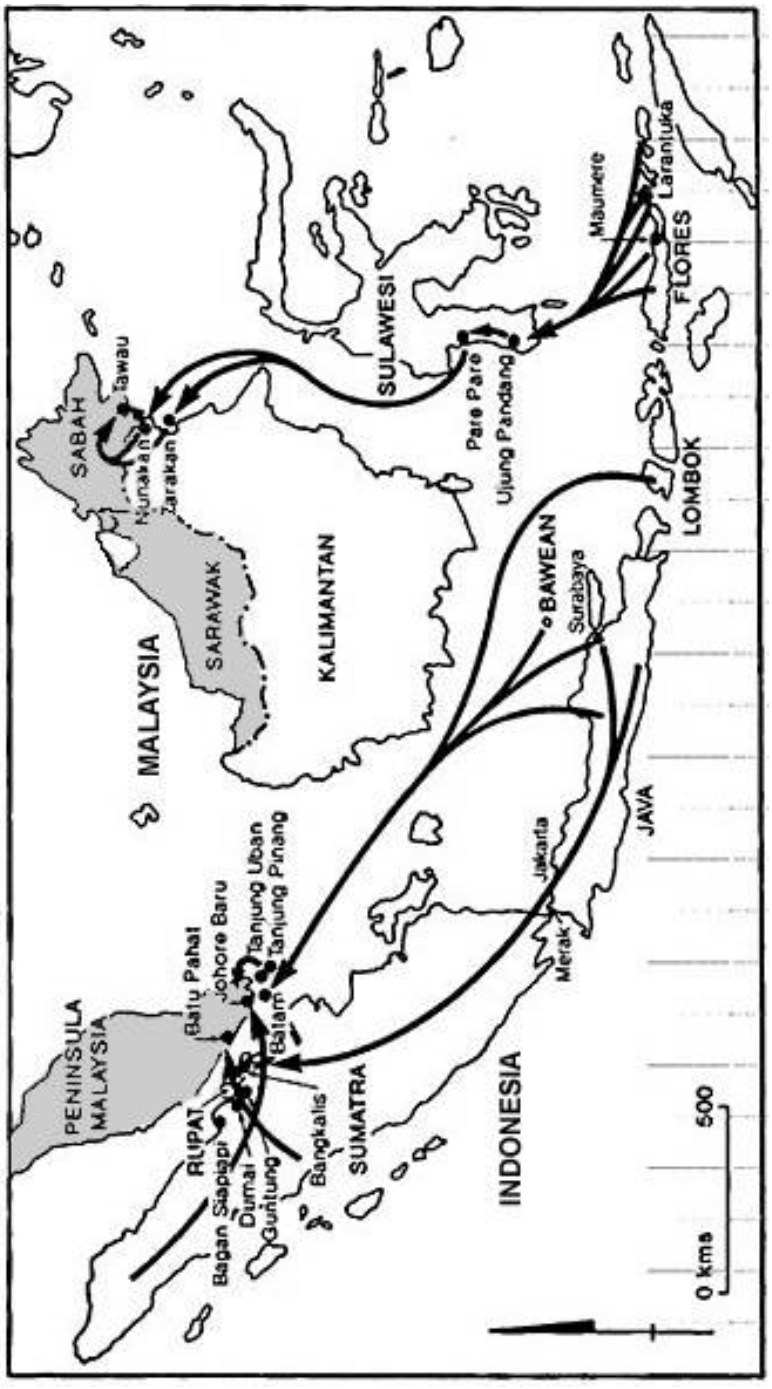
Help Wanted:
Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia

Map 1: Map of Southeast Asia

Map 2: Migration Flows between Indonesia and Malaysia

(Arrows show migration flows from Indonesia to transit points into Malaysia, which is shaded.)



I. Summary

> *The agent came to my house and promised me a job in a house in Malaysia… He promised to send me to Malaysia in one month, but [kept me locked in] the labor recruiter's office for six months…. I think one or two hundred people were there. The gate was locked. I wanted to go back home. There were two or four guards, they carried big sticks. They would just yell. They would sexually harass the women.*
>
> —Interview with Fatma Haryono, age thirty, returned domestic worker, Lombok, Indonesia, January 24, 2004

> *I worked for five people, the children were grown up. I cleaned the house, the kitchen, washed the floor, ironed, vacuumed, and cleaned the car. I worked from 5:00 a.m. to 2:00 a.m. every day. I never had a break; I was just stealing time to get a break. I was paid just one time, 200 ringgit [U.S.$52.63]. I just ate bread, there was no rice [for me]. I was hungry. I slept in the kitchen on a mat. I was not allowed outside of the house.*
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> —Interview with Nyatun Wulandari, age twenty-three, returned domestic worker, Lombok, Indonesia, January 25, 2004

In May 2004, graphic photographs of the bruised and burned body of Nirmala Bonat, a young Indonesian domestic worker in Malaysia, were splashed across newspapers in Southeast Asia. In a case that drew international attention and outrage as well as a prompt response by both the Malaysian and Indonesian governments, Bonat accused her employer of brutally beating and abusing her.

Many Indonesian domestic workers confront the risk of exploitation and abuse at every stage of the migration cycle, including recruitment, training, transit, employment, and return. Unlike Bonat, these women and girls have little opportunity for redress and their abuse is hidden from public scrutiny. Labor agencies in Indonesia and Malaysia control most aspects of the migration process with virtually no oversight from either government.

This report provides a comprehensive account of the conditions faced by migrant domestic workers, detailing their experiences from initial recruitment in their villages in Indonesia to their return home from Malaysia years later. Based on over one hundred firsthand accounts, it illustrates the endemic and often severe abuses that Indonesian domestic workers experience.

In Indonesia, prospective migrant workers secure employment in Malaysia through both licensed and unlicensed labor agents who often extort money, falsify travel documents, and mislead women and girls about their work arrangements. In both Indonesian training centers and in Malaysian workplaces, women migrant domestic workers often suffer severe restrictions on their freedom of movement; psychological and physical abuse, including sexual abuse; and prohibitions on practicing their religion. Pervasive labor rights abuses in the workplace include extremely long hours of work without overtime pay, no rest days, and incomplete and irregular payment of wages. In some cases, deceived about the conditions and type of work, confined at the workplace, and receiving no salary at all, women are caught in situations of trafficking and forced labor.

Indonesia and Malaysia have failed to protect Indonesian domestic workers and have excluded them from standard protections guaranteed to other workers. Indonesia lacks an adequate system for monitoring labor recruitment agencies or training centers. Malaysia's employment laws do not extend equal protection to domestic workers, leaving their work hours, payment of overtime wages, rest days, and compensation for workplace injuries unregulated. The Malaysian government leaves the resolution of most workplace abuse cases to profit-motivated labor suppliers, who are often accused of committing abuses themselves.

In May 2004, the two countries announced they would negotiate a new Memorandum of Understanding (MoU) on Indonesian domestic workers in Malaysia. This is an important commitment and this report provides suggestions on the terms that any such MoU should include. Such a bilateral agreement, however, can address only a portion of the measures that the two governments must undertake if they are to provide meaningful protection to migrant domestic workers. Each government must also review and amend domestic employment and immigration laws, provide resources for support services, create policies and monitoring mechanisms to regulate the practices of labor agents and employers, and train government officials and law enforcement bodies to enforce these protections.

There are approximately 240,000 domestic workers in Malaysia, and over 90 percent of them are Indonesian. Due to the hidden nature of work in private households, the lack of legal protections, the limited number of support services and organizations, and the control exerted over domestic workers' movements in Malaysia, only a small proportion of abused domestic workers are able to register complaints or seek help. Close to eighteen thousand domestic workers escaped or ran away from their Malaysian employers in 2003, which both government authorities and NGOs attribute in large part to abusive employment practices.

Indonesian women seeking employment in Malaysia encounter unscrupulous labor agents, discriminatory hiring processes, and months-long confinement in overcrowded training centers before they ever reach Malaysia. In order to pay recruitment and processing fees, they either take large loans requiring repayment at extremely high interest rates or the first four or five months of their salary is held as payment. Labor recruiters often fail to provide complete information about job responsibilities, work conditions, or where the women can turn for help. Women expecting to spend one month in pre-departure training facilities in Indonesia are often trapped in heavily-guarded centers for three to six months without any income. Some migrant domestic workers are girls whose labor agents altered their ages on their travel documents.

Indonesian domestic workers employed in Malaysia typically work sixteen to eighteen hour days, seven days a week, without any holidays. Most have no significant time to rest during the day. Those who care for children in addition to their cleaning responsibilities report being "on call" around the clock. An Indonesian domestic worker typically earns 350-400 ringgit (U.S.$92-105) per month, half the amount a Filipina domestic worker earns. Given that most work at least fifteen hours a day, every day of the month, this amounts to less than one ringgit (U.S.$0.25) per hour. Employers often give their domestic workers their wages in one lump sum only upon completion of the standard two-year contract; many fail to make complete payments or to pay at all.

Indonesian domestic workers confront numerous legal and practical obstacles that impede their ability to leave abusive situations or to seek redress. Employers and labor agents routinely hold workers' passports. Malaysian immigration policies tie domestic workers' employment visas to their employer, often trapping them in exploitative situations, as escaping means they lose their legal immigration status. Police and immigration authorities summarily detain and deport workers caught without valid work permits, often without identifying cases of abuse or trafficking. Furthermore, the employers of most domestic workers interviewed for this report forbade them to leave the house, use the phone, or write letters. This isolation meant that many did not have access to information, support services, or individuals who could help them. Domestic workers who break their two-year contract early must pay for their own return travel to Indonesia. Because employers routinely withhold their salaries, many women workers are unable to pay this fare. They either complete their contracts while enduring abusive working conditions or risk working without legal status to earn money for their trip home.

Around the world, female work in the private sphere is typically not valued as an economic activity nor acknowledged as work requiring public regulation and protection. The situation of Indonesian domestic workers in Malaysia reflects this global bias. Indonesian migrant domestic workers currently have little protection under national laws and bilateral labor agreements. Although, as noted, Indonesia and Malaysia are negotiating an MoU on domestic workers, they previously excluded such workers from a major MoU on migrant workers signed on May 10, 2004. Malaysia's national employment laws also exclude domestic workers from protections provided to other workers. In Indonesia, the Indonesian parliament, a consortium of migrants' rights groups called KOPBUMI, and the University of Brawijaya based in Malang, East Java, have drafted three different versions of a new piece of legislation to protect overseas workers. Before a migrant workers' bill can be debated by Parliament, the Indonesian president must assign a ministry to take the lead on the legislation. At this writing, the president had not acted and the timeline and eventual enactment of a migrant workers' law remained uncertain.

Malaysia and Indonesia are failing to uphold their international human rights obligations under a variety of treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Both Malaysia and Indonesia have ratified International Labor Organization (ILO) conventions on forced labor (Convention 29), protection of wages (Convention 95), and the worst forms of child labor (Convention 182). They should also ratify and enforce important international treaties on human rights and migrants' rights including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol).

This report is based on 115 in-depth interviews conducted in Indonesia and Malaysia in January and February 2004, as well as several months of background research. Human Rights Watch interviewed fifty-one Indonesian women currently working as domestic workers in Malaysia or who had left their employment in the previous twelve months. We also conducted sixteen interviews with Indonesian and Malaysian government officials. In Indonesia, these included officials from the Ministry of Manpower and Transmigration, the Ministry of Foreign Affairs, the Ministry of Women's Empowerment, and the National Commission on Violence against Women. In Malaysia, these included officials from the Immigration Department, the Ministry of

Human Resources, the National Human Rights Commission (SUHAKAM), and the Indonesian embassy in Kuala Lumpur. We conducted twenty-seven interviews with NGOs, lawyers, and United Nations agencies, and an additional thirteen interviews with Malaysian employers and labor agencies in Indonesia and Malaysia.

All names and identifying information of migrant workers we interviewed have been changed to protect their privacy and to prevent retaliation. In conformity with the CRC, this report uses "child" to refer to anyone under the age of eighteen.

Key Recommendations

> *The employer should not treat Indonesians badly, because we're still human. We have a heart and feelings. They should respect us too. They should not treat us badly. For all the mistakes [for which] we get hit, we are human.*
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> —Interview with Riena Sarinem, age thirty, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004

This report documents the routine abuse that women migrant domestic workers confront both during recruitment and training in Indonesia and in the workplace in Malaysia. Labor agencies control the migration process in both countries with little oversight from either government. Migrant domestic workers suffering forced confinement, physical violence, and unpaid wages have little hope for redress. Neither Indonesia nor Malaysia has legislation protecting the rights of migrant workers, and Malaysia's employment laws deny domestic workers the basic protections assured to other workers.

The governments of Malaysia and Indonesia should act decisively and quickly to respect fully the rights and dignity of Indonesian migrant domestic workers. Our central recommendations are listed below, and a full set of more detailed recommendations, addressed to both the Malaysian and Indonesian governments as well as to actors in the international community, may be found at the end of this report.

- Indonesia and Malaysia should actively protect and monitor the treatment of women migrant workers instead of abdicating these responsibilities to labor agents. This requires guidelines for labor agencies, more careful oversight of the work of such agencies, and enforcement mechanisms that include imposition of substantial penalties on agents who abuse workers or otherwise violate the guidelines.

- Malaysia should amend its employment and immigration laws to provide migrant domestic workers full protection under the law. Malaysia should amend its laws to facilitate civil lawsuits and the prosecution of criminal cases against abusive employers and to better respond to the needs of victims of abuse or trafficking.
- Indonesia should enact legislation on the protection of migrant workers. The government should better regulate and monitor recruitment practices and pre-departure training centers. The government should provide a range of services for returning migrants who have suffered abuse, including health care, legal aid, counseling, and reintegration programs.
- Indonesia and Malaysia should commit to negotiating a bilateral agreement on domestic workers that contains a standard contract with provisions on their hours of work, rest days, and pay; systems for monitoring training centers and places of employment; and plans on cooperation to provide services to survivors of abuse. This agreement should also protect domestic workers' rights to freedom of movement and freedom of association.

II. Background

Labor Migration in Asia

According to the International Labor Organization (ILO), there are approximately eighty-one million migrant workers worldwide, and of these, twenty-two million work in Asia.[1] Women comprised approximately half of all migrants worldwide for several decades, including in Asia, but were generally a small proportion of migrant workers. This pattern has been shifting since the late 1970s, most dramatically in Asia.[2] An estimated flow of 800,000 Asian women workers migrate each year, and this number is increasing steadily.[3]

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[1] International Labor Organization, *Towards a Fair Deal for Migrant Workers in the Global Economy* (Geneva: International Labor Organization, 2004), p. 7. These numbers refer to the total number of migrant workers in receiving countries at a given point in time, including all who had migrated prior to the date and are still inside the country. The flow of migrant workers refers to the numbers going out of a sending country or entering a receiving country during a particular period of time, usually a year. Several limitations constrain migration estimates, including high levels of undocumented migration, lack of record keeping, restricted access to existing data, competing definitions of migration, and difficulties aggregating across diverse sources of information. If refugees are included, there are an estimated 86 million migrants globally, with almost 50 million in Asia, ibid.

[2] United Nations Department of Economic and Social Affairs, Population Division, *International Migration Report 2002* (New York: United Nations Publications, 2002), ST/ESA/SER.A/220, p. 2. See also Hania Zlotnik, "The Global Dimensions of Female Migration," *Migration Information Source,* March 1, 2003 [online], http://www.migrationinformation.org/Feature/display.cfm?ID=109 (retrieved May 18, 2004).

[3] Lin Lean Lim and Nana Oishi, "International Labor Migration of Asian Women: Distinctive Characteristics and Policy Concerns," in *Asian Women in Migration*, eds. Graziano Battistella and Anthony Paganoni (Quezon City: Scalabrini Migration Center, 1996), pp. 24-25.

The feminization of Asian labor migration is most marked in Indonesia, the Philippines, and Sri Lanka, where the majority of workers who migrate abroad for work are women. For example, in 2002, the Indonesian Ministry of Manpower and Transmigration, responsible for overseeing Indonesia's labor policies, recorded that 76 percent of all legal overseas Indonesian migrant workers were women.[4] Women migrant workers are concentrated in low-paying, poorly protected sectors such as domestic work and sex work.[5]

In 2001, migrant workers from developing countries sent home U.S.$72 billion, the second largest source of external revenue after foreign direct investment.[6] For sending countries like Indonesia, the Philippines, Sri Lanka, India, Bangladesh, Pakistan, Vietnam, and Thailand, the "export" of labor has become an increasingly important strategy for addressing unemployment, generating foreign exchange, and fostering economic growth. Indonesia records up to U.S.$5.49 billion in remittances from migrant workers per year.[7] Indonesia, along with many other countries, includes targets for the numbers of workers it hopes to send abroad in its five-year economic development plans. Indonesia's targets have risen rapidly over time: in the economic development plan for 1979-84, the target was 100,000 workers; in the economic development plan for 1994-99, the target was 1.25 million workers; and in the economic development plan for 1999-2003, the target was 2.8 million workers.[8]

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[4] 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. This figure was 69 percent for Sri Lankan overseas workers in 2000 and almost 70 percent for Filipina overseas workers in 1998. Malsiri Dias and Ramani Jayasundere, *Sri Lanka: Good practices to prevent women migrant workers from going into exploitative forms of labour* (Sri Lanka: International Labor Organization, 2001), p. 7; Piyasiri Wickramasekera, *Asian Labour Migration: Issues and Challenges in an Era of Globalization,* International Migration Papers 57 (Geneva: International Labour Office, 2002), p. 18.

[5] International Labor Organization, *Towards a Fair Deal for Migrant Workers in the Global Economy,* p. 11.

[6] Dilip Ratha, "Workers' Remittances: An Important and Stable Source of External Development Finance," *Global Development Finance 2003* (Washington, D.C.: World Bank, 2003), p. 157. Furthermore, remittances are a more reliable source of income—they are less sensitive than foreign direct investment to economic downturns.

[7] "13.667 TKI yang Pulang Bawa Masalah," *Kompas,* June 10, 2004. See also, Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers*, p. 10 and Chitrawati Buchori, Farida Sondakh, and Tita Naovalitha, "TKW's Vulnerability: Searching for Solutions," (paper presented at World Bank, Jakarta, Indonesia, July 29, 2003), p. 1. Recorded remittances to Indonesia from migrant workers was U.S.$3.1 billion in 2002 and U.S.$2 billion in 2001. The unrecorded amount is assumed to be even higher. In 2001, foreign currency acquired from agriculture sector was U.S.$3.5 billion and mining (non-oil and gas) was U.S.$5.6 billion.

[8] Graeme Hugo, *Indonesian Overseas Contract Workers' HIV Knowledge: A gap in information* (Bangkok: United Nations Development Programme, 2000), p. 3. A five-year economic development plan in Indonesia is referred to as *Rencana Pembangunan Lima Tahun ("Repelita").*

The most popular destination for Asian migrants has shifted from the Middle East to other Asian countries whose economies have boomed in recent decades. In 1990, for every migrant worker from Indonesia, the Philippines, or Thailand employed in other parts of Asia, there were three working in the Middle East. By 1997, destinations such as Malaysia, Singapore, Japan, Hong Kong, and South Korea had surpassed the Middle East.[9] These countries rely upon migrant workers to fill labor shortages that arise when the domestic labor force cannot meet the labor demands created by their fast-growing economies, or when their citizens are unwilling to take up low-paying, labor-intensive jobs with poor working conditions.

Although Asian migrants include highly-skilled professionals in management and technology sectors, the vast majority remain workers employed in jobs characterized by the three D's: dirty, difficult, and dangerous. Unable to find adequate employment in their home countries and lured by promises of higher wages abroad, migrants typically obtain jobs as laborers on plantations and construction sites, workers in factories, and maids in private homes. Many of these jobs are temporary and insecure—approximately two million Asian migrant workers each year have short-term employment contracts.[10]

Indonesian Migrant Workers in Malaysia

Malaysia relies upon migrant workers from Indonesia, Bangladesh, the Philippines, India, and Vietnam to meet labor demands. Indonesians are the largest group of foreign workers (83 percent) and have a long history of working in Malaysia.[11] They fill sectoral labor shortages created by Malaysia's economic policies: seeking to reduce economic disparities between the Malay and ethnic Chinese populations, Malaysia instituted its "New Economic Policy" in 1971 which aggressively pursued export-oriented industrialization and public sector expansion. The policies resulted in urban job growth and a mass migration of rural Malaysians to the cities. Industrial growth also led to an

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[9] Piyasiri Wickramasekera, *Asian Labour Migration: Issues and Challenges in an Era of Globalization,* International Migration Papers 57 (Geneva: International Labour Office, 2002), pp. 14-16, 42.

[10] Manolo Abella, "Driving forces of labour migration in Asia", in *World Migration 2003* (Geneva: International Organization for Migration, 2003).

[11] Data from the government of Malaysia, in Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers*, p. 13. Inter-island migration in the region has been common over time. Migration into Malayia significantly increased when the British brought over Indian and Chinese workers for their plantation, mining, and construction sectors. Parmer, *Colonial Labour Policy and Administration: A History of Labour in the Rubber Plantation Industry in Malaya 1910-1949* (New York: J.J. Augustine, 1960) and Kernial Singh Sandhu, *Indians in Malaya: Some Aspects of Their Immigration and Settlement (1786-1957)* (Cambridge: Cambridge University Press, 1969). The Indonesian population in Malaya grew from 117,600 in 1911 to 346,800 in 1957. Bahrin, "The Pattern of Indonesian Migration and Settlement in Malaysia," *Asian Studies*, vol. 5 (1967), pp. 233-257.

increase in demand for labor in manufacturing and construction that could not be met by the domestic workforce. By the early 1980s, the scarcity of labor in the agricultural sector and the heightened demand for domestic workers among an expanding middle class catalyzed a surge of migrant workers.

According to Indonesian government records, approximately 480,000 Indonesians migrated in 2002 for overseas work.[12] Migrants to Malaysia find jobs in domestic work (23 percent), manufacturing (36 percent), agriculture (26 percent), and construction (8 percent).[13] Two million Indonesians may currently be working in Malaysia, but the exact number is difficult to verify as more than half may be undocumented workers without valid work permits or visas.[14]

Indonesians in Malaysia make up the largest irregular migration flow in Asia and globally are second only to Mexicans entering the United States.[15] During an amnesty that regularized the immigration status of undocumented workers in 1992, fifty thousand undocumented workers came forward.[16] In 1997, 1.4 million Indonesians residing in Malaysia voted in the Indonesian elections, causing Malaysia's Immigration Department to estimate that 1.9 million Indonesians lived in Malaysia at the time.[17] Many migrants choose to enter Malaysia through unofficial routes since migrating through licensed labor agencies can result in long delays and requires cumbersome bureaucratic procedures, while unofficial arrangements can take just days. However, there is greater risk of corruption and abuse with the unlicensed labor agents, and less protection if workers face problems with their employers or government authorities.

Over time, the Malaysian government has alternated between tightening immigration policies, causing mass outflows of foreign workers, and loosening them through development of bilateral agreements and amnesties. A number of measures taken by Malaysia over the past few decades, including the Medan Agreement of 1984, which introduced regulations for recruiting Indonesian domestic workers and plantation

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[12] Data from the Indonesian Ministry of Manpower and Transmigration, in Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers*, p. 9.

[13] Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers,* p. 14.

[14] Graeme Hugo, "Indonesia's Labor Looks Abroad," *Migration Information Source* (Migration Policy Institute), September 2002 [online], http://www.migrationinformation.org/Profiles/print.cfm?ID=53 (retrieved April 6, 2004).

[15] Prijono Tjiptoherijanto, "International Migration: Process, System and Policy Issues," in *Labour Migration in Indonesia: Policies and Practices* (Yogyakarta, Indonesia: Population Studies Center Gadjah Mada University, 1998).

[16] Hugo, "Indonesia's Labor Looks Abroad."

[17] Ibid.

workers, a November 1991-June 1992 amnesty for undocumented workers, and a 2002 amendment to the Immigration Act that established harsh punishments for immigration violations, have all failed to stem illegal migration or to protect the rights of migrants seeking work in households, manufacturing, construction, and plantations.[18]

Malaysia has made it a criminal offense for migrant workers to be present in Malaysia without a work permit or visa and has taken increasingly punitive measures, including caning, to deter and penalize such workers.[19] The local Malaysian population often blames both petty and violent crime on foreign workers. According to SUHAKAM, Malaysia's human rights commission, in January 2003, only three hundred out of 1,485 women in Kajang Women's Prison were Malaysian. The rest were foreign women, including migrant workers and trafficking victims.[20] The routine arrest, detention, and deportation of undocumented workers, regardless of the reasons for their undocumented status, means that migrant workers in abusive situations are less likely to attempt to escape, as they fear being caught by immigration authorities.

Domestic Work

Domestic work, or employment as a housekeeper or caretaker for children or the elderly, is poorly remunerated, and workers are particularly at risk of abuse because of their isolation in private homes. Migrant domestic workers encounter abuses not only in the workplace, but also at many stages of the work cycle, from susceptibility to trafficking at the recruitment stage and abuses at training centers in Indonesia, to poor conditions of detention and lack of access to health care if arrested without documents and detained.

Labor laws around the world usually exclude domestic work from regulation or provide less protection for domestic workers than for other workers, reflecting discriminatory social biases that create artificial dichotomies between work associated with men in the formal public sphere, and work associated with women in the private sphere. Malaysia's Employment Act of 1955 excludes domestic workers from regulations providing maternity benefits, rest days, hours of work, and termination benefits.

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[18] "Issues Paper from Malaysia," *Asia Pacific Migration Research* Network [online], http://www.unesco.org/most/apmrnwp9.htm (retrieved May 19, 2004); Sidney Jones, *Making Money off Migrants: The Indonesian Exodus to Malaysia* (Hong Kong: Asia 2000 Ltd. and Centre for Asia Pacific Social Transformation Studies, 2000).

[19] See section on Enforcement of the Immigration Act on page 73.

[20] Human Rights Watch interview with Kamala d/o M.G. Pillai, legal officer, SUHAKAM, Kuala Lumpur, Malaysia, February 13, 2004. Although there were close to 1,500 inmates, the prison only has capacity for 400-500 prisoners.

Policy-makers, employers, labor agents, and members of the public often view women's labor as domestic workers as a natural extension of women's traditional, unpaid role as mothers and care providers in the family, underplaying the contractual relationship between employer and employee. They do not address the range of working conditions that domestic workers may encounter, including the physical size, layout, and building materials of the house they must clean; the number of individuals they serve, including children in the employer's household; and the workload, which often involves juggling cleaning, cooking, caring for children, and caring for the elderly.

Legal labor migration from Indonesia is dominated by women domestic workers—According to the Indonesian government and the World Bank, in 2002, 76 percent of 480,393 overseas workers from Indonesia were women, and 94 percent of these women were employed as domestic workers in Middle Eastern, East Asian, and Southeast Asian countries.[21] These workers include girls who travel with falsified passports and employment visas.[22] According to Malaysian officials, there are currently 240,000 women migrant domestic workers in Malaysia and over 90 percent of them are Indonesian.[23] The "import" of domestic workers was in part a response to Malaysian women moving into more secure, higher-paying factory jobs.[24]

Most domestic workers who migrate to Malaysia come from East Java, Lombok, and Flores. The women whom Human Rights Watch interviewed cited financial necessity and a desire to support their parents and children as their primary reasons for seeking work in Malaysia. Some women stated that they were interested in seeing a different country and having new experiences, and that they saw Malaysia as a stepping stone to gaining the qualifications that could make them better candidates for more lucrative jobs

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[21] Chitrawati Buchori, Farida Sondakh, and Tita Naovalitha, "TKW's Vulnerability: Searching for Solutions," (paper presented at World Bank, Jakarta, Indonesia, July 29, 2003), p. 1.

[22] In this report, a "child," "girl," or "boy" refers to an individual under the age of eighteen. Human Rights Watch follows the U.N. Convention on the Rights of the Child (CRC) in defining as a child "every human being under the age of eighteen unless, under the law applicable to the child, majority is obtained earlier." Convention on the Rights of the Child, art. 1, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990), ratified by Indonesia on September 5, 1990 and by Malaysia on February 17, 1995.

[23] Human Rights Watch telephone interview with an official from the Ministry of Human Resources who wished to remain anonymous, Kuala Lumpur, Malaysia, June 24, 2004. See also, Ajitpal Singh, "Centres to train locals as maids," *New Straits Times,* June 19, 2004.

[24] Christine B. N. Chin, *In Service and Servitude* (New York: Columbia University Press, 1998), p. 14. ("The supply of Malaysian servants declined as newly-built factories owned by transnational corporations demanded female factory workers…. [Y] oung Malaysian Malay, Chinese, and Indian women elected to work in factories that paid higher wages and that offered more structured work environments with clearly defined rest periods and rest days…. Immigration, child care, employment, reproduction, and personal income tax legislation and policies affect everyday life in a way that continues to fuel Malaysian demands for foreign female domestic workers.")

in the Middle East, Singapore, or Hong Kong. Most were between the ages of seventeen and thirty-five, and had completed elementary or middle school. They chose domestic work because they did not have to pay any money up front, and they would receive free board and lodging in Malaysia, thereby, they believed, enabling them to save more money.[25] Labor agencies typically charge large processing and placement fees for other overseas work, for example, jobs in factories, restaurants, or plantations.

According to Malaysian immigration authorities, in the last four years, fifty-seven thousand domestic workers in Malaysia left their places of employment before the completion of their work contracts. Abuse in the workplace is one of the leading causes for workers to leave their employers.[26] NGOs in both Malaysia and Indonesia also reported handling cases of abuse of domestic workers.[27]

Trafficking

Every year, an estimated eight to nine hundred thousand people are trafficked across international borders into forced labor or slavery-like conditions.[28] Although exact figures are difficult to obtain, there is substantial evidence that trafficking of women and children in Asia is a particularly serious and entrenched phenomenon. Governments, NGOs, and international organizations have documented trafficking of individuals into forced labor, including forced prostitution, from Burma to Thailand, Indonesia to Malaysia, Nepal to India, and Thailand to Japan, among others.[29]

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[25] Human Rights Watch interviews with current and former women migrant domestic workers, Indonesia and Malaysia, January and February, 2004.

[26] "Runaway Maids on the Rise," *New Straits Times,* May 29, 2004. "Immigration director-general Datuk Mohd Jamal Kamdi, revealing these figures, said the maids, mostly from Indonesia, largely ran away for three reasons: difficult employers, unhappiness at being cooped up indoors, and 'the boyfriend factor.' Jamal said 17,131 maids left their employers last year [2003], compared with 14,400 in 2002, 12,200 in 2001, and 13,857 in 2000."

[27] For example, the Women's Aid Organization in Kuala Lumpur has traditionally provided a shelter and other services to women experiencing domestic violence. They have opened their doors to abused domestic workers as well—in 1999 they had seven such cases, and in 2003, they had twenty-nine. Their total caseload that year was 130. Human Rights Watch interview with Jessie Ang, social worker, Women's Aid Organization, Kuala Lumpur, Malaysia, February 11, 2004. Tenaganita, a migrants' rights organization, handled two hundred complaints by domestic workers in Malaysia between 1994 and 2000. Tenaganita, *Migrant Workers: Access Denied* (Kuala Lumpur: Tenaganita, 2004), p. 63. NGOs in Indonesia like Federasi Organisasi Buruh Migran Indonesia (FOBMI), Solidaritas Perempuan, Konsorsium Pembela Buruh Migran Indonesia (KOPBUMI), and Perkumpulan Panca Karsa (PPK) also provide services to returned domestic workers who experienced abuse.

[28] United States Department of State, *Trafficking in Persons Report 2003* (Washington D.C.: U.S. State Department, 2003).

[29] Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan* (New York: Human Rights Watch, 2000); Ruth Rosenberg, ed., *Trafficking of Women and Children in Indonesia* (Jakarta: International Catholic Migration Commission and American Center for International Labor Solidarity, 2003); Janice G. Raymond, Jean D'Cunha, Siti Ruhaini Dzuhayatin, H. Patricia Hynes, Zoraida Ramirez Rodriguez, and Aida Santos, *A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and*

Trafficking includes all acts related to the recruitment, transport, transfer, sale, or purchase of human beings by force, fraud, deceit, or other coercive tactics for the purpose of placing them into conditions of forced labor or practices similar to slavery, in which labor is extracted through physical or non-physical means of coercion, including blackmail, fraud, deceit, isolation, threat or use of physical force, or psychological pressure.[30] For a more detailed discussion of the definition of trafficking, see the "International Legal Standards" chapter of this report.

Migration and trafficking are interlinked, as traffickers often exploit the processes by which individuals migrate for economic reasons. Through corrupt government officials, unscrupulous labor agents, and poor enforcement of the law, economic migrants may be deceived or coerced into situations of forced labor and slavery-like practices. Indonesian trafficking victims may be found in situations of forced domestic labor and other forms of forced labor, forced sex work, and forced marital arrangements.[31] In its annual report for 2003, Malaysia's National Human Rights Commission (SUHAKAM), addressed the issue of trafficking victims forced into sex work, noting: "Indonesian girls and women are usually brought in as domestic maids and then 'sold' by their agents to work in discos and entertainment outlets to entertain men, including being forced to provide sexual services."[32]

No reliable estimates exist for the numbers of individuals trafficked from Indonesia to Malaysia each year. Although there are hundreds of confirmed cases, most groups working on the issue suspect the actual number runs into the thousands. According to the 2004 U.S. Trafficking in Persons Report, of 5,564 women and girls arrested and detained in Malaysia for suspected prostitution in 2003, a large number were probably trafficking victims.[33] Many anti-trafficking efforts have continued to focus on women and children trafficked only into forced prostitution, and police, immigration authorities,

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Health Consequences of Sexual Exploitation in Five Countries (Coalition Against Trafficking in Women, 2002); Human Rights Watch, *Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels* (New York: Human Rights Watch, 1995); and Asia Watch and Women's Rights Project (now Human Rights Watch), *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand* (New York: Human Rights Watch, 1993).

[30] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol), G.A. Res. 55/25, Annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force December 25, 2003.

[31] Ruth Rosenberg, ed. *Trafficking of Women and Children in Indonesia*.

[32] SUHAKAM, *Annual Report 2003,* (Kuala Lumpur: Human Rights Commission of Malaysia, 2004), p. 38.

[33] United States Department of State, *Trafficking in Persons Report June 2004,* (Washington D.C.: U.S. State Department, 2004), p. 101.

and other relevant actors still fail to identify individuals trafficked into other forms of forced labor.

Trafficking victims in Malaysia have little hope of receiving protection or aid from the Malaysian authorities, including services or remedies through the justice system. Despite a revision of the penal code in Malaysia, trafficking victims are often treated without distinction from undocumented migrants, meaning they may be detained, fined, and deported without any access to services or redress. There are few shelters and services for the victims of trafficking who are identified, and many are repatriated without pursuing criminal or civil cases because of the time, expense, and bureaucracy involved.

Repression of Civil Society in Malaysia: The Irene Fernandez Case

The repression of civil society in Malaysia makes the exposure of human rights abuses against women migrant workers, the provision of services, and advocacy for change extremely difficult. The case of Irene Fernandez, the director of Tenaganita, a prominent migrants' rights group in Malaysia, underscores the atmosphere of intimidation and coercion that has been created by the state. Fernandez is an internationally recognized human rights advocate who has worked to reform laws on rape and domestic violence, provide support services to migrant workers and trafficking victims, and create programs to improve health services for HIV-positive women.[34]

Tenaganita published a report in 1995, "Abuse, Torture and Dehumanised Treatment of Migrant Workers in Detention Camps," that detailed abuses against migrant workers in Malaysia's immigration detention centers, including physical abuse and inadequate food and water.[35] Instead of prosecuting or disciplining the officials responsible for these violations, the Malaysian government pressed charges against Fernandez in March 1996 for publishing "false and malicious" information about the Malaysian state under the restrictive Printing Presses and Publications Act of 1984 (PPPA).[36] The PPPA is but

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[34] Irene Fernandez was a Human Rights Watch Monitor in 1994. Every year, Human Rights Watch recognizes leading human rights activists for their commitment to the defense of human rights.

[35] In recent years, SUHAKAM, Malaysia's National Human Rights Commission, has documented severe overcrowding and poor living conditions in the detention centers. SUHAKAM, *Annual Report 2003* (Kuala Lumpur: Human Rights Commission of Malaysia, 2004), pp. 41-42 and SUHAKAM, *Annual Report 2002* (Kuala Lumpur: Human Rights Commission of Malaysia, 2003), p. 31.

[36] Printing Presses and Publications Act of 1984 (Act 301), Malaysia, section 8(A)(1). The PPPA is widely recognized as overly broad and insufficiently protective of free expression. The government has regularly used the PPPA to curb outlets critical of the government. Under the PPA, all publications have to re-register with the government annually, and the government has the power to dictate the terms of publication to all news outlets. See HRW, Repressive Laws: the Printing Presses And Publications Act, http://www.hrw.org/campaigns/malaysia/2000/laws-pppa.htm. For more information about the Irene Fernandez case, see also Sidney Jones, *Making Money off Migrants,* pp. 106-126.

one of several Malaysian laws that do not adhere to international standards, and which the government regularly uses to clamp down on the basic rights of free expression, association and assembly.[37]

On October 16, 2003, after the longest trial in Malaysian history, and one that drained the resources of one of the few organizations helping migrant workers, Fernandez was convicted and sentenced to a year in prison, sending a chilling message to other human rights advocates.[38] Fernandez, free on bail pending appeal of the one-year sentence, has faced other forms of restrictions from the government, including recent denials of her application to travel abroad to speak at international conferences, on the grounds that she would "tarnish the image of the country" if allowed to travel abroad.[39]

The Status of Women and Girls in Indonesia

The high risk of abuse and the accompanying lack of government protection encountered by Indonesian migrant domestic workers are linked to women's status in both Indonesia and Malaysia.

The status of women and girls in Indonesia varies widely across the country, reflecting the diversity of ethnic group traditions and social expectations about the behaviors of men and women across the archipelago. Girls' rate of primary and secondary school enrollment is approximately equal to boys, but gender inequality still manifests itself in political participation and employment. According to the ILO, women in the workforce earned 68 percent of that of male workers.[40] In 2002, the government stated that 38 percent of civil servants were women, but that only 14 percent of these women held positions of authority.[41]

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[37] Other laws that have been used against peaceful critics of government policy in the past are the Sedition Act, the Internal Security Act, and the Official Secrets Act. Malaysian activists have told Human Rights Watch that even the threat of prosecution under these laws is enough to significantly chill NGO activity, given the harsh penalties meted out to NGO activists in the past. For more information on the Sedition Act, the Internal Security Act (ISA), and the Official Secrets Act, see Amnesty International, *Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy* (London: Amnesty International, 1999). For more on the use of the ISA against alleged Islamic militants, see Human Rights Watch, *In the Name of Security* (New York: Human Rights Watch, 2004).

[38] At the writing of this report, Irene Fernandez was out on bail of 3,000 ringgit (U.S.$789.47) pending appeal.

[39] Fernandez missed four international events in November and December 2003. She obtained permission to travel to China for a Food and Agriculture Organization (FAO) conference in May 2004 after repeated requests. Yoon Szu-Mae, "Court rejects for third time activist's passport request," *Malaysiakini.com,* May 6, 2004. See also, "Malaysia: Rights Activist Barred From Travel," Human Rights Watch, November 6, 2003.

[40] Human Rights Watch interview with Octavianto Pasaribu, programme officer, Rights at Work Sector and Child Labour Programme, International Labour Organisation, Jakarta, Indonesia, February 4, 2004.

[41] United States Department of State, *Human Rights Report 2003* (Washington, D.C.: U.S. State Department, 2004) [online], http://www.state.gov/g/drl/rls/hrrpt/2003/27771.htm, (retrieved April 16, 2004).

Violence against women and girls is a serious problem in Indonesia and takes many forms, including domestic violence, trafficking, sexual violence, and violence by armed forces in conflict areas like Aceh and Papua.[42] The narrow criminal code definition of rape as penile penetration has prevented many rape prosecutions against sexual violence perpetrators. In 2002 in Aceh, soldiers were not held accountable for raping women with bottles and other foreign objects.[43] Marital rape is not outlawed.

Access to redress through the criminal justice system, difficult for most Indonesians because of notorious corruption and inefficiency, is largely inaccessible to women and girls. The process to file a complaint is often lengthy and bureaucratic, and law enforcement officials may not be adequately trained or competent in handling sexual or domestic violence cases. In 2001 and 2002, less than 10 percent of the cases reported to four women's crisis centers in Jakarta were reported to the police.[44]

The Indonesian government has taken some steps to address violence against and exploitation of women; for example, the president established the National Commission on Violence against Women by decree in 1998, and the police have established women's desks in police stations around the country to provide gender-sensitive services to women and girls.[45] The government has also begun setting up crisis centers for victims of violence and drafting bills to protect migrant workers' rights, address domestic violence, and prevent and respond to trafficking. Many of these initiatives remain in their planning stages and have been slow to get enacted or implemented. For example, although the legislature initiated the bill on domestic violence six years ago, the House has yet to begin deliberations on it.[46]

Gender-based discrimination, though outlawed by the 1945 Constitution, continues both in the law and in social practice. Citizenship can only be passed through the father,

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[42] National Commission on Violence Against Women with partner organizations, *Failed Justice and Impunity: The Indonesian Judiciary's Track Record on Violence Against Women, Report to the UN Special Rapporteur on Independence of the Judiciary* (Jakarta: Komnas Perempuan, 2002).

[43] The Department of Justice and Human Rights completed a draft Criminal Code Bill that contained a provision expanding the definition of rape to cover the insertion of foreign objects into a woman's vagina or anus. The bill had not yet been passed into law at the writing of this report. United States Department of State, *Human Rights Report 2003*.

[44] National Commission on Violence Against Women with partner organizations, "Failed Justice and Impunity," p. 10.

[45] Ibid, pp. 11-12.

[46] Muninggar Sri Saraswati, "Bill on domestic violence faces government challenge," *The Jakarta Post,* May 29, 2004.

meaning that children with Indonesian mothers and non-citizen fathers are not eligible for public services requiring citizenship, such as public school enrollment. Muslims have the right to choose whether civil law or Islamic law is applied to them, but the CEDAW committee has raised concerns about the extent to which Muslim women are able to make this decision freely.[47] The Islam-based family court system poses some disadvantages for women. For example, women bear a heavier burden of proof when seeking a divorce than men.

The Status of Women and Girls in Malaysia

Women's social, economic, and political roles have transformed over the past few decades, both influenced by and actively shaping Malaysia's politics and dramatic economic growth. Indicators on education and health show encouraging progress. For example, in 2000, school enrollment rates of males and females were approximately equal and 96 percent of all births were attended by a skilled health care provider.[48] The illiteracy rate among adult women dropped from 38 percent in 1980 to 17 percent in 2000, with only 2 percent of young women between the ages of fifteen and twenty-four being illiterate.[49]

Low levels of political participation and economic segmentation along class and ethnic lines marginalize women politically and economically. Women held 10 percent of the seats in the House of Representatives in 2003 and 26 percent of those in the Senate.[50] The second-largest political party, Parti Islam se-Malaysia (PAS), does not allow women to be candidates for the House of Representatives, but the party had three female senators in 2003.[51]

Ethnicity and religion intersect with gender in ways that adversely affect women's legal status and rights. The differences are especially marked in regard to the application of family law: Muslim women are governed by Muslim personal laws interpreted by separate systems of religious courts in each state; indigenous women from Sabah, Sarawak, and other parts of the country follow native customary law; and the rest fall

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[47] CEDAW Committee, *Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions)*, Supplement No. 38 (A/53/38/Rev.1), para. 287.

[48] World Bank, *Malaysia Summary Country Profile* [online], http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=MYS,Malaysia&hm=home, (retrieved April 15, 2004).

[49] Ibid.

[50] United Nations Development Programme, Human Development Indicators 2003 [online], http://www.undp.org/hdr2003/indicator/cty_f_MYS.html, (retrieved April 15, 2004).

[51] United States Department of State, Human Rights Reports, 2003 [online], http://www.state.gov/g/drl/rls/hrrpt/2003/27778.htm (retrieved April 16, 2004).

under Malaysia's civil and criminal laws, including the 1976 Marriage and Divorce Act.[52] Women's organizations have protested discriminatory provisions in Muslim personal laws that prevent Muslim women from having equal rights in contracting marriage or obtaining a divorce. Two states, Kelantan and Terengganu, have passed bills to impose Islamic criminal law, or Hudood, which have raised concerns about the implications for women; for example, women and girls are confronted with discriminatory and prohibitive evidentiary requirements in cases of rape as they must provide four male witnesses. Adultery is criminalized, and if a rape victim is unable to prove her case, she may be at risk for being punished for making slanderous accusations or for adultery for having sexual relations outside of marriage. As of this writing, the federal government has consistently blocked enactment of these laws.[53]

Violence against women and girls is a serious problem in Malaysia. Women's Aid Organization, an NGO, estimated that there were over three thousand cases of domestic violence in 2003, and in a 1995 report estimated that 39 percent of Malaysian women have suffered from partner abuse.[54] Marital rape is not a crime. Furthermore, the Penal Code requires that visible evidence of physical injury exist to prosecute a domestic violence case, preventing survivors of sexual abuse without visible injury or who have suffered psychological abuse from pursuing legal remedies. The government amended the Penal Code to stiffen punishments for rape from five years of imprisonment to thirty years, caning, and a fine.[55]

III. Pre-Departure Abuses in Indonesia

The agent came to my house and promised me a job in a house in Malaysia, where I would earn two hundred ringgit [U.S.$52.63] per month. I would not have to pay anything, they would prepare my passport and would cut my salary for the first four months. I wanted to get the experience and to earn money. The agent promised to send me to Malaysia in one month, but [kept me locked in] the labor recruiter's office for six months. I couldn't go out. Many people, even if they got hurt or wanted to leave, they weren't allowed out. I think one or two hundred people were there. The

[52] Law Reform (Marriage and Divorce) Act 1976, Malaysia; Islamic Family Law (Federal Territories) Act, 1984, Malaysia.

[53] BBC, "Malaysian State Passes Islamic Law," July 8, 2002 [online], http://news.bbc.co.uk/1/hi/world/asia-pacific/2116032.stm, (retrieved April 16, 2004).

[54] United States Department of State, Human Rights Reports, 2003 [online], http://www.state.gov/g/drl/rls/hrrpt/2003/27778.htm (retrieved April 16, 2004); Women's Aid Organisation, "Battered Women in Malaysia: Prevalence, Problems and Public Attitudes" (Petaling Jaya: Women's Aid Organisation, 1995).

[55] Penal Code of Malaysia, Section 375.

food wasn't enough, they gave it twice a day. The gate was locked. I wanted to go back home. There were two or four guards, they carried big sticks. They would just yell. They would sexually harass the women. There were lots of girls there too [who suffered the same treatment].

—Interview with Fatma Haryono, age thirty, returned domestic worker, Lombok, Indonesia, January 24, 2004

Licensing of Labor Recruiters and Suppliers

Labor agencies control most aspects of migrant workers' recruitment, foreign work permit applications, training, transit, and placement with an employer with little or no oversight from either the Indonesian or Malaysian government. Indonesia requires that a domestic worker migrating legally find employment overseas through a licensed labor agency that helps her apply for a passport; obtain a temporary employment visa; obtain medical clearance; pay insurance and other fees; and learn housekeeping, child care, and language skills. Over four hundred licensed labor agencies operate in Indonesia, with countless more operating illegally. The four hundred licensed recruitment agencies generate an estimated U.S.$2 billion a year in revenue by charging migrants U.S.$1,500 each to migrate abroad, and some collect additional fees.[56]

The requirements for becoming a "housemaid" recruiter or supplier in either country are simply that the company be legally registered with the government and have a certain amount of financial viability, measured by their meeting minimum standards on the size of their bank accounts.[57] Aside from basic specifications on the accommodations for domestic workers who stay at the center for training, there are no guidelines or requirements on the quality of their services or the background or qualifications of their staff.

In Indonesia, the Ministry of Manpower and Transmigration issues licenses to labor agencies. Once an agency has a license, they do not have to undergo a review to renew it periodically. If the Ministry discovers the agency has been cheating workers or breaking the regulations, they can cancel or suspend the license. Since the Ministry does

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[56] "Indonesia, Philippines," *Migration News,* vol. 11, no. 1 (January 2004) [online], http://www.migration.ucdavis.edu/mn/comments.php?id=2984_0_3_0 (retrieved April 6, 2004).

[57] Human Rights Watch interview with Fifi Arianti Pancawedha, director for Socialization and Guidance for Indonesian Overseas Placement, Ministry of Manpower and Transmigration, February 5, 2004, and Human Rights Watch interview with Mathew Barin, assistant director, Housemaid Unit, Foreign Workers Department, Department of Immigration, Ministry of Home Affairs, February 24, 2004. Fifi Arianti Pancawedha said Indonesian companies must be legally incorporated, have their own office space, and a deposit guarantee. They should have at least 250 million rupiah (U.S.$30,488) and basic capital worth 750 million (U.S.$91,463).

not monitor labor suppliers regularly or rigorously, the identification and penalization of agencies committing abuses is rare. Furthermore, NGOs report that owners and employees of suspended recruitment agencies may ignore the penalty and continue their operations by setting up new agencies under different company names and partner configurations.[58] One government official from the Ministry of Manpower and Transmigration noted that the government has limited power to sanction such agencies:

> So far we have canceled eighteen licenses, and some are under suspension. Some of these companies had fake documents, for example, they had no bank deposit, and others took money from workers and didn't send them overseas. In our next bill, we hope to cover illegal recruitment…. Our power is only to cancel or suspend the license, or use their deposit to pay the worker…. In the new bill, we need to be able to give the penalty of prison time, because right now we don't have enough power.[59]

Pre-Departure Process and Transit

Women migrating to Malaysia for domestic work often first come into contact with a local labor recruiter from their village who promises them a certain salary, presents them with employment options, and offers to guide them through the recruitment process. These agents often receive a commission from larger labor agencies or extract a fee from the prospective migrant worker. These agents may help the worker get a health exam for medical clearance and a passport before they pass them on to a labor supplier in Jakarta or a transit point.

Malaysian law requires all migrant workers be tested for pregnancy, human immuno-deficiency virus (HIV), and other infections like malaria and tuberculosis before they arrive in Malaysia. The workers either pay for this health exam or the cost is included in their initial salary deduction. Employers and labor agents often re-test them upon arrival in Malaysia, as they have little faith that the documents from Indonesia are reliable. Prospective workers who test positive will be denied entry or deported if they test positive for pregnancy, HIV, tuberculosis (TB), malaria, leprosy, sexually transmitted infections (STIs), or drug use. One domestic worker, Nur Hasana Firmansyah, told Human Rights Watch,

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[58] E-mail message from Geni Achnas, member, Women's Movement for the Protection of Migrants' Rights (GPPBM), Jakarta, Indonesia, to Human Rights Watch, June 9, 2004.

[59] Human Rights Watch interview with Fifi Arianti Pancawedha, director for Socialization and Guidance for Indonesian Overseas Placement, Ministry of Manpower and Transmigration, February 5, 2004.

> I took a full medical exam, with a blood and urine test. They did not give me the results, they just told me I was "fit." I also took another exam in Jakarta. Pregnant women failed. They were sent back home, but if they wanted an abortion they could stay. Two girls had an abortion and three girls went back home.[60]

Most women interviewed by Human Rights Watch said they did not receive any information specifying the health conditions for which they were being tested. There were no procedures for protecting the confidentiality of test results, and generally the health clinic gave the exam results directly to the labor agent. Human Rights Watch found no official policy concerning counseling or care for those who test positive for STIs or other illnesses. Government officials, labor agents, NGOs, and domestic workers said that women who were pregnant were sent home, or in a few cases, given the option of getting an abortion.[61] In a few isolated cases, some workers who tested positive for HIV during their medical exams in Indonesia were referred to an Indonesian NGO that provides services for individuals living with HIV/AIDS.[62]

While other migrants who seek employment in plantations, factories, and construction often pay large fees up front, many women choose domestic work because there is no initial fee. Instead, they agree to have the first four or five months of their salary in Malaysia withheld. Women who find employment through illegal agents have to pay a large sum, usually 1.5-2 million rupiah (U.S.$183-244). They typically raise these funds by borrowing money from the agent, village moneylenders, family, or friends at usurious interest rates. Most of the women interviewed for this report who had borrowed money had to repay their lenders double the original amount of the loan.

A migrant domestic worker may pass through two or three different agents or companies before she travels to Malaysia. The local labor recruiter or "sponsor" will send her to a branch office of an agency or directly to the main office. These offices either have their own training facilities or contract out to another agency to hold and

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[60] Human Rights Watch interview with Nur Hasana Firmansyah, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[61] Human Rights Watch interviews in Indonesia and Malaysia, January and February 2004.

[62] Human Rights Watch interview with Tika Surya Atmoja, NGO worker, Yayasan Pelita Ilmu (YPI), Jakarta, Indonesia, February 3, 2004. YPI is an NGO that works to provide services for people living with HIV/AIDS. Between 2001-2003 they had thirty cases of migrant workers who were HIV-positive referred to them. They are trying to develop working relationships with labor agencies, but of the two hundred agencies they have contacted, only thirty-three have responded and may cooperate with YPI by allowing them to conduct information sessions about HIV/AIDS and by referring migrant workers who test positive to them.

train prospective migrant workers. At this point, the agency may arrange for another health exam, will help her apply for a passport if she does not have one, request a temporary employment visa for the worker, pay for hospitalization insurance, and obtain approval from the Ministry of Manpower and Transmigration. The process is lengthy and contingent upon approvals from several government agencies. Indonesia also requires that women domestic workers undergo training in housekeeping, childcare, and Bahasa Melayu, the language of Malaysia, before they go to Malaysia. They must pass an exam before they are granted a visa.[63] While they are waiting for their paperwork to be completed and for a Malaysian agent to select them for employment, women migrant workers stay in holding or training centers for several months.

Malaysian labor agents and employers may contract domestic workers through licensed Indonesian labor suppliers, or they may illegally recruit directly through unlicensed agents or prospective workers themselves. Those who work with licensed Indonesian labor suppliers can choose domestic workers from written "biodata" forms containing photographs and biographical information about prospective workers (see appendix A for an example), or they may visit the holding and training centers in Indonesia to select women workers themselves.[64] The contempt with which Malaysian and Indonesian labor agents treated women workers is apparent in one Malaysian labor supplier's explanation of why he personally screens the prospective domestic workers in Indonesia's training centers. He told Human Rights Watch, "Malaysia is in the lowest category compared with Hong Kong, Taiwan…the good maids, the highly educated maids won't come to Malaysia. That's why I go to Indonesia, so they won't give me rubbish…. But there is still some rubbish, I don't know why…. Even in training centers, because of big numbers, the quality is totally zero."[65]

Once a woman has been selected for employment, she travels to Malaysia accompanied by either Indonesian or Malaysian labor agents, often with a small group of other workers. Human Rights Watch interviewed several women who experienced long journeys with unexpected stops in transit points. Some women who were promised plane tickets to Malaysia actually traveled by boat. Kusmirah Parinem told Human Rights Watch about her experience:

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[63] The training programs are of different lengths depending on the country of destination. The training for Saudi Arabia and Hong Kong are six months because the language training is more intensive. The training for Malaysia should take one to two months as Bahasa Indonesia and Bahasa Melayu, the language spoken in Malaysia, are similar.

[64] "Biodatas" are information forms that Malaysian agents and employers to select workers for employment. A typical biodata includes a photograph of the candidate, information about the worker's skills, and biographical information.

[65] Human Rights Watch interview with a labor supplier, Kuala Lumpur, Malaysia, February 13, 2004.

> The agent had promised we would travel to Malaysia by plane, but instead we went on a thirteen-person boat. From Jakarta to Batam, I went by plane, and we stayed there for three days without food. From Batam to Malaysia we traveled by boat. I can't remember how many hours but I was very frightened.[66]

Corruption, Extortion, and Other Illegal Practices

The long duration, high cost, and complex requirements of recruitment through legal procedures have led to both corruption and increased illegal activity. Competition and unethical practices among profit-seeking labor suppliers and recruiters create an environment that undermines the effectiveness of the few existing regulations, compromising migrant workers' rights. In the past two years, dozens of labor recruitment agencies were found to be falsifying competency test certificates for migrant workers.[67]

A labor supplier in Jakarta told Human Rights Watch about the regular bribes and unofficial fees he pays to avoid delays in processing workers' documents and other interference with his business. He said that without such payments, the obstacles he would then encounter would place him at a disadvantage relative to other recruitment agencies in a highly competitive environment. He told Human Rights Watch:

> There is competition between the PJTKI [recruitment agencies]—employers run to the labor supplier who is the cheapest and fastest. I give money to the media, social workers…police. I give "entertainment money" to about ten people per month. We give to key people …. We give, they don't ask. It adds up to about three or four million [U.S.$365-488] a month. [68]

The structure of labor recruitment in Indonesia increases the freedom and incentive local agents have to extort high fees from prospective migrant workers: in many cases,

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[66] Human Rights Watch interview with Kusmirah Parinem, domestic worker, Kuala Lumpur, Malaysia, February 14, 2004.

[67] Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers,* p. 16.

[68] Human Rights Watch interview with a labor supplier, Jakarta, Indonesia, February 7, 2004. Bribes to the media and social workers compromise their independence to report problems they discover at labor agencies or training centers.

they work on commission for several different agencies and do not receive a regular salary. An Indonesian labor supplier based in Jakarta said, "We do not give [the branch office agents] a salary from Jakarta. They get money from the migrant workers and brokers. I don't know how much they get…. I ask them not to take too much [from the workers]."[69] Local labor agents are often the first to provide information about the long and bureaucratic migration process to workers, making it easy for them to deceive workers about the amount of money they have to pay up front. Women migrating for domestic work through legal channels pay their fees through initial salary deductions in Malaysia and should have few, if any, financial obligations to their agents in Indonesia. Human Rights Watch interviewed women migrant domestic workers who paid large sums to their local labor recruiter, often resorting to borrowing money at high interest rates.[70]

The Indonesian government, through the Ministry of Manpower and Transmigration, requires each Indonesian migrant worker to pay U.S. $15 in insurance fees. Indonesian NGOs have criticized the insurance scheme for being vague. For example, the insurance covers hospitalization, but the maximum amount is not specified, and it remains unclear whether the insurance covers acts of abuse by employers. Workers only have one month after their return to Indonesia to make a claim.[71] Most migrant workers do not receive the coverage they are entitled to under this insurance scheme. The World Bank has commissioned a study in cooperation with the Indonesian government to discover how these funds are being used. As of early 2004, the whereabouts of these funds and their disbursement remained unclear. NGOs blame lack of transparency and accountability in the state treasury, the Ministry of Finance, and the Ministry of Manpower and Transmigration for the "disappearance" of these funds.[72]

The numerous and complicated procedures to send workers abroad, corruption among labor agents, and the absence of reliable information mean that many prospective migrant workers may think they are migrating legally, but actually, often unbeknownst to them, obtain fraudulent or incorrect documents at some point in the process. A labor recruiter in a village may be working for both licensed agencies and illegal agents simultaneously. In order to speed up the pre-departure process, a labor agent may promise to obtain a two-year temporary employment visa for a worker, but instead

[69] Ibid.

[70] See also, Sidney Jones, *Making Money Off Migrants,* 2000, pp.44-51.

[71] Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Migrant Domestic Workers,* pp. 34-35.

[72] Ibid, p. 33.

secure her a short-term visitor visa, making her vulnerable to falling out of status and encountering problems with the Malaysian immigration authorities.

In other cases, migrant workers may opt to seek employment through an illegal agent who can promise to send them abroad in a matter of days rather than months, and who can help them bypass the training and health requirements. Migrating through illegal agents typically places migrant workers at higher risk for abuse at all stages of the migration process and severely limits their access to redress. The governments of Malaysia and Indonesia do not handle complaints of unpaid wages and other labor rights violations from workers who migrated illegally. In Malaysia, such workers are also at risk of being arrested, detained, and deported under the immigration laws.

Lack of Information, Deception

> *The agent told me I would have to wait in Tanjung Pinang for one week, but in reality I was in Jakarta for three-and-a-half months.*
>
> —Interview with Hartini Sukarman, age twenty-four, returned domestic worker, Lombok, Indonesia, January 26, 2004

During the recruitment, training, and placement process, many women did not receive information about their employers' duties as required under the work contracts or immigration and labor laws in Malaysia. They also rarely learned where they could turn in case of problems. Only a few women that Human Rights Watch interviewed were even aware there is an Indonesian embassy in Malaysia and that they could turn there for help. Instead of providing information on options should the workers face abuse or other problems, labor agents barraged them with threats and lectures about their "obligations" not to run away, to obey their employer, and to work hard.

Human Rights Watch documented some cases of labor agents misleading workers about the amount of time they would spend at a training center, the rate of their monthly salary, and their workload. One woman told Human Rights Watch, "I was at the training center for five months and twenty days. I didn't know I'd be there for so long. The agreement was that I would wait for one or two months…. The agreement was that if I passed the medical check-up they would return my money—I had paid 500,000 rupiah. But the sponsor didn't return my money."[73]

[73] Human Rights Watch interview with Tita Sari, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

Human Rights Watch interviewed women workers who reported that their labor agent confiscated any contact information they had, like phone numbers of relatives and friends. The only person workers could contact was their agent, and if they came through illegal channels, their agent often disappeared or changed phone numbers.[74] Several women domestic workers reported that even if they were able to contact their agent, they did not receive the needed assistance. For example, Nur Hasana Firmansyah told us, "My [male] employer always tried to hug me. I decided to call my agent in Batam, but he didn't want to pick me up."[75] Women who found themselves in abusive workplaces felt they had no options and were left powerless and trapped.

Most of the women that Human Rights Watch interviewed knew little about the labor agencies they used to migrate to Malaysia. Many said they could not recall the name of their labor agency. The only information they had was the first name of the labor agent. Often they had few or no details about where they were staying aside from the name of the city. Some were unsure whether the labor agency they used was licensed or not, though educated guesses could be made from other information they provided, as in the case of Latifah Dewi. She described an experience she had while at a training center: "The police often came and all the women had to get in the house. They would let just one girl meet the police. If the police did an operation and asked the girl, 'are there many people in the house?', she had to tell them, 'I am alone.' I don't know if the agency was licensed or not."[76]

Most women reported signing a work contract, but never received their own copy. Many labor agencies only showed contracts to women migrant domestic workers briefly so they could sign them before they left the training or holding centers. Most women workers reported to Human Rights Watch and other Indonesian NGOs that they did not receive a full explanation of the content of the work contract, were not given an opportunity to raise questions, or to show the contract to legal counsel, family, or friends for discussion.[77]

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[74] Indonesian embassy officials and representatives from NGOs in Malaysia and Indonesia all commented that they encountered the same problem when trying to investigate complaints by migrant workers. When they tried to contact the concerned labor agent, they discovered that the provided phone number had changed or was disconnected.

[75] Human Rights Watch interview with Nur Hasana Firmansyah, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[76] Human Rights Watch interview with Latifah Dewi, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[77] E-mail message from Geni Achnas, member, Women's Movement for the Protection of Migrants' Rights (GPPBM), Jakarta, Indonesia, to Human Rights Watch, June 9, 2004.

Based on copies of contracts Human Rights Watch obtained from labor agents and immigration officials, and on the memories of women migrant workers, these contracts usually outlined a two-year work contract. They did not contain a job description detailing the workload or types of work for which the domestic worker would be responsible (see appendix B for a sample contract). It was understood that the worker would bear the cost of travel back to Indonesia if she left before the two-year contract was completed. Many contracts did specify that workers should be able to observe religious practices such as praying five times a day and fasting if that was their wish. Work contracts did not regulate number of hours of work or provide for overtime pay. Although contracts commonly stipulated that a worker could take one day off per week, many also provided that, if the employer paid the worker, she could be made to work all seven days.

Alteration of Travel Documents

> *There were a lot of young girls, the youngest was fifteen. They changed my age to twenty-six, I was sixteen at the time.*
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> —Interview with Suwari Syaripah, age eighteen, domestic worker, Kuala Lumpur, Malaysia, February 17, 2004

A significant number of the women whom Human Rights Watch interviewed stated that their passport and other travel documents had been altered to change their age, name, or address. The women and girls who told Human Rights Watch of this practice said they had their passport altered so they would appear to be at least twenty-five. Human Rights Watch interviews included girls and some women who were under eighteen at the time of their recruitment. According to a Malaysian immigration official, Malaysia requires that domestic workers be aged twenty-five to forty-five (see appendix C for a list of requirements to hire a domestic worker).[78] Partly as a result of the widespread practice of altering passports and other travel documents, government authorities and NGOs find it difficult to estimate the number of Indonesian domestic workers in Malaysia that are still children.

In most cases, women and girls did not pay an extra fee for passport alterations, but in a few cases they did pay up to one million rupiah (U.S.$125). Older women also had their passports altered to lower their age. One woman remembered her peers at a labor agency, "There were many, many girls below the age of eighteen, but the company

[78] Human Rights Watch interview with Matthew Barin, Department of Immigration, Ministry of Home Affairs, Putrajaya, Malaysia, February 24, 2004.

changed their age on their documents. They would have to pay five hundred thousand rupiah."[79]

Discrimination in Hiring Practices

Labor agencies marketed women workers based not only on their skills, but on characteristics unrelated to their job responsibilities in Malaysia. These include their age, weight, height, complexion, marital status, and number of children. Based on these characteristics, Malaysian labor suppliers selected the domestic workers they wanted from the Indonesian labor recruiters. Labor agents often view women domestic workers as tradable goods rather than human beings. One Malaysian labor supplier told Human Rights Watch:

> I go to Indonesia every one or two months. I conduct interviews and handpick maids. I have the right to pick whatever product I want. [Some maids end up having to stay in the holding and training centers longer. The reason why is]…marketing, some are ugly, fat, short. The final decision belongs to the employer. Maybe they can't sell. Some stay even up to eight months [in the holding and training centers.][80]

Most of the licensed labor agents in Indonesia prepare "biodata" forms for the women workers they have recruited, and both Indonesian and Malaysian labor suppliers noted that agents often select attractive women first, with "less desirable" women more likely to wait in holding and training centers for longer periods of time. Preferences about marital status varied, with some labor agents and employers stating that unmarried workers are better because they have "never been with a man" and are less likely to run away with a boyfriend. Others felt that men would prey upon young, attractive workers and preferred older, married women workers.

Abuses in Training Centers

> *There were 350 women waiting to work in Singapore, Malaysia, Taiwan. Lots of them were young, mostly Javanese…. We received no information about our rights, only about our obligations. They told us we were not allowed outside, we were not allowed to talk to anyone. We were not allowed to go outside, like putting out trash,*

[79] Human Rights Watch interview with Jumilah Ratnasari, returned domestic worker, Lombok, Indonesia, January 26, 2004.

[80] Human Rights Watch interview with a labor supplier, Kuala Lumpur, Malaysia, February 13, 2004.

and we had to clean, iron, and do all the domestic work. We were not allowed to speak to anyone. There was one big room [in the training center] and we all slept there…. We would wait for hours and hours in a long line to take a bath, sometimes we had our turns at night. We were not allowed out of the center, there was a big gate with a lock, and two security guards.

I wanted to go home but didn't know how to run away or go home. Many people ran away. Some people paid the company so they could leave. They had to pay five million rupiah (U.S.$610). When [I finally got to go] I felt tired and I didn't want to go to Malaysia anymore.

—Interview with Hartini Sukarman, age twenty-four, returned domestic worker, Lombok, Indonesia, January 26, 2004

As noted above, domestic workers, unlike individuals migrating for other types of work, must complete a training course before the Indonesian government will grant them permission to work overseas. The duration of these "training programs" typically range from one to six months. Labor suppliers, domestic workers, and NGOs told Human Rights Watch that some women and girls may wait in training centers for as long as nine months until the paperwork is completed and agents have selected them for employment. According to the women migrant workers and NGO workers interviewed by Human Rights Watch, the training centers are often overcrowded and the quality of the training is low.[81] The staff and security running the training centers generally restrict the women's freedom of movement and bar them from leaving the facilities. Some interviewees also reported inadequate food and water, verbal and physical abuse, or "training" apprenticeships where they were forced to perform domestic work locally without pay.

[81] Human Rights Watch interview with Solidaritas Perempuan, Jakarta, Indonesia, January 20, 2004; Human Rights Watch interview with KOPBUMI, Jakarta, Indonesia, January 21, 2004.

Forced Confinement

> *There were almost seven hundred people [in the training center]. Some of them became crazy. They were all women…. Some people were waiting there for six months. Most of them wanted to leave the company, but would have to pay one million rupiah [U.S.$122] to do so. A lot of people ran away by climbing the walls. We were not allowed outside. There were many security [guards]—strict—and locked gates. There were two women security and two men. It was very hard to leave the center without a reason. My friend wanted to visit me but wasn't allowed. I felt sorry when I first reached the center, but I pushed through because of my desire to earn money…. The security would always check when we were going to sleep to make sure we didn't run away. The security would get punished when people ran away, they would call agents in Lombok to see if the runaways returned home.*
>
> —Interview with Jumilah Ratnasari, age thirty-two, returned domestic worker, Lombok, Indonesia, January 26, 2004

Labor agents restricted the movement of prospective women migrant workers while they completed their training in Indonesia or waited for an employment assignment. Only three of the women interviewed by Human Rights Watch reported that they were able to move freely; the rest reported locked gates and constant monitoring by security guards. In a few cases, women were allowed visits by their family, occasional phone calls, or brief, supervised trips to markets, but in many cases, they remained confined to the training facilities for the entire duration of their stay. Most women endured these conditions because of the pressure they felt to migrate to Malaysia and earn money for their families or to repay loans. One woman told Human Rights Watch, "We were not allowed to go outside even if we wanted to buy food. The gate was locked. I wanted to return to Lombok, but I remembered I had borrowed so much money that I had to pay back."[82]

Human Rights Watch interviewed labor agents who cited fears about women getting pregnant, raped, or lost if they were allowed to leave the training center freely. One woman said that the agents warned them they could not go out because, "we could be cheated by others who would then sell us."[83] Another reason is profit. Supplying domestic workers is a competitive industry, with different companies vying to have a ready supply of fresh recruits available to meet labor demand in Malaysia. Because domestic workers typically do not pay any money up front but rather have the first four

[82] Human Rights Watch with Nur Aini Fitri, returned domestic worker, Lombok, Indonesia, January 25, 2004.

[83] Human Rights Watch interview with Harmini Ayu Putri, domestic worker, Kuala Lumpur, February 26, 2004.

or five months of their salary withheld, Indonesian labor agencies do not get paid for recruiting a worker until she is selected for employment by a Malaysian labor agency. Because the Indonesian agency has paid for the woman's transportation to the center, her board and lodging, the processing of her documents, and her medical exam, they fear the loss of their investment should she try to run away before she is transferred to a Malaysian labor supplier. This gives them a powerful financial incentive to strictly regulate her movements.

Some domestic workers and NGO activists reported to Human Rights Watch that labor agents kept girls in training or holding centers until they turned eighteen. The staff of KOPBUMI, a network of migrant rights' NGOs said, "The labor agents should [instead] ask migrant workers to wait at home…. If they want to leave, they have to pay. They may escape but the shelter people try to catch them."[84]

Inadequate Living Conditions, Food, and Water

> *I slept on the floor without a mat and used my bag as a pillow. There were 300 people there, all women…. We were staying in a big room with no windows…. There were three toilets but two were out of order. The water was not enough and the toilets were dirty. I took a bath twice a week, there were so many people that there were long lines. We were not allowed to go outside, there was a gate with a lock. Many people wanted to run away but didn't know how…. Some of the women had anxiety and were crazy, because it was very scary.*
>
> —Interview with Nur Hasana Firmansyah, age twenty-one, returned domestic worker, Lombok, Indonesia, January 26, 2004

Human Rights Watch found that training centers were typically overcrowded.[85] Women generally slept on the floor and some complained of having no sheets or mattresses. In some cases they had adequate food and water; in other situations, they remained hungry. Sanitation conditions were often poor, with insufficient toilets and showers for the numbers of women. Kusmirah Parinem, a twenty-one-year-old domestic worker in Malaysia, recalled:

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[84] Human Rights Watch interview with KOPBUMI, Jakarta, Indonesia, January 21, 2004.

[85] Human Rights Watch visited one training center in Jakarta, Indonesia. The findings about the conditions of training centers come primarily from the testimonies of women migrant workers, labor suppliers, and NGO workers.

> I was in the training center for four months. There were 600 people, sleeping in lines on sheets in a big hall. Sometimes you got sheets and sometimes you didn't. We got small amounts of food three times a day. I was hungry. There was one place to bathe and eight or ten women had to go at once. You have to queue up, if you are late, there is not enough water. Drinking water was not enough…. If we made some small mistake, the agents punished us and they didn't give us food the whole day, or we had to stay in front of the class all day. The food was not enough and it was not good.[86]

Although the Indonesian Ministry of Manpower and Transmigration has developed minimum standards for space, food, and sanitation, the monitoring of conditions by the ministry is infrequent, and according to NGOs, lax. An official from the Ministry who occasionally checks these conditions, said, "When I go to monitor training centers, I look at the accommodations and the management, for example, do they keep data and records about the workers?"[87] This official was unwilling to divulge the number of training centers that she had visited.

Psychological, Physical, and Sexual Abuse

> *If we made a mistake, they would get angry with us…. Once I had to take [a heavy load of] water on my head and stand on my knees in the sun for two hours because I didn't want to exercise in the morning. I didn't have any other problems, but others did. The staff would beat them with sticks and books.*
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> —Interview with Ira Novianti, age twenty, returned domestic worker, Lombok, Indonesia, January 25, 2004

Human Rights Watch interviewed twelve current and former domestic workers who had experienced psychological and physical abuse at the hands of labor agents and security personnel at training centers in Indonesia. In these cases, labor agents and trainers verbally abused or insulted women if they made mistakes during the training. Physical violence, typically involving beatings with sticks, was used as a tool for discipline and

[86] Human Rights Watch interview with Kusmirah Parinem, domestic worker, Kuala Lumpur, Malaysia, February 14, 2004.

[87] Human Rights Watch interview with Fifi Arianti Pancawedha, director for Socialization and Guidance for Indonesian Overseas Placement, Ministry of Manpower and Transmigration, February 5, 2004.

punishment. One domestic worker remembered, "The agency would use angry words, bad words, they beat me. They beat me with a tree branch."[88]

A few women Human Rights Watch interviewed were sexually harassed by the staff at the training centers, and others reported that women at times exchanged sexual favors for expedited processing and placement in Malaysia. Nur Hasana Firmansyah, a returned domestic worker in Indonesia, told Human Rights Watch:

> The guards would always pull us and touch us. If they saw a beautiful girl, they took her upstairs and slept with her. I know of two girls, Ratna and Ani, also Jianjur, she was about seventeen or eighteen. The security would tease me, "would you become my girlfriend?" I always fought back. They never touched me because I always screamed for the leader of the girls. I would wake up at night and yell…. They would tease us when we went to the washroom.[89]

Exploitative Labor Practices

> *They tutored us how to work for a week [in the training center]. Then I worked in a house for a month. There were about one hundred women at the training center…but many working outside the agent's house. They would sleep at their employers' house and get paid 150,000 rupiah [U.S.$18.29] per month. I was working 5:00 a.m. to 10:00 p.m. when in Medan.*
>
> —Interview with Ani Rukmonto, age twenty-two, Indonesian domestic worker, Kuala Lumpur, Malaysia, February 26, 2004

Some Indonesian labor agencies send women to work as maids in local households, either as "training" or as a way for them to earn money while they were waiting for their placement in Malaysia. Some migrant domestic workers told Human Rights Watch they were able to keep their earnings from this work, while others reported that their entire salaries were retained by their labor agent.

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[88] Human Rights Watch interview with Novena Susilo, returned domestic worker, Lombok, Indonesia, January 24, 2004.

[89] Human Rights Watch interview with Nur Hasana Firmansyah, returned domestic worker, Lombok, Indonesia, January 26, 2004.

Women employed as domestic workers in Indonesia confront many of the same spectrum of abuses as domestic workers in Malaysia: long hours, no rest days, low or unpaid wages, restrictions of movement, and mistreatment by the employer. For example, thirty-year-old Amsia Widodo told Human Rights Watch that, while at the training center, "People would borrow us to work in their home. I earned 125,000 rupiah [U.S.$15.24] a month. I lived in the [employer's] house and worked from 8:00 a.m. to midnight ironing and washing clothes."[90]

IV. Workplace Abuses in Malaysia

I worked for a husband, wife, two girls and a boy. Sometimes I didn't sleep…. I washed clothes, prepared food for the children, and prepared them for school, one by one. I would prepare milk for the youngest and prepare food for cooking. I would vacuum, mop, clean the kitchen, and water the flowers. Sometimes the employer was not satisfied and would ask me to redo it over and over again. My time was wasted by doing the work over and over again. I helped to cook all the meals, and I cleaned the toilets. I was working day and night. I am not sure when I finished, because she would ask me to redo the jobs many times…. Sometimes the employer said, "If you can't finish, you can't sleep." I never got any rest or any days off.

I never went out of the house on my own. I went to the market once in my time here [in Malaysia]. I couldn't talk to the neighbors. My employers told me, "You can't speak to the neighbors because the neighbors are cheaters." I could not use the phone or write letters.

I was under pressure. I always stayed inside the house and I was upset because I couldn't send a letter to my family. My employers didn't allow me to fast or to pray. Last Ramadan, when I wanted to fast, the employer hit me and said, "If you want to fast, I will not give you any food [at night]." If I didn't finish the work, the employer would be angry with me. Because I had to finish all the work in a hurry, I didn't eat.

Sometimes I slept on the kitchen floor, sometimes in front of the television. I did not have my own room. Sometimes I just fell asleep on the kitchen floor, otherwise the carpet in front of the TV. There was a mattress there.

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[90] Human Rights Watch interview with Amsia Widodo, returned domestic worker, Lombok, Indonesia, January 26, 2004.

—Interview with Ani Rukmonto, age twenty-two, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004

Indonesian migrant domestic workers in Malaysia encounter a wide range of human rights abuses in the workplace, including extremely long hours of work without overtime pay; no rest days; incomplete and irregular payment of wages; psychological, physical, and sexual abuse; poor living conditions; restrictions on their freedom of movement and ability to practice their religion; and in some cases, trafficking into situations of forced labor.[91] Conditions of confinement, workers' lack of information about or access to institutions that could provide assistance, and employers' government-sanctioned practices of confiscating workers' passports present formidable challenges that often prevent women domestic workers from reporting abuses, obtaining help, or even escaping. The lack of monitoring by any independent or government agency compounds these abuses by creating an environment where employers and labor agents face little or no accountability for their treatment of women migrant domestic workers.

Many abuses likely go unreported, but NGOs and the Indonesian Ministry of Manpower and Transmigration estimate that roughly eighteen thousand to twenty-five thousand migrants return to Indonesia each year from Malaysia and other destination countries having experienced some form of abuse.[92] These estimates mostly derive from returning migrants who pass through the international airport in Jakarta, leaving the true numbers of abuse cases unknown. A leader from a consortium of migrants' rights NGOs in Jakarta commented, "Four to eight hundred migrants arrive each day [at the airport]. Sometimes there are twelve rape victims in one week, like in November 2003. In 2002, 12 percent of returning migrants reported problems, and 2 percent were ill."[93]

Several other groups have documented abuses against Indonesian migrant workers. Perkumpulan Panca Karsa (PPK), an NGO on the island of Lombok, comes into contact with both documented and undocumented returning migrants, who may have returned by boat or by plane. PPK handled 450 cases of abuse and labor rights

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[91] Many of these abuses against Indonesian migrant workers in Malaysia and other destination countries have been reported by NGOs in Indonesia to the U.N. Special Rapporteur on Migrants. *Indonesian Migrant Workers: Systematic Abuse at Home and Abroad* (Jakarta: Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, 2002); *Indonesian Migrant Workers*. See also, Sidney Jones, *Making Money off Migrants*.

[92] *Indonesian Migrant Workers,* pp. 9-10. Authorities at the international airport in Jakarta estimate that there are four hundred returnees a day (1,650 during major holidays), and about 10 percent return with complaints of abuse. Therefore, NGOs estimate roughly twenty-five thousand migrants return by air with complaints of abuse and the Ministry of Labor has estimated eighteen thousand complaints per year.

[93] Human Rights Watch interview with Wahyu Susilo, executive secretary, Konsorsium Pembela Buruh Migran Indonesia (KOPBUMI), Jakarta, Indonesia, January 21, 2004.

violations in 2003.[94] Human Rights Watch interviewed a Malaysian labor supplier who said, "I bring about fifty maids to Malaysia each month, and [of those,] there are usually one or two [who have abusive employers]."[95] In 2003, 753 Indonesian migrant workers ran away from their employers and took shelter at the Indonesian embassy in Kuala Lumpur. The numbers who seek refuge at the Indonesian embassy have increased each year and the majority of those seeking assistance are women.[96]

Hours of Work, Rest Days, and Workload

> *I would wake up at 5:00 a.m. and go to sleep at midnight, sometimes 1:00 a.m. or 2:00 a.m…. Every day was full of work, every week was like that, there was no day off…. There was no time to rest.*
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> —Interview with Tita Sari, age twenty-four, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004

Indonesian domestic workers employed in Malaysia typically work sixteen to eighteen hour days, seven days a week, without any holidays. Most have no significant time to rest during the day, although some are able to take one-hour breaks in the afternoon. Indonesian domestic workers who cared for children in addition to their cleaning responsibilities reported being "on call" around the clock, as in the case of Susanti, who told Human Rights Watch:

> It was all work. I cleaned the toilet, all the rooms, the walls. I cleaned the whole house. I took care of the children, one was three years old and the baby was eight months. I worked from 4:30 a.m. to midnight. Sometimes my employer asked me to wake up at 3:00 a.m. to feed the baby. I worked every day. I had no rest during the day.[97]

A domestic worker's typical workload included cooking three meals a day; cleaning the house, including mopping, vacuuming, cleaning windows, and dusting; taking care of children, including bathing them, tutoring them, feeding them, preparing them for

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[94] Human Rights Watch interview with Endang Susilowati, executive director, Perkumpulan Panca Karsa, Mataram, Lombok, Indonesia, January 29, 2004.

[95] Human Rights Watch interview with a labor supplier, Kuala Lumpur, Malaysia, February 13, 2004.

[96] Human Rights Watch interview with Jun Kuncoro, attaché, Indonesian Embassy, Kuala Lumpur, Malaysia, February 18, 2004.

[97] Human Rights Watch interview with Susanti Pramono, returned domestic worker, Lombok, Indonesia, January 24, 2004.

school, playing with them, and putting them to sleep; washing the car every day; washing the entire household's clothes by hand; and ironing. Amsia Widodo told Human Rights Watch:

> There were three families living together in one big house and I was the only maid. There were seventeen people. There were eleven children between the ages of six and fifteen. I had to take care of the children, prepare them for school, give them baths, and make meals. I cut flowers, did a lot of work in the garden, washed the car, washed the floor, ironed, and cooked. I worked from 5:00 a.m. to 11:00 p.m. I had no rest. There was no day off, even when I asked for it.[98]

As noted above, most labor contracts Human Rights Watch obtained or those described to us by labor agents and Malaysian government officials allow domestic workers to have one day off per week, but this could be bypassed if they were paid for all seven days. With only a few exceptions, the domestic workers Human Rights Watch interviewed had fixed monthly salaries and worked every single day without rest. These workers typically did not receive their full salary; none reported receiving any extra payment for working every day of the week.

The contracts Human Rights Watch obtained failed to stipulate the number of hours that domestic workers should work each day. There is no provision for overtime pay or for vacation days in these contracts or for domestic workers under Malaysian employment laws. The employers and labor agents whom we interviewed defended these policies, often claiming that domestic workers did not know how to rest, and they could not be given a day off because they would get pregnant or bring foreign men to the house. One labor agent explained to Human Rights Watch that if he received a complaint about excessive workload, he would simply explain to the employer that pushing the worker beyond eighteen hours per day would lead her to leave, harming the employer's self interest:

> We instruct the employers. We tell them if the maid is not getting enough food or sleep or has too heavy a workload. There should be at least a minimum of six hours of rest for the maid. Otherwise the maid

[98] Human Rights Watch interview with Amsia Widodo, returned domestic worker, Lombok, Indonesia, January 26, 2004.

will run away and then the employers have to get a replacement. They will also feel the pinch.[99]

Forced Confinement and Restricted Communication

> *If my employers went out, they locked the door from the outside and took the key. It was very difficult because I couldn't go out. My employer told me not to speak to the neighbors. She didn't allow me to use the phone or write letters. I asked my employer to write a letter to my family and she didn't give me permission. I wrote a letter once, but my family didn't get it. Maybe the employer didn't send it because I am sure the address was right…. I had phone numbers for Jakarta but not for Malaysia. I wrote them in a little book, but they burned the little book. They are very bad and very cruel.*
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> —Interview with Arianti Harikusumo, age twenty-seven, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004

Domestic workers, labor agents, and employers all reported that domestic workers confront restrictions on their freedom of movement and their freedom of association. Employers typically forbid domestic workers from going outside of the house on their own. Aside from some women who accompanied their employers to the market or on family outings, most were confined to the house or apartment building where they worked. Some women reported being locked in their employers' homes from the outside. Many of these homes have electronic surveillance systems and the apartment buildings are in gated communities with security, making it difficult for women to leave even when their employers were out. Latifah Dewi, a twenty-year-old domestic worker who escaped from her employer's house said, "There is an autolock for the front gate and if someone jumps over the gate, the alarm should ring…. The employer had told me not to run because the house has a camera and alarm. The employer made me afraid but I wanted to run away."[100]

In addition to restrictions on their freedom of movement, domestic workers are often forbidden from contacting friends or family, using the telephone, writing letters, or speaking to their neighbors. One woman who was not allowed to go outside and who had relatives living in Malaysia remembered, "My family sent me their phone number, but my employer kept it and did not give it to me. I cried inside. My father sent the

[99] Human Rights Watch interview with a labor supplier, Kuala Lumpur, Malaysia, February 13, 2004.

[100] Human Rights Watch interview with Latifah Dewi, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

addresses of my family in Malaysia, but my employer kept it and only gave it to me when I returned to Indonesia. I never visited my relatives in Malaysia. My family thought I had died."[101] Seventeen-year-old Firuza Suprapto told Human Rights Watch,

> I'm just a housemaid, I can't ask for anything. I am not allowed to talk to the neighbors. The last time, I didn't know the employer would get angry. When I threw the rubbish out, the Indian neighbor talked to me. The employer was angry, asked me why I talked to them. She told me I have to check if someone is outside first before throwing out the rubbish.[102]

Restrictions on women domestic workers' freedom of movement and their communication with family, friends, and neighbors have several negative consequences. In addition to violating their rights under national and international human rights law, these restrictions made it difficult for them to seek help. Furthermore, they deepened the social isolation of domestic workers, who told Human Rights Watch of their loneliness and depression. Salma Wati, a thirty-four-year-old domestic worker in Kuala Lumpur said:

> I will go crazy here. They don't let me out, the employer won't let me speak to anyone. I will go crazy. I need to tell you everything quickly and speak faster, because my employer may return. [They always tell me] I can't hold this, I can't do this, I can't go there, I can't go here. I feel like I am in prison, I can't make phone calls.[103]

Human Rights Watch interviewed labor agents, employers, and government officials who claimed that if women had days off or were allowed to roam independently outside of the house, they would either run away or get pregnant. One labor agent said that "There is no reason for a maid to have a passport. She could run away, get involved in criminal activities like stealing.[104] Most had stereotypes of Indonesian domestic workers as naïve, gullible, or promiscuous. One employer explained:

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[101] Human Rights Watch interview with Hartini Sukarman, returned domestic worker, Lombok, Indonesia, January 26, 2004.

[102] Human Rights Watch interview with Firuza Suprapto, domestic worker, Kuala Lumpur, Malaysia, February 21, 2004.

[103] Human Rights Watch interview with Salma Wati, domestic worker, Kuala Lumpur, Malaysia, February 18, 2004.

[104] Human Rights Watch interview with a labor supplier, Kuala Lumpur, Malaysia, February 13, 2004.

> I think it's no good to let them out. If we allow them out, especially those women from the village, they get influenced, they start to fight back. They don't do this, they don't do that…. Just go to St. John's church. There are all these men hanging out there, lots of Indian and Chinese men waiting to pick up the maids. Lots of maids have no entertainment, they work and work and work, they have no friends, they're homesick…. They know when the employer is not at home… [and end up with] the local men [who] are very terrible…. You can't blame maids even if they are educated, they're all very innocent. It is very frightening for the employer.[105]

Unpaid Wages

> *If I asked for my salary, the employer hit me. I never got my salary, the employer didn't give me money. The employer never gave even one ringgit.*
>
> —Interview with Arianti Harikusumo, age twenty-seven, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004

Of the fifty-one domestic workers that Human Rights Watch interviewed, twenty-six did not receive their full salary, twelve received no salary at all, and most of the remaining were still working and hoping to get their salary after they finished their two-year contracts. In many situations where domestic workers received no salary, the lack of wages combined with other factors, such as deception, amounted to trafficking into forced labor. The legal section later in the report provides the legal definition of trafficking in persons.

One common ploy employers use to prevent domestic workers from running away or to cheat them out of their full salary is to give them their salary only at the end of the two-year contract. One labor agent commented, "This is because there are runaway cases, and it is protection for the employer."[106] Most defended this practice as a strategy for helping domestic workers to save money for their families. Instead of giving domestic workers their salary on a monthly basis, employers commonly tell workers they are depositing the earnings in a separate savings account for the woman worker. Indonesian domestic workers must leave Malaysia upon completion of their contract, and if they do not receive their full salary before their departure, they have little chance of claiming it

[105] Human Rights Watch interview with an employer, Kuala Lumpur, Malaysia, February 21, 2004.

[106] Human Rights Watch interview with a labor supplier, Kuala Lumpur, Malaysia, February 13, 2004.

from Indonesia. Many of the returned domestic workers that Human Rights Watch interviewed in Indonesia reported they never received their full salary, as in the case of Amina Ipah:

> I worked for my second employer for two years. They cut my salary 2000 ringgit (U.S.$526) in order to renew my passport. At the end of my work [of two years], I received a check for two million rupiah (U.S.$244). They still owe me 4000 ringgit (U.S.$1052). The employer said they want to send me money, but they haven't sent it. I had already finished repaying my debt. They said they didn't have the money but would send it later.[107]

Most of the currently employed domestic workers that Human Rights Watch interviewed were unaware if they had a savings account in their name, none held passbooks or other bank records, and several reported they were denied permission to withdraw any portion of their savings to send to their families in Indonesia. Hartini Sukarman said, "I never got my monthly salary, and I never sent any money home. I just got a check at the end. Sometimes I would want to take my salary, but they didn't give it to me. The employers would ask, 'What for? You don't have to go outside.'"[108]

Indonesian domestic workers with little education were unable to calculate the full payment they were entitled to and were cheated out of their salaries. Dija Susilo had an arrangement to receive 370 ringgit per month after an initial four-month withholding of pay. After two years of work, she should have earned 7,400 ringgit [U.S.$1947.37], but instead her employers gave her 2,000 ringgit [U.S.$526.31]. She told Human Rights Watch that when she returned to Indonesia, "the labor agency checked and said I should have gotten more money…. I didn't know I had more money, I only learned that after I came back, when the company told me."[109] In other cases, the employer deducted the cost of any purchased supplies, medicines, and phone calls during the two-year period.

In some cases, the employer gave the worker's salary to the labor agent instead of the worker directly. In these arrangements, many workers were denied their full salaries. A resident in the shelter at the Indonesian embassy observed:

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[107] Human Rights Watch interview with Amina Ipah, returned domestic worker, Lombok, Indonesia, January 27, 2004.

[108] Human Rights Watch interview with Hartini Sukarman, returned domestic worker, Lombok, Indonesia, January 26, 2004.

[109] Human Rights Watch interview with Dija Susilo, returned domestic worker, Lombok, Indonesia, January 25, 2004.

> In Singapore, the maids hold the salary. In Malaysia, the agent or employer holds the salary. If I want to buy anything, I had to borrow money from my employer. They promised to send my salary after the Chinese New Year but it hasn't come yet…. The employer gave my salary to the agent. The employer said she couldn't give it to me because she promised it to the agent…. All my friends, the same, the same. The employers give money to the agent, only the agent is no good. The agent told me the money is in the bank. I never saw the passbook, I didn't get the money.[110]

The tactic of withholding payment of wages until the completion of the two-year contract also deters women workers from escaping abusive conditions, as they know there is little chance they will be able to successfully claim their wages once they leave. They often face extreme pressure to bring money back home with them to Indonesia. Salma Wati, a domestic worker in Kuala Lumpur said:

> I want to send money home, but my employer won't let me. Finally she gave me only five hundred ringgit [U.S.$131.58]. I want to cut the contract because I can't stand it anymore. They took me back to the agent and told me I could break the contract, but that they wouldn't give me a cent. I said I came here to work and to earn money…. My salary is 385 ringgit [U.S.$101.31] per month, but I have not gotten my salary. I don't know if I have a bank account, my employer doesn't tell me. The agent is good friends with my employer, they talked and settled everything…. If I still want to go back [to Indonesia], then I won't get any money [from my employers] so I will have to [stay here and] work.[111]

Restrictions on Religious Freedom

> *They didn't allow me to fast or to pray. I asked them if I could pray, but they said only twice a day. I had to handle pork and their three dogs…. I wouldn't go back to Malaysia because I wasn't allowed to pray and I felt very sad. When I returned I*

[110] Human Rights Watch interview with Muriyani Khadijah, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[111] Human Rights Watch interview with Salma Wati, domestic worker, Kuala Lumpur, Malaysia, February 18, 2004.

went through a ritual cleansing by my family because I had touched pork. If I go back to Malaysia, I will get dirty again.

—Interview with Silvani Setiawan, age twenty-four, returned domestic worker, Lombok, Indonesia, January 27, 2004

Almost one third of the domestic workers that Human Rights Watch interviewed reported that they were unable to practice their religion freely. Most of the women were Muslim and were not allowed to pray five times a day or to fast during the month of Ramadan. Some were forced to handle pork, considered unclean and forbidden, or to touch dogs, which is also considered unclean and shunned by many of the women we spoke with. Some reported that labor agents confiscated their Koran and other prayer materials before their arrival. Christian women said their employers denied them permission to leave the house to attend church. As one woman said, "There is a part of the agreement where we can choose the type of job, and as a Muslim, it is written that we don't have to handle pork. In the agreement, you are allowed to do prayer, but actually you are not allowed to. When I was working I was not allowed to pray or to fast."[112]

Recent proposals to place Muslim workers with Muslim families would not remedy this problem, as Human Rights Watch interviewed workers who were prevented from praying and fasting by Muslim and non-Muslim employers alike. Similarly, there were non-Muslim employers who respected their employees' religious freedom. One returned domestic worker, Ulfah Aisyah, said, "My employers didn't allow me to fast or to take breaks to pray, even though they were Muslim. I was very hurt that they didn't let me pray."[113]

Physical Abuse, Neglect, and Mistreatment

Every day something made [my employers] angry. Every day the woman hit me many times with a wooden stick. Sometimes she slapped me, sometimes she hit me with a hanger or a comb, sometimes when I was cooking, she hit my head with tools. My body got bruises, I became black from my head to my hips. I never saw a doctor. Sometimes I treated the pain myself with a compress, no medicine. When the woman hit me, the man was working, he didn't know. She would say, "If I hit you, do not lose consciousness. If you do, I will dig a hole and leave you there so nobody knows."

[112] Human Rights Watch interview with Tita Sari, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[113] Human Rights Watch interview with Ulfah Aisyah, returned domestic worker, Lombok, Indonesia, January 27, 2004.

> *Sometimes when I combed the children's hair, the woman said, "You are a monkey, a donkey." Sometimes she said I was stupid, or like a bull. I didn't have anyone to turn to and I was afraid. I was beaten every day and swollen. I was beaten badly three times, and the third time, my head was bleeding and my body broke and then I lost consciousness.*
>
> —Interview with Ani Rukmonto, age twenty-two, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004

Almost half of the women Human Rights Watch interviewed suffered some form of psychological, physical, or sexual abuse. If one includes restrictions on movement or prohibitions on practicing one's religion, almost all interviewees experienced some form of abuse (see appendix E). Of the fifty-one domestic workers interviewed, eighteen experienced verbal abuse, nine experienced physical abuse, and seven experienced sexual harassment and abuse.

Physical abuse ranged from being punched and kicked to severe beatings requiring hospitalization. Several of the women that Human Rights Watch interviewed still bore the scars of this abuse, including burns, bruises, scars, and swollen body parts. Many reported that their beatings came after "mistakes" in their work, but as one NGO worker in Indonesia put it, "Just because a migrant worker burns a shirt with an iron by accident, it doesn't mean the employer should burn the worker with the iron as a punishment."[114] Twenty-seven-year-old Arianti Harikusumo said:

> [My employers] were fussy and cruel. If I washed the dishes and they were still a little dirty, she would take the glass and hit me with the glass. They would hit me with anything I washed, the pan, the glass. Usually it was the woman employer, but if she complained to her husband, he did the same thing. The woman's sister also hit me…. She hit me with her hand, a stick of wood, a steel rod, a mop, a steel glass, a big serving spoon, and a mineral water bottle when it was still full. If I made a mistake, I had to sleep in the toilet. The woman and the man were very cruel.
>
> Twice I lost consciousness as a result of the beatings. The first time it was raining and there was a leak in the house and I forgot to put a bowl

[114] Human Rights Watch interview with Dina Nuriyati, chair, FOBMI, Jakarta, Indonesia, January 22, 2004.

> out. She hit me with a mop. The second time, when I washed the clothes, the color ran and the employer hit me. I said I was sorry and that I would return the cost by deducting it from my salary, but she still hit me. She never sent me to see a doctor or to the hospital. Once I was hit by a wooden stick and she hit me until the stick broke. When I woke up late, after 5:00 a.m., the employer would pour hot water on me, like if I woke up at 6:00 a.m.[115]

Women domestic workers typically had no access to health care if they sustained injuries after beatings. The women who received medical care did so only after running away or being removed from the house by the police in response to phone calls made by neighbors. For example, women who escaped to the Indonesian embassy were provided with free medical care, an essential service. Even at the embassy, however, psychological counseling services were unavailable.

Abuse also took the form of denial of food, sleep deprivation, and forcing women to sleep in uncomfortable places, including on the floor, in bathrooms, and on staircases. Arianti Harikusumo, an exceptionally thin woman who appeared severely undernourished, said:

> It was hard to work for them because there was not enough food. I got food once a day. If I made a mistake, for example, if we ran out of rice and I forgot to tell the employer, she wouldn't give me food for two days. I often got treatment like that. Sometimes for one, two, three days. Because I was starving, I would steal the food from the house. Because of that, the employer hit me badly.[116]

Verbal abuse usually consisted of harsh insults, threats to the woman worker, and belittlement. Tita Sari said her employer, "would threaten me and called me names. She said, 'I'm not afraid if I have to kill you.'"[117] In the context of heavy workloads and long working hours, employers often intensified the stress and pressure that a worker felt by constantly shouting and scolding. Many incessantly criticized the quality of the work, forcing the domestic worker to redo it. The threats and insults were often accompanied

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[115] Human Rights Watch interview with Arianti Harikusumo, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004.

[116] Ibid.

[117] Human Rights Watch interview with Tita Sari, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

by physical abuse. Ulfah Aisyah, a twenty-five-year-old returned domestic worker, remembered,

> The grandmother was always angry. She never let me take a break. She always complained about my mistakes. She also hit me…. I told them, "I can take your hits, but don't say bad things about my family." They called me a motherfucker, a bastard, an illegitimate child, swine…. I always apologized about my work.[118]

Sexual Abuse and Harassment

> *When the lady went to drop off the children to the grandmother's house, the man would stay at home…. He raped me many, many times. Once a day, every day for three months. He hit me a lot because I didn't want to have sex. I don't know what a condom is, but he used some tissues after he raped me.*

> *[After paying off my three months of debt,] I took a knife, I said, "Don't get near me, what are you doing?" I told the lady, she was very angry with me and said "Just stay quiet and [tomorrow] we will go to the market. I didn't bring my clothes, I just followed my employer because I thought she wanted to buy vegetables. She took to me to the harbor and said she bought a ticket for me to Pontianak. I had no money to get home from Pontianak. I haven't gone to a doctor.*
>
> —Interview with Susanti Pramono, age twenty, returned domestic worker, Lombok, Indonesia, January 24, 2004

Human Rights Watch interviewed seven women who had been sexually harassed or assaulted by their employers. Of these, only three had reported this abuse to an NGO or the Indonesian embassy and had received any health care. An eighth woman was raped and became pregnant by a male migrant worker also working for her employer. The violence ranged from groping and fondling to repeated rape. Women survivors of violence typically were unable to see a health care provider until after they left the workplace, and in several of the cases, they had not yet received medical care or been tested for sexually transmitted infections at the time of the interview.

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[118] Human Rights Watch interview with Ulfah Aisyah, returned domestic worker, Lombok, Indonesia, January 27, 2004.

In several instances, men would try to buy sexual services from women domestic workers. One woman reported,

> The man [employer] teased me with money. He offered me 50 ringgit [U.S.$13.16] and threatened to rape me. He said he would give me the money and I would have to serve him. I didn't do it and he kicked me. With 50 ringgit he wanted to rape me but I refused because I came to work, not to do that thing. The man pulled at my skirt or would try to hold my hand. He would try to force me but I refused.[119]

The women domestic workers who reported sexual abuse said that they were afraid to run away because of threats made by the employer or because of the pressure they felt to complete the first few months of their contract in which their salary was withheld to pay for their transportation and placement fees. Nur Hasana Firmansyah, a twenty-one-year-old returned domestic worker, said that her employer fondled her, hugged her, offered to pay her money for sex, and came into her bed at night and tried to touch her. She told Human Rights Watch that her employer, "checked my bag and looked for important numbers to make sure I was not calling for help. The lady didn't know. I was afraid to tell her because the man was threatening me, 'don't tell my wife or you will see'…. Since I knew I had to pay back three months of salary, I tried to withstand it."[120]

Human Rights Watch interviewed some domestic workers who endured abuse for the initial three or four months of employment in order to pay off their debt before they escaped. Nur Hasana Firmansyah, part of whose story is recounted above, left her employer's household after completing three months of work, and returned to Indonesia without any earnings. Susanti Pramono, whose experience in Malaysia is described at the beginning of this section, felt pressure to complete three months of employment and pay off her debt before she informed her female employer that the male employer raped her every day.

Several of the women reported that they received hostile reactions if they finally turned to the female employer for help. Some employers blamed the worker, as in Nyatun Wulandari's experience. She told Human Rights Watch, "The sons would always touch me, they would call me a pig…. Whenever the elder son saw me he touched me all over my body. While I was sleeping, the employer's son came into the room. He wanted to

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[119] Ibid.

[120] Human Rights Watch interview with Nur Hasana Firmansyah, returned domestic worker, Lombok, Indonesia, January 26, 2004.

have sex with me. I yelled. The lady employer was angry with me. The next day she gave me a ticket to Indonesia."[121] Several other domestic workers shared the experience of being immediately sent back to Indonesia once they reported the harassment and abuse. Some received their wages, others did not.

Trafficking into Forced Labor

> *The agent said I will take care of old people. They promised me 350 ringgit [U.S.$92.10] a month, with four months deduction. There were four kids, the parents, and a grandma. From 4:30 a.m. to 8:00 a.m., I worked at a shop. Then I would go upstairs and clean the house, while taking care of the grandma. From 1:00 p.m. to 5:00 p.m. I would go back to the shop. After 5:00 p.m. I went to the other house. At the second house I would clean until 11:30 p.m. if I was able to go fast. If I wasn't able to go fast, I would return at 1:00 a.m.*
>
> *If I had rest time, the employer asked me to clean the house, mop, and wash the walls and windows. There was no time off. I was never allowed to use the phone or write a letter. Every time I worked, the woman complained about my job. She asked me to re-clean everything. The family called me a dog, they told me I don't have a brain, that I am crazy. I am Christian and they never allowed me to go to church. They never allowed me to walk out of the house. For the family, the principle was that I work and work and work and don't have time to rest. Sometimes I was tired and I wanted to rest. Even if I was ill I had to work.*
>
> *My employer kept my salary—350 ringgit per month. I don't know if they kept it in a bank account. I asked if I could send money to my family. I wanted to send 500 ringgit [U.S.$131.58], but they didn't give me the money, even though I had been working one year.*
>
> *I tried to kill myself, because I couldn't stand my employer. When that happened, she called the agency and the agent took me from the house to the agent's house. The agent asked whether I wanted to continue working or go back to Indonesia. I said Indonesia. The agent said if you go back, you get no money. The agent said he would send me home…but when we arrived in Kuala Lumpur, he said that immigration would only let me leave Malaysia on March 19, 2004. Now I know*

[121] Human Rights Watch interview with Nyatun Wulandari, returned domestic worker, Lombok, Indonesia, January 24, 2004.

that is actually the expiration date for the visa, not [a government requirement, but I didn't know that then]…. I never got a salary in all fourteen months.

—Interview with Riena Sarinem, age thirty, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004

The use of coercive tactics, fraud, or deception to trap individuals into forced labor falls under the international definition of trafficking in persons. Human Rights Watch interviewed nine women and girls who were trafficked into forced labor. These women were often promised jobs in domestic work but ended up working in restaurants, retail stores, or food stalls without any payment of wages. In other cases, they were promised other forms of employment but ended up as domestic workers, again without payment. One twenty-three-year-old trafficking victim, Harmeni Sudjatmoko, said that, "The sponsor cheated me. I can do massage. He promised me I could work as a masseuse in Malaysia, but instead I worked as a maid."[122] Atikah Titi's employers forced her to make beverages and sell them at the market the entire day, in addition to her responsibilities as a domestic worker. The twenty-one-year-old worker told Human Rights Watch,

> I was surprised because I had to do housework and then make soya bean drink also. The first employers were cruel…. I had to do my work in a hurry, clean the bed, clean the furniture, make soya bean drink from 9:00 a.m. to 1:00 p.m., then go to the market to sell from 1:00 p.m. to 11:00 p.m. I had no rest day, and when I got home at 11:00 p.m., I had to clean the clothes and then iron. I slept at 1:00 a.m.[123]

The trafficking victims Human Rights Watch interviewed typically suffered severe forms of the workplace abuses described in earlier sections of this report. They reported that employers forced them to work eighteen to twenty hours per day, locked them in their workplace from the outside, prevented them from making phone calls, and failed to pay any wages. These women and girls often confronted daily violence, endured poor living conditions, and received inadequate amounts of food. Employers and agents used threats and violence to keep them trapped in these situations. After nine months of working fifteen to twenty hours a day, sleeping on the floor, and daily beatings, eighteen-year-old Santi Kartika told her employer that she wanted to return to her agency. She

[122] Human Rights Watch interview with Harmeni Sudjatmoko, domestic worker, Kuala Lumpur, February 26, 2004.

[123] Human Rights Watch interview with Atikah Titi, domestic worker, Kuala Lumpur, Malaysia, February 25, 2004.

told Human Rights Watch, "I said I did not want to work for him anymore. That is when he threatened to rape me and prostitute me."[124]

Human Rights Watch interviewed NGO migrant worker advocates who felt that the Indonesian government could make significant progress in their fight against trafficking by better monitoring the training and holding centers to ensure that recruitment and placement procedures are legal and that women possess full and correct information about their jobs and rights. One trafficking expert noted that the Indonesian authorities should also check the ages of prospective migrant workers and the validity of their travel documents: "This would significantly affect the amount of trafficking…. No one is doing anything about the falsification of documents. Everyone talks about it. There are a lot of young girls…. There are different entry points, holding centers, borders, and consulates. It wouldn't be difficult for police to investigate."[125]

The Malaysian government does not have a system in place for monitoring the placement of migrant domestic workers. Although the immigration department investigates complaints made by neighbors who suspect abuse, or follows up on cases brought to them by the police, the Indonesian embassy, or NGOs, there are no procedures for tracking whether a woman migrant worker has been placed into the type and conditions of work that she was promised, or whether she has been trafficked into forced labor. The nascent effort to combat trafficking by the Malaysian government and its National Human Rights Commission, SUHAKAM, have focused on women trafficked into forced sex work and, thus far, have done little to identify or provide remedies for women trafficking into other forms of forced labor.

V. Protection Failures and Obstacles to Redress

Indonesian migrant domestic workers facing abuses during recruitment, while waiting in pre-departure training centers, or when working in Malaysia have few options for seeking protection and little hope for redress. The Indonesian and Malaysian governments abdicate most monitoring and protection functions to labor suppliers who may be either negligent or abusive themselves. The Malaysian government's blind enforcement of stringent immigration laws means that women escaping from abusive situations can be detained and deported without any access to services or legal aid. Even

[124] Human Rights Watch interview with Santi Kartika, domestic worker, Kuala Lumpur, Malaysia, February 19, 2004.

[125] Human Rights Watch interview with Ruth Rosenberg, program manager, Counter Trafficking Project, International Catholic Migration Commission, Jakarta, Indonesia, February 5, 2004.

women who obtain help from the Indonesian embassy or NGOs are still stymied in their quest for justice by Malaysian immigration and labor laws as well as labor agents who are able to vanish at critical moments and escape punishment.

In the wake of the Nirmala Bonat case in May 2004, the Indonesian and Malaysian governments announced several initiatives for addressing abuses against migrant domestic workers. These proposals include establishing a bilateral labor agreement on domestic workers, improving the quality of pre-departure training, and creating expanded support services for victims of abuse.

Bilateral Labor Agreements

The severe abuse of Nirmala Bonat, an Indonesian domestic worker, sparked the governments of Indonesia and Malaysia to commit to negotiating a MoU specifically for domestic workers during the summer of 2004. The content of the new MoU had yet to be decided at this writing, and it remained unclear whether it would provide substantive protections addressing the abuses that domestic workers encounter at all stages of the migration cycle or whether, instead, it would legitimize the inadequate systems and flawed policies currently in place. Currently, the government generally relies upon profit-oriented labor agencies to monitor workplace conditions, even though these agencies are often accused of abuse and exploitation themselves.

Malaysia and Indonesia brokered a Memorandum of Understanding (MoU) governing labor migration between the two countries in 1998 and signed another one on May 10, 2004. Both MoUs specifically exclude domestic workers, and Malaysia's Minister of Human Resources told Human Rights Watch that a separate agreement would need to be drawn up for "unskilled" workers.[126] Migrant workers in construction, factories, and plantations are all covered by the May 10, 2004 agreement, with only domestic workers classified as "unskilled" by the two governments.

In addition to excluding domestic workers, the MoU signed on May 10, 2004, fails to provide several critical protections for other types of migrant workers. The MoU permits employers to hold the passports of migrant workers and prohibits migrants from organizing through unions or other labor associations. It covers recruitment, medical checkups, and transportation, leaving out important areas like conditions of work and

[126] YB Datuk Dr. Fong Chan Onn, minister of human resources, made this comment in response to a question posed by Human Rights Watch at a press conference, Kuala Lumpur, Malaysia, February 16, 2004.

sanctions for employers and labor agencies that abuse migrant workers.[127] This MoU has marginal improvements over its 1998 predecessor such as the issuance of identity cards recognized by Malaysian authorities to migrant workers. These identity cards facilitate workers' movement within Malaysia, but without the right to hold their passports, workers still face restrictions on their movement across international borders. The MoU also specifies that round-trip airfares should be jointly paid by Indonesian labor recruiters and Malaysian employers and that migrant workers should earn a minimum salary of U.S.$10 per day.[128]

Migrant rights' advocates have called for stronger protections for migrant workers through bilateral agreements at the same time as they have acknowledged the weakness of these agreements. Bilateral agreements have few mechanisms for enforcement and redress, and unequal power relationships between countries of origin and destination make it difficult to produce fair agreements that truly protect migrant workers. Human Rights Watch interviewed several Indonesian government officials who noted that Indonesia felt inhibited from negotiating too hard as they feared that Malaysia would turn elsewhere for cheap labor.[129] Several NGOs and Indonesian government officials supported the idea of negotiating a binding treaty on regional labor standards that would help prevent this problem.

Response of the Indonesian Government

The Indonesian government has begun to respond to reports of abuse of Indonesian domestic workers through new policies and provision of support services. For example they have drafted legislation on the protection of migrant workers and have established a coordinating ministerial body on migrant workers.[130] Returning migrant workers showing signs of abuse or trauma at the international airport in Jakarta are taken to a special ward at Sukanto Hospital for treatment. The Ministry of Manpower and Transmigration has placed increased emphasis on pre-departure training programs.

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[127] "Government readies advocacy teams for migrant workers," *The Jakarta Post*, March 17, 2004; "Deadline Set for MOU with Malaysia," *The Jakarta Post*, February 12, 2004.

[128] Ibid.

[129] Human Rights Watch interview with Kamala Chandrakirana, head of Board of Commissioners, National Commission on Violence against Women, Jakarta, Indonesia, January 21, 2004.

[130] Komnas Perempuan and Solidaritas Perempuan/CARAM-Indonesia, *Indonesian Migrant Domestic Workers,* p. 42. Presidential Decree No. 29 established the coordinating ministerial body in 1999. The eleven lead agencies are the Ministries of Manpower and Transmigration, Foreign Affairs, Home Affairs and Regional Autonomy, Justice and Human Rights, Health and Social Welfare, Transport, Education, Finance, Religious Affairs, Women's Empowerment, and the National Police Force.

These reforms remain woefully inadequate compared to the scale and intensity of the problems. Several different ministries are taking up initiatives related to the protection of migrant workers, but coordination is weak. Bureaucratic hurdles and lack of meaningful oversight also contribute to a system that permits labor agents to freely exploit migrant workers without fear of sanction. Government corruption at all levels remains an impediment to preventing and responding to abusive labor practices. Although the Indonesian government has drafted legislation to protect overseas workers, the delay in assigning a government ministry to sponsor the bill has stalled parliamentary debate and enactment of the law.

Policies on Overseas Migrant Workers

The Indonesian government has a mixed record on legal protections for migrant workers. It is one of the few countries in Asia that has ratified all of the fundamental ILO conventions, and has laws that specifically protect the freedom to organize. However, despite the importance of remittances to its economy and the sheer numbers of workers that it sends abroad each year, it has not signed nor ratified the U.N. Migrant Workers Convention, and it has not ratified ILO migrant workers' conventions.[131]

Indonesia regulates overseas labor migration through ministerial decrees, and has no specific legislation governing recruitment and sending procedures or specific labor protections for migrant workers. The Ministry of Manpower and Transmigration has issued dozens of decrees relating to overseas work, but only two have substantive implications for the protection of migrant workers: the 2002 Labor Ministerial Decree on the Placement of Migrant Workers Overseas and the 2003 Labor Ministerial Decree on Insurance.[132] These decrees focus on recruitment procedures and administrative aspects of insurance policies, and do not address human rights protections for migrant workers. Advocacy groups in Indonesia have pointed out the weaknesses of these decrees, including vague provisions and lack of coordination among the eleven agencies charged with implementation. As mentioned earlier in this report, the Indonesian government has yet to properly account for insurance fees it charged all Indonesian migrant workers.

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[131] ILO Migration for Employment Convention, 1949 (No. 97) and ILO Migrant Workers Convention, 1975 (No. 143).

[132] 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, Solidaritas Perempuan/CARAM Indonesia, 2003), p. 33. Labour Ministerial Decree, No: 104A/Men/2002 on the Placement of Migrant Workers Overseas and the Labour Ministerial Decree No. 157 year 2003 on Insurance.

Three different versions of a draft bill to protect overseas workers exist, but the timeline and eventual enactment of a migrant workers' law remains uncertain. The Indonesian parliament, a consortium of migrants' rights groups called "KOPBUMI," and the University of Brawijaya in Malang, East Java, have drafted three different versions of the legislation. In order for Parliament to debate the bill, the president must assign a ministry to take the lead on the legislation. President Megawati Soekarnoputri had not done so at this writing. The draft versions of the bill cover recruitment, training, and conditions of employment. The passage of a national migrant workers' protection bill would be an important step forward in establishing legal protections for overseas workers. Even if such a bill were passed, however, local and regional-level initiatives would also be needed, given the devolution of government power from the central to provincial and even district-level authorities in Indonesia following Soeharto's resignation in May 1999.

The draft bills apply to all overseas migrant workers, including domestic workers, but fail to address many of the issues of discrimination and abuse well-known to Indonesian authorities and highlighted in this report. For example, although one draft would require that prospective domestic workers receive a minimum of fifteen days of training, that same draft sets no maximum time limit on how long a worker may be kept in a pre-departure training or holding center. The bills discriminate against younger, single workers by stipulating that workers must be twenty-one or married in order to migrate. The drafts address the problem of unpaid wages, but do not set minimum standards for work hours, overtime, rest days, or compensation for workplace injuries.[133] The bills also fail to specify clear mechanisms for monitoring and enforcement.

Bilateral agreements between the governments of Indonesia and Malaysia remain another strategy for regulating labor migration, but, as explained earlier in this report, the MoUs exclude domestic workers and focus primarily on labor recruitment rather than outlining protections and minimum standards of employment for migrant workers. Furthermore, mixed attitudes about labor migration on the part of the Malaysian government and the power differentials between sending and receiving countries heavily influence the type of policies that are passed. As already discussed, Indonesia's eagerness to maintain its status as Malaysia's top supplier of cheap labor has made it a weak negotiator for labor protections. At other times, national pride and frustration about continuing abuses against Indonesian migrant workers has propelled the government and some political parties to call for temporary bans on labor migration to countries where Indonesian workers face abuse, including Malaysia. Such a step would

[133] Draft legislation on the Protection of Overseas Migrant Workers, 2003.

punish economic migrants for governments' failures to protect workers and possibly drive more workers to riskier methods of illegal migration.

Recruitment, Training, and Sending Practices

The government of Indonesia recognizes the need to improve recruitment and sending practices for migrant workers, but has been slow to implement such changes. Key areas for reform include: streamlining the lengthy and complicated recruitment and training process; more effectively monitoring and investigating labor recruiters' practices; and eliminating corruption and falsification of documents. An official from the Ministry of Women's Empowerment acknowledged the problems with false documents and illegal migration, saying, "80 to 90 percent of the problems are internal—pre-departure. Workers have a fake identity, they pay 100,000, or 120,000 rupiah [U.S.$12.19-14.63] to get ID cards, they change their age and even their names. If we can solve these problems, maybe 50 to 60 percent of the problems would be solved."[134]

Much of the government's response to abuse of Indonesian domestic workers in destination countries has focused on improving their training, with special emphasis on their language and work skills.[135] One government official explained their rationale, "We can understand why employers hit—[although] it's not a good reason to hit. The problem is not with the employer but with the girl, she is not trained or skilled."[136] Such programs, though potentially providing workers with useful skills, do not address the culpability and attitudes of employers who behave abusively, nor strengthen measures to hold such employers and labor agents accountable.

The Indonesian government continues to allow labor recruiters (PJTKI), to manage most of the recruitment and training process without oversight. For example, when the government recently introduced a new requirement that migrant workers receive a pre-departure orientation on their rights, it gave principal responsibility for conducting the orientations to labor recruiters instead of a government agency or migrant rights NGOs.[137] Human Rights Watch interviews with Indonesian migrant domestic workers indicate that many labor agencies do not provide these pre-departure orientation programs, confiscate workers' belongings and contact information they possess, and

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[134] Human Rights Watch interview with Aziz Husain, deputy for community participation, Ministry of Women's Empowerment, Jakarta, Indonesia, February 4, 2004.

[135] "Center Set Up for Migrant Workers," *The Jakarta Post*, March 24, 2004.

[136] Human Rights Watch interview with Aziz Husain, deputy for community participation, Ministry of Women's Empowerment, Jakarta, Indonesia, February 4, 2004.

[137] Human Rights Watch interview with Aziz Husain, deputy for community participation, Ministry of Women's Empowerment, Jakarta, Indonesia, February 4, 2004.

mislead them about their rights and obligations in Malaysia. Competition between labor agencies to send domestic workers to Malaysia as soon as their paperwork is processed can lead them to cut out steps like providing required pre-departure orientations.

The Indonesian government must also address the quality of training, the living conditions at training centers, the conduct of staff and security guards, and workers' freedom of movement while waiting to migrate abroad.

Inadequate Victim Services

The Indonesian government bears responsibility for protecting migrant workers whose rights are violated and for helping them to obtain redress. The Indonesian government has begun to provide temporary shelter at its embassy for migrant workers and to channel resources into creating crisis centers for victims of violence in Indonesia, including returning migrant workers. However, most of these services are small in scale and represent isolated, ad hoc efforts to address services for migrant workers. Adequately addressing the needs of migrant workers who have been cheated, exploited, or abused requires a strong, well-coordinated response supported by sufficient resources and political will.

The Indonesian embassy in Kuala Lumpur and the Indonesian consulates in other parts of Malaysia provide services to migrant workers, and are currently working with some NGOs like the International Catholic Migration Commission (ICMC) to improve their services for victims of trafficking. The embassy in Kuala Lumpur provides Indonesians in Malaysia with temporary shelter if necessary, helps them to get their passports back from employers or labor agents, issues new travel documents, pays for medical treatment, and provides legal aid for workers who pursue civil lawsuits or cases in the criminal justice system against their employers.

According to an official at the Indonesian embassy in Kuala Lumpur, 753 women workers took shelter at the Indonesian embassy in 2003. Of these, 402 had run away from their employers, 153 were victims of trafficking into forced prostitution, thirteen had been physically abused, twenty-two experienced high levels of stress, one had been raped by a labor agent, and four had been raped by their employers.[138]

[138] Human Rights Watch interview with Jun Kuncoro, attaché, Indonesian embassy, Kuala Lumpur, Malaysia, February 19, 2004.

The current level of services does not meet the needs of the hundreds of women domestic workers who flee to the embassy each year. The temporary shelter is small and overcrowded, the high numbers of women seeking shelter and aid at any given time means they often must wait several months before their cases are fully processed, and there are no counseling or psychological services, a critical service given the abuse many have suffered. Runaway domestic workers, although consulted, are often excluded from negotiations regarding their case. One attaché described the process for handling labor disputes, "We have a tripartite system involving the embassy, agency, and the employers. We sit together to discuss the situation. The worker only sits in sometimes, we know better than her, she will interrupt the negotiations."[139]

The Indonesian embassy does not attempt to reach domestic workers who are still working for their employers. Some important actions it could take would be to institute monitoring mechanisms, create resource centers for domestic workers, enable the formation of domestic workers' associations, or refer workers to health services. The Indonesian embassy also has an important role to play as an advocate for Indonesian migrant workers' rights with the Malaysian government.

Treatment of Migrant Workers upon Return to Indonesia

Government policies intended to aid migrant workers may actually hurt them. One example is the designation of terminal three at the Soekarno-Hatta Jakarta International Airport for returning migrant workers. Returnees, migrant workers' families, and migrant workers' NGOs have reported extortion by unscrupulous airport employees who suspect that returning workers have large sums of cash. One Indonesian government official said, "The concept is to protect returning migrant workers. But really they go from the mouth of the tiger to the mouth of the crocodile."[140] At this writing, the Minister of Manpower and Transmigration was advocating channeling migrant workers through an airport terminal in Ciracas, which would further isolate migrant workers from other travelers. Absent protections and rigorous monitoring, such a policy could put migrant workers at risk for extortion, artificially low exchange rates that deprive them of a portion of their earnings, and higher transportation fees back to their homes. Currently, government and NGO representatives have set up some monitoring systems at terminal three to inform returning workers about their rights, and to identify workers who require immediate medical care upon return. These workers, many of whom have suffered severe physical abuse or sexual assault, are sent to Sukanto Hospital.

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[139] Ibid.

[140] Human Rights Watch interview with Aziz Husain, deputy for community participation, Ministry of Women's Empowerment, Jakarta, Indonesia, February 4, 2004.

The Indonesian government, though taking steps to better regulate labor migration, still shrugs off responsibility for workers who migrate through unlicensed labor agents. As one official from the Ministry of Manpower and Transmigration said, "We are not directly responsible for problems in Malaysia or overseas. We help workers indirectly by providing skills. Workers who go illegally make problems for themselves. If they have problems, who will take care of them? Nobody cares for them."[141]

Response of the Malaysian Government

The government of Malaysia has demonstrated interest in addressing abuse against migrant domestic workers following the public outcry surrounding the Nirmala Bonat case. The police arrested Bonat's employer and she was charged in the sessions court with four counts of voluntarily causing grievous hurt. The government issued a formal apology to Bonat and the people of Indonesia. The Ministry of Human Resources has committed to negotiating the proposed MoU on domestic workers by the fall of 2004.

These initiatives, encouraging as they are, do not address systemic problems posed by Malaysia's immigration and employment laws. Malaysia's stringent immigration policies make it extremely difficult for Indonesian domestic workers to seek help or pursue remedies through the legal system. The Malaysian government often treats foreign workers like potential criminals and has spent little time or resources on strengthening protections for migrant workers facing discrimination, abuse, or exploitation.

Absence of Mechanisms for the Protection of Indonesian Domestic Workers

The legal framework for protecting migrant domestic workers is vague. As one official from the Malaysian Ministry of Human Resources said:

> Laws for domestic workers and migrants are not clearly defined…. Maids are not really protected…. This issue is difficult to monitor. They are one by one [in individual households], how can we monitor? It is up to them to report. To get an organization to monitor maids is unlikely. Who is going to do that?[142]

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[141] Human Rights Watch interview with Meity S. Ichwanu, counselor, Directorate for the Protection of Indonesian Citizens and Legal Entities, Ministry of Manpower and Transmigration, Jakarta, Indonesia, February 6, 2004.

[142] An official from the Malaysian Ministry of Human Resources commented that the Malaysian government would be resistant to amending the 1955 employment laws to include domestic workers. Human Rights Watch

There is no legal minimum wage in Malaysia, and Indonesian domestic workers are among the lowest paid workers in the country. Most migrant workers in other low-wage sectors, such as food stalls and factories, earn at least 700 Malaysian ringgit (U.S.$184) per month, as do Filipina domestic workers. Indonesian domestic workers typically earn 350-400 ringgit (U.S.$92-105) per month.

Domestic workers are specifically excluded from many provisions in Malaysia's Employment Act of 1955, including those regulating hours of work, days off, and termination of contracts.[143] They are also excluded from the Workmen's Compensation Act. Domestic workers do have entitlements to their wages and can bring complaints about unpaid salaries to the Labor Department in the Malaysian Ministry of Human Resources. The few domestic workers who find refuge in the Indonesian embassy or with an NGO and therefore have access to free legal aid can file a complaint with the Labor Department for unpaid wages, and they can turn to the police or the Ministry of Home Affairs in cases of physical or sexual assault. As discussed later, immigration requirements prevent most workers from pursuing these options.

The Immigration Department has a small Housemaid Unit in the Foreign Workers Department for dealing with domestic workers, consisting of one full-time official and his director, who also has responsibility for other migrant workers. The Immigration Department has policies punishing labor agencies and employers who abuse domestic workers: they strip labor agencies of their operating licenses and deny employers permission to hire domestic workers. Despite these measures, the Immigration Department has few strategies for monitoring or investigating cases of abuse and has less than twenty blacklisted labor agencies.[144] One official admitted to Human Rights Watch, "We seldom get complaints from maids. They don't know how to come to the immigration office or to the embassy. The only way they know is through the labor agency."[145] As detailed in the next section, labor agents often ignore domestic workers' pleas for help or force them back into abusive or exploitative situations.

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interview with an official from the Ministry of Human Resources who wished to remain anonymous, Kuala Lumpur, Malaysia, February 24, 2004.

[143] Ibid. The reason he gave is that, "[i]t is very risky to change the 1955 law. The trade unions are very strong, and would become suspicious if we wanted to change it. The government has no way to intervene if the trade unions fight it, [we might] have to go to court and the case could go on for years and years."

[144] Human Rights Watch interview with Matthew Barin, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

[145] Human Rights Watch interview with Matthew Barin, assistant director, Housemaid Unit, Foreign Workers Department, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

Regulations that apply to other migrant workers often exclude domestic workers. For example, domestic workers will be excluded from a required post-arrival orientation program that Malaysia is introducing for all other migrant workers consisting of thirty hours of Malaysian law, thirty hours of Malaysian culture, and thirty hours of Malay language.[146] A Malaysian immigration official said that a post-arrival orientation for domestic workers is up to the labor agency, but they likely will be unwilling to conduct such programs because of competition between agencies to shorten waiting periods for employers waiting for domestic workers.[147]

The governments of Malaysia and the Philippines have negotiated a standard contract for Filipina domestic workers with several strong protections; however, no similar provisions exist for Indonesian domestic workers (see appendix B for the standard contract used for Indonesian domestic workers and appendix D for the standard contract used for Filipina domestic workers).

Unlike Indonesians, Filipinas are entitled to a minimum wage of U.S.$200 per month, a mandatory rest day once a week, a limit of ten working hours per day, and payment of their wages in cash every month. Filipina domestic workers may keep their passports in their possession. The contract further stipulates that workers should be provided transportation to and from Malaysia, access to health care services, and employer assistance to send remittances to designated beneficiaries regularly. Employers have the obligation to treat the worker in a "just and humane manner" and to refrain from physical violence under all circumstances.[148] Malaysia should establish a similar standard contract for Indonesian migrant domestic workers.

Abuses by Labor Agents in Malaysia

> *I think the Malaysian agent didn't protect my life properly. The treatment from the agent is uncivilized…. Most of the maids here at the [Indonesian] embassy were afraid to run to the agent so they came here. If the employer does something bad to the maid, the agent does not care or pay attention to the problem, even if the employer rapes the maid. I know many cases like this. If the employer hits them, and they*

[146] Human Rights Watch interview with an official from the Ministry of Human Resources who wished to remain anonymous, Kuala Lumpur, Malaysia, February 24, 2004.

[147] Human Rights Watch interview with Matthew Barin, assistant director, Housemaid Unit, Foreign Workers Department, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

[148] Department of Labour and Employment, Philippines Overseas Employment Administration, "Standard Employment Contract for Filipino Household Workers in Malaysia." See appendix D.

> *write to the agent, the agent blames them and hits them too. The agent can't be believed—the agent and the employer are the same.*
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> —Interview with Tita Sari, age twenty-four, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004

The Indonesian and Malaysian governments have charged labor agents with much of the responsibility for recruitment, placement, and monitoring the treatment of migrant domestic workers. After passing through the training centers in Indonesia, or traveling directly to Malaysia through an illegal agent, women migrant workers often stayed with Malaysian labor agents for a period typically ranging from one day to two weeks before moving to their employers' homes. In some cases, if they had problems with their employers or if their employers rejected them, they would return to the Malaysian agent to wait for another placement or to be sent back to Indonesia. They also returned to the agency on their way home upon completing the standard two-year contract.

Many of the domestic workers that Human Rights Watch interviewed reported that Malaysian labor agents confiscated their belongings, failed to give them information about where they could turn for help, and intimidated them so they would act submissively with their employers. Amsia Widodo said, "I spent two days at the agency in Malaysia. There were a lot of problems. They always yelled at me. The agent took my belongings and my Koran. He took my good clothes and gave me bad clothes. He wanted to burn the Koran."[149] Labor agents typically instructed women domestic workers to work hard and to avoid complaining, even when they were in situations considered to be forced labor.

Malaysian labor agents perpetrated many of the same abuses against Indonesian domestic workers as their Indonesian counterparts, for example, restrictions on their freedom of movement and psychological and physical abuse. Many women reported that labor agents in both Malaysia and Indonesia insulted them, forcibly cut their hair, or took their prayer materials and Koran from them. Yustiani Suharti, a twenty-five-year-old domestic worker at the Indonesian embassy recounted the particularly horrific experiences she had at the office of a Malaysian labor agency:

> We had to use our headscarves to clean dog shit. If I did not clean perfectly, the trainer would hit us. I have a friend…the agent got angry with her and hit her. He locked her in a dark room—I don't know how

[149] Human Rights Watch interview with Amsia Widodo, returned domestic worker, Lombok, Indonesia, January 26, 2004.

> long. We would get a punishment where we had to crouch up and down 250 times. People were hit every day…. The trainer asked us to hit the friend washing the plates because she had lied to the trainer. We had to hit both of her cheeks and say, "you lied, you lied." On other days we were hit with a wooden stick. There were four women from Cambodia and they didn't understand Malay. They didn't greet the trainer. He locked them into the back room and hit them with the rattan cane and poured water on them. Every day something happened.[150]

Indonesian women domestic workers reported that Malaysian labor suppliers failed to remove them from abusive situations, sometimes even blaming the worker for the abuse. Atikah Titi, who ran away from her employer because she was forced to work almost twenty hours a day in a food stall owned by her employers instead of cleaning their house said: "the agency took me back…and told me not to fight with the employer. They told me to just say sorry and if I make a mistake to just be silent."[151] Nur Hasana Firmansyah, who was sexually harassed by her employer and who had to call her agent three times before he picked her up, noted that the agent sent another domestic worker in her stead, knowingly putting the replacement worker in an unsafe environment.[152]

Human Rights Watch interviewed a Malaysian labor supplier who said that many workers called him complaining about heavy workloads. He said he was unsympathetic to most of their claims, but would intervene if they were not getting at least six hours of sleep or three meals a day. He added that he sent workers back to their employers "for their own good," shouting at them if need be, so they could earn money for their families.[153]

In other cases, Malaysian labor agents did not help workers obtain unpaid wages. Twenty-one-year-old Dita Endang, a domestic worker who had returned from Malaysia in November 2003, told Human Rights Watch:

> I earned 370 ringgit [U.S.$97.37] per month. I received 2,000 ringgit [U.S.$526.31] from my employer [after two years of employment]. The

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[150] Human Rights Watch interview with Yustiani Suharti, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[151] Human Rights Watch interview with Atikah Titi, Kuala Lumpur, Malaysia, February 25, 2004.

[152] Human Rights Watch interview with Nur Hasana Firmansyah, returned domestic worker, Lombok, Indonesia, January 26, 2004.

[153] Ibid.

> labor agencies checked, and they told me that I should have received more money. But the labor agents didn't take action. They only told me after I had returned to Indonesia.[154]

Many labor agents perpetrate abuses against migrant domestic workers or are complicit in the abuses committed by employers. These labor agents profit from the labor of domestic workers and have little incentive to remove them from abusive workplace conditions. The Indonesian and Malaysian governments should create guidelines for the practices of these labor agencies, monitor them regularly, and penalize them for infractions. The governments should prosecute labor agents accused of abuses against domestic workers according to the law.

Malaysia has few requirements for obtaining a license to become a labor recruiter. All Malaysian employment agencies must get a license from the Ministry of Human Resources. If they want to recruit foreign workers, they must also get an immigration license from the Ministry of Home Affairs. As one official from the Ministry of Human Resources noted, "The criteria for a license are not very strict…[we just ensure] it's not a fly-by-night company. It's more on the financial part, we make sure there's a deposit. It is not so much on their knowledge about maids."[155] In cases where the Malaysian government discovers abuses by these agencies, they can revoke the licenses. Licenses must be renewed periodically, but there is no system for monitoring agencies regularly.[156] Given recurring reports of abuse by these agencies, including those documented in this report, increased regulation and monitoring of labor suppliers is critical for the protection of migrant workers' rights.

Obstacles to Filing Complaints and Prosecuting Offenders

The few domestic workers who have the luck to find an NGO or make their way to the Indonesian embassy may file a complaint against their employer for abuse and for unpaid wages. However, these complaints take months and sometimes years to process, as do criminal prosecutions. Indonesian workers must apply for a "special pass" to stay

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[154] Human Rights Watch interview with Dita Endang, returned domestic worker, Lombok, Indonesia, January 25, 2004.

[155] Human Rights Watch interview with an official who wished to remain anonymous, Ministry of Human Resources, Malaysia, February 22, 2004.

[156] Malaysia only accepts domestic workers from Indonesia, the Philippines, Cambodia, Sri Lanka, and Thailand. The requirements for employers is that they both be working, have at least one child, and a combined income of at least three thousand ringgits (U.S.$789.47) per month. Human Rights Watch interview with Matthew Barin, assistant director, Housemaid Unit, Foreign Workers Department, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004. See appendix C for more information on requirements for hiring a migrant domestic worker in Malaysia.

in Malaysia while these cases are processed at the prohibitive cost of 100 ringgit (U.S.$26.31) per month. They are also prohibited from working during this time, effectively giving most workers no choice but to return to Indonesia and to give up any chance of redress. Most Indonesian domestic workers who do not have the aid of an NGO or the embassy typically do not know about any of these options, and Human Rights Watch interviewed several domestic workers who were not aware they could turn to the Indonesian embassy for help.

Domestic workers who wish to file complaints against their employers or pursue criminal cases must get special passes because their temporary work permits and entry visas are tied to their employers. If they leave their employer, even for reasons of abuse, they lose their legal status and may be imprisoned, fined, and deported under Malaysia's immigration laws. If a domestic worker wishes to change her employer legally, she must first return to Indonesia and then return on a new temporary employment visa. An immigration official gave the following explanation for this policy, "We don't allow maids to transfer employers. We don't want everybody to get it easy. If she doesn't like one employer, then the maid can just run away to another job. We have to monitor the ins and outs of maids."[157]

These visa policies left many domestic workers whom Human Rights Watch interviewed with few options for redress. If they chose to stay in Malaysia and pursue the case, they had to cope with an indefinite stay in which they would be confined to a shelter, unable to earn money. After escaping from traumatic situations, most wanted to return immediately to friends and family in Indonesia. These considerations prevented prosecutions even in cases where the police had arrested an abusive employer and the domestic worker had free legal aid. Ani Rukmonto, who had been severely physically abused, decided to drop the charges against her employers as the process was too lengthy. She told Human Rights Watch:

> The police brought me to the embassy after I was released from the hospital. I heard the employer was in jail. But after I signed a kind of paper to release her, she is not in jail. If the case proceeded in court, it would take too long. [According to the contract], the employer was supposed to pay me for two years, but in the end she only agreed to pay for one year and it is still being cut four months. From the agreement, I will get only 3250 ringgit [U.S.$855.26]. I want the employer in jail. I

[157] Human Rights Watch interview with Matthew Barin, assistant director, Housemaid Unit, Foreign Workers Department, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

> am not satisfied with the outcome because my body and my head hurt.[158]

Other domestic workers receiving assistance from NGOs or the Indonesian embassy chose not even to report some abuses. Because Malaysia's immigration laws prevented them from working after they had escaped their employers or labor agents, many domestic workers wished to return to Indonesia immediately in order to begin working again. Others cited loneliness in the shelters. These women and girls told Human Rights Watch they did not divulge all of their experiences because they feared they would be pressured into staying in Malaysia longer to pursue a case. One resident at the temporary shelter in the Indonesian embassy who had suffered humiliating mistreatment and abuse at the hands of a Malaysian labor agent said, "I didn't talk about these conditions to the embassy. If I talked about it, the embassy would tell the Malaysian government to close the agency. I was afraid my return to Indonesia would be delayed."[159]

Jun Kuncoro, an attaché at the Indonesian embassy in Kuala Lumpur, said that embassy officials tried to negotiate the best financial settlements possible for domestic workers since the backlogged judicial system and rigid immigration laws led many of them to drop their cases. He told Human Rights Watch,

> Malaysian courts take a long time. I don't blame the maid, just sitting in the temporary shelter, not doing anything, just mingling with other unwanted people. They tend to withdraw the case. If we go to court, how to prove it? In our experience, it is a long-winded process and we pay a lot for the lawyer. We almost have nothing, so we focus on negotiation.[160]

Enforcement of the Immigration Act

Malaysia's immigration laws deter many domestic workers from reporting abuse, escaping exploitative situations, or pursuing redress if they have found refuge in the Indonesian embassy or an NGO shelter. Employers or labor agents hold onto women

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[158] Human Rights Watch interview with Ani Rukmonto, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[159] Human Rights Watch interview with Yustiani Suharti, domestic worker, Kuala Lumpur, Malaysia, February 26, 2004.

[160] Human Rights Watch with Jun Kuncoro, attaché, Indonesian embassy, Kuala Lumpur, Malaysia, February 19, 2004.

migrant workers' passports, and police and immigration officials may arrest and detain any foreign worker without valid documents. The government of Malaysia strictly enforces its punitive immigration laws, with the stated purpose of deterring illegal entry into the country. One official told Human Rights Watch about the system: "U.S. immigration has entry control, but no exit control. But us, we have entry and exit control. Migrants cannot simply go out, they will be punished. After they finish the sentence [for violating immigration laws], we put them in a temporary detention center pending their removal."[161]

Human Rights Watch interviewed a seventeen-year-old domestic worker who had been confined to her employer's house, verbally and physically abused, and cheated out of her full salary. She said, "My employer kept my passport. I was scared to run away without my passport. I wanted to run away, but I was afraid the Malaysian government and security would catch me."[162] Another domestic worker had escaped from her employer's house and was staying hidden in the home of a friend at time of her interview with Human Rights Watch. She said:

> It's very hard here. I know the laws, and that's why I'm scared. I hear rumors, if we don't have a passport then if we get caught by the police, they put us in the lockup, then they put us in the jungle in very scary places. I had a male relative here. When there was an operation [immigration raid], he ran to the jungle and lived many days there. If I go out in the morning or evening I feel scared, so it is better not to go out.[163]

According to NGOs and the Indonesian embassy, the police often fail to distinguish workers who are escaping situations of abuse or trafficking victims from other types of undocumented migrants. These individuals are doubly victimized by being detained in sometimes appalling conditions and deported without any access to support services or redress.

Malaysia's enforcement of immigration laws extends to domestic workers, both those still employed and those who have escaped from their employers. One Malaysian

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[161] Human Rights Watch interview with Mohamed Haji Ismael, assistant deputy director, Enforcement Unit, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

[162] Human Rights Watch interview with Srihati Hermawan, returned domestic worker, Lombok, Indonesia, January 25, 2004.

[163] Human Rights Watch interview with Kusmirah Parinem, domestic worker, Kuala Lumpur, Malaysia, February 14, 2004.

immigration official told Human Rights Watch that the Immigration Department conducts raids to check whether domestic workers have permits, though he would not reveal how often they do these "random checks." He explained that they also arrest women who have run away from their employers and are working in restaurants, karaoke bars, or as sex workers. "Our enforcement is quite active. Lots of Indonesians and Filipinas come to be a housemaid, they run away, and they get caught. We put them in a detention camp and send them home. We blacklist the maid."[164]

Police and immigration authorities who arrest domestic workers without valid work permits and travel documents often fail to screen them to find out whether they are escaping situations of trafficking or other forms of exploitation or abuse. Language barriers further hinder workers from explaining their situation. One immigration official was aware of this problem, saying, "Normally when they're caught, they go to the police station first. But the maid can't speak well, can't explain what happened. Bahasa Malaysia and Bahasa Indonesia are different, the maids speak very slow."[165]

Migrant workers' advocates, migrant workers, and government officials confirmed that, once arrested, there is usually no opportunity for a migrant worker to contact a lawyer or even to obtain the services of a translator. Migrant workers may not have an opportunity to present their side of the story and are then subject to harsh punishments. Aegile Fernandez, program director at Tenaganita, a prominent NGO working with migrant workers, said:

> When taken to court, they are not given a chance to speak. They are instructed by the DPP [deputy public prosecutor] that if they plead guilty, they will receive a shorter sentence. They all plead guilty. According to the Immigration Act, the charge is for entering illegally, but mostly they come legally [and then fall out of status].[166]

Under the Immigration Act, they can then be sentenced to whippings (in the case of men ages eighteen to fifty-five), imprisonment, and fines. In 2003, 42,935 foreigners were arrested under these laws, and almost half were Indonesian. Nine thousand of

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[164] Human Rights Watch interview with Matthew Barin, assistant director, Housemaid Unit, Foreign Workers Department, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

[165] Ibid.

[166] Human Rights Watch interview with Aegile Fernandez, programme coordinator, Tenaganita, Kuala Lumpur, Malaysia, February 9, 2004.

those sentenced were caned.[167] Indonesian domestic workers who are determined to have entered the country illegally are subject to imprisonment and fines. These punishments are followed by indefinite detentions in the temporary immigration centers until they are deported. Malaysian authorities may detain and deport domestic workers who have escaped from their employers and have therefore fallen out of status.[168]

Conditions in Temporary Detention Centers

> *There were seventy-seven people in one room, all women. There were seventy-one from Indonesia, from Kalimantan, Java, Timor. Eight people gave birth in the prison and there were ten young girls. We had vegetables and rice, it was not enough food, and I was hungry. They gave us food twice a day. The toilet was not clean…. They would beat people sometimes, [but] they never beat or yelled at me. The Indonesian consulate did not want to help me.*[169]
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> —Interview with Sutiati Desi Ajeng, age thirty-seven, returned domestic worker who was detained and deported in 2003, Lombok, Indonesia, January 24, 2004

NGOs and the Malaysian Human Rights Commission (SUHAKAM) have reported that conditions in Malaysia's temporary immigration detention centers are overcrowded, with substandard living conditions. According to Human Rights Watch interviews with former detainees, NGO advocates who had visited the detention center, and SUHAKAM, the conditions in the detention center do not meet U.N. minimum standards for the treatment of prisoners.[170] In addition to overcrowding, detainees sleep on the floor and do not receive blankets or mattresses. In one detention center, detainees reported inadequate supplies of drinking water and problems with nutrition as they ate the same meal of salted fish and rice every day.

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[167] Statistics from the Department of Immigration, Malaysia cited in Tenaganita, "Migrant Workers: Access Denied," Kuala Lumpur, 2004.

[168] Human Rights Watch interview with Mohamed Haji Ismael, assistant deputy director, Enforcement Unit, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

[169] Human Rights Watch interview with Sutiati Desi Ajeng, returned domestic worker, Lombok, Indonesia, January 24, 2004.

[170] Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (no. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (no. 1) at 35, U.N. Doc. E/5988 (1977).

Unless a detainee has a friend or family member willing to pay for their ticket home, it can be months before an individual's embassy or the Malaysian government finally arranges for their deportation. An official from Indonesia's Ministry of Foreign Affairs told Human Rights Watch that 48,000 Indonesians had been deported since 2002. She said, "It is difficult to get access, even our officers can't get access [to visit the detainees]."[171] Some of the detainees Human Rights Watch interviewed said that there were individuals who had been in the detention centers for more than a year. Mohamed Haji Ismael, an official with Malaysia's Department of Immigration said,

> Women don't have money right away. Their embassy will call their relatives to see if they'll help. Sometimes there is a big operation that is handled by the police. They arrest a mass of people. It is not possible to charge all of them. If we don't charge them, we deport them. We have fourteen days to charge them in court. We have to make a police report, we can't simply put them in the detention center. I don't know if there are people [for longer than one year] in the centers. In my experience, they are stateless [for example, refugees from Burma], and there is no place to throw them.[172]

Response of Civil Society

In contrast to the Indonesian and Malaysian governments, NGOs have consistently raised attention to the plight of Indonesian domestic workers in recent years. In 2003, Indonesian groups collaborated to submit a report to the U.N. Special Rapporteur on the Human Rights of Migrants highlighting the abuses faced by Indonesian women migrating to the Middle East and Asia as domestic workers.[173] Many groups in Indonesia have expanded their outreach efforts to organize workers who have returned from abroad, and to provide services to those who suffered abuses.

In Indonesia, several NGOs work on various aspects of migrant workers' rights, including: grassroots organizing, provision of health and legal services, research, and policy advocacy. Two important networks include KOPBUMI, a federation of migrant

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[171] Human Rights Watch interview with Meity S. Ichwanu, counselor, Directorate for the Protection of Indonesian Citizens and Legal Entities, Ministry of Manpower and Transmigration, Jakarta, Indonesia, February 6, 2004.

[172] Human Rights Watch interview with Mohamed Haji Ismael, assistant deputy director, Enforcement Unit, Department of Immigration, Kuala Lumpur, Malaysia, February 24, 2004.

[173] Komnas Perempuan and Solidaritas Perempuan/CARAM Indonesia, *Indonesian Domestic Workers*. The U.N. Special Rapporteur of the Commission on Human Rights on the Human Rights of Migrants has a mandate to examine ways to overcome obstacles to the full and effective protection of migrants' human rights.

workers' organizations, and a coalition of women's organizations called the Women's Movement for the Protection of Migrant Workers (GPPBM).

Relatively few organizations address the needs of migrant workers in Malaysia compared to the proliferation of initiatives in Indonesia. In Malaysia, the NGO Tenaganita provides services to migrant workers, predominantly men working in construction and factories, although they have a unit that works specifically on domestic workers and trafficking victims. Women's Aid Organization provides shelter and other services to domestic workers fleeing abusive situations, and church-based groups around the country often provide support to domestic workers as well, though most of their work centers on Filipina domestic workers.

NGOs in both Indonesia and Malaysia are active in regional networks that promote the rights of migrant workers in Asia, such as CARAM-Asia which focuses on migrant workers and health, and Migrant Forum in Asia. NGOs throughout Asia have highlighted domestic workers' rights as a priority area for action in numerous reports and meetings, including reports given to the U.N. Special Rapporteur on the Human Rights of Migrants, and a regional summit on foreign domestic workers held in August 2002 in Sri Lanka. At the regional summit, 132 participants from twenty-four countries articulated what they believed should be the rights of migrant domestic workers and proposed policies and interventions in the "Colombo Declaration."[174]

VI. National and International Legal Standards

When Indonesian women who migrate for employment as domestic workers in Malaysia encounter abuses such as severe restrictions on their movement and ability to practice their religion; psychological and physical abuse, including sexual abuse; discrimination under the labor code; or excessively long working hours without regular pay or rest; they are experiencing violations of international human rights law. These abuses also violate rights articulated in the national laws of Indonesia and Malaysia.

Indonesia and Malaysia have both committed to uphold human rights protections defined in the Convention on the Elimination of All Forms of Discrimination against

[174] The text and background of the Colombo Declaration may be found on the website of CARAM-Asia at http://caramasia.gn.apc.org/page_type_2.php?page=regional_summit/Regional_Summit-Declaration&title=CARAMASIA.ORG%20::%20Colombo%20Declaration.

Women (CEDAW) and the Convention on the Rights of the Child (CRC).[175] They must ensure that domestic law and its enforcement comply with their international obligations to protect the rights of women and children and to guarantee equality under the law. Both Indonesia and Malaysia have also ratified several ILO conventions, including the ILO Forced Labor Convention (No. 29), the Worst Forms of Child Labor Convention (No. 182), and the ILO Right to Organize and Collective Bargaining Convention (No. 98), and have obligations to protect the rights of workers as set forth in those treaties. Research conducted by Human Rights Watch found that, in law and in practice, the rights of women migrant domestic workers are routinely flouted.

The Universal Declaration of Human Rights (UDHR) is the precursor of important international treaties that set forth human rights. Although Indonesia and Malaysia have not ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), these are important sources of international law and human rights standards. Some of their provisions reflect a significant degree of international consensus and evolving state practice. In this sense, they provide guidance on how Indonesia and Malaysia might reformulate their legislation in respect to migrant workers.[176]

The Right to Just and Favorable Conditions of Work

International human rights law protects a spectrum of workers' rights. Articles 23 and 24 of the UDHR outline rights to just and favorable conditions of work, remuneration, freedom to form and join trade unions, rest, leisure, reasonable limitations of working hours, and periodic holidays.[177] Article 11(d) of CEDAW delineates the "right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value" and article 11(f) describes the "right to protection of health and to safety in

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[175] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/34/46, 1979, entered into force September 3, 1981, and ratified by Indonesia on September 13, 1984 and by Malaysia on July 5, 1995; Convention on the Rights of the Child (CRC), U.N. Doc. A/44/49, 1989, entered into force September 2, 1990, ratified by Indonesia on September 5, 1990 and by Malaysia on February 17, 1995.

[176] International Covenant on Economic, Social and Cultural Rights (ICESCR), U.N. Doc. A/6316 (1966), entered into force January 3, 1976; International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, entered into force March 23, 1976; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention), adopted on December 18, 1992, U.N. G.A. Res. 45/158, entered into force July 1, 2003.

[177] UDHR, art. 23 and art. 24.

working conditions."[178] The CRC and several ILO Conventions outline protections for working children.[179]

Through their ratification of several International Labor Organization conventions, Indonesia and Malaysia also undertook international obligations to enforce labor rights protections for the payment of wages and to suppress forced labor.[180] According to ILO Convention on Forced Labor, Number 29, forced or compulsory labor "shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[181] Malaysia has ratified the ILO Convention on the Protection of Wages, Number 95, 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.[182]

By excluding domestic workers from several key employment protections, Malaysia's labor laws fail to comply with international law. The principal source of employment law in Malaysia is the 1955 Employment Act, which regulates terms and conditions of work. The 1955 Employment Act includes "domestic servants" in the categories of employees covered by the Act, and protects them from irregular or late payment of wages, but specifically excludes them from provisions on rest days, hours of work, public holidays, annual leave, sick leave, and maternity protections. Domestic workers are also excluded from termination, lay-off, and retirement benefits.[183] Malaysia's 1952 Workmen's Compensation Act, which provides a mechanism for workers to receive compensation for workplace injuries and occupational illnesses, also excludes domestic workers.[184]

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[178] CEDAW, art. 11(d) and art. 11(f).

[179] The CRC states children's right "to be protected from economic exploitation and from performing any work which is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." The ILO Worst Forms of Child Labour Convention (No. 182) requires the prohibition and elimination of "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children," along with work characterized as the "worst forms" of child labor, Worst Forms of Child Labour Convention, art. 3(d). ILO Recommendation 190 on the Worst Forms of Child Labour calls on states to give special attention to girls in hidden work situations. ILO Recommendation 190, Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, art. 2(c)(iii). When defining types of work that comprise the worst form of child labor, states should include "work which exposes children to physical, psychological or sexual abuse" and "work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer." Ibid, art. 3(a) and art. 3(e).

[180] Indonesia and Malaysia, Forced Labour Convention, 1930 (No. 29); Protection of Wages Convention, 1949 (No. 95).

[181] ILO Convention on Forced Labour, 1930 (No. 29).

[182] ILO Convention on the Protection of Wages (No. 95), arts. 5, 12, and 14.

[183] 1955 Employment Act of Malaysia, sections 12, 14, 16, 22, 61, 64 and parts IX, XII, and XIIA.

[184] Workmen's Compensation Act of 1952, Malaysia.

Employers in Malaysia routinely require Indonesian domestic workers to work fourteen to twenty hours a day, seven days a week, with no rest, in contravention of the human rights outlined in international instruments. Article 24 of the UDHR states that "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." These work conditions also do not meet the minimum standards defined in Malaysian law for workers in sectors besides domestic work. Malaysia's 1955 Employment Act sets forth the following labor rights: one rest day per week; a minimum thirty-minute break for each period of five consecutive hours of work; and limitations of work hours to eight hours per day (not to be spread over a period longer than ten hours in one day) and forty-eight hours per week.[185]

Many Malaysian labor agents and employers delay payment of wages to workers until the end of their standard two-year contracts, both denying the workers control of their wages and creating coercive conditions that make many domestic workers unable to leave their place of employment. These practices violate both international law and Malaysian law.[186] Domestic workers, including Indonesian migrant domestic workers, are protected under sections 18 and 19 of the Employment Act which stipulate that, "a contract of service shall specify a wage period not exceeding one month," and that "[e]very employer shall pay to each of his employees not later than the seventh day after the last day of any wage period the wages, less lawful deductions, earned by such employee during such wage period." Many domestic workers never receive their full salary because their employers cheat them or because the mechanism for claiming unpaid wages through Malaysia's Department of Labor is too long, cumbersome, and expensive. Most Indonesian domestic workers that Human Rights Watch interviewed were not even aware of this option.

Freedom from Discrimination

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.[187] International law and the Constitution of Malaysia also

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[185] 1955 Employment Act of Malaysia, part XII, sections 59-60a.

[186] UDHR, art. 23(3) states, "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." Malaysia Employment Act, 1955, section 18-19.

[187] UDHR, art. 2; ICCPR, art. 2(1): "Each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See also, CEDAW, art. 1; CRC, art. 2; International Convention on the

guarantee equality before the law and the entitlement of all persons to equal protection of the law.[188] The Indonesian Constitution provides that, "[e]ach person has the right to be free from discriminatory treatment on any grounds and has the right to obtain protection from such discriminatory treatment."[189] The section on unjustifiable disparate impact immediately below demonstrates how exclusion of domestic workers from employment laws and bilateral agreements is a form of discrimination violating Malaysia and Indonesia's obligations under international law.

Unjustifiable Disparate Impact: Domestic Workers' Exclusion from Legal Protections

Malaysia's employment laws and its bilateral agreements with Indonesia exclude domestic workers from many of the legal protections extended to other workers. These exclusions reflect discrimination against a form of work that is is usually performed by women and girls and involves tasks associated with traditional female domestic roles such as cleaning, child care, and cooking. Women domestic workers are often at particular risk of abuse because of the isolated nature of their work. The lack of legal protections for domestic workers both compounds these risks and prevents victims of abuse from seeking redress through the law.

Facially neutral laws, regulations, policies, and practices can have a discriminatory impact.[190] The CEDAW Committee has not directly articulated its interpretation of discriminatory impact on the basis of sex, but has indirectly done so in its definition of gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately."[191] Thus, a law, policy, or human rights abuse that has an unjustifiable disparate impact on a group distinguished by sex,

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Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Indonesia on June 25, 1999, art. 1; and the Migrant Workers Convention), art. 7.

[188] UDHR, art. 7; ICCPR, art. 26; Malaysia Const, art. VIII, § 1; Indonesian Const, 1945, amended 2002, art. 28 § d.

[189] Indonesian Const, art. 28 § i(2).

[190] The Convention on the Elimination of Racial Discrimination (CERD) Committee has argued that when abuses or policies disproportionately affect a group of people based on such distinctions as race, color, descent, and national or ethnic origin, and have the effect of impairing enjoyment of human rights and fundamental freedoms, this "disparate impact" can be understood as discrimination. CERD Committee, General Recommendation 14 on Definition of discrimination (art.1, para.1). (Forty-second session, 1993), U.N. Doc. A/48/18. In General Recommendation 20, the CERD Committee noted that states must take special caution to ensure that any restriction on the rights listed in Article 5 of the Convention is "neither in purpose nor effect...incompatible with Article 1 of the Convention." Article 5 enumerates a long list of civil, political, economic, social, and cultural rights, including the right to just and favorable conditions of work and the right to just and favorable remuneration. CERD Committee, General Recommendation 20 (Forty-eighth session, 1996), U.N. Doc. A/51/18.

[191] CEDAW Committee, General Recommendation No. 19.

and which has the effect of limiting their enjoyment of human rights, could be read as discrimination within the meaning of CEDAW.

The exclusion of domestic workers from the majority of Malaysia's labor protections, while a facially neutral policy, has a disparate impact on women migrants since the vast majority of domestic workers in Malaysia are migrant women workers. No legitimate reasons exist for these exclusions, meaning that the unequal protection of domestic workers in Malaysian law constitutes impermissible disparate impact discrimination.[192] These exclusions prevent women domestic workers from enjoying their right to freedom from discrimination in the field of employment, as articulated under Article 11 of CEDAW, including in rights to job security and all benefits and conditions of service; equal remuneration, including benefits; paid leave; and health and safety in working conditions.[193]

Around the world, exclusions of domestic work from employment protections represent the formalization of social biases and gender stereotypes into law. Male work in the public sphere is often considered the norm for defining the type of employment deserving legal protection. Female work in the private sphere is typically not valued as an economic activity or acknowledged as work requiring public regulation.

The Right to Health and the Right to Privacy

International law protects the right to the highest attainable standard of physical and mental health.[194] Malaysia and Indonesia must uphold the right to have medical care and

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[192] Some have argued that because domestic workers have responsibilities for child care or preparing meals that do not fit in a standard eight-hour workday, they should not be regulated by limits on their working hours. Although their hours may be flexible, there should be limits on the maximum hours of work they perform each week, with provisions for overtime pay. Furthermore, the requirements of many other jobs, such as health care providers, waiters, and pilots, do not fit the standard eight-hour workday model, yet workers in these jobs are still covered under domestic employment protections.

[193] CEDAW, art. 11.

[194] ICESCR, art. 12(1). "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." See also, CRC, art. 24. The Committee on Economic, Social, and Cultural Rights has established that states have obligations "to adopt legislation or to take other measures ensuring equal access to health care and health-related services…. States should also ensure that third parties do not limit people's access to health-related information and services. Committee on Economic, Social and Cultural Rights, *The right to the highest attainable standard of living (General Comments), General Comment 14*, August 11, 2000, U.N. Doc. E/C.12/2000/4, para. 35. The Committee on Economic, Social and Cultural Rights is a body of independent international experts charged with monitoring the implementation of the Covenant in each ratifying state. To aid the ratifying states in the implementation of their obligations under the Covenant, the Committee issues general comments which are widely recognized as authoritative interpretations of the rights set forth in the Covenant.

necessary social services as set forth in article 25(1) of the UDHR.[195] Article 12(1) of CEDAW prohibits discrimination against women in the field of health care and obliges states to ensure equal access to health care services.[196] Indonesian domestic workers have little or no access to adequate health care when confined in training centers for indefinite periods, or when working in Malaysia. The conditions in the training centers and their employers' homes often negatively affect Indonesian women workers' health. Women interviewed by Human Rights Watch reported deprivation of adequate amounts of food or sleep, injuries from physical and sexual abuse, and anxiety and depression often associated with the confinement and abuse they encountered.

The 1998 United Nations Guidelines on HIV/AIDS and Human Rights (U.N. Guidelines) interpret the right to privacy as encompassing, "obligations to respect physical privacy, including the obligation to seek informed consent to HIV testing."[197] The practice of health care providers in Indonesia giving the results of pregnancy and HIV tests and other medical exams to labor recruiters rather than directly to prospective migrant workers, and without the workers' consent, violates their rights to privacy. [198]

Women interviewed by Human Rights Watch said that they did not know they were tested for HIV, and therefore did not provide informed consent, and they generally received no pre- or post-test counseling. The U.N. Guidelines advise that "public health legislation … [should] ensure, whenever possible, that pre- and post-test counseling be provided in all cases," because counseling helps ensure the voluntary nature of HIV testing and contributes to the effectiveness of subsequent care or HIV prevention.[199] Malaysia and Indonesia should ensure that all HIV testing be accompanied by informed consent and by pre- and post-test counseling.

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[195] UDHR, art. 25(1). "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

[196] CEDAW, art. 12(1).

[197] Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *HIV/AIDS and Human Rights International Guidelines* (from the second international consultation on HIV/AIDS and human rights 23-25 September 1996, Geneva) (U.N. Guidelines) (Geneva: UNAIDS, 1998), U.N. Doc. HR/PUB/98/1, para. 97. The U.N. Guidelines provide guidance in interpreting international legal norms as they relate to HIV/AIDS.

[198] UDHR, art. 12; CRC, art. 16. See also ICCPR, art. 17; Migrant Workers' Convention, art. 14.

[199] U.N. Guidelines, para. 28(c) and para. 74.

Forced Labor and Trafficking

International law prohibits forced labor and trafficking in persons. The UDHR, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), CEDAW, the ILO Forced Labor Convention, and the ILO Worst Forms of Child Labor Convention are the principal sources of international law that define and prohibit these practices.[200] Indonesia and Malaysia must uphold the rights set in the treaties it has ratified: CEDAW and the Forced Labor Convention. Indonesia has also signed the Trafficking Protocol.

National-level provisions proscribe forced labor. Article 6(2) of the Malaysian Constitution states that "[a]ll forms of forced labour are prohibited."[201] Forced labor is defined by the ILO Forced Labor Convention as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." "Menace of any penalty" was explained by the ILO Committee of Experts as a penalty that "need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges."[202]

In many of the cases described above, labor agents and employers engaged in practices that created a "menace of penalties," including threats and physical abuse; confiscation of passports; and withholding of wages. By diverting salaries directly into inaccessible bank accounts, leaving domestic workers penniless for two years, or making irregular payments, employers and labor agents contributed to conditions that made workers economically dependent. Workers face the loss of up to two years of earnings if they protest their workloads or if they decide to escape from abusive situations.

Neither Indonesia nor Malaysia has domestic legislation specifically addressing trafficking, but as of this writing, Indonesia is developing an anti-trafficking law. Trafficking is defined in the Trafficking Protocol as:

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[200] UDHR, art. 4; ICCPR, art. 8, Trafficking Protocol, CEDAW, art. 6; ILO Forced Labor Convention 29; Convention to Suppress the Slave Trade and Slavery, 60 L.N.T.S. 253, September 25, 1926, Article 1(1); and the Worst Forms of Child Labour Convention, art. 3(a).

[201] Malaysia Const, Art. VI, § 1 and Art. VI, § 2.

[202] International Labor Conference, 1979 General Survey of the Reports relating to the Forced Labor Convention, 1930 (No. 29) and the Abolition of Forced Labor Convention, 1975, (No. 105), Report of the Committee of Experts on the Application of Conventions and Recommendations, 65th Session, Geneva, 1979, Report III, para. 21.

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[203]

Human Rights Watch interviewed nine women who could be classified as trafficking victims given the deception and coercion involved in their recruitment and the situations of forced labor in which they were placed. These women were deceived about the type of work they would perform in Malaysia, the salary they would receive, or the terms and conditions of their work. The lack of information and protections in the labor migration process places many economic migrants at risk of trafficking into situations of forced labor.

Freedom of Movement and Freedom of Association

International law protects both the right to freedom of movement and freedom of association. Article 13 of the UDHR provides for the right to liberty of movement and the right to return to one's country.[204] In addition to its legal basis under treaty law, the right to return has increasingly been recognized as a norm of international customary law.[205]

Article 20 of the UDHR elaborates the right to freedom of association.[206] This right is further elaborated by several ILO Conventions, most notably the Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (Convention No. 98), two of the ILO's fundamental conventions.[207] Indonesia has ratified both of

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[203] U.N. Trafficking Protocol, art. 3.

[204] UDHR, art. 13; see also, ICCPR, art. 12. The Migrant Workers Convention also protects the right of migrants to enter their country of origin, Migrant Workers Convention, art. 8.

[205] See "Current Trends in the Right to Leave and Return," U.N. Doc. E/CN.4/Sub.2/1985.

[206] UDHR, art. 20. See also, ICCPR, art. 22; Migrant Workers Convention, art. 26.

[207] Freedom to organize is one of the four core labor rights identified by the International Labor Organization Declaration on Fundamental Principles and Rights at Work (ILO Declaration). According to the ILO Declaration, all ILO members, including Indonesia and Malaysia, "have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the

these conventions, and Malaysia has ratified the latter.[208] Malaysia's Constitution protects the right to freedom of movement and the right to freedom of assembly only for citizens.[209]

Bilateral agreements between Indonesia and Malaysia permit employers to hold workers' passports, significantly restricting their freedom of movement and the right to return to their own country. These MoUs also prohibit migrant workers from joining trade unions and forming associations. Malaysia and Indonesia have failed to ensure that their domestic legislation and bilateral agreements conform to their obligations under international law.

The forced confinement of domestic workers is not necessary for purposes of national security, public order, public health or morals, or the rights and freedoms of others. Consequently, the widespread practice of restricting domestic workers from leaving training centers or their workplace and confiscating their travel documents constitute violations of international human rights law. Confinement in training centers and the workplace prevents women domestic workers from enjoying other rights, such as the right to the highest attainable standard of health, freedom of association, and the right to return to their country. Combined with labor rights violations and abuse, forced confinement is also psychologically abusive, isolating domestic workers from support networks or escape options and fostering dependency and feelings of powerlessness.

Restrictions on Indonesian domestic workers' movements prevent them from associating with other domestic workers, or from contacting religious organizations, NGOs, or other types of support and advocacy groups. In contrast, the Filipino government has negotiated a standard contract with the Malaysian government that guarantees the right for Filipina domestic workers to have at least one day off. Migrant Filipina workers have used the day off to meet with one another. They have formed strong associations in which they can turn to each other for social support and information, and through which support services, including health care and legal aid, can more easily be channeled. The Malaysian government violates the right of Indonesian domestic workers to freedom of association by not legislating and enforcing freedom of movement, rest days, and the right to organize.

Constitution, the principles concerning the fundamental rights." International Labour Conference, ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 18,1998.

[208] Ninety-eight, Malaysia May 6, 1961, Indonesia Ninety-eight July 16, 1957, 87 June 9, 1998.

[209] Malaysia Const, art. IX and art. X.

Freedom from Violence

International human rights law establishes the right to life, security of person, and the right to be free from torture and other forms of cruel, inhuman, and degrading treatment.[210] In the Declaration on the Elimination of Violence Against Women, the United Nations stated that governments have an obligation to "prevent, investigate, and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by states or by private persons."[211] A state's consistent failure to do so amounts to unequal and discriminatory treatment, and constitutes a violation of the state's obligation to guarantee women equal protection of the law.[212]

Sexual harassment may also be considered a form of gender-based violence and discrimination prohibited under CEDAW and directly impacts equality in employment. The ILO's Committee of Experts considers that sexual harassment falls within the scope of the ILO Discrimination (Employment and Occupation) Convention. The CEDAW Committee has commented that sexual harassment includes:

> unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment and promotion, or when it creates a hostile working environment.[213]

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[210] UDHR, art. 3, ICCPR, art. 6, CRC, art. 6 (right to life); UDHR, art. 5, ICCPR, art. 7, CRC, art. 37 (freedom from torture, cruel, inhuman or degrading treatment).

[211] Declaration on the Elimination of Violence against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (no. 49) at 217, U.N. Doc. A/48/49 (1993), art. 4.

[212] CEDAW, art. 15, and ICCPR, art. 26. See also, Committee on the Elimination of Violence against Women (CEDAW Committee), General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 84 (1994) (contained in document A/47/38), para. 6.

The U.N. Special Rapporteur on violence against women has stated, "In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women." Special Rapporteur on violence against women, its causes and consequences, "Preliminary Report Submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45," (Fiftieth Session), U.N Document E/CN.4/1995/42, November 22, 1994, para. 72.

[213] CEDAW Committee, General Recommendation No. 19, para. 17-18.

The CEDAW Committee recommends that governments institute effective complaints procedures and remedies for survivors of gender-based violence. These include:

(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;

(ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

(iii) Protective measures including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.[214]

Indonesia and Malaysia both have national-level legislation to address violence against women, but these laws contain gaps in crucial areas and enforcement is weak. In Indonesia, the Penal Code has provisions against rape but the definition of rape remains narrow and is limited to forced sexual intercourse, excluding forms of rape like forced oral or anal sex.[215] The law should be amended to include any physical invasion of a sexual nature without consent or under coercive circumstances. Draft bills on domestic violence and trafficking were pending as of June 2004. In Malaysia's penal code, rape is also limited to forced sexual intercourse and sexual assault is defined to include forced anal sex and the insertion of objects into bodily orifices.

Malaysia's Ministry of Human Resources has drawn up a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. However, women's rights organizations are concerned about the effectiveness of the code and are lobbying for more powerful legislation barring sexual harassment.[216] The code does not explicitly prohibit sexual harassment or provide sanctions for perpetrators; rather, the stated goal is to provide "guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the

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[214] CEDAW Committee, General Recommendation No. 19, art. 24 (i).

[215] Penal Code of Indonesia, art. 285.

[216] The Code of Practice defines sexual harassment as, "Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment: (i) that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment, or (ii) that might, on reasonable grounds, be perceived by the recipient as an offence humiliation, or a threat to her/his well-being, but has no direct link to her/his employment." Kementerian Sumber Manusia (Ministry of Human Resources), Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. August, 1999, art. 4.

workplace." The guidelines therefore have little relevance for domestic workers who are isolated in private homes and who have few or no options for where they can turn to report sexual harassment.

The governments of Malaysia and Indonesia have a responsibility to address the psychological, verbal, physical, and sexual violence that Indonesian domestic workers encounter at every stage of the migration process. As described above, the current structure of labor migration between the two countries, which gives labor agents the primary responsibility for informing workers about their rights and for responding to cases of abuse, has often left migrant domestic workers in extreme positions of vulnerability with almost no opportunity for redress. In order to uphold their obligations under international human rights law, Malaysia and Indonesia must enact effective laws and institute programs that prevent and remedy such abuse, including by punishing perpetrators of violence. Independent monitoring of training centers and employment conditions in private homes is essential for such efforts, as are mandated rest days and protections of workers' freedom of association. Indonesian women migrant workers' ability to take time off and to visit NGOs, the Indonesian embassy, health care providers, and workers' associations are critical measures for increasing their awareness about their rights and access to services.

Freedom to Practice One's Religion

Article 18 of the UDHR establishes, "the right to freedom of thought, conscience, and religion…and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."[217] Article 3(1) of the Malaysian Constitution states that "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation."

The restrictions employers and labor agents place on Muslim domestic workers' freedom to fast, to pray, and to avoid pork and dogs in accordance with their religious beliefs constitute a clear abuse and infringement on their freedom of religion as protected under international human rights law. The same standard applies for Christian workers who are unable to attend church. In some cases, confiscation of prayer materials and the

[217] UDHR, art. 18. The right is also articulated in Article 18 of ICCPR, Article 12 of the Migrant Workers Convention, Article 14 of the CRC, and in the U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. ICCPR, art. 18; Migrant Workers Convention, art. 12; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, U.N.G.A. Res. 36/55, November 25, 1981.

Koran as well as targeted religious insults designed to humiliate domestic workers could also be considered a form of psychological abuse and degrading treatment.

The Malaysian and Indonesian governments should ensure that all domestic workers are able to practice their religion freely, without restriction or punishment. In response to earlier reports of Muslim domestic workers being prevented from practicing their religion, the Malaysian and Indonesian governments considered a rule to place domestic workers only in homes with employers who belong to the same religion as they do. However, such a practice would discriminate on the basis of religion, and furthermore would not be an effective solution. As noted above, for example, Human Rights Watch interviewed Muslim domestic workers who said that their Muslim employers did not allow them to fast or to pray. The government must instead find ways to monitor the treatment of domestic workers inside homes, create mechanisms for domestic workers to report such abuses, and to raise awareness and accountability among employers about their responsibility to respect this right.

VII. Conclusion

Indonesian domestic workers migrating for employment in Malaysia encounter systematic discrimination, exploitation, and abuse at the hands of labor agents and employers. The governments of Malaysia and Indonesia have neglected their international human rights obligations to prevent these abuses, provide effective remedies, and punish the perpetrators.

The failure of both governments to monitor actively recruitment agencies, training centers in Indonesia, labor suppliers in Malaysia, and places of employment creates an environment where domestic workers are exploited with impunity. Restrictions on domestic workers' freedom of movement and freedom of association have particularly severe consequences by heightening their vulnerability to labor rights violations and abuse and by preventing them from accessing information and help. Punitive immigration policies compound the problems that a worker escaping from an abusive situation may face, as she is likely to be detained in an immigration detention center with poor conditions and then be summarily deported, with no access to social or health services or to redress for labor rights violations.

Regional labor migration is a pervasive phenomenon in Asia, one that benefits the economies of both sending and destination countries. Economic migrants are increasingly women, and are often concentrated in sectors such as domestic work, which

are characterized by inadequate legal protections and little access to social services. Regional and international bodies have a responsibility to increase protections for migrant workers and to establish and enforce international labor standards that prevent "a race to the bottom."

VIII. Recommendations

To the Governments of Indonesia and Malaysia

- **Enact legislation to protect migrant workers, including domestic workers, and amend existing employment and immigration laws to provide equal protection to domestic workers.**
    - The Indonesian government should enact the proposed law on the protection of migrant workers after revising it so that it fully protects their human rights. The president should prevent any further delay by assigning a ministry to discuss the bill in parliament. Regional governments should also enact similar legislation.
    - The Malaysian government should amend the Employment Act of 1955, the Workmen's Compensation Act, and other labor laws to include full and equal labor protections for domestic workers, including regulations on hours of work, rest days, and compensation for workplace injuries and occupational illnesses.
    - The Malaysian Ministry of Home Affairs should eliminate the fee for a "special pass" and revise immigration policies to permit migrant workers to find employment if waiting in Malaysia for the completion of an investigation or complaint with the Labor Department, or prosecution of a criminal case.

- **Adopt a bilateral labor agreement that protects domestic workers' rights.**
    - Establish recruitment, training, and placement policies that protect fully domestic workers' human rights. Develop a mechanism for monitoring these processes, including workers' transit to and from Malaysia.
    - Include provisions for a standard contract. The contract should clearly define work responsibilities and include regulations on hours of work, rest days, regular payment of wages, and compensation for injuries.
    - Protect migrant domestic workers' freedom of association, freedom of movement, right to health, and other human rights protections.
    - Ensure that migrant domestic workers are entitled to protections outlined in other MoUs on migrant workers, including the one signed on May 10, 2004.

- **Regulate and monitor rigorously the practices of labor agencies. Impose substantial penalties on labor agencies and agents who violate these regulations.**
  - The Indonesian Ministry of Manpower and Transmigration and the Malaysian Ministry of Human Resources should establish mechanisms for regular and independent monitoring of labor agencies to ensure their compliance with regulations on recruitment, training, travel, work placements, and termination of contracts.
  - The Indonesian Ministry of Manpower and Transmigration, the Department of Immigration, and the Ministry of Foreign Affairs should streamline and simplify recruiting and training procedures for migrant domestic workers to avoid opportunities for corruption and deception. They should improve payment structures and mechanisms for accountability at the field level to reduce incentives for local sponsors to extort money from potential migrants. They should enforce time limits on waiting periods for job placement and eliminate all placement fees.
  - The Indonesian Department of Immigration should improve anti-corruption measures to help prevent alteration of passports, visas, and other travel documents.
  - Indonesia's Ministry of Manpower and Transmigration should adopt improved regulations for labor recruiters and migrant worker training centers that more clearly delineate minimum health and safety conditions, protect women workers' freedom of movement, outline standards for treatment of trainees, and create effective mechanisms to enforce the regulations.

- **Inspect workplace and detention conditions and create accessible complaint mechanisms for migrant domestic workers who suffer abuse. Provide redress for these workers and penalize labor agents, employers, and government officials who perpetrate abuses.**
  - The Labor Department of the Ministry of Human Resources should develop mechanisms for regular monitoring of workplace conditions.
  - In Malaysia, the Labor Department of the Ministry of Human Resources, and the Department of Immigration and the Royal Malaysian Police in the Ministry of Home Affairs, should establish complaint mechanisms that are accessible to migrant domestic workers.
  - The Malaysian Ministry of Home Affairs should implement training programs for police officers and immigration officials to identify trafficking victims and domestic workers who have experienced abuse. The police should have a

protocol for handling cases of abuse including immediate health care and social service referrals.

- The Malaysian Ministry of Home Affairs should allow independent and regular inspections of immigration detention centers and visits to migrant workers in custody. They should ensure that conditions meet international standards on the treatment of prisoners.
- The Malaysian and Indonesian governments should prosecute labor agents who violate the rights of domestic workers according to national laws. They should also provide civil remedies, including monetary damages, that migrant domestic workers can pursue against labor agents.

- **Provide support services for migrant domestic workers and strengthen the capacity of NGOs to assist domestic workers.**
  - The governments of Indonesia and Malaysia should provide resources for support services, including legal aid, health care, shelter, job training, psychological counseling, and reintegration programs.
  - The governments of Indonesia and Malaysia should work cooperatively with NGOs in both Indonesia and Malaysia to protect the rights of migrant domestic workers, including through establishing regular consultations and by providing funding.
  - The Malaysian Ministry of Health, the Ministry of Human Resources, and the Department of Immigration should coordinate to establish programs and policies that make health care accessible to women migrant domestic workers. The Indonesian and Malaysian governments should ensure that women migrant workers have access to treatment and care as well as insurance coverage both for accidents and medical care including hospitalization.
  - The Ministry of Foreign Affairs, in coordination with other relevant ministries, should establish expanded and higher-quality victim services at consulates and embassies in Malaysia. It should strengthen their monitoring capacities.
  - The government of Malaysia should refrain from punitive prosecutions of labor rights activists and issue a pardon for the unjust conviction of Irene Fernandez for publishing a report on conditions in immigration detention centers.

- **Disseminate information on domestic workers' rights and the obligations of labor agents, employers, and governments.**
  - The Indonesian Ministry of Manpower and Transmigration should create and widely disseminate a guide for domestic workers about their rights.

- The Malaysian Ministry of Human Resources should provide an orientation to migrant domestic workers upon arrival in Malaysia, as currently required for other migrant workers. These orientations should include information about workers' rights and how to contact assistance.
- The Ministry of Human Resources should publish a guide for employers about the treatment of domestic workers and provide trainings to educate employers about their legal responsibilities.

- **Improve and coordinate efforts to prevent and respond to trafficking.**
  - Train the Indonesian and Malaysian police to identify trafficking victims, especially when arresting and detaining individuals for violations of the Immigration Act. Create protocols for referrals for health care, legal aid, counseling, and other support services.
  - The Indonesian and Malaysian governments should investigate trafficking cases and prosecute traffickers to the full extent of the law. They should investigate trafficking into all forms of forced labor, including forced domestic work.
  - The governments of Indonesia and Malaysia should enact anti-trafficking legislation. The Indonesian president should prevent any further delay by appointing a ministry to discuss the existing draft anti-trafficking legislation in parliament. The Malaysian government should adopt specific anti-trafficking legislation instead of using provisions in the Internal Security Act.
  - In Indonesia, the Ministry of Manpower and Transmigration, the Ministry of Women's Empowerment, and the Ministry of Education, among others, should conduct campaigns to raise awareness about trafficking, especially among prospective migrant workers.

- **Sign and ratify international human rights treaties. Comply with treaty-body reporting requirements.**
  - The governments of Indonesia and Malaysia should ratify the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (United Nations Trafficking Protocol); and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention).
  - Indonesia and Malaysia should submit their overdue reports to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Committee. Malaysia should submit its overdue reports to the Committee on the Rights of the Child.

To the Association for Southeast Asian Nations (ASEAN)

- Create a working group to study regional labor migration and propose solutions, including multilateral agreements on labor standards and protections for migrant domestic workers.
- Establish a regional human rights mechanism that could address the protection of human rights, labor migration, and trafficking in persons in the region.

To International Donors (United Nations, World Bank, European Union, United States, Japan)

- International donors should:
  - Provide resources for support services, including legal aid, health care, shelter, job training, and psychological counseling.
  - Provide resources for strengthening the capacity of research and advocacy organizations working on behalf of migrant workers, especially those focusing on female domestic workers.
  - Raise attention to the abuses faced by migrant domestic workers in bilateral and multilateral meetings with the governments of Malaysia and Indonesia. Press for the reforms recommended above.
- The Global Commission on International Migration should address in detail the situation of migrant domestic workers in its research, consultations, and recommendations.
- The International Labor Organization (ILO) should ensure substantial attention to domestic workers when implementing its plan of action on migrant workers adopted in June 2004. The ILO should also create model bilateral labor agreements and model standard contracts for domestic workers to aid governments undertaking reforms.

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