



PROTECTION OF MIGRANT DOMESTIC WORKERS IN DESTINATION COUNTRIES

**ILO Human Rights
Training Manual for
Consular Officials and
Labour Attaches**

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FOREWORD

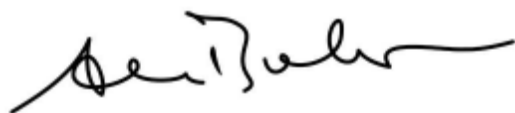
According to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up resolution from the 92nd session of International Labour Conference in 2004, all workers, regardless of their status and sector, have equal rights to labour and human rights protection. However, despite the existing international standards framework, many migrant workers continue to suffer discrimination and forced labour conditions abroad.

The ILO Human Rights Training Manual for Consular Officials and Labour Attaches has been developed to strengthen the capacity of diplomatic missions, consular officials and labour attaches to protect their citizens working and living abroad. The training manual provides background text, tools, case-stories, interactive group exercises and trainers' instructions required for comprehensive training of consular staff and labour attaches at all levels. Special emphasis in this training manual has been given to ensuring the protection of migrant domestic workers who are at risk or have become victims of trafficking and forced labour.

The training manual was developed by the ILO project 'Mobilizing Action for the Protection of Domestic Workers from Forced Labour and Trafficking in Southeast Asia' in collaboration with the Indonesian Ministry of Foreign Affairs. The Manual forms part of the project's support to the Indonesian Ministry of Foreign Affairs to restructure part of its obligatory curriculum and training at the Ministry's Training Centre for consular officials at Junior, Middle and Senior Levels. The Training Manual was updated following a series of regional training workshops for Indonesian Consular Staff and Labour Attaches in South East Asia, South Asia and the Middle East in 2005-2006, which were technically supported by the project.

By publishing a generic version of the original Indonesian training manual for consular officials and labour attaches, ILO aims to further disseminate this Training Manual for use by other labour-exporting countries who wish to strengthen the capacity of their Foreign Services to respond to the protection needs of their citizens living and working abroad. Furthermore, because of the comprehensive content, organizations assisting migrant workers may also find this Training Manual useful for their work.

Jakarta, 1 March 2006



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INTRODUCTION

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

The training is a practical tool so that embassy and governmental 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 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 is responsible for training its own embassy staff. For 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. The course will be administered by a core trainer (facilitator) and various subject area specialists will deliver relevant modules. These specialists include governmental 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.

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 Monitoring, Follow-up 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 most of the information you need for the 3 day course. However, the facilitator of the training should provide participants with additional and country specific information (i.e. latest updates of country information, existing laws and regulations, contact list for NGOs, TUs and governmental institutions in sending and destination countries etc) in order for participant to get a in-depth and contextual understanding of their training and future assignment. 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.

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 foreign policy of sending country (to be attached by facilitator)
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 domestic workers*:

- ♦ Average age is 26 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

* 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

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.

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.
- ☐ 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) has 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 their country of origin.
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

ANNEX 1:

Essential reading:

- Responsibilities under the Vienna Conventions on Diplomatic and Consular Relations
- 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

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.

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. 9-21

1.3. Why the focus on women international migrant workers?

1.3.1. The feminization of international labour migration

"Times have changed, and today more and more women migrate not to join their partner, but in search of employment in places where they will be better paid than in their home country. It is estimated that female migrants make up almost half of migrant workers in the world today. This 'feminization' is sometimes characterized by an over-representation of women migrants in extremely vulnerable positions, in so far as these positions are characterized by a strong bond of subordination between the employer and the employee and, above all, because those sectors are generally excluded from the scope of legal protection on employment, notably from the Labour Code".⁴

The gender dimensions of international labour migration are too important to ignore:

♦ **Number and share of female migrants large and increasing:**

- At the start of the 21st century, one out of every 35 persons worldwide is living outside their country of origin. The total number of migrants more than doubled between 1965 and 2000 from 75 to 175 million. This number includes migrant workers, permanent immigrants, refugees and displaced persons, but does not include irregular migrants who escape official accounting. The annual flow of migrants is estimated at between 5 and 10 million people, including undocumented migrants.
- According to the International Labour Organization (ILO), there are some 120 million migrant workers and their family members worldwide. The regional breakdown is 20 million in Africa, 18 million in North America, 12 million in Central and South America, 7 million in South and East Asia, 9 million in the Middle East and 30 million in Europe.
- Global estimates by sex confirm that for more than 40 years since 1960, female migrants have been almost as numerous as male migrants. Already in 1960, female migrants accounted for nearly 47 out of every 100 migrants living outside their countries of birth. Since then, the share of female migrants among all international migrants has been rising steadily, to reach 48 per cent in 1990 and nearly 49 per cent in 2000. By 2000, female migrants constituted nearly 51 per cent of all migrants in the developed world and about 46 per cent of all migrants in developing countries [see. Box 1.2];
- What is striking is that in developing countries that admit migrants exclusively for temporary labour purposes, the share of women in the labour migration flows has been increasing since the late 1970s. The major magnets for female labour migration are located in Western Asia and also in the countries of the Pacific Rim in East and Southeast Asia. In both these regions, the proportion of women among all international migrants has been rising steadily since 1980. By 2000, the number of female migrants was estimated to have surpassed the number of male migrants in East and Southeast Asia (5 million versus 4.9 million). The 7.6 million female migrants in Western Asia were estimated to constitute 48 per cent of all migrants in that region. "One of the most recent changes to African migration has been a growing feminization, which suggests that traditional social roles have been modified considerably. Whereas men used to leave in search for work, more and more women are now striking out on their own to seek economic independence.

Women currently make up half of Africa's migrants. Doctors, domestic workers or businesswomen, they are now migrating not only within borders, but increasingly abroad". What is noteworthy in the case of African women migrants is the growing number of highly skilled. The brain drain has been feminized in recent years as more and more African women are becoming as qualified and skilled as men.

- National level estimates indicate that in 2000, women represented 68 per cent of the 2.55 million Indonesian migrant workers abroad; 46 per cent of the 2.945 million documented and 1.840 million undocumented Filipino migrant workers abroad; and 75 per cent of some 1.2 million Sri Lankan migrant workers abroad.
- 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

Box 1.2. Percentage of female migrants among the total number of international migrants, by major area, 1960-2000

Major Area	1960	1970	1980	1990	2000
World	46.6	47.2	47.4	47.9	48.8
More developed regions	47.9	48.2	49.4	50.8	50.9
Less developed regions	45.7	46.3	45.5	44.7	45.7
Europe	48.5	48.0	48.5	51.7	52.4
Northern America	49.8	51.1	52.6	51.0	51.0
Oceania	44.4	46.5	47.9	49.1	50.5
Northern Africa	49.5	47.7	45.8	44.9	42.8
Sub-Saharan Africa	40.6	42.1	43.8	46.0	47.2
Southern Asia	46.3	46.9	45.9	44.4	44.4
Eastern and South-eastern Asia	46.1	47.6	47.0	48.5	50.1
Western Asia	45.2	46.6	47.2	47.9	48.3
Caribbean	45.3	46.1	46.5	47.7	48.9
Latin America	44.7	46.9	48.4	50.2	50.5

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

- Increasingly, the globally mobile workers are women who are moving on their own (as autonomous migrants), leaving family and home for employment abroad;
- The bulk of recent women migrants are engaged in temporary migration. However, there are many who end up going abroad several times over their life cycle, taking up a series of employment contracts, or who live and work in a country for several years and in some cases even permanently;
- In some parts of the world, the growth of a "migration industry" comprising private recruitment agents, overseas employment promoters, human resource suppliers and a host of other legal and illegal intermediaries has greatly facilitated female labour migration;

- Some sending countries encourage labour migration of both men and women as an important source of foreign exchange through the remittances of workers' wages;
 - Men migrate for a variety of jobs ranging from low to high skilled jobs. But female labour migration is strongly characterized by the concentration in a very limited number of female-dominated occupations, which are associated with traditional gender roles, such as domestic workers and "entertainment" workers. While these jobs do not necessarily have to be exploitative, the circumstances of the job itself often lead to a high degree of vulnerability to abuse and exploitation, even forced labour and slavery;
 - To give a sense of the significance of **women migrants in domestic work**, some figures can be quoted: in Hong Kong, migrant domestic workers numbered more than 202,900 in 2000; between 1999 to June 2001, 691,285 Indonesian women left their country (representing 72 per cent of total Indonesian migrants) to work mainly as domestic workers abroad; in Malaysia, there were 155,000 documented (and many more undocumented) migrant domestic workers in 2002; in Italy, 50 per cent of the estimated 1 million domestic workers are non-European Union citizens and in France over 50 per cent of migrant women are believed to be engaged in domestic work;
 - Data on **women migrants in the entertainment industry** or in sex work are lacking. But in the year 2000 alone, some 103,264 migrants entered Japan as "entertainers". Estimates from official statistics suggest that up to 5,000 women could have been trafficked into South Korea for the sex industry since the mid-1990s, although the actual number may be much higher. Filipino women make up the majority, but significant numbers also come from the central Asian countries. There has also been a recent surge in the number of female entertainers from Russia, Belarus and Ukraine.
 - Migrants, both men and women, are often used as a buffer stock for reserve labour hired at times of shortage and dismissed when the employment situation deteriorates:
"In this world of transformation, the status of migrants is precarious. In developed economies, they already constitute the least protected and more expendable segment of the labour force, forever an element of flexibility in the labour market. In developing economies, where jobs are lacking, migration provides additional flexibility to employ the domestic labour force. Migrants are the flexible factor par excellence. Is flexibility just a new word for exploitation?"
- ♦ **The changing role of women migrants within their families and societies:**
- In some parts of the world, women migrant workers have become important income earners for their families and contributors of foreign exchange for their countries of origin, often on par with men. In Sri Lanka, they contributed over 62 per cent of the more than US\$1 billion total private remittances in 1999, accounting for more than 50 per cent of the trade balance and 145 per cent of gross foreign loans and grants.
 - Their movement, often as a family survival strategy, has been given an added impetus by the negative impacts of structural adjustment programmes, economic/financial crises, transition to market economies, political conflicts in their home countries;
 - In these contexts, the feminization of poverty and the fact that more women are becoming the sole breadwinner in families have contributed to the growing number of women willing to take their chances by searching for employment and income opportunities abroad.
- ♦ **Trafficking and forced labour of women and girls: a growing global concern:**
- Trafficking in human beings – male and female adults and children - has grown in scope and magnitude to such an extent that it is now the focus of international, regional and national counter-trafficking initiatives. Although there are no hard data because of the nature of the phenomenon, it is estimated that some 800,000 to 900,000 persons are trafficked across borders annually

- Of particular concern is that the bulk of victims of trafficking are women and girls who end up in prostitution and sexual exploitation or in other exploitative forms of employment, forced labour, debt bondage or slavery;
- Women are also victims of the mail-order bride trade; they are tricked by offers of marriage with foreigners only to end up in forced labour or even in prostitution rings. There are also cases of women and girls being sold or traded as wives to foreigners;
- There is an obvious link between trafficking of women and racial discrimination: Some women of certain racial or ethnic groups are subjected to abuses in larger measure than other women, while trafficking frequently involves racist attitudes and perceptions;
- Violation of human rights, including labour rights, are both a cause and a consequence of the trafficking in persons;
- The feminization of poverty and chronic unemployment in countries of origin have exacerbated the vulnerability of women and girls to trafficking;
- Restrictive policies on migration are at variance with market realities in both origin and destination countries and account for the rising numbers willing to take the risk of being smuggled and/or trafficked. On the one hand, the job prospects and the wage differentials can be so great that the probable returns to the risks involved become an attractive proposition for individual migrants. On the other hand, the imbalance makes trafficking and smuggling of migrant labour a very lucrative "business";
- In addition, the growth in many countries of a visible but legally restricted sex industry has expanded the demand for female migrants not subject to any inspection or regulatory control and thus more highly exploitable.

♦ ***Gender differences in the migration experience:***

- The factors leading to female migration and those conditioning the outcomes are likely to differ from those relating to male migration;
- Immigration and emigration policies and regulations are often gender-insensitive and not gender-neutral in intent or impact. Policies and regulations often reproduce and intensify existing social, economic and cultural inequalities between women and men in both the countries of origin and destination;
- The over-generalization/misperception that "men migrate, women are trafficked" can lead to additional biases in migration policies;
- The impacts of labour market dynamics are selective by gender, race or ethnic origin and migrant status in countries of origin and destination;
- Adjustment to living and integration in a foreign country is often harder for female than male migrants, especially for those who come from conservative or sheltered backgrounds. They normally have limited or no access to culturally appropriate or language-specific support services;
- Reintegration upon return to their home countries is often a very difficult process, especially when the women are faced with family problems caused by the separation. Many women are not able to find remunerative employment, are not able to succeed in establishing their own businesses and are often pressured into leaving for jobs abroad again.

♦ ***Empowerment or vulnerability:***

- Many women move as a means of furthering their emancipation. Migration can be an empowering experience, helping women to achieve greater freedom and personal fulfilment;
- On the other hand, in some countries the families of women and girls believe that it is the daughter's responsibility to improve the family's living standard. Daughters and sons do not have equal rights to self determination – and the daughter's duty may include allowing herself to be trafficked, sold as a wife to a foreigner or at least to endure hardships as a migrant worker to support her family;

- Women migrant workers tend to be much more vulnerable – relative to male migrants or native women – to discrimination, exploitation, abuse and trafficking – both in the actual migration move and in the labour markets of origin and destination countries:
“Women migrant workers suffer from double discrimination in employment: first because they are foreigners and hence subject to the same discrimination as male migrant workers; and second because they are women and as such often victims of entrenched traditional attitudes in their country of origin or of employment concerning the place of women in society in general and in working life in particular”.
- Gender-insensitive migration, labour market and social policies and the pervasiveness of socio-cultural norms that perpetuate gender inequalities have meant that in many cases, migrant women exchange a subordinate position within their family in the country of origin for an equally subordinate, if not exploitative, position within the workplace in the destination country:
“Population movements can be highly gender-specific, with women and men migrating for different reasons along different routes and with different results. But most migration-related policies and regulations have not adjusted to this – at either the country of origin or country of destination end of the migration spectrum. Policies are frequently non-existent or neglect the gendered nature of migration, with unforeseen consequences for women”
- There is often a downgrading or waste of human capital and deskilling; women migrants take up jobs mismatched with their educational or skill qualifications. For better income but lower status abroad, the women understate their qualifications in order to secure a job abroad;
- The migration of young women affects their life cycle trajectories, for example, they may delay marriage and having children. There may also be inter-generational impacts, in that older women may be left to look after grandchildren;
- The migration of mothers can have a more severe impact on children left behind than the migration of fathers. Children are found to drop out of school or have poor grades, have emotional problems, be drawn into substance abuse, be forced to enter the labour force early, suffer physical or sexual abuse;
- The trafficking of women and girls into the sex industry is contributing to the spread of sexually transmitted infections and HIV/AIDS across national borders. The health aspects are of growing concern;
- The “victims” of trafficking when “rescued” by the authorities normally face rapid deportation – because they are undocumented migrants – and are denied the right of access to justice. There is often a “revolving door” phenomenon, with trafficked women and girls ending back in their origin countries with the push factors unchanged and falling back into the hands of the same or other traffickers and being re-trafficked.

1.3.2. Vulnerabilities to discrimination, exploitation and abuse

“The Committee [of Experts] draws the attention of governments to the particular vulnerability to exploitation and abuse of women migrant workers, who according to some estimates account for half the entire migrant population worldwide today. [...] Their vulnerability lies principally in the fact that they are employed abroad and hence outside the legal protection of their country of origin, but is also due to the fact that they often hold jobs for which there is little protection under social legislation: domestic workers, manual workers (in agriculture, factories or export processing zones), hostesses or entertainers in nightclubs or cabarets, etc. Their subordination is made worse by the lack of autonomy and the strong relationship of subordination that is typical of the jobs usually held by these workers; added to this is the fact that these women are usually young and

poor, living in fear of losing their jobs, having had to leave their families in their countries of origin, do not speak the language of the country of employment, are unaware that they have rights that are being infringed, and usually do not know where to go for help. In these circumstances, the fact that they are in an irregular situation in the country of employment or that they are illegally employed there makes them even more vulnerable to violence or ill treatment”.

o **Women migrant workers are at greater risk to discrimination, exploitation and abuse in several ways:**

- ☐ As women vis-à-vis men;
- ☐ As foreigners compared to nationals;
- ☐ As dependent compared to autonomous migrants; and
- ☐ As irregular (which they often are) relative to documented migrants.

♦ **As women vis-à-vis men:**

Gender inequality and discrimination persist in virtually all countries – whether origin, transit or destination. Within their families, at the workplace, in society and in the nation, women and girls still do not

Within their families, at the workplace, in society and in the nation, women and girls still do not have equal rights and opportunities with men and boys. On the other hand, more and more women are being expected to assume responsibility for the survival of the whole family and to look for new sources of income.

have equal rights and opportunities with men and boys. On the other hand, more and more women are being expected to assume responsibility for the survival of the whole family and to look for new sources of income.

But they still face distinctions, exclusions or restrictions on the basis of their being born female, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field. Stereotyped gender roles persist – for example that men are breadwinners and women are dependents; that men migrate and women are trafficked. Women, relative to men, have limited access to information and lack decision-making powers and control over resources. Labour markets and occupations in both countries of origin and destination remain largely segregated by sex.

♦ **As foreigners compared to nationals:**

Women migrants, like men migrants, are vulnerable in so far as they are outside the jurisdiction and protection of the laws of their own home country

An important source of vulnerability is due to the fact that women migrant workers are often concentrated in occupations that are not normally covered by the destination country's labour codes or social security provisions.

and are not entitled to the full range of protection and benefits of the destination country. An important source of vulnerability is due to the fact that women migrant workers are often concentrated in occupations, such as domestic service, sweatshop manufacturing, entertainment and the sex industry, that are not normally covered by the destination country's labour codes or social security provisions. In many countries, migrant workers are not allowed to form or join trade unions.

With the hardening of official attitudes towards migrants in general coupled with the growing resentment of nationals towards foreigners especially in situations of rising unemployment or economic difficulties in the countries of destination, the vulnerability of migrants in general,

and women migrants in particular, has been increasing. Xenophobia (attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity) and racism (distinction based on difference in physical characteristics, such as skin coloration, hair type, facial features, etc) have been growing in the media, political discourse and public sentiments.

♦ ***As dependent migrants compared to autonomous migrants:***

Women face discrimination and restrictions in the countries of destination in terms of entry, stay and labour market participation, including the right to work, access to welfare assistance, the right to remain and the right to sponsor the migration of others. This is especially the case when women move not as autonomous migrants but on the basis of family ties and are cast in a legally dependent position to the male migrants. Many entry laws still tend to assume that female migrants are mainly secondary migrants joining other migrants. As "dependents", migrant women have restricted labour market rights, may be deported if they lose the support of their husbands or families or may be summarily forced to leave if their husbands or parents are deported.

Another type of dependency is when women migrant workers are not allowed under the immigration laws of the receiving country to change employers or are required to have their visas sponsored by a national. The "one employer rule" and the visa sponsorship system ("kafala" system in the Middle East) put the worker almost totally under the control of the employer/sponsor. If they do not want to lose their ability to stay on in the country, the women migrant workers may have to put up with any kind of employment condition and abuse. The dependency is especially great in the case of migrant domestic workers who live in the employer's household. The women have hardly any power of negotiation and are unable to react against breaches of their rights and severe abuse.

When women are allowed entry into a country as autonomous labour migrants, it is normally into the bottom end of the labour market. Many labour importing countries have in place legislation protecting their domestic labour market. Such legislation, which is often referred to as the "priority rule" means that employment permits will not be issued until it is verified that there are no nationals wanting to take the jobs. Women migrants are received to perform lower status jobs that are clearly unattractive to locals.

♦ ***As undocumented or irregular migrants:***

Some countries have attempted to "protect" women and girls from being trafficked, exploited or abused by banning or restricting their mobility. However, such restrictive migration policies often have the consequence of pushing women and girls into seeking illegal channels for migration and making them much more vulnerable to trafficking.

Women and girls who have entered a country without proper documents or port-of-entry inspection, whose legal residency in a country has expired as well as those who are legally resident in a country but are working without the permission of the State are especially vulnerable to exploitation and abuse. Since they have no legal status in the destination country, they have no recourse to the law in case of violation of their rights. They are also too scared to complain or even to approach the authorities for any kind of official assistance. Even when they are "rescued" by the authorities from employers, intermediaries or others exploiting or abusing them, they are often treated as criminals because of their illegal status. Trafficked women who escape their situation often find themselves re-victimized as a result of the treatment they receive at the hands of the authorities.

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- o **Women migrant workers, therefore, face multiple forms of discrimination and disadvantage and are vulnerable to exploitation and abuse at each stage of the international migration process [Box 1.3]:**

- *Decision-making and preparation for going abroad;*
- *Recruitment and the journey for employment abroad;*
- *Working and living abroad; and*
- *Return to their countries of origin and reintegration back into their families and communities.*

- ♦ **Decision-making and preparation for going abroad:**

It has been said that the most critical period in the migration

process is prior to departure – especially at the stage of making the decision to migrate. Often the decision to seek employment abroad is not made by the individual woman herself but rather by her family, especially by the male members. Although the family also exerts some influence on male migration, it is often the family that makes the decision to send daughters and wives overseas “to earn well, save and give [their] family a bright future”. It is in the family that women’s subordination to male authority is generally most obvious and immediate; it is the family that assigns or defines roles for women, which in turn determines their relative motivations and incentives to migrate; and it is the family that provides the resources and information that can support or discourage migration.

Accurate, adequate and easily accessible information is critical as the basis for realistic decision-making. Unfortunately, potential women migrants and their families often have unrealistic expectations and perceptions about working and living abroad because recruitment agents and traffickers provide misleading information; returning migrants often give a rosy picture rather than admit the true nature of their migration experience; and male migrants provide information that might not be relevant for potential female migrants. Women themselves, because of their subordinate position within their family or society often lack access to the kinds of information they need on labour market opportunities, the true costs and benefits of migration, the legal and other requirements, etc.

Accurate, adequate and easily accessible information is critical as the basis for realistic decision-making. Unfortunately, potential women migrants and their families often have unrealistic expectations and perceptions about working and living abroad.

- ♦ **Recruitment and the journey for employment abroad:**

Where women or their families lack access to realistic and accurate information concerning

available job opportunities at home and abroad and the economic and social costs and benefits of overseas employment, they are especially at risk of being deceived by unscrupulous recruitment agents and traffickers.

The recruitment stage can be fraught with dangers. The “migration business” has become so lucrative that recruitment agents, overseas employment promoters and a host of other legal and illegal intermediaries and traffickers operate, often taking advantage of the women’s lack of access to accurate and realistic information. The fees charged by agents are commonly exorbitant, so that the women and their families often go into long-term debt or sell their property to pay these fees. Depending on the placement fees they can afford to pay, they end up in different countries. The women may be confined in “training camps” under deplorable conditions for several months until they can be sent abroad, have their passports or other documents unlawfully withheld by the agent, and be subject to deceptive

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contractual agreements, contract substitution or the absence of contracts.

Illegal recruitment for migration has proliferated, often because of very restrictive, complicated, time-consuming or very costly procedures involved in legal migration. Women tend to be more likely than men to make use of illegal recruitment and migration channels because of their limited access to information, lack of time to search for legal channels and lack of financial resources to pay the fees. The nature of the work and the forms of migration open to women may also lead them to rely on fraudulent and dubious recruiters and agents. These situations make them easy prey for organized crime networks and illegal recruiters and expose them to high-risk situations in the context of irregular migration. Illegal, unscrupulous recruiters may also actively seek out women as being more gullible than men. The escalating problem of trafficking in women and children and smuggling of migrants can also be traced to the operation of well-organized networks, often with official connections.

The actual journey to the country of destination can be very risky and dangerous, especially when the migration move is in irregular or abusive conditions. There are many cases of women and girls illegally transported, smuggled or trafficked across international borders under appalling conditions – resulting in injury to or even death of the migrants concerned. During the journey women and girls may also be subject to sexual and physical violence by different intermediaries.

♦ **Working and living abroad:**

Immigration laws governing entry into a country are generally not overtly sex-specific in so far as not explicitly including words such as “husband or wife”, instead of spouse, “daughter or son” instead of children, “male or

In jobs such as domestic work, in the entertainment and sex industry, as helpers in restaurants and hotels, female migrants have limited or no power for bargaining and few or no opportunities for establishing networks of information and social support. These jobs are often not recognized as work and are not, or are only very partially, covered by labour laws and welfare provisions.

female” instead of migrant. Instead, indirect factors, notably sex stereotypes and sex stratification, are at work. For example, practices that automatically assign the role of head of household to men increase the probability that women are administratively designated as spouses - and therefore dependents - both by visa officers and by the immigrant family itself.

In so far as entry regulations admit migrants for certain occupations and there is gender segregation in these occupations, migrants admitted as seasonal agricultural workers or construction workers generally will be men, whereas women migrants usually dominate the services sector (domestic service, care-giving and entertainment). The application of skills criteria for entry would also tend to produce different outcomes for women and men, either because in the countries of origin, there is discrimination in access to skills training or because in the destination countries, gender stereotypes lead to women being associated with unskilled jobs and men with highly skilled positions.

In the countries of destination, “if migrants are concentrated in SALEP-jobs (Shunned by all Nationals Except the Very Poorest), migrant women are concentrated in the most vulnerable of these jobs” . They are in the “3D jobs” – the dirty, dangerous and degrading jobs [**see Section 1.3.4**]. Many women migrant workers, in particular domestic workers and entertainers, are subject to abuses such as contract violations (under/non-payment of wages, no rest days or holidays), substandard working and living conditions, restricted freedom of movement, physical, psychological or sexual abuse.

Most of these jobs are extensions of women’s traditional role of care-giving and household work and are characterized by individualized and isolated work environments. In jobs such as domestic work, in the entertainment and sex industry, as helpers in restaurants and

hotels, female migrants have limited or no power for bargaining and few or no opportunities for establishing networks of information and social support. These jobs are often not recognized as work and are not or are only very partially covered by labour laws and welfare provisions, even for nationals. They are exposed to exploitation by employers, who often rely on their immigrant status (especially if they are undocumented) and their dependent relationship on their employers to underpay them, overwork them and treat them as a docile labour force.

♦ **Return and reintegration:**

For a large proportion of migrants, return represents the last stage of the migration

Just as the life of migrant women is hard abroad, their reintegration upon return may be equally difficult.

process and the attainment of the ultimate migration goal. Some women return with accumulated savings and assets, greater self-confidence and new norms or attitudes acquired abroad. They acquire enhanced status and decision-making power within their own families and, importantly, may be role models for other young women seeking a better life.

But they can also face serious re-adaptation problems. Case studies show that, just as the life of migrant women is hard abroad, their reintegration upon return may be equally difficult. Female migrants need assistance not only to fit back into their families and communities but also to find satisfying and remunerative employment. Their problems are particularly serious when they find that their time abroad has contributed to family break-ups, their spouses have taken new partners and the money they faithfully remitted every month disappeared in family consumption. Without any savings or being unable to find employment locally, many of the women seek employment abroad again. Where the women or their families have managed to save, it is still a challenge for them to be able to put their hard-earned savings into productive investments because of the lack of local opportunities or official support.

Under international covenants and anti-trafficking laws, those sold or trafficked into a country should be considered victims exempt from fines or imprisonment and granted safe repatriation back to their countries of origin. However, trafficked women and children are commonly dealt with under the immigration and alien laws or labour laws of the destination country, arrested and often imprisoned for long periods without charge or trial and eventually deported. Even back in their own countries, trafficked persons may not be safe. In most cases, trafficked persons returned home are not afforded any protection by the authorities of their countries of origin, and may be highly vulnerable to reprisals by traffickers and to being re-victimized into trafficking. Victims of trafficking may also need socio-psychological counselling, health care and legal assistance to help them deal with their terrible experiences and to successfully reintegrate back into their families and communities.

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

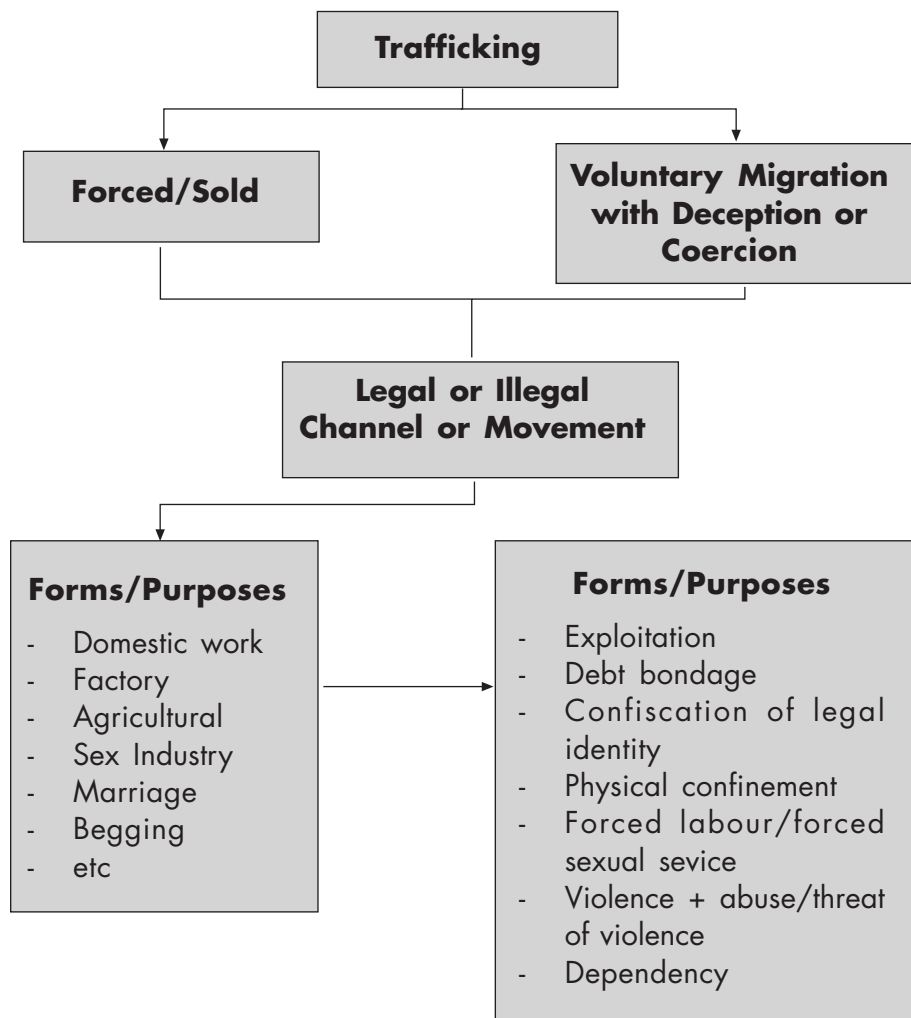
+ for the purpose of exploitation

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**” 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)

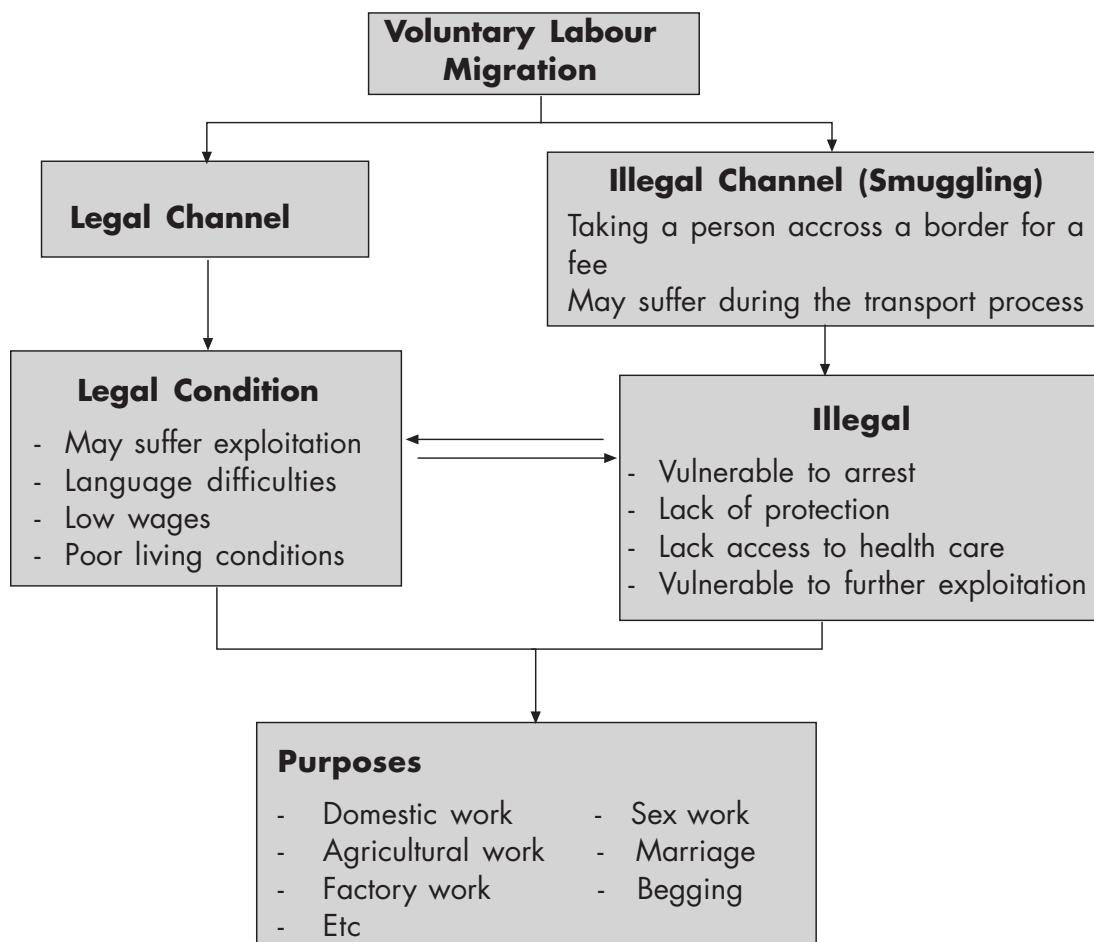
Smuggling

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

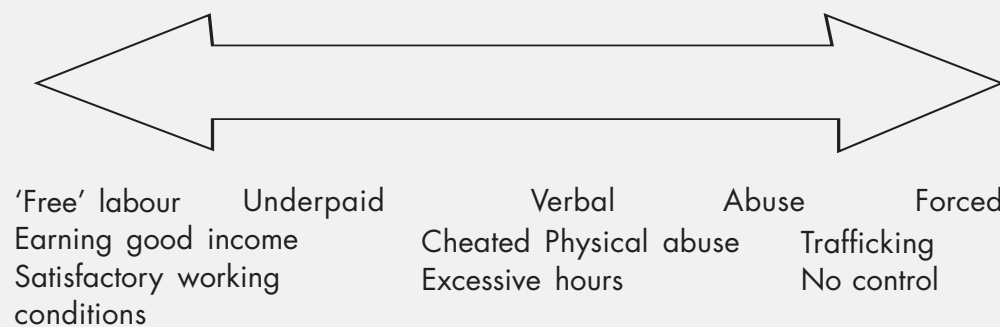
According to ILO estimates,

- ♦ 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

- ♦ 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

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 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

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

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

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 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.

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

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

But they can also face serious re-adaptation problems. Case studies show that, just as the life of migrant women is hard abroad, their reintegration upon return may be equally difficult. Female migrants need assistance not only to fit back into their families and communities but also to find satisfying and remunerative employment. Their problems are particularly serious when they find that their time abroad has contributed to family break-ups, their spouses have taken new partners and the money they faithfully remitted every month disappeared in family consumption. Without any savings or being unable to find employment locally, many of the women seek employment abroad again. Where the women or their families have managed to save, it is still a challenge for them to be able to put their hard-earned savings into productive investments because of the lack of local opportunities or official support.

Under international covenants and anti-trafficking laws, those sold or trafficked into a country should be considered victims exempt from fines or imprisonment and granted safe repatriation back to their countries of origin. However, trafficked women and children are commonly dealt with under the immigration and alien laws or labour laws of the destination country, arrested and often imprisoned for long periods without charge or trial and eventually deported. Even back in their own countries, trafficked persons may not be safe. In most cases, trafficked persons returned home are not afforded any protection by the authorities of their countries of origin, and may be highly vulnerable to reprisals by traffickers and to being re-victimized into trafficking. Victims of trafficking may also need socio-psychological counselling, health care and legal assistance to help them deal with their terrible experiences and to successfully reintegrate back into their families and communities.

Box 1.3. Vulnerabilities at different stages of the migration process

Migration Stage	Vulnerabilities faced by female migrant workers
Recruitment and Pre-departure	♦ Illegal recruitment and trafficking ♦ Excessive fees for placement and documents ♦ Cheating and extortion by agencies and brokers ♦ Non-existent jobs ♦ Inappropriate and expensive training programmes ♦ Being locked up by recruiters, abuses in "training centres" ♦ Not being sent abroad at all ♦ Falsification of worker's identity ♦ Lack of information on terms and conditions of employment
Perjalanan	♦ Expensive fares ♦ Unofficial transportation/smuggling ♦ Hazardous travel ♦ Victimization in transit

Migration Stage	Vulnerabilities faced by female migrant workers
Working and living abroad	♦ Contract substitution or contract violations ♦ Dependent employment relationship ♦ Withholding of papers/documents ♦ Poor working and living conditions ♦ Health and safety risks and lack of social protection ♦ Non-payment of or unauthorized deductions from wages ♦ Physical, psychological or sexual abuse or violence ♦ Limited freedom of movement ♦ Lack/absence of information, access to services and redress mechanisms ♦ No embassy or inadequate services provided by embassy
Termination of contract	♦ Illegal termination ♦ Sudden, unjust termination ♦ No place to stay before being sent home ♦ Absence of complaint and redress procedure
Pulang dan bersatu kembali	♦ No alternative source of income, difficulties of finding employment ♦ Extortion and overpricing of services by airport and customs personnel, moneychangers, etc. ♦ Bankruptcy ♦ Family problems, adjustment ♦ Social reintegration difficulties, particularly for survivors of violence abroad ♦ Danger of being re-trafficked.
Adapted from: Asian Migrant Centre, Asia South Pacific Bureau for Adult Education, Migrant Forum in Asia, Clearing a Hurried Path: Study on Education Programs for Migrant Workers in Six Asian Countries (Hong Kong, 2001), pp.93, 114-116; Unlad Kabayan Migrant Services Foundation Inc., Planning Your Re-entry Filipino Migrant Workers Orientation Course (Quezon City, Unlad Kabayan, November 2001), pp.16-17; and Asian Migrant Centre and Coalition for Migrants' Rights, "Strategies, Experiences and Lessons: Protecting the Rights and Empowering Asian Migrant Domestic Workers", power point presentation made at the ILO Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking, 17-19 February, 2003, Hong Kong.	

Box 1.4. Categories of Female International Migrants ³⁰

Women as permanent immigrants:

These are documented migrants admitted for permanent resettlement in the host country. Only a handful of countries still permit migration on a permanent basis, namely the United States, Canada, Australia and New Zealand. Women have been admitted mainly as dependents of male migrants, for example under family reunification schemes. Women admitted as dependents often have restricted rights to participation in the labour market.

Women as temporary migrant workers:

These are women admitted by a country other than their own for the explicit purpose of exercising an economic activity. They can be seasonal migrant workers employed for only part of a year because the work they perform depends on seasonal conditions. *Project-tied migrant workers* are admitted for a defined period to work solely on a specific project carried out in the host country by the migrant workers' employer. *Contract migrant workers* have contractual arrangements that set limits on the period of employment and are not allowed to change jobs. *Temporary migrant workers* are allowed to work for a limited period in a particular occupation or a specific job and may change employers and have their work permits renewed. Most female migrant workers are unskilled or semi-skilled, but women are also accounting for a rising proportion of highly skilled or professional migrants, often referred to as the "*brain drain*".

Women as refugees and asylum-seekers:

A refugee is "any person who,owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country" . Refugees are those seeking permission to enter the host country, while asylum-seekers are either already in the country in which they hope to be recognized as refugees. Some countries have now adopted "*women at risk*" immigration programmes, which provide special resettlement opportunities for unprotected refugee women and their dependents; the criteria for granting refugee status includes women fleeing persecution on the basis of gender discrimination, including female genital mutilation.

Women as irregular or undocumented migrant workers:

Irregular or undocumented migrant workers are those who do not comply with the conditions necessary to be authorized to enter, to stay and to engage in a remunerative activity in the country of employment pursuant to the law of that State and the international agreements to which that State is a party. Irregular or undocumented female migrant workers can be:

- *Those who enter the country legally but whose stay or employment contravene the law.* One example concerns those who overstay after their contract or visa has expired or after they left their employer and they are no longer in line with applicable immigration and labour law of the country of employment;
- *Those whose stay and entry are lawful but who do not have the right to work and are engaged in illegal or illicit employment.* They are usually women who migrated as dependent spouses and whose residence permit is separated from their work permit;
- *Those who enter the country illegally and who seek to change their status after arrival to find legitimate employment.* They may enter by fraudulent or unofficial channels, such

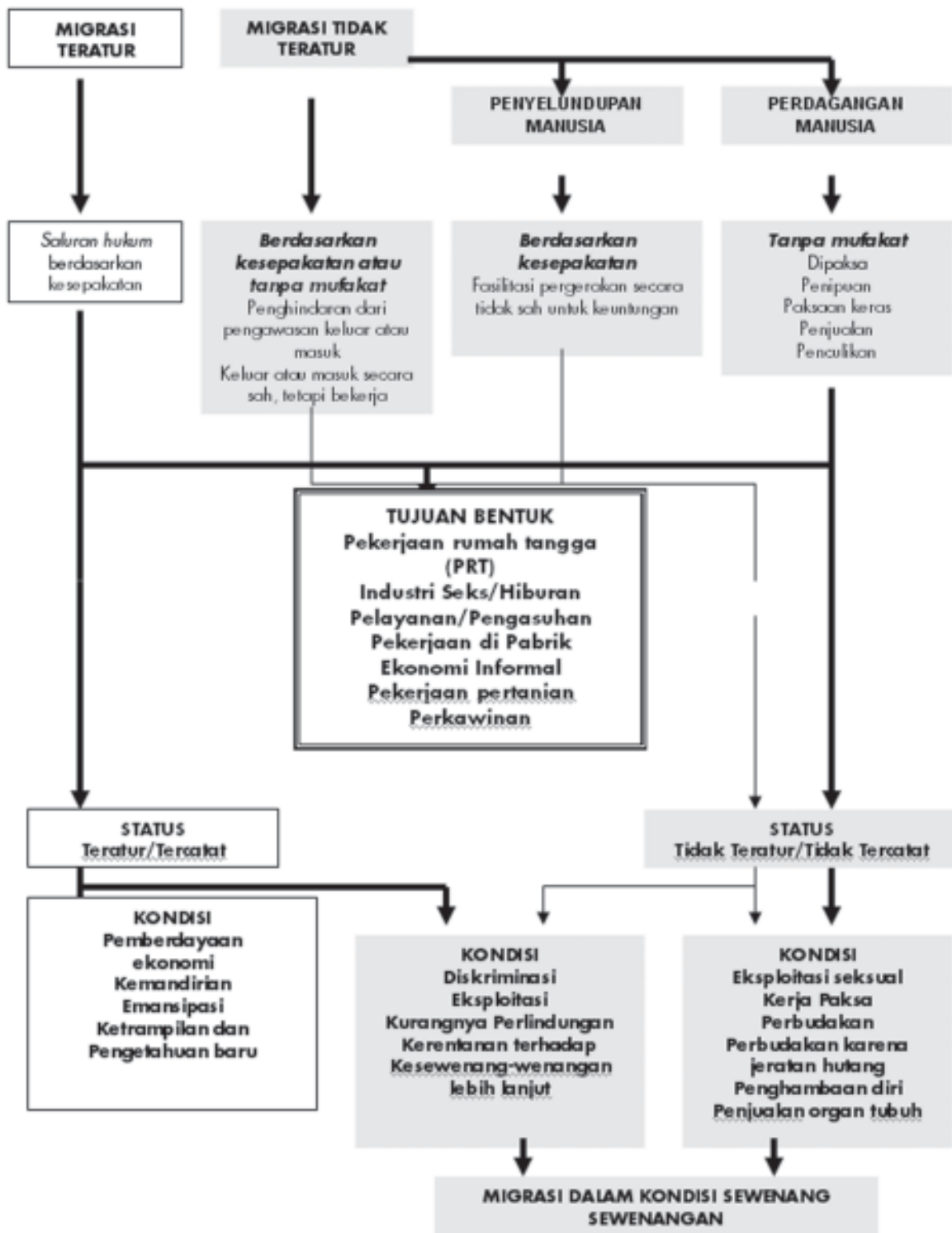
as using false documents or having no documents and do not have the right to stay or to work;

- *Those who enter the country illegally, whose stay is unlawful and whose employment is illegal.* This kind of irregular migration usually involves illegal recruiters and traffickers, smugglers or organized crime networks. Such women would be extremely vulnerable to exploitation and abuse.

While persons are generally categorized as irregular due to the manner in which they entered or remained in a country of destination or transit, migrants may be irregular in their countries of origin as well. For example, some countries restrict outward travel for work by their female nationals to external destinations. Some countries prohibit the emigration of women below a certain age to become domestic workers abroad. Others may prohibit labour migrants from leaving without completing certain registration procedures. Emigrants who contravene these requirements may be considered irregular in their origin countries, whether or not they are considered irregular in the destination or transit countries.

The Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001

(Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance) 2001, has no less than 40 paragraphs on



the treatment of migrant workers.²⁷ The text specifically urges States to address discrimination, racism and xenophobia at the workplace and to ensure full equality for all before the law, including labour law. The paragraphs that address women migrants and women and girl victims of trafficking include:

Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001

- "Urges States, in light of the increased proportion of women migrants, to place special focus on gender issues, including gender discrimination, particularly when the multiple barriers faced by migrant women intersect; detailed research should be undertaken not only in respect of human rights violations perpetrated against women migrants, but also on the contribution they make to the economies of their countries of origin and their host countries, and the findings should be included in reports to treaty bodies." (Paragraph 31).
- "Urges States to incorporate a gender perspective in all programmes of action against racism, racial discrimination, xenophobia and related intolerance and to consider the burden of such discrimination which falls particularly on indigenous women, African women, Asian women, women of African descent, women of Asian descent, women migrants and women from other disadvantaged groups, ensuring their access to the resources of production on an equal footing with men, as a means of promoting their participation in the economic and productive development of their communities" (paragraph 50).
- "Urges States to devise, enforce and strengthen effective measures at the national, regional and international levels to prevent, combat and eliminate all forms of trafficking in women and children, in particular girls through comprehensive anti-trafficking strategies which include legislative measures, prevention campaigns and information exchange. Urges States to allocate resources, as appropriate, to provide comprehensive programmes designed to provide assistance to, protection for, healing, reintegration into society and rehabilitation of victims. States shall provide or strengthen training for law enforcement, immigration and other relevant officials who deal with victims of trafficking in this regard" (paragraph 64).

1.4.2.3. Promoting decent work

The primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO views decent work as comprising four main pillars:

Migration today is about work and governments, employers and workers are acknowledging it as a major concern. Addressing migration means promoting decent work.

- The promotion of fundamental principles and rights at work for all workers, national and non-national, irrespective of where they work;
- The creation of productive and remunerative employment;
- The extension of social protection especially to marginalized and vulnerable groups; and
- The organization and representation of workers and employers in social dialogue institutions and processes.

The promotion of decent work incorporates a rights-based approach and a development approach. From a rights-based perspective, decent work is about fundamental human rights in the field of labour: non-discrimination in respect of employment and occupation, freedom from forced labour, freedom from child labour and freedom of association and the right to organize [the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up and the core ILO Conventions in Section 1.4.3.1]

Decent work is about securing human dignity - "about gender equality, equal recognition, and enabling women to make choices and take control of their lives". The promotion and protection of the rights of women migrant workers is critical because they often suffer, more than their male counterparts or even female nationals, from deprivation of their rights.

From a development perspective, decent work widens choices and increases capacities, whilst taking into account men's and women's basic needs. Decent work is also essential from the perspective of livelihood opportunities. It is because people are poor, unemployed or under-employed, lack livelihood choices and access to basic social services and information that they move or are moved to other places in search of more productive employment and income opportunities.

1.4.2.4. Eradicating poverty and social exclusion

The ILO's Decent Work Agenda provides a coherent and integrated framework for addressing poverty. Poverty eradication is a priority of the Millennium Development Goals;

People migrate for employment as a survival strategy out of poverty and social exclusion. Women account for the majority of the poor in the world.

the resolution is to halve by the year 2015 the proportion of the world's people whose income is less than one dollar a day, and at the same time, "to promote gender equality and the empowerment of women as effective ways to combat poverty".²⁹

A root cause of migration is poverty. People migrate for employment as a survival strategy out of poverty and social exclusion. Of course, not all vulnerable women migrant workers come from the poorest segment of society. As is widely known, potential irregular migrants may have to accumulate significant sums of money to pay for the services of smugglers. Even those going through legal channels may still have to pay substantial fees to recruiters and agents. However, it is still a fact that most women migrant workers are especially vulnerable to exploitation, abuse and trafficking because of their poverty. Women account for the majority of the poor in the world, especially when we take into account the intra-household distribution of income and resources. Worsening economic and social conditions in many sending countries may also have strengthened the linkages between the feminization of poverty or impoverishment and the incidence of abusive migration and trafficking.

Measures aimed at preventing migration in abusive conditions and trafficking emphasize poverty eradication and social inclusion. For example, the European Union is focussing on addressing poverty and unemployment at the roots of trafficking in the candidate countries seeking accession to the EU and the strategies give particular attention to enhancing women's participation in the labour market. Another example is the Asian Development Bank's guidelines for mainstreaming trafficking concerns into activities for poverty eradication [? Box 6.12 in Booklet 6]; the underlying aim is to identify the risks and vulnerabilities faced by specific groups of the poor, particularly women and children, to trafficking and to analyse how development and poverty eradication initiatives impact on or mitigate these risks.

1.4.3. International legal instruments

A response framework must have its foundation in the rule of law. There are a number of important human rights international instruments, and the aim should be to promote their adoption and implementation. For the purposes of this Guide, the sections below primarily focus on those instruments of the International Labour Organization and the United Nations relevant for protecting women migrant workers against discrimination, exploitation and abuse, including trafficking for labour and sexual exploitation. There are also regional instruments that are of potential value in addressing the rights of women migrant workers ^{xxxii}

1.4.3.1. ILO instruments

One of the ILO's major strengths is its role as a standard-setting organization. ILO Conventions have force of domestic law, once a member State ratifies an individual Convention. There are also a number of non-binding Recommendations. The ILO supervisory machinery for the application of its Conventions and Recommendations include a regular reporting system by member States supervised by an independent Committee of Experts on the Application of Conventions and Recommendations; a standing tripartite Committee on the same subject, which meets at the ILO's Annual Conference; and special procedures for representations and complaints on non-observance of ratified ILO Conventions. There is also the Committee on Freedom of Association that handles complaints regarding infringements of trade union rights.

International labour migration has been a central concern for the ILO since its inception, and the singular vulnerability of migrant workers remains a priority in the Organization's mandate. When the ILO was founded in 1919, the Treaty of Versailles addressed the situation of workers employed abroad:

"The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein". (Article 427).

The Preamble to the ILO Constitution also imposes on the Organization a Constitutional obligation for:

".... The protection of the interests of workers when employed in countries other than their own."

The ILO's obligation to protect migrant workers has traditionally been effected through the elaboration and supervision of international labour standards. It should be recalled that unless specified otherwise for specific categories of workers, all ILO Conventions and Recommendations are of general application, and apply to all workers, whether they are national or non-national. From the comments of the ILO supervisory bodies, it is clear that the ILO fundamental Conventions [described below] apply to all migrant workers, whether they are temporary or permanent, and even if they are in an irregular situation. As highlighted in the text box on p.45, the **ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up**, which was unanimously adopted by the member States in 1998, refers specifically to the protection of migrant workers in its Preamble. The Declaration states that all member States, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize the principles concerning the fundamental rights embodied in the core Conventions:

↑ **The core labour standards covered in the Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998 are:**

- **Forced Labour Convention, 1930 (No.29);**
- **Abolition of Forced Labour Convention, 1957 (No.105);**
- **Minimum Age Convention, 1973 (No.138);**
- **Worst Forms of Child Labour Convention, 1999 (No.182);**
- **Equal Remuneration Convention, 1951 (No. 100);**
- **Discrimination (Employment and Occupation) Convention, 1958 (No.111);**
- **Freedom of Association Convention, 1948 (No.87);**
- **Right to Organize and Collective Bargaining Convention, 1949 (No.98).**

These core Conventions apply to all workers, nationals or non-nationals, whether they are regular or irregular status migrants. The provisions that are of particular relevance for preventing discrimination, exploitation and abuse of women migrant workers are highlighted in the box below.

Forced Labour Convention, 1930 (No.29):

- Aims at the immediate suppression of all forms of forced or compulsory labour;
- Defines forced or compulsory labour as “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”
- Calls for adequate and strictly enforceable penal sanctions for the illegal exaction of forced or compulsory labour.

Worst Forms of Child Labour Convention, 1999 (No.182):

- Confirms that child trafficking is a practice similar to slavery and as such a worst form of child labour;
- Calls for immediate and effective measures to secure the prohibition and elimination of trafficking of girls and boys under 18 years of age;
- Targets trafficking of children that leads to exploitation of boys and girls, including in illicit activities such as drug trafficking and prostitution;
- Provides guidelines to effectively eliminate child trafficking and to protect children that have fallen victim to traffickers or are at risk to do so;
- Requests Member States to establish mechanisms to monitor child trafficking and to draw up a programme of action to eliminate child trafficking as a matter of priority;
- Calls for effective and time-bound measures for prevention, to provide support for the removal of child victims of trafficking and their rehabilitation, to ensure access to basic education or vocational training for all children removed from trafficking situations; to identify children at special risk and to take account of the special situation of girls;
- Calls for international cooperation and assistance among the ratifying States to combat child trafficking.

Equal Remuneration Convention, 1951 (No.100):

- Aims to ensure that men and women workers receive equal remuneration for work of equal value, establishing rates of remuneration without discrimination based on sex;
- Aims to ensure equal remuneration in the public sector and promote equal remuneration in the private sector.

Discrimination (Employment and Occupation) Convention, 1958 (No.111):

- Defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- Requires the provision of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination thereof;
- The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment;
- Protection against gender-based violence or exploitation in the sphere of work can be part of a national policy to promote equality of opportunity and treatment.

Convention on Freedom of Association and Protection of the Right to Organize, 1948 (No.87):

- Guarantees employers and workers the right to establish and join organizations, and to exercise freely their right to organize;
- Protects employers’ and workers’ organizations against interference or restrictions by public authorities.

The Right to Organize and Collective Bargaining Convention, 1949 (No.98):

- Protects workers who are exercising the right to organize;
- Upholds the principle of non-interference between workers’ and employers’ organizations;
- Promotes voluntary collective bargaining.

The ILO has also developed a comprehensive body of international law dealing with the protection of migrant workers, and migrant women and girls in particular, including those trafficked into forced labour. The main standards that refer specifically to migrant workers or that contain provisions protecting their rights include the following:

↑ Relevant ILO Conventions:

- **Migration for Employment Convention (Revised), 1949 (No. 97);**
- **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);**
- **Equality of Treatment (Social Security) Convention, 1962 (No.118);**
- **Maintenance of Social Security Rights Convention, 1982 (No.157);**
- **Private Employment Agencies Convention, 1997 (No.181).**

The two comprehensive ILO instruments relating specifically to migrant workers are the **Migration for Employment Convention (Revised), 1949 (No.97)** and the **Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)**. Their aims are twofold: to regulate the conditions under which labour migration takes place, and to provide specific protection for a very vulnerable category of workers while employed in countries other than their own.⁶²

Generally, **Conventions Nos. 97 and 143** do not make a distinction between permanent or temporary migrants. However, certain provisions of Convention No.97 only relate to migrant workers and their families who have been admitted on a permanent basis, for example the provisions that protect these workers against expulsion on the mere ground of incapacity to work.

The Migration for Employment Convention (Revised), 1949 (No.97) covers those regularly admitted as migrants for employment. It includes measures to regulate the conditions in which migration for employment should occur, general protection measures relating to the maintenance of free service to assist migrants, the provision of information, steps against misleading propaganda, the journey and arrival of migrants, transfer of their earnings and measures related to expulsion of permanent migrants. It provides for measures aiming to ensure equality of treatment between regular migrant workers and nationals with regard to social security, working and living conditions, employment taxes and access to justice.

Migration for Employment Convention (Revised), 1949 (No.97)

Article 2:

Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 3:

.... undertakes that it will as far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

Article 4:

Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception by migrants for employment.

Article 6:

.... undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters (remuneration, membership of trade unions and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes, legal proceedings)

Article 8:

A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorized to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.

Article 11:

For the purpose of this Convention, the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.

Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)

Part 1: Migrations in Abusive Conditions

Article 1:

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers

Article 2:

Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there

depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations [...]

Article 3:

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and (b) against the organizers of illicit or clandestine movement of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions [...].

Article 7:

The representative organizations of employers and workers shall be consulted [...].

Article 8:

On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit [...].

Article 9:

With prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

Part II: Equality of Opportunity and Treatment

Article 10:

Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)

(Part I, Articles 1-9) is the first attempt by the international community to deal with the problems arising out of irregular migration and illegal employment of migrants and also includes provisions for minimum standards of protection for both regular and irregular migrant workers. In laying down the general obligation to respect the basic human rights of all migrant workers (Article 1) and providing for certain protective measures for migrant workers who have lost their employment (Article 8) and for those in an irregular situation (Article 9), the Convention affirms, without challenging the right of States to regulate migratory flows, the right of migrant workers to be protected, whether or not they entered the country on a regular basis, with or without official documents. The Convention also stresses the importance of consulting representative organizations of employers and workers in regard to the laws, regulations and other measures provided for and designed to prevent and eliminate migration in abusive conditions.

The implementation of a policy of *equality of treatment* between national and regular migrant workers is provided for in **Convention No.97**. In addition to the equality of treatment as regards the areas guaranteed by **Convention No. 97**, Part II of **Convention No.143** also provides equality of opportunity with regard to access to employment, trade union rights, cultural rights and individual and collective freedoms. Article 14 of Convention No.143, however, permits limited restrictions on equality of opportunity in access to employment. The national policy required under Convention No.143 must not only promote but also guarantee equality of opportunity and treatment in employment and occupation for migration workers and members of their families who are lawfully within the territory of the country of employment.

It should be noted that both **Conventions Nos. 97 and 143** allow for a number of exceptions with respect to the categories of migrants covered by the Conventions. Seafarers, frontier workers and short-term entry members of the liberal profession and artists and the self-employed are not covered by the Conventions. In addition, **Convention No. 143** also excludes trainees and specific duty assignments. However, these exclusions in **Convention No. 143** only apply to Part II, which deals with equality of opportunity of regular women and men migrants with nationals. This means that all migrant workers, without distinction, have the right to some minimum protection with respect to their basic human rights and certain rights arising out of past employment.

ILO standards also address the very important issue of social security of migrant workers. The most common forms of discrimination with respect to social security are non-coverage, conditional or optional coverage of migrant workers. The two principal instruments in this respect are the **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** and the **Maintenance of Social Security Rights Convention, 1982 (No.157)**. Both instruments contain provisions relating to all nine branches of social security: medical care, sickness benefit, maternity benefit, invalidity benefit, old-age benefit, survivor's benefit, employment injury benefit, unemployment benefit and family benefit. However, while a State which ratifies **Convention No. 118** may limit its application to certain of these branches, such flexibility is not offered by **Convention No.157**. Under **Convention No. 118**, for each of the branches that it accepts, a State party undertakes to grant within its territory to nationals of any other State which has ratified the Convention equality of treatment in social security with its own nationals. Furthermore, equality of treatment must be granted to refugees and stateless persons. In addition, where, under the national legislation, entitlement to benefit is subject to a residence requirement, such a condition cannot in principle be imposed only on non-nationals.

The *maintenance of acquired rights* permits migrant workers to receive benefits which are due to them from a State, even when they cease to be resident on its territory. This principle, which is essential for the social protection of migrant workers, is intended to ensure them real equality of treatment and not just legal equality. A State party to **Convention No.118** has to ensure the provision of benefits abroad in a specific branch for its own nationals and the nationals of any other State which has accepted the obligations of the Convention for the same branch, irrespective of the place of residence of the beneficiary. **Convention No. 157** establishes a similar obligation. However, as it does not allow for the exclusion of any branches at the time of ratification, the maintenance of acquired rights has to be ensured for the nationals of other States parties to the Convention in any branch of social security in which the States concerned have legislation that is in force. Finally, both **Convention No.118** and **Convention No.157** provide that this principle shall apply, without any condition of reciprocity, to refugees and stateless persons.

Considering the growing role of private employment agencies in the recruitment and placement of migrant workers, and recalling the need to protect migrant workers against fraudulent and abusive practices, the **Private Employment Agencies Convention, 1997 (No.181)** offers guidance for designing a legal framework to address illegal recruitment practices and trafficking

of human beings, especially women and girls. The purpose of this Convention is to allow the operation of private employment agencies while protecting the workers using their services against abuses and ensuring that these workers are entitled to their basic rights provided for under the core labour standards, as well as the provisions relating to recruitment and placement in Conventions No. 97 and No.143. To promote equality of opportunity and treatment in access to employment and occupations, Article 5 of the Convention stipulates that member States shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or any other form of discrimination covered by national law and practice. Article 7 of the Convention stipulates that, with certain exceptions, private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. Article 8.1 requires ratifying States to adopt measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses. Article 8.2 provides that member States concerned shall consider bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

1.4.3.2. United Nations instruments

↑ **The relevant United Nations instruments include the:**

- **Universal Declaration of Human Rights (UDHR), 1948;**
- **International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;**
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, 2000;**
- **Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime, 2000;**
- **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965;**
- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979;**
- **Convention on the Rights of the Child, 1989 and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2001.**

The **Universal Declaration of Human Rights (UDHR)**, adopted in 1948, specifies that all human beings, men and women alike, are born free and equal in dignity and rights. No man or woman shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms (Article 4). No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5). Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Article 23).

The formulation of rights and freedoms stipulated in the UDHR apply equally to migrants as to any other individual, as do the provisions of the UN instruments, in particular the **UN Covenant on Civil and Political Rights (1966)** and the **UN Covenant on the Economic, Social and Cultural Rights (1966)**, that have been subsequently developed. States are not only obliged to refrain from violating the human rights embodied in these Conventions, but shall also take positive steps so that individuals can enjoy these rights.

The International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990) is the most important United Nations instrument of direct relevance to migrant workers [see Box 1.16]. It recognizes and builds upon the provisions contained in the existing ILO Conventions and in many ways goes beyond them. The UN Convention, which came into force in 2003, extends considerably the legal framework for migration, treatment of migrants and prevention of exploitation and irregular migration. It extends to migrant workers who enter or reside in the host country illegally, rights which were previously limited to individuals involved in regular migration for employment. The objective of the Convention is to discourage and finally to eliminate irregular migration, but it also aims to protect the fundamental rights of migrants during the migration process taking account of their vulnerable position. The definition of “family” is broader than that provided by the ILO Conventions and takes into account a more modern and up-to-date composition of the family. Ratifying States are no longer permitted to exclude any category of migrant worker from its application. There is greater rights protection given to the self-employed, which include informal economy workers.

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

English Language Term	English Language Definition
Agents	Person acting for another. Migration agent is someone who facilitates the migration process. There are both legal and illegal migration agents in Indonesia.
Arbitrary Detention	The detention of an individual without cause
Arbitration	The settlement of a dispute by a person or persons chosen to hear both sides and come to a decision.
Battery	A physical attack on another person
Blackmail	A payment or other benefit extorted by pressure or threats
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.
Brokers	A person who buys or sells on behalf of another.
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 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.
Child Prostitution	Prostitution by a child, which constitutes one of the worst forms of child labour.
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.
Choice	The ability to freely select between a range of options
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.
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

English Language Term	English Language Definition
	voluntarily by members of society to protect or extend their interests, values or identities, NGOs and TUs are civil society organizations.
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 o cause a person to believe that failure to perform an act would relust in serious harm to or physical restrain against an persons; or The abuse of treateden abuse of the legal process
Complicity	Involvement in acts(s) of wrongdoing (including failure to stop in acts(s) of wrong-doing).
Commercial Sex Worker	A person who engages in sexual acts for money crimes and their punishments.
Criminal syndicates	Association of persons based on criminal activity
Cruel, inhuman or degrading treatment	Treatment which violates an individual's human rights
Debt Bondage	See Bonde Labour
Discrimination	Unfavourable treatment based on prejudice
Evidence	Tertimony or material which is presented to prove a fact
Exploitation	To make unethical use of someone for one's own advandage or profit
Force	Compel someone to act against their will
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.
Forced Prostitution	To compel (force) someone to work as a prostitute
Formal Economy (or Sector)	Economic activities within the framework of government regulation including taxation and labour laws.
Gender	Refers to those characteristics of women and men that are socially constructed (as compared to biological characteristics which are denoted as 'sex').
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 suct 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.

English Language Term	English Language Definition
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 people (migration) across national borders. Globalisation is not new, but the speed, depth and breadth of the changes aided by technology is new
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.
Illegal migrant	A person who migrated without the legal authority to do so (i.e. without proper documentation)
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.
Imprison	To confine or place in prison
Inalienable	Refers to rights that belong to every person and cannot be taken from a person under any circumstances
Indictment	To accuse someone formally of a crime
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"
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.
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.
International Law	A set of rules generally regarded and accepted as binding in relations between states and nations. (also called law of nations)
Intimidation	To influence someone by frightening or threatening them
Investigation	To study an issue carefully
Labour Exploitation	To make a profit from the labour of others without giving a just return
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'.

English Language Term	English Language Definition
Mediation	The act of friendly or diplomatic intervention, usually by consent or invitation, for settling differences between persons, nations, etc.
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.
Migration	Movement from one community or country and settling in another.
Monitor	Maintain regular surveillance over an issue or person
Non-government organisations (NGOs)	An organisation which works for the welfare benefit and/or development of society or certain section of society. It is usually 'non profitable', which means that its members are not entitled to any profit from the earning or income that it generates.
Perpetrator	To commit an act. For example, to perpetrate an act of trafficking is to commit the crime of trafficking
Persecute	To afflict or harass constantly so as to injure or distress, OR To oppress cruelly, especially for reasons of religion, politics, or race.
Punishment	Discipline or penalty imposed for wrong-doing
Prosecute	To institute legal proceedings against, or conduct criminal proceedings in court against.
Prostitution	A sexual act engaged in for money
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.
Rape	Non-consensual sexual intercourse
Recruitment	The act of enlisting persons for work or an activity
Servitude	A state of subjection to an owner or master; or Lack of personal freedom, as to act as one chooses.
Sexual slavery	When a person owns another and exploits them for sexual activity
Sexual violence	Violence or force exerted for the purpose of sexually violating, damaging, or abusing
Shelter	Refuge or haven; or something that provides cover or protection
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.

English Language Term	English Language Definition
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
Survivor	Someone who continues to live in spite of acts perpetrated against them which have endangered their life
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
Testimony	Declaration, supporting evidence
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'
Trafficker	A person who commits the crime of trafficking in persons
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, forced labour/ unfair wages or slavery or similar practices.
Trauma	An emotional wound or shock that creates substantial, lasting damage to the psychological development of a person; or an event or situation that causes great distress and disruption
Treaty	An international agreement between countries, which is binding in international law. Treaties can be called a number of things including 'Convention', 'Covenant', 'Protocol', and 'Agreement'.
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.
United Nations	An international organization composed of most of the countries of the world. It was founded in 1945 to promote peace, security, and economic development.
Victim	Person injured, killed or made to suffer
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

English Language Term	English Language Definition
	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.

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. 12

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]

Annex 3: Essential reading:

- o Relevant Law of sending country
- 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 for 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 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 destination country)

(15 minutes)

For Shamela's case, even though she is from Bangladesh, consider what laws could be applied if she was from the country which you are representing.

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

Group work answer table:

Other laws that could protect the worker?

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 or recruitment agency withholding 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

Examples of domestic criminal laws of receiving countries

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.

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?

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.

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 Kumaratonga

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

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.

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

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

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.

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

Conflicting rights and laws

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

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.

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.

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. 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?

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.

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 laws from sending country?
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?

Discussion

Consider the provisions of the MoU between Philippines and Kuwait

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

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.

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 sending country (added by facilitator)

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. A n 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. Response Framework

- In Booklet 1 [see Section 1.4.1] of this Information Guide, it was emphasized that the response mechanisms to address the multifaceted causes, manifestations and consequences of the discrimination, exploitation and abuse of women migrant workers should be comprehensive, multi-pronged and multi-level. In this Booklet, the elements of such a response framework for trafficking are elaborated upon.
- The response framework makes close reference to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Trafficking Protocol) and also the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002.
- A comprehensive response framework must cover the prevention of trafficking, protection of trafficked persons and prosecution of traffickers. Sections 6.7, 6.8 and 6.9 focus on the strategies, practical measures, good practices and lessons learned for these three “Ps.”

↑ A comprehensive response framework should:

- *Treat trafficking as a distinct crime and address all stages of the trafficking cycle and all victims;*
 - *Address the root causes of both the supply of and demand for trafficked persons;*
 - *Promote human rights, including labour rights and migrant rights;*
 - *Promote a standards-based approach to combat trafficking;*
 - *Promote decent work for all workers;*
 - *Work towards regulated, orderly and humane labour migration systems;*
 - *Take action at all levels: community, national, regional and global;*
 - *Establish institutional mechanisms to involve all social actors;*
 - *Gather and share information;*
 - *Ensure adequate and harmonized legal frameworks and effective law enforcement;*
 - *Ensure that legislation, policies and programmes are gender-sensitive; and*
 - *Promote the principle of non-discrimination and fight racism and xenophobia.*
-
- *Treat trafficking as a distinct crime and address all stages of the trafficking cycle and all victims:*

A response framework will be coordinated and effective only if all parties – government officials, law enforcers, workers’ and employers’ organizations and NGOs – are all focusing on the same crime and identifying the same set of victims and the same set of perpetrators. Trafficking should be treated as a distinct crime and should not be conflated with smuggling or prostitution. Trafficking is not just for sexual exploitation; it encompasses all forms of forced labour, slavery and servitude in any sector of the economy. Trafficking also does not just affect women and girls. Men and boys are also victims, in some areas even more so than females.

Since trafficking is a multi-phased problem, all countries of origin, transit and destination in the trafficking cycle should be involved in a comprehensive response that aims to:

- *Prevent trafficking* – by not only effective legal frameworks, strong law enforcement mechanisms and cooperation between States but also by addressing both the supply and demand factors and tackling the underlying root causes of trafficking, including poverty, unemployment, inequality and all forms of discrimination and prejudice;
 - *Extend appropriate protection and support to all trafficked persons* without discrimination, and respect the rights and needs of those who have been trafficked;
 - *Investigate, prosecute and adequately penalize traffickers and their collaborators*, paying full attention to due process rights and without compromising the rights of the victims;
 - *Provide trafficked persons, as victims of human rights violations, with access to adequate and appropriate remedies*, including access to justice, the right to be free from reprisals, rights to recovery, rights to legal redress, and ability to sustain themselves and their families.
- *Address the root causes of both the supply of and demand for trafficked persons:*
- The United Nations Recommended Principles on Human Rights and Human Trafficking emphasize that strategies aimed at preventing trafficking should address demand as a root cause of trafficking; and States and intergovernmental organizations should ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.*
- The root causes behind the supply of and the demand for trafficked women and girls were identified above [see Section 6.5]. Although admittedly not easy and although measures would need to be over the long term, these root causes must be dealt with if efforts to address trafficking are to be effective and sustainable [see Section 6.7].*
- It is necessary to avoid what has been described as the “push down – pop up” phenomenon. The lesson learned from the Asia Pacific region is: While successful interventions may be made in one community or country, the lack of reduction on the demand side results in a shift of the supply pool to the next vulnerable community or country. Successful community based protection strategies will have limited impact and only result in transferring the problem until more attention is paid to regional cooperation and tackling the demand side.*

- *Promote human rights, including labour rights and migrant rights:*

Human trafficking is first and foremost a violation of human rights.

Trafficking is a grave human rights abuse and, in responding to this problem, States should prioritise the protection of the human rights of trafficked persons, taking the steps necessary to prevent abuses and provide remedies where abuses occur. “Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organized crime and illegal migration. Human trafficking is first and foremost a violation of human rights”.

The following principles are keys in applying a **human rights framework**. Human rights are:

- **Universal:** they apply everywhere;
- **Indivisible:** political and civil rights cannot be separated from social and cultural rights;
- **Inalienable:** they cannot be denied to any human being;
- **Interdependent:** all rights are equally important.

↑ Basic labour rights and migrant rights are part of human rights:

Universal Declaration of Human Rights

Article 23

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;
- Everyone has the right to form and to join trade unions for the protection of his interests.

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up [see Booklet 1, Section 1.4.3.1], which was unanimously adopted by the member States in 1998, reaffirms the right to freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation for all workers, nationals and non-nationals. The Preamble of the Declaration makes specific reference to the protection of migrant workers:

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation.

Box 6.8. Guidelines for the promotion and protection of human rights

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum seekers.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

- ♦ Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked;
- ♦ Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes;
- ♦ Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons and relevant sectors of civil society;
- ♦ Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner;
- ♦ Protecting the rights of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right;

- ♦ Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement;
- ♦ Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures;
- ♦ Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty-monitoring bodies;
- ♦ Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law, including human rights law, humanitarian law and refugee law;
- ♦ Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

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

- *Promote a standards-based approach to combat trafficking, together with protecting the basic rights of all migrants:*

A response framework must have its foundation in the rule of law. It is critical to establish legal rights and policy standards, so as to ensure social legitimacy and accountability. Therefore, the aim should be to promote the adoption and implementation of the key UN and ILO Conventions **[see Booklet 1, Section 1.4.3]**:

- International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;
- ILO Migration for Employment Convention (Revised), 1949 (No.97);
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975, (No.143);
- ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, and the related core Conventions;
- United Nations Convention Against Transnational Organized Crime, 2000;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000;
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000.

- *Promote decent work for all workers:*

Migration today is about work. Addressing migration means promoting opportunities for

women and men, national and migrant, to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Migration in abusive conditions and the exploitation and trafficking of migrant workers occur in contexts of serious decent work deficits – in terms of the absence of rights at work, lack of productive and remunerative jobs, inadequate social protection and lack of representation and voice – in source, transit and destination countries.

Therefore, a comprehensive response to the problem of trafficking must be based on the promotion of decent work. The ILO views decent work as comprising four main pillars: the promotion of fundamental principles and rights at work for all workers, national and non-national; the creation of productive and remunerative employment; the extension of social protection especially to marginalized and vulnerable groups; and the organization and representation of workers and employers in social dialogue institutions and processes.

Migration in abusive conditions and the exploitation and trafficking of migrant workers occur in contexts of serious decent work deficits.

6.9. Prosecution of traffickers

“Prosecution of traffickers is the most basic precondition for preventing trafficking and stopping the ‘recycling’ of women and girls. Otherwise, the anti-trafficking action will stimulate illegal migration and trafficking rather than reduce it. Return programmes will become free travel agencies used by traffickers to send back, at the international community’s expense, those women and girls whom they choose to release”

↑ **At this moment, prosecution is probably the weakest part of the whole anti-trafficking system. The main obstacles are:**

- Lack of political will and action against traffickers;
- Lack of anti-trafficking legislation;
- Failure to apply relevant existing law, except to prostitution;
- Lack of enforcement of law due to corruption, lack of understanding of the legislation, lack of knowledge about trafficking and anti-trafficking legislation;
- Lack of information and training for the police and judiciary;
- Written testimonies of the victims of trafficking are not sufficient evidence in the court;
- No witness security;
- Lack of international cooperation and exchange of information.

↑ **To overcome these obstacles and improve prosecution of traffickers, the following measures are important:**

- *Establish a distinct offence and definition of trafficking in human beings;*
- *Impose effective deterrent sanctions;*
- *Make legal entities criminally liable;*
- *Criminalize all activities related to trafficking;*
- *Establish other criminal offences related to trafficking;*
- *Establish extraterritorial jurisdiction.*

- *Establish a distinct offence and definition of trafficking in human beings:*

The criminal law in a considerable number of countries does not include the distinct offence of trafficking in human beings. This should be the first requirement.

There cannot be prosecution without a clear definition of the crime. The criminal law in a considerable number of countries does not include the distinct offence of trafficking in human beings, as described above. The first requirement should be to establish a distinct offence of trafficking in human beings sufficiently broad to cover all forms of trafficking; including at least the following elements:

- *Acts:* recruitment, transportation, transfer, harbouring or receipt of a person;
- *Means:* threat or use of force or other forms of coercion, of abduction, fraud, deception, abuse of power or a position of vulnerability;
- *Purpose:* not just for sexual exploitation, but all forms of forced labour or services, slavery, slavery-like practices and servitude.

▪ *Impose effective deterrent sanctions:*

At present, the sanctions for trafficking available in many countries have no deterrent effect because they are too weak. In many instances, the punishment

In many instances, the punishment for carrying drugs is much more severe than those for buying and selling human beings.

for carrying drugs is much more severe than those for buying and selling human beings. The nature and severity of the sentences imposed may influence prosecution efforts:

- Establish and apply sanctions for trafficking that have a deterrent effect and reflect the serious nature of the crime and the human rights violations involved;
- States should consider the following sanctions: imprisonment, fines, confiscation of assets resulting from trafficking, and closure of establishments associated with trafficking;
- Assets confiscated from traffickers should be used to compensate trafficked persons and then to pay for services to trafficked persons. States should also consider supporting re-integration programmes in the countries of origin with the money derived from confiscation.

▪ *Make legal entities criminally liable:*

Traffickers sometimes act through legal entities (also called “legal persons”), such as travel agencies, marriage agencies, sex shops, bars, hotels, brothels and employment agencies. If prosecution were limited to individuals, the activities of the legal entities would go unpunished. If only individuals are sent to prison, the business may continue with other persons running them. In many cases, it is also difficult to prove the involvement of the individual persons acting for such entities. Therefore:

If prosecution were limited to individuals, the activities of the legal entities would go unpunished. If only individuals are sent to prison, the business may continue with other persons running them.

- States should establish criminal and civil liability of legal entities involved in trafficking in human beings. This should be without prejudice to the liability of the individual persons involved;
- Sanctions against legal entities should include fines, confiscation of assets, closure of establishments, exclusion of the entitlement to public aid or tax benefits, placement under judicial supervision and disqualification from the operation of commercial activities.

▪ *Criminalize all activities related to trafficking:*

To break the trafficking cycle, it is necessary to ensure that all activities at any stage of the trafficking process are prosecuted. And since trafficking is now a well-organized business with elaborate structures and networks, all actors should also be prosecuted. This raises the issue of criminalizing aiding, abetting, instigating

To break the trafficking cycle, it is necessary to ensure that all activities and all intermediaries at any stage of the trafficking process are prosecuted.

trafficking, or attempting trafficking. Persons who are not part of the criminal group but who fail to act, such as a border guard who turns a blind eye to the traffickers passing the border, could also be held liable. For effective prosecution:

- States should establish all activities relating to trafficking as criminal offences, such as instigating, aiding, abetting, attempting, omission to act against and conspiracy to traffic;
- States should specifically establish the activities of organized criminal groups involved in trafficking as a criminal offence;
- States should further ensure that trafficking cases involving public officials are prosecuted and involve not only disciplinary consequences but also sanctions under criminal law.

▪ *Establish other criminal offences related to trafficking:*

Trafficking is often only one of the crimes committed against trafficked persons. In order to ensure that the penalties applied reflect the gravity of the harm inflicted upon the trafficked person, States should, additionally to prosecuting traffickers under the offence of trafficking in human beings, invoke other applicable provisions of criminal law. Such offences include,

In order to ensure that the penalties applied reflect the gravity of the harm inflicted upon the trafficked person, States should, additionally to prosecuting traffickers under the offence of trafficking in human beings, invoke other applicable provisions of criminal law.

but are not limited to the following: slavery, slavery-like practices, involuntary servitude, forced or compulsory labour, debt bondage, forced marriage, forced abortion, forced pregnancy, torture, cruel, inhuman or degrading treatment, rape, sexual assault, bodily injury, murder, kidnapping, unlawful confinement, labour exploitation, withholding of identity papers and corruption. The ability to invoke other provisions of criminal law could be particularly useful in countries where:

- A distinct criminal offence of trafficking does not exist;
- Penalties for trafficking do not adequately reflect the severity of the crime and do not have a deterrent effect;
- The existing evidence is not sufficient in order to prosecute the suspect for trafficking

▪ *Establish extraterritorial jurisdiction:*

Trafficking in human beings often extends beyond national frontiers. Therefore, extraterritorial jurisdiction – the possibility of a State to prosecute and try alleged offences that did not take place within its territory – is crucial in order to enable the authorities to prosecute traffickers, as well as to prohibit perpetrators from escaping criminal prosecution in one country by moving their activities to another country:

- States should exercise jurisdiction over offences of trafficking that are committed in their territory;
- States should also establish jurisdiction if the offence was committed outside their territory, at least in cases, where the offence was committed by or against one of their nationals and in cases of transnational crime, when the act was committed outside the territory but has effects on their territory;
- States should ratify the **United Nations Convention Against Transnational Organized Crime, 2000**. Additionally, they should conclude bilateral or multilateral agreements in order to facilitate extradition in cases of trafficking in human beings;
- States should ensure that its competent authorities apply such extradition treaties in practice and that suspected traffickers are extradited to the country where the evidence of an alleged offence has been uncovered;

- States should also consider extradition of their own nationals. When a State refuses extradition of its own nationals, it should immediately submit the case to its competent authorities for investigation and prosecution.

Box 6.35. Examples of prosecution efforts

Belgium: has a broad anti-trafficking law and punishment for trafficking is commensurate with other grave crimes, with particularly severe penalties for trafficking children. Trafficking related sentences average from two to six years imprisonment with a range of fines. However, trafficking convictions are less frequent than prostitution-related convictions and observers note that cases involving illegal sweatshops which may relate to trafficking are rarely pursued. Belgium's Office of the Federal Prosecutor coordinates investigations and prosecutions of traffickers and a special unit of the Federal Police is responsible for anti-trafficking enforcement. The government appointed special anti-trafficking magistrates on the national and district levels, and the Centre for Equal Opportunity and the Fight Against Racism provides specialized training to police officers and prosecutors involved in anti-trafficking activities.

Colombia: In 2002, improved anti-trafficking legislation broadened the definition of trafficking and toughened the penalties – almost doubling the prison sentences and raising the maximum fine by a factor of 10. Colombia is one of the leading countries engaged in cooperative international law enforcement cooperation against traffickers. Police have conducted numerous international operations in coordination with other governments, particularly Spain the Netherlands and Japan, which have led to the freeing rescue of hundreds of trafficking victims and over 100 arrests. Domestically, police are proactive, attempting to break up trafficking rings before women are victimized. The government also encourages victims to testify against their traffickers, but the victim protection programme is under funded, and successful intimidation by traffickers has helped keep the number of successful prosecutions low.

Lithuania: Trafficking in persons into or out of Lithuania for purposes of sexual abuse, material or personal gain, and prostitution, is criminally prohibited. Penalties range from four to eight years of imprisonment, with more severe penalties for aggravating circumstances, including trafficking in children. The law also provides for asset forfeiture and confiscation, with new penalties for trafficking in minors, operating a brothel and possession of child pornography. The government successfully employed electronic and undercover surveillance, as well as videoconference technology in the courts, in investigations and proceedings against traffickers suspected of forcing several hundred women from Lithuania into European brothels. The government monitors its own police and has imprisoned police officers for involvement in trafficking, extortion and pimping. The government has bilateral agreements with the Interior Ministries of more than 20 countries, including cooperation in the area of trafficking. It coordinates with law enforcement from several regional and European countries via trilateral and bilateral agreements, Interpol and EU liaison officers stationed in Lithuania. Enhanced border control led to a decrease in trafficking victims from Ukraine, Russia and Belarus, transiting through Lithuania, and the police have been working to create a national database to monitor traffickers through other related crimes. Trafficking increasingly falls under the mandate of the organized crime police.

United Arab Emirates: The penal code specifically prohibits trafficking; cases of trafficking can also be prosecuted under other statutes. Law enforcement actively investigates trafficking cases and complaints of abuse. The government recently criminalized the use of child camel jockeys. It conducts DNA and medical tests to investigate “parents” of camel jockeys. The Ministry of Labour created a task force to inspect all industrial establishments in the private sector and added 54 labour inspectors. After being found guilty of labour violations, 215 companies were blacklisted from submitting applications for work permits or sponsorship transfers and were fined. The Institute for Judicial Training and Studies at the Ministry of Justice has mandatory courses for prosecutors and judges on human rights, sex offences, immigration and labour violations. The Department of Naturalization and Residency at the Ministry of Interior established a central operations room to track the arrival and departure of individuals in the Emirates. To combat document fraud, the government instituted the use of retinal scan to add biometrics identification information to its databases.

Source: United States of America Department of State, Victims of Trafficking and Violence Protection Act 2000 Trafficking in Persons Report, Juni 2003, country narrative.

Annex 3: Recommended reading

Special Working Contract for Non-Jordanian domestic worker

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

**Special Annexed Working Contract for Non-Jordanian Domestic Workers
In Compliance with article 2 (B) of the Original Special Working Contract**

Premises

1. First Party-

A- (Employer)

Name: _____

Sex: _____

Nationality: _____

ID: _____ ID 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: _____

Birth: _____

Sex. Female/Male: _____

Nationality: _____

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: _____

3. Third Party:

A- (Employer)

Name: _____

Sex: _____

Nationality: _____

ID: _____ ID Number: _____

Profession: _____

Work Tel: _____

Work Address: _____

Residency address (city): _____

Street: _____

Residence No.: _____

P.O. Box: _____

(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 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

Box 3.5. Example of a bilateral labour agreement

**MEMORANDUM OF UNDERSTANDING ON LABOUR AND MANPOWER
DEVELOPMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE
PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT**

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT (hereinafter referred to as the "Parties")

CONFIRMING the existing fraternal ties between the Governments and peoples of the two Parties;

DESIRING to strengthen the existing bonds of friendship between them and support bilateral cooperative relations based on equality and mutual benefit;

WISHING to support cooperation and enhance coordination in the field of labour and manpower development;

HAVE AGREED AS FOLLOWS:

Article 1

Both Parties shall undertake to strengthen cooperation in labour and manpower development.

Article 2

Both Parties shall provide the necessary and relevant facilities for the fulfilment and promotion of such cooperation within the framework of existing rules and regulations of each country.

Article 3

Both Parties shall undertake to facilitate the mobilisation and development of manpower between the two countries, within the framework of existing and applicable laws, rules, and regulations of each country.

Article 4

Both parties shall exchange visits and undertake consultations to share knowledge and experience on job creation and generation

Article 5

The basic conditions for the rights, duties, and terms of employment, applicable to both the employer and the employee shall be set out in a mutually agreed individual contract of employment which conforms with the relevant laws, rules, and regulations of both countries.

Article 6

In the settlement of labour disputes arising from employee-employer relationships, the government authorities concerned of both parties, in accordance with their respective laws, rules and regulations, shall work towards amicable settlements through negotiations, conciliation, and arbitration. When efforts to amicably settle the dispute fail, the parties

concerned may resort to the courts in accordance with their respective laws, rules and regulations.

Article 7

A Joint Committee shall be formed to carry out the following tasks:

- a) To ensure the implementation of this Memorandum; and
- b) to propose revisions of the Memorandum as necessary and resolve difficulties in its implementation.

The Committee shall meet whenever necessary upon request by either party.

Article 8

This Memorandum shall be valid for four (4) years. It shall enter into force on the date of the later notification by the Parties indicating compliance with their respective internal legal requirements for its entry into force. This Memorandum shall be automatically renewed for the same period unless one Party notifies the other in writing, through diplomatic channels, of its desire to terminate or amend this Memorandum six (6) months prior to its expiration.

Done in Kuwait City this 14th day of September 1997 corresponding to 12 Jamada A1 I 1418Hijra in two originals in the Arabic and English language, both texts being equally authentic. In case of conflict in interpretation, the English text shall prevail.

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

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:

- Distinguish between empowering and repressive responses by FSOs to domestic worker problems and give some examples of each.
- State 4 important attitudinal traits to remember when serving domestic workers in the embassy
- Explain why sometimes it can be difficult to identify victims of trafficking from other domestic workers
- Explain what steps to follow for workers who are victims of trafficking or abuse
- Name 3 groups it is useful to network with when providing immediate assistance to domestic workers and how they can assist FSOs
- 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:

- ICMC, *Victim Services Manual: Consular Assistance for Indonesian migrants and trafficking victims abroad*, ICMC, Jakarta, 2005 (draft), pp.8 – 30.
- Zimmerman, C., *World Health Organisation Ethical and Safety Recommendations for interviewing Trafficked Women*, WHO, Geneva, 2003, pp.
- 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

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)
- ♦ 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)

(Source: International Catholic Migration Commission, Victims Services Manual: Consular Assistance for Indonesian migrants and trafficking victims abroad, 2005, Jakarta, draft version).

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

⁹ Anggraeni, D., Dreamcatchers: Indonesian Women Who Seek Work as Domestic Helpers Overseas, ILO, 2005, Draft only, p. 33.

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

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).

¹⁰ Such as by Anti-Slavery International...

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.

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.

¹¹ See OHCHR Recommended Principles and Guidelines

¹² See the OHCHR Guidelines on children

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.

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.
- o 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."
- o 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 (Indonesia-Malaysia)

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, 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 consulates 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;
- ♦ ie 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

Maintenance of Social Security Rights Convention, 1982 (No.157)
Part IV. Maintenance of Acquired Rights and Provision of Benefits Abroad

Article 9

- 1 Each Member shall guarantee the provision of invalidity, old-age and survivors' cash benefits, pensions in respect of employment injuries and death grants, to which a right is acquired under its legislation, to beneficiaries who are nationals of a Member or refugees or stateless persons, irrespective of their place of residence, subject to measures for this purpose to be taken, where necessary, by agreement between the Members or with the States concerne

Article 10

1. Members concerned shall endeavour to participate in schemes for the maintenance of rights acquired under their legislation, taking into account the provisions of Part III of this Convention, as regards each of the following branches of social security for which each of these Members has legislation in force: medical care, sickness benefit, maternity benefit and benefit in respect of employment injuries, other than pensions and death grants. These schemes shall guarantee such benefits to persons resident or temporarily resident in the territory of one of these Members other than the competent Member, under conditions and within limits to be determined by mutual agreement between the Members concerned.

Table 4.23. Social security provisions for migrant workers

Italy has made several provisions in its legislation to cover migrant workers, observing the principle that social security for foreigners should not be at a level inferior to that of nationals:

Article 41 of the Immigration Act establishes a general principle of equal treatment for nationals and aliens holding a sojourn permit that is valid for at least one year or a sojourn card, in reference to the benefits of social security allocations.

Article 25 of the Immigration Act regulates in detail social security benefits for seasonal workers. In this case the employer should contribute to the national institute for social security the amount of family allocations and insurance against non-voluntary unemployment. Such amounts finance the national fund for migrant policies, established by Article 45 of the Immigration Act.

Article 49 of Act No. 488 of 23 December 1999 grants social allocations to pregnant alien women workers holding a sojourn card (issued after five years of legal residence in the territory of the State). Such a provision discriminates against migrant women bearing sojourn permits as compared to those bearing sojourn cards.

Source: D'Alconzo, G., S. La Rocca and 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), p.31.

Improve assistance and support facilities and services for migrant worker:

Receiving country governments should provide support facilities and services to ease the adaptation and integration of migrant workers into the society and local traditions. Such services can include [see Boxes 4.24 to 4.26]:

- Language training,
- Information on rights and access to basic services,
- Skills training,
- Counselling centres, and
- Assistance with accommodation.

↑ In providing such support facilities and services, governments should work closely with workers' and employer's organizations and civil society groups. These private sector and non-governmental organizations often provide many of the services that are unmet by the government; they have close networks with the migrant workers and are competent in identifying their needs and in providing appropriate services.

Table 4.24. Public support for having foreign trainees to learn the local language

"The Japanese Government – in other words, the taxpayers – should foot the bill for the language education of foreign workers, as part of the nation's educational ODA, for several reasons. First, there is the humane reason that the ability to speak Japanese will make living and working in Japan safer and more pleasant for foreign workers. Second, it will be of economic benefit, by helping to increase their work capacity and efficiency. Third, there is a public merit in that acquiring the ability to speak Japanese can be considered an investment in public goods. Clearly Japanese language ability does have the character of private goods, in being of benefit to both the individual trainees and their employers. But, in contrast to visiting foreign students, whose chief objective in coming to Japan is study and research, foreign workers come mainly to work, and therefore lack the freedom, ability, or inclination to master Japanese on their time and at their own expense. Again, there is very little economic incentive for employers to help trainees acquire more than the most basic working knowledge of the language. But if the government, through foreign aid, were to support an overall improvement in the ability of foreign workers to speak Japanese, this would bring significant social benefits by increasing the effectiveness and improving the results of the Work – and -Learn Programme. Hence, any investment in improving foreign workers' standard of Japanese could be seen as a public investment. Finally, an overall improvement in the ability of foreign workers to speak the language would have significant social and economic utility in the sense of raising the profile and usefulness of Japanese in international business and in workplaces"

Source: H. Shimada, Japan's "Guest Workers": Issues and Policies (Tokyo, University of Tokyo Press, 1994), p.97.

Table 4.25. Informing migrant domestic workers of their rights

In Costa Rica, the official organization responsible for promoting gender equality and protecting women's rights was the National Centre for Women and Family (CMF). Between 1994-1998 the CMF formed a strategic alliance with ASTRADOMES, the only organization for household maids in the country. Together they prepared a series of six information and training modules in popular format with pictures and captions and in language easily understood by the migrant domestic workers on:

Module 1: Hiring

Module 2: Wages and Christmas bonus

Module 3: Work shift and vacations earned

Module 4: My right to health

Module 5: Migrant household maids

Module 6: Right to life without violence

The modules were validated for four months in La Merced Park, a public area where many Nicaraguans (approximately 1,500) gather during the week and especially on weekends. A tent was set up in the park and three CMF experts were responsible for giving informative lectures and answering questions from both women and men. The strategy combined the use of modules and on site training with posters representing each topic and radio announcements via La Voz Nica.

The CMF also promoted coordination with different public organizations, including the Nicaraguan Embassy in Costa Rica, the General Directorate of Migration and Alien Status, and the Ministry of Public Security. Coordination was particularly important with

the Ministry of Public Authority, since its agents allowed the migrants to approach the CMF tent with confidence even when they did not have their migration documents in order.

Source: A. I. Garcia, M. Barahona, C. Castro and E. Gomariz, Costa Rica: Female Labour Migrants and Trafficking in Women and Children (Geneva, ILO GENPROM, 2002), p.47-48.

Box 4.26. “Your guide to services in Hong Kong”

The Hong Kong Home Affairs Bureau has published a guide in different languages for migrants coming to work in Hong Kong, mainly as domestic workers. The contents include:

- Introduction
- Arriving in Hong Kong
 - Immigration
 - Customs
 - Getting into town
- ID Cards and Visas
 - Applying for a Hong Kong ID card
 - Keeping your ID card handy
 - When will my visa expire
 - How do I apply for an extension of stay
 - Where do I make a complaint about the quality of Immigration Service
- Working in Hong Kong
 - Conditions of employment
 - Employment agencies
 - What are your rights as a foreign domestic helper
 - Ill treatment, physical or sexual abuse
 - Getting along with your employer
 - Applying for visa extension
 - Completion of employment contract
 - Termination of employment contract
 - Assistance from the Labour Department
 - Your rights to organize and other labour rights
 - Employment Contract (for a domestic helper recruited from outside Hong Kong)
- Getting Around Hong Kong
- Banks and Money
- Health Care in Hong Kong
- Legal Assistance
 - Labour Relations Division Office of the Labour Department
 - Non-governmental organizations
 - Legal information by telephone
 - Duty Lawyer Scheme
 - Legal aid services
 - Getting access to a lawyer
- The Hong Kong Police Force
- Preventing Corruption
 - Bribery and corruption
 - The Independent Commission against Corruption

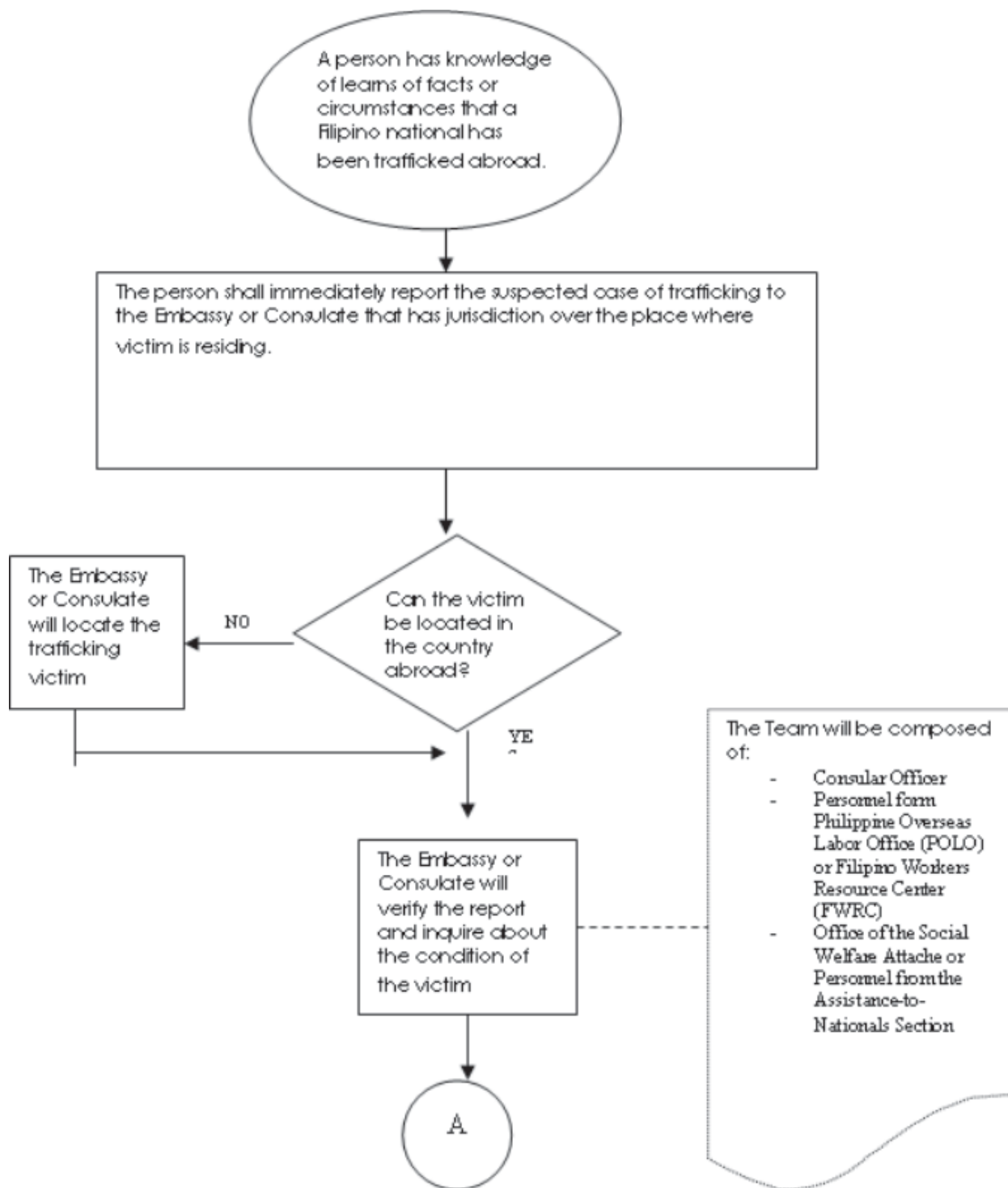
- Consumer Rights
- Social Activities, Culture and Entertainment
- Places of Worship
- Postal Services
- Social Services
- Tropical Cyclone and Rainstorm Warning Signals
 - Government Structure
- Public Enquiries and Hotlines
- Local and International Telephone Calls
- Organisations just for You
 - The Consulate General of the Country of Origin
 - Migrant organizations, unions and NGOs
- Returning Home
- Helpful Chinese Place Names and Cantonese Phrases

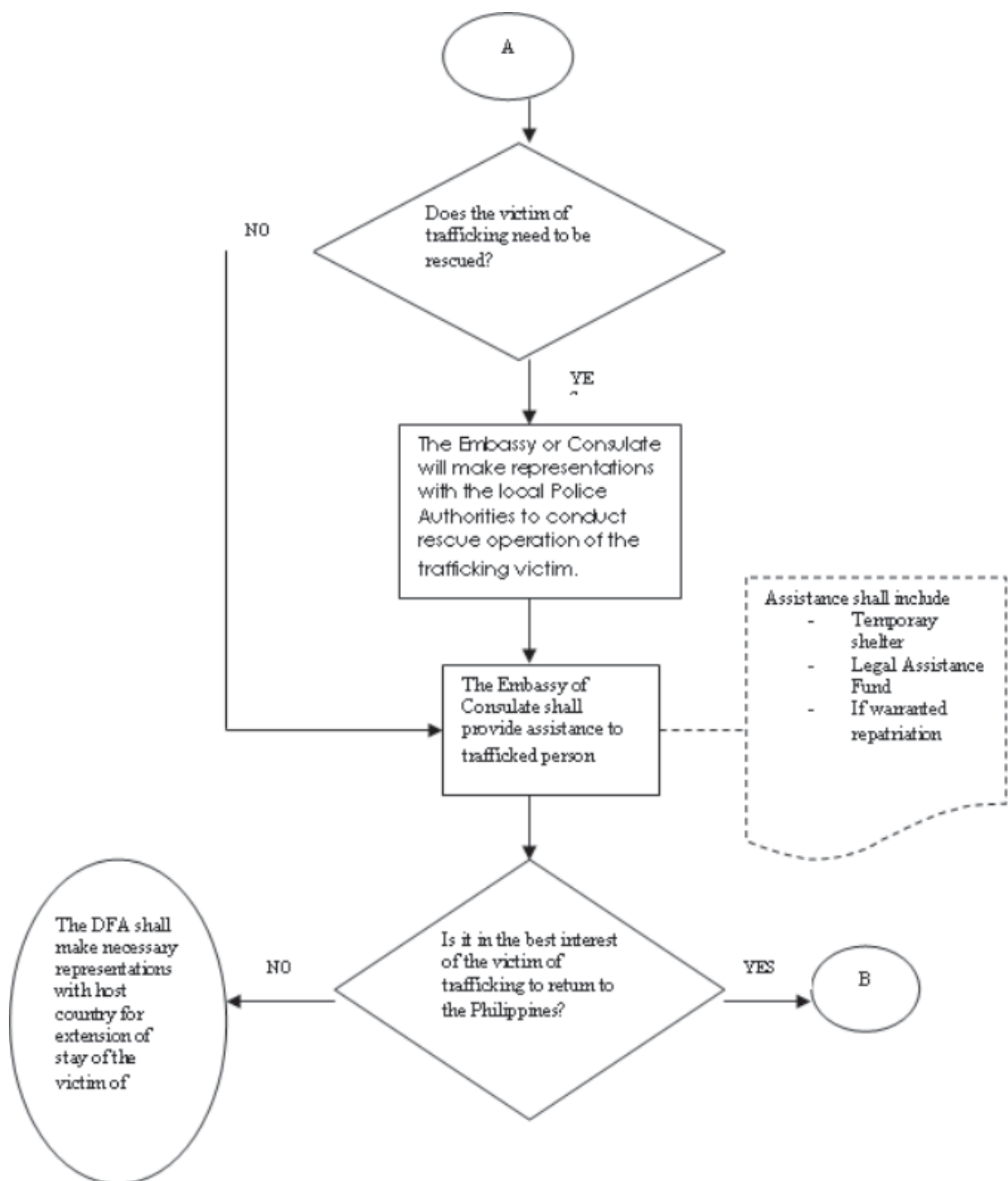
Source: Hong Kong SAR Home Affairs Bureau, Your Guide to Services in Hong Kong English Version (3rd. Edition), January 2002.

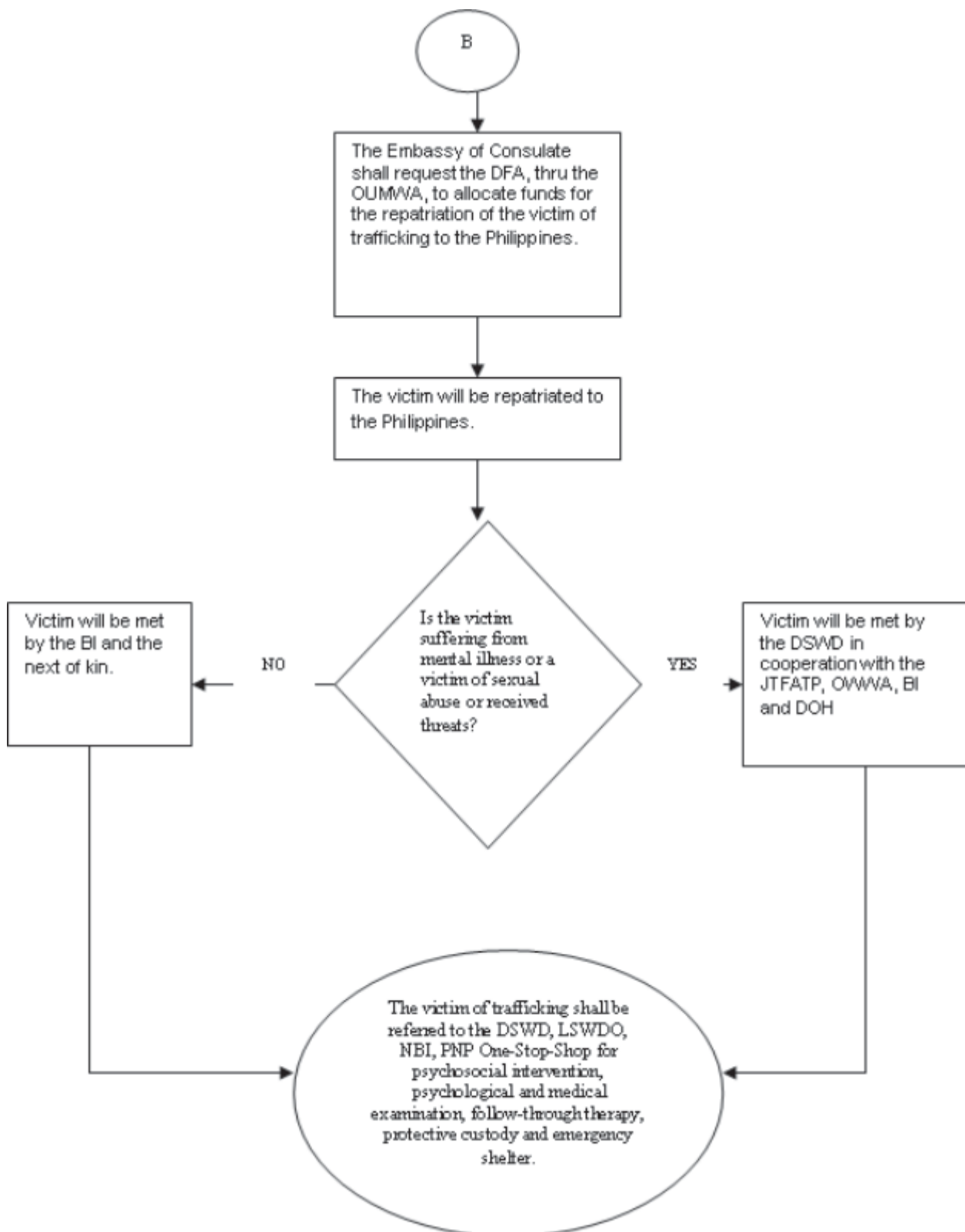
Annex 4: Recommended reading

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 your consulate. What should 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 government receiving and sending country
- ♦ 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.

**An Information Guide Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers,
GENPROM, Geneva, 2002, Booklet 4, pp. 38–42, 57-61**

4.4. Preventing discrimination, exploitation and abuse of women migrant workers in the destination countries

4.4.1. What can destination country governments do

"[...] there is a need to formulate and strengthen measures at the national level to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in sectors of many societies, and to promote greater harmony and tolerance in all societies".

"And for the host community, particularly those who pride themselves on equality of opportunity for all, the presence of an immigrant underclass is an uncomfortably close reminder that much of their prosperity is based on the hard work of others – who do not share equally in the rewards".

- ↑ Perhaps the first and most important step is for the governments of destination countries to link immigration policies and administrative procedures for regulating migration to systematic and realistic assessments of the labour market demand for migrant labour. Such assessments should be done by the competent government authorities – normally the ministry of labour rather than the ministry of interior or ministry of justice – in close consultation with employers' and workers' organizations.
- ↑ Women migrant workers play essential roles in the labour markets and the development process of receiving countries. They make valuable contributions to the economies and societies of the receiving countries. They provide human resources in the paid economy – in jobs that nationals do not want but that are essential and that allow a country to maintain its global competitiveness. They also play key roles in the care economy – in terms of household chores and the care of dependent children, the elderly, the infirmed and the disabled – freeing national women to take up higher status, better paying jobs in the national economy.
- ↑ Receiving countries should recognize and value the contributions of women migrant workers and respect and uphold the human rights, labour rights and migrant rights of these workers, promote their economic and social integration and not treat them merely from the perspective of the management of migration and national security controls. The governments of receiving countries should:
 - ♦ Conclude bilateral or multilateral labour agreements with sending countries;
 - ♦ Ensure that immigration policies are gender-sensitive;
 - ♦ Provide adequate labour protection to migrant workers;
 - ♦ Consider specific legislation to cover domestic workers;
 - ♦ Regulate and supervise the activities of recruitment agencies;
 - ♦ Provide adequate checks on employers;
 - ♦ Protect the health and occupational safety and improve social security for migrant workers;

- ♦ Improve assistance and support facilities and services for migrant workers;
- ♦ Allow freedom of association and facilitate organization and representation of migrant workers;
- ♦ Take measures to promote gender equality and end xenophobia and racism.

↑ **Conclude bilateral or multilateral labour agreements with sending countries:**

Such agreements can be an effective means to regulate migration processes, control abuses in recruitment, placement and employment, and undercut illegal recruitment and trafficking [see Box 1.8 in Booklet 1]. These agreements should aim to ensure the rapid and orderly matching of employers' requests with migrant candidates for employment. They should cover key aspects such as vacancy notification, selection and recruitment, employment contracts, transport, terms and conditions of employment, grievance and disputes settlement procedures, protection of basic rights and social security. There could be agreement that the destination country will not issue visas or work permits for applications that have not been checked and authenticated in the sending countries [see Section 3.5.1 and Box 3.5 in Booklet 3].

Even when formal agreements have not been signed, close cooperation between receiving and sending countries could promote the exchange of information especially with respect to degrading, fraudulent or abusive practices on the part of private recruitment or placement agencies as well as on the part of employers. Procedures could also be set up to investigate and take action against abuses.

↑ **Ensure that immigration policies are gender-sensitive:**

As discussed in Sections 1.4.2 and 1.4.3 in Booklet 1, countries, by virtue of their membership in the international community and in particular if they have ratified the key human rights instruments, are obliged to refrain from violating the rights of individuals, national or non-national, and to take positive actions to ensure that individual women and men are able to enjoy these rights. There are also specific instruments to protect the rights of migrant women and men. It is not enough to grant rights to migrant workers; they should have the possibility of claiming adherence to such rights if they believe that they have been violated. Therefore, grievance and dispute settlement procedures have to be open to migrants – on the same terms as they should be open to national workers – and they should have access to the destination country's labour and other courts.

The **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990**, which has now come into force provides a comprehensive legal framework for the treatment of migrant workers [see Box 1.16 in Booklet 1]. Importantly, it stipulates that regardless of legal status, migrant workers have inalienable human rights. It also regards the rights of migrants as determining their living and working conditions and establishes minimum standards of protection.

↑ With specific reference to immigration legislation and the rights of migrant workers, destination countries should review the rules and regulations to ensure that there is no overt or covert discrimination against women in entry, residence and employment:

- Where migrants are being granted entry into the country to work in a range of occupations where it has been determined (in consultations involving the ministry of labour and employers' and workers' organizations) that there is need for foreign labour, the government should ensure that women migrants have equality of opportunity and treatment as men migrants;

The Canadian Government has been integrating gender concerns into its national immigration programme. A model of gender directed immigration policy-making has been developed. Following a "gender based analysis" matrix, every new immigration policy and legislative issue is subjected to the test of potential gender impacts.

- Where the law allows for migrant workers to be accompanied by their members of their families, it should apply equally to male and female migrants;
- Women migrant workers should not be discriminated against in terms of their entry, stay or employment being made dependent on compulsory periodic medical tests for pregnancy, infectious diseases, HIV/AIDS and other sexually transmitted diseases. Such tests can be made freely and voluntarily available to all workers, migrants and nationals and appropriate counselling and medical assistance provided to those in need;
- Review legislation relating to employment restrictions to ensure that the rules do not become a source of abuse by employers;
- Those who are victims of trafficking should not be treated as criminals or prostitutes but should be given the necessary assistance and support to seek redress from their traffickers, to be able to stay in the country during the period of on-going redress and voluntarily to be able to return to their home countries [see Booklet 6].

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)

Article 14 (a) provides for employment restrictions, stating that a Member State may

“make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract”.

But when a country puts such restriction into practice in terms of visa sponsorship by an employer or in terms of the stipulation that a migrant worker cannot change employers without facing the threat of deportation, she/he becomes heavily dependent on the employer. As described in the Sections above, this dependence can be a serious source of abuses. There should be a review of the visa sponsorship system. There should also be more careful assessment of the “one employer” ruling; for example, where it can be proven that the reason for wanting a change is abuse or forced labour by the employer, the migrant worker should not be penalized in terms of deportation. Such review may help to deal also with the problem of “runaways”, which is quite serious in some countries.

Taiwan has changed its regulations to allow a worker to be transferred to a new employer where there is adequate evidence of the employer’s wrongdoing. Such wrongdoing covers not only withholding of passports, bodily harm or violation of the legal rights of the migrant worker but also non-payment of salary for three months or non-observance of the salary stipulation of the contract.

↑ Provide adequate labour protection to migrant workers:

Migrant workers, as an essential part of the labour market of destination countries, should be covered under the country’s Labour Code. Governments ought to urgently review their labour legislation to:

- Ensure that migrant workers are entitled to at least the minimum standards enjoyed by nationals regarding working conditions, basic benefits and protections [see Box 4.20];
- Ensure that the working conditions of migrant workers are regularly monitored by the country’s inspection/enforcement mechanisms;
- Ensure that migrant workers have recourse to labour courts or other forms of labour arbitration or dispute settlement.

The United States follows the recommendations of the ILO and provides the same wage and hour labour market protections to all workers regardless of their legal status. To encourage migrants to report violations of their rights, the US Department of Labour does

not report suspected unauthorized workers to the INS if the workers initiate a complaint. Further the Equal Employment Opportunity Commission will investigate and, if appropriate, apply penalties to US employers who discriminate against workers on the basis of race, nationality or gender, even if the workers are unauthorized. The Office of the Special Counsel for Immigration Related Unfair Employment Practices in the Department of Justice is devoted to the enforcement of laws that prohibit discrimination in hiring and employment-based immigration status or origin.

In this context it is worth recalling the **Migration for Employment Convention (Revised), 1949 (No.97)**:

Migration for Employment Convention (Revised), 1949 (No.97)

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:
 - (a) In so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities –
 - (i) Remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - (ii) Membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) Accommodation;
 - (b) Social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in the course of acquisition;
 - (ii) National laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
 - (c) Employment taxes, dues or contributions payable in respect of the person employed; and
 - (d) Legal proceedings relating to the matters referred to in this Convention.

Text Box 4.20. Special contract for migrant domestic workers

The Ministry of Labour in Jordan endorsed a Special Working Contract for non-Jordanian Domestic Workers in early 2003. The contract is the result of joint efforts by UNIFEM and the Ministry of Labour under the project: "Empowering Migrant Women Workers in Jordan." The Steering Committee of the project which includes the Ministries of Planning, Interior, Police department, Family Protection Unit, the International Labour Organisation, the Jordanian National Commission for Women and the Jordanian Women's Union and the Embassies of Sri Lanka, Indonesia and the Philippines, reflects an attempt to diversify migration as a security and border control matter.

The contract is the first of its kind in Jordan, and is expected to become a model for other countries in the Arab region. The "Special Working Contract for Non-Jordanian Domestic Workers" augments coordination between the sending countries and Jordan, as a destination country, guarantees migrant workers' rights to life insurance, medical care, rest days, repatriation upon expiration of the contract, and reiterates migrant women's right to be treated in compliance with international human rights standards.

The contract will be considered as a requirement for obtaining residency, working permit and visa to enter Jordan. The contract comes with the amendment of the new law to register the recruiting agencies. This law will allow the Ministry of Labour to monitor the work of these agencies and take serious actions if they violate the regulations that aim at protecting the migrant workers and employers as well.

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.

↑ Take measures to promote gender equality and end xenophobia and racism:

There has to be a general environment of respect for gender equality and women's rights in the country of destination. If a country does not afford its own women equality of opportunity and treatment vis-à-vis men, traditional gender stereotypes are prevalent and national women are discriminated against in law or practice, it is not likely that the rights of women migrant workers will be upheld and that they will be protected from discrimination, exploitation and abuse. It is therefore crucial that governments:

- First and foremost, ensure that all women have a legal status equal with men and are able to enjoy, exercise and defend their basic rights equally with men;
- Have in place effective legislation and enforcement of such legislation against all forms of discrimination by race, colour, sex, religion, political opinion, national extraction or social origin;
- Promote a positive image of women and their contributions to the society and economy;
- Adopt and enforce a policy of non-tolerance of all forms of violence against women;
- Economic and social policies and legal provisions that perpetuate or reinforce gender inequality or discrimination in a country should be looked at. For example, policies that deny women equal rights with men to education, information, property and other resources would entrench sex-based divisions in the labour market – and if national women are discriminated against, then migrant women are likely to be doubly disadvantaged.

Governments should also take all measures possible to address the trend of growing racism and xenophobia by implementing the relevant provisions of the Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination,

Xenophobia and Related Intolerance, 2001 [see Section 1.4.2.2 in Booklet 1]. Some specific practical measures for governments to consider are to:

- Work with the popular media to promote greater understanding and acceptance of migrant workers. Use positive and negative sanctions to ensure that the popular media does not contribute to racism and xenophobia by, for example, vilifying migrants, and in particular women migrants – such as portraying them as responsible for “social diseases”, the spread of HIV/AIDS, providing a bad influence for children and young persons, “stealing the local men”, etc.
- Conduct special awareness raising and sensitisation programmes for officials – the impact is very serious when it is a high level official who makes racist remarks or whose dealings with migrants is based on his/her prejudices or preconceptions;
- Sponsor special social events that will bring together nationals and migrants and give them the chance to gain a better understanding of each other and opportunities for social and cultural integration;
- Treat cases of racism or xenophobia with severity so as to send the message that such treatment will not be tolerated and will be punished

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:

Recommended reading

- List of acronyms and abbreviations
- Glossary
- Contact information

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?

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

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)

The ministry/department in charge of the training 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, the facilitator 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?

9. In terms of training methods, which activities did you find most interesting and useful (e.g. group work, discussion, presentation, role play, quiz)

10. 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

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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

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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

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Migrant Forum in Asia

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Quezon City 1104
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E-mail: mfa@pacific.net.hk
Website: <http://www.mfasia.org>

Migrants Rights International

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Fax: +41.22.7882875
E-mail: migrantwatch@vtx.ch

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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