



Arrest, Detention And Deportation

PREVENTION IS BETTER THAN CURE.

Potential foreign domestic workers have the right to information and the right to travel and acquire proper documentation before they leave their country of origin.

FACT: Most foreign domestic workers are arrested, detained, and/or deported because they were illegally recruited, were victims of human trafficking, and/or were ignorant of the law.

Title

What if.....? (Role playing)

Target Audience

Foreign domestic workers, NGO workers, civil society

Objectives

1. To determine what to do if a foreign domestic worker is arrested, detained, and/or deported.
2. To introduce participants to some rights based approaches to establishing the rights of foreign domestic workers.
3. To provide some practical advice in case arrest, detention and deportation happens.

Materials

1. 6 volunteer participants
2. White board
3. White board markers
4. Fact-sheets/informational hand-outs about the laws regarding arrest, detention, and deportation (if any) in local countries.
5. A list of authorities and organisations working for the protection of foreign domestic workers rights
6. Posters, photographs, and other visual aids relating to the activity—if available.

Time Needed

Minimum of one hour to maximum of two hours

Activity

1. Ask the volunteers to decide who will act as victims and who will act as policemen (3 victims, 3 policemen).
2. Divide the 6 to three groups
3. Ask the first group to role play: What if...if she is being arrested? Ask the second group to role play: What

if...she is detained. And ask the third group to role play: What if...she is being deported. Present each play one at a time.

4. Encourage the participants/actors to create their own lines/dialogue. The facilitator should write down the important lines/information on the board.
5. The remaining participants should observe each play.
6. Each play should be a minimum of two minutes and a maximum of 5 minutes. Encourage spontaneity.
7. After each presentation, applaud the volunteers.
8. Ask the following questions after each play:
 - What did you see in the role play?
 - Is what you saw an accurate portrayal of what happens to foreign domestic workers? What have you heard happens to foreign domestic worker after they are arrested/detained/deported?
 - What have you heard from foreign domestic workers who have been arrested/detained/deported?
 - What have you heard from policemen involved in arresting/detaining/deporting a foreign domestic worker?
 - What would you do if you were being arrested/detained/deported?
9. After the Question and Answer session, the facilitator should present the guidelines below:
 - Facilitators should prepare/bring appropriate hand-outs with information from the countries where this activity is being done. The hand-outs should include local laws about foreign domestic workers from the receiving countries.

Some guidelines to avoid arrest, detention and deportation from the receiving countries:

In any situation and whenever you are, you do not lose your basic rights, such as:

- The right to life;
- The right not to be tortured, nor subjected to cruel, inhuman or degrading treatment or punishment; and
- The right to freedom of thought, conscience and religion
- These rights are absolute. Under no condition can their fulfillment or enjoyment be suspended. These are irrevocable rights under the **International Covenant on Civil and Political Rights**.
- The right not to be subjected to forced labour;
- The right not to be punished for an act which was not yet a crime at the time of its commission.
- The right to be recognised and treated as a person

What to do

IF YOU ARE BEING ARRESTED¹

- Stay calm. Being arrested is not the end of the world. Some apprehension is unavoidable; but you can reduce this by concentrating on each event as it happens, and not letting your imagination run wild about what will happen next.
- Ask a friend, or even a stranger (get the name and address) to witness your arrest. If you own a cellular phone, send a text message to your family, friends and lawyer (if you know any) informing them that you are being arrested. You may also call your family, friends, and lawyers so they may listen in on your arrest.
- Ask for a copy of their warrant to arrest you and examine it carefully. Note particularly if you are named in the warrant of arrest, and the offense for which you are being arrested. (Note that in countries like Malaysia, this is not the case).
- If is any defect in the warrant, register your objec-

tion to being arrested, but do not use force.

- If you are rightfully arrested, you may be searched for dangerous weapons, or anything which may be used as proof that you committed the crime for which you are being arrested.
- Inquire from your arresting officer where will you be taken. Ask that you be accompanied by the relative, a friend, or stranger who witnessed your arrest. Assure the arresting officers that this is for their protection as well as yours.
- Ask to be allowed to telephone your lawyer; if denied ask your relative, friend or other witness to your arrest, to do so. Inform your lawyer or any significant NGO's of your arrest, identity of the arresting officers, the cause of your arrest, and where you will be taken.
- Do not, at any time, offer any physical resistance to the arrest. State that you object and are not waiving any of your rights, but are going peacefully in order to avoid violence.
- If the persons making the arrest are in civilian clothes, or refuse to give their names or show any warrant of arrest refuse to go with them. Ask them to let you call for a policeman to verify the authority. The law requires arresting officers to be properly dressed, to behave properly and to respect your rights and dignity.
- If you are told that you are not being arrested but merely invited for questioning, reply that you will consult your lawyers first. Do so, then get your lawyer to talk to the officers and arrange a date, time and place for the questioning. If they do not allow you to consult with your lawyer, refuse to go along with them. If they insist, their acts become an arrest, and the preceding advice applies.

REPEAT: REMAIN CALM. Concentrate on what is happening now. Do not imagine what will happen next. Many of our fears are self created. Above all, do not worry if you forget to do any of the things listed above. They are counsels of perfection, not always attainable. As long as you remain calm and collected, you will be able to protect your rights.

What to do

IF YOU ARE ALREADY UNDER DETENTION ²

Your rights are:

- To be treated as a human being
- To due process, which comprises the rights :
- To be informed of the written regulations governing the detention center;
- Not to be punished for any act except in accordance with those regulations;
- To be subjected to only such punishment for breaches of discipline as are the least means to maintain order and security in the detention center;
- Not to be subjected to corporal punishment, confinement in dark cell or total isolation
- To receive visits from your embassy officials, family, friends and lawyers.
- To practise your religion.
- To adequate food and, if you desire, to procure food from outside, through the administration of the detention centre or through family and friends.
- To wear your own clothing unless you have none, in which case the detention administration shall supply it, but such clothing must be different from that supplied to convicts
- To healthful accommodations, with sufficient light, and ventilation, an adequate sanitary and bathing facilities.
- To a separate bed with sufficient bedding.
- To at least one hour's daily outdoor exercise
- To competent medical, and dental service.
- To be furnished with or to procure reading and writing materials.
- To be kept separate from convicts serving sentence.
- To a speedy, impartial and public trial.

1. Expulsion

Treatment to be accorded to migrants and their families in the event of expulsion

Art 22, ICMW 1990

Migrants and their families shall not be subject to collective expulsion.

Art 23, Art 23 and Art 56

Elaboration of terms in case of expulsion,

- decision will be taken by competent authority in accordance with law
- communication of the decision to migrant
- right to review of decision
- settlement of claims, wages and entitlements
- costs of expulsion
- right to consular support
- humanitarian and other considerations to be exercised in deciding on expulsion

Preventive Measures

PRE-DEPARTURE

Checklist: Is it safe for you to work in another country?

1. Are you of legal age? Under the law if you are below 18 you are still a child/young person and you are prohibited to leave your country to work overseas.
2. Are all your documents LEGAL? Make sure that you legally obtained your papers. Also make sure that all of your travel documents and contracts are LEGAL documents. Obtain all legal travel documents from an authorised government agency. Avoid asking people you do not know/trust to get your travel documents for you.
3. Are you sure your recruiter is legal? **BEWARE OF ILLEGAL RECRUITERS.** Human Trafficking is a Crime. Seek advice from NGO's or the government department related to overseas contract workers to verify the authenticity of the recruiting agent.
4. Do you have a clear contract with all terms and conditions specified? If your home country requires that contracts be validated by the embassy in the destination country, verify that the contract has been duly stamped and validated.
5. Do you have photocopies of all your documents? Photocopy all your documents. Give one copy to your family and keep one copy for yourself. Always carry a photocopy of your passport and other documents in case you lose the original ones (in case of an emergency, the photocopies will serve as a reference).
6. Do you have the address and telephone number of your local embassy/consulate? Get the address and telephone numbers of your local embassy/consulate in the country of destination. If possible, try to memorize this information or keep a hard copy of this information with you at all times.
7. Do you understand the laws of the country you are going to – regarding immigration, labour, trafficking?

8. Do you have all of your important information with you? You should not put your contract and/or other important documents in your check-in luggage. The immigration officer at the point of origin will ask you for necessary papers before you leave the country.

UPON ARRIVAL

Checklist: Is it safe for you to work in another country?

1. Do you have your labour contract? Make sure you have your labour contract. Do not sign any documents whose contents you are not sure about. Ask for a copy of the documents in a language that you are able to read or ask somebody you trust to translate the documents for you.
2. Do you have all the contact details of your embassy? Know the contact details of your embassy.
3. Do you have other contact information? Know the contact details of NGOs who support migrants or the contact details of migrant groups/associations/unions.
4. Do you know your rights? Know your rights regarding arrest, detention and deportation as enshrined in international law.
5. Do you have a basic understanding of the criminal justice system in the destination country? You should know:
 - Brief background of the criminal justice system of your host country
 - Your rights if you are arrested—especially the essential right to an attorney and the importance of due process
 - The process of filing a complaint with the concerned judicial authorities, how to approach or demand access to a lawyer or lodging a complaint with the local police authority
6. Do you have a basic understanding of administrative detention? This pertains to arrest and detention by administrative authority—not the police or if you are at the sole discretion of an administrative authority without trial or being charged—some migrant legislation allows this. Administrative

detention will not always be subject to independent judicial review

7. Do you know the contact details for legal assistance? You should know the contact details of human rights and legal aid lawyers in the receiving country.

INTERNATIONAL STANDARDS: No one shall be subject to arbitrary arrest, detention or exile

- Article 9 of the Universal Declaration of Human Rights states that: **No one shall be subject to arbitrary arrest, detention or exile.**
- Articles 9 and 10 of the International Covenant on Civil and Political Rights (ICCPR) 1966.
- Standard Minimum Rules for the Treatment of Prisoners³, first adopted in 1955 and then extended in 1977 to enlarge protection of persons detained without charge,
- Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment 1988⁴
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990– Arts 16, 22, 23, 56
- Rules for Juveniles Deprived of Their Liberty 1990⁵
- 1949 I.L.O. Migration for Employment Convention (No. 97)
- Vienna Convention on Consular Relations 1963

2. Notification

Right to prompt consular and diplomatic support

- Article 36 (1) of the Vienna Convention on Consular Relations of 1963
- Article 16(7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

3. Access to Detained Migrants

Communication with the outside world, through correspondence and visits, is important for the protection of the detainee's rights and is also an aspect of humane treatment.

Right to correspond and visit with one's family

- Article 17 of the Covenant on Civil and Political Rights
- Rule 92 of the Standard Minimum Rules

Right to communication with diplomatic and consular representatives

- Rule 38 of the Standard Minimum Rules
- Article 16(7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Access to legal counsel

- Article 14(b) of the ICCPR
- As regards minors, the Convention on the Rights of the Child is explicit in stating in Article 37(d) that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.
- Rule 93 of the Standard Minimum Rules state that - right to legal counsel.

4. Handling of Detainee's Property

Rule 43 of the Standard Minimum Rules deals with property rights:

All money, valuables, clothing and other effects belonging to a prisoner should be kept in safe custody and steps should be taken to keep them in good condition; all articles and money should be returned; authorities should take careful treatment of money and effects received from outside the prison.