p4.

14 Figures from the Ministry of Foreign Affairs, quoted in M.L. Alcidi, *Migrant Labour in Southeast Asia: Philippines Country Study*, Paper prepared for Friedrich Ebert Stiftung Project on Migrant Labor in Southeast Asia, 2005, p7.

15 Data from the Philippines Overseas Employment Administration (POEA), quoted in Alcidi, *Migrant Labour in Southeast Asia: Philippines Country Study*, p8.

Singapore. Top destinations for Filipina domestic workers are Hong Kong (36 per cent of new hires in 2002), Kuwait (20.5 per cent) and Saudi Arabia (18.8 per cent).¹⁶

Similar to domestic workers in their countries of origin, overseas domestic workers are in need of income to support their extended family. Domestic work is an important source of income for entire families and communities in rural areas in sending countries. Remittances by migrant workers are estimated to amount to US\$7-8 billion to the Philippines and US\$2 billion to Indonesia.¹⁷ However, overseas domestic workers are more often married, aged above 25 and, in the case of Filipina domestic workers, educated at high school or university level.

Research among Filipina domestic workers in Hong Kong revealed an average age of 33 years, while 62 per cent of the sample had completed tertiary education. According to a survey in Singapore, half of all Filipina domestic workers had completed high school, while 43 per cent held a college degree. Filipina overseas domestic workers were also found to be more often from urban areas than their counterparts who stay in the country.¹⁸ Interviews among former Indonesian domestic workers in Singapore revealed that some 70 per cent were married with children at the time of their employment. About half of them had finished six years of primary school education or less. Many (63 per cent) did not have prior work experience.¹⁹ In contrast, a study of returning Indonesian female migrant workers found that some 60 per cent had primary education or less.²⁰ Thus, the profile of domestic workers overseas varies significantly by country, while the differences between domestic workers overseas and those working in their own countries calls attention to the need to distinguish push and pull factors for these different groups.

16 Sayres, *An Analysis of the Situation of Filipino Domestic workers*, p10, based on POEA data.

17 Abella, *Plan of Action on Labour Migration in Asia Pacific*, p6 and Human Rights Watch, *Maid to Order*, p10. Data for remittances to the Philippines appears to include money sent by overseas Filipinos who did not migrate temporarily for work.

18 Sayres, *An Analysis of the Situation of Filipino Domestic Workers*, p12. See also ILO, *Gender and Migration in Arab States*, p20.

19 Wisnuwardini, A. Savitri, Alb. Bambang Buntoro, Mulyadi and Sri Palupi, *Problems Faced by Indonesian Migrant Domestic Workers in Singapore: Data and facts*. (Jakarta: Working Forum for the Justice of Migrant Domestic Workers, Institute for Ecosoc Rights, 2005).

20 Study by Pujiastuti, quoted in Rosenberg, *Trafficking in Women and Children in Indonesia*, p45.

2

LACK OF LEGAL PROTECTION FOR DOMESTIC WORKERS

Domestic work is usually temporary in nature and highly insecure, due to its invisibility and its exclusion from labour legislation in most countries in the region. An ILO study of national laws in 65 countries around the world found that only 19 of them had legislation or regulation protecting domestic workers. Even where laws and regulations existed, these offered lower levels of protection to domestic workers than to formal workers.²¹ As domestic work is widely perceived as an extension of women's natural and unpaid work in the family and household, it is usually not valued as an economic activity and not considered to be in need of regulation and protection. This thinking, however, ignores the fact that domestic workers work in isolation and are often at the mercy of their employers. When confronted with abuse, domestic workers therefore have little opportunity for claiming protection and seeking redress.

For example, migrant domestic workers in Malaysia are excluded from the Memorandum of Understanding (MoU) on labour migration signed by the Indonesian and Malaysian governments in 2004, on grounds that domestic workers are “unskilled” workers. Human Rights Watch reports that “the Malaysian government leaves the resolution of most workplace abuse cases to profit-motivated labor suppliers, who are often accused of committing abuses themselves” or are negligent in monitoring working conditions of domestic workers.²² Even if Indonesian domestic workers in Malaysia were covered by the current MoU, it would prohibit them from organising collectively, it would not regulate their conditions of work or provide sanctions in case of abuse, and it would allow employers to hold their passports. While the two governments have expressed their intention to negotiate a new MoU specifically concerning domestic workers, the extent to which it will offer protection to domestic workers is uncertain.

The situation is similar for foreign domestic workers in Singapore, whose Employment Act and Workmen's Compensation Act exclude domestic workers from their protections. The Employment of Foreign Workers Act and the Employment Agencies Act, however, offer lesser standards of protection to domestic workers than to other categories of workers, and are more concerned with regulation of work permits than with protection.²³ Hong Kong is an exception, as migrant domestic workers are protected under Hong Kong's Labour Ordinance and have the same rights and freedoms as local workers.

Domestic workers in Indonesia itself are not covered by any legislation or regulation, although a handful of draft local ordinances are under discussion. The Philippines government, however, in 2003 passed the Batas Kasambahay Act, known otherwise as the Magna Carta of household helpers, which comprehensively sets out minimum working conditions for this group of workers in the Philippines. It covers minimum provisions of the employment contract, sets a minimum wage and working hours/days, and covers the standard of treatment and other rights to which domestic workers are entitled. The Magna Carta also determines the mode and schedule of payment of a variety of benefits (e.g. leave,

21 Ramirez-Machado, J.M. Domestic Work, Conditions of Work and Employment: A legal perspective. Conditions of Work and Employment Series No. 7 (Geneva: International Labour Office, 2003).

22 HRW, Help Wanted, p2.

23 HRW, Maid to Order, p24.

health insurance, social security, and maternity) and prohibits bonded labour. The Magna Carta also addresses the special rights and treatment necessary for domestic workers who are aged below 18. However, this legislation remains unique in the Southeast Asian region.

In part because of their insecure legal position, both domestic workers who work in their own country and those who migrate abroad remain vulnerable to violations of their rights at all stages of the work cycle. More than one hundred Indonesian domestic workers have died in Singapore during the past five years, most of them falling or jumping from high-rise apartments.²⁴ In 2003, almost eighteen thousand domestic workers in Malaysia escaped or ran away from their employers. In most cases, the reason was assumed to be abusive employment practices.²⁵ More than ten per cent of all migrant workers returning through Jakarta's main airport were sick, according to data from the Indonesian Ministry of Manpower and Labour.²⁶

Most domestic workers working in their own countries as well as many who work overseas have not signed a contract with their employer, and therefore do not enjoy standardised and regulated conditions of work that can be enforced. It also means they have little bargaining power when the salary they were promised does not materialise or when given additional tasks that were not agreed upon at the time of recruitment. As Ramirez-Machado observes, "frequently, the working contract is of an oral nature, presenting the worker with the extra difficulty of proving the existence of a contractual working relationship in case of controversy."²⁷ In Singapore, interviews with former Indonesian migrant domestic workers found that some 38 per cent of respondents had signed a contract with the recruitment agency rather than the employer, while 8 per cent had not signed any contract at all.²⁸ In Hong Kong, 86 per cent of surveyed Indonesian domestic workers had signed a contract, but almost two-thirds of this percentage had not received adequate explanation of the contents, while one one-quarter had been allowed to keep a copy of the contract.²⁹ In Bahrain, an ILO survey found that only 44 per cent of domestic workers had signed a contract before their arrival.³⁰

But even those who hold a written contract experience violations of their rights, as there are few effective and efficient mechanisms to hold employers accountable for abuse and exploitation. As a result of pressure to repay loans, many domestic workers fear reprisals from their agents if they do not complete their employment contract.³¹ Worse still, there are reports of domestic workers being forced to sign a new contract upon arrival, whose conditions are worse than those of their original contract.³² Court rulings in Malaysia and Singapore have accepted these new contracts as valid and overruling the old contract.³³

24 AMC, Underpayment, p.6; Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore, p1.

25 HRW, Help Wanted, p3.

26 AMC, Underpayment, p6.

27 Ramirez-Machado, Domestic Work, Conditions of Work and Employment, p2.

28 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore, p7.

29 AMC, Underpayment, p31.

30 ILO, Gender and Migration in Arab States, p21.

31 HRW, Maid to Order, pp21-22.

32 Sayres, An Analysis of the Situation of Filipino Domestic Workers, p28.

33 Discussion Lotte Kejser with Bridget Lew from HOME, Singapore, 23 November 2005.

3

ABUSE AND EXPLOITATION DURING RECRUITMENT AND PLACEMENT

Recruitment of domestic workers working in their own country takes place through friends and relatives as well as through formal or informal brokers and agencies. In Indonesia, the former channel is preferred by many, as it offers a higher likelihood of finding a good employer and avoiding problems.³⁴ In the Philippines, recruitment agencies must apply to the Department of Labour's Bureau of Local Employment to obtain a license and the authority to recruit. Currently, some 580 licensed local recruitment agencies exist nationwide, though unlicensed and unauthorised agencies are also involved in recruitment of domestic workers.³⁵ DOLE's recruitment rules and regulations determine the types of fees these agencies are allowed to charge, while no such regulations exist in Indonesia. Whether or not regulations exist, domestic workers experience deductions from their salary for various types of fees, raising the prospect of forced labour when domestic workers are unable or unwilling to repay these various fees through their monthly salary.

But it is especially the recruitment process for overseas domestic workers that poses high risks. Their recruitment and placement are usually coordinated by profit-oriented labour agencies with little or no oversight by government or other institutions. As there are only very few examples in Asia of bilateral agreements between origin and destination countries, the role played by commercial recruitment and placement agencies is relatively large. While these agencies are arguably more efficient than governments in maximising opportunities for labour migration, they are also a major cause of workers' vulnerabilities, due to a "high incidence of fraud, trafficking, and high cost of recruitment intermediation."³⁶

In the Philippines, the recruitment process is overseen and regulated by the Philippines Overseas Employment Agency (POEA). However, illegal recruitment occurs here and in other countries in the region. A substantial number of individuals and agencies involved in recruitment and placement of aspiring domestic workers use deceptive and exploitative methods. For example, in 2003 the POEA provided legal assistance to 1,625 victims of illegal recruitment.³⁷ In Indonesia, only a fraction of the several hundred officially registered recruitment agencies operate according to local laws.³⁸ Many Indonesian workers find their way into Malaysia and Singapore through unlicensed agents. While in training camps awaiting departure, many Indonesian domestic workers are deprived of their freedom of movement for lengthy periods averaging 4 to 6 months (but sometimes up to two years), are forced to work without proper payment, and face poor living conditions and physical and mental abuse.³⁹ Only 9 per cent of surveyed Indonesian domestic workers in Hong Kong had been free to leave their training camp, while more than 40 per cent had been restricted in their communication with family during their

34 Rosenberg, *Trafficking in Women and Children in Indonesia*, pp58-59.

35 Sayres, *An Analysis of the Situation of Filipino Domestic Workers*, p24.

36 Abella, *Plan of Action on Labour Migration in Asia Pacific*, p8.

37 Sayres, *An Analysis of the Situation of Filipino Domestic Workers*, p28.

38 See reports on domestic workers by Anti-Slavery International, Discussion Paper, prepared by Lin Chew in collaboration with the ILO Action Programme Against Forced Labour (Geneva, International Labour Office: 2003); HRW, *Help Wanted*; AMC, *Underpayment*.

39 HRW, *Maid to Order*, pp18-19 and HRW, *Help Wanted*.

stay and 42 per cent had been forced to work without proper payment.⁴⁰ Although Indonesian agencies are required to offer migrant workers a pre-departure orientation on their rights, no standardised training exists and some agencies do not provide suitable training.⁴¹

Instead, many agencies in origin as well as destination countries mislead workers about their rights and working conditions. Agencies may misinform workers about their wages, force them to sign loan agreements and charge exorbitant fees, causing workers to enter debt bondage.⁴² A survey among Indonesian domestic workers in Hong Kong found that 77 per cent had paid recruitment fees some 15 per cent above the standard set by the Indonesian Ministry of Manpower and Transmigration.⁴³ Agencies may maintain workers' dependency by withholding passports and other personal documents during and after travel. They may also practise fraud and deception by falsifying travel documents or sending workers on tourist visas.⁴⁴ Such practices are part of trafficking and forced labour practices or contribute to them.

40 AMC, Underpayment, pp29-30.

41 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore, p4 and AMC, Underpayment.

42 HRW, Help Wanted.

43 AMC, Underpayment, p39.

44 HRW, Maid to Order, pp22-23.

4

ABUSE IN THE WORKPLACE

Violations concern both labour rights and women's rights. Domestic workers routinely work extremely long hours; it is not uncommon for women to work 14 to 16 hours per day while some even are forced to work 18 to 20 hours. Research among former Indonesian domestic workers in Singapore found that 90 per cent of respondents worked more than 14 hours per day and 50 per cent more than 17 hours a day.⁴⁵ Neither local legislation nor work contracts allow for one day of rest per week or for statutory holidays (except in Hong Kong). Domestic workers in the Middle East, Singapore, and Malaysia on average had between zero and two days off per month.⁴⁶ Even when contracts stipulate one day of rest per week, Indonesian domestic work in Malaysia are hardly ever paid if they work on this day.⁴⁷ Even in Hong Kong where local legislation calls for one day of rest per week, a survey found that among 1,017 respondents, 60 per cent received two days or less of rest per month.⁴⁸ 40 per cent of those who had to work on their rest day reported not receiving any compensation for their overtime.

Such long hours without rest periods leave domestic workers constantly tired and affect their mental and physical health. Among the frequent causes are excessive work duties (e.g. too many people in the household or being on call to care for children 24 hours), working at more than one workplace (e.g. employer owning two houses or requiring the domestic worker also to work in the shop or factory) and the employer or his/her family requiring the domestic worker to repeatedly carry out chores, thus deliberately not allowing her any rest. According to Ramirez-Machado, "working hours are so extended as to deprive domestic workers of any free time... as employers normally consider that the level of specialization required to complete the worker's tasks is low, there is a tendency to systematically increase the number of chores to be performed."⁴⁹ These problems are compounded when domestic workers are not given proper and nutritious food (or are not given any time to eat their food), do not have access to good and affordable health care, and are not granted a decent place for rest. Especially in Malaysia and Singapore, many Indonesian domestic workers are not allowed to leave their employer's house or to communicate with outsiders.⁵⁰

Even when domestic workers succeed in meeting the expectations of their employer and his/her family members, they are not assured that they will see the fruit of their labour. Late, partial or non-payment of wages is pervasive in all destination countries under review here, due to a variety of factors including absence of a written contract, illegal practices by employers and recruitment agencies, unhelpful government policies and loopholes in regulations and legislation. For example, Singaporean employment

45 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore. See also Sayres, An Analysis of the Situation of Filipino Domestic Workers, p35 on working hours. Interviews by Human Rights Watch with Indonesian domestic workers in Malaysia found that 60 per cent worked 16 or more hours per day (HRW, Help Wanted, appendix E, and p38).

46 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore; HRW, Maid to Order; HRW, Help Wanted, pp38-39; and ILO, Gender and Migration in Arab States, p18.

47 HRW, Help Wanted, p39.

48 AMC, Underpayment, p34.

49 Ramirez-Machado, Domestic Work, Conditions of Work and Employment, p1.

50 HRW, Help Wanted, pp39-42 and HRW, Maid to Order; Wisnuwardini, Problems Faced by Indonesian Migrant Domestic Workers in Singapore.

agency regulations stipulate a deduction of one to three months salary when a domestic worker changes employers, regardless of whether the change is necessary because of abuse at the workplace. Employers can also return a domestic worker to the agent if they are not satisfied with her performance, thus further adding to feelings of job insecurity.⁵¹

Domestic workers also face multiple deductions from their wages for expenses incurred during the recruitment process and mistakes (allegedly) made during their employment. These deductions can add up to several months of wages, leaving the worker with little money upon return to her home town. Half of the Indonesian domestic workers in Malaysia interviewed by Human Rights Watch reported not having received their full salary, while 24 per cent did not receive any salary at all. More than one-third had four months or more of their initial pay cut from their salary.⁵² Singaporean employment agency regulations stipulate that if a domestic worker is returned to her home country by her agent or chooses to return home before the end of her 2-year contract, she and her family are responsible for paying a penalty fee to the recruitment agency, and may not receive the wages she is entitled to for the period worked.⁵³ Upon the domestic worker's return, an agency regulation stipulates that the employer will send the salary in one lump-sum through a bank transfer rather than hand over cash on a monthly basis to the domestic worker. This is meant to prevent domestic workers from spending their wages unnecessarily during their employment in Singapore, but in practice provides unscrupulous employers and agents with opportunities to deceive domestic workers. Upon completion of the contract, many employers fail to make the full payment.⁵⁴

Both local and overseas domestic workers experience high levels of sexual and physical abuse as a result of the disparity in social status and economic power between employer and domestic worker. Additional factors increasing the risk include cultural attitudes and gender discrimination that devalue domestic work and condone (and sometimes encourage) violence against women, and the isolated nature of domestic work which results in the absence of social control by family members and community.⁵⁵ According to a 2001 survey of Indonesian domestic workers in Hong Kong, almost one-third had experienced verbal abuse (shouting, abusive language or finger-pointing), one-quarter reported physical violence, while 10 per cent had experienced sexual violence (ranging from suggestive language to rape).⁵⁶ A study of domestic workers in the greater Manila area found that 85% had experienced some form of abuse or abusive working condition.⁵⁷ ILO surveys of domestic workers in the Gulf States found that 51 per cent in Kuwait, 47 per cent in Bahrain, and 50 per cent in the United Arab Emirates had experienced physical, verbal or sexual abuse.⁵⁸ Mandatory health checks and physical and sexual abuse while in training camps, during employment and after return home make domestic workers vulnerable to infection with HIV/AIDS and other sexually transmitted diseases.⁵⁹

Generally, few women and girls who experience abuse or violence report this to police or other authorities. All respondents of the above ILO surveys in the Gulf States reported that their freedom of

51 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore.

52 HRW, Help Wanted, Appendix E.

53 HRW, Maid to Order.

54 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore, pp12-14.

55 Edriana Noerdin and See Eun Park, Situational Analysis of Domestic Workers in Indonesia, p15; Sayres, An Analysis of the Situation of Filipino Domestic Workers, p33.

56 AMC, Underpayment, p35.

57 Quoted in Sayres, An Analysis of the Situation of Filipino Domestic Workers, p36.

58 ILO, Gender and Migration in Arab States, p18.

59 Solidaritas Perempuan, Position Paper, Petition to the Government of Indonesia on the immediate fulfillment of the health rights of Indonesian migrant workers and to protect their vulnerability towards HIV/AIDS (Jakarta: December 2005).

movement was curtailed by their employer. In many instances, not only is existing legislation inadequate to deal with sexual violence (for example, by excluding marital rape and limiting the types of violence that can be prosecuted) but law enforcement agencies lack proper training in how to handle cases of violence against women with the necessary sensitivity towards victims. All this makes domestic workers unlikely to seek redress for abuses by their employers or other people at their workplace.

Child domestic workers suffer the same problems as adults, which are compounded by their lack of physical and intellectual maturity and education. In particular, young women and girls from rural areas often have little knowledge of their rights and many of them are easily intimidated and reluctant to search for help outside their place of employment. Although legal instruments are at hand to stop child domestic work, these are not sufficient to stamp out the problem.

5

CLAIMING RIGHTS AND FREEDOM OF ASSOCIATION

Both domestic workers in their own country and those overseas face serious obstacles preventing many of them from claiming their rights at work and in society in general. Most research shows that domestic workers who experience abuse or exploitation at work have very few options to resolve the situation, leading many to continue to suffer in silence or run away in search of a new employer. Research among former Indonesian domestic workers in Singapore found that half of those who had experienced problems with their employer did not take any action, while approaching their local employment agent caused many to suffer further hardship, rather than seeing their problem resolved.⁶⁰

It is difficult (though not impossible) for domestic workers to organise or for trade unions to assist them in unionising. From the viewpoint of trade unions, organising domestic workers is fraught with difficulties. Not only do trade unions have little experience, skills and resources for organising informal workers, but many have traditionally been hostile to the informal economy and do not yet understand the importance of organising migrant workers. In many destination countries, trade unions have historically been anti-immigration, which further decreases the likelihood of unions taking action on behalf of migrant workers.⁶¹ In some countries, such as Singapore, domestic workers are not allowed to unionise.

Domestic workers, in turn, face serious obstacles in joining trade unions or organising in other ways. The ILO lists three important reasons: “First... because the employer–employee ratio is the reverse of the normal pattern, in that there is generally one employee for several employers. Second, working hours vary from one situation to another and many domestics do not have a day off in the week when meetings can be organized. Third, those most in need of support are often confined to the household and have to resort to clandestine means of communication with the outside world.”⁶² In addition, domestic workers working in their own countries usually do not have a written contract, making it easy for employers to (threaten to) dismiss them due to any perceived attempts to join a labour association or union. Similarly, those working overseas are not protected against premature termination of their contracts.⁶³

Child domestic workers are the least likely to try to organise or ask for help from outside, due to their lack of knowledge and experience, reluctance to question an older person’s authority or outright fear of their employer. Lastly, many migrant workers have little knowledge of trade unionism and are reluctant to pay dues when uncertain about the benefits that trade unions can offer to them.⁶⁴ Where domestic workers have been able to establish their own organisations (for example, in some cities in Indonesia and the Philippines, and in Hong Kong), these usually have difficulties attracting a sufficient

60 Wisnuwardini et al, Problems Faced by Indonesian Migrant Domestic Workers in Singapore.

61 Piper, N., Social Development, Transnational Migration and the Political Organising of Foreign Workers. (Singapore, 2005), p13, and Piper, Migrant Labor in Southeast Asia: Malaysia Country Study, p20.

62 ILO, A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. International Labour Conference 93rd Session, Report 1(B) (Geneva: International Labour Office, 2005), para 243.

63 AMC, Underpayment, p40 and Piper, Migrant Labor in Southeast Asia: Malaysia Country Study, p.9.

64 Piper, Social Development, p13.

number of regular and dues-paying members and therefore are dependent on funding from donor agencies.

Overseas domestic workers face additional difficulties. In many destination countries, domestic workers do not receive information or training on their rights at work and are not allowed to organise into unions, thus denying them the main avenue for improving their bargaining power. Blackett asserts that “because of the heightened vulnerability engendered by the intricate link between their employment and immigration status, foreign domestic workers are less likely than most other workers to be willing or able to claim their rights.”⁶⁵ Malaysian regulations, for example, stipulate that a domestic worker who leaves her employer loses her legal status, putting her at risk of imprisonment and deportation. In order to stay in Malaysia to pursue her case, a domestic worker would need to apply (and pay a high monthly fee) for a special pass, which does not allow her to work anywhere.⁶⁶ Such regulations effectively rob domestic workers of their right to organise and right to be heard.

⁶⁵ Blackett, A., *Making Domestic Work Visible: The case for specific regulation*. (Geneva: International Labour Office, 1998), p1.

⁶⁶ Piper, *Migrant Labor in Southeast Asia: Malaysia Country Study*, p10 and HRW, *Help Wanted*.

6

FORCED LABOUR AND TRAFFICKING OF DOMESTIC WORKERS

Domestic workers face the risk of human rights violations not only in the workplace, but also at various stages of the work cycle, such as during recruitment, placement and return to their home town. Women who migrate – whether it is overseas or within their country – in search of domestic work are vulnerable to trafficking at their point of departure and at various transit points. Trafficking is defined by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as “the recruitment, transportation, transfer, harboring 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.” The forms of exploitation covered by the Protocol encompass sexual exploitation, forced labour or services, slavery or similar practices, servitude, and the removal of organs.⁶⁷ Forced labour, in turn, comprises “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁶⁸

As the ILO explains, “domestic work per se is of course not forced labour... but it can degenerate into forced labour when debt bondage or trafficking is involved – or when the worker is physically restrained from leaving the employer’s home or has his or her identity papers withheld.”⁶⁹ Sayres describes two common forms of trafficking of domestic workers, both in-country and overseas: “(1) those promised jobs as domestic helpers are deceived about their conditions of work and end up in abusive or exploitative servitude; or (2) those promised jobs as domestic helpers, once abroad, are deceived or forced into working as bar girls or prostitutes.”⁷⁰

Exact numbers of victims of forced labour and trafficking are not available. Estimates of victims of trafficking in Indonesia alone vary from 74,616 people to one million, a number that includes trafficking across national borders as well as involuntary movement within the country.⁷¹

ILO research has highlight that “the lack of information on job offers abroad and the dependence of migrants on private intermediaries are major factors behind forced labour.”⁷² Most migrant workers – whether overseas or domestic – lack correct or complete labour market information. Due to their often low levels of education, especially young women and underage girls are not aware or are not informed by recruiters of the exact conditions of work opportunities, such as pay, location, work requirements, and contract period. Many Indonesian domestic workers report being forced to work without proper pay and not being allowed to leave during their detention in training camps before

67 The Protocol is a supplement to the United Nations Convention against Transnational Organized Crime (2000).

68 ILO International Labour Convention on Forced Labour, 1930 (No.29).

69 ILO 2001, para 83.

70 Sayres, *An Analysis of the Situation of Filipino Domestic Workers*, p42.

71 Rosenberg, *Trafficking of Women and Children in Indonesia*.

72 ILO, *A Global Alliance against Forced Labour*, p.48.

departure overseas. Similarly, employers overseas may not allow the domestic work to leave the household or communicate with any outsider. Promises of lucrative jobs with high salaries in foreign currency, which may never materialise, are also a frequent occurrence. In its annual report for 2003, Malaysia's National Human Rights Commission (SUHAKAM) noted that "Indonesian girls and women are usually brought in as domestic maids and then 'sold' by their agents to work in discos and entertainment outlets to entertain men, including being forced to provide sexual services."⁷³

Immigration and labour restrictions in the host country pose additional problems. Confiscation of travel documents, fear of denunciation to immigration authorities and deportation, and high penalties for leaving an employer prematurely force many domestic workers to continue working in abusive circumstances, which constitutes forced labour. Alternatively, if Indonesian domestic workers in Malaysia want to return home before the end of their 2-year contract, they have to pay their own fare. Those unable to do so, because their wages are paid only at end of their contract or are not paid at all, may be forced to work illegally in order to earn the necessary money.⁷⁴

Although some sending countries such as the Philippines have taken action to protect migrant workers from excessive fees and misleading information, forced dependence on employers, recruitment agents or money lenders occurs regularly and puts domestic workers at risk. In Indonesia, forced labour may start already before departure, when prospective domestic workers are held by recruitment agents in transit camps, denied contact with anyone outside the camp, subjected to physical and mental abuse and forced to work involuntarily.⁷⁵ High fees payable before departure and a lack of access to cheap credit cause many prospective domestic workers to turn to moneylenders, putting them further at risk of debt bondage upon arrival. Many irregular and undocumented domestic workers are at risk of trafficking, because they travel on false documents to avoid high fees and/or strict regulations such as minimum age restrictions. This leaves them vulnerable to arrest and deportation upon arrival and to threats by their employers or by those involved in their recruitment. Every year, thousands "find themselves in a situation of virtual slavery because the practice of confiscating passports and travel documents by employers [...] is widely tolerated, despite policies to the contrary."⁷⁶ Once they have entered abusive work situations, they find it difficult, if not impossible, to escape them.

There are numerous obstacles that prevent victims of trafficking and forced labour from receiving protection or seeking redress. Most countries have not yet passed legislation to deal with human trafficking. Furthermore, immigration legislation in countries such as Malaysia fails to distinguish between illegal migrant workers and those who have left their employer due to abusive working conditions, putting them at risk of arrest and deportation without access to social or legal protection.⁷⁷ Due to the lengthy procedures and high costs involved, domestic workers are discouraged from filing legal cases against their employers. Lastly, officials and labour agents are unwilling or lack the necessary training to assist victims, who therefore prefer to return home as soon as possible.

Gender inequality in all its dimensions is an important factor in trafficking and forced labour of domestic workers. Lower social and economic status puts women at risk because they have less power

⁷³ Quoted in HRW, *Help Wanted*, p15.

⁷⁴ HRW, *Help Wanted*, p3.

⁷⁵ ILO, *A Global Alliance against Forced Labour*, para 262.

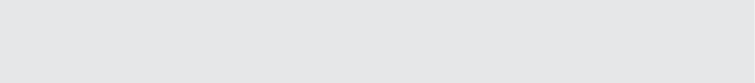
⁷⁶ Abella, *Plan of Action on Labour Migration in Asia Pacific*, p10.

⁷⁷ HRW, *Help Wanted*.

to voice complaints or access assistance, while their frequent lack of education and skills means that they have few economic alternatives. Young women are often not prepared emotionally, economically or socially to live on their own in case of divorce or family problems. At the same time, family pressure can exacerbate a worker's vulnerability. Many Indonesian women migrate in search of domestic work because of their feelings of responsibility towards their family.⁷⁸ Furthermore, poor families often ask their children to continue working overseas even though their contracts have expired. Once they have become undocumented workers, they are vulnerable to exploitation, abuse, trafficking and forced labour practices.⁷⁹

78 Rosenberg, *Trafficking of Women and Children in Indonesia*.

79 Anti-Slavery International, *Discussion Paper*.



7

AFTER END OF CONTRACT

Overseas domestic workers who leave their employer prior to the end of their work contract due to abuse are confronted with a variety of difficulties, none of which are adequately addressed by legislation and currently available services. The situation of Indonesian domestic workers abroad is particularly dire, with much-needed services such as temporary housing, legal aid, provision of new documents, counselling and repatriation severely underfunded and provided in an ad-hoc manner by embassies and concerned NGOs.⁸⁰ Research indicates that labour agents and embassy officials in Singapore often offer little effective assistance to Indonesian domestic workers who have experienced abuse and exploitation.⁸¹ Agents instead were reported to put pressure on domestic workers to stay with their employer, by threatening to take them to Batam where due to the workers' lack of funds to return home, their only option would be to enter prostitution. In Malaysia, many agents themselves perpetrate various forms of abuse, even though the Malaysian government has made labour agencies responsible for monitoring the conditions of work of foreign domestic workers. Such abuse ranges from intimidation and restrictions on movement of domestic workers before placement, to collusion with abusive employers, to rape and other physical and sexual abuse.

Stringent immigration policies in countries of destination such as Malaysia mean that illegal domestic workers as well as those who entered legally but have fled from their employer are at risk of being arrested and deported, regardless of circumstances such as forced labour and abuse. Several NGOs have reported on human rights violations that have taken place in the course of deportation of Indonesian domestic workers from Malaysia.⁸²

Returning overseas domestic workers also confront numerous difficulties upon arrival in their home country. In Indonesia, reports abound of unscrupulous airport employees, immigration officials, transport providers and thugs who extort money from returnees, charge artificially high fees, or deceive them in other ways in their quest to continue the journey to their home town.⁸³ In general, workers who were promised lump-sum payment of their wages at the end of their contract have no legal means to force their employers or agents to fulfill their promise, or to seek redress through their local agent.

Upon their return home, many overseas domestic workers are faced with difficult family circumstances. Although no statistics are available, NGOs report that many domestic workers have been left by their husbands, fiancés or boyfriends during their employment overseas. In some cases, their partners have taken with them the remittances sent by the domestic worker or have sold off property, leaving the woman in economic hardship despite having saved money during her employment overseas.⁸⁴ Such circumstances, as well as the need to save more money to set up a small business, persuade many former domestic workers to work abroad again.⁸⁵

⁸⁰ For example, see HRW, *Help Wanted*, chapter V.

⁸¹ Wisnuwardini et al, *Problems Faced by Indonesian Migrant Domestic Workers in Singapore*.

⁸² HRW, *Help Wanted*, chapter V.

⁸³ HRW, *Help Wanted*, chapter V and AMC, *Underpayment*, p47-8.

⁸⁴ Wisnuwardini et al, *Problems Faced by Indonesian Migrant Domestic Workers in Singapore*.

⁸⁵ AMC, *Underpayment*, p49.

8

CONCLUSION

Due to the multitude of vulnerabilities experienced by domestic workers both in their own countries and while working overseas, protection and regulation of domestic work should be a priority for policy makers. Legal and social protection could assist domestic workers to realise their human and labour rights according to internationally agreed upon conventions. However, some countries in the region have not signed and ratified these conventions, and have for various reasons preferred to leave management of labour migration (including for domestic work) in the hands of commercial recruitment and placement agencies. Reports consistently show that a large number of employment agencies and middlemen continue to apply illegal means of recruitment, placement, holding and sending of domestic workers, both in their own country and overseas. Many employers, on the other hand, are loath to apply internationally agreed upon standards of decent work, regardless of the skill-level of the domestic worker they employ. There is therefore an urgent need for governments to design, adopt and enforce legislation on domestic work, focusing on the roles and responsibilities of employers as well as recruitment and placement agencies. Greater oversight by law enforcement agencies, greater awareness about standards of decent work, and a Code of Practice for employers and employment agencies would all be useful steps towards the legal protection of domestic workers. In addition, domestic workers should be eligible for all types of social protection that formal workers receive, ranging from social security to health benefits to services designed to help them cope with and overcome the effects of abuse and exploitation.

Especially governments have an important role to play in protection of domestic workers and according them a secure legal status equal to that of formal workers. Source and destination countries should both sign and ratify relevant international instruments, as well as bilateral MoUs that regulate and protect domestic workers. They should cooperate in managing labour migration in all its aspects, including through strengthening capacity for migration policy and administration. They should seek the views of representatives of employers and workers in their efforts to put in place effective policies and legislation. They should build on or otherwise support successful initiatives by trade unions, recruitment and placement agencies and NGOs to empower domestic workers. It is hoped that such steps, in conjunction with awareness raising by civil society organisations and collective organising by domestic workers together with trade unions, will lead to the empowerment of domestic workers both within and across national borders.

9

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