
Sanctioned Abuses: The Case of Migrant Domestic Workers

by Nisha Varia*

Millions of women from Indonesia, the Philippines, and Sri Lanka work as live-in domestic workers in the Middle East, Malaysia, Hong Kong, and Singapore. Migrating on two-year contracts, these women encounter a wide range of abuses during recruitment, employment, and return to their countries. Across the world, the failure to properly regulate paid domestic work facilitates egregious abuse and exploitation, and means domestic workers have little or no means for seeking redress. Women and girls employed in private households routinely encounter human rights violations in the workplace, ranging from excessively long working hours with little pay or rest, to sexual harassment and physical violence. For migrants, recruitment-related fees, deceptive recruitment practices, and precarious immigration status further jeopardize their right to just and favorable working conditions.

Governments in both labor-sending and labor-receiving countries have largely failed to protect the rights of migrant domestic workers. Using Human Rights Watch research and advocacy on domestic workers from or employed in Hong Kong, India, Indonesia, Kuwait, Lebanon, Malaysia, Nepal, the Philippines, Saudi Arabia, Singapore, Sri Lanka, and the United Arab Emirates,¹ this article will focus on two major areas of concern: (1) the exclusion of domestic workers from most labor laws and the emergence of weaker, less enforceable “standard contracts;” and (2) the failure to adequately regulate labor recruitment practices and immigration policies that impede access to the criminal justice system, which contribute to abuses such as restriction of domestic workers’ right to free movement.

MIGRATION FOR DOMESTIC WORK

The number of women migrants has increased significantly over the last three decades, and they now comprise approximately half of the estimated 191 million migrants worldwide.² Women and girls migrating as domestic workers are an important part of this trend. The feminization of labor migration is particularly pronounced in the Philippines, Indonesia, and Sri Lanka, where national-level estimates indicate that women comprise 60-75 percent of legal migrants.³ The vast majority of these are employed as domestic workers in the Middle East, Singapore, Malaysia, and Hong Kong. There are approximately 1.5-2 million migrant domestic workers in Saudi Arabia, 600,000 in the United Arab Emirates, and 300,000 in Malaysia.⁴ These numbers underestimate the true population as some women and girls migrate outside legal channels and then find employment as domestic workers.

The movement of people across borders promises new opportunities and has become extremely lucrative: in 2006, recorded remittances sent home by migrants from developing countries exceeded U.S. \$200 billion, more than double the amount in 2001.⁵ This money exceeded foreign aid in many countries — and

much of this money directly reaches poor households. Yet this money has often come at a profound human cost. Governments and employers interested in “flexible” labor have been quick to take advantage of a transnational workforce. But they have often turned their backs on labor and immigration protections for migrants and done little to establish a safety-net to address widespread abuses. The situation of migrant domestic workers is a particularly stark illustration of the need for transnational governance in an era of globalization.

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Estimating the prevalence of abuse is difficult given the lack of reporting mechanisms, the private nature of work, the lack of legal protections, and restrictions on domestic workers’ freedom of movement. There are many indications, however, that abuses are widespread. Employers and agents withhold passports as a standard practice, and granting domestic workers a day off once a week is an active public debate in Singapore. In major labor-receiving countries, embassies have created shelters onsite to handle the huge number of domestic workers seeking assistance for unpaid wages, physical or sexual abuse, or poor working conditions. In Saudi Arabia, the Indonesian, Sri Lankan, and Philippine embassies handle thousands of complaints each year.⁶ Additional complaints are registered in home countries upon return, and in many cases, never reported at all.

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DELIBERATE EXCLUSION FROM LABOR LAWS

Most labor codes specifically exclude domestic workers from key labor protections afforded to most other categories of workers under national laws. Such rights include guarantees of a minimum wage, overtime pay, rest days, annual leave, fair termination of contracts, benefits, and workers' compensation. This exclusion denies domestic workers equal protection under the law and has a discriminatory impact on women and girls, who constitute the vast majority of this category of workers.

Domestic workers are almost always grossly underpaid for the long hours they are required to work. Domestic workers usually earn well below service sector minimum wages and prevailing wages for domestic work typically performed by men, such as gardening and driving. For example, migrant domestic workers earn approximately 25-50 percent of the de facto minimum wage in Saudi Arabia, not even taking into account their long hours.⁷ Furthermore, employment agencies assign different wages based on national origin rather than skills and experience, with Indonesian and Sri Lankan workers earning significantly less than Filipina domestic workers.

The most frequent complaint reported by migrant domestic workers in the Middle East and Asia is nonpayment of salary for months or years at a time, as well as arbitrary and illegal deductions from their salaries. A study by the Hong Kong-based Asian Migrant Centre found that 42 percent of Indonesian domestic workers in Hong Kong were underpaid.⁸ In Malaysia, employers commonly pay migrant domestic workers only upon completion of the standard two-year contract. This serves as a ploy to prevent workers from running away or reporting abuses. When domestic workers do receive payment, it is often not the agreed-upon amount.

Without legislated standards, a domestic worker's workload depends on the whim of her employer. Some enjoy decent working conditions with periods of rest and paid holidays. However, it is common for employers to require their domestic workers to labor 14-20 hours a day, seven days a week, for months or even years on end. Those caring for young children or the elderly are called upon to work around the clock. Employers and labor agencies tend to justify denying domestic workers a day off in the name of preventing them from running away or becoming pregnant.

Excluded from workers' compensation schemes in most countries, injured and ill domestic workers can only trust — often in vain — in the kindness of their employers. Many domestic workers never receive adequate medical attention or treatment, even for work-related injuries, and are often required to continue working while ill. When employers do take their domestic workers to a doctor for treatment, they often deduct the costs of the visits and medicine from the workers' wages. Some labor-receiving countries have begun to require employers to take out insurance policies for their domestic workers, but these remain limited in coverage and unevenly enforced.

The exclusion of domestic workers from labor laws and the associated abuses contravene a spectrum of workers' rights enshrined in international human rights law. The Universal Declaration of Human Rights provides that everyone has the right to rest and leisure, including reasonable limitation of working and periodic holidays with pay, as well as the right to just and favorable remuneration to ensure "an existence worthy of human dignity."⁹

The ILO has developed a robust body of conventions dealing with virtually every aspect of workers' rights. These include Convention No. 95 on the Protection of Wages, which specifies that wages should be paid directly and regularly to workers, and that workers should be informed of the conditions of payments before beginning employment; Convention No. 155 concerning Occupational Safety and Health; Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, which prohibits discrimination on the basis of sex with respect to access to employment and conditions of employment; and the Maternity Protection Convention 2000 (No. 183) guaranteeing women workers — and explicitly domestic workers — the right to maternity leave.¹⁰

The exclusion of domestic workers from many of the legal protections extended to other categories of workers constitutes unjustifiable disparate impact discrimination as prohibited under nondiscrimination principles enshrined in international law.¹¹ Exclusion of domestic workers from national labor laws, while facially neutral in that it focuses on a form of employment, have a disparate impact on women and girls since the overwhelming majority of domestic workers are female. The lesser protection extended to domestic work reflects discrimination against a form of work usually performed by women and that involves tasks associated with traditional female domestic roles, such as cleaning, child care, and cooking.

As the demand for migrant domestic workers increases, and as horrific stories of abuse become more well-known, some governments have begun to initiate reforms. In most cases, such as in the United Arab Emirates, Jordan, Singapore, and Kuwait, they have taken the form of standard employment contracts for domestic workers or bilateral labor agreements. Neither have clear enforcement mechanisms or the penalties provided in national labor laws. Furthermore, both typically contain provisions focusing primarily on the logistics of recruitment, and outline terms of employment that are weaker and vaguer than those in national labor laws. For example, Singapore introduced a contract for migrant domestic workers in 2006 that does not limit working hours, provides only a minimum of one rest day per month, and fails to limit salary deductions for payment of recruitment fees. Malaysia and Indonesia inked a bilateral labor agreement in 2006 which fails to protect domestic workers' right to hold on to their passports.

Hong Kong provides a model that few others have emulated: domestic workers are included in its main labor laws, protecting their rights to a weekly day of rest, a minimum wage, maternity leave, and public holidays. While the domestic workers in Hong Kong are not immune from abuse, they have legal remedies available, unlike their counterparts elsewhere. Combined with the freedom to form associations and trade unions, many of these domestic workers have greater awareness of their rights, an ability to negotiate better working conditions, and avenues for reporting labor exploitation.

HARMFUL LABOR-RECRUITMENT AND IMMIGRATION POLICIES

Migrant domestic workers' labor rights are closely interlinked with immigration and recruitment policies. Despite the increasing volume of women migrating each year, these policies have escaped rigorous scrutiny. The recruitment and placement of migrant domestic workers remains poorly regulated and monitored, espe-

cially in regard to recruitment fees and provision of correct information about the terms and conditions of employment. Immigration policies impose tight and unfair conditions on migrant women who often have no other alternatives.¹²

Recruiting migrant domestic workers has become a profitable industry, with hundreds and sometimes thousands of licensed and unlicensed labor agencies and brokers in many countries. What happens during recruitment can influence a worker's fate pro-

domestic workers with the intention of preventing permanent migration or integration of these workers into society. For example, Singapore imposes a lifetime ban on migrant workers from marrying Singaporean citizens or permanent residents.¹³

With the exception of Hong Kong, domestic workers who become pregnant lose their jobs and face immediate repatriation instead of receiving maternity leave. In most major labor-receiving countries, work permit regulations allow employers to repatriate

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foundly. If she is lucky, she will know how to distinguish between a licensed agent and an unlicensed one, obtain a copy of her employment contract, and learn about her rights before she leaves home. More likely, she will become heavily indebted due to huge recruitment fees, be promised certain working conditions but encounter something markedly different when she begins working, have her passport held by her agent, and never even see an employment contract in her own language. Deception or coercion used during the recruitment process sets workers up for abuse, and if they end up in extremely exploitative working conditions, these cases rise to the level of trafficking into forced labor.

Taking advantage of migrants' desperation to find work, agents and employers have shifted the burden of recruitment fees, including airfare, visas, and administrative fees on to the workers themselves, while employers pay only nominal fees. This has led to an unreasonable debt burden on international migrant domestic workers. Many Indonesian domestic workers migrating to the Middle East take out loans from local moneylenders with interest rates as high as 100 percent to pay these fees, while those traveling to Asia typically use a “fly now, pay later” scheme. In Singapore and Hong Kong, Indonesian migrant domestic workers often spend up to 10 months out of a two-year contract without a salary since they must turn over these wages to repay their recruitment fees. The resulting financial pressure makes it difficult for workers to report abuse for fear of losing their jobs and inability to pay off their debts.

International labor recruitment is a fast-growing industry that requires more stringent licensing requirements and more rigorous monitoring. Governments have a critical role to play in recognizing the unequal bargaining power between potential migrants, employers, and labor agents and shifting the burden of recruitment costs back to employers. Reforming current practice also requires measures such as unannounced inspections of labor recruitment agencies and real penalties for those committing violations.

In contrast to inadequate regulation of recruitment policies, immigration requirements for domestic workers are rigid and detailed. Countries that have difficulty finding local workers for low-paying jobs have created special immigration schemes for

migrant domestic workers at will or deny them transfers to other employers, leaving domestic workers less able to demand just treatment and forced to stay in jobs with abusive conditions. Dismissal often means immediate repatriation with no access to redress for abuses, and sometimes without payment in full of their wages. Employment agencies foster employer impunity by offering a domestic worker at a set wage and a “free replacement” if there are problems. For women who have accrued debt to migrate for work or feel acute pressure to earn money for their families back home, the prospect of repatriation upon dismissal significantly weakens any bargaining power they might have.

Immigration policies aimed at stemming irregular migration have contributed to abusive practices. Saudi Arabia requires employers to sign “exit visas” for migrant workers before they can leave the country. That policy contributes to forced labor as migrant workers have reported they were forced to work involuntarily for months or years before their employers granted them exit visas. For example, several countries impose “security bonds” on employers, penalizing them if their migrant domestic worker runs away. Such bonds appear to have little impact on the stated policy goal of staunching undocumented migration. Employers use the bonds as justifications for confining domestic workers to the workplace, restricting their communication, holding their passports, and withholding their wages—conditions that are abusive and may rise to the level of forced labor. Furthermore, in several countries, migrant domestic workers lose their legal status once they leave their employers, since their visas are tied to their employer. This makes it difficult for them to run away from abusive situations, change employers, or to negotiate their conditions of employment. The consequences may be dire: in Malaysia, punitive immigration laws mean that migrants can face up to five years' imprisonment, heavy fines, caning, and indefinite detention for an immigration offense.

For those migrant domestic workers who enter the country as undocumented workers, or who lose their legal status while abroad, access to redress may become unattainable. Governments should promote immigration rules that permit migrants to report abuse without fear of criminal penalties.

CONCLUSION

Migrant domestic workers provide important and needed services to both labor-sending and labor-receiving countries. Yet the combination of major gaps in labor laws and restrictive immigration policies have left them at high risk of a wide array of exploitative and abusive practices, at times rising to the level of trafficking or forced labor.

Concrete and feasible measures exist that could dramatically improve the working conditions of most migrant domestic workers. Many governments have argued that it is impossible to treat private homes like a workplace. Yet labor legislation in Hong Kong and South Africa has set positive examples, as domestic workers

have the right to a minimum wage, overtime pay, a weekly day of rest, maternity leave, and paid annual leave. Workers' associations, public awareness campaigns, and accessible complaint mechanisms with follow-up actions can promote enforcement of these laws.

Other important reforms include enhancing local economic and educational opportunities so that domestic workers can migrate based on informed choice; setting standards for and monitoring transnational labor recruitment systems; amending restrictive immigration policies that leave such workers particularly at risk of exploitation; and promoting international cooperation between sending and receiving states to prevent and respond to abuse.

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ENDNOTES: Sanctioned Abuses

1 Human Rights Watch, *Swept Under the Rug: Abuses against Domestic Workers Around the World*, (July 2006), available at

http://hrw.org/campaigns/women/2006/domestic_workers/reports.htm; and forthcoming Human Rights Watch reports on Sri Lankan domestic workers in the Middle East and Asian domestic workers in Saudi Arabia.

2 United Nations, *Trends in Total Migrant Stock: The 2005 Revision: CD-ROM Documentation*, available at POP/DB/MIG/Rev.2005/Doc, (New York, Population Division, Department of Economic and Social Affairs, United Nations, 2006).

3 Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers: Their Vulnerabilities and New Initiatives for the Protection of Their Rights* (Jakarta: Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, 2003), p. 9; Sri Lanka Bureau of Foreign Employment, "Departures for Foreign Employment by Country and Sex 2001-2005," based on 2004 figures, available at <http://www.slbfe.lk/feb/statistics/stat2.pdf>; International Organization for Migration, *World Migration 2005*, (June 2005) available at <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=932>.

4 In December 2006 Human Rights Watch interviewed Saudi Labor Ministry officials and diplomats from labor-sending embassies in Riyadh, Saudi Arabia; *Irin*, "United Arab Emirates: Domestic workers face abusive employers," available at <http://www.irinnews.org/Report.aspx?ReportId=27089> (July 2, 2006); and BBC News, "Indonesia and Malaysia Talk Maids," available at <http://news.bbc.co.uk/2/hi/asia-pacific/4915222.stm> (April 17, 2006).

5 Dilip Ratha, "Leveraging Resources for Development" at 2, *World Bank* (March 2007), available at <http://siteresources.worldbank.org/INT-PROSPECTS/Resources/334934-1110315015165/LeveragingRemittances-ForDevelopment.pdf>.

6 In December 2006 Human Rights Watch interviewed embassy and consular officials from the Philippines, Indonesia, Sri Lanka, Nepal, Riyadh and Jeddah, Saudi Arabia.

7 While there is no official minimum wage in Saudi Arabia, a defacto minimum wage has been set based on the minimum monthly contribution to the pension system which, in 2006 was 1,500 riyals a month. The average wage of a Sri Lankan domestic worker in 2006 was 400 riyals per month, for an Indonesian domestic worker, 600 riyals per month, and for a Filipina domestic worker, 750 riyals per month.

8 See Asian Migrant Centre, "Systematic Extortion of Indonesian Migrant Workers in Hong Kong," available at http://www.asian-migrants.org/index.php?option=com_content&task=view&id=4&Itemid=29 (retrieved April 6, 2006).

9 The International Covenant on Economic Social and Cultural Rights reiterates these rights in recognizing the right of all persons to just and favorable conditions of work.

10 ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour *Worst Forms of Child Labour Convention*), art. 3(d), entered into force Nov. 19, 2000, available at <http://www.ilo.org/public/english/standards/realm/ilc/ilc87/com-chic.htm>; ILO Convention No. 95 (on the Protection of Wages), entered into force Sep. 24, 1952, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C095>; ILO Convention No. 155 (concerning Occupational Safety and Health), entered into force Aug. 11, 1983, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C155>; ILO Convention No. 111 (concerning Discrimination in Respect to Employment and Occupation), entered into force June 15, 1960, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>; and ILO Convention No. 183 (concerning Maternity Protection (Revised) 2000), entered into force Feb. 7, 2002, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>.

11 International law prohibits discrimination on the basis of such distinctions as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. International law also guarantees equality before the law and the entitlement of all persons to equal protection of the law. CEDAW obligates states parties to ensure "the right to equal remuneration [between men and women], including benefits, and to equal treatment in respect of work of equal value." Laws, regulations, policies and practices that are neutral on their face can have a discriminatory impact.

12 Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (July 2004), available at <http://hrw.org/reports/2004/indonesia0704/>; and *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore* (Dec. 2005) available at <http://hrw.org/reports/2005/singapore1250/>.

13 Employment of Foreign Workers Act, Chapter 91A, *Conditions of Work Permits*, "Fourth Schedule: Conditions of Work Permit/Visit Pass for Foreign Worker," available at http://www.mom.gov.sg/publish/etc/medialib/mom_library/work_pass/files.Pa.r.8149.File.dat/WSPassConditions.pdf. While applications can be made to the Controller of Work Permits to grant exceptions, there is little awareness among domestic workers and some officials from sending countries' embassies about this possibility and for those who do apply, many applications are rejected. Human Rights Watch, *Maid to Order* (2005).