
**Good Practices taken by Asian States
to effectively supervise recruitment agencies**

Submitted to the

Committee on Migrant Workers

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Introduction

The fair and equal treatment of domestic workers has been among the major concerns of Migrant Forum in Asia (MFA) in its advocacy for the protection and promotion of the rights of migrant workers and their families in Asia. MFA is a regional network of non-governmental organizations, (NGOs), associations and trade unions of migrant workers and individual advocates committed to promote and protect the rights and well-being of both documented and undocumented migrant workers and their families in Asia.

MFA's engagement on the issue of domestic work dates back when the network was established in 1994. In a forum held in Taiwan entitled, "Living and Working Together with Migrants in Asia". It was the high point in a process of consultations, meetings communication and networking among a group of women human rights activists who were engaged in voluntarily serving migrant workers in host countries particularly in Malaysia and Hong Kong. The MFA Secretariat was first set-up in Hong Kong to address the needs and issues of women migrant domestic workers.

MFA was the first network in the region to call for the recognition of migrant workers right to freedom of association, organize and form associations or trade unions. MFA members in Hong Kong helped spearhead the organizing of Filipino and Indonesian migrant domestic workers union. Currently a number of members of the MFA Network are associations and unions of migrant domestic workers among them: Indonesian Migrant Workers Union (IMWU) – Hong Kong; Filipino Domestic Helpers General Union (FDHGU) – Hong Kong; Coalition for Migrants Rights (CMR) – Hong Kong; Solidaritas Migran Scalabrini – Indonesia; Serikat Buruh Migran Indonesia (SBMI). In 2007, MFA has been instrumental in the creation of the Asian Migrant Domestic Workers Alliance (ADWA), a self-representative regional alliance of migrant domestic workers.

Domestic workers, especially women migrant domestic workers, provide an environment for other workers and their families to improve their living standards by taking care of their homes and household members (children and the elderly). Due to the nature of their work and their working environment (households of private persons) they are not monitored by labor inspectors and in most countries not included under national labor laws, thus denying their status as "real workers". This is true in many countries, particularly in Asia, where very few countries have passed laws on domestic workers; there is also inadequate attention on key aspect of their situation in international law.

As a result, they have been suffering from persistent abuses, violence and violations of their rights, including fundamental principles and rights at work as well as the differences in employment arrangements, methods to remuneration, working time and other aspects of their working conditions.

The struggle for recognition of and respect for migrants' rights is traveling a long and arduous road aggravated by rapid changes in our globalized world that challenge every small step even after the Migrant Workers' Convention came into force in 1990.

Several countries are introducing policy reforms affecting migrant domestic workers yet these changes fall far short of the reforms needed to combat widespread abuse, much less remove the systematic vulnerabilities and discrimination/ marginalization of migrant domestic workers.

The creation of the ILO Multi-Lateral Framework on Migration in 2004 is one such step. But even as the benefits of global labor migration, especially vis-à-vis national development of sending countries, have caught on the discourse, a significant sector remains highly vulnerable: domestic workers, especially women migrant domestic workers.

The ILO's decision to include the discussion on decent work for domestic workers in the 2010 Conference is a significant and crucial development. In preparation for this, ILO issued a Law and Practice Report along with a questionnaire in April 2009 for governments, labor unions and employers (tripartite approach) to answer. The process hopes to culminate in a Domestic Workers Convention which would recognize the dignity of domestic work and provide better protection for domestic workers, including migrant domestic workers.

Upon the release of the questionnaire, consultations at national, regional and international levels were conducted for the purpose of generating a response on a possible ILO instrument that addresses the specific conditions of domestic workers and strengthen protections of this vulnerable informal sector. These processes were initiated both by CSOs and the tripartite constituents. CSOs around the region initiated consultations among its partners and domestic workers themselves to solicit responses for the questionnaire. In Asia, MFA initiated the first consultation. The consultation brought together advocates of the rights of local domestic workers, migrant domestic workers and women migrants.

This submission aims to contribute to the discussion of the Committee of Migrant Workers on the Day of General Discussion to be held on 14 October 2009 in Geneva, Switzerland. MFA has put together a compilation of good practices by Asian States to effectively monitor and supervise recruitment agencies, which depict some the important issues involved. While MFA recognizes the existence of these "good" practices, these are not enough to address specific conditions of DWs, which justifies the need for a Convention. Moreso, the issue of enforcement is still a challenge.

Recruitment process and the cycle of exploitation

Recruitment agencies are private entities that facilitate the conscription of migrant domestic workers overseas – even when working legally, often charge steep fees for placement and travel. When working irregularly or without government oversight, such agencies often charge fees that are close to impossible to repay, trapping women migrants into conditions akin to debt bondage. Agencies working in direct contravention of national laws, facilitating women’s crossing of borders illegally, may use coercion, force, or false promises, placing women in clandestine domestic settings, illegal sex work, or exploitative sweatshops – practices that amount to trafficking.

In many places, employment contracts are concluded between the employer and recruitment agency alone, leaving the worker without any protection. Some contracts will allow domestic employers the option of “returning” a migrant worker to the recruitment agency after a period of time – often as long as three months in some places – if their services are deemed unsatisfactory. During the trial period, the employee is rarely paid, and once they are “returned” they must begin a new probationary period, during which they will again likely not receive pay. This kind of cycle – in which the employee is working without wages – has reportedly lasted more than a year in some countries.

To curb these negative practices, a number of countries in Asia introduced policy reforms and practices to monitor the recruitment and employment of domestic workers. The succeeding discussions present the existing practices in some Asian countries.

Measures to effectively monitor recruitment and employment of domestic workers

Covenant of Ethical Conduct and Good Practices (UNIFEM, East and South-East Asia Region, 2005)

The ‘Covenant of Ethical Conduct and Good Practices’ is a document in which recruitment agencies of nine Asian countries (**Bangladesh, Cambodia, Indonesia, Jordan, Lao PDR, Nepal, Philippines and Sri Lanka**) agreed on far-reaching business standards geared towards protecting women migrant workers. The Covenant, which was developed with the assistance of UNIFEM, recognizes that financial exploitation and deliberate misinformation of migrant women workers through illegal recruiters leads not only to economic ruin, but also to physical and sexual abuse of countless women. Through the Covenant, the recruitment agencies commit themselves to information campaigns for migrant workers and employers, to social security and insurance programmes that benefit migrant workers, and to the establishment of resource and welfare centers in labour-receiving countries.

(The Covenant of Ethical Conduct and Good Practices is attached at the end of this document as reference)

Brunei Darussalam (Department of Labour, 2005)

Introduction of Employment Agencies Order 2004

This Order was introduced to control the activities of employment agencies relating to employment in the private sector, such as domestic workers. Previously, there was no law to regulate the activities of employment agents who bring foreign workers into Brunei. Before the enforcement of this Order, employers who had licenses to bring in foreign workers normally used the services of agents to recruit them based on the quota approved. Such activities raised many complaints from employers about instances of misuse and abuse of their licenses.

There are also instances where domestic workers have been brought into the country without the knowledge of the actual employer. Many have been brought in without confirmed employment, thus, forcing them to look for jobs or work as 'freelancers.' This practice has consequently tarnished the good name of the country, with reports published by foreign media of alleged human trafficking in Brunei Darussalam. With the enforcement of the new Order, entry of foreign workers has been controlled and the welfare of the foreign workers is protected from irresponsible employers. At the same time, employment agencies must operate according to regulations established under the Order and the Department of Labor takes firm legal action against those who violate it. The Order requires all employers who have been granted licenses to employ foreign workers to use the services of approved employment agencies. The direct employment of foreign workers or through unregistered agents is now prohibited. It is hoped that the licensing of employment agencies will crack down on illegal recruiters who prey on desperate foreign workers looking for employment in Brunei Darussalam.

Jordan (Labour, 2005)

Regulating Work of Recruitment Agencies:

Two major efforts have been made to regulate the work of recruitment agencies. The first has been the amendment of a new labor law to register recruitment agencies. This law allows the Ministry of Labor to monitor the work of recruitment agencies and take serious measures if they violate the regulations intended to protect migrant women workers and their employers, as well. Secondly, the Ministry of Labor has improved its coordination on recruitment procedures with the Ministry of Interior, which has also served to strengthen the enforcement mechanism on complaints against recruitment agencies.

Malaysia (Ministry of Human Resources, 2005)

Employment Agencies are expected to abide by all the provisions as quoted in the Private Employment Agency Act 1981. Certain additional terms have been implemented so as to monitor the recruitment of migrant domestic workers and the need for issuance of agency licenses, which are as follows:

- Forwarding of the details of migrant domestic workers and employers to the Labor Department.
- Paying visits to the employer's residence (at the employer's convenience) to check on the welfare of the migrant domestic worker.
- Providing the migrant domestic worker with the contact details of the employer, concerned employment agency and the Labor Department in case of employment conflicts and emergencies.
- Assisting in finding a suitable replacement migrant domestic worker for the employer in cases where a current worker does not perform her duties properly during the official period of employment.

*(A copy of the Private Employment Agency Act 1981 can be viewed at:
<http://www.agc.gov.my/agc/Akta/Vol.%205/Act%20246.pdf>)*

Singapore (Taken from Ministry of Manpower website)

Regulating Employment Agencies (EAs)

Employment agencies provide recruitment and placement services. There are three aspects to the Ministry of Manpower's (MOM) regulation of EAs: legislation, licensing and accreditation (for foreign domestic workers (FDWs) using the services of EAs). The EA legislative framework encompasses the EA Act, EA Agency Rules and EA License Conditions. Under the EA Act, errant EAs could be fined up to S \$5,000 and/or imprisoned for up to 2 years. Contraventions of the EA Act, Rules or License Conditions could lead to revocation or non-renewal of licenses. MOM also enforces against errant EAs and acts on public complaints. For instance, anyone who is found guilty of withholding the passport or work permit of any foreign worker could be fined up to S \$1,000 and, in the case of subsequent convictions, could be fined up to S \$2,000 and/or imprisoned for up to 6 months. From January 2004 to November 2005, MOM had revoked two EA licenses and declined to renew another nine licenses out of a total of 508 FDW-placing EAs in the industry. Another thirteen EAs have faced prosecution from April to November 2005. EA license applicants are screened for previous court convictions. Singapore also imposes a security deposit of S \$20,000. This deposit will be forfeited upon revocation of the license.

Demerit Points System for Employment Agencies

Under the Demerit Points System (DPS), any employment agency (EA) that breaches the EA Act, Rules or License Conditions will be issued with demerit points. The demerit points issued for a particular infringement will be valid for a period of 6 months. Nonetheless, should an EA be deemed to have committed a severe infringement (e.g. illegal deployment of foreign workers, abuse of workers), the EA's license will be revoked.

EAs that have accumulated 12 demerit points or more at any point in time would be placed on MOM's surveillance list. An EA on MOM's surveillance list would be warned that committing further offences will lead to license revocation.

Further, as part of MOM's effort to provide more information on EA's performance, the demerit points accumulated by an EA [is now available online](#). The three key features of the employment agency (EA) Demerit Points System (DPS) are:

- Six-month validity for demerit points issued;
- EAs which have accumulated 12 demerit points or more at any point in time would be placed on MOM's surveillance list.
- Reinstating of EA's demerit points for key appointment holders when EA Licensees give up their existing licenses and re-apply for new EA licenses.

Accreditation of FDW-placing EAs

To raise the professionalism of local employment agencies, MOM made accreditation of FDW-placing EAs compulsory from June 2004. The requirements for accreditation include proper orientation of FDWs, employer education in regards to their obligations towards the welfare of FDWs, and the facilitation of written employment contracts between FDWs and their employers. This accreditation scheme also serves to ensure EAs take ownership of the training and quality of FDWs that they place. The employment agencies are prohibited from changing the provisions of the standard contract without the approval of the accreditation body, otherwise, the agencies will lose their accreditation

Employers' Guidelines/Orientation

Provide information to the employers to help them make informed choices and prepare them to have a good working relationship with their domestic workers. Singapore's Ministry of Manpower requires first-time employers of migrant domestic workers to attend a three-hour Employer's Orientation Program. Employers who apply for a sixth domestic worker or more within 12 months are interviewed by the Ministry of Manpower personally before their applications are processed. The following information are provided:

a. Initial Difficulties

This explains the background and skills of domestic workers

b. Maintenance

This explains the need to provide rest/break time for the domestic workers. It recognizes the right of the domestic workers privacy, thereby recommending providing a separate room for them. Likewise provision of food and basic necessities of domestic workers are also stipulated here.

Others provisions also include medical care, insurance and personal accident. This remind employers that they are required to bear the full cost of her medical care should she require medical treatment including hospitalisation.

c. Well-being

d. Family Integration

Employers are advised to make FDW part of their family since she will be staying on the same roof. This provision asserts the need for employers to understand the diverse background of their workers.

e. Employment Laws and Contracts

Domestic workers, both foreign and local, are not covered by the Employment Act. For a common understanding, the Ministry of Manpower (MOM) encourages employers and their Foreign Domestic Workers (FDW) to draft a written employment contract. Employment agencies commonly draft mutually agreeable contracts for the two parties involved.

In event of an employment problem or breach of contract by her employer, the FDW can lodge a complaint or file a claim with MOM. MOM will contact the employer and arrange for a meeting between the FDW and the employer to solve the dispute.

FDW is required to be paid her due salary each month, no later than seven days after the last day of the salary period. Any salary period agreed between the employer and worker shall not exceed one month. If the worker so requests, the salary shall be paid via direct transfer into the worker's bank account in a bank established in Singapore.

If it is mutually agreed that the employer should keep the bank account book, the FDW must be given access to the book at all times to check that payments are credited promptly and regularly.

The employer must also keep a record of the monthly salary paid to the FDW, and should be able to produce this record at the request of any public officer.

In terms of wage adjustment, where appropriate, the employer should consider giving the Foreign Domestic Worker (FDW) a periodic wage adjustment. This is to reward her for good performance and loyalty in service.

Apart from monthly wages, the employer can also consider offering the FDW a contract gratuity. This sum of money, which should be negotiated between the two parties, could be paid to the FDW upon conclusion of an agreed period of employment. Such incentives may result in a more motivated and diligent FDW.

f. Levy

A Foreign Domestic Worker (FDW) levy of \$265 (normal) or \$170 (concession) is payable every month. Levy charges begin one day after the FDW arrives in Singapore. For first-time FDWs, the levy will begin on the fourth day of the worker's arrival (excluding the day of arrival). Failure of the employer to pay the FDW of levy, one or more of the following measures may be taken:

- A late payment penalty will be charged.
- Existing Work Permits will be cancelled.
- The employer will not be allowed to apply for new Work Permits or renew their existing workers' Work Permits.
- Legal proceedings will be taken to recover the unpaid levy liability.
- If you, your Partners or Directors are Sole Proprietors, Partners or Directors of other Companies, these companies will not be allowed to apply for Work Permits.

For the change of employer's address, employers are required to inform the Central Provident Fund Board (79 Robinson Road, Singapore 068897) and the Work Pass Division (18 Havelock Road, Singapore 059764) in writing within 14 days of any change in your address.

g. Termination of Services, Repatriation and Security Bond

When an employer no longer requires the services of the FDW, they are obliged to ensure that all issues pertaining to the employment must be settled with the FDW even before cancelling the Work Permit. Reasonable notice of repatriation should be given to the FDW. The employer is responsible to bear the cost of repatriation. To ensure this, a security bond must be executed with the Work Pass Division. Under the bond, employers are required to post a security deposit of \$5,000 per FDW in the form of an insurance/banker's guarantee.

This deposit may be forfeited if the employer breaches any of the security bond conditions, including failing to repatriate the FDW upon cancellation of Work Permit.

h. Employment Disputes

When these happen, either the employer or the FDW can call the employment agency or the Ministry of Manpower (MOM). MOM offers a conciliation to help, reconcile and resolve employment disputes between FDWs and their employers. The conciliation service is provided free-of-charge. The hotline number is 6438 5122.

i. Abuse and Ill-treatment

Employers who abuse their foreign workers will be severely dealt with. The Police conduct prompt and thorough investigations into all such cases. Errant employers will be charged in court and those found guilty of physical abuse or ill-treatment will be jailed, fined and/or caned.

In 1998, the Penal Code was amended to stiffen penalties committed by employers against their FDWs by 50%. For example, the normal penalty for causing voluntary hurt is imprisonment for up to one year and/or a fine of up to \$1,000. However, if the case involves an employer voluntarily hurting an FDW, the employer can be imprisoned for up to 1½ years and/or fined up to \$1,500. In addition, convicted employers and their spouses will not be allowed to employ another FDW permanently.

j. Illegal Employment /Deployment

Under the existing Work Permit conditions, Foreign Domestic Workers (FDWs) are employed to perform domestic chores only for their employers at the residential addresses stated on the FDWs' Work Permit cards.

Under the Employment of Foreign Manpower Act, employers can be charged for illegally employing or deploying a FDW.

(Information is available at the Ministry of Manpower website at <http://www.mom.gov.sg/publish/momportal/en/home.html>)

Nepal (UNIFEM East and South-East Asia Region, 2005)

In **Nepal**, UNIFEM supported efforts to revise discriminatory provisions and pass a new law on foreign employment. Advocacy began in 2002, with a view to remove restrictions on women working abroad. A previous cabinet decision had prohibited women from seeking employment in Gulf countries. The 2007 Foreign Employment Act not only bans discrimination based on gender but also adopts special measures to guarantee women's security and rights when seeking jobs abroad. Nepali women migrants now receive information about the contractual obligations of the employer and about migrant assistance centres in destination countries. The new law also contains provisions to regulate recruiting agencies and includes programmes for the families of migrant workers.

(A copy of the Foreign Employment Act may be viewed at:

http://www.moltm.gov.np/doc_folder/9foreign%20employment%20act%202042-eng.pdf)

Hong Kong

In Hong Kong, employment agencies are regulated by Section 57 of the Employment Ordinance (Chapter 57) and the Employment Agency Regulations administered by the Labor Department. The Ordinance prevents an employment agency from taking any more than a prescribed commission from the domestic worker's wage.

(Section 57 of the Employment Ordinance may be viewed at: <http://www.labour.gov.hk/eng/legislat/content2.htm>)

(The Employment Agency Regulations may be viewed at: <http://www.hk.ii.org/hk/legis/en/reg/57A/>)

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