



Reality

Check!

**RIGHTS
& LEGISLATION**

**FOR MIGRANT DOMESTIC
WORKERS ACROSS ASIA**

REALITY CHECK !

Rights & Legislation for Migrant Domestic Workers across Asia

Published by



Published by:



CARAM Asia

Wisma Hamid Arshat ,
No, 12- 5, Jalan Bangsar Utama 9, Bangsar Utama,
59000 Kuala Lumpur, Malaysia
Tel: 603-2282 7708
www.caramasia.org
Email: caraminfo@caramasia.org

Published in 2011
All Rights reserved.

Printed by

Polar Vista Sdn Bhd (318716-P)
15, Jalan 6/118C, Desa Tun Razak,
Cheras, 56000 Kuala Lumpur, Malaysia.
Tel: 603-9173 1434, 9173 1436
Fax: 603-9173 1412

We acknowledge and appreciate
the financial support from the

Open Society Foundation

Any part of this report may be copied, reproduced or adapted to meet local needs, provided that the parts reproduced are acknowledged. Please inform CARAM Asia about the adaptation or reproduction. We would appreciate being sent a copy of any materials in which the text has been used.

Contents

BAHRAIN

Background	1
Lack of Legal Protection	1
Mistreatment and Violence	3
Lack of Access to Justice	4
Human Trafficking	5
What have the government done?	5
The ILO Domestic Workers Convention supplemented by a Recommendation	5

Cambodia

Background	7
What Rights Do MDWs Have?	8
Other policies to protect migrant domestic workers	11
The modus operandi of recruitment & placement	11
Cambodian Government's response to legislative protection	13
The ILO Domestic Workers Convention with Recommendation	15

Indonesia

Background	17
Legislative framework that protects	17
Recruitment & Placement	20
What have the government done?	22
The ILO Domestic Workers Convention supplemented by a Recommendation	23

Malaysia

Background	25
Legislative framework that protects	26
What have the government done?	35
The ILO Domestic Workers Convention supplemented by a Recommendation	35

Philippines

Background	37
Government's response to violations	38
The modus operandi of recruitment & placement	40
How many layers of recruitment?	41
Legislative framework and other mechanisms/policies that protects MDWs	42
The ILO Domestic Workers Convention supplemented by a Recommendation	48

Thailand

Background	53
Legislative framework that protects	56
The modus operandi of recruitment & placement	57
The ILO Domestic Workers Convention supplemented by a Recommendation	57

BAHRAIN

Report jointly prepared by Bahrain Center for Human Rights and CARAM Asia

Background

Numbers of Migrant/ Domestic Workers(MDWs) in Bahrain:	estimated to be around 70,000
MDWs nationalities:	Predominantly Sri Lankan, Indonesian, Indian and Filipinos
Types of Violations:	long (and often undefined) working hours, low salaries, the withholding of salaries and travel documents, poor living conditions such as being forced to sleep outside or in cramped quarters and denied food; psychological, physical and sexual abuse as well as restrictions on movement. It is extremely difficult for victims of these gross abuses of human dignity and human rights to seek legal redress.

Lack of Legal Protection

As domestic workers do not fall under the purview of Bahraini labour law, abuse of power at the hands of employers goes largely unchecked by the government. Employment contracts for domestic workers are set between the employer and worker, at the employer's discretion. The government provides a model contract, but it is merely a suggestion and not a requirement. Vague terms of contract lead to confusion over the exact job requirements. Often this results in domestic workers taking on multiple roles within the household including cleaner, babysitter and cook as well as tending to their employer's relatives as well. According to a 2005 ILO study, the average number of work hours for female domestic workers in Bahrain was 108 per week, slightly higher than in Kuwait and the United Arab Emirates (101 and 105 respectively). These women had an average of 1 day off per month. Another issue faced by domestic workers is contract substitution whereby the worker agrees to one contract while still in their

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

home country, but they are made to sign a new contract with different (often worse terms) upon arrival.

Bahrain has pledged to cancel the Kalafa (sponsorship) system for expatriate workers. It is among the first of the GCC countries to make this pledge to remove what has been criticized as a system of “modern day slavery.” Although Bahrain has announced the cancellation of the sponsorship system, this has yet to be implemented. Furthermore, domestic workers are not slated to be included in the reformed labour laws. Domestic workers are legally required to live with their sponsor (employer). Their legal status in Bahrain is dependent upon the continued sponsorship of their employers. Migrant workers in exploitative or abusive situations face a catch-22. Their employer is their key to legal residency status in Bahrain, but workers who attempt to flee abusive or exploitative living and working conditions risk arrest, prolonged detention and deportation. If a domestic worker attempts to leave their employer’s home without the employer’s consent, the employer can report the worker as a runaway to the police, grounds for arrest. It has been the case in Bahrain that victims of abuse who fled their employer’s home to file a complaint were detained by police as runaways. A frequent consequence of this system is that domestic workers who suffer abuse do not make complaints against their employers.

There is no formal system in place to monitor the contracts between employers and domestic workers. Nor is there a formal system for monitoring working conditions. A recent legal reform entitles workers to maintain their passports in their possession. It is still common practice, however, for employer’s to withhold passports, limiting freedom of movement. Since domestic workers are excluded from labour laws, the regulation of domestic work is sorely lacking, at the expense of victims of abuse.

One major positive change that took effect in 2010 is the introduction of the Easy Exit Program. This government initiative allows illegal migrant workers, including domestic workers, to leave Bahrain quickly and easily. This program was adopted to help the estimated 43,000 illegal migrant workers in Bahrain. As long as a migrant worker is not involved in a pending legal case, they can pay simply pay a fine and leave Bahrain immediately.¹

1 “Easy Exit Campaign” Labour Market Regulatory Authority
<http://portal.lmra.bh/english/page/show/109>

Mistreatment and Violence

Reports of abuse and mistreatment against female migrant domestic workers have continued to surface in local newspapers and from foreign embassies since the 2008 report. According to the Labor Ministry, 322 domestic workers ran away from their sponsors in 2009. In the first five months of 2010 another 42 fled their sponsors.²

Contributing to the vulnerable situation of domestic workers is the practice of hiring runaways or illegal residents. According to the Labour Ministry Inspection and Labour Director Ahmed Al Haiki the practice of hiring domestic workers off the street has worsened recently. This is a higher risk situation for migrant domestic workers. Their illegal work and residency status, further limits their legal rights and can increase apprehension in reporting mistreatment and abuse.³

During Ramadan in the month August, the Filipino Workers Resource Center (FWRC) run by the Embassy of the Philippines reported that between August 11th and August 24th alone, 22 female domestic workers sought shelter from abuse at the hands of their employers. The FWRC reported that they typically receive 30 domestic workers during the month of Ramadan, 50 percent more than the average monthly intake.⁴

The Philippines' Mass Repatriation Program aims to repatriate distressed workers by assisting in resolving outstanding issues and fines. The FWRC and Philippine Government in coordination with the Labour Market Regulatory Authority repatriated 39 illegal Filipino domestic workers and laborers in August. Many of the illegal Filipino workers in Bahrain leave the Philippines undocumented through an illegal escort system.⁵

In August, the Gulf Daily News reported the abuse of a 32 year old Indian housemaid who was under the care of the MWPS after running away from her employer. The maid reported that during her two months of employment she had been subjected to physical and verbal abuse from her employer's wife, had not been paid her monthly salary of 50BD and was refused meals. She ran away from her employer's home and was discovered by a Bahraini citizen who took her to the Indian embassy to file a complaint. The Indian embassy assisted her in filing a complaint at the Khamis police station

2 "Don't Employ Runaways Call" Gulf Daily News June 03, 2010
<http://www.gulf-daily-news.com/NewsDetails.aspx?srch=1&storyid=279463>

3 "Don't Employ Runaways Call"

4 "Abuse Claim by 22 Maids" Gulf Daily News August 24, 2010
<http://www.gulf-daily-news.com/NewsDetails.aspx?srch=1&storyid=285430>

5 "39 Illegal Workers Repatriated" Labour Market Regulator Authority August 17, 2010
<http://blog.lmra.bh/en/archives/1029#more-1029>

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

where her employer had already reported her as a runaway ⁶. The maid left Bahrain in November after being cared for at the MWPS shelter for three months. In December the Lower Criminal Court found the employer's wife guilty of assault. The Bahraini woman was sentenced to one month in jail and fined 280 BD. The MWPS reported that it was pursuing further financial compensation in Civil Court. ⁷

Bahrain witnessed the mass exit of 300 Sri Lankan domestic workers between May and November of 2010. The domestic workers left Bahrain under the government's new Easy Exit program. Reasons cited for leaving were physical abuse, sexual harassment, non-payment of salaries and being overworked. Out of the approximate 13,000 Sri Lankan migrants in Bahrain it is estimated that there are 3,000 Sri Lankan domestic workers in Bahrain. ⁸

Another serious problem resulting from the mistreatment of domestic workers is suicide. There were several reported cases of female migrant domestic workers resorting to suicide. ⁹

Lack of Access to Justice

Only a small number of female migrant domestic workers are able or willing to seek legal action against their employer. The fear of reprisal, arrest or deportation inhibits many from stepping forward to report abuse. Additionally, although the government and local NGOs have carried out information campaigns, many migrant domestic workers are unaware of their rights. This is especially true for domestic workers who work long hours in the household and have little access or interaction outside the confines of their employer's home.

Those who seek legal redress for exploitative working conditions find little institutional support within the government. They must rely on their foreign embassy or NGOs such as the Migrant Worker Protection Society (MWPS) to facilitate the proper legal recourse against abusive employers. Court cases can take several months, costing migrant

6 "Widow Beaten Up By Sponsor" Gulf Daily News August 04, 2010 <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=283882>

7 "Prison Term for Sponsor's Wife Welcomed" Gulf Daily News December 02, 2010 <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=292952>

8 <http://www.gulf-daily-news.com/NewsDetails.aspx?srch=1&storyid=292105>

9 "Housemaid Found Hanging" Gulf Daily News April 30, 2010 <http://gulf-daily-news.com/NewsDetails.aspx?storyid=276886>; "Maid Found Dead in Swimming Pool" Gulf Daily News May 04, 2010 <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=277210> "Rise in Suicides of Migrant Workers in Bahrain" Migrant Rights February 10, 2010 <http://www.migrant-rights.org/2010/02/09/rise-in-suicide-of-migrant-workers-in-bahrain/>

workers valuable time and money. If a domestic worker is involved in a pending court case they are legally prohibited from leaving the country until the issue is resolved.

Human Trafficking

Female migrant domestic workers are the most vulnerable sector of Bahraini society to illegal human trafficking. In their annual report on human trafficking the U.S. Department of State rated Bahrain as a tier II country for human trafficking. A tier II classification applies to “Countries whose governments do not fully comply with the Trafficking Victims Protection Act’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards”¹⁰. The report noted that although Bahrain has made some attempts to curb human trafficking in to the country, including introducing the anti-trafficking law, there is still a great deal of work to do ¹¹. Most notably, the report cites that the government lacks a formal procedure for identifying victims among vulnerable groups, such as migrant domestic workers. The report charges that Bahrain does not provide adequate protective services for victims. Although the government funds the Dar Al Aman shelter for trafficking victims, only a small number of victims are being directed there. Foreign embassies and the MWPS generally take on the responsibility for caring for trafficking victims. The report also cites concern over the lack of legal alternatives for the removal of trafficking victims to countries where they face retribution or hardship.

What have the government done?

In 2008, Bahrain made a stride forward in improving the quality of life for migrant workers through a reform allowing migrant workers to change employers (without their employer’s consent and in the absence of allegations of non payment or abuse). This major improvement for migrant workers does not apply to domestic workers.

The ILO Domestic Workers Convention supplemented by a Recommendation

The Bahrain government replied to ILO’s questionnaire supporting a Domestic Workers Convention in the initial stage of the standard setting process. However, it changed its

10 Annual Trafficking in Persons Report. United States Department of State. July 2010 <http://www.state.gov/g/tip/rls/tiprpt/2010/142755.htm>

11 Annual Trafficking in Persons Report. United States Department of State. July 2010 http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

position to support a recommendation in consonance with the positions taken by other Gulf and Middle East countries during the 2010 International Labour Conference. By 2011, it did not submit any replies to ILO pertaining to comment on the draft text for the ILO Domestic Workers Convention and its supplementary recommendation.

Cambodia

Report prepared jointly by CARAM Asia, CARAM Cambodia and Tenaganita

Background

Numbers of Migrant Domestic Workers abroad:	over 40,000 employed in Malaysia ¹
Women as percentage of immigrants (2010):	51.7% ²
Destination countries for Cambodian domestic workers:	Malaysia
Numbers of abuse cases:	Tenaganita have taken up 22 cases involving 34 Cambodian Domestic Workers from 2010 to April 2011
Types of Violations Experienced	<ul style="list-style-type: none">• Working conditions differ from the contract signed between migrant domestic workers and their agents in Cambodia including lower wages and debt bondage not known to worker prior to departure.• Detention at recruitment agencies' training center• Underage girls sent to work with falsified documentations• No payment of wages• Irregular payment (migrant domestic workers are only paid at the end of their contract)• Long working hours• On call 24 hours a day• Excessive duties and tasks• No days off• No privacy• Verbal abuse• Sexual abuse• Physical abuse• Confiscation of personal documents

¹ Sok Serei reported in Radio Free Asia (RFA), broadcasted on 03 March 2011

² CARAM Asia, "Remittances: Impact on migrant workers' quality of life" October, 2010.

What Rights Do MDWs Have?

The rights of Cambodian domestic workers are mainly subjected to the national laws and regulations in destination countries such as Malaysia and Thailand. The Cambodian government have yet to pass specific laws that stipulate labour rights for Cambodian domestic workers working outside Cambodia. However, the government of Cambodia formulated a policy on Labour Migration in June 2010. It has a sub-decree 57 on sending Khmer worker to work abroad that is in the process to be amended by the Ministry of Labour and Vocational Training (MoLVT) and to be submitted to the Council of Ministers and it is subject to approval by the Prime Minister.

1. Sub-Decree 57 on Sending Khmer worker to work abroad issued in 1995

Although the Cambodian government have issued a legal document called sub-decree 57 in 1995, it is not enforceable in the destination country where violation of rights occurred. This legally binding document also focuses more on the responsibilities of the recruitment agencies, conducting a pre-departure training for the migrants, coordinating with the Ministry in the return of migrants, etc.

It does not include standard contracts or any clear provisions on the minimum standards for specific labour rights that migrant workers should be entitled to. Unfortunately, this sub-decree 57 is the only legally binding document regulating migration. The sub-decree mandates the current Ministry of Labour and Vocational Training (MoLVT) as the providing party and a recruitment company /agency as the receiving party.³

Sub-Decree 57 includes an obligation for the recruitment agencies to sign a written contract with the worker.

However, there is no standardized employment contract which can be enforced in Cambodia or the destination countries. Migrant domestic workers are forced to sign loan contract, statement contract and other documents as provided by recruitment agencies. In addition, even if the employment contract was signed between some recruiting agencies and domestic workers in Cambodia, the contract will be kept with recruiting agencies in Cambodia. Migrant domestic workers usually do not understand the contract prepared by these recruiting agencies. Often, migrant domestic workers do not have copies of these contract with them in case of dispute with recruiting agencies/ employer.

3 ILO, "Review of labour migration management, policies and legal framework in Cambodia" 2009.

From the experience of CARAM Cambodia and CARAM Asia member in Malaysia, there are rampant cases of fraud. Often, the terms and conditions written in contracts signed between the worker and agencies in Cambodia differ from the actual contract between the migrant domestic workers and their employers in destination countries. Usually, the contracts signed in Cambodia provide higher wages promising rest days, etc but when the worker arrived in destination countries, they receive lower wages than what the agents had promised them. Even if Cambodian domestic workers signed contracts with their employers after their arrival in destination countries, the contract will only be in the language known by the employers and there is no copy in Khmer.

Laws in the destination country- Malaysia, did not stipulate numbers of day offs for migrant domestic workers, hours of work and other basic labour rights and Cambodian MDWs also lacked documentation. Therefore, it is nearly impossible for migrant domestic workers to file complaint against their employer for not giving them labour rights. Moreover, once in Malaysia, the Cambodian migrant domestic workers are rarely allowed out without the company of employer or their family members. They are tied to a work contract with a single employer or household and are not allowed to change employers. If a worker runs away from unsatisfactory working condition, they risk arrest, detention and deportation as their employer may cancel their work permit and render them undocumented. It is an immigration offense for MDWs to remain in Malaysia once their work permit is cancelled.

It is hard to pursue legal action when the workers do not possess legal documentation. It is also complicated to identify the responsible party when there are too many middle men involved in the process. Migrant domestic workers usually signed employment contract with recruiting agencies in Cambodia and recruiting agencies in Cambodia are the sub agencies who signed employment contract with placement agencies (principle agencies) in Malaysia.

There is a lack of inspection conducted by inspection officer from MoLVT over recruiting agencies in Cambodia and placement agencies in Malaysia.⁴

It is difficult for domestic workers in Malaysia to use this sub-decree to charge agents for cheating them because migrant domestic workers do not have any employment contract with them. On the other hand, there is no clear complaint mechanism for domestic workers to file complaint against recruiting agencies in Cambodia. So far, the complaint against recruiting agencies is coordinated and supported by non-governmental

4 UNIAP, Domestic Workers and Recruitment Agencies: Employment between Cambodia and Malaysia, March 2011

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

organizations. Rarely are there complaint filed against recruiting agencies to claim for the damage or losses relating to employment abroad to courts.

2. Prakas 108, May 2006, on “Education on HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad”

The Prakas No. 108 is issued and approved by the Cambodian Ministry of Labor and Vocational Training (MoLVT) to guide recruiting agencies in giving pre-departure training to Cambodian migrant workers before their departure for employment abroad on HIV/AIDS, safe migration and labor rights. However, the Prakas is not legally binding and is not mandatory for recruiting agencies in Cambodia to follow.

The Prakas No. 108 on conditions related to sending Cambodian Migrant Workers abroad covered Cambodian migrant domestic workers. It has these provisions:

Pre-departure training:	potential migrant workers are required to pass through pre-departure training on HIV/AIDS, safe migration and labour rights.
Provision of training, report, data and related documents:	recruiting agencies are required to provide information to migrant workers before departure, upon arrival and after reintegration.
Collaboration:	recruiting agencies are required to collaborate with non-governmental organizations and concerned institutions and give favourable conditions in provision of pre-departure training to potential migrant workers.
Inspection:	Inspection Officers are required to conduct inspection at recruiting agencies/destination countries at least one time per year.
Letter of contract:	The contract is made between recruiting agencies and the Ministry of Labor and Vocational Training.

Migrant domestic workers going to Malaysia for employment, usually go through pre-departure training by some recruiting agencies, but the content of these pre-departure training covers only on how to effectively perform their domestic work provided by employer and did not cover labour rights and other matters about the protection for workers.

All migrant domestic workers going to Malaysia for employment is also required to have a mandatory health testing on HIV/AIDS, pregnancy and other types of diseases required

by Malaysia. Women workers found pregnant or positive for any of the diseases stated by Malaysia will lost the costs that they incurred for migration and the opportunity to work and deported if they had already arrived in Malaysia.

Other policies to protect migrant domestic workers

On June 11, 2010, the Royal Government of Cambodia through Ministry of Labour and Vocational Training (MoLVT), approved a policy on Labour Migration for Cambodia. The policy only document issues, trends and challenges but does not regulate recruitment agencies, stipulate standard contracts or other rights for migrant domestic workers.

The policy challenges are grouped into the governance of labour migration, the protection and empowerment of migrant worker, and the harnessing of labour migration for economic development. The paper also examines the medium-term employment and demographic outlook in Cambodia, looking at the factors that make it essential for the country to utilize the opportunities rendered by labour migration.

There is no standard contract nor MOU signed between Cambodian government and destination countries of Cambodian migrant domestic workers.

However, the Royal government of Cambodia did made several initiatives in 2010 such as developing a guideline for training centre of recruiting agencies, the national policy on labour migration in June 2010 and the pre-departure training manual on safe migration.

The modus operandi of recruitment & placement

Since the last 2 years after Indonesia temporary suspended the placement of Indonesian migrant domestic workers to Malaysia, there is a surged of Cambodian women working in Malaysia. Last year, Malaysia issued 28,561 work visas to Cambodians, according to statistics provided by the Malaysian Embassy in Phnom Penh. More than 24,700 of those were given to domestic workers. That figure is almost five times the total number of visas issued just two years earlier.

At the same time, the number of recruitment agencies operating in Cambodia has taken a corresponding leap. And they have established loose networks of agents paid to recruit potential employees from villages throughout the country.⁵

5 Irwin Loy in The Diplomat (an International a magazine), "Second-Class Citizens?" February 16, 2011: <http://the-diplomat.com/2011/02/16/second-class-citizens/>

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

Since migration to Malaysia is a new phenomenon for Cambodian women, this loose network of agents may not know the actual working conditions in Malaysia. They comprised of villagers or local authorities who are paid between US\$ 50-100 or higher charge per domestic worker ⁶, which is a highly attractive sum from recruiting agencies. These agencies promised workers that they can earn hefty sums which would double the minimum wage in factories.

There are also recruiting agencies who promised parents of the prospective Cambodian women 50 kg of rice and the equivalent of \$125 in cash up front as a gift. Both the women and their parents may accept it not knowing that these gifts could be considered recruitment fees which will eventually place the Cambodian women domestic worker into debt bondage with their employer and recruitment agencies both in Cambodia and in Malaysia.

Recruiting agencies charged both worker and employers for the recruitment and placement fees. Malaysian employers pay about USD4000 for each Cambodian migrant domestic worker. The employers are told that the USD4000 include placement costs owed by the worker to the recruitment agencies. Agents advised employers to reclaim their costs by fully deducting MDWs' salary for the first 7 months or more. Therefore, Cambodian women domestic workers ended up working without salary for their first 7 months of work in Malaysia.

In addition, the debt increases if migrant domestic worker or their family members take more loans from recruiting agencies. Since the Cambodian recruiting agencies are afraid if the migrant workers will run away prior to their departure to Malaysia, the women are detained by recruiting agencies in Cambodia for almost three months at recruiting agencies' centre.

CARAM Cambodia's interview with migrant domestic workers in 2010 to early 2011 revealed that there are cases of migrant domestic workers placed in small rooms with insufficient food in the training centre of Cambodian recruitment agencies. The poor living condition have also caused some domestic workers to fall sick.

In July 2010, authorities in Phnom Penh raided a recruitment firm, where they found more than 200 people, including underage girls, crammed into rooms in the training complex. Within a week, another agency made local headlines after a woman leapt over the walls to escape, claiming she had been held against her will because she couldn't

6 CARAM Cambodia's interviews with Cambodian domestic workers within 2010-2011

pay off her debt ⁷ (to the recruitment agencies). Some of the more destitute villages have proven to be fertile grounds for recruitment. In one village alone, 30 women have signed on to what local police chief Hun Miera believes is an uncertain future.

“These people don’t have legal protection when they leave. Anything could happen to them,” he says.

CARAM Cambodia saw its first domestic worker client in 2010. Now the organisation is advising more than 20 women who have claimed various forms of abuse or mistreatment.

CARAM Cambodia found that many women and their families receive gifts from Cambodian agents which will eventually be deducted from workers’ salary as recruitment costs. Sometimes workers’ families are given cows or rice by the recruitment agencies in Cambodia and the costs for these things are considered as loan from the agencies to workers.

Cambodian Government’s response to legislative protection

Ministry of MoLVT acknowledged that Cambodian MDWs faced a lot of problem.

The Department of Employment and Manpower under the MoLVT is the main government department overseeing the registration and sending of Cambodian workers to other countries. It also issues work permits to Cambodian migrant domestic workers. On 31 March 2011, CARAM Asia and CARAM Cambodia representatives met with two officials from the Ministry of MoLVT. They are:

- 1) Chuop Narath, Deputy Director, Department of Employment and Manpower
- 2) Ouk Ravuth, Chief of Office, Department of Employment and Manpower

They acknowledged that the current policy on migration needs to be improved. They shared that the ministry is in the process of developing a new sub-Decree that will be more comprehensive than the current sub-decree 57.

The proposed sub-decree will include a few new initiatives such as:

- The future assignment of labour attaches to Cambodian Embassy in countries of

⁷ Irwin Loy in The Diplomat (an International magazine), “Second-Class Citizens?” February 16, 2011: <http://the-diplomat.com/2011/02/16/second-class-citizens/>

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

destinations of migrant workers

- Punitive measure for recruitment agencies that failed to perform its duties according to requirements under the sub-decree. There will be a 3 step punitive measure:
 - 1) a warning letter issued to the recruitment agency
 - 2) temporary suspend the license of the recruitment agency
 - 3) withdrawal of the license of the recruitment agency
- Recruitment agencies have to ensure that information given to migrant workers including advertisements made is realistic and it should not differ from the actual working condition that migrant workers will be subject to.
- Recruitment agencies have to report to the Cambodian agencies at least 30 days prior to migrant workers return to Cambodia to facilitate their reintegration process. Upon migrant workers return to Cambodia, recruitment agencies have to bring workers to the MoLVT, so that labour officials may see the health condition of workers.
- The content for the contract between any worker and their employer and the contract between the worker with their recruitment agency should be the same in both English and Cambodian language.

Since a lot of migrant workers and their family members lodged police reports in Cambodia about violation of rights, the Ministry of Interior which is the General Commissariat of the Cambodian national police force in Cambodia also looked into the problems faced by migrant Cambodian domestic workers. On 30 March 2011, CARAM Asia and CARAM Cambodia representatives met with the Deputy Director of Anti Human Trafficking and Juvenile Protection Department from the Ministry of Interior, Brigadier General Chiv Phally.

In 2010, the Ministry of Interior started investigation on recruitment agencies and they have taken actions against agencies for illegally detaining prospective migrant domestic workers and producing fake documents to bring underage girls to migrate to work as DWs.

They arrested 6 companies and 8 people including 3 recruiter and 1 clerk who act as communal chief. The clerk from the local authority had been sentenced to 2 years imprisonment for forging document for underage girls. The cases of the rest are pending

court proceedings.

The Deputy Director of Anti Human Trafficking and Juvenile Protection Department from the Ministry of Interior informed CARAM Asia that they have taken initiatives to warn recruiting agencies about breaching the Cambodian human trafficking law. Recruiters are liable to be charged for deceiving Cambodians by giving false information about working condition, salaries etc to potential migrant workers.

During trainings conducted with staffs from recruitment agencies, they warned against producing fake document. Recruiting companies involved in using fake documentation to lie about the age of underage girls are liable to be charged under the criminal & human trafficking laws in Cambodia.

The ILO Domestic Workers Convention with Recommendation

The Cambodian labour ministry officials informed CARAM Asia that they will support the ILO Domestic workers Convention and recommendation, however, the ILO Blue report released in March did not have the input from the Cambodian government.

Indonesia

Report jointly prepared by CARAM Asia, Solidaritas Perempuan and Indonesian Migrant Workers Association (ATKI)

Background

Numbers of Migrant Domestic Workers (MDWs) in Indonesia:	300,000
Women as percentage of immigrants (2010):	44.5% ¹
Destination countries for Indonesian domestic workers:	Malaysia, Singapore, Taiwan, Hong Kong, Macau, Gulf and Middle East countries.
Numbers of abuse cases:	ATKI received 1635 cases from July 2009 to July 2010
Types of violations:	Most cases revolved around unpaid wages, unreasonable termination, physical and verbal abuses.

Legislative framework that protects

The only Indonesian law concerning migrant workers is Law No. 39/2004 that was issued in 2004. Documented migrant domestic workers are covered in this legislation. Although the law is on Placement and Protection of Indonesian Workers in Foreign Countries, its content is only regarding recruitment and placement. It does not protect workers during their employment.

Indonesian migrant domestic workers faced exploitation at every stage of their migration. They are trapped into debt bondage due to the exorbitant recruitment and placement fees. The table below are a compilation on the fees and salary deduction

¹ CARAM Asia, "Remittances: Impact on migrant workers' quality of life" October, 2010.

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

faced by Indonesian migrant workers done by ATKI:

Destination Country	Legislation	Costs	Number of months salary deducted	Paid by Migrant Workers(Rp)
Taiwan	No. 158/D2PTKLN/XII/2004	12,944,500	12-15 months	20-30 Million
Malaysia Barat	No. 650/D2PTKLN/XII/2004	3,865,000	3 months	
Malaysia Timur	No. 651/D2PTKLN/XII/2004	2,500,000	3 months	5 Million
Singapura	No. 652/D2PTKLN/XII/2004	5,310,000	7 months	15 Million
Hong Kong	No. 186/2008	15.500.000 + USD15	7 months	21 Million
Brunei Darussalam (informal workers)	No. 654/D2PTKLN/XII/2004	4,295,000	3 months	6 Million
Brunei Darussalam (formal workers)	No. 655/D2PTKLN/XII/2004	4,470,000	2 months	6 Million
Bahrain	No. 659/D2PTKLN/XII/2004	7,275,000	2 months	3 Million
United Arab Emirates	No. 767/D2PTKLN/XII/2004	7,275,400	2 months	3 Million
Oman	No. 770/D2PTKLN/XII/2004	7,275,000	2 months	3 Million
Qatar	No. 771/D2PTKLN/XII/2004	7,275,000	2 months	3 Million
South Korea	No. 443/MEN/TKLN VII/2005	8,830,000	n.a	

The Law No.39/2004 gave full authority to recruitment agencies to handle the placement and protection of MDWs. It is mandatory for MDWs to engage the service of such recruitment agencies. The Indonesian government does not permit direct recruitment. Unable to bypass the services of such recruitment agencies, MDWs had to pay for the recruitment and placement fees. The repayment of such fees lead them to work for 6 months and above without wages, placing them into debt bondage and into a trafficked labour situation.

Upon arrival in destination countries where the bulk of the violations occurred, MDW's fate lies in the lack of legislative protection for them as most destination countries do not grant basic labour rights to migrant domestic workers. They also do not have rights to freedom of mobility due to sponsorship systems and regulations that permits employers holding on to MDW's travel documents. Their right to redress is impeded since there are so many barriers to freedom of mobility to seek justice and the threat of termination.

There is no standard contract for MDWs². They often sign one contract with the recruitment agency in Indonesia and another upon arrival. Many MDWs are cheated in the process as they are promised better wages and working condition while in Indonesia

2 United for Foreign Domestic Workers Rights (UFDWRs), "A Handbook on Domestic Worker Rights Across Asia" 2010.

but are left tied to their work contract for a minimum of two years in destination countries and is unable to leave their employment through legal means.

Article 8 of the Law No. 39/2004 mandates that the representatives of the Government of Indonesia to give protection to the Indonesian migrant workers abroad in accordance to legislation in destination countries. For this purpose, the Indonesian government is able to create the post of Labour Attaché in destination countries. Since 2007, the Ministry of Foreign Affairs had gradually formed Citizen Services at embassies/consulates in countries with significant numbers of Indonesian citizens including:

Singapore, Brunei, South Korea, Qatar, Syria, Jordan, Saudi Arabia, United Arab Emirates, Hong Kong, Kuwait and three areas in Malaysia (Kuala Lumpur, Johor Baru and Kota Kinabalu).

These services however are often inadequate and Indonesian embassies are often full of Indonesian migrant workers seeking protection from exploitative working conditions in these destination countries. Often, the shelter provided by the embassies are overwhelmed and unable to accommodate all of those who need assistance.

The government of Indonesia has signed memorandum of understanding (MOUs) with 10 destination countries - Malaysia, Taiwan, South Korea, Japan, Kuwait, Jordan, United Arab Emirates, Syria, Libya and Qatar.

In general, the MOU stipulates terms for the placement of migrant workers, rather than their protection, because the spirit of the agreement is to increase the efficient flow of labour migration between countries. The actual rights and protections of migrant workers are weak and fall short of international labour standards. The MOUs fail to provide clear standards on wages and working conditions. For instance, in the MOU between Indonesia and Malaysia concerning the recruitment and placement of Indonesian domestic workers (2006),³ did not stipulate basic entitlements such as a mandatory weekly 'day off', annual leaves or minimum wages.

Since 2009, the government of Indonesia and Malaysia are negotiating to revise to the MOU concerning domestic workers (2006). It is said that the Indonesian government is demanding for :

1. a minimum monthly wage (RM 600, around USD200)
2. the workers to have weekly one day off

3 CARAM Asia, "Remittances: Impact on migrant workers' quality of life" October, 2010.

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

3. MDWs to be able to keep their passport and documentation.

The negotiation between Indonesia and Malaysia had went on for more than a year by the time of writing and no new MOU has been signed.

The bilateral agreements and MOUs negotiated by the Indonesian government tend to regulate only workers that migrate through official procedures, leaving undocumented workers unprotected and vulnerable to exploitation.

In addition to MOUs, sometimes, Indonesian government declared a moratorium on the placement of Indonesian migrant workers due to exploitative conditions in certain destination countries.

For instance, since mid 2009, Indonesian government halted temporarily the placement of Indonesian MDWs to Malaysia. By September of the same year, Indonesia also suspended the migration to Kuwait. These temporary suspension are brought about from continuous reports of abuses against Indonesian MDWs, many cases of unpaid wages and high suicide rates (Kuwait).

The moratorium is a way to urge the Malaysian government to give serious protection for Indonesian migrant workers in the country. At the time of writing, the moratorium has not been lifted since both governments had yet to agree on the minimum standards of protection. However, the suspension had led to a rise in cases of recruitment agencies sorting illegal means to bring Indonesian MDWs into Malaysia through undocumented channels, putting MDWs further at risk of being trafficked to work. A MOU between Indonesia and Kuwait is also being negotiated.

Recruitment & Placement

Indonesian MDWs' access to rights are also largely dependent on recruitment agencies and sponsors who are their first contact for information about their working terms and conditions. Recruitment agencies and sponsors are also their mediators between employers and other governmental agencies involved in the migration process. Indonesian MDWs typically had to engage the services of about 7 middlemen or agencies or sponsors from their villages, to the nearest town and to the Indonesian Capital before arriving in destination countries.

Sponsors generally recruit potential migrant workers from their own neighbourhoods and assist them with the documentation processes and travel to the recruitment agencies in the city. Prospective migrant workers usually pay the sponsors IDR 2,000,000 (USD 200) for transportation and other expenses, and the sponsors will also receive IDR

600,000 (USD 60) to IDR 1,000,000 (USD 100) per recruited person from the agencies⁴. Once the migrant workers are in the shelter of the recruitment agencies, they become the ‘responsibility’ of the agencies, for the processing of documentation, medical check-up, and training. Due to the many layers of middlemen involved in their recruitment processes, MDWs have to pay high fees for their migration costs. Since the fee will be deducted from their salary, MDWs ended up working without wages between 6 to 13 months depending on the destination country chosen and the fees charged by the recruitment and placement agencies. The high costs for migration rendered MDWs without much savings and led to a cycle of remigration upon contract expiry.

Migrants who travel to Malaysia are charged a fee of IDR 2.5 million (USD253) for going to East Malaysia and IDR 3.865 million (USD390) for those going to West Malaysia. However, in reality the agents in Malaysia charged employers between RM8000-RM12,000 (USD2667 to USD4000) which leads to employers recuperating the costs by deducting 100% wages of MDWs for the first 6 to 8 months of their employment.

As regulated by Law No. 39/2004, the placement contract should include the rights and obligations of both parties, type of work requested by the employer, and amount of placement fee paid by migrant worker. In reality, most MDWs do not have such terms written in the contract prior to their migration for work.

There are however issues with the signing of the contracts as migrant workers have claimed that they are often made to sign the working contract at the airport so they do not have time to read the contract properly, and some migrant workers are not able to read the contract due to their illiteracy or the limited understanding of the language used in the contract.

To date there is no regular monitoring conducted by the government for either recruitment agencies or sponsors. In 2004, there was an estimated 400 licensed recruitment agencies operating in Indonesia, and more are operating illegally.⁵ Nevertheless, BNP2TKI issues a list of ‘problematic’ recruitment agencies annually, and will revoke the license when there is evidence of poor performance or negative reports about migrant workers placed by these agencies. However it is not difficult for the suspended agencies to re-establish a new recruitment agency under a new company name. Without regular monitoring there is no guarantee that recruitment agencies adhere to regulations. For instance, prospective MDWs are supposed to wait at the agency for a month or two before departure however in practice it is common for migrant workers to stay at the agency

4 Pei-Chia Lan, “Global Cinderella’s: Migrant Domestic Workers and Newly Rich Employers in Taiwan” 2006.

5 Human Rights Watch, “Help Wanted: Abuses Against Female Migrant Domestic Workers in Indonesia and Malaysia” 2004.

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

for up to six months because the agency has not found the 'suitable' job for the migrant workers. During the training period, prospective MDWs should not be employed, but sometimes there are reports from prospective MDWs that they were employed at the agency's owner's house. The condition of the shelter is also often overcrowded, with poor accommodation, food and living conditions and migrants are often prohibited from leaving and have limited contact with their families and communities.⁶

Recruiting agencies are also mandated to provide pre-departure education and training, delivered over two days, covering conditions and culture in the destination country, risks of working abroad, language-skill, and the rights and obligations of Indonesian migrant workers. Prospective migrant workers are obligated to participate in this training and to receive a certificate of work competency. In addition the agencies provide training for prospective migrant workers to increase their working skill to meet the requirement of the country of employment. The training includes language lesson, cooking, practices to use electronic appliances for domestic workers, etc. However, in reality, prospective migrant workers often do not receive sufficient training needed for their work overseas.⁷

What have the government done?

Migrant workers returning to Indonesia, who have experienced problems overseas can seek assistance from the Ministry of Foreign Affairs' Office in Jakarta, Directorate of Protection of Indonesian Citizens and Legal Bodies (Direktorat Perlindungan WNI dan BHI). The services include legal aid, assistance to repatriate Indonesian migrant workers who are having problems overseas or with the return of the bodies of Indonesian migrant workers who died overseas.⁸

The government also claim to protect migrant workers upon their return through the creation of the special terminal for Indonesian migrant workers at the Soekarno-Hatta Airport that is separated from other terminals used by tourists. They claimed that the terminal is set up for migrant workers to report any work-related issues and cases that are commonly reported include termination of contract by employers, repatriation due to illness, unpaid wages, work contract violations and physical and sexual abuse. The cases reported are dealt with by the officials, and then considered closed after the migrant worker receives insurance compensation. However, most MDWs are not aware

6 CARAM Asia, "Remittances: Impact on migrant workers' quality of life" October, 2010.

7 Interview by Solidaritas Perempuan with female migrant workers, January and October 2009.

8 Indonesian Ministry of Foreign Affairs:
[Http://www.deplu.go.id/Pages/ServiceDisplay.aspx?IDP=1&1=en](http://www.deplu.go.id/Pages/ServiceDisplay.aspx?IDP=1&1=en)

about these services provided by the Indonesian government. They are also unaware about the insurance coverage and do not possess the documents required to make the insurance claim. The workers' lack of information is a result of agent and sponsors processing all their documentation without thorough explanation to workers and also without giving MDWs the original copies of all documentation that included insurance policies etc.

The location and practices within the special migrant terminal has lead to additional layers of exploitation and disadvantage for returning migrant workers. It is common practise within the isolated terminal that migrant workers are forced to pay extra transport costs and higher ticket prices for travel between the terminal and their home communities, and the exchange rate used within the terminal is lower than the rate used at the regular airport.⁹

The ILO Domestic Workers Convention supplemented by a Recommendation

In 2010 Indonesia refrain from supporting a binding ILO Domestic Workers convention, but instead proposed for the ILO DW standard to be in the form of a recommendation.

By 2011, Indonesia submitted its comments regarding the proposed text for the ILO DW Convention requesting for an additional subparagraph for the possibility to exclude persons performing domestic work within the context of the family or for relatives. In reality, sometimes Indonesian employers claim that domestic workers are only assisting relatives to perform the work, therefore denouncing employment relationship.

The other comments made by the Indonesian government seemed to only strengthened the protection for domestic workers such as ensuring the text to include legal assistance to domestic workers.

9 CARAM Asia, "Remittances: Impact on migrant workers' quality of life" October, 2010.

Malaysia

Report prepared jointly by CARAM Asia and Tenaganita

Background

Numbers of Migrant/ Foreign Domestic Workers(FDWs) in Malaysia:	300,000
FDWs nationalities:	<p>Indonesia, Philippines, Cambodia, India and Sri Lanka, with future plans for Nepali women to be recruited.</p> <p>In the last 2 years, Indonesia had temporary suspended the placement of Indonesian migrant domestic workers to Malaysia. To meet the demand for FDWs, there is a surged of Cambodian FDWs. Last year, Malaysia issued 28,561 work visas to Cambodians, according to statistics provided by the Malaysian Embassy in Phnom Penh. More than 24,700 of those were given to domestic workers. That figure is almost five times the total number of visas issued just two years earlier.¹</p>
Women as percentage of immigrants (2010):	45.2% ²
Numbers of abuse cases:	Tenaganita recorded 314 cases consisting of 2826 human rights violations from June 2004 to April 2011
Types of violations:	These human rights violations include non payment of wages, wrongful deductions, withholding of passports, physical abuse, sexual harassment and rape, psychological abuse, threats, long working hours, no off day, confinement, work in two places, employment of children, no proper food provided, various health problems with no treatment and not allowed to conduct religion obligations as well as denied access to family

1 Irwin Loy in *The Diplomat* (an International a magazine), "Second-Class Citizens?" February 16, 2011: <http://the-diplomat.com/2011/02/16/second-class-citizens/>

2 CARAM Asia, "Remittances: Impact on migrant workers' quality of life" October, 2010.

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

Legislative framework that protects

Labour Laws

The Malaysian Employment Act of 1955 is the key labour law in the country for all workers. Domestic Workers are referred as “Domestic servant” in the Act which excludes them from enjoying rights guaranteed to all other workers. This concept of servant and its continued acceptance comes from how housework has been defined, understood and unrecognized. Housework is seen as unproductive within a capital centric system. Housewives have worked long hours without remuneration and remains so in Malaysia. The non recognition and maintaining the word “servant” creates a relationship of servant and master who has full control over the domestic worker and not one of employer and employee.

Domestic Workers can only invoke the Employment Act 1955 in the event of unpaid wages and/or irregular wages. The categorical exclusion of domestic workers resulted in them in being not entitled to weekly days off, holidays, overtime pay, termination benefits and other provisions stated in the law for other categories of workers.

According to the presentation made by Ravi Nekoo, a representative from the Malaysian Bar Council at the National Consultation on ILO Decent Work Agenda for Domestic Workers on 23 April, 2009, DWs are excluded from these sections in the Employment Act:

Section 12	Notice of termination of contract
Section 14	Termination for special reasons e.g. misconduct
Section 16	Employees on plantation estates to be provided with minimum number of days’ work in each month.
Section 22	Limitation on advances to employees.
Section 61	Duty to keep registers
PART IX	Maternity protection
PART XII	Rest days, hours of work, holidays and other conditions of service
PART XIIA	Termination, lay-off, and retirement benefits

The other provisions of the Employment Act which applies to foreign domestic workers (FDWs) are listed by the Malaysian Bar Council’s Press Release 8 July, 2009:

- Section 18** Wage Period (shall not exceed one month)
- Section 19** Time of payment of wages (i.e., not later than the 7th day after the last day of any wage period) If we consider the provisions for both Section 18 & 19, FDWs should be paid monthly by the 7th day after 1 month. Yet, it is found to be a practice among some employers to pay workers towards the end of their work contract. From, from the experience of Tenaganita, a Malaysian NGO which takes up foreign domestic workers abuse complaint cases found that many of them were paid towards the end of their 2 year work contract.
- Section 24** Lawful Deductions (Deductions shall not exceed 50% of the wages earned – 24(8)). In reality most foreign domestic workers are not paid at all for the first six month of work as their salaries are deducted to defray employment agency fees.
- Section 69** Director General’s power to inquire into complaints (Dispute relating to wages or any other payment in cash due to the employee under the terms of the contract of service or the Employment Act)
- Section 65** Powers of inspection and inquiry (Director General shall have power to enter without previous notice any place of employment and to make an inquiry)
- Section 79** Powers of Director General to investigate possible offences under the Act
- Part XVII** Offences and Penalties (Fines not exceeding RM10,000)

Experience in Malaysia thus far showed that most of these sections under the labour law has not been enforced or monitored.

Occupational Safety and Health

1952 Workmen’s Compensation Act of Malaysia excludes foreign domestic workers from receiving compensation for workplace injuries and occupational illness.

Immigration Laws

According to the Immigration Act of Malaysia 1959/60, any person found to have entered the country without valid Entry Permit or a valid Pass, on conviction, be liable to a fine not exceeding ten thousand ringgit (about USD3,125) ² or to imprisonment for

² USD1.00 = RM3.20 as at July 15, 2010

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes. The whipping is applicable to only males.

As for any person who remained in the country upon the expiry or cancellation of their travel Permits/ Pass, if found guilty, shall, on conviction, be liable to a fine of not less than ten thousand ringgit (about USD3,125) or to imprisonment for a term not exceeding five years or to both.

In the case of FDWs who had entered and remained in the country on the basis of employment, their work permits served as valid travel documents. It is the responsibility of employers to renew work permits for their FDWs on a yearly basis. This is despite the fact that FDWs do not have the prerogative to renew work permits on their own. Employers who fail to do so face the possibility of being fined, while FDWs faced the risks of arrest, detention, fines and deportation. The FDW's cannot leave their employers as the work permit binds them to one employer only. Due to the fear that employers will cancel their work permits and render them punishable under the Immigration Act for overstaying in the country, some FDWs tolerate abusive or exploitative situations. The terms and conditions surrounding the matter of work permits for FDWs leads them to a bonded labour situation where they cannot change employers.

In the event that FDWs want to file labour dispute or access the judicial system while their work permits are no longer valid, FDWs will have to apply for special pass to stay in the country to pursue their right to redress. A fee of RM100 is charged for special pass valid for a month only (USD31.25) and renewable to a maximum of only 3 months. FDWs are predominantly poor and lack the financial resources to pay for such fees for the duration of their pursuit to seek justice. The FDW is even in a more vulnerable situation when she has not got her wages at all. Through Tenaganita's experience in handling such cases, the process of filing a case until its resolution usually takes time between at least one year and up to four years. Therefore it will not only be costly to periodically renew the special pass for the duration of the case but she is forced to return home as the special pass cannot be renewed after 3 months. This abusive policy impacts seriously the FDWs access to justice. If the FDW continues to assert her right to redress, she can be fined or compounded for overstaying in spite of the fact that she has officially filed a case for redress.

The Malaysian Passport Act 1966 states that a person cannot hold another's passport, however it is a common practice that the employer retains the FDWs' passport, which is a direct violation of the Passport Act 1966. Recruitment agents encourage the employers to withhold the passports for the fear of "runaways". To date no employer has been charged under this Act. This situation places the FDW in a condition of forced confinement and risk of detention if caught by authorities in the event they step out of their employers' premises.

Criminal Justice System

The Malaysian Penal Code protects the foreign domestic workers against physical and sexual abuse, however very few perpetrators are brought to court to be charged and sentenced. Workers' inability to get out of their confined environment makes it impossible for them to raise their complaint to anyone and so they suffer in silence. Moreover, the time for police investigation, bringing cases to court and for courts to attend to perpetrators' appeals has been known to drag on for years and incurring high costs for FDWs to remain in Malaysia. For example, a well known case of abuse on an Indonesian FDW by the name of Nirmala Bonat has been dragged on for almost 8 years and the employer is still filing appeals with the courts while Nirmala cannot migrate to work again pending the final determination of the matter by the appellate court. She also has to bear the costs of paying fees for temporary stay in the country and the travel in and out of the country each time when there is a hearing at court.

Anti Trafficking in Persons Act

Malaysia, in spite of passing the Anti Trafficking in Person Act in 2007 and bringing it into enforcement in February 2008, has yet to address or even look at the whole dimension of recruitment, placement and employment of domestic workers as a form of trafficking in labour. The US government in its status report on Trafficking in Persons 2009 has included domestic work in its current reality as servitude and a form of bonded labour³. In 2009, the Malaysian government was placed on Tier 3, which is the lowest tier. This was the second instance that Malaysia was placed on Tier 3. According to the report, "The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so... it has yet to fully address trafficking in persons issues, particularly labour trafficking in Malaysia." The report noted that the Memorandum of Understanding between Malaysia and Indonesia authorizes Malaysian employers to confiscate and hold the passport of the domestic employee throughout the term of employment and FDWs are subjected to 14 to 18 hours of work a day, seven days a week. Such treatments constitute labour trafficking in the US definition.

Policies

In 2010, the Malaysian labour department published a handbook for the recruitment of FDWs.⁴ Among interesting items that departs from the omission from the pre-existing

3 Tenaganita, Domestic Workers' Campaign Toolkit, 2009.

4 A copy of the handbook can be found at the following URL:
<http://jtksm.mohr.gov.my/images/stories/Penerbitan/buku%20panduan%20PRA.pdf>

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

labour laws, the handbook for the recruitment of FDWs states that FDWs should only be required to do housework as stated in the contract and that FDWs should not be required to work in employers' business premises such as cooking in hawker stalls etc.

However the handbook also states that it was mandatory for workers to live in with employers, which places FDWs under condition of greater control by employers.

Prohibition for Sexual and Reproductive Rights

Malaysian regulations prohibit FDWs from getting pregnant, If found so, FDWs will be deported and stand to lose migration costs paid to agencies while not given the chance to continue employment. The labour department's handbook for the recruitment of FDWs state that it is the responsibility of the employer to ensure that the FDW do not marry anyone from any nationality while still employed. In addition, the FDWs work permit also prohibits them from getting married while employed. This terms and conditions represent a direct contravention with the principles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Malaysia has ratified in 1995.

Restriction in Movement

The work permit issued by the Malaysian Immigration department does not allow the domestic worker to change place of work or employer. The regulation places the worker in a situation where they remain bonded to the same employer and forces them to tolerate abusive situations in order to keep their job. Given the prevalent practice of employers or agents to hold on to a domestic workers' passport, FDWs who attempt to escape from their place of work, will face the risk of arrest and detention for staying in the country without valid travel documents.

Current recruitment fees in Malaysia costs employers approximately RM8,000 (USD2,500) per worker leading to 6 to 7 months of full salary deductions on the FDW. This places the FDW on a debt bondage situation. Additionally, employers will be fined RM250 (USD78) by the Immigration Department if a worker runs away from employer's home. At the same time, employers will have to bear the costs for recruiting a new worker. The fear of incurring additional recruitment costs, paying fines for FDWs who run away, and time spent reapplying for a new FDW, lead employers to forbid FDWs from leaving their place of work. This situation is also the primary cause for Malaysian employers to tend to hold on to the FDWs' passport.

The situation further aggravates as over 90% of the foreign domestic workers work without a day off for a whole year. Held in captivity, with no off days and wages fully

deducted to repay recruitment costs for more than 6 months, the domestic worker is in a bonded labour or trafficked situation.

Employers' Income Requirement

Malaysian immigration policy stipulates a much lower qualifying income for employers of Indonesian FDWs compared to employers of Filipina FDWs. The minimum annual employers' income level to employ Indonesian FDWs is RM36,000 (USD11,250). This is about one-third of the RM120,000 (USD37,500) minimum annual income of a Filipina's employer. These variances reflect the differential treatment for FDWs in that Indonesian FDWs can be employed at one third of the wages paid for a Filipina FDW by employers from a lower income group. In reality however, Indonesian FDWs shared commonality with Malaysian language and cultural background and thus also has similar skills with the Filipinas.

Deportation of Pregnant Women & HIV Positive Migrant Workers

The Malaysian government has a mandatory health testing policy that leads to deportation of workers tested positive for HIV, tuberculosis, pregnancy and other illnesses. Under current immigration policies, migrant workers who becomes pregnant or tested to be HIV positive is subject to immediate dismissal; her work permit is automatically revoked. On the contrary, in the current Malaysian scenario, employers can not dismiss a Malaysian worker on the grounds of pregnancy, yet such policy is imposed on FDWs.

As the International Guidelines on HIV/AIDS and Human Rights notes, "There is no public health rational for restricting liberty of movement or choice of residence on the grounds of HIV status. Any restrictions on these rights based on suspected or real HIV status alone, including HIV screening of international travellers are discriminatory and cannot be justified by public health concerns ⁵. Furthermore it must be recognized that HIV positive migrant workers can remain productive for many years and contribute to the social, economic and cultural fabric of both destination and origin countries.⁶ The policy of mandatory HIV testing on migrant workers contravenes with international standards such as the ILO Code of Practice on HIV/AIDS and the World of Work.

5 UNAIDS, International Guidelines on HIV/AIDS and Human Rights (2006 consolidated version), 127. CARAM Asia, State of Health of Migrants 2007: Mandatory Testing (Kuala Lumpur: CARAM Asia Berhad, 2007), p. 11, http://www.caramasia.org/reports/SoH2007/SoH_Report_2007-online_version.pdf

6 CARAM Asia, State of Health of Migrants 2007: Mandatory Testing (Kuala Lumpur: CARAM Asia Berhad, 2007), p. 11, http://www.caramasia.org/reports/SoH2007/SoH_Report_2007-online_version.pdf

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

Country of Origin Policies

The agreements between the Malaysian government with other countries show differential treatment for FDWs of different nationalities. Some countries such as the Philippines stipulates standard contracts that state minimum wage and other terms for the employment of workers from their country. If Malaysian employers signed work contracts according to the terms contained in the standard contracts from origin countries, and if the terms do not contravene with Malaysian laws then, these employers can be charged in courts if they breach the contract. However Malaysian employers cannot be charged in Malaysian labour courts for not following such policies from workers' origin countries or the conditions mentioned in MOUs, since these policies are not covered under Malaysian labour laws.

The Malaysian government signed a Memorandum of Understanding (MOU) with the Indonesian government in 2006 and had been in discussion since 2009 to sign a new MOU. The widespread view is the 2006 MOU had failed to protect the rights of FDWs as it does not stipulate hours of work, specific numbers of rest days, holidays and rights to stay in the country while seeking justice for abuse or exploitation without paying immigration costs. The MOU state that "The Employer shall, as reasonably practicable, and if requested by the Domestic Worker, assist the DW to open an account with any Malaysian financial institution." In reality, many employers decided to open joint accounts with their FDWs which render them free access to withdraw money from the accounts at will. Such practice further denied FDW's their basic right to have control and independent access to their hard earned income. The absolute control over their finances, puts the FDWs at the mercy of their employers.

Countries such as Indonesia, Philippines, Cambodia, Sri Lanka and India provide standard employment contracts for the recruitment of their nationals as foreign domestic workers in Malaysia. Below are some general terms stated in these contracts:

Rest Day	In the Philippines, Sri Lankan and Indian contracts, there is a provision for a paid weekly rest day. There is no such provision in either the Cambodian or Indonesian contract.
Hours of work	In the Indian contract, the monthly salary is for working an 8 hour day. The Philippines contract does not specify hours of work but states that the worker must be provided with continuous rest of at least 8 hours a day.
Passport and work permit	The Philippine contract states that the passport with the work permit are to remain in possession of the FDWs.

Variations to terms in contracts	Any variations to the Indian standard contract can only be made with the approval of the Indian High Commission. If not, the original term applies.
Visit to the workplace	In the Indian contract, employers has to accede to the request of the Mission officials to visit the workplace in order to look into the welfare of the Indian workers.
Employers' Bond	In the Indian contract, employers are required to place a bond of RM9,000 (USD2812.50) with the Indian High Commission for each domestic worker employed.

Common Practices

Since Tenaganita started its 24 hours DW Action Line from June 2004, the organization had handled 314 FDWs cases as of April 2011. Out of these 314 FDW cases handled by Tenaganita, only 3 perpetrators had been charged and sentenced.

These 314 cases all involved 2826 forms of human rights violations. These human rights violations include non payment of wages, wrongful deductions, withholding of passports, physical abuse, sexual harassment and rape, psychological abuse, threats, long working hours, no off day, confinement, work in two places, employment of children, no proper food provided, various health problems with no treatment and not allowed to conduct religion obligations as well as denied access to family.

Every single case that Tenaganita received comes with multiple complaints and usually for one particular case there are 7-10 complaints and rights violations.

The minimum age for FDWs to be employed in Malaysia is 21 years old, however in the course of Tenaganita's work it has encountered many recruitment agencies that falsify the stated age of the worker on the passport to be above 21 years old resulting in a number of children being recruited as domestic workers. In one instance, a child as young as 14 years old was found to be recruited. Overall 20% of the cases handled by Tenaganita involved the employment of minors as FDWs.

The Malaysian government has stressed that migrant workers who are ill treated or denied benefits under the Employment Act 1955 or contractual terms and conditions can submit their complaint to the labour department. The long due process with the courts and the high costs in staying legal with the special pass, RM100 monthly (USD31.25), makes it very difficult, frustrating and sometimes impossible to seek redress. In some instances, labour officials refuse to accept a complaint from persons who are unable to produce their passport as their passport is held by employers. Even if the FDW wins her

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

case, there is no guarantee that she will be fully compensated for all costs incurred or the award will be respected. In most cases, FDWs compromise in their negotiations with employers to only receive partial payment from the unpaid wages due to them because FDWs do not want to have their labour dispute dragged on longer.

Agencies Blacklisted

In the past, there had been agents who were blacklisted by the immigration department for various immigration offences, yet agents can reapply for their licence to operate upon paying a fine. Therefore, many agents who had been blacklisted resume operations after the low fines are paid or even register as another company.

Media and Other Sources of Information

There is no advertisement of information or public announcements made through the media regarding the rights for FDWs and obligations for employers. On the other hand, advertisements by recruitment agencies make promises of low hiring costs and highly skilled docile domestic workers.

Planned Policies and Reactions

Since 2007, CARAM Asia, and its local member, Tenaganita together with the Malaysian Trade Union Congress and other faith-based organisations in Malaysia have been campaigning for a weekly paid day off for FDWs. In 2009, the Malaysian government announced that they would amend the Employment Act to make it mandatory for FDWs to have a weekly day off from work. However, the move triggered a public outcry from employers and politicians.

Malaysian media reports state that employers feel that there will not be anyone to do the household chores if the FDW is on leave or they suspect that FDWs will run away on their day off or be influenced negatively by friends. Perhaps reflective of the general attitude towards FDWs, a senior politician from the governing coalition also commented that if FDWs are given a day off, they would flood the city centre on Sundays and portray “an image of an alien city to Malaysians”. It underlies the mentality that FDWs are only workers to meet the needs of the Malaysian employers. FDWs are not perceived as humans with psycho-social needs to have a rest day, meet with their friends and to have a social life. In fact, every often, their engagement in social activities are perceived as social ills. Letters by employers written in local newspapers objecting to the proposed mandatory weekly day off policy to FDWs reveal employers’ fear that “workers will run away with boyfriends and get pregnant”.

What have the government done?

Malaysia, inspite of passing the Anti trafficking in Person Act in 2007 and bringing it into enforcement in February 2008, has yet to address or even look at the whole dimension of recruitment, placement and employment of domestic workers as a form of trafficking in labour. Through Tenaganita's case management and interventions, there is a lack of understanding in labour trafficking and modern day forms of slavery in the enforcement of the ATIP Act by the authorities.

The increased reporting of violent abuses and denial of labour rights of domestic workers, coupled with regional campaigning has led Indonesian women turning down Malaysia as a destination country. Then the Indonesia Government put a ban on Indonesian domestic workers to Malaysia ,after the deaths of two Indonesian Domestic Workers in 2009. The Malaysian government remains adamant and now has begun recruitment of domestic workers from Nepal, Myanmar, Vietnam and Laos.

Since the ban on Indonesian domestic workers, ,there has been an increase of Cambodian Domestic Workers into Malaysia, where many of them are children , ranging from the years of 15 to 17. As such, children are also trafficked into Malaysia for domestic work.

This strategy shows that Malaysia does not want to address the rights violations and continues to keep running to new source countries to get the domestic workers.

The Malaysian government, in spite of loud statements that it will combat trafficking in persons, continues to sustain modern day forms of slavery in domestic work. It has refused to recognize domestic work as work and a decent minimum wage for all domestic workers

The ILO Domestic Workers Convention supplemented by a Recommendation

Since the ILO standard setting process for DWs started, Malaysia had not supported the proposal for an ILO Domestic Workers Convention supplemented by a Recommendation. Instead, it voted for a non-binding recommendation. In its reply to the ILO, Malaysia mentioned that, "The rights of householders should also be considered. A Recommendation would be more suitable than a Convention". Clearly the Malaysian government is more concerned about its citizens who mostly employ FDWs.

According to the ILO Blue report release by the first quarter of 2011, Malaysia made a comment on Article 3(2)(a) pertaining to freedom of association and the right to collective bargaining. The Malaysia government wanted to add the words "within the context

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

of national laws”. Although FDWs have freedom of association under the Malaysian labour laws, but immigration policies prohibit them to form associations, which is often interpreted by enforcement agencies to prohibit them from joining unions.

Philippines

Report prepared by Development Action for Women Network (DAWN), Philippines

Background

Number of Migrant Domestic Workers (MDW) abroad:	71,557 household service workers were deployed in 2009 (new hires) 69, 669 or 97 percent of whom are women ¹
Women as percentage of immigrants (2009):	52%
Destination countries for Filipino domestic workers:	Top ten destination countries for DWs are Hong Kong, Kuwait, UAE, Saudi Arabia, Qatar, Italy, Cyprus, Singapore, Oman, Bahrain

Table 1. Number of Deployed Household Service Workers by Top Ten Destinations, New Hires, 2003-2009

Destination	2003	2004	2005	2006	2007	2008	2009
Total	45,950	62,818	82,467	91,412	47,877	50,081	71,557
Hong Kong	13,874	16,424	117,514	19,532	22,127	18,286	24,998
Kuwait	11,070	17,018	19,707	19,097	4,806	8,092	14,087
UAE	4,314	5,816	9,113	11,844	3,149	6,403	10,558
Saudi Arabia	8,652	7,699	9,227	11,898	2,581	3,079	6,954
Qatar	1,736	2,436	4,998	6,524	1,912	4,682	6,376
Italy	95	285	68	573	4,951	2,839	1,793
Cyprus	598	1,108	982	1,178	1,763	1,218	1,409

¹ POEA. 2009 Overseas Employment Statistics

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

Singapore	974	1,305	2,429	3,162	1,568	1,244	1,405
Oman	70	645	1,419	2,068	719	944	1,098
Bahrain	393	666	763	1,343	413	558	1,095

Source: POEA, 2009 Overseas Employment Statistics

Numbers of abuse cases:	Official data not available. According to Migrante, 7 to 10 OFWs are abused every day in the Middle East, although it does not say whether these are males or females or from what work sector they belong to.
Types of violations:	In 2005 and 2006, the Department of Foreign Affairs and the Department of Labour and Employment reported the following problems experienced by Filipino domestic workers: contract substitution; contract violation; non-payment/delayed payment/underpayment of salary; excessive work/no day-off/no overtime pay; sexual abuse/harassment/molestation/rape; physical/verbal abuse; maltreatment; poor housing/working condition/no food. ² Other violations reported included high placement fees; confiscation of identification papers, including passports; and, smuggling of Filipino workers to countries like Lebanon and Jordan (where the Philippines imposes a deployment ban).

Government's response to violations:

- 1.) An abused OFW can seek the help of the Philippine Embassy or consulate in the country where she or he is working. If an OFW runs away, the Philippines has shelters in 20 posts, 12 of them in the Middle East, where they can temporarily stay. Distressed OFWs in destination countries report that after lodging their complaints before officials in the embassy "instead of helping them attain justice, the Philippine government facilitates the settlement of the cases by having the OFWs sign waivers on all courses of action against the employers."³ Afterwards, OFWs are repatriated back home.

2 Commission on Audit. Government's Overseas Workers Welfare Program. Sectoral Performance Audit, Report No. 2007-1

3 In "Heroes and Slaves," available at <http://www.thepoc.net/thepoc-features/politi-ko/politiko-features/3974-heroes-and-slaves.html> (accessed on March 25, 2011)

- 2.) Under Republic Act 8042 (as amended by R.A. 10022), there shall be a legal assistance fund (LAF) for migrant workers that can be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress (Sec. 25-26). The fund can be used for the payment of foreign lawyer hired, bail bonds to secure temporary releases and other litigation expenses.

In an interview conducted by DAWN in 2008 with the Consul General in Dubai, he said that they can only “hire a lawyer for those accused of crimes that could lead to conviction and capital punishment. We devote the legal defense fund for such cases, not those which do not warrant capital punishment... We cannot afford to go on litigation because there are lots of them. An acceptance fee for a criminal case already amounts to a minimum of 5,000 dollars.”

- 3.) Cases lodged by OFWs against deploying agencies are brought to the National Labour Relations Commission (NLRC), which maintains a Migrant Workers Desk. The NLRC reported that from January to September 2005, 30% of cases filed were successfully settled.⁴
- 4.) In January 2011, a contingent from the House of Representatives, led by the members of the Committee on Overseas Workers Affairs (COWA) visited several countries in the Middle East to look into their plight of OFWs, including MDWs. With the many cases of abuses they witnessed, COWA made the following recommendations to the Department of Foreign Affairs, Department of Labour and Employment, Overseas Workers Welfare Administration, and the Philippine Overseas Employment Administration⁵:
1. Negotiate the terms of a bilateral labor agreement with the Saudi government primarily to ensure that the rights of all OFWs in the kingdom are protected;
 2. Upgrade the Pre-departure Orientation Seminars for OFWs headed for Saudi so that the pros and cons of living there may be fully disclosed;
 3. Discourage people from working as “washers” and “beauticians” or other domestic work and related occupations in the kingdom;

4 In “High Settlement rates in OFW Cases marked,” in <http://www.nlrc.dole.gov.ph/nlrcNews.php> (accessed on March 25, 2011)

5 In “Stop deploying domestic helpers to Saudi — House panel,” <http://pinoyoverseas.net/news/middle-east/saudi-arabia/stop-deploying-domestic-helpers-to-saudi-%E2%80%94-house-panel/> (Accessed Feb. 23, 2011)

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

4. Prosecute recruitment agencies accused of deploying domestic workers to households and establishments that abuse workers, and those that practice contract substitution;
5. Ensure that the budget for Assistance to Nationals and the Legal Assistance Fund are increased and not reduced;
6. Increase efforts to secure the release of Filipinos on death row and others currently detained in Saudi jails on various charges;
7. Negotiate a bilateral agreement with the Saudi government addressing the plight of children born of Filipino or mixed parentage in Saudi Arabia and facilitate their repatriation to the Philippines; and
8. Increase the number of personnel in the embassy, consulate, and Philippine Overseas Labor Office in Saudi.

However, these are recommendations made by the Committee and government has not yet acted on these.

The modus operandi of recruitment & placement

- 1.) The Philippines has issued a ban on the deployment of workers to Lebanon and Jordan. This came about as a result of the lack of laws that will protect Filipinos working in these countries. However, there are a number of Filipinos working in these countries, specifically women working as domestic workers (DWs). For example, when the war erupted in Lebanon in 2006, there were an estimated 15,000 OFWs in Lebanon, and about 60 percent of them were undocumented. Most were tourist visa holders who sought employment after their visas had expired; many were endorsed for work by their relatives.
- 2.) In Singapore, MDWs are deployed through a largely unregulated process. In the case of Filipinos, they can easily come to Singapore as tourists. While in Singapore, the women can look for employment as domestic worker. There are employment agencies in Singapore that also recruit directly, or there are those directly recruited or referred by acquaintances. These are the ones who do not pass through the POEA and therefore are not registered in the Philippines government system.

- 3.) In the 2006 Guidelines on the Implementation of the Reform Package Affecting Household Service Workers (HSWs) ⁶, the POEA Governing Board reiterated the “no-placement-fee” policy for host countries where laws and regulation requires the employer to pay the cost of hiring will be strictly applied to recruitment and placement of domestic helpers. If hired through an agency, HSWs are exempted from payment of placement fees.⁷ However, there have been reports that some recruitment agencies do not abide by the policy. Reports have it that some Philippine recruitment agencies and their counterparts in Israel have been charging placement fees as high as US\$3,000 to US\$6,000.⁸
- 4.) Some applicants who are unable to pay the huge placement fees required by the recruitment agency are offered by the partner of the agency a loan with interest.

How many layers of recruitment?

The hiring process starts with the documentation and verification of foreign employers by the Philippine Overseas Labour Offices (POLOs). These documents are then authenticated by embassy officials abroad. The verified documents are then submitted to POEA through their counterpart recruitment agencies in the Philippines. Licensed recruitment agencies then recruit for accredited foreign employers. The recruitment agencies have to ensure that only the qualified and medically fit are deployed. Thus, those wanting to work abroad have to undergo medical examination from government accredited medical clinics and hospitals. Some employers also require the prospective OFW to pass a trade test to be administered by government authorized training centers.

There are standard employment contract forms for seafarers, household service workers (HSWs), and other skilled workers that are the bases for the contract between the OFW and the placement agency and/or employer. After the contract has been signed, there are fees to be paid by either the employer or the employee. These include the POEA processing fee, the OWWA membership fee, visa fee, and other related expenses. The OFW has likewise to secure an exit clearance in the form of an electronic receipt from the POEA to get exemption from paying the travel tax and airport terminal fee.

Under its rules, the POEA does not allow the collection of placement fees on countries where it is prohibited. In countries where collection is allowed, the maximum legal

6 The Guideline also stipulates the minimum monthly salary of US\$400/month for HSWs

7 POEA Guidelines on the Implementation of the Reform Package affecting HSWs

8 In “Recruiters make a killing on HSWs bound for Israel,” <http://pinoyoverseas.net/news/middle-east/israel/recruiters-make-a-killing-on-hsww-bound-for-israel-migrante/> (Accessed March 7, 2011)

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

placement fee charged by licensed recruitment agencies from applicants must not be more than one-month salary of the worker, except like countries like Taiwan/Korea which have special placement fee schedules. The amount does not include documentation and processing costs.

Although this is the standard process of hiring, there are some individuals/groups, mostly unlicensed ones, that recruit workers from the provinces with promises of work abroad. These individuals/groups then pass on the recruit to an overseas placement agency. Before they do so, they ask for some money from the prospective worker, and this is on top of the other expenses that the worker has to spend for the processing of documents and placement fee with the overseas placement agency.

The issue of contract substitution in the destination country adds to the burden of migrant domestic workers. While they sign contracts in the Philippines stipulating the amount of salary that they should receive (US\$400, as per POEA guidelines), as well as their work load, they are forced to sign new contracts with lower salary and substandard employment conditions. Either they do that or be sent home.

It is also sad that it is POEA itself that violates its own guidelines. In June 2010, the POEA issued Governing Board Resolution No. 5, allowing for the deployment of 1,000 HSWs from the Autonomous Region of Muslim Mindanao (ARMM) for the salary of RM1,000 or US\$300⁹. According to the Resolution, this is to be a Pilot Study and in consideration of the fact that the ARMM government has signed an MOU with the G20, a group of recruitment agencies in Malaysia. When this issue was questioned by NGOs during a meeting of the Consultative Council on Overseas Filipino Workers (CCOFW), the plan to deploy HSWs using this proposed scheme was scrapped.

Legislative framework and other mechanisms/policies that protects MDWs:

It should be noted that the existence of laws and treaties are only as good as their effective implementation.

1. RA 8042 of 1995 as amended by RA 9422 and RA 10022

Republic Act No. 8042 was enacted in June 1995 to concretize government's commitment to protect the rights and promote the welfare of migrant workers, their families, and other overseas Filipinos in distress. It also provides the framework for

9 POEA Governing Board Resolution No. 5, Series of 2010

concerted government action in dealing with difficulties faced by Filipinos abroad. The law seeks to protect the rights and interests of Filipino workers and other Filipinos abroad through specific policies and services.

RA 8042 was amended by RA 9422 in 2007 that repealed sections 29 and 30 on deregulation. RA 10022 is the second amendatory law which added a provision on mandatory insurance for migrants deployed by recruitment and/or manning agencies.

2. Philippines as a Signatory to the UN Migrant Workers Convention

The Philippines is one of the first signatories to the UN Migrant Workers Convention. It ratified the said Convention on July 5, 1995.

As a state party to the Convention, the Philippines should report on its compliance with the Convention. On its 9th and 10th Sessions in November 2008 and April 2009, the Philippines' compliance was examined for the first time by the UN Committee on Migrant Workers (UNCMW) at the UN Geneva headquarters. The State reports, which were originally due in 2004 but submitted by the Philippine government in January 2008 and subsequently in February 2009 were prepared without any consultation and inputs from the migrant sector. This was contrary to the provision of the Convention that requires State parties to dialogue and consult with non-government groups in the dissemination of the Convention and in the preparation of the reports. Because of this, migrants rights groups in the Philippines and abroad decided to prepare and submit an alternative report to the UNCMW ¹⁰.

The alternative report highlighted the government's non-compliance with many of the provisions of the Convention.

As a result of hearing both the government report and the alternative report prepared by different migrants' organizations, the UN Migrant Workers Committee observed the following:

1. There is insufficient implementation by the Philippines of existing policies on labour migration. The UNMWC urged the government to review its labour migration policy and set up proper mechanisms and time-bound targets for the effective implementation of policies;
2. Need for greater collaboration between government and non-government groups on issues pertaining to migrant workers;

¹⁰ The Migrant Watch, June 2009.

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

3. Need to exert more efforts in the protection of women's rights and the enhancement of women empowerment;
4. Need to improve consular and on-site services to migrants, as well as strengthen the regulation of recruitment agencies; and,
5. Need for broader participation of civil society organizations.

3. Bilateral Labour Agreements (BLAs) and MOUs

The Philippines to date has entered into BLAs with only 13 of the 197 countries hosting OFWs. These are Norway, United Kingdom, Papua New Guinea, South Korea, Taiwan, Switzerland, Libya, Jordan, Qatar, Kuwait, Iraq, Commonwealth of the Northern Mariana Islands, and Indonesia.

Memorandum of Understanding (MOU) entered by the Philippines with other countries include, among others: MOU between DOLE Philippines and the Ministry of Labor of Korea on the Sending and Receiving of Workers under the Employment Permit System of Korea (EPS); MOUs with Alberta, Manitoba, Saskatchewan, British Columbia in Canada; MOU between the Philippines and Korea on Labor and Manpower Development; MOU between the Philippines and UAE in the Field of Manpower; MOU between the Philippines and Bahrain on Health Services Cooperation; the Philippines-United Kingdom (UK) MOU on Healthcare Cooperation; Recruitment Agreement between the Philippines and UK; the Philippines-Switzerland Agreement on the Exchange of Professional and Technical Trainees; the Philippines-Norway Transnational Cooperation for Recruiting Professionals from the Health Sector; and, an accord renewing the expired MOU on the Special Hiring Program for Taiwan.

The MOU between the Philippines and the UAE is specific to manpower supply. It was signed by representatives of the two countries on April 9, 2007 ¹¹.

Among the important provisions of the said MOU are the following:

1. The UAE will recruit manpower (defined as temporary contractual labour for a certain period of time) from the Philippines and such recruitment will be regulated in accordance with relevant laws, rules and procedures of both countries (Art. 3);
2. Manpower recruited pursuant to the MOU shall be given protection pursuant to the labour laws and regulations in both countries (Art. 4);

¹¹ See Annex 1

3. The terms and conditions of employment of workers in the UAE shall be defined by a separate labour contract between the worker and the employer and this should state the rights and obligations of both parties (Art. 6). A standard labour or model contract shall be drafted.
4. The labour contract shall be written in English and Arabic versions. In case of any dispute arising from the labour contract, the Arabic version shall prevail when the dispute is referred to authorities in the UAE (Art. 7)

The MOU was drawn supposedly to improve the labour conditions of OFWs in the UAE. Unfortunately, such has not been the case. First, contract substitution remains rampant. The original work contract signed by Filipinos in the Philippines is not followed. It becomes non-binding in the UAE since it is basically an agreement between the placement agency and the migrant worker. The fact that the agreement allows for a separate labour contract between the worker and the employer in the UAE means that the terms and conditions of work may be to the worker's disadvantage. In many cases, the OFW is forced to accept such a situation rather than return to the Philippines.

Second, the contract signed by the OFW is both in English and Arabic. However, in case of disputes, the Arabic which is the language in UAE courts will be used. This puts the OFW who is not familiar with the language, at a disadvantage. And third, domestic workers are not covered by the MOU. They fall under a separate agreement, with different terms and conditions.

The UAE government has implemented an employment agreement for domestic workers and sponsors, to which the Philippine government abides. The said agreement puts all domestic workers under the jurisdiction of the Naturalization and Residence Department (NRD) and not under the Ministry of Labour. This alone is a clear non-recognition of domestic work as work by the UAE government and has been the reason for many abuses and harm inflicted on domestic workers.

Also, there is no provision in the contract that guarantees a paid day off. It only mentioned "adequate breaks". We have to remember that especially during Ramadan, a lot of domestic workers run away from their employers due to the long hours they have to endure during this period, not to mention fasting. The contract only mentioned a one-month paid vacation after finishing the two-year contract.

The contract likewise provides a four-month "testing" or probationary period for domestic workers wherein their rights and condition of work are not specifically stated. It is not specified how much a domestic worker should receive during the probationary period. It has to be noted that there are employers who do not pay domestic workers during the probationary period.

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

In case of conflict between the worker and the employer, Article 10 of the Agreement states that they should take the case to the NRD for mediation. If the case is not settled in two weeks, then they go to federal court. If the case goes to court, the employer is in an advantageous position since the language used is Arabic. Section 2 of the same article also states that “Without setting aside the punishment that is mentioned in the entry and residency law, the second party’s rights are null and void if the second party absconds”.

Aside from the Philippines, the UAE has existing bilateral labor agreements with governments of sending nations such as Nepal, India, Pakistan, Bangladesh, Sri Lanka, China and Thailand ¹². The purpose of these agreements is supposedly to eliminate the middlemen or recruitment agencies that charge exorbitant placement fees, including the cost of visa which should be borne by the employer, from the migrants.

4. Guidelines on the Implementation of the Reform Package Affecting Household Service Workers (HSWs)

In 2006, the POEA drafted guidelines regarding the deployment and other matters affecting household domestic workers which took effect on December 16, 2006. The guideline defined policies that seek to improve the conditions of household workers. These policies include upgrading of skills of the workers, orientation course on country-specific culture and language, protective mechanisms at the job sites, obliging employers to shoulder the cost of deploying the domestic helper, and increasing the minimum salary to a level commensurate to their acquired competencies.

Other salient points of the Guidelines include:

- Skills assessment by the Technical Education and Skills Development Authority (TESDA). TESDA-certified workers will be issued Certificate of Competency.
- Country-specific language and culture training to be sponsored by the Overseas Workers Welfare Administration (OWWA) free of charge to the worker.
- Minimum wage of US\$400
- Strict application of the "no-placement-fee" policy for host countries where laws and regulation requires the employer to pay the cost of hiring of domestic helpers.

12 UAE Ministry of Labor. The protection of the Rights of Workers in the United Arab Emirates. 2007 Annual Report, p. 11

- As part of the pre-qualification system, the Philippine Overseas Labor Offices (POLO) to determine the employer's fitness to hire domestic workers, including personal interview of the employer. The POLO and the POEA shall blacklist employers who have committed cases of abuse and maltreatment against Filipino workers and cases of contractual breaches especially non-payment or underpayment of salaries.

5. Domestic Workers in the Labour Code

Domestic workers in the Philippines are explicitly included in Labour Code, Presidential Decree No. 442 (as amended in 1998), and in the Omnibus Rules Implementing the Labour Code, Book Three, Rule XIII.

Labour Code Article 141 uses the term “domestic or household service”, rather than domestic work, and defines it as *“service in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.”*

Despite including some conditions such as a minimum wage and health care, the Labour code excludes domestic workers from the conditions covering hours of work and holidays with pay. This is due to the prevailing idea that it is not a 9-5 job, especially since most domestic workers also look after the employers' children; the employer often wants the worker at their disposal.

6. Proposed Magna Carta for Domestic Workers

Currently, a bill is pending before Philippine Congress for the passage of a Magna Carta for Domestic Workers. It was first filed as a proposed bill in 1996 as a response to the recommendations of the first National Consultation on Child Domestic Workers in the Philippines.

At the Upper House (Senate), the bill has passed on third and final reading but it has not yet been passed at the Lower House.

The proposed law provides for additional benefits and protection to house helpers. It lists the rights of the household helpers and the responsibilities of their employers including the level of compensation for the helpers. The main provisions of the bill include the following:

- household helpers based in Metro Manila and other highly urbanized cities would be entitled to a minimum wage of P2,500 a month;

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

- the minimum wage for their counterparts in the first class municipalities and other chartered cities would be P2,000 a month. For the rest of the country, the minimum wage would be pegged at P1,500 a month
- the household helpers would be entitled to a 13th month pay and enrolment in the Philippine Health Insurance Corporation, Social Security System, Pag-Ibig Fund and the Employees Compensation Commission where the premiums would be paid by their employers;
- there would be a mandatory contract between employer and employee, written in a language or dialect understood by both, and not exceeding two years;
- they have the right to form association for their mutual benefits and protection and elimination of all kinds of forced or compulsory labor;
- local government units would be required to register the household helpers and their employers for the purpose of monitoring and regulating their employment.

The ILO Domestic Workers Convention supplemented by a Recommendation

The Philippines government had been supportive of an ILO DW Convention supplemented by a Recommendation. In the first debate on the ILO standard setting process for DWs, a Philippines government representative chaired the debate at the 2010 International Labour Conference.

ANNEXES



**Philippine
Overseas
Employment
Administration**

Republic of the Philippines
Department of Labor and Employment
BFO Building, Ortigas Avenue cor. EDSA, Mandaluyong City 1501
Website: www.poea.gov.ph E-mail: info@poea.gov.ph
Hotline: 722-1144, 722-1155

ADVISORY NO. 12
Series of 2007



TO : CONCERNED RECRUITMENT AGENCIES

SUBJECT : IMPLEMENTATION OF THE UAE EMPLOYMENT
AGREEMENT FOR DOMESTIC WORKERS AND SPONSORS

Effective 01 April 2007, the UAE government has implemented the employment agreement for domestic workers and sponsors. All employers wishing to hire foreign domestic workers will have to execute the following documents to be duly approved by the UAE Department of Naturalization and Residency:

1. Employment agreement for domestic workers and sponsors (both in English and Arabic text). The first party is the direct sponsor and the second party is the worker.
2. Contract agreement to bring in sponsored person of domestic worker category and their sponsors (both in English and Arabic text). The first party is the foreign placement agency or labour supply company and the second party is the sponsor.

In view of the DOLE/POEA's acceptance of the above documents, the POJO will now verify the two abovementioned documents, in lieu of the existing POEA model contract for HSWs, for purposes of documentation of UAE bound domestic workers and in addition to the Special Power of Attorney that is required of employers for their registration.

Sample copies of the two agreements with the UAE Department of Naturalization and Residency approval stamp in both English and Arabic may be obtained at the Marketing Branch or may be downloaded from the POEA website www.poea.gov.ph.

For the guidance of all concerned.


ROSALINDA DIMAPILIS BALDOZ
Administrator

16 May 2007

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

عقد استخدام مكفول من الفئات المساعدة في المنازل ومن في حكمهم			
Contract Agreement to bring in sponsored person of Domestic Worker category and their Sponsors			
On the day	Date	200 / /	الموافق
City	200	in	في مدينة
the following parties have agreed:			
First Party		الطرف الأول	
1- Gentlemen/Labour supply Office.		1- المادة/مكتب استخدام:	
Represented in the contract by:		وبمثله في العقد:	
Address:		العنوان:	
Second Party		الطرف الثاني	
2- Mr. :		2- السيد :	
Nationality:		الجنسية:	
Passport#:		و برقم ر: كم:	
Address:		العنوان:	
on the following:		على الأثر:	
First Article (The contract Subject)		الأول (موضوع العقد):	
With this Article the first party is obligated to bring /		مع هذا المادة يلتزم الطرف الأول باستخدام /	
Nationality/ Age /		الجنسية / العمر /	
to work for the second party in the job of/		وذلك نظير واثب شهري كدوره	
(AED) during the time from/		إلى	
for a monthly salary		شاهداً فقط وذلك خلال الفترة من	
Second Article (First party's obligations)		الثاني (التزامات الطرف الثاني):	
1- The first party admits that is allowed from a specialized authority to bring in the sponsored person according to what laws in the country takes.		1- الطرف الأول يعترف بأنه مرخص له من السلطة المختصة باستخدام المكفول وفقاً لما	
2- The first party guarantees that sponsored person should be in a good shape and health, qualifying to do jobs related with the contract and passing the necessary medical tests, which leads to permission for residency to work.		2- الطرف الأول يضمن أن يكون المكفول بصحة جيدة تؤهله للقيام بالعمول والواجبات	
3- The first party is obligated immediately the sponsored person arrives to the country to deliver to the second party without delay, also guarantees that the sponsored person commits with work for the second party during the testing time		3- الطرف الأول ملزم فور وصوله للبلاط إلى الطرف الثاني دون تأخير	
4- The sponsored person relationship with the second party should be direct without interfering from the first party, in which doing jobs for the sake of the second party.		4- العلاقة بين الطرف الثاني علاقة مباشرة دون تدخل من الطرف الأول فيما يقوم به من أعمال لصالح الطرف الثاني.	
5- The first party should not take any poundage from the sponsored person to work.		5- الطرف الأول بعدم اقتطاع مولة من المكفول نظير استخدام و تشيخه.	
Third Article (Testing Duration)		الثالث (مدة الاختبار):	
1- The sponsored person work for the second party should be under testing for four months duration with the decided fees. In case the sponsored person passed the testing duration, the contract continues from the beginning of contracting.		1- لاختبار لمدة أربعة أشهر بالآخر تعاقب	
2- In the case of the sponsored person is not qualified or absconds was proven during the testing duration. The first party must undertake all the sponsored person travel expenses and all the expenses that the second party had undertake.		2- في حالة عدم كفاية أو هروبه من فترة الاختبار يكون الطرف الأول ملزم بتحمل نفقات السفر وجميع النفقات التي تكبدتها الطرف الثاني.	
Fourth Article (Second party's obligations)		الرابع (التزامات الطرف الثاني):	
1- The second party is obligated to pay the first party an amount () AED, because of the sponsored person bringing and the first party charge.		1- يلتزم الطرف الثاني بأن يدفع للطرف الأول مبلغ (درهم) وذلك	
2- Under consideration what was mentioned in the third article of this contract regarding the testing duration. The second party is responsible of the sponsored person receiving and undertakes returning the sponsored person to the first party in the case of not passing the testing duration, or to give a prove from a specialized side in the case of absconds.		2- مع مراعاة ما نص عليه هذا العقد بشأن فترة الاختبار يكون الطرف الثاني مسؤولاً عن استقبال المكفول من قبله و بتمهيد تسليمه إلى الطرف الأول في حالة عدم اجتياز فترة الاختبار أو تده	
3- The second party is obligated to release a working contract with the sponsored person and to take all the procedures that are decided to use the sponsored person according to the laws that are worked with in the country.		3- يلتزم الطرف الثاني بتحرير عقد العمل و اتخاذ كافة الإجراءات المقررة بشأن كفايته و استخدامه وفقاً للتأشيرات و التوائح المعمول بها في الدولة.	
4- The second party is committed to deliver the first party a copy of the documents that proves that the sponsored person has been taken a monthly salary during the testing time.		4- يلتزم الطرف الثاني بتسليم نسخة من كشوف الدفعة على تسليم المكفول راتبه الشهري خلال فترة الاختبار.	
Fifth Article (Conflict between the two parties)		الخامس (التفراج بين الطرفين):	
In the event of conflict between the two parties, both are obligated to undergo mediate the Naturalization and Residency Administration, and if they do not reach a compromise in two weeks, they must take the dispute to the specialized courts to look into the conflict.		في عند حدوث نزاع بين الطرفين بشأن تطبيق بنود هذا العقد تتم التسوية بطريقة ودية بواسطة مكتب تسوية المنازعات بإدارة الجنسية و الإقامة المختصة و إذا لم يتم التوصل إلى تسوية ودية يتم اللجوء إلى المحاكم المختصة لنظر النزاع.	
Sixth Article (Contract copies)		السادس (نسخ العقد):	
The contract should be in three original copies, a copy for each party. The third copy is in The Naturalization and Residency Administration.		تحرر هذا العقد من ثلاثة نسخ أصالية يحتفظ كل طرف بنسخة منها في حين تحفظ النسخة الثالثة في إدارة الجنسية و الإقامة المختصة.	
Second party	الطرف الثاني	First party	الطرف الأول
Name:	الاسم:	Name:	الاسم:
Signature:	التوقيع:	Signature:	التوقيع:
مصلحة إدارة الجنسية والإقامة			
Naturalization and Residency Approval			
Date	200 / /		
	التوقيع:		

عقد عمل الفلغات المساعدة في المنزل ومن في حكمهم

إته في يوم الأربعاء الموافق ٠٤ / ٠١ / ٢٠٠٧ حرر هذا العقد في مدينة دبي بين كل من:

الطرف الأول (شكلا):	الاسم: عبدالله علي عبدالله محمد الجنامي
الجنسية: الإمارات	الجنس: ذكر
العنوان: دبي	رقم جواز السفر: ١٣٥١٥١٣
الطرف الثاني (شكلا):	رقم هاتك: ٠٥٠٥٥٣٢٢٢٢
الاسم: روسليكا بوجو باينا	الجنس: قتي
الجنسية: فلپين	رقم جواز السفر: SS-108921
تاريخ الميلاد: ١٩٥٨/٠٥/٠٢	رقم هاتك: ١١١١١١١١
العنوان: دبي	
اسم وعنوان من يمكن مراجعته عند الضرورة: ١١١١١١١١	

بعد أن أقر الطرفان وهما يكمل أحدهما للآخر اتفاقاً على الآتي:

- البند الأول (نوع العمل وطبيعته والرتب):**
- 1 - بموجب هذا العقد قبل الطرف الأول تشغيل الطرف الثاني لديه بمهنة (خكعه) و براتب شهري قدره (٤٠٠ درهم) يدفع كاملاً نهائية كل شهر بالإضافة للمأكل والمشرب. ويقيم الطرفان بالتوقيع على كشف فروق لإثبات التسليم والاستلام من قبلهما ويكون للكشف محرراً باللغة العربية والإنجليزية ويحتفظ به الطرف الأول لإظهاره عند اللزوم.
- 2 - يتعهد الطرف الثاني بالقضاء بقولجيت والالتزامات التي تفرضها هذه المهنة وفقاً للمعارف عليه وينفذ هذا العقد.
- 3 - لا يجوز للطرف الأول تشغيل الطرف الثاني في الأعمال الخطرة أو التي تتنافى مع النظام العام.
- 4 - لا يجوز للطرف الأول إلزام الطرف الثاني بالعمل لسدى الغير إلا وفقاً للشروط المحددة في قانون دخول وإقامة الأجانب ولائحته التنفيذية.
- 5 - يلتزم الطرف الأول ببذل العناية لمساعدة الطرف الثاني في تحويل راتبه وفقاً للأخطة المصرفية للدولة.
- البند الثاني (تنظيم العمل والإجازات):**
- 1 - يتم تنظيم العمل بالاتفاق بين الطرفين بما يتناسب مع طبيعة المهنة والأعمال المسندة إلى الطرف الثاني على أن يمنح للطرف الثاني فترات كافية للراحة.
- 2 - يستحق الطرف الثاني إجازة بأجر منها ثلاثين يوماً من كامل مدة العقد، وإذا لم يرغب في استخدامها يمنح مقابلها راتب شهر كبديل إجازة بالإضافة إلى راتبه، وإذا لم يتمتع بها بناء على رغبة الطرفين يمنح مقابلها البديل المذكور بقيمة التكلفة لها بما عودته بالإضافة إلى راتبه.
- البند الثالث (تذكار المسطر):**
- 1 - يتحمل الطرف الأول تكلفة سفر الطرف الثاني إلى موطنه عند انتهاء مدة العقد سنكاً دون تجديده.
- 2 - في حالة تجديد العقد بين الطرفين ورغبة الطرف الثاني في السفر إلى موطنه لقضاء الإجازة المقررة يتحمل الطرف الأول تكلفة الذهاب والعودة.
- البند الرابع (المعيشة):**
- يلتزم الطرف الأول بأن يوفر للطرف الثاني سكناً صحياً وملائماً.
- البند الخامس (ضمن المعاملة):**
- 1 - يتعهد الطرف الأول بمعاملة الطرف الثاني بمعاملة حسنة تحفظ له كرامته وأمنه.
- 2 - يلتزم الطرف الثاني بأن يؤدي عمله بأمانة وصديق وإخلاص ومرة محترماً لأعراس الطرف الأول وخصوصيته وملتزماً بالتقاليد والمعارف عليها والمعمول بها في الدولة.

أحرر هذا العقد من ثلاث نسخ أصلية باللغتين العربية والإنجليزية يوقع عليها من طرفي العقد ويحتفظ كل منهما بنسخة ويتم إيداع النسخة الثالثة لدى إدارة الجنسية والإقامة للرجوع إليها عند اللزوم.



الطرف الثاني
الاسم:
التوقيع:

مساعدة إدارة الجنسية والإقامة
التاريخ: ٢٠٠٧/٠١/٠٤

الطرف الأول
الاسم:
التوقيع:

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

Employment Agreement for Domestic Workers and Sponsors

This Agreement, entered into this Wednesday day of (4/4/2007), in the city of Dubai between the following:

First party (Sponsor):

Name: ABDULLA ALI MOHAMMAD ALJANAHI

Nationality: U.A.E

Address: DUBAI

Second party (the person to be sponsored):

Name: RUSTICA YUGO PAPINA

Nationality: PHILIPPINES

Birthday date: 02/05/1958

Address: DUBAI

Name and address of emergency contact: / / / / /

Sex: MALE

Passport #: 1351513

Phone #: 0505538333

Sex: FEMALE

Passport #: SS0458921

Phone #: / / / / /

The two parties have agreed on the following:

First Article (Type and Nature of the Job and salary):

- The first party in this contract has agreed to employ the second party in the capacity of (... SERVANT.....) and the second party shall receive an annual salary, payable monthly to the amount of 400 AED, subject to raises agreed by both parties in subsequent contracts. The second party shall be paid the monthly salary in full at the end of each month, in addition food and drink. Both parties will sign a salary record to prove delivery and receipt of salary. The list will be written in Arabic and English, kept and shown by the sponsor.

- The second party undertakes all obligations and regulations of its position stipulated by the contract.

- The first party may not demand that the second party performs duties that are dangerous, injurious to health or unethical.

- The first party may not force the second party to work for others, unless the work is in accordance with the conditions in the entry and foreigner's residency law and its executive lineup.

- The first party commits to help the second party transfer salary according to banking regulations.

Second Article (Organizing work and vacations)

- The work is organized with the agreement of both parties, including adequate breaks.

- The second party shall be given one month paid vacation after contract completion. The second party may opt for a salary of one month in lieu of the month vacation, in addition the due of one return ticket to home country.

Third Article (Travel Tickets)

- Upon expiry of contract without renewal, the first party must pay for the second party return to home country.

- Upon renewal of contract, should the second party opt for one month's vacation, the first party must provide the second party a return ticket to home country.

Fourth Article (Accommodation)

- The first party shall provide suitable, safe and hygienic accommodation for the second party.

Fifth Article (Good Treatment)

- The first party undertakes to treat the second party humanely, ensuring dignity and body safety.

- The second party accepts to perform duties faithfully and efficiently respecting values, customs and traditions of the country.

- This contract must be signed by both parties, copied in triplicate in both Arabic and English, and kept for both. The third copy will be held in the Naturalization and Residency Administration if needed.

First party

Name:

Signature:

Second party

Name:

Signature:

[Signature]

Naturalization and Residency Approval

Date 5/4/2007



استوفيت الرسوم

Thailand

Report prepared jointly by CARAM Asia and MAP Foundation

Background

Table 1. Number of Migrant Workers in Thailand:

Province	Total Registered Migrants	Total Men/ Women	Total Legal Entry	Nationality Verification Process	MOU	Total Illegal Entry	Ethnic Illegal	Migrant Workers Cards
Thailand	765,540	436,944/ 328,596		304,784 (161,024 men 143,760 women)	44,632 (26,506 men, 18,126 women)	321,189 (173,649 men 147,540 women)	26,053	295,136
Chiang Mai	28,761	15,376/ 13,385	10,152	7,294	6	18,609	11,232	7,377
Tak (Mae Sot)	23,741	8,407/ 15,334	1090	834	1	22,651	563	22,115
The total for Thailand figures above are for February 2011 and seems slightly distorted because it was a period when migrants had to re-register, below are equivalent figures for January 2011								
Thailand	1,345,728			250,448	41,080	958,843		
From these figures we will see that 54,336 migrants had their nationality verified during January (all nationalities). 3,552 new migrants entered the country through the MOU process but 637,654 registered migrants have fallen out of the system or have failed to re-register.								

Statistics from Department of Employment, Ministry of Labour, February 2011

Table 2. Number of Migrant workers Registered as Household Workers (including domestic workers) by Nationality and Gender

	Men	Women	Total
Burma	4595	17421	22016
Lao PDR	671	2602	3273
Cambodia	291	1079	1370
Total	5557	21102	26659

Reality Check!

Rights & Legislation for Migrant Domestic Workers across Asia

General Basic Working Conditions:	<p>With no regulations or protections in place, the working and living conditions of domestic workers are totally under the control of the employer. Domestic workers thus experience a wide range of conditions. At one end of the scale, a small percentage of domestic workers enjoy a good salary, regulated hours and tasks, privacy and time off while at the other end of the scale a small percentage of domestic workers suffer in servitude with no freedom to leave their work, confinement, no pay and long hours. While the rest of domestic workers work in conditions somewhere between these two extremes, for most of whom the conditions would include payment of far less than a living wage, very limited time off work and long hours of work with little privacy.</p>
Types of Violations Experienced:	<ul style="list-style-type: none">• No payment• Payment of less than the minimum wage• Unexplained and illegal deductions from wages• Irregular payment (some domestic workers are only paid once a year)• Long working hours• On call 24 hours a day• Excessive duties and tasks• Lack of days off• No privacy• Verbal abuse• Sexual abuse• Physical abuse• Confiscation of personal documents
Examples of Abuse and Action	<p>Between 2004 and 2010, MAP has supported 28 domestic workers, mostly in Chiang Mai, who had been underpaid or not paid by their employers to negotiate with their employers directly or at the offices of the Labour Protection and Social Welfare. They were compensated a total of 486,415 baht.</p> <p>Migrant domestic workers are particularly vulnerable and reporting abuse is very difficult for migrant women. The following are two examples of the abuse that happens:</p> <p>In June 2010, BAT, a Community Based Organisation (CBO) in Bangkok was contacted by a young man whose 19 year old wife was being held in a condominium. The employer, who had been</p>

paralysed in a car accident had already had six Burmese domestic workers leave his employment. The employer watched while his assistant beat the young woman, urinated on her, and had sex with her. BAT contacted MAP and together with the husband the situation was reported. The woman was eventually freed.

On 21st January 2007 a young migrant woman was raped by a taxi driver. She was traveling with another young woman and the taxi driver told her that the immigration police was following them and he would take the two women to a short-term motel for their safety. The woman did not have any papers so was fearful of immigration. The taxi driver took money from the migrant woman in order to pay for the motel. He told the said migrant woman that he should share a room with her because if the police should come, it would be better for them to claim they were a married couple. He then took her into the hotel room and raped her. Afterwards he stole her money and then called immigration and reported that there were two illegal migrants staying in the named motel. The migrant woman does not know what happened to the other young woman she was travelling with, as she disappeared then and she has not been in contact with her since. She was taken to hospital but the police only took her testimony on January 31st 2007 when MAP and Yaung Chi Oo Workers Association found a translator. Although the woman could supply detailed information about the driver and the taxi the police have not arrested anyone. The girl was transferred to the Government Rehabilitation centre but did not receive any form of justice. In February 2008 she returned to Burma.

Migrant domestic workers now meet together regularly in several locations around Thailand to exchange experiences and information and to make collective decisions about how to improve their working and living conditions. Through these Domestic Workers Exchanges, the domestic workers have organized a postcard campaign in which they delivered over 6,000 signed postcards calling for a day a week paid leave and recognition of domestic work as work to the Parliamentary Committee on Labour on August 28th 2009. The domestic workers continue to meet and strategise and keep informed about national and international developments for domestic workers.

Legislative framework that protects:

What Rights Do MDWs Have?

Thai Labour Protection Act 1998 and amendment 2007 stipulates an equal treatment of all employees, including migrant workers irrespective of their legal statusⁱ. However, only extremely limited protections under the Thai Labour Protection Act are extended to domestic workers.

Such minimal protection include:

- The right to have six days off a year (without weekly day off)
- Requirements of advance termination notice
- Salary payment
- Protection against sexual harassment

Furthermore, the minimal labour protections which are applicable to domestic workers are neither practiced nor enforced. Undocumented women filing a complaint against the employer may result in a visit and deportation from the immigration authorities, while for documented migrants, the employer is likely to immediately dismiss the workers. The domestic worker then only has seven days within which to find a new employer. With no job seeking agencies or assistance in place, domestic workers often have great difficulty finding a new employer in such a short time.

The cost of becoming documented, whether through registering under the annual amnesties or by entering the system to apply for a temporary passport, involves spending the equivalent of two or more months' salary. Most domestic workers do not have such available cash and therefore have to borrow from brokers or their employers and then attempt to pay the money back. This debt bonds the domestic worker to the broker and/or employer, leaving her little freedom of movement, work or choice.

Other policies to protect migrant domestic workers

In 2010, the Thai labour ministry announced that a ministerial regulation on the protection of domestic work was being drafted to be approved by the cabinet. The ministerial regulations would specify minimum wage, days leave, access to medical treatment, education and other requirements. The ministerial regulation should cover all domestic workers regardless of immigration status or nationality, however, at the time of writing, the ministerial regulation has not been approved. Unfortunately even if the ministerial

i ILO, "Domestic Workers in Thailand: Their Situation, Challenges and the Way Forward" January, 2010

regulations are approved, they still fall short of fully acknowledging domestic workers as workers with comprehensive labour rights and will thus continue to expose domestic workers to abuse and exploitation. MAP, together with the Domestic Workers Network, advocates for domestic workers to be included alongside other workers in the Labour Protection Act 1998.

The modus operandi of recruitment & placement

Migrants from Burma, Cambodia and Lao PDR have entered Thailand illegally without any documents. Some have come with family members who have previously worked and lived in Thailand. While some have used the services of brokers to help them navigate the land mines and the check points. None have used any formal recruitment agency as their migration is considered illegal. Once in Thailand, some of the domestic workers have been able to register themselves in one of the annual registration periods that the Thai government has implemented over the last 20 years. In order to register, domestic workers must already have an employer, but prior to registering they were undocumented and therefore employers may be considered as breaking the law. This confusion and the contradictions in the process have opened many loopholes for brokers and agents to profit.

The ILO Domestic Workers Convention supplemented by a Recommendation

In the June 2010 ILO Conference the Thai government supported the vote for a binding Convention for the Protection of Domestic Workers. The Thai government also reiterate that it agrees in principle with the proposed Convention and Recommendation in its reply to ILO as reported by the ILO Blue report released by the first quarter of 2011.

Very few countries in the world have comprehensive legislation to protect the rights of foreign domestic workers (FDWs). In most countries, FDWs are not even recognised as workers with labour rights. They are called maids, helpers, servants...

In 2010, CARAM Asia concluded a comparative research between the perceptions and attitudes of Malaysian and Hong Kong employers towards their foreign domestic workers. The comparison is made between these two country because of the different legislative back ground. In Hong kong, the Employment Ordinance and the Employees' Compensation Ordinance established labour rights for FDWs that cover rest days, holidays, annual leaves, maternity protection and rights to unionise etc. On the contrary, the Malaysian Employment Act 1955 addresses FDWs as "servants" excluded from basic rights such as weekly day off and annual leaves.

Our survey with 262 Hong Kong employers and 283 Malaysian employers found that proper laws, recognition through regulations and effective enforcement of laws tend to bring positive perceptions and understanding of FDWs.

Therefore, CARAM Asia called for states to recognised the contribution of FDWs by showing strong commitment in legislating rights for domestic workers nationally.



CARAM Asia (Coordination of Action Research on AIDS & Mobility) is an NGO in Special Consultative status with the Economic and Social Council of the United Nations. The organisation was set up in response to the growing global phenomenon of migration and emphasises a region approach in addressing the issues of migration and health.