



Section 1

# Issues & Concerns

FOREIGN DOMESTIC WORKER CAMPAIGN TOOLKIT



# 1.1 Foreword

There are several push and pull factors that contribute to the growing ranks of foreign domestic workers (FDWs). Wealthy countries in the West, the Middle East and the fast growing economies in Asia, rely on labour migration to fill low-paying, labour intensive jobs with poor working conditions. Paid domestic workers help free women in expanding middle classes to work outside the home, where increased access for women to the formal labour market has not been matched with appropriate family-friendly working conditions and children options.<sup>1</sup>

A new feature of international migration for work is the increase in the numbers of overseas women migrant workers, which in countries like the Philippines, Indonesia and Sri Lanka exceed the numbers of male migrants. Women migrant workers are recruited into both skilled and unskilled jobs, the majority are concentrated in the low status jobs at the lower end of the job hierarchy, where they suffer abuse. Migrant workers face many problems throughout the migration process. Women migrant workers face these in a qualitatively different way from men and are often at a greater disadvantage. Women are disproportionately disadvantaged, despite their substantive contribution. Continued discrimination, violence and exploitation of women migrant

workers thwart human development. It is a drain on economic resources, productivity and economic growth. Protecting and empowering women foreign domestic workers thus promote gender equality, uphold basic human rights and ensure human development and good governance.<sup>2</sup>

The health of domestic workers is often ignored. Health is the most important resource for people. It goes beyond absence of disease and it includes the daily dealing with stress that domestic workers are facing. Health is more than the presence of physical disorders, and can only be seen in the context of the human rights of domestic workers. If these are not respected, domestic workers will have increased vulnerability, while having limited access to prevention and care.

Many things have been said and suggested in the past to defend the rights of the foreign domestic workers in order to improve their health. This resource toolkit is an attempt to compile knowledge and make use of the tested activities of many years to serve the purpose of education and advocacy strategy and thus uphold and protect the rights of the foreign domestic workers with emphasis on health. As such it complements other initiatives to advocate domestic workers rights.

The Campaign Toolkit is also an outcome of the Regional Summit on Foreign Migrant Domestic workers from 26-28 August 2002 in Colombo Sri Lanka by CARAM Asia with the support of many UN agencies, regional organisations and migrant organisations with the objective of understanding the current status of FDWs and defining emerging issues in order to increase protection and reduce various forms of vulnerability especially to HIV/AIDS.

The FDW Campaign Toolkit is designed to achieve the following objectives:

- To enhance awareness and understanding of the vulnerabilities of foreign domestic workers to discrimination, exploitation and abuse throughout the migration process

- To recognise domestic work as work and as such it should be compensated in economic terms like any other work
- To enhance an understanding of overseas women foreign domestic workers not just as victims but as survivors and a productive force
- To promote policies, legislation and programmes that prevent abuse and protect and empower foreign domestic workers
- To facilitate the issue of integration of access to health care in the ensuing campaign.

We are sure with everyone committed to this cause; we will achieve the goal of defending the foreign domestic workers rights and their freedoms through the effective use of the toolkit.

# 1.2 Introduction

CARAM Asia is a regional network of organisations working with Asian migrants globally for the protection of their health, especially with regards to their vulnerability and infection related to HIV/AIDS.

The special vulnerabilities of foreign domestic workers have been evident since the inception of CARAM's participatory action research in 1997 with migrants and their communities at all stages of migration.

In 2001, CARAM Asia used the World Conference Against Racism (WCAR) in Durban, to develop a process of dialogue and cooperation with human rights organisations in the Middle East to address the human rights violations of foreign domestic workers. A joint public hearing of migrant workers was organised with various migrants and migrant support groups focusing in particular on domestic workers. The Cairo Declaration was jointly signed by CARAM Asia and the Arab Organisation for Human Rights in June 2001.

## Regional Summit on Foreign Migrant Domestic Workers 2002

As a follow up to the above, in August 2002, CARAM Asia with the support of the United Nations Office of the High Commissioner for Human Rights, the International Organisation for Migration, the Asia Pacific Forum on Women in Law and Development, the Arab Organisation for Human Rights, Migrante International, the Global Alliance Against Trafficking in Women, the Wereldsolidariteit – Solidarite Mondiale, the Indonesian National Commission on Violence Against Women and the Canadian Human Rights Foundation organised a

Regional Summit on Foreign Migrant Domestic Workers, in Colombo, Sri Lanka.

132 participants from 24 countries including migrants, government representatives, NGOs and UN representatives participated in the summit. The summit was the result of issues and concerns identified by foreign domestic workers and migrant support groups involved at the community level in origin and destination countries. These issues were later discussed at various regional and national level consultations which preceded the summit.

### Objective of the Summit

- To understand the current status of foreign domestic workers, define emerging issues in order to increase protection to reduce various forms of vulnerability especially to HIV/AIDS.
- To initiate dialogue to clarify perspectives, strengthen understanding of causes and impact of the situation of foreign domestic workers and their communities and forge partnerships between stakeholders.
- To chart and carve out strategies leading to the development of common denominators and standards for protection; strategies for development of partnerships at various levels, and strategies for regional cooperation especially between sending and receiving countries.
- To bring together foreign domestic workers, government representatives, international agencies, NGOs and other stakeholders for a collaborative effort to realise the goals of the summit.

The summit culminated in the adoption of the Colombo Declaration by the 132 participants. The Colombo Declaration encapsulated strategies, policies, plans, and interventions that needed to be established to address the concerns of recognition, protection, and dignity of foreign domestic workers. The Colombo Declaration underlines the fact that foreign

domestic workers are human beings and the protection of their human rights and freedoms need to be central to all interventions with/for them. The participants agreed to build international solidarity by declaring August 28 the International Day of Solidarity with Foreign Migrant Domestic Workers.

## Global Campaign – An Outcome of the Regional Summit on Foreign Migrant Domestic Workers 2002

One of the outcomes of the 3-day summit was the decision by participating organisations to launch a foreign domestic workers campaign.

This global campaign seeks to lobby for the recognition of domestic work as work which is still to be realised as reflected in the testimonies of the migrant workers that were present at

the summit. Migrant workers also do not have access to legal protection. Thus appropriate instruments to address their economic rights, criminalisation of foreign domestic workers and access to justice, as well as measures to be taken to provide better access to healthcare will be taken up as core issues in the campaign.

## Development of the Foreign Domestic Workers' Campaign Toolkit

One of the tools developed for this campaign is the Foreign Domestic Workers Campaign Toolkit.

The Colombo Declaration has been used as the basis to develop this campaign.

Though the development of this campaign toolkit has been initiated by CARAM Asia, it is a joint effort with other regional networks that participated in both the initial planning and later development of the toolkit.

While, the Asia Pacific Forum of Women, Law and Development (APWLD) and the Asia Pacific Mission for Migrants (APMM), Hong Kong were involved in the initial planning and conceptualisation of the toolkit, other organisations and regional networks like the Geneva Institute for Human Rights, the Global Alliance Against Traffic in Women and others have contributed to the information and development of the toolkit.

The logo for the campaign toolkit was selected from a competition that was organised by the

Asia Pacific Mission for Migrants (APMM), Hong Kong. This logo was created by Mrs. Janet Pancho-Gupta, a former foreign domestic worker in Hong Kong who later married to a journalist from India. Janet is a former client of the Bethune House Migrant Women's Refuge, a half-way house for foreign women domestic workers who were terminated and had on-going cases filed against their employers. Janet is still living in Hong Kong and a member of the Friends of Bethune House, an organisation of former and present clients of Bethune House.

The **objectives** of the foreign domestic workers' campaign toolkit are to:

1. To provide a resource for the implementation of the campaign
2. To stimulate thinking on ways in which the campaign may be planned and executed
3. To build capacity of domestic workers' groups and support groups to undertake the campaign

# 1.3 Colombo Declaration

**We, the 132 participants from 24 countries, representing foreign migrant domestic workers, governments, trade unions, NGOs and international organizations met at the Regional Summit on Foreign Migrant Domestic Workers from 26 to 28 August, 2002, in Colombo, Sri Lanka.**

The right to stay and the right to move within and across borders with dignity are fundamental to human civilization. Foreign migrant domestic workers contribute to the socio-economic development of societies and economies.

The summit aimed at developing a framework for dialogue at various levels to ensure appropriate recognition, protection and dignity of foreign migrant domestic workers. The main principles defining the dialogue included the principles of human rights for all without discrimination, and the values of freedom, equality and justice.

The experiences of foreign migrant domestic workers in the migration process reveal that domestic work is still to be recognized as a socio-economic activity and valued accordingly. This leads to a serious lack of protection, vulnerability and exploitation. Multiple discriminations based on gender, race and class within the family, the community and nations and the

isolated and individualized conditions of work, and lack of protection and appropriate services and information increases their vulnerabilities to exploitation and violence. It also compromises their health and human security.

The different stakeholders (recruiters, employers, agencies, states, societies and economies) work together in benefiting from foreign migrant domestic workers' social and economic contribution.

From the testimonies and voices of foreign migrant domestic workers and other stakeholders at the summit, it was apparent that the isolation and unequal dependency on the employer for the fulfillment of the foreign migrant domestic workers' basic human needs, and the absence of access to own documents, restricted mobility and captivity within the household makes them, especially women, vulnerable. We have heard accounts of foreign migrant domestic workers being further victimized, accused, blamed and punished as consequences of sexual abuse, assault and exploitation which even ended in death. Lack of access to free and fair trial, appeal, judicial and immigration procedures and decisions, gender biased policies, regulations and practices further increase risks to their human security and rights.

It is only when socio-economic value and contribution and due respect are given to domestic work, dignity, justice and rights of foreign domestic workers will be guaranteed. Legal recognition and protection of their rights, including fair and decent wage, freedom of expression, association, unionisation, religion, privacy, rest and recreation and right to vote should be ensured. Free access to health care services, social security systems, communication and information, services including training, legal aid and counseling, socio-economic benefits to the foreign domestic workers and their families are also essential components for a successful and safe migration process. This should empower and improve the quality of lives of foreign domestic workers and their families as well as enhancing the quality of life of the societies where they live and work.

We recognize the various positive actions and developments undertaken by governments, international organizations and civil society to address the growing issues and concerns affecting the life of foreign migrant domestic workers. However, we need to build on these initiatives to further strengthen the mechanisms, measures and create new and innovative interventions and services through an expanding partnership.

Protecting the rights of foreign migrant domestic workers necessitates the inclusion of domestic work in national labor legislation in accordance with international labor standards and human rights principles and practices including gender justice. We also need to define domestic work in the context of human rights principles specially for developing and implementing work contracts.

The following strategies, policies, plans and development interventions should be established to address the issue of recognition, protection and dignity of foreign migrant domestic workers:

## Rights

1. Origin countries should ensure that overseas employment opportunities are not achieved at the expense of compromising the protection and welfare of migrants especially foreign migrant domestic workers.
2. Foreign migrant domestic worker should be recognized as a migrant and as a worker.
3. Documented and undocumented foreign migrant domestic workers should be treated as per existing international labor and human rights standards.
4. Accurate and realistic information concerning economic and social costs and benefits of overseas employment, including health vulnerabilities should be provided at all stages of migration to facilitate successful integration.
5. Foreign migrant domestic workers should be able to enjoy physical and mental health, reproductive health and sexual health rights at all stages of migration, including the right to marry, bear children and enjoy family life.
6. Foreign migrant domestic workers should enjoy equal rights of all workers including the right to change their place and nature of work.
7. Migrant workers, particularly, foreign migrant domestic workers and their children should have access to education at all stages of migration.
8. Origin countries should facilitate the exercise by migrant domestic workers' of their right to vote in elections in their home countries.



## Policies & Mechanisms

9. Migration should be incorporated in the development policy and planning in the origin and destination countries as well as in the international social and economic institutions.
10. Ratification of the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and other relevant international instruments to ensure a rights based approach for protection, both in origin and destination countries is imperative.
11. The ban and restriction on female migration and all types of migrants should be removed to uphold core human rights principles.
12. Concerns about security must not turn into xenophobic actions against migrants especially foreign migrant domestic workers.
13. Bilateral and multilateral agreements and arrangements between the origin and destination countries should be established to protect the rights of migrants including foreign migrant domestic workers. The agreements should reflect accountability and transparency in regulating recruiting and employment agencies. They must be accompanied by implementing guidelines and action plans. The agreements should also include the definition and clear enunciation of terms of contracts for upholding international labor standards.
14. Regional processes both at government and civil society levels should be initiated to evolve consensus to address regional migration challenges.
15. Mechanism needs to be established at national and regional levels for effective development, independent monitoring and implementation of support services for foreign migrant domestic workers. Rights of access to consular services should be guaranteed. The consular services should be further strengthened and made effective especially in providing legal and health services.
16. Mechanisms and policies must be established to enable greater involvement of foreign migrant domestic workers in the development and implementation of programs addressing their issues and concerns.

## Interventions

17. Programs should be put in place to effectively address trafficking and smuggling that may occur during the process of migration.
18. Provisions and arrangements should be made available to foreign migrant domestic workers for safe and secured transfer of remittances and their productive utilization.
19. In cases of serious human rights violations or serious injuries such as death, arbitrary detention, crimes, unfair trials, sexual violence and abuse, States must undertake full and transparent investigation and ensure that those responsible are held accountable.
20. Interventions should be developed by the State and civil society for enhancing skill and empowerment of foreign migrant domestic workers.
21. The Durban Declaration and Program of Action of the World Conference Against Racism seeks to eliminate racism, xenophobia, racial discrimination and other forms of related intolerance. As part of this process public awareness to build positive attitudes to recognize and value domestic work is imperative. Responsible media and civil society advocacy must be engaged.
- 22. We the participants agreed to continue this process of dialogue through existing structure and non traditional regional cooperation. The dialogue should be based on a mechanism to reconcile contradictory priorities, concerns and interests of all stakeholders.**

## Institutions

23. Member States of the UN should implement the recommendations in the resolutions in the UN Commission on Human Rights relating to migrants and their families.
24. The Commission on Human Rights should also act on the recommendations made by the UN Special Rapporteur on the Human Rights of Migrants and give special attention to the reports which refer to the situation of foreign migrant domestic workers. Member states of the UN should also implement the recommendations in the Secretary General's reports on migrants and foreign migrant domestic workers.
25. National human rights commissions should integrate into their agenda foreign migrant domestic workers
26. The IOM, ILO and UN agencies, including the office of the High Commissioner for Human Rights (OHCHR), UNIFEM, UNDP, UNICEF, UNAIDS and WHO, should coordinate and work together to strengthen the protection of foreign migrant domestic workers.

**Foreign migrant domestic workers are human beings. They have life, rights and dignity. They have also feelings, need warmth, respect, care and love. They are not just individuals and cannot live in isolation. They are as part of families, communities, cultures and civilizations. Their work must be considered as such according to the universal values of human rights and internationally recognized labor standards. The kind of work they do should not be used as a reason for their discrimination and an excuse for violating their rights as human beings and as workers. Violations of foreign migrant domestic workers rights, including fundamental principles and rights at work, must be stopped, in order to ensure decent work and life of dignity for them and their families. It is only when the foreign migrant domestic workers can enjoy their rights and universal values, can we then realize a just and democratic society. Towards this end we will build international solidarity by making August 28 the International Solidarity Day with Foreign Migrant Domestic Workers.**

Adopted on August 28, 2002 in Colombo, Sri Lanka

# 1.4 What Is Domestic Work?

Domestic work is regarded as 'women's work' because,

1. the actual tasks associated with it – cooking, cleaning, washing, child care have been universally assumed to be 'naturally' part of the women's sphere
2. it is assumed that such tasks are normally performed in the household
3. the 'personal service' aspect of such labour resonates with the ideology of woman as wife

Based on these considerations, a tentative definition of domestic work is a 'wage earner working in a (private) household, under whatever method and period of remuneration, who may be employed by one or several employers who receive no pecuniary gain from this work'.

However, the present labour laws around the world usually exclude domestic work from regulation or provide less protection for foreign domestic workers than for other workers such as providing maternity benefits, rest days, hours of work and termination of benefits. This is because women's labour as foreign domestic workers is viewed as a natural extension of women's traditional, unpaid role as mothers and care providers in the family.

# 1.5 User's Guide

1. The foreign domestic workers campaign toolkit is a publication to improve the quality of education and advocacy strategy in the promotion and protection of foreign domestic workers rights in the region through the creation of an enabling social, political and economic environment for community-based initiatives.
2. The toolkit is divided into four major parts. Each part is presented in the form of a knowledge based approach to the campaign and the tools necessary to support and enhanced the content of the resource kit.
3. The use of the toolkit is aimed at foreign domestic workers, government staff, teachers, researchers, civil servants, NGOs and other stakeholders.
4. The knowledge and skills used in the toolkit have already been tested in several pilot projects of CARAM ASIA and found to be suitable for different target audiences.
5. Users of this toolkit are encouraged to adjust the activities and knowledge given according to the context, element of time, age and background of the participants and relevance of the topic to them.
6. In as much as the making of this toolkit is giving considerable attention to the ethical and cultural sensitivities of the people and the communities, users should never stop exploring the application of appropriate, ethically and culturally relevant activities in the sessions and during the implementation of the campaign.
7. Some of the activities in the toolkit are designed to be participatory and should elicit responses from the participants towards a proactive result of the campaign.
8. At the end of the activities presented in the toolkit it is important to note possible action points that participants may wish to undertake as the result of the advocacy work.
9. The toolkit is not prescriptive and feedback is most welcome about the use of the resource material.

# 1.6 Ethical Issues

## FOREIGN DOMESTIC WORKERS RIGHTS PROTECTION

### What is ethics?

- A set of principles of right conduct
- The rules or standards governing the conduct of a person or the members of a profession, or in this case governing the conduct of the campaign

### Why it is important to consider ethical practices in pursuing the campaign?

Successful campaigns usually spread far and wide. The issues and the campaign is taken up by many groups in different areas. It is essential therefore to establish some clear principles of the campaign from the beginning to ensure that the campaign is ethical, does not abuse people's rights and does not negatively affect foreign domestic workers.

Principles for the campaign should be established collectively with the foreign domestic workers.

### Points for discussion may include the following:

1. How to ensure participation of foreign domestic workers throughout the campaign.
2. How to ensure management of the campaign by foreign domestic workers groups throughout the campaign.
3. How to ensure two-way flows of information from foreign domestic workers to organisations and back to foreign domestic workers. (i.e. if lobbying is taking place at the UN, how can this information be relayed back to as many foreign domestic workers as possible, and how can they make decisions based on the response on the next steps of the campaign).
4. Confidentiality regarding foreign domestic workers. Systems in place to protect the confidentiality of foreign domestic workers who prefer to remain anonymous or who have not given permission for personal disclosure.
5. Confidentiality regarding employers: **Principles need to be established on how to deal with information about employers. Discussions will need to focus on which information is kept confidential and which information needs to be exposed.**
6. Informed consent: How do we ensure that all involved in the campaign, whose case studies may be used, are truly informed of the consequences and can give informed consent. Discussions will include the world-wide web on information, how information flows over the internet, cable TV etc and how control is lost in this spread of information.
7. Accountability: Information disseminated in a campaign must be true, and there may sometimes be calls to verify the information. How to react to calls for verifications of rape cases? Should the rape victims have to repeat their stories over and over again? **What systems can be put in place before the campaign starts?**

8. Representation: Representatives of the campaigns and the issue need to be legitimately able to represent it to others. **They need to be based in the community, able to feed into networks and support systems of foreign domestic workers.**
9. How to deal with the power discrepancies between working groups. Some foreign domestic workers groups and some NGOs will have easy access to resources and to policy-makers, others will not. There is a need to recognize these discrepancies from the beginning and plan how to work together with equality and mutual respect.

Prior to the campaign and throughout the campaign a group will need to be established which monitors the risks and the backlashes:

### **Risk Assessment:**

Prior to the campaign, the group will need to assess all the possible scenarios that could occur as a consequence of the campaign. Below are some examples of possible scenario:

- One nationality of foreign domestic workers become vocal on cases of abuse, the government decides to change policy and import “more docile” foreign domestic workers from another country.
- Foreign domestic workers who speak out on cases of abuse by influential employers may be threatened, harassed or simply disappear.
- Foreign domestic workers associations may be harassed, targeted or shut down by authorities.
- One group or nationality of foreign domestic workers may secure better conditions and wages than another group or nationality. Divisions may arise.
- The campaign message may change as the campaign progresses.

The discussions will need to include ways to minimise possible negative consequences, these may include discussions on:

### **How to ensure that all groups are well-informed on national and international laws in order to be able to respond to illegal and unethical responses to the campaigns**

- Including plans and funding in the activities to be able to provide for security, relocation and livelihood of domestic workers suffering negative consequences of the campaign.
- Securing alliances and support networks at the beginning of the campaign. Finding allies among local women’s workers unions or associations may be critical to the protection of the foreign domestic workers.
- Agree on methods to ensure that all participating in the campaign adhere to the basic principles. While changes in activities and focus over time are healthy progressions, the principles should be non-negotiable.
- Developing effective communication channels between all groups to know what is happening and what are the responses.
- Ensuring that these discussions continue throughout the campaign.

# 1.7 Rights Based Approach

While there is no single and universally accepted definition of a rights based approach<sup>3</sup>, there are some common elements in the various rights based approaches.

Based on this, a rights based approach for the foreign domestic workers campaign includes that:

1. the perspective in which the campaign is conceptualised and implemented is in line with human rights principles and perspectives
2. the proposed goals and outcomes reflect human rights standards; and
3. the end result seeks to achieve the respect, protection and promotion of the human rights of foreign domestic workers.

## 1.7.1 Conceptualising and Implementing the Campaign - in line with human rights principles and perspectives.

The isolation and invisibility of the domestic worker arising from unequal power relations (related to her gender, class and migrant status) is the root of all her vulnerabilities. Empowerment, giving her power, capacity, access and capabilities to change her life can only become a reality when the power imbalances and dynamics are changed in her favor.

Given below are some ways in which rights based approaches can be integrated in the campaign planning and implementation to realise the above.

IN THE INTERNAL STRUCTURE, POLICY & MANAGEMENT OF THE CAMPAIGN	IN THE FRAMEWORK AND CONDUCT OF THE EXTERNAL CAMPAIGN
<b>Domestic Workers – Heart of the Campaign</b>	
<ul style="list-style-type: none"> <li>• The foreign domestic worker occupies central place and enjoys meaningful <b>participation</b> including in <b>decision making</b> in,               <ul style="list-style-type: none"> <li>– all stages of the campaign – planning, implementation and monitoring and evaluation.</li> <li>– all aspects of the campaign – content, programme, networking and budget.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The foreign domestic worker leads the campaign’s content and strategy development by speaking for herself and asserting her perspectives, needs, and human rights.</li> </ul>
<b>Participation</b>	
<ul style="list-style-type: none"> <li>• Given the existing constraints to domestic workers leading the campaign, all initial efforts needs to be geared to developing strategies that will help to,               <ul style="list-style-type: none"> <li>– Address the causes of the constraints including the lack of a weekly off day arising from the lack of legal protection for their labour rights.</li> <li>– Explore ways to mobilise foreign domestic workers.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The space created for the foreign migrant domestic worker in the external dialogues enables a positive re-definition of her relationships with other stake holders like the State, employers, recruiting agents, NGOs and others and enables her to reclaim her space and rights.</li> <li>• Concomitantly, attitudes and values towards foreign domestic workers are redefined.</li> </ul>

IN THE INTERNAL STRUCTURE, POLICY & MANAGEMENT OF THE CAMPAIGN	IN THE FRAMEWORK AND CONDUCT OF THE EXTERNAL CAMPAIGN
<p><b>Equity</b> In order to bring about equity, the campaign (in addition to the above) needs to,</p>	
<ul style="list-style-type: none"> <li>• identify strengths of foreign domestic workers that can be utilised in the campaign as well as areas for capacity building.</li> </ul>	<ul style="list-style-type: none"> <li>• address the worst rights violations paying attention to the more marginalised undocumented foreign domestic workers in keeping with the preoccupation of human rights with marginalised populations.</li> <li>• In bringing about equality of opportunity to make their voice heard and increasing access, empowerment is facilitated.</li> </ul>
<p><b>Accountability</b></p>	
<p>Rights and responsibilities are linked in the internal management of the campaign by mutual accountability of the campaign partners to each other and shared and collective accountability to external parties.</p>	<p>In accordance with human rights principles, the campaign will seek to hold the state accountable in its negative obligations<sup>4</sup> and positive obligations<sup>5</sup> as 'duty bearer' in upholding the human rights of the foreign domestic worker. In this way, private non state actors, be they employers, recruiting agents or organisations will also be regulated.</p>
<p><b>Indivisible, Interrelated and Interdependent Nature of Human Rights</b></p>	
<p>Given the,</p> <ul style="list-style-type: none"> <li>• intersectionality of the issues, and,</li> <li>• the magnitude of the long term goals and tasks at hand (from gaining recognition for domestic work, to mobilising foreign domestic workers to securing the legal and non legal protection of the rights of foreign domestic workers in terms of labour, health, freedom from violence among others), cooperation and solidarity between the various civil society organisations is imperative in a rights based approach.</li> </ul>	<ul style="list-style-type: none"> <li>• The inter-relatedness of abuse and rights related to the foreign domestic worker need to be considered in the development of the framework of the campaign (CARAM Asia, 2002)</li> </ul>

## 1.7.2 Proposed Goals and Outcomes - to reflect human rights standards

Human rights are international moral, legal and political norms that aspire to protect all people everywhere from severe political, legal, and social abuses<sup>6</sup>, and they are found in international conventions, comments and concluding remarks issued by treaty bodies, constitutions and other documents. These instruments provide for minimum standards for the respect, protection and promotion of human rights<sup>7</sup>.

While the standard setting may be based on the key international human rights instruments, namely,

- 1951 Refugee Convention
- 1965 Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- 1966 Covenant on Civil and Political Rights (ICCPR)
- 1966 Covenant on Economic, Social and Cultural Rights (ICESCR)
- 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)



- 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- 1989 Convention on the Rights of the Child (CRC)
- 2003 Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICMW)

that protect the human rights of all human beings and provide for legally enforceable entitlements, three of them, namely, CEDAW, CRC and ICMW focus specifically on the human rights of women, children and migrants respectively.

While all the above human rights treaties provide for the protection of certain rights of non citizens, the ICMW 1990 is the only that addresses specific protection needs, and at times gives additional guarantees to migrant workers' rendered vulnerable by their absence from their country of origin (ICMC, 2004). It incorporates the rights enshrined in all the six international human rights treaties besides ICMW 1990 and provides for additional rights. Further, it provides for the guarantee of rights not just for migrants, but for the members of their families also. It also provides for the rights of undocumented migrants.

Similarly, CEDAW, in being based on the principle of non-discrimination and in outlining State responsibility in eliminating gender based discrimination, provides the campaign with standards and monitoring tools to confirm the State's adherence to rights based approaches in dealing with foreign domestic workers.

The Declaration on the Elimination of Violence against Women adopted by the UN General Assembly on December 20, 1993 that deals exclusively with the question of violence against women is the first international instrument to express international political consensus that states have human rights obligations to prevent gender-based violence and to redress the harm caused. This is another standard that the cam-

paign can draw on in addressing the problems of violence encountered by foreign domestic workers. Domestic workers work in the families in the host country where a common notion exists that the State is not responsible for acts committed in the private sphere such as the family. Such a division between public and private spheres is an artificial one. Thus the State is responsible for protecting the citizens and migrant workers from domestic violence and sexual harassment that are actions of the individuals who are directly accountable to the State.

The ICESCR recognises 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. General Comment 14 in elaborating on the standards in the ICESCR provides for equal access of undocumented migrants to preventive, curative and palliative health services.

In addition, ILO Conventions 97 and 143 also enshrine standards for the treatment of migrant workers that are legally binding. While ILO Convention 97 addresses labour issues such as collective bargaining, trade union membership and social security issues among others, ILO Convention 143 addresses the rights of irregular migrants. ILO Convention No 29 deals with the issue of forced labour.

The overarching objective of the ILO of 'decent work' is yet another standard that can be used in the campaign. Decent work has been re-phrased as the promotion of opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Decent work is the converging focus of the four strategic objectives, namely rights at work, employment, social protection and social dialogue. Decent work is an organizing concept for the ILO in order to provide an overall framework for action in economic and social development, ILO<sup>8</sup>.

More details on these standards are given in Part 4 of this toolkit.

### 1.7.3 End Result – Protection and Promotion of Human Rights of Foreign Domestic Workers

Rights based approaches have many advantages which can be accrued to the campaign:

- They are based on international recognised and legally guaranteed principles and standards and not on political expediency
- The universality of the standards is all the more relevant in a pluralistic context and is effective in a multi-cultural setting – whether it be between employer and domestic worker or between different ethnic groups of domestic workers
- They address the root causes of inequalities and exploitation
- They promote transparency, equity and participation of marginalised populations
- They not only address ‘need’ but also ‘claims of rights’ of people to ‘freedoms’ and ‘entitlements.’ Policy responses are not driven by benevolence on the part of state but their accountability to people within their jurisdictions and to the international community
- They could facilitate better access to justice for foreign domestic workers who have been abused as redress and remedial mechanisms are based on principles of accountability, justice, good governance, non-discrimination, attention to vulnerable groups and equality.

#### **Problems with operationalising rights based approaches in the context of foreign domestic workers:**

While there are many advantages, there are also challenges to realising justiciability of rights:

- The reluctance of both destination and sending countries to sign the ICMW 1990 in order to institutionalise cheap migrant labour and protect their labour bargaining positions respectively (Piper and Iredale 2003)
- While the ICMW 1990 guarantees equality on the basis of sex, it does not integrate the necessary feminist perspective to considering the specific circumstances that predispose women migrants like domestic workers to gender based injustices and providing the necessary gender sensitive measures to realise redress
- The absence of an optional protocol for the ICMW 1990 that would allow for foreign domestic workers to seek redress and hold states accountable
- The absence of a universally recognised definition of domestic work and of labour standards pertaining to domestic work
- The ‘hidden’ circumstances under which the violation of rights takes place and the consequent difficulties in bringing non state actors to book. Related to this is the fundamental reluctance of states to institute regulatory laws for domestic work arising from an unwillingness to intrude into the private domain of the household.

In spite of the challenges with securing legal protection for foreign domestic workers, the aforesaid human rights standards remain a powerful tool in advocacy with governments because they are based on internationally agreed norms and values.

### **Pursuing Rights Based Strategies – Some Examples for the Campaign**

- Raise awareness on standards and State obligations among all players
- Monitor and report violations of rights of foreign domestic workers
- Lobby and pressure policy makers to initiate, change and amend laws, policies, programmes and budget allocations in favor of foreign domestic workers
- Educate public policy makers about human rights
- Use the judicial system of the country to realise justiciability of rights
- Engage with national and state human rights mechanisms in monitoring violations and seeking redress
- Develop shadow reports on the status of human rights of foreign domestic workers when States submit their periodic reports
- Using the mechanisms of the thematic UN Special Rapporteurs (for example on Migrants, Violence Against Women, Health, Trafficking and so on) and the UN Commission on Human Rights

### **Conclusion**

Today rights based approaches have become a buzz word in the development sector, with governments, UN and international agencies and others also seeking to define and pursue rights based approaches from their standpoint; thus creating a diversity of approaches. It is thus imperative that the perspective and voice of foreign domestic workers becomes the underpinning framework for the discourse on a rights based approach for foreign domestic workers. The campaign on foreign domestic workers can easily facilitate this by integrating the application of human rights standards in its planning and operations.

# 1.8 An Overview of Foreign Domestic Workers Origin and Condition In Asia

## 1.8.1 Colonisation and Globalisation Period

Migration for domestic work is an age-old phenomenon. Historically the demand and supply for domestic work, in different parts of the world depended on the existing social and economic conditions of the time. The practice of keeping foreign domestic workers perhaps has its origins in the age of slavery when Africans were transported to Europe or America as servants.

In Asia, the tradition of keeping domestic servants goes back to the feudal agricultural systems of landlords or zamindars (India) who kept servants to sustain their lavish lifestyle. Similarly the “mui tsai” system came into being in China when rural young women were sold or adopted for their domestic services. Such a system did exist in Malaysia and Hong Kong. The colonial masters also maintained their lifestyle through foreign domestic workers. The managers of plantations in Malaysia or Sri Lanka had maids who were paid by the industry itself. This trend has continued in Asia as the continent continues to develop together with the increasing participation of women in the labour market. Domestic workers were considered important for the maintenance of a luxurious style of living. They are seen as workers but there is little attention given to their health and well being.

However, with globalisation and integration of nations into the global economy, inequities and the gap in growth expanded between people. Debt repayment and structural readjustment programs (SAPs) pushed many of the poor countries to export their labour resource to earn much desired revenue. At the same time, countries that were becoming newly developed found their success in promoting women into the market and to be wage earners in their own right. Society however, still maintained that housework was a woman’s role within a private domain. It had little or no value to the profit oriented capitalistic global economy.

With women working, a vacuum in child care and housework emerged. Governments, of these newly developed or developed countries, instead of providing the services, found the solution in the recruitment of foreign domestic workers. In this process, both the state and the man abdicated their role in childcare. In this equation the domestic worker was not a worker. Protection was left to the individual household. Pushed by poverty and high unemployment, women from countries like the Philippines, Indonesia, Sri Lanka or India opted to work as domestic workers or maids on a contractual basis with very low wages outside of their countries.

## 1.8.2 Context of Migration of Foreign Domestic Workers: Feminisation of Migration

### Trends

The large scale participation of women in migration and their heavy concentration in reproductive work are distinctive features in Asia and globally. In 1970, 20,000 Asian women migrated for work abroad but by 1990 the number was 1.5 million and at the turn of the century, it soared to 3 million. In Indonesia, Sri Lanka and Philippines, women account for 60-80 of yearly deployment flows. This feminisation of migration is expected to increase as there is growing demand for domestic work in the region.

### Numbers

Nowadays 48.6 % of the world's migrants are women representing an increase from 47.2% in 1970<sup>10</sup>. The same report adds that the increase in the proportion of women migrants has not been uniform, with differences in flows from selected countries and flows for certain occupations accounting for the diversity. In Asia the overall share of female migrants declined from 46.6 per cent in 1970 to 43.3 per cent in 2000<sup>11</sup>.

However, migration of women predominated the flows to the Gulf Cooperation Council (GCC) in the last 30 years. By the early 1990s, women constituted 25 per cent of the foreign labour force in Kuwait, 10 per cent in Oman and 9 per cent in Qatar. Women also migrated to countries like Japan, Malaysia, Singapore, Hong Kong and Taiwan in the 1980's to work in the service sector, particularly as domestic workers<sup>12</sup>.

According to the report of the UN Special Rapporteur on Trafficking (2005), in Lebanon, NGOs estimate the total number of domestic migrant workers to be between 120,000 and 200,000 serving an overall population of 4 million. The largest group of domestic workers are Sri Lankan women (80,000-120,000),

The trend of feminisation of migration which initially became evident in the 70's and demonstrated that women were moving between countries independently as economic bread winners of their families reversed the earlier notion that most migrants were men and women migrated as dependents of their male spouses<sup>9</sup>. This trend has also led to emerging typical forms of female migration for domestic work, for the sex industry (either through migration or trafficking) and the organised migration of women for marriage (Commission on Population Development, 2006) .

followed by Filipinas (20,000-25,000) and Ethiopians (20,000-30,000). Others are from India, Madagascar, Bangladesh, Vietnam, Indonesia, Nepal, Burundi, Ghana, Nigeria and Senegal.

This consolidation of the feminisation of migration in the informal sectors, especially in domestic work is corroborated by the experience of sending countries. In the case of the Philippines, seven in ten of all new hires in 2002 were female (Huang 2003).

Indonesia sent increasing numbers of women migrants to the informal sector comprising mainly of domestic work (Indonesia Country Report, 2003). The numbers of women migrants increased from 3,817 in 1974-79 to 972,198 in 1999-2002, while male migrants increased from only 12,235 to 382, 496 in the same period<sup>13</sup>.

In Hong Kong too, there was an increase in the numbers of domestic workers from 70,300 in December 1990 to 240, 180 in September 2002 with numbers steadily increasing even during the economic downturn in 1997 and 1998 to 171,000 and 180,600 respectively (Indonesia Country Report, 2003).

Dr Tasnim Siddiqui, a lecturer in political science at Dhaka University, estimates that some 50,000 women have left Bangladesh in defiance of the ban on women migrants since it was imposed in Bangladesh (IPS, 2003<sup>14</sup>).

### **Decision Making to Migrate**

While the decision to migrate still continues to be a familial affair (Hatmadji 2003 and Kalayaan 2000), there is increasing evidence from grass roots interventions with migrant women that many women are independently making a decision to migrate in order to further their own aspirations and interests.

### **Remittances**

Women migrants are known to be more reliable in sending home remittances. This gender dimension in the issue of remittances is best reflected through the Indonesian example where transfer of money from destinations that receive Indonesian women migrants (like the Middle East and Asia Pacific) is higher than destinations that receive male Indonesian migrant workers (like America and Europe) (Soeprobo 2003 as cited in Hatmadji 2003).

## **1.8.3 Factors Encouraging Migration of Women and Foreign Domestic Workers**

Factors encouraging the migration of women, especially foreign domestic workers may be examined through the lens of the following constituencies:

### **Women Migrants and Foreign Domestic Workers:**

- Motivation to better economic prospects of their families or at times to escape from harsh and abusive family situations at home
- To fulfill a sense of adventure and personal aspirations to go overseas
- As a means to cope with the feminisation of poverty and the exposure of women and girls to chronic poverty<sup>15</sup>
- To perform haj in the case of Indonesian domestic workers going to Saudi Arabia (Hatmadji 2003)

### **State**

- The role of state in promoting female migration is encouraged through globalisation and its attendant features. The dualistic nature of global economic development has created a section of industrially developed, service-oriented economies that are developing structural labour shortages and less industrially developed economies with a surplus labour. This is accompanied by diminished job opportunities for male migrants in the manufacturing and construction sectors over time<sup>16</sup>. On the other hand
- rising female labour participation rates in destination countries which usually enjoys state support in the economic globalisation process has created a demand for low and semi skilled workers in service sectors, especially in domestic work.
- Active 'export promotion' of many sending countries like the Philippines, Sri Lanka, Indonesia, Cambodia and others to service their foreign debt and boost the foreign exchange of their home countries. Sending countries including families and com-

munities, euphemistically call the migrant women the 'unsung heroes' because they are loyal, reliable and profitable.

- The ideology of gender and the consequent subordinate role of women permeate most policies of the modern state. While the

legitimacy of the patriarchal institution of family remains unchanged through economic, socio-cultural and political globalisation, women from a lower class are used to support and perpetuate these institutions in order to prevent a social crisis.

### Society

- The patriarchal system, in which a good female is a docile subservient woman with good domestic skills, has been extended into the sphere of labour and pushed through the promotion of domestic work. For this reason, it has been easy to allow migrant women entry into homes in destination countries in spite of xenophobic attitudes. For the same reason, when situations become depressed, it has also been easy for men and families in many countries to send their women overseas to work<sup>17</sup>
- Need for domestic workers in oil-rich countries arising from the big size of the family and affluent lifestyle due to higher incomes. Possession of amahs and slaves is also a status symbol in these countries.

## 1.8.4 Challenges Faced by Foreign Domestic Workers

Many factors encouraging the migration of foreign domestic workers feed on patriarchal norms and arguments that legitimise her alienation, subordination and isolation by allowing for power relations to be defined between the state, the community and the family.

This is evident in the absence of policies and regulatory laws in most destination countries for domestic work because of not wanting to intrude into the private space of the home. On the other hand existent policies are women and migrant unfriendly. The psycho-social and sexual needs of the foreign domestic worker are ignored through single entry policies that do not allow them to bring their families and partners/spouses, gender and age selectivity which predispose them the harsh risks of working in specific informal and unprotected areas of work, prohibition on marriage in the destination country and deportation on account of pregnancy. At the same time, policies and mechanisms safeguarding their rights and providing

avenues for redress are lacking. The exclusion of domestic workers who are all women from the Memorandum of Understanding (MOU) signed in May 2004 between Malaysia and Indonesia is another example of the lack of regard for women migrant domestic workers.

At the other end of the continuum some states (like Bangladesh and Nepal) ban migration of migrant women. This is also true in case of imposed age limit on migration — women are considered less attractive, and thus less troublesome, after certain age. This exposes women migrants to the risks of being trafficked.

Migrant women worldwide face unique obstacles to their full enjoyment of human rights due to a combination of gender, race, ethnicity, language, immigration and class status factors. The intersection of gender based discrimination and racial discrimination is exacerbated by occupational segregation and its consequent relative economic disadvantages.

The consequent vulnerabilities include:

- Exposure to work in the informal sector, which is highly exploitative in nature
  - Due to the 'hidden' character of domestic employment and employment in other informal sectors of work, abuses are less visible and the employee is highly dependent on the employer. Since law does not recognize domestic workers, the employer often unilaterally establishes rules and conditions of work.
  - Precisely because of the irregular nature of job, women migrants are too frequently victims of violence, in particular of a sexual nature at their place of work
  - Migrant women are also vulnerable to trafficking by criminal networks. Restrictive policies towards migrants, lack of information and opportunities often lead migrants to cross borders irregularly, with the help of criminal networks
  - Restrictive policies towards migrants, lack of information and opportunities often lead migrants to cross borders irregularly, with the help of criminal networks and make them vulnerable to trafficking, smuggling and its consequent abuses
  - Typically, in such societies, the double standard of sexuality is used when women "transgress" into the public space. A study done by Shisuk of Bangladesh on domestic worker returnees in Chagrigan, revealed how the women and their children were ostracized, condemned and stigmatized when they returned home. Many of them, who had suffered from abuse and violence and lost their jobs, could not accept the discrimination. They fell back into the cycle of migration a second time
- Rape, torture, arbitrary execution, deprivation of liberty, forced labour and forced marriages are perpetrated against women who seek to exercise their freedom of movement
  - Poor access to health care and information and absence of safeguards for labour rights, including reproductive and sexual health lead to poor health outcomes and create health vulnerabilities
  - There are no specific provisions regarding the detention of pregnant women, children and other vulnerable groups, which allows for their detention in conditions that often violate their basic human rights and are detrimental to their physical and mental health
  - Most of the time when migrant women are detained, procedural safeguards such as access to interpreters and lawyers, the right to be informed on the grounds for detention and appeal mechanisms, the right to inform consular or embassy representatives are lacking.



## 1.8.5 The Social Impact of Female Migration & Consequences for Foreign Domestic Workers

Female labour migration has got its twin aspects of personal and societal gains and costs for the foreign domestic worker, her family and community. This tension is also between short-term benefits and long-term impacts.

On the up side, the overwhelming evidence from research indicates benefit for the family from the remittances. The money ensures the education of the left behind children, and increases the living standard of the family, for example better or durable housing structures or investments in land or businesses, and provides a resource for dowries. The research work "Hearts Apart – Migration in the Eyes of Filipino Children" identifies migration as a clear factor for the well-being of the children when it comes to the socio-economic status, especially

when the female migrant is able to communicate with children left behind and in that sense keep the families physically and emotionally intact during their absence.<sup>18, 19</sup>

Migration has also been known to increase the autonomy of women in some areas of their lives (Hugo 2002 in UNESCAP 2004). The increasing autonomy is also reflected in migrant women evolving dynamic collective strategies and networks of resistance to counter the gendered exploitation and inequalities in international migration (Yamanaka 2005). There are various good practices of such collective strategies including the collective action taken by domestic workers in Hong Kong during the wage hike and actions of other groups like KALAYAAN in UK.

### Hong Kong – AMCB

In March 2003, the government of Hong Kong approved the proposal to cut the Minimum Allowable Wage (MAW) of Foreign Domestic Helpers (FDH) from HK\$3,670 to HK\$3,270 or by HK\$400. This 11% pay cut was one of the biggest experienced by any worker sector in the community.

The Asian Migrants Coordinating Body comprising Hong Kong based migrant unions and associations from various countries started a strong campaign that is still ongoing with the following demands:

1. Stamp out underpayment of FDWs, and overcharging by recruitment agencies.
2. Use the employers' levy as a 'Protection Fund for FDWs' to compensate FDWs for underpayment and contract violations.
3. Implement a 6% wage hike in 2005, and a 12% hike in 2006.
4. Include the FDWs in the coverage of social security protection schemes, such as Mandatory Provident Fund (MPF).
5. Consult registered FDW trade unions when amending/changing terms and conditions in the standard FDW employment contract.

As part of the campaign AMCB has organised protest marches, dialogues with the government, massive education work among migrant groups and gathering support from local trade unions, community groups and local people.

On the other hand consumerism is supported and expectations increase so that a cycle of migration and remigration is started. Further, the social, emotional, and psychological impacts on the family and the children of such a 'care drain' are uncertain. Successful adaptation of the family to migration depends on their ability to reconfigure gender roles and identities to fill the vacuum left by the absent mother.

Families with an absent father have done well because of the women's ability to fill the vacuum left. As research has shown the transfer of roles from women to men is not that smooth. Often it is more likely that other female family members take up the caregiver role left behind by the migrants.

Children, especially when both parents migrate, are known to be at risk of sexual and physical abuse, malnourishment and neglect. In the case of Sri Lanka, returning mothers complained about incest and child molestation in their family. This is also shown in many cases in Burma, when the children are left behind with neighbours or other family members.

A potential problem arising from male reaction to women becoming the main breadwinner of the family is known to manifest in the form of alcoholism, gambling and misuse of remittances sent home which can deeply influence the well being of the children. Some Indonesian husbands confessed to feelings of failure to

support their families sufficiently, and therefore had to allow their wives to migrate.<sup>20</sup> However, in the study "Filipino Domestic Workers in Singapore: Impacts on Family well-being and Gender Relations" the men interviewed didn't feel their standing in the family was threatened and still regarded themselves as the head of the family.

In Bangladesh, it is said that female migration transformed the economic and social fabric of society and therefore brought society closer to formal Islam.<sup>21</sup>

"While children can often cope with and rationalise away their mothers' absence in the short term, the long-term impacts may be more ambivalent, especially if the absence results in the breakup of the marriage."<sup>22</sup> The emotional pressure on a transnational family is high, for the ones that leave as well as for those left behind. If the separation ends in a divorce it is even more difficult for the children, and often they blame their mothers.

The impact on the left behind children can cause problems: delinquency, dropping out of schools or lower academic performance, emotional estrangement between mother and child, drug addiction, difficulties with social relationships, and other social ills due to the absence of one loved one. Pakistan has already reported these negative effects in the behaviour of the children.<sup>23</sup>

## Conclusion

Given the increasing migration of women for domestic work, the gendered inequalities being created in international migration, the conflicts and contradictions being experienced by women foreign domestic workers in the migration process, the emerging models of resistance of women migrants including domestic workers to oppression, the lack of clarity regarding the potential short and long term economic and social gains, more feminist research with regards

to foreign domestic workers is needed to define issues and problems and develop analysis and collective actions to address the same.

In addition, more support needs to be created to strengthen organising of migrant domestic workers and their undertaking of collective action to facilitate their empowerment and realise their human rights.

# 1.9 Labour

## FOREIGN DOMESTIC WORKERS: LABOUR ISSUE OR NOT

Migrant women leave their homes and their countries to find work in another country. This, they hope, will offer them opportunities to send money back to support their families, to improve their own standard of living and if possible to gain experience and skills. Whether through a specialised recruiting agency or through informal networks, many women migrate to work as domestic workers. They did not travel thousands of miles to voluntarily clean, wash and cook for someone they do not know. And yet, few governments have taken steps to ensure that worker rights of domestic workers are fully protected, few unions have campaigned for effective legislation to protect the labour rights of domestic workers. The law considers the employment of foreign domestic workers as “private”, ‘informal’ and thus outside of the realm of labour laws.

Legally, most countries do not include domestic work in the coverage provided by the National labour laws. Some countries enact specific laws or regulations dealing with domestic work, or have specific sections on domestic work in the labour codes or employment acts. According to Ministerial Regulations issued in 1998 in Thailand, numerous parts of the *Labour Protection Act 1998* do not apply to domestic workers. *The Cambodian Labour Code, 1997* on the other hand, specifies which sections do apply to domestic servants, which include: forced labour (Section 15), protection of workers’ claims (Section 122), wage attachment (Section 131-133), occupational accidents (Section 249) and workers’ representatives exclusion (Section 283). Singapore Employment Act 1968 Section 2, provides a definition of a ‘domestic servant’ but without a Ministerial order the act does not apply to domestic workers.

At different periods in time and different geographical areas, there have been different systems of “employing” someone to do the work in the house. In some cases, it has been a job offered to the poor relative, or to someone in need. It has been seen as act of charity, or she is said to be part of the family. In others, the domestic servant has been bought to perform all work as demanded. These are all very different scenarios, but with one thing in common. In none of the situations is the relationship between the domestic worker and the householder a relationship of employer-employee. It was patron-client, rich uncle-poor niece, owner-slave. Today, the words used to describe ‘domestic workers’ in many languages still reflect these old relationships: “my maid, the girl, etc”

Domestic work has received little attention as “work” because it is perceived as unproductive and economically invisible because

- It takes place in the private realm, not the business realm.
- It takes place within an economic unit – the family – traditionally seen only as a consumption unit. However, such views ignore the role of the family in ensuring social production and reproduction.
- Domestic work does not create value, given that its immediate products are used for direct consumption within the same unit of production, namely, the household. Therefore it is not exchanged directly in the market and its market value is not recognised.
- It is not reflected in the national accounts because it is seen as being outside the monetary economy. However, it fails to account for the economic returns for the sending country, i.e. the country of origin of the domestic worker.

- It is “women’s work”, that is work that is done traditionally by women for the family without pay, “In developed countries women produce just under 40% of official GDP. But if the worth of housework is added (valuing the hours worked at the average wage rates of a home help or a nanny) then women probably produce slightly more than half of total output”<sup>24</sup> To move housework and domestic work into the realm of payment and labour rights, might be seen as threatening the male privileges in the household and male position in society.
- It is under-valued, and in some instances, non-valued work.

An advice brochure to employers of foreign domestic workers in Singapore tries to convince the employers to treat the domestic workers well by including the foreign domestic worker as an indirect contributor to the economy of Singapore. However it falls short of saying the domestic workers are really working, and reassures men that this always was and still is, women’s work:

*More than 160,000 foreign domestic workers work in Singapore. By helping out with household chores and bearing part of the responsibility for caring of our children or elderly sick, these domestic workers often relieve Singaporean women for the workplace and help contribute to Singapore’s economy and the well-being of families.<sup>25</sup>*

Women who do domestic work may be taught skills to do it effectively, but rarely are these skills taught as part of an empowering education experience. In the domestic worker training schools run by the recruiting agencies in Phnom Penh, Cambodia, women are taught to use a vacuum cleaner, a washing machine, to cook Malay, Chinese or Indian food, there are signs posted around the room: “No gain without pain”, “Your employer is always right”, “Smile all the time”, “Don’t wear short skirts”. The message is clear. Women must be obedient, subservient; they must serve their employer not work for him/her.

Due to this attitude towards domestic work and to the lack of labour and legal protection of domestic workers, the standard of working conditions of domestic workers is generally much lower than the standard for all other jobs. It also allows for very exploitative, secretive conditions to exist where women can be held against their will, confined or tortured. It is thus not surprising that women and girls are trafficked into domestic work.

## What is Domestic Work?

There are many different interpretations of what domestic work is. It may include a variety of occupations of a domestic nature, for example: babysitter, butler, childminder, cook, minder of older people or disabled people, housekeeper, handyman, maid, watchperson, or it may be a category of its own.

From a study of laws relating to domestic work in sixty countries<sup>26</sup>, the ILO finds the following commonalities in defining of domestic work in the various national laws:

The workplace is a private home and the work performed has to be “in connection with the work of a private dwelling house” (Malaysia, Employment Act No 265, 1955, Section 2) or is “usually necessary or desirable for the maintenance and enjoyment (of the employers home) and includes ministering to the personal comfort and convenience of the members of the employer’s households” (Philippines Labour Code 1998, Section 141). The work is carried out on behalf of the direct employer, the householder and under his/her supervision. The employer (the householder) must not derive any pecuniary gain from the activity done by the domestic worker. Thus the work should not be in connection with any trade, business or profession carried out by the employer. The work is performed in return for remuneration, either in cash and/or in kind.

The ILO conventions which deal with standards of work and remuneration do not have

any specific definition of domestic workers. Domestic workers are defined as workers who are not members of the family or household, but who are employed “to facilitate the running of domestic life and personal needs” (ILO,

2000:31). Female migrant foreign domestic workers are temporary migrant workers. There are no ILO conventions that deal specifically with temporary migrant workers.

### 1.9.1 Contract Of Employment

A contract of employment is the legal basis of employment, with details of the job description, conditions of employment, outlining the rights and obligations of the employer and employee. Despite its importance, especially in the absence of labour laws, a contract of employment between the employer and domestic worker is only legally required in very few countries. In Hong Kong, a standardised contract of employment for domestic workers was developed and enforced after foreign domestic workers campaigned for better conditions. In Lao PDR it is a legal requirement for local domestic workers, in Vietnam “persons who are employed to assist in households may be hired under oral or written employment contracts” but ‘persons hired to watch over property must in all cases have a written employment contract’. In most other countries, it may just be advised but is not a legal requirement, as in Singapore where The General Guidelines to Employers of foreign domestic workers suggests *“To avoid misunderstanding, it is advisable for the employers to draw up employment agreements/ contracts with their foreign domestic workers from the start of employment. .... The terms should be drawn up based on mutual agreement between the worker and you.”*<sup>27</sup>

In some cases it is not the country of destination but the country of origin which requires a standard employment contract. Some embassies require the contract to be signed before they will renew the foreign domestic workers passport. As a sending country, The Philippines has formulated standard contracts for migrant domestic workers, and they are adopted through bilateral agreements

General standardisation of employment contracts includes the following items:

1. Job Description and Scope of work
2. Nature of work stipulated in the contract (full/part-time, live in/out)
3. Working conditions including: hours of work, rest periods, working days, public holidays, maternity leave, probationary period, breaks, overtime, meals, accommodation, work clothing, transportation, holidays, social security benefits, termination of employment, settlement of disputes, Social security protection
4. Minimum age requirement for domestic workers
5. Level of skills of domestic workers
6. Standard wages of domestic workers and payment of wages
7. Duration of contract

## Complications In The Contract

Beyond the difficulties in changing attitudes to domestic work, there are also practical challenges in drawing up a standardised contract between an employer (householder) and employee (domestic worker). Some of these factors are as follows:

**WORKING HOURS:** Due to the live-in nature of the work, the number of working hours has been defined in many different ways. In some contracts, the number of hours to be worked is defined; in others the number of rest hours is defined. In some the number of hours is per week, in others it can be averaged over several weeks with the agreement of the domestic worker. In addition to hours of planned work, most domestic workers are also expected to be “on-call”. These “on-call” periods also have to be defined in the contract and an agreement made on pay for these periods. Similarly any expectations on night-work need to be spelt out clearly. Once the working hours, rest hours, on-call and night work has been defined, only then will it be possible to approach the issue of over-time work and pay in the contract.

**ANNUAL LEAVE:** The contract needs to specify the number of days and when annual leave can be taken (usually it specifies after how many months of work). Where a domestic worker is live-in and receiving a lesser salary in return for board and lodging, this will have to be re-adjusted for the payment for annual leave to take into account that the domestic worker is not receiving board or lodging during that time.

**PUBLIC HOLIDAYS:** Many employers may wish to have the domestic worker work over a public holiday. An agreement will need to be made about time off in lieu and the rate of overtime paid for working on a public holiday.

**SICK LEAVE:** Because domestic workers are often not covered by the social security laws of the country, it is usually the employer’s responsibility to provide and pay for medical care and paid leave for the domestic worker. Some countries have insurance schemes, others do not. In instances where there is no national health system or system of insurance, the employer may risk spending large amounts of money should the

domestic worker have a serious illness. This is also a serious risk for the domestic worker, since the employer may not want to pay, and prefer to throw the domestic worker out.

**INFECTIOUS DISEASES:** In addition, particular attention may be needed to issues of contagious diseases. What will be the arrangements if someone in the household has a contagious disease? What will be the arrangement if the domestic worker contracts a contagious disease from someone in the household? What arrangements will the family make, lacking the domestic worker and gaining a patient to be looked after?

**MATERNITY LEAVE LAWS:** The contract will need to refer to the national laws where foreign domestic workers are protected by the social security or maternity laws. However in some countries, such as Thailand, the Social Security Act (1990) Section 5 does not afford maternity leave and related benefits to domestic workers. In these cases, an agreement on maternity leave is needed in the contract. Immigration laws on foreign migrants will also have to be consulted.

**LIVE-INS:** Since many domestic workers live on site, there is the issue not only of the standards and privacy of her accommodation, but also her salary in relation to the benefits in kind. Some contracts define the maximum that benefits in kind can represent with the total salary; whereas some contracts define the maximum amount that can be deducted from the salary for the board and lodging.

**SOCIAL/EDUCATIONAL:** The contract may need to include some provisions to give domestic workers the opportunity to attend school, college or vocational training; and to attend social or religious events and union obligations.

## Challenges for Implementing the Law or Enforcing the Contract

The very nature of domestic work being in the realm of the “domestic” immediately creates a dilemma for monitoring the conditions. By law, the labour inspectors have the right to inspect the labour conditions, but also by law, the householder has a right to privacy. Nevertheless, when the householder becomes an employer in his/her household, s/he has already accepted that some amount of privacy will be lost. And while the right to privacy is of course extremely important, it can be broken with consent from the householder for issues of public safety (inspection of gas pipes, electricity etc),

there is therefore little reason why a labour inspector could not request an inspection.

Since domestic workers usually work individually with an employer, it is difficult for domestic workers to take collective action; therefore any legal action is taken individually and is unlikely to make an impact on other employers.

Without recognition as workers, domestic workers cannot form unions, or organise for their rights.

### 1.9.2 Good Or Bad Practise?

#### Medical Examinations

Many countries insist on foreign domestic workers taking a medical examination. These medical examinations may happen in the country of origin, on arrival in the country of destination, every 6 months or one year in the country of destination.

#### BAD PRACTISE

- Giving people a mandatory medical examination is a bad practise. It does not change the person’s health behaviour; it does not promote healthy practises.
- If the medical examination includes life-threatening diseases, such as HIV/AIDS, a mandatory test can have serious consequences for the person being tested. They may be banned from many jobs, they may not be able to get insurance, they may be stigmatised and isolated from their community, they may lose their spouse. They may become seriously depressed and suicidal.
- Refusing work to a healthy HIV positive worker is a discriminatory practice.
- As a tool for immigration, it is a very bad practise. The results of a medical examination should be for a doctor to follow up with the patient for treatment, not for the immigration officials to follow up with deportation.
- As a pretext for testing pregnancy and an excuse for deporting a domestic worker if pregnant.

#### GOOD PRACTISE

- If medical examinations are offered voluntarily, with accurate information (in the language of the migrants) and follow up treatment, they contribute to health prevention and promotion and are a good practise.

## Security Bonds

Singapore and Malaysia have used a system of security bonds. The employer of a domestic worker deposits a set amount of money with the government office. At the end of the domestic workers contract the employer can reclaim his/her money. In December 2005, Thailand also tried to enforce a system of paying a deposit for a migrant worker, but waived the fee following protests from migrant's rights groups and employers.

### BAD PRACTISE

- If the employer makes the domestic worker pay the deposit fee, by deducting from her salary, this further indebts and bonds her to the employer.
- If employers do not have the money to pay, or refuse to pay, it creates an underground employment system of migrants and provides opportunities for 'dark influences', mafia and traffickers.
- If employers do not have the money to pay, or refuse to pay, enterprising brokers may set up a system, thereby becoming more powerful and more in control of the workers.
- If the worker is being abused or exploited by the employer, she will not be allowed to leave, make a complaint by the employer who will fear losing his/her deposit fee.

### GOOD PRACTISE

- If "labour inspectors" inspect the working and living conditions of the domestic workers and in cases of exploitation/abuse use the deposit fee to compensate the domestic worker.
- If labour protection mechanisms are proactive in informing foreign domestic workers of their rights and responding immediately to complaints.
- If a register of employers is kept and abusive employers blacklisted from the register.
- If the deposit fee provides more interaction between employment officials and employers to promote good working conditions.
- If the interest from the deposit fee is used to set up community centres for domestic workers with educational, vocational and recreational facilities.

## Recruitment Fees

### BAD PRACTISE

- Most women moving to work as domestic workers have to pay a high recruitment fee. To pay the fee, the domestic workers either have to sell their security at home, borrow at home or borrow from their employer in the destination country. They will be indebted and maybe controlled by the debtor.
- Extortion: the fees should be no more than the actual costs (including a percentage fee for the agency) but usually they are several times more.
- Bans on foreign domestic workers from changing to other job categories, higher levies imposed on employers of foreign domestic workers than for employers of other kinds of workers, wage cuts imposed on workers to compensate for levies on employers.

### GOOD PRACTISE

- Paying a recruitment agency to do all the paperwork saves numerous trips to the big city and to government offices; some recruiting agencies offer a one stop service.
- An experienced, honest recruiting agency can screen employers and provide some protection to the domestic workers.



### 1.9.3 What Can Be Done?

In many countries, foreign domestic workers, their support groups, and NGOs feel that the first thing which needs to be done is to ensure that domestic workers at least have one paid day off a week. Without this most basic of rights, it is not possible for domestic workers to have a life, and regarding improvement of their working and living conditions, it is not possible for them to mobilise, or even meet. As we have seen in this chapter, domestic work presents many challenges for the law and for contracts of employment. It is therefore essential that domestic workers have time to share on these issues and to develop recommendations from their experiences. The first and immediate step therefore must be for all domestic workers everywhere to be afforded **AT LEAST ONE DAY PAID LEAVE PER WEEK**. This is a campaign everyone must support.

Domestic workers organising should be provided financial and technical support, including para-legal training and legal aid. Where possible organisations of foreign domestic workers and local domestic workers should be introduced, domestic workers should be given the opportunity to network with other workers and also with women's groups.

Domestic workers and foreign domestic workers should be put in the same category as other workers, protected by the basic labour rights afforded by general labour standards to other workers.

Domestic workers and foreign domestic workers should be protected by the social security acts and provided with all social security benefits.

While domestic workers are developing recommendations for employment contracts and the law, legal provisions and actions should tend towards the generalization and standardisation of the terms and conditions of work. This may be best achieved through the promotion of model contracts of employment.<sup>28</sup>

Labour protection officers should be sensitized to the issues of foreign domestic workers, and should be pro-active in offering their services to domestic workers (this could include having interpreters on staff, help-lines in the languages of the workers, phone-in radio programs, offering trainings on standards to domestic workers and employers).

And lastly there needs to be a paradigm shift. Domestic work can no longer be seen as chores, help, aiding, assisting, it must be seen as "decent and productive work, in conditions of freedom, equity, security and human dignity" (ILO Principles of Decent Work). And this depends on the inter-connectedness and mutual commitment of countries around the world. In June 1995, when the Philippines passed the Migrant Workers and Overseas Filipino Act, the humiliation of Flor Contemplacion<sup>29</sup> and countless other Filipina domestic workers was partially erased. The Act shifted the paradigm from the primacy of economic goals in favour of protecting the dignity and human rights of Filipinos. But it has been unachievable. The receiving countries are not mutually committed to the same goals, and will not enter into bilateral agreements and protect the rights of migrant workers.

## **Annex A – PROPOSED GUIDELINES FOR DRAWING UP WRITTEN AGREEMENTS ON EMPLOYMENT TERMS AND CONDITIONS BETWEEN EMPLOYERS AND THEIR FOREIGN DOMESTIC WORKER**

These guidelines are not exhaustive and any party may include other terms and conditions agreeable between the employer and the worker.

The written agreement should state the Names of the Employer and Worker, the Commencement and Expiry Dates of the Employment Contract, Signatures of the Employer and Worker, as well as the following items:

### **A) SALARY**

- Agreed monthly salary reflecting the scope of work and duties assigned
- To pay salary due to the worker each month, no later than the 7 days after the last day of the month
- Payment mode e.g. in cash or via bank account
- Agreed increment and other variable payment based on worker's performance
- Written acknowledgement of all salary payments

### **B) SALARY DEDUCTIONS**

- It is a common practise for the employer to pay, on the worker's behalf, the agency fees that the worker is liable to pay to her employment agency for her replacement. This amount is considered a loan from the employer to the worker and the amount is recovered by the employer from the worker's salary. It is advisable to document clearly such loan agreement and to obtain the worker's consent to the loan payment through her salary deduction as well as the payment schedule.
- Each salary deduction to be acknowledged by worker in writing

### **C) REST DAYS**

- Number of rest days per month to be negotiated
- Subject to agreement, encashment of rest day is possible for worker's rest day

### **D) ANNUAL LEAVE**

- Duration of unpaid leave for home visit to be negotiated
- Subject to agreement, encashment of leave is possible if the worker forgoes home visit

### **E) MEDICAL BENEFITS**

- Employer to cover worker under a Personal Accident Insurance of not less than S\$10,000 with the worker or worker's next-of-kin as the beneficiary of the insurance
- Employer to bear medical expenses incurred by foreign domestic worker and ensure that she has adequate rest during her illness
- Employer to pay for medical expenses incurred by worker for all compulsory medical examinations that are directed by the Controller of Work Permits, including the compulsory six-monthly medical examinations

#### F) DUTIES

- Workload and duties of the workers to be scheduled by the employer
- Employer to ensure that the worker has adequate rest hours at night and adequate breaks during the day

#### G) MAINTENANCE AND WELL-BEING

- Employer to be responsible for and bear the costs of the foreign domestic worker's upkeep and maintenance.
- Employer to provide safe working conditions and acceptable accommodation

#### H) DISPUTE SETTLEMENT

- Employer and worker should first try to resolve any dispute among themselves, failing which the assistance of the agent or the MOM could be obtained

#### I) TERMINATION OF CONTRACT

- Either party to give sufficient notice of a period to be negotiated
- No notice required in cases of misconduct by worker or physical threats by employer

#### J) TRANSFER OF EMPLOYMENT

- Notice to be served by the initiating party
- Levy fees to be borne by employer pending transfer of worker

#### K) REPATRIATION

- Employer to bear costs of worker's repatriation

(This Guide was updated on 06 March 2006)

# 1.10 Arrest, Detention & Deportation

## REALITIES VS. HUMAN RIGHTS STANDARDS

### 1.10.1 Background

Foreign domestic workers experience vulnerability to various forms of abuse, exploitation, gender based violence and poor access to redress given that their place of employment is in the private setting of their employer's household which is beyond the scrutiny of labor and other authorities. The isolation and confinement in the employer's house arising from no/few off days, poor social contact and prohibitions on the freedom of movement exacerbates this overall vulnerability.

Unfortunately, the law and justice systems often not only fail to protect them against the infringement of their rights by third parties but also directly breach their human rights. Discrimination on the basis of their gender and migrant status limits the scope for accessing redress for abuses and exploitation they have endured. The lack of protection arising from the absence of legal labor contracts to guarantee their labor rights and protection is further aggravated by the failure of national labour codes in most countries to include domestic work under its purview. This often leads to the undesirable situation of migrant unfriendly immigration laws that are preoccupied more with

national security than labour welfare taking the lead in determining the outcomes of labor disputes or other grievances like rape. Consequently, it also becomes very easy for them to become an undocumented or 'illegal' migrant. Foreign domestic workers also become highly vulnerable to arrest and detention.

The issue of securing the rights of foreign domestic workers in the event of arrest, detention and deportation in the destination country assumes tremendous importance in the above context. There is growing international concern regarding domestic workers being detained in the different countries in Asia with either little or no communication with their families and/or proper representation in the courts to a fair and just trial.

Workers who face alleged criminal charges or are detained on immigration violations deserve the same human dignity and respect as any national of the country in which they are so employed. Human rights standards and norms dictate that all individuals, regardless of sex, ethnicity or nationality are due the same inherent rights and respect.

## 1.10.2 Factors Giving Rise to Arrest, Detention and Deportation of Foreign Domestic Workers

### 1. WITHHOLDING OF DOCUMENTS BY EMPLOYERS

The withholding of passports and other legal documents by employers renders the domestic workers technically 'illegal' or 'undocumented' when she is unable to produce valid legal documentation when stopped in public places by enforcement authorities seeking to check her legal status; becoming a cause for arrest and detention.

### 2. SPECIFICITY OF WORK PERMITS

Work permits of migrant workers are usually specific to their employers, place of work, geographical region and for a specific period of time. Any violation of the same (i.e. if migrant workers change employers, place of work or geographical region for example) becomes terms for arrest and deportation, even if it is an attempt to escape abuse and exploitation.

### 3. ESCAPE FROM ABUSE

The above situation has special relevance for foreign domestic workers who most often work and live in inadequate conditions, without access to basic services and at risk of physical and sexual abuse. These workers are subject to weak recruitment regulations and limited legal protection. Consequently, they are vulnerable to exploitation by unscrupulous recruitment agents and employers.

Human Rights Watch, in its report on Indonesian domestic workers in Malaysia, has stated that these workers often work grueling 16 to 18 hour days, seven days a week, and earn less than 25 U.S. cents per hour. Some suffer physical or sexual abuse at the hands of their employers. However, given their severe limitations to access a remedy for their grievances they have no recourse but to run away from the abusive situation.

In Malaysia, for example, the Immigration Director-General Datuk Mohd Jamal Kamdi

("Runaway Maids on the Rise," New Straits Times, May 29, 2004), stated that, 17,131 maids left their employers in 2004, compared with 14,400 in 2002, 12,200 in 2001, and 13,857 in 2000, because of difficult employers, inability to bear being confined indoors all the time and the 'boyfriend factor'. This situation is also true in many other destination countries.

Running away however easily renders them 'illegal'. This is because of the bonded nature of their contracts which disallows change of employer. Further, the immigration law which decides on the legal status of the migrant in almost all countries often grants the right to cancel the work permit (and thus making the migrant undocumented) only to the employer. Sigma Huda, UN Special Rapporteur on Trafficking in Persons, Especially Women and Children in the report of her mission to Lebanon in September 2005, states that, 'domestic workers who flee situations of exploitation and abuse are frequently re-victimised. Their cases often fail to be investigated with due diligence by the authorities and the victims are considered to be irregular migrants whose visas lapsed once they fled from exploitative or abusive employers. In many cases these victims end up in a detention centre before being deported, while the perpetrators enjoy impunity.'

### 4. SPECIAL OPERATIONS AND MASS EXPULSIONS

There is also a trend in the Asian region for governments to have 'special operations or mass expulsions' within a specified time frame. These deportations may be cross border deportations wherein deportees are taken to the border and forced to return to their country of origin; or they may be in the context of international migration. Though the nature of the deportation differs between cross border and international migration situations, in both cases, documented evidence reveals that the

conditions of deportation do not allow for proper assessment of cases, access to a fair trial during detention and access to basic amenities like food, sanitation and health services.

Malaysia began its operations called Ops Tegas in March 2005 and mobilised Malaysians through its volunteer corps to be part of the arresting team with enforcement agencies. Harsher penalties are currently imposed under the newly amended Immigration Act, including sentences of up to five years imprisonment and six strokes of the cane.

Amnesty International and Tenaganita, in their memorandum to the Malaysian government on the massive crackdown, in 2004, stated clearly the concerns related to due process investigations, right to be represented and a fair and just trial. Some of these included:

- Risk of *refoulement* of asylum-seekers, refugees and others to their country of origin, where they may be at risk of serious human rights violations, including extrajudicial executions, torture, arbitrary detention, and 'disappearances';
- Lack of guarantees that trials of individuals charged under the Immigration Act will be fully consistent with international standards for fair trials;
- Risk of cruel, inhuman or degrading treatment during arrest, detention and through punishment under the Immigration Act;
- Risk that all those detained, but particularly vulnerable groups, such as women and children, may suffer other human rights violations, including denial of access to adequate health care in detention.

A similar crackdown on undocumented migrants also began in South Korea in 2003 as a lead up to the new migrant worker management system initiated by the South Korean government, entitled the Employment Permit System (EPS) which took effect in 2004. According to the new system, migrant workers can work in South Korea for only three years and have no right to change their work place; thus giving the employer complete control over

the wages and working conditions of migrant workers and binding the workers to the employer like slaves. This policy has resulted in the tragic deaths of nine migrant workers who chose death instead of returning to their home countries. Some migrant workers even committed suicide. Still, more than 110,000 migrants remain as undocumented workers. Among them are many domestic workers especially from Vietnam.

In Thailand, in 2004, such a form of mass arrests of undocumented workers, created a pervasive climate of fear; indiscriminate arrests, regardless of migrant's status; deportation of particularly vulnerable groups, including women and young children; and collective expulsions. Many Burmese migrants were forced to cross the border and face danger and uncertainty in the forests as well as towns. On both sides of the border, people were in hiding without food, shelter, protection, access to medical services or other facilities. Many Burmese domestic workers faced the same risk.

## 5. CRIMINAL OFFENCES

There have been various media reports, in recent years, in South East Asia and the Middle East of foreign domestic workers being charged for acts of abuse and use of violence on members of the families of employers, and in some rare cases of child abuse. Interventions with these migrant domestic workers often indicate that in most cases they tend to commit these offences after enduring continuous abuse from employers. The loneliness, isolation and demeaning conditions of work decrease the psychological capacity of the woman to cope with the ongoing harsh and abusive situation. On an extreme level, some lose control and react violently. But quite often, due to lack of corroborative evidence or no representation in court, the domestic worker is handed out a harsh sentence.

In some cases, the domestic worker, in order to protect herself from further abuse or rape, uses violence and murders the employer.

### 1.10.3 Conditions Of Arrest And Detention, Trial And Deportation

The following problems as documented by NGOs in various countries sum up the treatment that is usually meted out to foreign domestic workers who are experiencing or have experienced arrest, detention, trial and deportation.

<p>1. Often, especially in the Middle East, the women are not aware of the reason for their arrest. They are not made aware of their rights at the time of arrest.</p>	<p>4. Risk of physical and sexual abuse during detention. The consequence of the same is that they often find themselves coerced to admit to offences they may not have even committed.</p>
<p>2. Many domestic workers seeking to lodge police reports or take similar action against perpetrators who have raped or abused them face the following situations:</p> <p>2.1. Police and/or Immigration refuse to accept complaints</p> <p>2.2. They are further criminalised when false allegations are made against them in return</p> <p>2.3. They are returned to their employers and the abusive situation by the enforcement authorities</p>	<p>5. Detention conditions are appalling and inhuman<sup>30, 31</sup>.</p> <p>6. Access to a fair trial is denied when access to services, to legal representation, information and embassy support and interpretation facilities are not provided.</p>
<p>3. During interrogation they are not provided with female police officers, interpretation facilities, legal representation and prompt consular support.</p>	<p>7. Deportations including mass deportations especially after prolonged periods of detention almost always contravene international standards in that adequate food, clean water, sanitation, health care facilities are not provided. This often leads to infections and other health problems which can be easily avoided. In extreme cases it has lead to death.</p>

#### 1.10.4 Middle East

In a recent report released by Amnesty International, women are said to constitute 20%-40% of the migrant population in the GCC region which is also said to be a more accurate reflection of economic activity of women in general in the Gulf region.<sup>32</sup>

Most countries of the Middle East and North Africa maintain a dual system of secular courts and religious courts, in which the religious courts mainly regulate marriage and inheritance. Saudi Arabia, Sudan, Bahrain and Iran maintain religious courts for all aspects of jurisprudence. Sharia or the Arabic word for Islamic law, governs both public and private lives of those living within the state.

While the constitutions of Qatar, Bahrain and Oman have equality provisions for men and women, the constitutions of UAE and Kuwait are vague.

Thus, the gender based discrimination faced by women in society is exacerbated by judicial systems that do not have provisions for bringing about gender equity through the legal system in the country. In fact, patriarchal values, perceptions and laws embedded in institutions often can have disempowering consequences for women, especially for women entering the criminal judicial system. Amnesty International reports that crimes of 'immoral conduct' seem to be invoked more in the case of women because of greater restrictions on women's behaviour while foreign domestic workers are at considerable risk of experiencing discriminatory laws and practices when they try to exercise their rights. This is aside from the fact that domestic work, which almost wholly employs women migrant workers, is not included in the national labour codes and legislation of almost all the Middle East countries thus denying them another level of protection from workplace abuses which occur in the private domain of the employer.

Nasiroh, a young Indonesian woman, went to Saudi in 1993 as a domestic worker. She was sexually abused by her employer, falsely accused of his murder, then tortured and sexually abused by police officers during two years of incommunicado detention. Officials from her embassy did not visit her once. Her trial was so cursory that she did not know she had been convicted and still does not know for what "crime" she was imprisoned for five years.

*Amnesty International, Saudi Arabia, Gross Human Rights Abuses Against Women, 2000.*

In countries like Saudi Arabia, while the law recognises the principle of independence of the judiciary, the judiciary is subordinate to the executive authority of the Ministers of Justice and Interior. The Ministry of Interior is further responsible for the whole process of arrest and detention. The judiciary does not have a supervisory role in the process.<sup>33</sup>

There have been numerous cases of domestic workers from Philippines, Indonesia or Sri Lanka incarcerated in jails for long time, often for crimes they have not committed or offences which are not revealed and/or explained to them. Solidaritas Perempuan is one of the NGOs that has documented and handled hundreds of cases of deaths, including mysterious deaths, punishment by stoning, death sentences and sexual violence of Indonesian domestic workers in the Middle East<sup>34</sup>. Such experiences have also been documented by international organisations like Amnesty International and other migrants and migrant support groups.



## Some Subjects of Concern of the Committee against Torture regarding Saudi Arabia

- Domestic law does not explicitly prohibit torture even though the Sharia law prohibits the same
- The different regimes applicable, in law and in practice, to nationals and foreigners in relation to their legal rights to be free from, and their ability to complain of, conduct in violation of the Convention.
- Allegations of prolonged pre-trial detention of some individuals beyond the statutory limits prescribed by law, denial, at times for extended periods, of consular access to detained foreigners, the limited degree of judicial supervision of pre-trial detention;
- incommunicado detention of detained persons, at times for extended periods, particularly during pre-trial investigations; lack of access to external legal advice and medical assistance, as well as to family members
- Cases of deportation of foreigners in breach of the obligations imposed by article 3 of the Convention
- The vaguely defined powers and jurisdiction of the Mutaw'een officials to pursue, inter alia, violations of the moral code and to proscribe conduct they identify as not conducive to public morality and safety.

*Conclusions and recommendations of the Committee against Torture: Saudi Arabia. 12/06/2002.*

Some of the key concerns specific to the Middle East as experienced by foreign domestic workers in their brush with the judicial system there are as follows:

1. The use of confessions by arresting officers and uncorroborated confession evidence to pursue convictions for offences punishable even by death and flogging
2. Survivors of rape find it difficult to pursue legal redress because of the requirement for them to produce four witnesses to the rape event in order to get a conviction. There is also a fear that the law may be used against them when a failed attempt to get a rape conviction may be used by the perpetrators to take the rape survivors to court for the crime of 'qadhf' or of 'making slanderous accusations' which is usually punishable by lashes
3. The secrecy in which the criminal justice system operates denies one the right to a free and public trial
4. Judicial punishment of flogging and death sentences violates the right to freedom from torture and the right to life guaranteed by the ICCPR (Art 6 & 7).

### 1.10.5 Conclusion

As detainees and prisoners are particularly vulnerable to exploitation, because they are under the direct control of the State, international norms dictate that arrest and detention are only permissible if carried out in accordance with the law. Furthermore, it must neither be arbitrary nor conducted by unauthorised personnel. The procedures of arrest and detention must at all times conform to international standards. Any person arrested or detained must be at once informed of the reason for such action and of their inherent rights and should be able to challenge the legality of such detention. Furthermore, detainees must be provided with information on how to avail of their rights, such as by exercising the right to counsel and confidential communications with such legal representative. If language issues arise in the host country, the detained individual must also be provided a competent interpreter to facilitate proceedings. Embassies of the country of the detainee should be notified of the arrest and detention. Foreign nationals must also be informed of the essential right to communicate with their families and/or the concerned Embassy, Consulate or civil society organisations and must enjoy equal protection before the law.

# 1.11 Domestic Workers & Health

The situation of our physical and psychosocial health of foreign domestic workers is very fragile and unstable.....As live-in foreign domestic workers, we are forced to work long hours (from 12 to 20 hours) and 24 hours on call so we lack rest and there is not enough time to recover our energy. That directly impacts on our physical health. With regard to the psychosocial health, we experience a variety of emotions from being absent-minded/ forgetful to depression and homesickness. Many of us experience back pain, irregular menstruation, insomnia and other problems. It is worse for those who are victims of physical and sexual abuses.

*Statement on Condition of Migrant Domestic Workers in Hong Kong by Eni Lestari Andayan, Spokesperson of Asian Migrants Coordinating Board (ACMB), 10th International Women's Health Conference, New Delhi 21-25 September 2005*

Foreign domestic workers share the same burden of vulnerabilities and stigmatisation like other migrants in terms of health. They are denied the conditions necessary for well-being and health promotion. This results in chronic as

well as acute health problems. It also predisposes them to emerging infections like HIV and SARS though they most often bear the brunt of labels such as 'carriers of disease', in both home and destination countries.

## 1.11.1 What Are The Factors That Create Health Vulnerabilities For Foreign Domestic Workers?

### Work Conditions

Long work hours, endless types and number of tasks (from child care to cleaning to cooking to gardening and care of pets and elderly), no/few off days, poor nutrition, isolation and confinement in the employer's house create psychosocial pressures leading to stress and exposes her to various types of general health, occupational health and mental health problems. Injuries and even death arising from cleaning of high rise windows or drying laundry or because of suicide attempts especially in countries like Singapore have drawn a lot of attention in recent times. In cases of suicide in Singapore, there is no compensation but rather possible criminal prosecution.<sup>35</sup>

### Social Discrimination

Social discrimination is a function of social inequality. Social discrimination impacts health outcomes through exposure to abuse (verbal, physical, mental and sexual), decreased social opportunities and hindered access to health care and other social support services.

This is true in the case of of foreign domestic workers, whose subordinate position in society arising because their gender and their employment in the unvalued and low paid sphere of domestic work is compounded by the racial discrimination and related intolerance they experience because of their migrant status.

The typical situations of abuse encountered by domestic workers include,

- verbal humiliation and constant scolding over unfinished work
- control, limitation and devaluing arrangements on their food consumption, requiring them to wash their clothes separately from the employers', bad quality sleeping arrangements, threats to use violence or to report an undocumented worker to the immigration service<sup>36</sup>.
- Restrictions with regards to freedom of movement and of communication with the outside world
- physical assault, sexual harassment and rape have a tremendous effect on mental health, as well as on physical health.

### **Access To Health Care**

Different health financing systems exist in different destination countries for migrants. In some countries, the government subsidises health care costs totally. In other countries, private medical insurance systems paid for by employers and/or migrants provide coverage. There are also countries where government subsidy or medical insurance provides only partial coverage. These medical benefits are only applicable for documented migrants.

In the absence of medical insurance, there is a tendency for foreign domestic workers to go for the cheaper self-medication option owing to high costs of health care. This is also because they tend to want to maximise their remittances by saving on health costs, which is a low priority to them.

However, the more critical external factors which are known to impede the access of foreign domestic workers to health care are:

- Poor access to timely and correct information and in a language that they can comprehend. This can be evidenced in the lack of information put out for migrants regarding the Avian influenza even though governments and international agencies are making various efforts to deal with this emerging disease
- Dependence on their employers for meeting their health needs. While the employer is responsible for the domestic worker's health and access to health services, most employers however do not provide medical insurance entitlements. There is no law requiring employers to take responsibility for the worker's medical costs. Moreover it is the experience of many foreign domestic workers that there is also a tendency for employers to provide medication to the foreign domestic worker, which sometimes results in delayed diagnosis and treatment and calls into question the issue of 'choice' that the foreign domestic worker is entitled to exercise in terms of her health care options. Further, it is also known that employers often do not allow them access to public health information even if the state provides the same<sup>37,38</sup>
- Undocumented status and avoidance of official health care for fear of deportation
- Discriminatory attitudes of health care workers.

## Policy And Legislative Environment

The above mentioned vulnerabilities are a consequence in part due to the absence of enabling policies and legislation and due to disabling policies which not only fail to protect their rights but also infringe directly on their various human rights.

### POLICIES/LAWS THAT ARE ABSENT:

While the laws given below are not directly related to health, in creating a disabling environment and undermining legal protection to domestic workers they have a negative health impact, albeit indirectly.

- Lack of recognition of domestic work leading to lack of legal protection for domestic work through its exclusion in national labour laws
- Absence of national policy on migration
- Lack of bilateral and multilateral agreements
- Lack of regulatory laws and mechanisms with regards to recruiting agents.

### EXISTING POLICIES THAT ARE UNFRIENDLY:

- Health policies where differential pricing requires migrants to pay prohibitive prices
- Prohibition to bring along their spouse / partner to the destination country (single entry policy)
- Prohibition to marry which creates risks when foreign domestic workers are forced to choose unsafe means to enjoy relationships that meet their normal human needs for warmth, intimacy and belonging.
- Mandatory testing, notification and deportation for easily treatable health problems which do not take away the productive capacities of the domestic worker like STIs, TB, HIV etc.

## 1.11.2 Impact On Health

Little has been published on foreign domestic workers and their health. Often, domestic workers are reluctant to participate in research out of fear for their legal status, and/or because they need the approval of their bosses which they often do not get, or because of an absolute lack of time. Moreover, it is difficult to identify the population of foreign domestic workers since the nature of their work is hidden. Therefore in this section an overall description of the signalled health problems of domestic workers will be presented based on a review of existing literature on the health of domestic workers globally<sup>39</sup>.

### GENERAL HEALTH PROBLEMS

- Health problems like headaches, gastrointestinal disorders like irritable bowel syndrome and sleep problems, which at times are known to have psychological causes related to stress

- Weight change arising from control of quantum and quality of food intake by the employer, unavailability of culturally acceptable food and inadequate food consumption in relation to work load

### OCCUPATIONAL HEALTH

The nature of the work carried out by the domestic workers brings about specific health risks and hazards.

Predominant Musculoskeletal problems mentioned are:

- lower backache
- arm-shoulder-neck pain and
- the risk of injuries from on-the-job falls or burns
- Repetitive Strain Injury

Domestic work requires frequent, rapid and combined posture changes like twisting and bending as well as forced and uncomfortable

positions for example during furniture cleaning. There is no category of women workers who manifest a higher prevalence of chronic shoulder pain than domestic workers. Further, cleaning is one of the activities with the highest index of neck and back pain (ILO<sup>40</sup>).

The use of strong cleaning liquids may provoke allergies and skin problems. In fact, cleaning personnel in general have a high amount of skin problems like dermatitis, eczema and mycosis mainly of the hands (ILO<sup>41</sup>). Other important symptoms caused by cleaning chemicals include irritation and allergy of the eyes, nose, throat and airways, including asthma, and headache.

What is more, many domestic workers are not entitled to worker's compensations, or they do not know they have a right to it.

#### MENTAL HEALTH

The mental health of migrants is said to be dependent on the following factors<sup>42</sup>:

- Factors relating to the society of origin
- Factors relating to the migration itself
- Factors operating in the society of resettlement

The challenge to mental health is biggest during the first few months after arrival in the host country. This is the phase of initial adaptation to a completely new situation. Both a low or very high degree of education is identified as risk factors for mental health problems among female migrants. The loss of status as a result of downward mobility is particularly difficult to cope with and leads to loss of self-esteem and to feelings of depression.

Social isolation is also considered to be an important contributing factor to psychological problems in migrants<sup>43</sup>.

The most common psychiatric diagnoses assigned to foreign housemaids comprise of,

- acute stress reaction and
- adjustment disorder, followed by
- manic episode,
- depressive episode and
- acute and transient psychotic episode.

In a study with Filipina domestic workers in the Klang Valley in Malaysia (Pereira 2000), while 55 out of the 60 domestic workers interviewed reported an initial feeling of experienced loneliness upon arrival in Malaysia, 53 out of 60 of them reported to experiencing loneliness from time to time since the time of arrival. They stated that keeping in touch with friends, relatives and family at home and in the destination country through phone and letters, listening to music and radio, and support from church groups they belonged to helped them to overcome their feelings of loneliness.

An increasing number of female migrants are mothers who leave their children behind. Without a doubt, this has emotional consequences for both the mother and the children in the home country.

On the other hand, building capacity and strengths by 'improving modes of communication, developing familiarity with the support system, tapping the potential of the new environment for offering understanding and help, and developing and strengthening of emotional ties are integral parts of the process' (Pereira, 2000) of building one's psycho-social resources for mental well-being in the migration process.

Further, if one translated the 3 factors to prevent depression among foreign domestic workers, this would include, creating an enabling environment that provides stability, building the capacity of foreign domestic workers to exercise choice, and supporting their ability to adapt<sup>44</sup>.

## SEXUAL AND REPRODUCTIVE HEALTH & HIV

Most female foreign domestic workers are in the prime of their reproductive age (18-45 years) and as such share specific needs and health risks. The health risks related to reproductive health issues like unplanned pregnancies, abortions and contraception among women this age is considerable for various reasons.

Many destination countries deny the entry of spouses or children, because of ill adapted migration policies that consider migrants simply as a disposable source of labour. Family reunification is only allowed in a few countries. Many of these countries do not recognise the psychosocial and sexual needs of migrant women and in fact ostracize and criminalise them when they try to meet these needs.

Owing to language barriers and poor information delivery methods, migrant women may also have less access to preventive messages

and to appropriate contraception that protects them against STI's and HIV. It is known, STIs make women more vulnerable to contracting HIV, which is why it is even more important to quickly treat a suspected STI.

In many countries abortion is illegal and pregnancy of migrant workers is terms for deportation leaving them with no other option than to resort to unsafe clandestine abortions which create other sexual and reproductive health complications. If pregnancies are not artificially ended, then medical attendance is usually very late in pregnancy or else not at all, if workers are undocumented and are thus not entitled to health care.

An annual physical exam including pelvic exam and PAP smears and periodic screening for cervical cancer in the migrant female community is recommended for their sexual and reproductive health and wellbeing.

### 1.11.3 Emerging Diseases

Foreign domestic workers bear the brunt of the fallout of emerging diseases through stigmatization in both home and destination countries. This was evidenced during the SARS epidemic in 2003. Employers used this as a reason to restrict their movement even on their off days for fear 'over their catching and spreading the disease to the home' which in turn affected

organising activities of migrants. The small number of migrants, who contracted the infection, lost their employment. Countries like the Philippines which had some cases of SARS, discouraged their overseas workers from returning home and there were cases of extreme ostracism and discrimination for those who returned home infected<sup>45</sup>.

### 1.11.4 Women's Health Issues

Often women's health issues are narrowly defined in relation to sexual and reproductive health alone. However, general health problems which affect both men and women are known to occur at different times in the life cycles of men and women and are known to have different types of impact on men and

women because of economic, socio-cultural, psychological and biological factors. Owing to this, a gender sensitive understanding of women's health issues is necessary. Given below are some tests and screening that are recommended for foreign domestic workers given their gender-based health vulnerabilities.

#### Preventive Health TESTS Women<sup>46, 47</sup>

##### FOR WOMEN OF ALL AGES-ANNUAL PHYSICAL EXAM:

- blood pressure measurement
- a clinical breast examination
- an internal or 'pelvic exam' including a Pap test and certain tests for STIs

##### FOR THOSE CONSIDERING PREGNANCY OR ARE PREGNANT

- find out blood type, vaccination history (especially for rubella), blood count
- screening for diabetes
- screening for cervical infection called Strep B

##### AT 35 YEARS

- Mammogram to detect breast cancer
- Bone density test to detect osteoporosis
- An electrocardiogram to detect cardio-vascular (heart) problems
- An occult stool test to detect bleeding in the gastro-intestinal tract (stomach ulcers)

##### FOR PRE-MENOPAUSAL WOMEN

- Cholesterol screening
- Regular mammograms

##### FOR POST MENOPAUSAL WOMEN

- Annual physical exams with pelvic exam and pap tests
- Mammograms
- Bone density testing
- Electrocardiograms
- Cholesterol screening



### 1.11.5 Right To Health Of Women Migrant Domestic Workers – Who Is Responsible?

Women's 'right to the enjoyment of the highest attainable standard of physical and mental health' is affirmed by both ICESCR (Art 12) and CEDAW (Art 10-12). The relevance and importance of the right to health for women is also underscored by various other documents, one of them being the Beijing Platform for Action (1995).

Within a right to health perspective, the State bears the final responsibility for the respect, protection and fulfilment<sup>48</sup> of the right to health.

The immediate obligations (Asher 2004) of the State with regards to the Right to Health include:

- Core obligations (outlined below)
- Preventing, avoiding and halting discrimination
- Refraining from taking any measures that infringe upon (or interfere with) directly or indirectly the enjoyment of the right to health
- Refraining from taking retrogressive measures that are incompatible with the enjoyment of the right to health.

The 'core obligations' of the State with regards to the right to health and what it needs to provide at the minimum are<sup>49</sup>:

- (a) To ensure the right of access to health facilities, goods and services on a non discriminatory basis, especially for vulnerable or marginalised groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- (e) To ensure equitable distribution of all health facilities, goods and services;
- (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population.

Obligations of comparable priority include<sup>50</sup>:

- (a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child healthcare;
- (b) To provide immunisation against the major infectious diseases occurring in the community;
- (c) To take measures to prevent, treat and control epidemic and endemic diseases;
- (d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;
- (e) To provide appropriate training for health personnel, including education on health and human rights.

### 1.11.6 Actions To Promote The Health Of Foreign Domestic Workers

PLAYER	ACTIONS
State (government departments & embassies)	<ul style="list-style-type: none"> <li>• Abolish regressive laws and policies like mandatory testing, notification and deportation for infectious diseases including HIV</li> <li>• Develop coherent and consistent migration policies in line with international standards of human &amp; migrant rights</li> <li>• Develop gender sensitive laws and policies that protect the labour, health and human rights of foreign domestic workers</li> <li>• Ensure that bilateral and multilateral agreements protect the rights of foreign domestic workers</li> <li>• Establish laws and mechanism to recognise and protect domestic work</li> <li>• Institute policies and mechanisms to promote access to health services and information</li> <li>• Amend policy to allow for marriage and family reunification</li> <li>• Regulate recruiting agents</li> <li>• Develop support services for foreign domestic workers and/or fund NGOs providing such services</li> <li>• Develop policies and mechanisms that deliver timely and appropriate pre-departure, post arrival and reintegration related information to foreign domestic workers which includes protection of health, assertiveness skills and survival skills</li> <li>• Ratify international conventions especially, ICCPR, ICESCR, CERD, CEDAW, ICMW</li> <li>• Institute standardised contracts that incorporate just and decent working conditions<sup>51</sup></li> </ul>
Recruiting Agents	<ul style="list-style-type: none"> <li>• Provide timely and appropriate pre-departure, post arrival and reintegration related information to foreign domestic workers which includes protection of health</li> </ul>
Employers	<ul style="list-style-type: none"> <li>• Respect the rights of the foreign domestic workers</li> <li>• Provide freedom and just and decent work conditions for foreign domestic workers</li> <li>• Provide medical benefits including maternity leave and benefits</li> </ul>
International Bodies	<ul style="list-style-type: none"> <li>• Development of standards of protection of health for foreign domestic workers</li> <li>• Monitoring of right to health of foreign domestic workers</li> </ul>
Foreign Domestic Workers	<ul style="list-style-type: none"> <li>• Know your body</li> <li>• Know your human rights, especially the right to health and state obligations to respect, protect and promote your health</li> <li>• Develop assertiveness skills and survival skills</li> <li>• Know how HIV, STIs are transmitted and how to practise safe sex</li> <li>• Join associations/movements/unions of workers/foreign domestic workers for support and solidarity</li> <li>• Monitor actions of state and non state action in the protection of your health rights</li> </ul>
NGO's & Trade Unions	<ul style="list-style-type: none"> <li>• Promote human rights education including right to health, HIV/STIs etc to foreign domestic workers</li> <li>• Provide support services to foreign foreign domestic workers</li> <li>• Lobby and advocate to governments to develop humane, just and rights based policies that protect and promote health of foreign domestic workers</li> <li>• Monitor right to health and other rights of foreign domestic workers including development of shadow reports</li> </ul>

# 1.12 Sexual Harassment & Other Forms Of Violence

This section aims to define the various forms of sexual harassment and other forms of violence that foreign domestic workers may experience. While women's experience of particular forms of violence may differ from country to country, foreign domestic workers experience violence in all countries. For this reason, this section does not focus on any country in particular, but rather tries to provide the reader with an awareness about violence and about national and international instruments and methods which can be used to develop strategies to overcome the violence and abuse that women face.

## **What is sexual harassment?**

- Sexual assault
- Rape
- Physical harassment: including unwanted kissing, patting, pinching or touching in a sexual manner
- Verbal harassment such as unwelcome comments about a person's appearance, private life or body. Insults or put-downs based on a person's sex
- Gestural harassment; sexually suggestive gestures such as winks, nods, gestures with hands, legs or fingers, licking of lips
- Written or graphic harassment: display of pornographic materials, harassment via letters, email and other modes of communication
- Emotional harassment: behaviour which isolates, is discriminatory towards or excludes a person on the ground of his or her sex

## **What does sexual harassment mean in the context of domestic work?**

Usually sexual harassment at work is defined as harassment that takes place at work or on the way to and from work. However, in the case of domestic workers, the workplace is not confined to the employer's home. Every trip made with or for the employer family to the market or school or wherever is on the job.

## **What can be the effects of sexual harassment?**

- Physical symptoms...nausea, loss of appetite, anger, fear, headaches, fatigue and anxiety
- Emotional and physiological effects: feelings of humiliation, anger, powerlessness, depression and loss of motivation
- Suicide
- Trauma of sexual assault
- Unplanned pregnancies,
- STDs and HIV transmission

## **What is the extent of violence against foreign domestic workers?**

In the last few years, many organisations have made attempts to document the violence against women migrants, and in particular against foreign domestic workers. The reports have covered diverse receiving countries and nationalities, but they all tell a similar story - that of women risking violence and threats of violence throughout the migration cycle. Domestic workers are often more vulnerable to sexual harassment because of the isolated nature of their work and the high degree of subordination between the worker and the employer. In addition, domestic services also tend to be excluded from protective labour legislation. Where regulations exist for foreign domestic workers, they tend to restrict rather than protect them.

## 1.12.1 Migration, Domestic Work and Violence

### Prior to Migration

Some women choose to migrate to free themselves from a situation of violence at home. Women may leave a situation of domestic violence as the only solution to protecting her own safety and in some cases the safety of her children. This is particularly the case in countries where there are no laws or services available for women to protect themselves and their children from abuse in the family. Other women leave their homes to find safety from state violence. This may be in the form of civil war, armed conflicts, ethnic cleansing, or restrictive policies which criminalise women who think and behave freely or differently.

### Recruitment

In some countries women who have signed up for work overseas are brought to the capital city or major port and kept in a holding centre until the broker is ready to send them on to the place of work. These holding centres are often overcrowded, unhygienic and “guarded” by abusive men. Where there are no legal routes of migration or where women have restricted access to information and services, they have to use informal brokers to arrange their travel and find work.

### The Journey

Women who choose to migrate may face violence along the route. Women are vulnerable at airports where immigration authorities may ridicule or harass them. Women who migrate on foot cross-border are vulnerable to abuse at the various cross-border check points, including police, soldiers, local militia, rebels and immigration. Migrants being smuggled into a country in the back of trucks are at risk of suffocation or road accidents.

### At Place of Work:

Reports from many different countries have recorded similar abuses of foreign domestic workers that it must be considered systemic.

Foreign domestic workers are in a particular situation of vulnerability. They are dependent on the employer for their safety and security. If the employer does not ensure this safety and security they may suffer abuse at the hands of the employer, the employer’s family or friends. Domestic workers work in isolation without community support and friendship. The most severe forms of abuse include:

- Forced confinement
- Sexual harassment and other forms of violence
- Food deprivation
- Forced Control of Reproduction

In most countries foreign domestic workers who are experiencing abusive situations have great difficulties trying to get any response. In many ways, the response is similar to responses to domestic violence. Police and other authorities are reluctant to investigate a private home. In cases of domestic violence, police will say that they do not interfere in domestic affairs, in cases of violence against domestic workers; police will say they must respect the privacy of the employer. The employer is usually considered a “respectable” member of society and society is more likely to listen to the employer than to a temporary, foreign woman.

### Arrest, Detention, Deportation and Return

Foreign domestic workers are vulnerable to sexual assault and violence during arrest, detention and deportation. Unlike other workers, who may be arrested as a group, domestic workers are more likely to be arrested as individuals by male law enforcers.

In some countries, where workers left the country illegally they are liable to arrest on return to their home country. If women left their community at home to escape abuse, they may be liable to community punishment on return. Women are also subject to community censures on their return.

## 1.12.2 International Conventions on Sexual Harassment And Other Forms Of Violence Against Women

Sexual harassment has been highlighted and condemned by international bodies and is considered by some of these bodies to be covered by existing international instruments on human rights, sex-based discrimination, violence against women and occupational health and safety. The vulnerability of migrant workers to violence of all kinds has been recognised at the international level with the Special Rapporteur on the Human Rights of Migrants reporting specifically on violence against women migrant workers (E/CN.4/2002/94 and Add.1) and many reports on the violence of foreign domestic workers (Human Rights Watch, Amnesty International)

The only ILO convention that explicitly prohibits sexual harassment is the Indigenous and Tribal People's Convention, 1989 (No 169), Article 20 states "that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment". The Discrimination (Employment and Occupation) Convention, 1958 (No.111) covers protection against gender-based violence or exploitation in the sphere of work.

The General Recommendation of the CEDAW committee in 1992 called on States to take measures to protect women from sexual harassment, which was recognized as a form of violence. Sexual harassment is defined as "such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may

constitute a health and safety problem."

The UN Declaration on Violence Against Women 1993 acknowledges "Violence against women shall be understood to encompass, but is not limited to physical, sexual and psychological violence....including sexual harassment and intimidation at work" (Article 2)

In the Asia Pacific region, in 2001, the International Confederation of Free Trade unions Asia Pacific Regional Office (ICFTU-APRO) adopted a Resolution on Action Against Work-related Sexual Harassment calling on ILO member states to adopt a binding international labour instrument to explicitly prohibit sexual harassment.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965 should also be relevant to the situation of foreign domestic workers as their situation of being foreigners leaves them vulnerable to racism, violence and racial discrimination. Particular areas of relevance to domestic workers is the protection of equal treatment before tribunals, right to security of person and protection against violence or bodily harm; the right to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, to just and favourable remuneration; and the right to housing, public health, medical care, social security and social services. However, ICERD allows States to make "distinctions, exclusions, restrictions or preferences" (Article 1.2) between citizens and non-citizens.

### 1.12.3 National Laws

Domestic work is often not protected by national labour laws however provisions in other laws can be used to protect domestic workers from violence.

Occupational health safety laws often provide general provisions for the protection for safe and healthy work environments and where such acts establish clearly the duties of the employers to secure the safety, health and welfare of persons at work, it could be understood to include safety from sexual harassment.

Criminal law can be used to address sexual harassment. Some countries have crimes against "offending women's modesty or dignity" or sexual harassment is criminalised through other offences such as hooliganism, obscenity or criminal intimidation. However, using the criminal law involves court cases which take time, which many workers can ill afford, specially those under precarious contracts such as domestic workers.

#### **Tort Law or Civil Code Law**

Domestic workers can sue in cases of personal injury, usually in the form of damages.

#### **Policies on Domestic Work**

Many countries impose strict restrictions on women's right to reproduction. Foreign domestic workers are forbidden to marry local men or to become pregnant. Such policies are founded in racism where countries fear the mixing of

racess and nationalities, or from economic policies over-riding human rights.

#### **Policies on Violence Against Women**

National responses to violence against women are most often led by the national women's movement, with support from international movements. Where women's movements have been partially successful, the services are institutionalised but in most cases they are still run mainly by the voluntary sector. In some countries these services are extended to migrant women, with services available not only in the language of the migrant women but also in the culture of the migrant women, in other countries the women's groups have not yet taken on board the violence faced by migrant women and in yet other countries very few services exist for any women.

Where governments have intervened to reduce violence it has often taken the form of further restrictions. Some countries respond to particularly bad (but well-publicised) cases of violence or trafficking by banning their women from travelling overseas, or to the country of the particular incident or by putting greater restrictions on women to travel (raising the age, making it more difficult to get passports, insisting on guardian control' restricting women from going abroad for employment without the approval of the Government and the guardians). Such responses fail to recognise the problem as systemic.

### 1.12.4 Whose responsibility?

Who will most actively promote the safety and rights of foreign domestic workers? Who will monitor the situation and respond to it? The employer? The recruitment agency or the government?

Currently, both sending and receiving countries are abdicating such responsibility to labour agents. But if the governments were to take a

more leading role, it would require guidelines for labour agencies, more careful oversight of the work of such agencies, and enforcement mechanisms.

Domestic workers need space and time to discuss these issues and develop recommendations regarding their contracts.

**Advocacy Issues:**

All countries should ensure that there are appropriate laws and services available for women who are victims of sexual harassment and other forms of violence. These would probably include: restraining orders, cool off lock ups, safe houses, emergency financial support for women, awareness raising in the community, zero tolerance campaigns.

All states should take immediate legislative steps to ensure that no migrant woman worker is held against her will at work. These regulations should impose substantial penalties on employers who continue the practice, and provide fair and equal compensation to the victims, commensurate with the length and severity of their confinement.

All states should end practices which aim to control women's reproduction.

Laws aimed at restricting the movement of women should be reoriented towards creating a safe environment rather than restricting the freedom and movement of women.

Embassies should appoint a Women Labour Attaché with specific experience on violence against women issues.

**NGO Interventions**

The promotion of spaces for foreign domestic workers to meet and organise.

Women's centres particularly servicing migrant women need to be set up providing active support and legal aide to victims of abuse.

Specific Standards need to be specified for Women's Refuges. Current standards available can be used as a starting point for discussion. In 1986 the Women's Rights Committee of the EU Parliament recommended one family place in a refuge per 10,000 of the population, in 1998 the Council of Europe expert group reduced this figure to 7,500. These figures could be adjusted according to the number of domestic workers in each area.

24-hour helplines in the languages of the migrants: A toll-free 24-hour helpline that provides support and crisis counselling and refers women to face-to-face services such as refuge centres, counselling centers or the police. Preferably, these helplines should be funded by national governments and operated by women's NGOs.

Prevention and awareness-raising campaigns on issues relating to violence against women and racism in the country of origin and the country of destination.

Support for the transnational networking links between domestic workers in different countries.

# 1.13 Reintegration of Foreign Domestic Workers

'I will go home for good' is a statement declared by Filipino migrant workers when they make the decision to finally come home, after years, or even decades, of toil and tough grind in foreign lands. It speaks of migration for overseas work as a 'temporary' solution to the harsh realities back home. It speaks of migration as a transitory juncture, punctuated by a series of arrivals and departures, which necessitate constant shifts and movements in the migrant workers life and work.

'For good' is about coming full circle, whether to come back to where one left off or to replant

and rebuild new roots. In official parlance it is referred to as "Reintegration" but that which connotes a more permanent state. Ideally 'for good' is a personal and voluntary decision, resulting from either a profitable or alternately, unsuccessful overseas venture.

## **What is Reintegration?**

In the migration cycle, Reintegration is regarded as the last stage of migration. This is when the foreign domestic worker returns to the country or community of origin after spending some time abroad.

### 1.13.1 Why do foreign domestic workers return home?

The following are some reasons why foreign domestic workers return home:

1. Voluntary return when the contract of employment has ended, or they have achieved the objectives set for them prior to departure;
  2. Return before the end of the contract, may be a result of the following reasons:
    - Forced deportation because of poor health conditions;
    - Working conditions becomes intolerable where employer becomes violent and abusive;
    - Change in motivation to work abroad. For example aspirations to earn lots of money.
    - Family problems back home involving the children left behind, spouse or due to illness or loss of loved ones.
- Return in groups as a result of :
    - o Political crisis, wars and conflicts, outbreak of epidemics in the host country;
    - o Economic crisis in the host country which results in a rise in unemployment;
    - o Challenges in diplomatic relations between sending and host countries;
    - o Mass deportation of undocumented workers;
    - o Change in policies in the host country;
    - o Programmes to encourage replacement of foreign domestic workers with local workers in the host country.



## 1.13.2 Factors of vulnerability in Reintegration

### **Impact of being HIV+:**

What happens when a migrant worker is forced to go home? Such is the situation of migrant workers who are diagnosed with HIV/AIDS. The jolt can be severely unnerving and some even do not survive the journey home.

### **Difficulties in Disclosure:**

Those who are forced to return often experience severe trauma and shock, as they are most likely to have not gotten any form of pre- or post test counselling.

*"I kept crying in the plane. I was wondering how I would tell my family about my condition. How would I explain my sudden homecoming?" Lovely, a foreign domestic worker tested positive in Singapore and deported to Philippines.*

*"I just cried .....I wanted to jump out of the window, if only I could open it. I really wanted to commit suicide then and there"* Faye, Foreign domestic worker who worked in KL

### **Difficulties in Access to Treatment:**

The study undertaken by Pinoy Plus Association revealed that PLWHA's ironically experience discrimination more frequently in the health care setting. Such experience is particularly

traumatic because their very condition necessitates constant visits and /or stays in health care institutions. The PLWHAs, therefore face the risk of experiencing constant discrimination in various forms and ways. It is therefore understandable that PLWHAs either refuse to seek treatment or refrain from disclosing their HIV status and thus end up with inaccurate and incomplete diagnosis of their health. (Marin and Quesada, 2002)

### **Difficulties faced in Reintegration by HIV+ Migrants:**

The absence of a stable and regular source of income impacts negatively on the health of migrant workers. Spending on health is limited because more basic needs - food, shelter, education- have to be met.

There is the burden of remaining healthy, not only because they want to live longer, but also because they want to return to a state of being physically 'normal'. It is also their way of warding off fears of reaching the stage of full-blown AIDS which eventually leads to death. Unfortunately, their access to medical and psychological treatment and care is not guaranteed. As former migrant workers, most of them have no active insurance or automatic social security benefits.

## 1.13.3 Stages of Reintegration

The foreign domestic worker who returns home after a long period abroad will go through two stages in Reintegration

**I INITIAL HAPPINESS IN MEETING THE FAMILY MEMBERS AND FRIENDS:**  
The initial phase of Reintegration can be fairly challenging for the foreign domestic worker. This is because the domestic worker returns with new experiences. These experiences may be good or unpleasant especially for those who were victims of exploitative and abusive work environments.

**II STIGMA DUE TO DEPORTATION:**  
In addition, there are also cases where the foreign domestic worker is deported for health reasons, after being detained, or due to abuse, loss of job, pregnancy or accidents. Under such circumstances, the domestic worker has to deal with the rejection, alienation, shame and guilt which makes Reintegration a long and painful process.

### III DESKILLING AND SEEKING NEW EMPLOYMENT:

This stage is when the foreign domestic worker embarks to seek employment in their home country. In some cases, if the worker has acquired some skills while abroad, they may explore the possibility of starting their own income-generating activity. The reality is that there will be an adjustment period before they start earning a stable income, especially if they now live in a rural environment. In cases where there is a lack of

business skills, the result may be a loss of investments if the limited funds are mis-managed.

### IV SUCCESSFUL REINTEGRATION IS A MYTH:

The reality is that for many migrant returnees, successful reintegration remains a distant dream. This may be due to the lack of skills or opportunities for a stable employment or income. As a result these foreign domestic workers may decide to re-migrate.

## 1.13.4 Conflicts faced by foreign domestic workers

Foreign domestic workers have to deal with numerous conflicts, which need to be understood and recognised to facilitate a successful Reintegration. Some of these conflicts are highlighted below:

#### A WORK EXPERIENCES FROM ABROAD

Some of the foreign domestic workers acquire new skills while working in the host country. However, the dilemma is when they go back home, they do not have entrepreneurial skills to explore possibilities of sustaining a stable income. In addition, the economic situation back home may also hamper their aspirations to setup viable income generating projects.

#### B HEALTH CARE AND SUPPORT

Reintegration becomes more difficult when a foreign domestic worker returns home because of poor health conditions. For example, a domestic worker who returns because he/she is tested HIV-positive has to deal with rejection, blame and stigmatisation by their own family. In addition, in most cases they do not have access to counselling, lack proper care and support, and access to treatment. The situation is worsened when the domestic worker comes from a poor family and treatment is unaffordable.

#### C SEXUALITY AND RELATIONSHIPS WITH SPOUSE AND FAMILY

The foreign domestic worker may have developed their own social and sexual relationships and networks while living abroad. Their spouses back home may have also had other relationships to cope with loneliness and as a form of security. As a result, this creates a sense of guilt and both parties are also at risk of having contracted HIV or STIs, which in turn often results in rejection.

#### D CULTURAL CHANGES

Foreign domestic workers who work in a more developed work environment would inevitably adopt different lifestyles. This can make it difficult when they go back home where the community remains conservative and backward. As such, there is a need to acknowledge that conflicts and tensions may surface during Reintegration.

#### E ARREST AND DETENTION

The foreign domestic worker encounters varied experiences while living in the host country. In the case of domestic workers who have been arrested and detained, and have been subjected to physical, sexual or verbal abuse or torture; they may have

to deal with more serious mental health problems. The situation worsens if the returnees have not prepared for coming home, have insufficient income and savings and are faced with family expectations that are high.

#### **F CHANGES IN THE FAMILY, SPOUSES**

A migrant returnee may find many changes in the family upon return: the children are grown up and have changed. They may be confronted with alienation and a spouse with different expectations. A study among sailors and their wives in the Philippines, found that many wives are happy when their husbands return, but face emotional insecurities and ambivalent feelings towards their husbands.

After the departure of their partners, spouses are equally left with human and social needs of having relationships and some-

times also sex, to cope with loneliness and anxieties about the spouse. Many women spouses are forced to take on employment to meet economic demands in the absence of the husband. Many returning men need time to come to terms with his wife's new status. Many women migrants find their husband has settled with another woman upon their return.

Many male migrants contract an STI or HIV in the host country, which is often untreated due to lack of access to health care. Most men do not tell their wives about their affairs and visits to sex workers, and often pass HIV/STIs on to their wives. Some wives are aware and confront them, but many accept it as inevitable. In addition, many women also face physical abuse and sexual exploitation when their husbands are away.

### **1.13.5 What is key in reintegration?**

An effective Reintegration programme will encompass the following:

#### **Key Principles:**

- Address the issues within the context of human rights of foreign domestic workers and their families at all stages of migration.
- The issue of Reintegration should be addressed in both sending and destination countries.
- Sending countries need to address Reintegration as a forward-looking process. Since they benefit from the remittances sent by migrant workers, a part of these remittances should be used for Reintegration and towards the welfare of returning migrant workers.
- Gender-sensitive in its initiatives and process, taking into account the rising number of women migrant workers in the region.
- Networking, referrals and partnership building are crucial for developing holistic Reintegration programmes.

#### **Key Strategies of Reintegration**

- Begin at the very start of the migration process: it should be addressed at the Pre-departure, as well as Post-arrival stages. The migrant worker and his/her family should be involved from the beginning.
- Strategies and programmes should be empowering and based on the migrant worker as a human being, not an economic commodity.
- Empowerment of migrant workers will happen through collectivisation and formation of groups for the prevention of human-rights violations, as well as for facilitating a smooth Reintegration process.
- Group-based savings mobilisation should be initiated in host countries. Group saving schemes should be managed by migrants, and provide support for management and organisation of

- migrants' finances; plan for readjustments; and troubleshoot any problems.
- Migrants' families and communities should also be organised in the home country; they need to be trained to properly manage the remittances sent by the migrant worker, and to deal with any other emerging issues.
- Migrants need to be informed about alternative investments, employment opportunities and availability of loans for entrepreneurship and self-initiatives in the home country.
- Migrant worker groups and NGOs in the host country should address issues related to social transformation and changes, as well as to families.

### 1.13.6 Reintegration in the Host Country

Reintegration issues are not restricted to the home country alone. Many migrant workers while working in the host country develop relationships or marry nationals from the host country. Migrants spend long time some times more than 5-7 years in the host country, away from their families. The long separation coupled with the need to adjust to new surroundings, job and culture can create conditions for fulfilment of human needs such as warmth, companionship and sex. These conditions lead to inevitable forging of relationships.

Marriage between migrant men and local women is generally prohibited. Most host countries do not allow male migrants to stay on with their local wives. Spouses' visas are often refused. In most countries men are not allowed to continue with their work and are thus forced to go back. It is often difficult for men to return on 'spouse status' and even if they return on the spouse status. It may be difficult for them to find work upon return. The work permits are usually not renewed. If the migrant workers are not legally married in many Asian countries they are arrested or deported, losing their jobs. Thus they become and remain undocumented.

However, some countries do give residential rights to women who marry local men. But the women have to quit their jobs, go back to their country of origin and apply for visas on the 'spouse status'. In many instances, the spouses

visa is renewed only on a yearly basis and so long as the woman is married to the local man or so long as the man chooses to be married to the woman.

This can often put the woman in a vulnerable position especially if she has children in the host country. She has to leave behind her family and has to resign from the job and be at the mercy of her local husband for stay and renewal of the visa.

One of the major legal issues is that of the children borne out of these relationships and marriages. Firstly, the marriage itself is not legalised in either the receiving or the sending country. The marriage is considered as 'customary' and thus is not solemnised. Children born out of these relationships are also not recognised or given 'citizen' status in either of the countries. Some sending countries like Bangladesh require paternity proof for a woman to bring back the child born in the host country.

Apart from the citizenship rights, custody of the children could also be an issue. Custody of the child with the father in the host country is often also a problem, since many men register with the hospitals under a false name. Due to these policies related to deportation and residential rights, the 'mixed' families are constantly under the threat of family disintegration.

### 1.13.7 Conclusion

Reintegration programmes facilitate not only economic empowerment, but also personal and community development. In April 2000, the 'Assembly of Re-integration Members and Families of Migrants in the Philippines' was held in the Philippines, which gathered group members and their families living in the Philippines. The purpose of this assembly was to raise the consciousness of not only migrant workers but also their families and communities and even potential migrants. Needless to say, the merit of Reintegration programmes is actually to raise migrant workers' sense of responsibility to secure an economic and social life on their own. The pursuit of profit was underemphasized in favour of whether programs could lead to community development. On this account, Reintegration programmes recommend more community-based and sustainable investment projects.

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49 General Comment 14, Para 43

50 General Comment 14, Para 44

51 The overarching objective of the ILO has been re-phrased as the promotion of opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Decent work is the converging focus of the four strategic objectives, namely rights at work, employment, social protection and social dialogue. Decent work is an organizing concept for the ILO in order to provide an overall framework for action in economic and social development, ILO. <http://www.ilo.org/public/english/bureau/integration/decent/index.htm>. Accessed April 12, 2006.



This Campaign Toolkit is an outcome of the Regional Summit on Foreign Migrant Domestic Workers held from 26-28 August 2002 in Colombo, Sri Lanka. Organised by CARAM Asia with the support of UN agencies, regional and migrant organisations, the objective of the summit was to assess the status of Foreign Domestic Workers and identify emerging concerns with the aim to protect and realise their rights including health rights. The summit culminated in the adoption of the Colombo Declaration which is the framework used to develop the Campaign Toolkit.

This Campaign Toolkit is a resource to build capacity of target groups like foreign domestic workers, government, teachers, researchers, NGOs, recruitment agencies and other stakeholders like employers in the area of protecting and promoting the rights of foreign domestic workers. It is also a resource for foreign domestic worker's groups and support groups for the implementation of a regional campaign to be launched in 2008.

The Campaign Toolkit is divided into four major parts using a knowledge-based approach and the tools necessary to support and enhance the upcoming regional campaign.

- 1 The Issues and Concerns
- 2 The Capacity Building
- 3 The Rights and Policies
- 4 The Action Tools section

CARAM Asia, an open and dynamic regional network, was set up in 1997 to address special interventions for mobile populations at all stages of migration to reduce their vulnerabilities to HIV and improve health outcomes.

It's mission is:

- To empower migrants, their families and communities throughout the migration process and build capacities of CBOs/NGOs working for the promotion and protection of migrant health rights including reproductive and sexual health and rights.
- To utilise Participatory Action Research to ensure inclusion of migrant voices and perspectives on HIV vulnerabilities, migrant health status and potential policy prescriptions for effective national and regional advocacy.
- To use the rights based approach in promoting and protecting migrant health through interventions to reduce HIV vulnerability and improve social determinants of health throughout the migration process.

For more information on CARAM Asia and partners, please visit: [www.caramasia.org](http://www.caramasia.org)

