

Regional overview and analysis of policies related to the rights of migrant domestic workers

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ROMIA: Migrants with a specific focus on migrant domestic workers and victims of human trafficking



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Inherent tension with the approaches on these two target populations

Migrant domestic work has the opportunity to be a positive force for development, women's economic empowerment and community development in countries of origin

Human trafficking exists almost solely in the framework of criminal law and denies any agency of the victim, focuses on vulnerability

But there is a nexus – the 'labour approach' to human trafficking

Using the framework of labour rights available to all workers, including migrant domestic workers



Changing the conversation...

Fair recruitment, safe migration and ensuring women's mobility = **prevention** of human trafficking/forced labour?

Reducing exploitative working conditions and ensuring decent work = **prevention** of human trafficking/forced labour?

Enforcement of labour rights, health and safety through inspections = **protection/prosecution** of human trafficking/forced labour and related crimes?



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Overview

Why is trafficking a **labour market/labour rights issue** in East and South-East Asia?

Why are we talking about **human trafficking/forced labour**?

Labour rights and legal standards on **domestic work, forced labour** and **trafficking in persons**

How do **immigration** systems create **vulnerabilities**? Why? How do women get around these systems?

What added value do the new ILO Protocol and Recommendation on forced labour (**'the labour approach'**) bring to anti-trafficking work ?

- Prevention
- Protection
- Remedies, including compensation



Why is domestic work – and human trafficking – a labour market/labour rights issue in ASEAN?

Globally, **one in every 13 wage-earning women** is a domestic worker

About **73.4 per cent** (or around 8.5 million) of all migrant domestic workers **are women**

Southeast Asia and the Pacific host **24 per cent** of the global number of women migrant domestic workers

Migrant domestic worker numbers are **likely to increase** to fill care and household services' needs

Migrant domestic workers are **at risk** of human trafficking/forced labour

Isolation in which they usually work

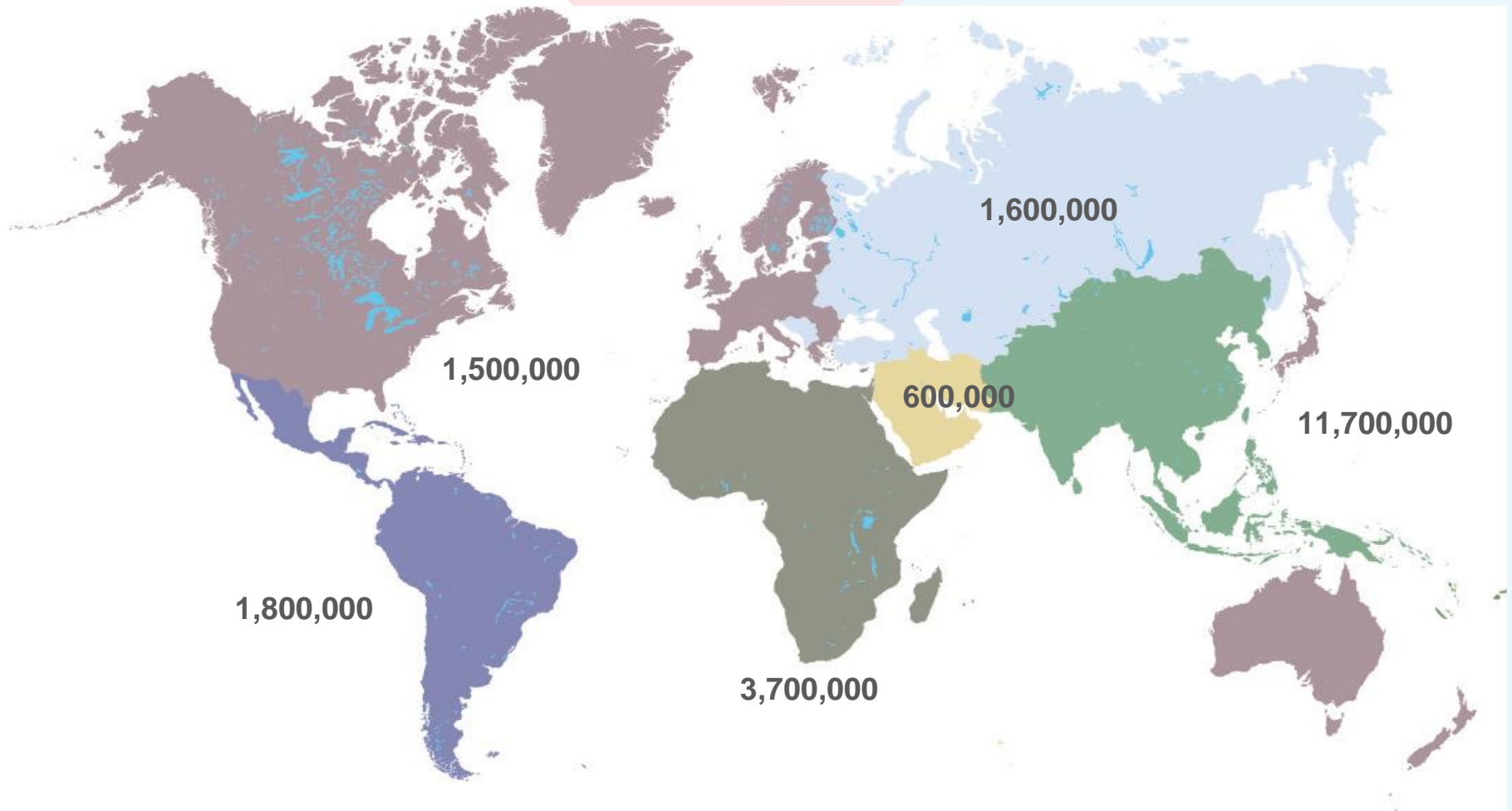
Intersecting **discriminations** (inc. informality of sector and migrant/worker status)

Why are we talking about trafficking/forced labour?

ILO global estimate of forced labour (2012)



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International legal standards – basic obligations

Forced Labour Convention, 1930 (No. 29) prohibits the use of forced or compulsory labour in all its forms.

Obligations of member States which ratify Convention No. 29 include:

Suppression of the use of forced or compulsory labour in all its forms within the shortest possible period (Article 1(1)).

Making illegal exaction of forced or compulsory labour punishable as a **penal offence** (Article 25).

Ensuring that the **penalties** imposed by law are really **adequate** and **strictly enforced** (Article 25).

Obligations of member States which ratify the Protocol to Convention No. 29

Provide **protection** and access to appropriate and effective **remedies, such as compensation**, to victims.

The measures shall include specific action against **trafficking in persons for the purposes of forced labour** (Article 1(3)).

Each member shall develop a **national policy and plan of action** for the effective and sustained suppression of forced labour, which shall involve systematic action (Article 1(2)).

Shall be developed in consultation with employers' and workers' organizations and, as appropriate, implemented in coordination with them.



What's new in the Protocol and Recommendation?

They approach forced labour as a **labour market issue**, and not only as a criminal justice issue.

They address **structural/systemic factors** that make workers vulnerable to forced labour, **instead of** only focusing on **identification of individual cases** and prosecution of perpetrators.

They promote **broad partnerships** involving labour market institutions, **employers' and workers' organizations**, and other groups.

They recognize the responsibility of **private sector** in preventing and responding to risks of forced labour.

They provide specific **protection to migrant workers**.

They establish an **explicit linkage** between concepts of **forced labour** and **human trafficking**.



What international labour rights are available to migrant domestic workers?

Migrant domestic workers should be entitled to:

- All rights available to other migrant workers
 - This includes **pay equality with national workers**
- All rights available to other domestic workers
- And rights under the ILO's **Domestic Workers Convention, 2011 (No. 189)** and other relevant international labour standards
 - Reaffirms rights of freedom of association and equality and NO to discrimination, forced labour & child labour
 - Protection against abuse, harassment and violence
 - Fair terms of employment & decent working & living conditions
 - Information on terms & conditions, written contract
 - Working time & remuneration
 - Social protection
 - Compliance and enforcement

But we know that domestic workers aren't able to access these rights...



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In Asia and the Pacific, **only 3%** are covered by general labour laws to the same extent as other workers

61% are **excluded** from any labour **legislation**

97% have **no right** to one **day off** per week

99% have **no normal weekly hours limit**

88% are **excluded** from **minimum wage coverage**



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Governments have recognized/reacted risk factors for migrant women

Protectionist (discriminatory) policies

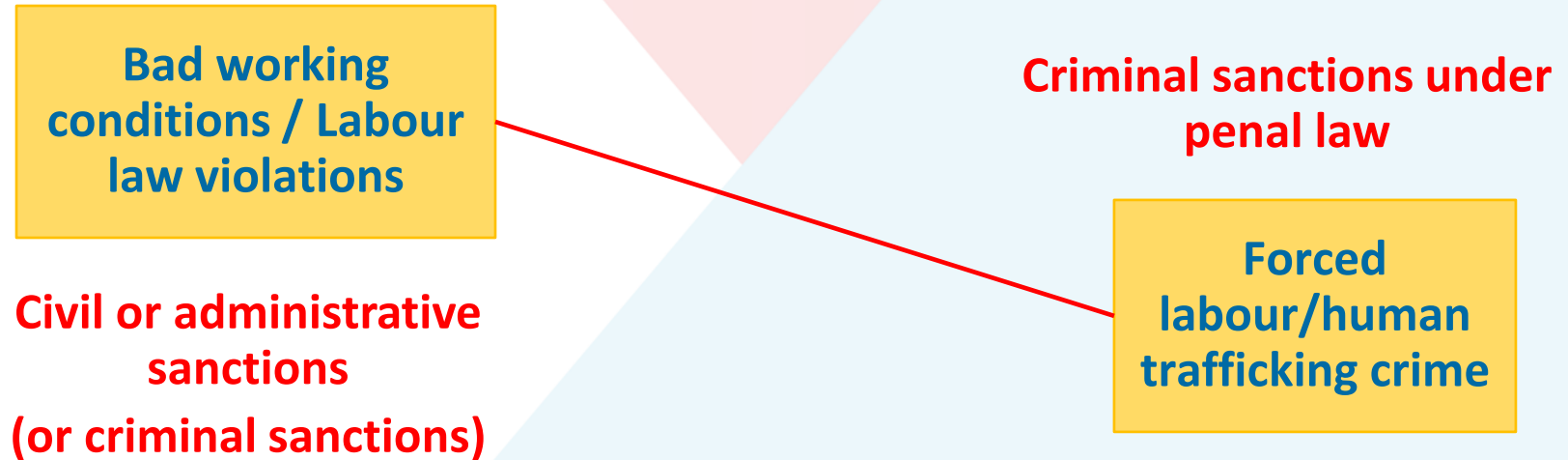
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Improvement of labour standards

Why?



The continuum of exploitation



The '**labour approach**' believes that by addressing bad working conditions, labour law violations and so on, we will better be able to **identify, address and prevent** cases of trafficking/forced labour.

We need to ensure better **integration of labour and criminal justice** to capture the continuum of exploitation – this means addressing **domestic work as work** not limiting our thinking to victims of trafficking/vulnerable women.



How do **immigration** systems create **vulnerabilities**?

Immigration systems regularly not only create vulnerabilities that increase the chances of exploitation/forced labour, but reflect and reinforce gender norms that undervalue women's work, including domestic work and sex work

- **By restricting women's access to regular migration channels, including for domestic work**
 - Through considering domestic work as apart from other systems governing migrant workers entry into destination workplaces
 - By imposing paternalistic restrictions on women (where parental or spousal permission is required, or minimum ages greater than those required for other jobs)
 - By forcing women to circumvent these restrictions to gain access to jobs



What barriers to women's mobility exist?

Cambodia

- Age requirement of 21 years for domestic work only (18 for other sectors)
- Ban on first-time migration for domestic work to Malaysia (since 2011)
- Parental permission required (regardless of age) for domestic workers in Malaysia to extend contracts or renew passports (since 2012)

Indonesia

- Ban on migration for domestic work to the Middle East (since 2015)
- Planned cessation of domestic worker outward migration by 2017

Lao PDR

- Migration not allowed for work that is dangerous or "contrary to Lao customs and traditions"

Myanmar

- Generalized ban on migration for domestic work to any country (since 2014)
- Recruiters must place women in worksites where they will work with at least five women

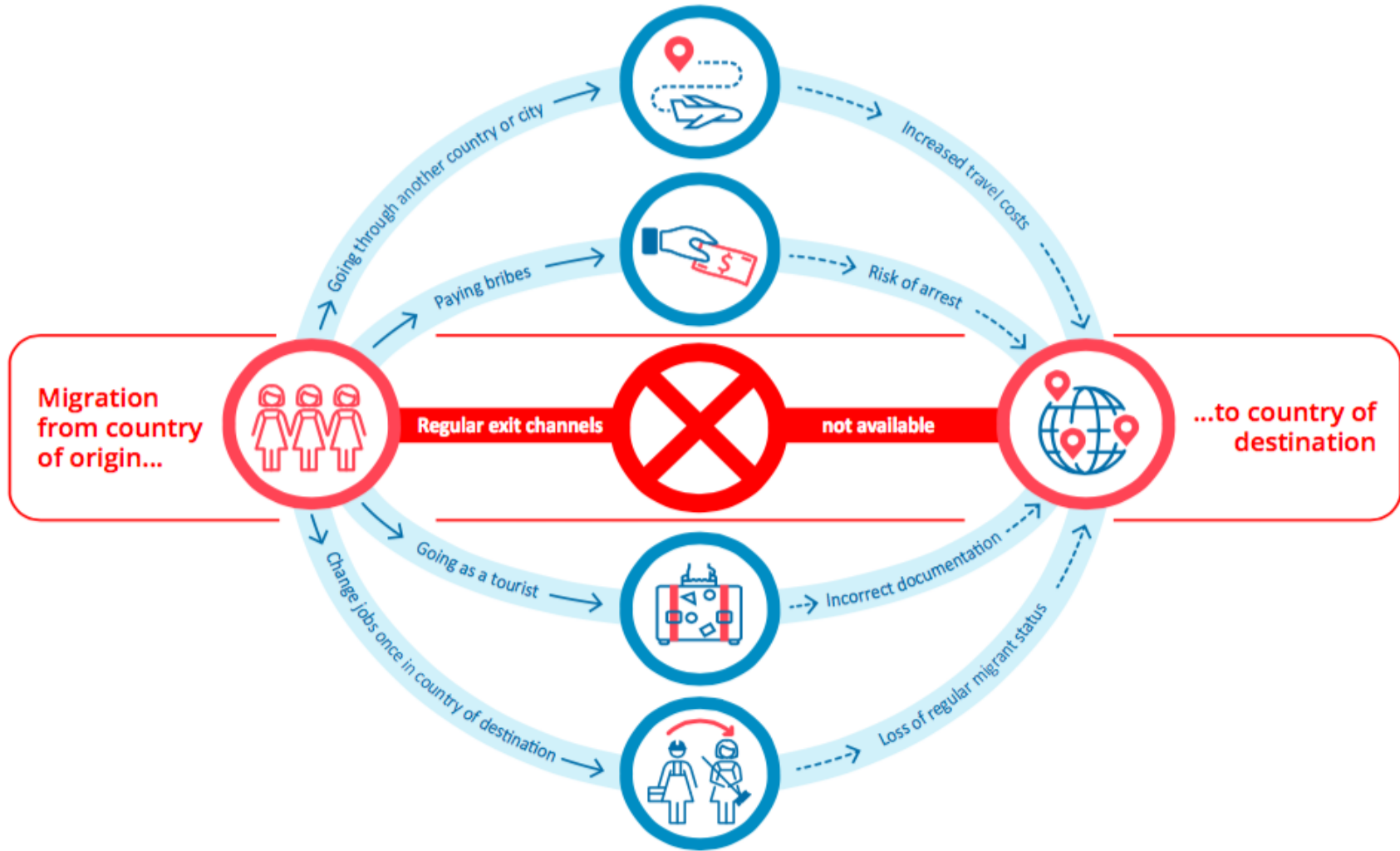
Philippines

- Age requirement of 23 years for domestic work only (18 for other sectors) (since 2011)

Viet Nam

- Migrant workers not permitted to work as dancers, singers, or masseuses in restaurants, hotels or entertainment entities (since 2007)

How do women circumvent bans?





If trafficking is a labour market issue best addressed with the 'labour approach' what does this mean?

1. Using **labour inspections** to ensure standards of working conditions are upheld
2. Creating **real value in domestic work** performed in our communities – recognizing domestic work as *work*
3. **Listening to workers and employers** on their needs and challenges
3. Using the **Forced Labour** and other international labour standards to **reduce the decent work deficits** for migrant domestic workers

This also means **creating regular channels** for migration into **domestic work**, ensuring **minimum wage** and **social protection** for domestic workers and generally that migrant workers enjoy the same protections as nationals through the relevant labour laws

So why is this so difficult? **Attitudes...**

What is the role of National Red Cross Societies in changing attitudes?



Just part of the family...

Employment relations determine working conditions

- **Contractual**: both parties are equal and individual actors. This model offers acknowledgement of labour rights and sees domestic work as work
- **Fictive kin (imaginary family)**: bound up in affectual relations, mutual dependence and duty; “one of the family”

Employers in Thailand and Malaysia generally agreed that domestic workers should be treated as one of the family (fictive kin)

Domestic workers may also prefer ‘**fictive kin**’

The **limits of ‘fictive kin’** model and implication for policy:

- In Thailand, officials stated that domestic workers were part of the family and this was one reason why labour authorities cannot inspect their employers and why social security was not appropriate

[VIDEO](#)



THANK YOU

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